

Disappearance

Dear Kalsang la,

Generally, it is fine and I'm impressed !

You've done a good job with the important details and have been very careful to answer all the questions, and that is very important.

However, please do read & analyze the actual questions more carefully. Each set of questions under a heading (I, II, III, IV, etc.) applies to a different aspect of the situation (the existence of legal remedies, the abduction of relatives & children in addition to the main figure, the level of remedial action, national & international).

There is no need to say anything more than once in the right place !

I'm delighted you're happy with the material, there is plenty more coming next week.

Apr. 1 98

Report on the enforced or involuntary disappearance of a person

I. Identity of the person subjected to enforced or involuntary disappearance

1. Family name : Not applicable [or, decide that one of the two is a family name & stick with it]
2. First name : Gyaye
3. Second name: Phuntsok
4. Sex : Male
5. Birth date or age (at time of disappearance) : 68
6. Nationality : Tibetan
7. Civil status (single, married, etc) : Single
8. Identity document : N/A
9. Profession : Administrator

10. Address of usual residence: Gyaye village, Rigmon Township, Ghongo County, Tsolho Tibetan Autonomous Prefecture in Qinghai Province.

11. Activities: [in a narration, best to provide some chronological sequencing] Throughout his career, Phuntsok Gyaye sought to initiate positive, constructive activities for the benefit of the Tibetan people [improvement as applied to people, has some moralistic connotations].

During former Communist Party Secretary Hu Yaobang's visit to the area in June 1980, Phuntsok reported to him on the grievances and the problems and difficulties faced by the Tibetan people in Tsolho Prefecture.

[is the following also to Hu Yaobang ? if not, when and to whom ?] Later on, Phuntsok supported the claim of a group of nomads for the return of the land that were confiscated by the Northwest Landrou [Lanzhou if it is the city in Gansu] military battalion. His efforts resulted in the return of half of the lost land. He secured water and electricity for Tibetan families from the Chinese authorities [these are prob. not nomads, so worth separating action from previous one]. Phuntsok also helped to set up a school [for ?] in the area with private donations and German aid. For these reasons, he was elected [by ?] as their [whose?] popular [here, the use of "popular" would sound like a value judgement - English is a funny language - this one is popular, this one is unpopular. So just say "representative" but, say whose rep. And maybe at what level, say (he was elected by the local nomads to represent them at the county level, or as their representative".] representative. He was then also [because it is quite different from his Tibetan representativity - shows that Chinese taking advantage of a man they see as having become popular ... and influential, so they try to coopt him to achieve their own aims] appointed by the Chinese authorities as the member for Gong-hai County of Tsolho Tibetan Autonomous Prefecture's Political Consultative Committee (Qinghai province).

[Separate para. because what follows is a different element]

In March 1992, Gyaye Phuntsok went to India on religious pilgrimage, with valid Chinese travel documents. Upon his return, the Chinese officials in his area became suspicious (you can't "suspect" something that is common knowledge, but you can suspect there were hidden motives, then you say "become suspicious about") about his visit to India. He was interrogated several times and placed under strict surveillance by the intelligence wing of the Public Security Bureau. In August 1998, Phuntsok's house was raided and material containing speeches by H.H. the Dalai Lama was found and confiscated. Gyaye Phuntsok was then arrested. ~~and taken away in a truck by officials of the National Security Department.~~ [below is proper place for details]

II. Date of disappearance

12. Year, month, day and hour when missing person was arrested or abducted : August 1998

13. Year, month, day and hour when missing person was last seen : August 1998

14. Other indications relating to the date of disappearance :

Gyaye Phuntsok's house was raided and searched. After finding some booklets containing speeches by H.H the Dalai Lama, he was arrested

and taken away in a truck by officials of the National Security Department. According to reliable sources inside Tibet, Phuntsok is believed to be ~~detained~~ held in Qinghai, but the exact location of his incarceration is not known.

III. Place of disappearance

15. Place where missing person was arrested or abducted: From his house in Gyaye village, Rigmon Township, Ghongo County, Tsolho Tibetan Autonomous Prefecture in Qinghai Province. [excellent]

16. Place where missing person was last seen : ~~From~~ At his residence

17. If subsequent to the disappearance of the person information was received about him/her being detained, please indicate, if possible the place (official or others) and period of detention, as well as the source of information, in particular witness who have seen the disappeared person in captivity:

None

18. Other indications concerning the place of disappearance: ~~It is believed that one of the reason for restriction on Gyaye Phuntsok may be linked to his visit to India in March 1992.~~ [may be cause, but irrelevant to place of dis]

IV. Forces believed to be responsible for the disappearance:

19. If the person was arrested or abducted, please indicate who carried out the arrest: ~~Public Security Bureau (PSB)~~. The officials of the National Security Department carried out the original arrest in August 1998. [this seems contradictory is it the PSB or the Nat'l SD ? Question 19 addresses only the original arrest or abduction]

NB - this thematic procedure, the WG on Dis, was adopted in the days of the Argentinian & Chilean military dictatorships, which made a practice of abducting inconvenient people and throwing them in jail or into the sea - so it was crucial to know who had carried out the "arrest" or kidnapping - sometimes paramilitaries, sometimes, the army, the police, people in masks, etc.]

20. If the forces or agents who carried out the arrest or abduction cannot be identified, state why you believe that the government authorities, or persons linked to them, are responsible for the disappearance:

[See above, if abducted by men in masks, etc., important to explain why you accuse the government, because in int'l law, a government can only be held to account for the actions of its agents, not those of insurgents or common criminals]

~~According to our source officials of the National Security Department has carried out the arrest.~~ [no need to say anything more, you have already said that it was the ?local branch ? of the NSD]

After his arrest, some of the nomads from his area tried to trace him but to no avail. When they inquire about Gyaye Phuntsok the officials threatened them by saying they could also be imprisoned if they persist.

[This is useful, points to guilt of officials, but who are these officials ? PSB ? Gvt. ?]

21. If the arrest or abduction took place in the presence of witnesses indicate the names of the witnesses. If the witnesses have not identified themselves or wish to withhold their names, indicate if they are relatives. neighbours bypassers etc.: Neighbour [Only one neighbor ? Seems weak. Here it is worth saying, "the arrest was witnessed by neighbors and bystanders whose identity must be protected for fear of official reprisals"]

22. If any written evidence of the arrest exists, please describe (arrest, order, communiques, officials notes, letters etc.):

None: Tibetans involved in nationalists activities are [often] detained arbitrarily or "in arbitrary fashion" without any official warrant.

~~documentation. No arrests warrant, for example, are issued.~~ [Now, as a lawyer, you realize it is unsafe to make such a sweeping statement - and I'm afraid the police often do have warrants nowadays, even in

Tibet ! Here, other than the existence of a warrant, the question seeks to elucidate whether news of this disap. was published in a newspaper, or if there was an official communique, or a comment by an official, etc. The Chinese (and other gvts.) often do radio or TV broadcasts when they get excited about a subversive incident]

23. If a search took place of the missing person's domicile, office or place of work, (or that of any other person connection with him / her), before, during or after the disappearance, please indicate and describe the search: Prior to his arrest, Phuntsok's house was raided [by ? who raided ?] and thoroughly searched: some booklets containing speeches of H.H the Dalai Lama ~~was~~ [the word "booklets" is in the plural & requires a plural verb form] were confiscated.

N.S.D.
~~Gyaye Phuntsok was then arrested and taken away in a truck by officials of the National Security Department [this does not pertain to the search, and the exact same words appear twice above - one instance has been deleted & this one too].~~

24. If someone was questioned concerning the disappeared person by agents of the security services, official authorities or other person related to them, before or after the arrest (or disappearance), please indicate and provide available information concerning the questioning:

Not known

V. National action (legal or other) on behalf of the missing person.

[Here, "national" means within the country, as opposed to the next item, "international". It is a principle of international law that before a h.r. issue can be taken up internationally, all domestic = national remedies must be exhausted. That is the import of "amparo, habeas corpus, etc. All you have to say is, not available]

26. Nature of the action:

Other measures taken at the national level (letters, petitions, etc., or the steps taken before the civil or military authorities):

In China, recourse against arbitrary official action should be provided by the Administrative Litigation Law, adopted in 1992. However little is known by the public about this procedure and it is seldom used. Our Tibetan sources indicate that they are not aware of such procedure.

After his arrest, some of the nomads from his area tried to trace Gyaye Phuntsok Gyaye Phuntsok but to no avail. When they inquired about him the officials threatened them by saying they could also be imprisoned if they persisted.

[v. good]

A. Habeas corpus, amparo or similar

[I would leave the numbered questions right out, since the rights don't exist there is no point going into a detailed denial - just enter phrase below]

~~Note: Tibetan remains denied of these rights by the Chinese authorities. "XYZ are denied these rights by ..." (not "of" the rights") Chinese are also denied these rights, mainly because they don't exist in law in China ... so~~
"These rights are not recognized in Chinese jurisprudence".

B. Criminal complaints:

"None [no criminal complaints were entered by the police or local prosecutor acting on behalf of the victim]

C. Other measures taken at the national level:

~~Not possible in Tibet~~ Other than the seldom invoked Administrative Litigation Law, there is no legal provision for national action against abuse of administrative power in China. While the ordinary Chinese have a tradition of

petitioning the Emperor, and resumed writing this type of letter to obtain redress, restitution or political rehabilitation after the "liberalisation" that followed Chairman Mao's demise, occasionally obtaining some satisfaction, ordinary Tibetans have no such history or tradition of dealing with Chinese authorities. [here you sneak in a little history]

At the local level only, verbal appeals can be addressed to the Public Security Bureau, and they are generally rejected. Moreover, Tibetans fear approaching the authorities because of their links to detainees may bring problems or pressures to bear on their family members or friends.

~~but [they who ?] do not comply with their law.~~

VI. Measures taken at the international level on behalf of the missing person: None
[This section applies to other UN procedures, like the SRs, or 1503, or UNESCO, or NGOs like Amnesty, or gvt. Orgs like Interpol]

VII. Related cases of arrest or disappearance, in particular missing relatives or children:

None

VIII. Information concerning the author of the present report

The Tibetan Centre for Human Rights and Democracy is a non-governmental organisation based in Dharamsala. The main objective of the Centre is to monitor and research human rights developments in Tibet. This information is mainly sourced from people who have recently arrived from Tibet. The case is filed on behalf of the Tibetan Centre for Human Rights and Democracy.

40. Relationship with the missing person:
The Tibetan Centre for Human Rights and Democracy TCHRD is responsible for promotion, observation and protection of human rights situation in Tibet and the Tibetan community. It is the duty of TCHRD to report on any disappearance of Tibetan nationals. This information on Gyaye Phuntsok was sourced from a neighbour who is now in exile in India.

41. Contact details for TCHRD are: Tel, +91 1892 23363 / 22510 / 22457
Fax: +91 1892 23363/ 24957
Email: dsala@tcrc.org

Please state whether the author of the present report wishes his / her identity to be kept confidential:

The identity of the actual source of the report must remain confidential. There have been many cases of official reprisals, including the arrest and torture of relatives or associates of persons reporting human rights violations. [important things first] The report may be credited to TCHRD. ~~However information relating to our source must be kept secret.~~ The Tibetan Centre for Human Rights and Democracy remains in contact with the sources of allegations of human rights violations and provides follow-up information on cases.
Date: April 9, 1998

Signature of author:

Kalsang Topgyal
Field Officer
Tibetan Centre for Human Rights and Democracy
Dharamsala

Return-Path: tica@compuserve.com
Date: Sun, 11 Apr 1999 17:44:33 -0400
From: Marie Louise Broch <tica@compuserve.com>
Subject: For Kalsang la
Sender: Marie Louise Broch <tica@compuserve.com>
To: "TCHRD, Dsala" <tchrd@tcrclinux.tibdsala.org.in>
Content-Disposition: inline

Kalsang la,

Thinking over your presentation, a few questions came to mind :

1. Was Mr. Gyaye still a member of the CPPCC at the time of his arrest ? It isn't clear.
2. What is his job / occupation at present ? If "retired", please indicate from what functions.

The WTN says he was heading the administration of the school he had founded. In the text, you might refer to it as a "primary school for the children of the poorer Tibetan families in his area". You might want to add that it was the only one in the area with a (German) foreign teacher for English classes. This justifies the German aid and might be a reason for the disappearance, if it perturbs the school - you don't say anything, but you provide the elements for the experts to figure it out if need be.

3. If his "crime" was to have travelled in 1992, why has it taken so long for the ?PSB? or ?National Security? to make a case against him and proceed to his arrest ? Was there some action to trigger it ?

It might be a good idea to read up on the difference between the PSB & the National Security administrations. All over the world, the intrusion of a central authority signals the political (non-standard) nature of the incident.

Please don't forget to let me know which of the documents you want from the rather long list - or in what order, which would you rather have first, and do you need any background for any of them, either coments or additional material.

Best regards,
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