

THRD Request

I. Identity of the person arrested or detained

1. Family name: none
2. First name: **Jigme** Second name: **Gyatso**
3. Other name: none
4. Birth date or age (at the time of detention): 35 years old
5. Nationality/Nationalities: Tibetan
6. a) Identity document (if any): none
b) Issued by:
c) On (date):
d) No.:
7. Profession and / or activities: Monk
8. Sex: Male
9. Address of usual residence: Vartha Village, Kansu Tibetan Autonomous Prefecture, Kansu Province

II. Arrest

1. Date of Arrest: 30 March 1996
2. Place of arrest: Tsongla Yangzom restaurant, Lhasa
3. Forces who carried out the arrest or are believed to have carried it out: Public Security Bureau Officials of Lhasa city.
4. Did they show a warrant or other decisions by a public authority? Yes
5. Authority who issued the warrant or decision: Office of the Procurator, Lhasa.
6. Relevant legislation applied (if known): not known

III. Detention

1. Date of detention: 30 March 1996
2. Duration of detention: 15 year sentence
3. Forces holding the detainee under custody: For first day and a night by the anti-riot department, Lhasa, and for a year in Gutsa detention centre by the Public Security Bureau officials and thirdly in Drapchi prison, to serve out the rest of his term
4. Places of detention: Anti-riot department, Gutsa and Drapchi prison.
5. Authority that ordered the detention: Intermediate People's Court of Lhasa
6. Reasons for the detention imputed by the authorities: Charges of disseminating counter-revolutionary propaganda, incitement and having illegally formed the organisation called Association of Tibetan Freedom Movement
7. Relevant legislation applied (if known): not known

IV. Describe the circumstances of the arrest and / or the detention and indicate precise reason why you consider the arrest or detention to be arbitrary

Jigme Gyatso visited India to receive Kalachakra empowerment from His Holiness the Dalai Lama. He later joined Gaden Monastery in 1987. From that time, Jigme became

involved in pro-independence activities. He distributed independence leaflets and pasted wall posters around Gaden Monastery and nearby Lhasa city. Sometime in 1988-1989, Jigme Gyatso led a group of young friends who formed a secret youth organisation named the Association of Tibetan Freedom Movement. In 1992 Jigme led one of the major demonstrations that took place in Lhasa. Many of the demonstrators were arrested and detained by the Public Security Bureau and the officials of the anti-riot department. Jigme was not arrested at the time, although officials of the PSB suspected he was involved in the demonstration and kept him under strict vigilance. Jigme was then compelled to leave the monastery, as he was unable to bear the situation.

After the arrest of Samdup Tsering a fellow member of the Association of Tibetan Freedom Movement on 2nd July 1993, an arrest warrant was issued for Jigme Gyatso. The authorities continued to search for Jigme Gyatso until he was actually arrested on 30th March 1996 from Tsongla Yangzom restaurant in Lhasa by the People's Armed Police and Public Security Bureau officials. Jigme was immediately taken to the anti-riot department (Tib: Ngandon Nyentok Rukhag) in Lhasa for one day and night.

Throughout that time he was ill treated and tortured while being interrogated. The following day, Jigme was taken to Gutsa Detention Centre and detained for one year until March 1997. Jigme was formally tried in May 1997 and subsequently given a 15 year sentence on charges of disseminating counter-revolutionary propaganda, incitement and having illegally formed the organisation, Association of Tibetan Freedom Movement. Three months after sentencing, Jigme was transferred to Drapchi prison, where his visitation rights have been entirely denied. According to the source, who visited Drapchi, Jigme's head was covered with a bandage, and Jigme was heard to say he was slightly jaundiced. After the protest in Drapchi prison in May 1998, Jigme was placed in solitary confinement. His current health condition is a serious concern.

We believe this arrest and detention to be arbitrary because it was based on Jigme's exercise of his human rights as delineated in the Universal Declaration of Human Rights (UDHR). We also believe that the sentence he received is not in accordance with his so-called crimes. The arrest and detention of Jigme Gyatso is contrary to Art. 19 of the UDHR and Art. 19 of the International Covenant on Civil and Political Rights concerning the exercise of the freedom of opinion and expression. It also violates Art. 20 of the Universal Declaration of Human Rights and Art. 22 of the International Covenant on Civil and Political Rights concerning the exercise of the freedom of association, including trade unions.

V. The reasons given by the authorities for the arrest and / or the deprivation of liberty

Jigme was convicted on charges of disseminating counter-revolutionary propaganda, incitement and having illegally formed the organisation, the Association of Tibetan Freedom Movement.

Chinese Gov Response

Translated from Chinese

99-44097 Hobbs

We acknowledge receipt of communication No. G/SO 218/2 dated 9 January 1999 from the Chairman of the United Nations Commission on Human Rights' Working Group on Arbitrary Detention. The Chinese Government has made conscientious inquiries into the matters raised therein, and now responds as follows.

A. Jigme Gyatso

Jigme Gyatso, male, age 38, from Xiahe in Gansu Province, made plans to establish an illegal organization and engage in activities with a view to dividing the country and damaging its unity in January 1992. His actions were contrary to Chinese law and amounted to a criminal offence. On 30 March 1996 he was taken in for questioning by the Tibetan public security authorities, in accordance with the law, and was subsequently arrested with the approval of the Lhasa Municipal People's Procuratorate. On 25 November 1996 the Lhasa Municipal Intermediate People's Court found him guilty under articles 98, 102, 51, 52, 22, 23 and 24 of the Penal Code and sentenced him to 15 years' imprisonment and deprivation of political rights for five years. He is currently serving sentence in the Tibet Autonomous Region Prison (referred to in the communication as Drapchi) and is in normal health. Since his committal to prison, Jigme has always been confined with other inmates: he has never been placed in solitary confinement and enjoys normal visiting rights. .

B. Some clarifications

China fully guarantees people's lawful freedoms of speech and association. Its Constitution and laws clearly state that citizens have the right to freedom of speech, the press, assembly and association and that the exercise of those rights is guaranteed by law. But the Constitution also says that citizens of the People's Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the state, of society or of the collective, or upon the lawful freedoms and rights of other citizens. This is consistent with the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other such international human rights instruments. Article 29 of the Universal Declaration and articles 19 and 22 of the International Covenant state that in exercising their rights and freedoms, including those of speech and association, people are subject to necessary restrictions imposed by law and must not infringe national security, public safety, public order or the rights and freedoms of others.

Jigme planned to found an illegal organization and seek to divide the country and damage its unity. This was not merely a breach of Chinese law and a crime, but also a breach of the provisions of international human rights instruments which ought to be punished anywhere.

Draft Version of TCHRD Response

Re: Jigme Gyatso: Arguments that can be incorporated

It has been contended by the Chinese Government that the arrest of Jigme Gyatso does not amount to an arbitrary arrest nor does it contravene any provisions of International Human Rights Law. This claim has been made on the basis that the activities of Jigme Gyatso constituted acts which infringed national security, public safety, public order and hence violated Articles 98, 102, 51, 52, 22, 23 and 24 of the Penal Code. It has also been argued that the rights enshrined in the Universal Declaration of Human Rights {UDHR} and the International Covenant on Civil and Political Rights {ICCPR} are subject to restrictions imposed by law, in this case the aforementioned articles of the Penal Code.

In our opinion:

The existence of a Municipal law which defines what acts constitute a threat to national security does not exclude the application of principles of customary law to determine even the validity of such law.

A UN study which attempts to clarify arbitrary arrest defines it as "An arrest or detention is arbitrary if it is

- a. on grounds or in accordance with procedure established by law or
- b. *under the provisions of a law the purpose of which is incompatible with respect for the right to liberty and security of person.*¹

Therefore it is clear the mere existence of a procedure established by law, and an arrest pursuant to such procedure does not by itself dilute the arbitrary nature of the arrest and detention. To determine the nature of the arrest one would necessarily have to look at the political context in which the law exists.

A report made by the International Commission of Jurists² has severely indicted the Chinese Legal system for being the extension of a brutal state machinery, whose primary utility is to crush any expression of democratic rights. It has also indicted the Chinese judiciary for being subservient to the purposes of the state. One of the chief tools used to further this purpose is the definition of acts which are in violation of national security. It

¹ See, "Study of the right of everyone to be free from arbitrary arrest, detention and exile", UN Doc E/CN.4/826/Rev.1, para 27 (1964. Emphasis added

² See, Tibet: Human Rights and the rule of law, *International Commission of Jurists*, December 1997.

is not difficult to imagine in the context of the Tibetan struggle for self determination³ the insidious ways in which the argument of threat to national security can be used to violate the human rights of the Tibetan people.

The UN working group on arbitrary detention while looking at China's earlier criminal law dealing with 'counter revolutionary crimes' had held "municipal legislation that considers such activities {issuing and distributing writings or speeches, instigating national separation harmful to society etc } as counterrevolutionary propaganda and agitation ... is liable to be declared inconsistent with the UDHR and the ICCPR".⁴

In March 1997, as a result of the pressure exerted by the international community the National People's Congress eliminated crimes of counterrevolution from the criminal code and introduced in its place the equally vague term of "endangering state security" which covers an even wider range of internationally protected dissenting activities.⁵

A new article {Article 13} has also been introduced which specifically targets "organising, scheming or acting to split the nation or sabotage national unity".

In 1994 the UN working group on arbitrary detentions and arrests found 32 cases of arbitrary arrests of Tibetan prisoners for various activities such as distribution of 'pamphlets on the freedom of Tibet etc'.⁶

It is clear from the political context of the Tibetan struggle that the arrests of activists like Jigme Gyatso stem from unjustified political motivations. Hence it is our submission that:

- The caveat provided by Article 29 of the UDHR do not bestow upon any national government the unrestricted power to exempt the operation of rights enshrined in the UDHR and other documents. In this case the exercise of the power of arrest under the Chinese municipal law for 'acts against national security' have to be examined critically keeping in mind the political motivations of such arrests, and the arrest of Jigme Gyatso is one such instance of the violation of an individual's right against arbitrary arrest and detention.

³ A collective right clearly enunciated in all the major documents of international human rights. See for instance Article 1 of the ICCPR and the ESCRC.

⁴ See UN Doc.E/CN.4/1995/31, Add.1, Decision 53/1993 (Peoples Republic of China, para 8.

⁵ Quoted from the ICJ Report at p.237.

⁶ See UN Doc. E/CN.4/1995/31/Add.1, Decision No.65/1993.

- The test of arbitrariness under Articles 9 of the UDHR and the ICCPR and as clarified by the UN group on arbitrary arrests and detention, does not merely extend to the existence of a legal procedure but also to the substantive operation of the law itself. In this case the arbitrary nature of the arrest stems from the fact that it is based on a law 'relating to 'threats to national security'', a term couched in vagueness but infused with oppressive authority. Thus the claims of the Chinese government to the validity of the arrest of Jigme Gyatso because it is in accordance with law is untenable.
- The exercise of Jigme Gyatso's right to freedom of speech and expression was in furtherance of his right to self determination under Article 1 of the ICCPR and the CESCR. It is therefore clear that even the laws restricting his right to freedom of speech and expression is based on a motive that violates another customary international law principle and thus cannot be justified as being in accordance with principles of international law.

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