

TIBET ADVOCACY COALITION

SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON TORTURE
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT

IN ADVANCE OF HIS REPORT TO THE 49TH SESSION OF THE
HRC IN MARCH 2022

Joint Report Submitted on 30 August 2021



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1. INTRODUCTION

Tibet Advocacy Coalition presents this submission in response to the [call for inputs](#) issued by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to inform his report to the 49th Session of the Human Rights Council in March 2022. This contribution focuses on the weaknesses of China's national laws in protecting Tibetans against torture and other ill-treatment; provides an overview on Tibetans who have died in Chinese custody following reports of torture as well as those who have been released in extremely ill-health; the patterns of torture and other ill-treatment of Tibetans in detention; and the routine use of incommunicado detention which places Tibetans at serious risk of torture and ill-treatment. The report recommends urgent measures to be taken by the Chinese authorities to ensure they uphold their international legal obligations arising from the absolute and non-derogable prohibition of torture and ill-treatment.

2. NATIONAL LEGAL FRAMEWORK

China ratified the Convention Against Torture (CAT) in 1988, which states the non-derogable prohibition on torture, and other cruel, inhuman or degrading treatment or punishment. Over the years, China has passed numerous regulations intended to strengthen the formal prohibition of torture. China's Constitution Article 33, paragraph 3 states "The State respects and preserves human rights."¹ Torture is explicitly prohibited, though not defined, in the 1997 Criminal Law Article 247² and Criminal Procedure Law Articles 18, 50, and 54.³ In serious cases, acts of torture can be punished by life imprisonment or death.⁴ On 24 December 2012, the Chinese Supreme People's Court issued an interpretation of the country's Criminal Procedure Law, declaring that under article 54 of the Criminal Procedure law, corporal punishment or other methods of inflicting severe physical or mental pain or suffering on defendants are "illegal means such as coercion of confession by torture".

The Regulations on Administrative Detention Facilities, which went into effect in April 2012, states that detention facilities shall guarantee personal safety and lawful rights of detainees. It additionally states that families of detainees have the right to be notified of their relative's

¹ Constitution of the PRC, Art. 33(3), as last amended on 11 Mar. 2018 (http://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html).

² Criminal Law of the PRC, Art. 247, *supra* n3.

³ CPL of the PRC, Arts. 18, 50, 54, *supra* n12.

⁴ Criminal Law of the PRC, Art. 247, *supra* n3.

detention and allows them to meet with lawyers.⁵ Additionally, the 1996 Law on Administrative Penalty authorizes charging perpetrators for torture and cruel treatment of detainees.⁶

Despite China's many domestic laws and policies which provide on-paper safeguards against torture, China's own national laws do not include the minimum requirements of the CAT and patterns of torture remain rife. The Committee against Torture itself has repeatedly raised concerns that provisions in Chinese law "do not include all the elements of the definition of torture set out in article 1 of the Convention."⁷ Article 247 of the Criminal Law lists several offences related to the prohibition of torture, including "torture to coerce a confession" and "extorting testimony by violence." However, it provides only for prosecution of "judicial officials" for these offences, and not other categories of personnel. Moreover, the provisions do not address the use of torture for purposes other than extracting confessions from defendants or criminal suspects.⁸

China's laws also failed to exclude acts that would otherwise constitute torture under the Convention. For instance, although Chinese rules require that confessions and witness statements obtained through corporal punishment, "corporal punishment in disguise," threats, enticement, or deception be excluded as evidence, no procedures exist to exclude such evidence in corruption cases.⁹ Chinese laws also allow the usage of solitary confinement, a practice that violates the UN Standard Minimum Rules for the Treatment of Prisoners¹⁰ and has been found to cause severe physical and psychological harm.¹¹

China only prohibits and prosecutes torture committed by specific categories of governmental officials, excluding from prosecution categories of state actors who are in a position to or can commit torture. China also has a restrictive definition of torture that effectively excludes acts that would rise to the level of torture under the Convention.¹²

The Chinese authorities have maintained their refusal to repeal, as a matter of urgency, the provisions of their Criminal Procedure Law that allow people accused of state security crimes to be denied due process and expose them to serious risk of incommunicado detention, torture and ill-treatment. Under this law, suspects have no right to a lawyer,¹³ have no right to an open trial,¹⁴ can be kept for indefinite periods of time in detention, and may be kept at undisclosed locations

⁵ CAT, *Consideration of reports submitted by States parties under article 19 of the Convention*, CAT/C/CHN/5, at 11 (4 Apr. 2014).

⁶ Administrative Penalty Law of the PRC, promulgated 13 Mar. 1996

(<https://www.cecc.gov/resources/legal-provisions/peoples-republic-of-china-administrative-punishment-law-english-and>).

⁷ Committee Against Torture (CAT), *Concluding Observations and Recommendations to China*, CAT/C/CHN/CO/, at 7 (3 Feb. 2016).

⁸ Criminal Law of the People's Republic of China ("PRC"), Art. 247, as last amended on 14 Mar. 1997

(<https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm>).

⁹ Human Rights Watch, "Special Measures": *Detention and Torture in the Chinese Communist Party's Shuanggui System* (6 Dec 2016),

<https://www.hrw.org/report/2016/12/06/special-measures/detention-and-torture-chinese-communist-partys-shuanggui-system#>.

¹⁰ UNODC, *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, General Assembly resolution 70/175, annex, adopted on 17 December 2015, Rules 43 and 44.

¹¹ UN General Assembly, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, A/66/268, at 62-65 (5 Aug. 2011).

¹² Amnesty International, *Submission to the UNCAT, 54th Session, 20 April – 15 May 2015*,

(<https://www.amnesty.org/download/Documents/ASA1700052015ENGLISH.pdf>).

¹³ Criminal Procedural Law, Article 37

(<https://www.cecc.gov/resources/legal-provisions/criminal-procedure-law-of-the-peoples-republic-of-china>)

¹⁴ *Ibid.* Article 183

for interrogation.¹⁵ The family of the accused does not have to be notified about the detention,¹⁶ and family members may legally be kept under surveillance at their homes.¹⁷ Evidence collected during the investigation process for criminal cases related to state secrecy is kept undisclosed, complicating any attempts for Tibetans to seek redress.¹⁸ Article 248 of the Criminal Law prohibits “beating or physically ill-treating” detainees but only by policemen or other officers of a detention institution or by other detainees at the instigation of these officers. This article is also restricted to the infliction of physical abuse only.¹⁹

China’s failure to amend these provisions means that abuses and impunity have continued to worsen. Tibetans continue to be subjected to torture and ill-treatment in detention and to date, there is no evidence of a single case of torture in Tibet being investigated or the perpetrators been held accountable. The Coalition is also seriously concerned that Tibetans continue to be held incommunicado for prolonged periods of time, denied access to lawyers and their families and have both died in detention as well as following their release from prison.

3. DEATH IN CUSTODY

In recent years, there has been a marked increase in the number of Tibetans who have died in custody or shortly following their release from detention, with incriminating signs of torture that raise serious concern. The causes and circumstances of such deaths have not been independently investigated and those responsible have not been held to account. These cases, like many others, illustrate the failure of the Chinese authorities to hold police officers and other officials accountable for their unlawful conduct and human rights violations. The Chinese authorities are also notorious for denying families access to the bodies of family members who have died in custody.

On 6 February 2021, **Kunchok Jinpa**, a Tibetan tour guide who was serving a 21-year sentence died in a hospital in Tibet’s capital Lhasa. Kunchok Jinpa had been transferred to hospital from prison in November 2020, without his family’s knowledge. On 29 January 2021, his family learned he was due to undergo emergency treatment. Local sources said he had suffered a brain hemorrhage and was paralyzed. He died a few days later.

Kunchok Jinpa was arrested on 8 November 2013 in Driru County, Nagchu Prefecture, Central Tibet [CH: Biru, Naqu, Tibet Autonomous Region] and later convicted of “leaking state secrets” after he shared information to foreign media, including via social media, about local environment and other protests. There had been no information about his whereabouts since his detention and until now there had been no news concerning his trial or conviction.

¹⁵ Ibid. Article 73

¹⁶ Ibid, Article 83

¹⁷ Ibid. Article 73

¹⁸ Ibid. Article 52

¹⁹ *Id.* Art. 248.

In January 2021, **Tenzin Nyima**, a 19-year old monk died from injuries inflicted on him in Chinese custody. Tenzin Nyima was arrested on 9 November 2019, in Wonpo Township in Kardze, Sershul County, after he and three other monks staged a peaceful demonstration outside the local police station during which they threw leaflets in the air and called for Tibet's independence. Tenzin Nyima was released in May 2020 but re-arrested on 11 August 2020 for allegedly sharing the news of his arrest and contacting Tibetans in exile in India.

The next news of Tenzin Nyima came on 9 October 2020, when his family was contacted by the police, who informed them that his health had deteriorated and he was now in a comatose state. A hospital report that Human Rights Watch obtained indicates that he had been in critical condition for 10 days before being handed over to his family. His family took him to a nearby hospital in Chengdu, where his admission was delayed due to the family's inability to afford the expensive medical charges. His family was only able to successfully admit him to hospital almost two months later, still comatosed, on 1 December. He died shortly after.

In August 2020, **Lhamo**, a Tibetan herder from Driru County of Nagchu Prefecture, Central Tibet [CH: Biru, Naqu, Tibet Autonomous Region], died in a local hospital shortly after being transferred from police custody. Lhamo, a 36-year-old mother of three who had been in good health before her detention, was detained by authorities in June 2020 and accused of sending money to family members or other Tibetans in India. She was detained two days after another local Tibetan called Tarpa was also detained on the same charge. Lhamo's family were summoned to visit her in hospital in August where they found her badly bruised and unable to speak. She died two days later, and her body was immediately cremated, which prevented an investigation into the circumstances surrounding her death.²⁰ The Chinese authorities have also refused to return the body of prominent monk and community leader Tenzin Delek Rinpoche to his family, who died while in custody in 2015. Despite evidence of torture while in prison and international calls for an investigation into Tenzin Delek Rinpoche's death in prison on 12 July 2015, the Chinese government continues to ignore requests for an investigation.²¹

On 18 April 2020, **Gendun Sherab**, a monk from Rongpo Rabten Monastery in Sog County, Central Tibet, died from injuries sustained while in Chinese detention. Gendun was arrested in Lhasa in 2017 after sharing a message from the Dalai Lama on his WeChat. During his detention he was brutally beaten which led to a severe and life-threatening injury. Gendun had been released from prison after three months but he continued to struggle with his injuries, especially after he was blacklisted from accessing various health facilities in Lhasa, which prevented him from receiving medication.

On 7 May 2020 **Choekyi**, a monk from Phugu Monastery, Serthar County, eastern Tibet, died after release from prison in 2019. Choekyi had health issues before being detained but was

²⁰ Human Rights Watch, *China: Tibetan Woman Dies in Custody* (29 Oct. 2020), <https://www.hrw.org/news/2020/10/29/china-tibetan-woman-dies-custody>.

²¹ See China: Release Tibetan Monk's Body, *supra* note 31

subjected to brutal treatment and hard labour in prison, which caused his health to deteriorate further, damaging his liver and kidney. Reportedly, his weak health was noticed by prison authorities, but he was not given any medical consultation or treatment.

Choekyi was sentenced to four years in prison in June 2015 after he was caught making a special garment for the Dalai Lama's 80th birthday. He also allegedly posted pictures that were deemed politically sensitive.

In late November 2019 **Jimtri**, the brother of Tibetan nomad and environmental rights defender, A-Nya Sengdra, died in hospital in Xining, Qinghai Province, after spending almost a year in detention. Jimtri, 54, was arrested on 15 December 2018 by the Public Security Bureau in Gade County and on 26 July 2019 was charged with "gathering people to disturb social order". The precise date of his death and the circumstances that lead to it have not yet been confirmed.

On 26 April 2019, **Pema Wangchen**, a former political detainee in his early thirties, died in a hospital in Chengdu, the capital of Sichuan province, from a prolonged illness following injuries sustained after spending one month and four days in police custody where he was severely beaten and subjected to torture in early 2016. Pema was arrested after a video of him singing the banned Tibetan national anthem at a public gathering went viral on Wechat in 2016.²² On 17 February 2020, **Samdup**, a former Tibetan monk and political prisoner and monk died from a diabetes-related illness at 50 years old. He was imprisoned for seven years following his involvement in a peaceful protest in Lhasa in 1992 alongside 12 monks from his monastery.²³

The UN Committee against Torture has expressed concern in its 2016 report when it stated that it "remains concerned over allegations of death in custody as a result of torture or resulting from lack of prompt medical care and treatment during detention". These cases all highlight the urgent need for the Chinese authorities to carry out an investigation into these deaths and to ensure that those responsible are held accountable. United Nations standards adopted by the General Assembly set out that all death-in-custody cases should be subjected to "prompt, impartial and effective investigations into the circumstances and causes" of the death. As the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions has noted, since there is a presumption of state responsibility due to the custodial setting and the government's obligation to ensure and respect the right to life, the government has to affirmatively provide evidence to rebut the presumption of state responsibility.

It is important to note that due to stringent limitations on access to Tibet and the crackdown on information flows, it is extremely difficult to represent a definitive list of cases relating Tibetans who have died in custody from torture and other ill-treatment.

²² Free Tibet, 'Former political prisoner dies from ill-health following torture', 30 April 2019, <https://www.freetibet.org/news-media/na/tibetan-former-political-prisoner-dies-ill-health-following-torture>

²³ Free Tibet, 'Former Tibetan monk and political prisoner dies', 16 July 2020, <https://www.freetibet.org/news-media/na/former-tibetan-monk-and-political-prisoner-dies>

4. RELEASED FROM PRISON IN EXTREMELY ILL-HEALTH

The Chinese authorities have an appalling track record of detaining prisoners in prolonged solitary confinement and in dire conditions, subjecting Tibetan prisoners to torture and other ill-treatment and denying them access to medical care. The lack of proper medical attention afforded to Tibetans while in detention causes health problems and exacerbates existing and underlying health conditions, which had led to numerous Tibetan political prisoners being released from prison in extremely ill-health at the end of their sentence. Seeking to evade further allegations of torture, Chinese authorities also often release prisoners on medical parole while they are in critical condition and before they die.

On 8 May 2019, a Tibetan woman named **Dolkar** was arrested and subsequently sentenced to one year and 3 months in prison for sharing news with those outside the region about her nephew's arrest which occurred on 29 April 2019. Her nephew was sentenced to four years and six months in prison for shouting slogans calling for the release of Tibetan spiritual leader the Panchen Lama, who disappeared into Chinese custody in 1995, when he was just six years old. Dolkar served her sentence in Ra-nga Khar prison in Minyak in Kardze, Tibetan Autonomous Prefecture (CH: Xinduqiao Prison, Minya, Ganzi, Sichuan Province).

Dolkar was released from prison on 15 August 2020, with badly damaged limbs and bruises all over her body. On 16 August, she was taken to a local clinic to extract puss and other fluids from her limbs.

On 6 December 2019, **Tsegon Gyal**, a Tibetan blogger and journalist, was released from prison in extremely ill health. Gyal was arrested following a blog he published criticising the Chinese government's restrictive policy of "ethnic unity". He was serving a three-year sentence on charges of "inciting separatism." Less than a month after his release, Tsegon Gyal was admitted to hospital where he underwent gallbladder surgery on 14 January 2020. His condition is said to be critical. In April 2017, during its 78th session, the United Nations Working Group on Arbitrary Detention criticised the Chinese government for its treatment of Tsegon Gyal and called for his release.

5. ENDEMIC TORTURE IN CUSTODY

Tibetans continue to experience torture while in Chinese custody, despite consistent and long-standing recommendations by international human rights bodies that the Chinese government investigate credible allegations and in violation of China's commitments under the CAT as well as its own domestic laws.

Three Tibetan teenagers, **Kansi, Dadul and Sangye Tso**, were arrested in Kyegudo, Kham [CH: Yushu City, Yushu Tibetan Autonomous Prefecture, Qinghai Province] on 17 February 2021 after local authorities found they had set up a WeChat group that had not been registered. One of the three teenagers, Dadul, was tortured in Chinese custody resulting in both of his legs being broken. He was hospitalised as a result of these severe injuries and his family was threatened by the authorities that they do not share information about his situation. The WeChat group, called 'Zari Karmoi Gongtsok' ('White Rocky Mountain Club'), was set up ahead of the Tibetan Losar (Tibetan New Year). The title of the group is a reference to a local Buddhist deity.

While no official reason was given for their arrest, it appears to be related to their failure to register this WeChat group with local authorities. In January 2018, China launched a countrywide campaign against "underworld forces" and "organised crime" and issued a series of notifications across Tibet that restrict legitimate activities and violate human rights including the rights to freedom of expression, association and assembly. One listed "illegal activity" includes, "Sending messages through messaging channels such as WeChat that harm stability and security in Tibet, or spread harmful gossip about the Party, government and the country."

On 20 February 2019, **Tsering Dorjee**, 45, resident of Peleb village in Tashi Zom Township, was detained hours after he had a phone call in which he spoke to his younger brother about the importance of Tibetan language education for children. Dorjee was detained for over a month at the Dingri County PSB detention centre of Shigatse, U-Tsang, Tibet (CH: Xigaze, TAR) where he was reportedly subjected to beatings by the Chinese authorities.²⁴ In early 2018, regional police in China issued a public notice that declared organizations campaigning on "mother tongue" issues illegal and a form of "underworld gang crime."²⁵

Tsering Tso, a participant in the US. State Department's International Visitor Leadership Program, which brings foreigners to the US, was brutally beaten by police and detained for ten days from

²⁴ Tibetan Centre for Human Rights and Democracy, 'Tibetan man criminally detained for phone conversation about Tibetan language education' 20 December 2019,

<https://tchrd.org/tibetan-man-criminally-detained-for-phone-conversation-about-tibetan-language-education/>

²⁵ Human Rights Watch, 'In Tibet, it's a crime to even talk about the value of mother-tongue education', 15 April 2020, <https://www.hrw.org/news/2020/04/15/tibet-its-crime-even-talk-about-value-mother-tongue-education>

20-30 November 2020. According to the police, she was charged for “sending two messages on WeChat related to issues of stability” and for “disseminating discussions of ‘provocative issues.’”²⁶

Tashi Wangchuk is a human rights defender and activist who has faced ongoing harassment, intimidation, and prosecution by Chinese authorities. He was arrested in 2016, and in May 2018, after two years without trial, he was sentenced to five years in prison for “inciting separatism” by his actions asking to recognize Tibetan’s right to language education in schools.²⁷ Prior to his arrest Tashi Wangchuk appeared in a New York Times documentary where he spoke about the importance of preserving the Tibetan language.²⁸

Tashi Wangchuk was tortured in the early days of his detention, including being held in a “tiger chair” where he was subject to arduous interrogation and repeatedly beaten. His family was also threatened.²⁹ While Tashi was released on 28 January 2021, no investigation has been conducted into his reports of torture nor has he been provided with any compensation. His sentence includes an additional five year ban on his political rights, that is he is barred from “free expression, association, assembly, publication, vote, and to stand in elections”³⁰ and he will remain under constant surveillance following his release.³¹

6. INCOMMUNICADO DETENTION

Tibetans continue to be held in incommunicado detention where they are at serious risk of being subjected to torture and other-ill-treatment. **Sonam Palden**, a 22 year old Tibetan monk and language rights advocate from Kirti Monastery in Ngaba was arrested on 19 September 2019, after posting comments on social media platform WeChat expressing concern about Beijing’s policies in Tibet that are leading to the eradication of the Tibetan language³² in a poem entitled ‘Father Tongue’. Sonam remains in incommunicado detention, unable to see his family or lawyer, placing him at a significantly elevated risk of torture.³³

The current whereabouts and well-being of **six other Tibetan monks from Wonpo Monastery** in Kardze, eastern Tibet who were arrested alongside 19 year old Tenzin Nyima who died in police custody remains unknown. Tsultrim, Nyimay, Choegyal, Choephel, Yonten and So-tra were

²⁶ *Tibetan Woman Detained, Threatened in Qinghai Over Calls For Democracy*, RADIO FREE ASIA, published 8 December 2020, accessed 20 Feb. 2021, <https://www.rfa.org/english/news/tibet/woman-12082020180623.html>

²⁷ OHCHR, *UN human rights experts condemn 5-year jail term for Tibetan activist*, (6 Jun. 2018), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23176>.

²⁸ Chris Buckley, *Tibetan Who Spoke Out for Language Rights Is Freed From Chinese Prison*, THE NEW YORK TIMES (29 Jan. 2021), <https://www.nytimes.com/2021/01/29/world/asia/tibet-china-tashi-wangchuk.html>

²⁹ International Tibet Network, *Tibetan rights activist Tashi Wangchuk release after five years in prison*, (28 Jan. 2021), <https://tibetnetwork.org/tibetan-rights-activist-tashi-wangchuk-released-after-five-years-in-prison/>

³⁰ See CPL of PRC.

³¹ International Tibet Network, *supra* n11.

³² Radio Free Asia, ‘Tibetan Monk Arrested by Chinese Police Last Month Remains Missing’, 10 April 2019, <https://www.rfa.org/english/news/tibet/sonam-palden-10042019175054.html#:~:text=Sonam%20Palden%20was%20arrested%20in,mo,nastery%20in%20Ngaba%20since%20childhood>.

³³ Tibetan Centre for Human Rights and Democracy, ‘Monk detained for criticising China’s policy on Tibetan language at high risk of torture’ 11 November 2019, <https://tchrd.org/monk-detained-for-criticising-chinas-policy-on-tibetan-language-at-high-risk-of-torture/>

arrested on 9 November 2019 for involvement in a peaceful demonstration outside the local police station during which they threw leaflets in the air and called for Tibet's independence.³⁴ Their trials took place at the Intermediate People's Court in Serzhul on 10 and 12 November 2020 and on 14 December they were sentenced to between one to five years imprisonment for "incitement to split the country". All of them were all between ages 16 and 23 (Tsultrim, was 15 or under at the time of the protest). The lack of information on where they are being held places them at serious risk of torture and other ill-treatment.

Wangchuk, a 45 year old **Tibetan man from Nyalam county**, was arrested in Shigatse, Central Tibet (CH: Xigaze, Tibet Autonomous Region) on or around 8 March 2019 after returning from a business trip to Lhasa.³⁵ According to local sources, he was detained in relation to books he shared on WeChat, including on teachings of His Holiness the Dalai Lama and a Tibetan translation of the book *The Noodle Maker of Kalimpong*; a book written by one of the Dalai Lama's brothers which recounts the story of the Dalai Lama's family and his exile from Tibet. He had received copies of these books from friends living outside of Tibet. Wangchuk's current whereabouts and the grounds for his arrest remain unknown, although his relatives believe he has been imprisoned at Nyari Prison in Shigatse.

7. IMPUNITY

The Chinese government claims its Law on State Compensation, which includes provisions for the State to grant compensation for torture and psychological harm suffered provides adequate compensation to individuals claiming harm from state authorities.³⁶ Moreover, Article 41 of the Chinese Constitution provides: "Citizens who have suffered losses as a result of infringement of their civic rights by any State organ or functionary have the right to compensation in accordance with the law."³⁷ Articles 2 and 67 of the Administrative Procedure Law of the People's Republic of China also provide that any citizen, legal person or other organization whose legitimate rights and interests have been infringed by a specific act of an administrative organ and its personnel has the right to bring charges before a people's court and claim compensation.³⁸ Article 50 of the People's Police Law stipulates: "Where the people's police, in the performance of its functions, infringes upon the lawful rights and interests of a citizen or organization, it shall provide compensation in accordance with the State Compensation Law and other relevant laws and regulations."³⁹

³⁴ Human Rights Watch, 'China: Tibetan Monk Dies from Beating in Custody. 6 Others, Including Boy, Get Up to 5 Years for Distributing Leaflets, Video' 21 January 2020: <https://www.hrw.org/news/2021/01/21/china-tibetan-monk-dies-beating-custody#>

³⁵ Tibetan Centre for Human Rights and Democracy, "Tibetan man sentenced to prison for sharing books on WeChat," 7 November, 2019: <https://tchrd.org/tibetan-man-sentenced-to-prison-for-sharing-books-on-wechat/>

³⁶ Concluding observations on the fifth periodic report of China, *supra* note 39 at ¶ 57.

³⁷ Article 41 of the Constitution of the People's Republic of China, *supra* note 20.

³⁸ Article 2 and Article 67 of the Administrative Procedure Law of the People's Republic of China, as last amended on March 1, 2015, <https://www.cecc.gov/resources/legal-provisions/administrative-procedure-law-chinese-and-english-text>; <https://loc.gov/law/foreign-news/article/china-administrative-procedure-law-revised/>

³⁹ Article 50 of the People's Police Law of the People's Republic of China, promulgated by Order No. 40 of the President of the People's Republic of China on 28 Feb. 1995, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/92664/108061/F-1334361595/CHN92664%20Eng.pdf>

In practice, however, there is no formal mechanism providing compensation or rehabilitation for victims of torture.⁴⁰ Compensation for injuries suffered during detention is extremely rare, and the unwillingness of the government to investigate cases of torture in Tibet, or the outright denial of such cases, by the government contributes to the lack of any adequate compensation mechanism despite China's domestic laws ensuring those victimized by torture receive financial remedy.⁴¹

To date, there is no evidence of a single case of torture in Tibet being investigated or the perpetrators being held accountable. China has not issued compensation or reparations for those who have been the victims of arbitrary detention and state sanctioned torture. The Chinese authorities should provide Tibetans subjected to torture and/or their families with fair and adequate compensation, as required under the Convention against torture. To date, there have been no reported cases that such compensation was paid to Tibetans suffering torture or cruel treatment by the Chinese authorities, including to the families of those cases described in this report.

Another method used to avoid accountability by the Chinese authorities has been to continue to deny UN experts meaningful access to Tibet, including to detention facilities. Beijing has instead adopted a highly limited and selective approach to issuing visit invitations to UN experts and in the last two decades between 1997 and 2020, China permitted only eight mandate holders to visit the country.⁴² Six out of eight of those mandate holders have mandates related to economic and social issues, which the Chinese government sees as its success story - education, food, extreme poverty, foreign debt, women's rights and the rights of older persons. Mandate holders reporting on civil and political rights have faced a near total denial of access.

Of those UN experts who have been permitted access, the Chinese authorities have either entirely denied them access to Tibet or severely monitored and controlled the visits. During the most recent visit of a UN expert to China which took place from 25 November to 3 December 2019, Rosa Kornfeld-Matte, the UN Independent Expert on the human rights of older persons, was again unable to visit Tibet and Tibetan populated areas.

⁴⁰ Concluding observations on the fifth periodic report of China, *supra* note 49.

⁴¹ International Campaign for Tibet, 'Torture and Impunity' published 26 Feb. 2015, accessed 27 July 2021,

<https://savetibet.org/torture-and-impunity-29-cases-of-tibetan-political-prisoners/>

⁴² UN Commission on Human Rights, *Report of the Working Group on Arbitrary Detention. Mission to China*, 29 December 2004, E/CN.4/2005/6/Add.4, available at: <https://www.refworld.org/docid/42d66e570.html>; UN Commission on Human Rights, "Report submitted by the Working Group on Arbitrary Detention, Addendum: Visit to the People's Republic of China," E/CN.4/1998/44/Add.2, December 22, 1997; UN Commission on Human Rights, *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Mission to China*, 10 March 2006, E/CN.4/2006/6/Add.6, available at: <https://www.refworld.org/docid/45377b160.html>; UN Commission on Human Rights, The right to education: Report submitted by the Special Rapporteur, Katarina Tomaževski: Addendum Mission to China, 21 November 2003, E/CN.4/2004/45/Add.1, available at: <https://www.refworld.org/docid/4090ffdc0.html>; UN Human Rights Council, Report of the Special Rapporteur on the right to food, Olivier De Schutter - Addendum - Mission to China, 20 January 2012, A/HRC/19/59/Add.1, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/19/59/Add.1; UN Human Rights Council, Report of the Working Group on the issue of discrimination against women in law and in practice - Mission to China, 12 June 2014, A/HRC/26/39/Add.2, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/39/Add.2; UN Human Rights Council, Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to China, 1 March 2016, A/HRC/31/60/Add.1, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/60/Add.1; UN Human Rights Council, *Report of the Special Rapporteur on extreme poverty and human rights on his mission to China*, 28 March 2017, A/HRC/35/26/Add.2, available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/26/Add.2; UN Human Rights Council, Report of the Special Rapporteur on the human rights situation of older persons on her visit to China, 7 August 2020, A/HRC/45/14/Add.1, available at: <https://undocs.org/A/HRC/45/14/Add.1>

The last UN expert to visit Tibet was the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2005. During Mr Nowak's visit, he visited the Tibetan Autonomous Region but was unable to secure access to the Tibetan populated areas of Qinghai, Sichuan, Gansu or Yunnan. These areas are in equal and urgent need of independent human rights monitors to assess the human rights situation on the ground.

The most recent request by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment which has been outstanding since 2 November 2015, with reminders sent to the Chinese authorities on 24 January 2017, 21 November 2019 and most recently on 27 January 2021.⁴³ By successfully denying mandate holders access to areas under Chinese control, China has been able to operate with near total impunity for its widespread and systematic human rights violations in Tibet, including the routine use of torture and ill-treatment against Tibetans.

8. RECOMMENDATIONS

Tibet Advocacy Coalition encourages the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to make the following recommendations to the Chinese authorities:

- Criminalise torture and other cruel, inhuman or degrading treatment or punishment in line with international law and standards and repeal or substantially amend laws such as the Criminal Procedural Law which do not conform to the requirements of the UN Convention against Torture;
- Conduct full and impartial investigations into all individual allegations of torture and other ill-treatment, enforced disappearance as well as deaths in custody, or shortly following release; ensure that all those found responsible are brought to justice in fair trials and without recourse to the death penalty and ensure reparation and redress for victims and their families;
- Ensure that all Tibetans detained have access to lawyers and appropriate medical care, as well as ensure that their relatives or a third party of choice are informed of their specific whereabouts and conditions. In cases where lawyers are unable to meet with their clients in person due to COVID-19 restrictions at detention sites, implement alternative measures for lawyers to access their clients in private via secure phone calls or video conferencing;

⁴³ OHCHR, View Country visits of Special Procedures of the Human Rights Council since 1998: <https://spinternet.ohchr.org/ViewCountryVisits.aspx?visitType=all&country=CHN&Lang=en>

- Respond promptly and positively to any and all requests to visit China by UN Special Procedures and provide them with unrestricted access to all detention facilities in Tibet, including the visit request by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment which has been outstanding since 2 November 2015;
- Ensure that everyone who meets with or contacts the UN experts or treaty bodies is protected from possible reprisals, including detention, harassment, threats, acts of intimidation, or ill-treatment;
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention Against Torture and rapidly institute a system of independent national monitoring of all places of detention, including unannounced visits to places of detention and powers to search and to check the detainee registers of these places;
- Give all individuals who are currently held under conditions of enforced disappearance immediate access to their families and lawyers;
- Ensure that anyone detained solely for exercising their rights to freedom of expression, peaceful assembly or association is released immediately and unconditionally
- Ensure that all those detained are registered, have access to their lawyers, can challenge the legality of their detention before an independent court, are provided access to medical care, are held in official places of detention and are allowed regular visits by their families;
- Fully implement the recommendations contained in paragraph 41 of the concluding observations adopted in 2015 by the Committee against Torture (CAT/C/CHN/CO/5).