

# ARBITRARY DETENTION AND TORTURE IN TIBET



Tibet Vigil Human Rights Day-9786. Source:Keith Loh/Flickr, 2008.



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This article was written by Fleur Harmsen under the supervision of  
Mandakini Jathavethan.

HUMAN  
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# 1. Introduction

The Tibetan population living under the Chinese occupation has been subjected to arbitrary detention and torture since the uprising against the Chinese rule in 2008 (Dolma, 2022). Many Tibetan scholars, intellectuals, artists and those celebrating Tibetan culture have been arbitrarily detained and subjected to torture as a result of engaging with their Tibetan heritage. They have been detained on the grounds of “inciting separatism”, “illegal activities”, and “espionage” and are being held as political prisoners enabling the Sinicization of the Tibetan plateau. After their arrest, many of them have been held in incommunicado detention, with no possibility of reaching out to their families and loved ones and being denied medical assistance. During the detention periods, detainees were subjected to torture and inhumane treatment, violating China’s numerous human rights law commitments.

## 2. Context

Many Tibetans have been arbitrarily detained due to their religious and political practices and for speaking out against the persistent human rights violations. In this regard, many detainees are political prisoners, as any act that engages with Tibetan cultural heritage is seen as a political opposition under the Chinese occupation of the Tibetan plateau (Anthis, 2022).

Nyima, a student of Tibetan culture was arbitrarily detained as a political prisoner on charges of disseminating state secrets and contacting Tibetans living in exile (Lhamo, 2022). The authorities have not divulged any information about the type of secrets the student exposed, nor the repercussions he might have had on China's sovereignty. Nyima was sentenced to three years in Karze Prefecture detention (Tibetan Review, 2022). The student engaged with tourists and visitors, sharing Tibet's culture, social life and history. Such practices, as well as Nyima's fluency in English, Chinese and Tibetan made him susceptible to arbitrary arrest as the Chinese authorities perceived his knowledge of Tibetan history and his contact with outsiders as a threat to their Sinicization policies (Lhamo, 2022).

Similarly, Jigme Guri, a Tibetan monk and Buddhist scholar, was repeatedly detained for "splitting the nation" as a result of his peaceful protests against Chinese rule (Kunchok, 2022a). He spoke out against the numerous human rights violations that Tibetans have been suffering in occupied territories, as well as the increasing restrictions on Tibetan cultural language and practices (The Tibetan Centre for Human Rights and Democracy, 2022). He was held in incommunicado detention and was subjected to torture. Jigme Guri was denied contact with his family and his right to correspondence was not disclosed due to his unknown location. In addition, the Chinese authorities deprived him of hospital visits, making it impossible for him to seek the medical treatment needed for his maltreatment. Jigme Guri died on July 2nd, 2022 as a result of poor health due to torture during detention (Kunchok, 2022a).

Tibetan writer and poet Rongwo Gendun Lhundup has also been detained since 2020 in an undisclosed location. He was imprisoned for "inciting separatism" and was sentenced to four years in prison with two additional years of "deprivation of political rights" (Dolma, 2022). The writer advocated for the preservation of Tibetan identity and had been questioned by Chinese authorities several times for criticizing the Chinese cultural assimilation policies (Tibetan Centre for Human Rights and Democracy, 2022).

Another example of China's arbitrary detention of Tibetans is the case of Zumkar; a 27-year-old Tibetan woman who was arrested by the Chinese after she was found in possession of a photo of the Dalai Lama in her home (Tibet Watch, 2022). These pictures are part of the Tibetan altar where religious objects like statues and scriptures are kept for prayers to be offered. After her arrest, Zumkar was taken 500 kilometers from her home to Lhasa and her well-being remains unknown since her arrest (Tibet Watch, 2022).

All those detained have been denied correspondence and contact with family members, and their detention locations remain concealed during the detention period. Arbitrary detention, torture, and the deprivation of the right to correspondence substantially violate international human rights law.

### 3. International human rights law

Such practices by Chinese officials against the Tibetan population violate the Universal Declaration of Human Rights (UDHR), which was ratified by China in October 1997, the International Covenant on Social, Economic and Cultural Rights (ICESCR) ratified in 2001, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) ratified in 1988 as well as the International Convention for the Protection of All Persons from Enforced Disappearance ratified in 2006 (ICPAPED) (United Nations Treaty Collection, 2022).

#### A) Arbitrary detention violating the right to freedom of religion, culture and belief

Article 19 of the UDHR states that all individuals have the right to freedom of expression regardless of the frontiers (UDHR, 1948). Therefore, all individuals have the right to share their opinions within and outside of a given territory. Article 27 of the UDHR states that all individuals have the right to participate in the cultural life of their community in the way they desire (UDHR, 1948). In this regard, expressing one's opinion regarding the ongoing situation in Tibet and engaging in activism to oppose the latter can be seen as a form of engagement in the cultural life of the community through defending its integrity.

The right enshrined under Article 27 of the UDHR is complemented by Article 18 of the UDHR, which states that all individuals not only have the right to freedom of thought and belief, but also the freedom to manifest the latter in the way they want to (UDHR, 1948). Therefore, these articles protect the freedom to participate in the community by expressing thoughts and beliefs in how they please, both in their homes and in public places. Article 19 of the UDHR writes that the State is obliged to ensure that the freedom enshrined under articles 18 and 27 is not violated due to government interference (UDHR, 1948). In other words, the State has to ensure that the right to freedom of thought and belief stipulated under Article 18 is safeguarded through ensuring that no State authorities promote, change or halt expressing political and cultural affiliation and belief (UDHR, 1948).

Lastly, Article 1 of the ICESCR states that all people have the right to pursue their social and cultural development freely (UNGA, 1976). The expression and means to such developments are left to the choice of the individual in question, and the pursuit shall be enjoyed without government interference. Article 2(2) of that same Covenant complements Article 1 and the rest of the Covenant by expressing that all individuals shall enjoy these rights regardless of religion, political affiliation or other opinions, language, sex and other cultural affiliations (Ibid.). Therefore, regardless of one's political, cultural and religion, the State should safeguard their right to engage with them.

In this regard, Zumkar's detention as a result of possessing photos of the Dalai Lama on her altar is seen to violate Article 2(2) of the ICESCR. Arresting an individual for possessing a part of a Tibetan altar violates the freedom of social and cultural development based on religious affiliation. Thus, showing explicit discrimination towards Tibetan Buddhists. Therefore, China violated Article 2(2) in the case of Zumkar's

detention but also in the case of Rongwo Genduyim Lhundup, who has been detained for engaging with and advocating for the maintenance of Tibetan culture (Dolma, 2022; & Tibet Watch, 2022). Indeed, Rongwo Genduyim Lhundup detention disallows his engagement in his activism and political thought and is due to his Tibetan heritage, shows clear discrimination towards the Tibetan population (Dolma, 2022).

In addition, the detention of Jigme Guri and Rongwo Gendun Lhundup is also violating articles 18 and 19 of the UDHR as their freedom to express their opinions and belief have been violated as the manifestation of their political thought in public has been disallowed through their incarceration, showing clear interference of the State in their activism and sharing of the Tibetan culture (Kunchok, 2022a).

Lastly, through Nyima's detention as a result of his communication with Tibetans in exile, the Chinese government is also disallowing Nyima to participate in the social and cultural life of his community in the way he wishes to do so, violating Article 27 of the UDHR (Tibetan Review, 2022). In other words, through detaining Nyima after his communication with Tibetans in exile regarding the current situation in Tibet, his way of engaging with and participating in the life of the community has been denied and violated by the Chinese authorities.

## **B) Right to be free from arbitrary detention**

Such detentions based on political association, private life and religious practices can be considered arbitrary as the actions are all related to a human right enshrined in conventions ratified by China. Thus creating a legal basis for their enjoyment of the latter. Arbitrary detention occurs when a government arrests an individual without due process and legal protection of a fair trial or when an individual is deprived of their liberty without any legal basis (OHCHR, 2022). Rongwo Genduyim Lhundup has been subjected to such arbitrary detention, as he has been detained for four years without a trial for a legal justification (Kunchok, 2022a). He was also denied contact with the outside, unable to share any information about his whereabouts and well-being (Kunchok, 2022a). Such incommunicado detention amounts to enforced disappearance as the inability to communicate with the outside world has been inflicted by the State.

Articles 9 and 12 of the UDHR protect individuals from arbitrary detention and ensures the right to correspondence, declaring that no individual shall be arbitrarily detained, exiled or arrested (Article 9) and that everyone has the right to correspondence, even during detention periods (Article 12) (UDHR, 1948). The latter states that all individuals, whether detained or not, have the right to communicate with whomever they desire through correspondence (Ibid.). The right to correspondence represents a positive obligation of the State as it has to ensure that all individuals have access to resources that ensure the enjoyment of that right, even if that person has been deprived of their liberty.

In this regard, Articles 9 and 12 have been violated by China as it subjected Rongwo Genduyim Lhundup to incommunicado arbitrary detention in the meaning of Article 9 of the UDHR (UDHR, 1948). Indeed, he was detained without legal justification for the latter, as his practices were in line with Article 18 of

the UDHR stipulating the right to freedom of thought. His detention was also characterised by the denial of contact with the outside, to such an extent that the awareness of his well-being and whereabouts were denied by his friends and family, amounting to a violation of his right to correspondence and enforced disappearance by the Chinese authorities (Dolma, 2022).

The enforced disappearance of individuals is considered an internationally wrongful act by customary international law, which violates the *jus cogens* principle (Sarkin, 2012). Incommunicado arbitrary detention amounts to enforced disappearance as the well-being, location and justification for the detention of an individual in question are not communicated to the individual's family. In addition, incommunicado detention forbids the detained person to correspond with their families, amounting thus to a state of enforced disappearance. Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance states that arrest, detention, abduction or “any other form of deprivation of liberty by agents of the State” can be considered as enforced disappearance when the fate of the individual in question and the whereabouts of that individual are concealed (UNGA, 2010). In this regard, by arbitrarily detaining Nyima, Jigme Gyatso and Rongwo Genduyim Lhundup, China violates Article 2 of the ICPAPED and Article 9 of the UDHR.

### **C) Incommunicado detention as a form of torture**

Enforced disappearance is considered to be a form of torture. In the ruling *Francisco Larez v the Bolivarian Republic of Venezuela*, the Committee Against Torture stipulates that incommunicado detention in itself constitutes a form of torture within the meaning of Article 1 of the UNCAT (*Francisco Larez v. the Bolivarian Republic of Venezuela*, pp. 6.4 & UNGA, 1984). According to the Committee, the suffering caused by incommunicado detention amounts to torture due to the severe stress and cruel treatment endured by the detainee (*Francisco Larez v. the Bolivarian Republic of Venezuela*, pp. 6.4).

Article 1 of the UNCAT states that any act that inflicts “severe pain or suffering, whether physical or mental”, by any person's action in an official capacity amounts to torture (UDHR, 1948). In this regard, China's arbitrary incommunicado detention of Rongwo Genduyim Lhundup lasting four years without trial, and with no indication of his release, amounts to torture. Similarly, holding him in incommunicado detention inflicts substantive suffering, thus violating the UNCAT.



## 4. Conclusion

Considering the human rights violations in Tibet, the findings of this monthly article underline how the right to be free from arbitrary detention and torture and the right to freedom of religion, culture and belief have been denied to Tibetans living in occupied territories. Chinese authorities have arbitrarily arrested individuals perceived as politically threatening, holding them in incommunicado detention. People have been denied their liberty, and through such deprivation of freedom, could not participate in the cultural life of their community and were disallowed to express their political opinions and faith. While individuals were detained, they were denied contact with the outside world through incommunicado detention, amounting to torture as a persistent inability to contact relatives and loved ones consisting of blatant psychological suffering. China is seen to violate UDHR, ICESCR, UNCAT and the International Convention for the Protection of All Persons from Enforced Disappearance throughout June 2022.

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