

**OPINION No. 33/2007 (China)****Communication addressed to the Government on 7 December 2006.****Concerning Mr. Sonam Gyalpo.****The State has signed but not ratified the International Covenant on Civil and Political Rights.**

1. (Same text as paragraph 1 of Opinion No. 14/2007.)
2. (Same text as paragraph 3 of Opinion No. 15/2007.)
3. In the light of the allegations made the Working Group welcomes the cooperation of the Government. The Working Group transmitted the reply provided by the Government to the source and received its comments.
4. The Working Group believes that it is in a position to render an Opinion on the facts and circumstances of the cases, in the context of the allegations made and the response of the Government thereto, as well as the observations by the source.
5. The case summarized below was reported to the Working Group on Arbitrary Detention as follows: Mr. Sonam Gyalpo, aged 44, tailor by profession and resident at Lhasa, capital of the Tibet Autonomous Region (TAR), was arrested at his home by 16 officers from the State Security Bureau (Ang jang jue – SSB) on 28 August 2005 at around 6 pm. The arrest took place a few days ahead of festivities marking the 40th anniversary of the TAR, which commenced on 1 September 2005. The authorities did not produce a warrant authorizing his arrest. Instead, Sonam Gyalpo was asked to sign a document. When he made inquiries about it, he was told by the officials that they had received orders from “higher authorities” to apprehend him. After he had signed the document four officers took him away by car. The remaining 12 SBB officers searched Sonam Gyalpo’s house and discovered four videotapes containing teachings of the Dalai Lama, political literature relating to Tibetan affairs and pictures of the Dalai Lama. Sonam Gyalpo was initially detained at Sitru TAR Public Security Bureau Detention Centre for about nine months.
6. His wife, Ms. Tsamchoe, was only able meet him there for the first time after months of search not knowing his whereabouts. On her second visit she learned that Sonam Gyalpo had been transferred to Chushul (Qushui) Prison in the west of Lhasa, where he is currently imprisoned to serve a 12 year sentence for “endangering the security of the People’s Republic of China” and “espionage”, which was handed down by the Lhasa Intermediate People’s Court around

mid-2006. Sonam Gyalpo's family appealed to the High Court to reconsider the sentence, however, to no avail.

7. Sonam Gyalpo's arrest, detention and imprisonment appear to have taken place in the context of the "Summer Strike Hard" campaign, launched on 22 July 2005 by the TAR Anti-separatist Committee and the Security Bureau Committee (SBC) in order to prevent any political activities that could undermine the celebration of the 40th anniversary of the establishment of the TAR. According to the source, individuals with a record of political activism in the region were the prime target of this campaign, which was carried out in a concerted effort by the Tibet Affairs Bureau, the SBC, the Lhasa Security Bureau (LSB), the People's Armed Police (PAP) and national security departments. The campaign was accompanied by tightened security measures in Lhasa. These measures included imposing upon Tibetan hosts the obligation, effective from the first week of July 2005, to report their visitors to the Lhasa Security Bureau and to answer for them. Moreover, Tibetans were barred from entering Lhasa for circumambulation for the most part of the day. An extra number of officials from the Government were assigned to the Sera Monastery in the first week of July 2005 in order to resume patriotic re-education and all roads and check posts were monitored in and around Lhasa 24 hours a day by officers from the LSB and the PAP.

8. Together with 21 monks from the Drepung Monastery, Sonam Gyalpo had already been arrested on 27 September 1987 during a peaceful demonstration in Lhasa. He was later charged on accounts of "counterrevolutionary activities" and subsequently served a three years term of imprisonment at Drapchi Prison in Lhasa. He was released on 20 September 1990 upon completion of his term. On 23 July 1993, however, he was again arrested at his home by LSB officers and transferred to Sitru Detention Centre, where he was detained for a couple of days thereafter. The officials then secretly took him to Shigatse Nyari Detention Centre for further interrogations. After six months of detention, he was transferred back to Sangyip TAR Public Security Bureau Detention Centre in Lhasa, where he was detained for further six months.

9. The Government, in its response, indicates that Sonam Gyalpo was in fact born on 14 June 1955 and is a resident of Gongkar county in Lhoka prefecture, Tibet. It goes on to state that, on September 1992, Sonam Gyalpo made contact with members of the "Security Ministry" of the "Dalai clique" and was provided with seals of the underground organizations "Truth Group" and "Tibetan Youth Association", provided by the "Security Ministry" of the "Dalai clique". He then set up an underground separatist organization inside the country, gathered together a wide range of intelligence and transmitted this to the "Dalai clique".

10. According to the Government, on 28 August 2005, Sonam Gyalpo was arrested by the Tibetan public security authorities, in accordance with the law, on suspicion of the offences of endangering State security and espionage and on 28 September, with the approval of the procuratorial authorities and pursuant to the law, he was placed in custody. The Lhasa City Intermediate Level People's Court found that Sonam Gyalpo had been sentenced because he had committed the offence of endangering State security. Once he had completed his sentence, however, Sonam Gyalpo resumed his criminal activities and continued to endanger State security; he was designated in charge of gathering intelligence by an espionage organization based abroad. His conduct was deemed to constitute the offence of espionage and,

on 9 June 2006, as a repeat offender subject to a mandatory heavier sentence, he was sentenced to 12 years' fixed term imprisonment, to run from 28 August 2005 to 27 August 2017, and stripped of his political rights for four years.

11. The Government further states that after receiving the court sentence at first instance, Sonam Gyalpo refused to accept the verdict and lodged an appeal. After considering his case at second instance, the People's High Court of the Tibetan Autonomous Region found that the original judgement had been based on clear facts, the evidence adduced had been sound and ample, the classification of the offence had been accurate, the sentence was commensurate with the offence and the trial proceedings had been in accordance with due process and, on 17 October 2006, it dismissed the appeal and ruled that the original judgement should stand.

12. The Government maintains that, in the course of these proceedings, Sonam Gyalpo's rights in litigation were fully upheld and defence counsel was assigned to him. In addition to exercising his own right to defence, the defence counsel appointed for him also made a full submission in his defence. Sonam Gyalpo is currently serving his sentence at Chushur prison in the Tibetan Autonomous Region and is in good health.

13. In its reply to the observations of the Government, the source states that there has been a miscarriage of justice since the judicial process was arbitrary and summary in nature on the following points: In the Lhasa Intermediate Court, a defence lawyer of his choice did not represent Sonam Gyalpo. He was provided a state appointed lawyer who rubber-stamped whatever the authorities had to say. When Sonam Gyalpo appealed to the higher court, his case was dismissed even before a retrial could open and the Higher People's Court upheld the verdict passed by the lower court. He was charged of "endangering national security" and "espionage" on evidence of possession of pictures and videotapes containing teachings by the Dalai Lama. State authorities and courts freely use the legislation governing "endangering state security". Nowhere has the legislation been defined properly. According to the source, it is used as a blanket cover to disapprove any unacceptable activity and to eliminate anyone who disagrees with the authorities. Finally, the source adds that Sonam Gyalpo's health condition has gravely deteriorated.

14. The Working Group notes that the Government does not contest that Sonam Gyalpo was detained in August 2005 for no other reasons than his record of political activities, and for possessing material related to the Dalai Lama.

15. The Working Group observes that he was punished for these activities on the charge of "endangering national security" and given a 12 years imprisonment sentence. The Working Group, as it has stated before in previous Opinions and on the occasion of its visits to the People's Republic of China, believes that the term "endangering national security" gives rise to numerous abuses and criminalizes activities protected as rights enshrined in the Universal Declaration of Human Rights, either because it is not defined with sufficient precision or because it is interpreted in an extensive manner.<sup>17</sup>

16. The Government has not provided elements that would allow the Working Group to qualify the conduct of Sonam Gyalpo as an activity that endangers State

<sup>17</sup> See E/CN.4/2005/6/Add.4.

security. The Working Group considers that the reasons for which Sonam Gyalpo has been arrested, detained and imprisoned are those maintained by the source. Possessing pictures and videotapes containing teachings of the Dalai Lama and political literature relating to Tibetan affairs, however, amounts to an exercise of the right to freedom of opinion and expression as protected by article 19 of the Universal Declaration of Human Rights, in particular to seek, receive and impart information and ideas through any media and regardless of frontiers and to hold opinions without interference, even if they should contradict official Government policies.

17. As to the allegations of violations of the right to fair trial, the Working Group considers that it does not have sufficient information available to express an opinion in relation to them.

18. In the light of the foregoing, the Working Group renders the following Opinion:

The detention of Mr. Sonam Gyalpo is arbitrary, as it contravenes the principles and norms set forth in articles 9 and 19 of the Universal Declaration of Human Rights and falls within category II of the categories applicable to the consideration of the cases submitted to the Working Group.

19. The Working Group, having rendered this Opinion, requests the Government to take the necessary steps to rectify the situation in order to bring it into conformity with the norms and principles set forth in the Universal Declaration of Human Rights, and to take the necessary measures to ratify the International Covenant on Civil and Political Rights.

Adopted on 30 November 2007