

# No. 29/2010 (China)

## Communication addressed to the Government on 3 August 2010

Concerning: **Thamki Gyatso, Tseltem Gyatso, Kalsang Gyatso**

### **The State is not a party to the International Covenant on Civil and Political Rights.**

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the former Commission on Human Rights. The mandate of the Working Group was clarified and extended in Commission resolution 1997/50. The Human Rights Council assumed the Working Group's mandate in its decision 2006/102, extended it for a three-year period in resolution 6/4 of 28 September 2007 and subsequently in resolution 15/18 of 30 September 2010 for a further period of three years. Acting in accordance with its methods of work, the Working Group forwarded to the Government the above-mentioned communication.
2. The Working Group conveys its appreciation to the Government for having forwarded the requested information.
3. The Working Group regards deprivation of liberty as arbitrary in the following cases:
  - (a) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him) (category I);
  - (b) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (category II);
  - (c) When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (category III).
4. 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 the latter's comments thereon. The Working Group believes that it is in a position to render an opinion on the facts and circumstances of this case, 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 hereinafter was reported by the source to the Working Group on Arbitrary Detention:
6. Thamki Gyatso is 33 years old and was born in the Sanke Grassland. He is a monk at the Labrang Monastery where he has lived since he was 15 years old.
7. Tseltem Gyatso is 38 years old and was born in Yochong Thing. He has been a monk at the Labrang Monastery for 20 years.
8. Kalsang Gyatso is 33 years old and was born in Zayi. He is also monk at the Labrang Monastery.
9. According to the source, in March 2008, these three individuals participated in a demonstration for democracy, human rights and the return of the Dalai Lama.

10. On 16 March 2008, Thamki Gyatso was arrested and detained by agents of the police. In July 2009, he was sentenced to 15 years' imprisonment. It was reported that Thamki Gyatso had no access to a lawyer. His family has not been allowed to visit him since his arrest.

11. Tseltem Gyatso was arrested three to four months after the demonstration. He was later sentenced to life imprisonment. Tseltem Gyatso is allegedly deprived of his right to be visited by his family and friends.

12. Kalsang Gyatso left the monastery after the demonstration in 2008. On 1 April 2009, he was arrested by the police on a bus.

13. According to the source, no one has been allowed to visit the monks in custody.

14. The source argues that the detention of the three individuals is arbitrary because it results merely from their participation in a demonstration for democracy and human rights which took place in March 2008.

15. On 3 August 2010, the Chairperson of the Working Group sent a letter regarding this case to the Government and provided it with an opportunity to reply. Following a reminder letter sent on 29 October 2010, the Government's reply was received on 22 November 2010, thus permitting the Working Group to render the present opinion.

16. In its reply, the Government submits that the three persons were detained on the grounds of their participation in an illegal demonstration that was contrary to national unity. Thamki Gyatso, Tseltem Gyatso and Kalsang Gyatso were tried pursuant to articles 103, 55, 56 and 57 of the Criminal Code and sentenced, respectively, to 15 years of imprisonment with a prohibition to exercise civil and political rights for a period of five years; life imprisonment and prohibition of all civil and political rights; and 10 years of imprisonment combined with five years of prohibition to exercise civil and political rights. All were convicted of separatism and are currently serving their sentences.

17. The Government added that a competent jurisdiction applied the legal provisions in this matter, the defendants were provided with an interpreter and a legal counsel to ensure their adequate defense, and that all procedural rights were fully respected.

18. The Government's reply was transmitted to the source on 22 November 2010 and the reply of the latter reached the Working Group on 23 November 2010. None of the comments provided therein have substantially changed the elements already before the Working Group.

19. The above reply, without adducing any specific comments regarding the information received from the Government, is confined to questions addressed to the Working Group and demands it to verify some elements of the information received.

20. It must be recalled that the mandate of the Working Group does not permit it to seek elements of information and to make them available to the source. In contrast, the Working Group is to rely on the information provided by the source in order to render an opinion, except for those cases in which the Working Group acts *proprio motu*.

21. Having clarified this point, the Working Group is in a position to render an opinion on the basis of the information currently available before it.

22. All three persons concerned in this case are monks who, following their participation in a demonstration for democracy, human rights and the return of the Dalai Lama, were arrested and detained. They were tried and received heavy sentences.

23. In its reply, the Government does not contest this assertion, merely stating that they were prosecuted for separatism without articulating the exact facts on the basis of which they had been charged or the nature of the crime of separatism allegedly committed.

24. While stating that the monks benefited from interpreters and lawyers and that the trial was conducted in compliance with the rights of the defendants, no element in the brief reply of the Government has questioned the primary allegation from the source that the arrest of the persons concerned related to a demonstration having as its purpose the respect for democracy, human rights and the return of Dalai Lama. In particular, neither the source nor the Government have referred to any violence as part of the demonstration.

25. The Working Group relies on information from the Government providing clarification on possible human rights abuses indicated in the Working Group's communication. Where there is a *prima facie* restriction on human rights, the Working Group looks to the Government's communication to

determine whether there is a restriction and whether it can be justified or falls within a derogation which may apply. This reflects general human rights principles where the burden similarly falls on the State where there is a prima facie restriction on human rights. The brief assertions made in the Government's reply do not provide sufficient support to establish that the prima facie human rights restriction is justified.

26. In the light of the foregoing, the Working Group maintains that the monks were arrested for having expressed their opinions and convictions. Their deprivation of liberty is in violation of articles 9, 18, 19 and 20 of the Universal Declaration of Human Rights and contrary to category II of the categories applicable to the consideration of cases submitted to the Working Group.

27. The Working Group therefore considers arbitrary the detention of Thamki Gyatso, Tseltem Gyatso and Kalsang Gyatso.

28. Consequent upon the opinion rendered, the Working Group requests the Government to ensure their immediate release and to provide for reparation of the harm caused as a result of this situation.

29. The Working Group also recommends the Government of China to ratify the International Covenant on Civil and Political Rights, which it has already signed.

[Adopted on 24 November 2010]