

## **International Campaign for Tibet (ICT) submission to the Questionnaire by Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association**

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The International Campaign for Tibet (ICT) is a not-for-profit advocacy group that works to promote human rights and democratic freedoms for the people of Tibet. In this submission, we aim to highlight serious gaps in the protection of rights to freedom of Assembly and Association in Tibet.

- 1. What has the Government in your country done to ensure the right to an effective remedy, access to justice and accountability for violations and abuses of the rights to freedom of peaceful assembly and of association (FoAA), both in law and in practice? Please specify instances of the impact that the lack of effective remedy and accountability has had in the closure of civic space; as well as the impact that effective remedy and accountability has had on the opening of civic space and the broader enjoyment of FoAA.**

Tibetans (approximately 6 million) in the People's Republic of China do not enjoy the right to freedom of assembly and of association, as their ethnicity marks them as potential threats to social stability and national security. Despite the right being protected in Article 35 of the Constitution<sup>1</sup>, Tibetans who peacefully gather or associate to protest injustice or celebrate significant anniversaries are regularly detained and sentenced for 'incitement to separate the state' and threatening 'social stability'. In instances where the right to freely assemble and associate have been abused, opportunities to access justice and accountability are not available to Tibetans due to the politically sensitive nature of their ethnicity.

Tibetans are routinely denied their right to freely assemble, enjoy due process when detained, and procedural justice when wrongly charged. The securitization of Tibetan ethnicity combined with the criminalization of information sharing, online censorship, neighborhood surveillance systems, collective punishment, and the use of torture has deterred individuals from organizing groups and gatherings that may be perceived as politically sensitive. The lack of legal protections against these violations, including the right to remedy wrongful detention, has resulted in the loss of civic space (both online and off-line) in Tibetan society.

Two areas of public life and civic space have been particularly affected: the ban on public gatherings to celebrate the birthday of the Dalai Lama and the severe penalties for organizing around social injustice.

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<sup>1</sup> Constitution of the People's Republic of China, 14 March 2004, [http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content\\_1372963.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/2007-11/15/content_1372963.htm).

*1) The ban on public gatherings to celebrate the birthday of the Dalai Lama has resulted in loss of community events*

The Tibetan people, whether in the Tibet Autonomous Region or in the Tibetan areas in Sichuan, Yunnan, Qinghai and Gansu provinces of the People's Republic of China have a historical bond with their spiritual master the Dalai Lama. According to Tibetan tradition, the devotees gather together for a religious ritual on his birthday that includes an incense-burning ceremony.<sup>2</sup> Tibetans also undertake meritorious actions, such as saving animals from being killed and dedicating accumulated merit to their spiritual masters. In the lead up to and on the Dalai Lama's birthday (6<sup>th</sup> July), Chinese authorities have used administrative ordinances and law enforcement to ban Tibetan gatherings and prayers.<sup>3</sup> These bans have been more explicit since 2008. For example, in 2011, security personnel were deployed in Nyitso village, Tawu, (Chinese: Daofu), Kardze (Chinese: Ganzi) Tibetan Autonomous Prefecture in Sichuan to prevent peaceful celebrations of the Dalai Lama's birthday, and thousands of Tibetans were stopped from making offerings at a holy mountain during the early hours of the Dalai Lama's birthday.<sup>4</sup>

In 2013, two Tibetans were shot in the head and at least eight others seriously injured after police opened fire at unarmed Tibetans who had gathered to offer prayers on the Dalai Lama's birthday, at a sacred mountain in Nyitso, Tawu, (Chinese: Daofu), Kardze (Chinese: Ganzi) Tibetan Autonomous Prefecture in Sichuan Province .<sup>5</sup> A Tibetan monk in Kumbum monastery in Qinghai Province highlighted the effect of such bans on public life, telling a journalist "We'll celebrate his [Dalai Lama's] birthday at our homes privately but we'll never do it in the open".<sup>6</sup>

*2) Restrictions and severe penalties for organizing around social injustice has led to loss of civic spaces and civil society*

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<sup>2</sup> "Thousands Wish the Dalai Lama a Happy Birthday in Dharamshala" July 7, 2012 (accessed on January 19, 2021) <https://www.dalailama.com/news/2012/thousands-wish-the-dalai-lama-a-happy-birthday-in-dharamshala>

<sup>3</sup> Wary Tibetans mark Dalai Lama's birthday quietly in China, Reuters, July 6, 2013, <https://www.reuters.com/article/us-china-tibet-dalailama-idUSBRE96502H20130706>; "China Blocks Public Gatherings in Tibetan Areas in Advance of Dalai Lama's Birthday" Radio Free Asia, June10, 2015, <https://www.rfa.org/english/news/tibet/blocks-06102015160216.html>; China Deploys Police, Restricts Online Discussion in Malho Ahead of Dalai Lama's Birthday, Radio Free Asia, July 5, 2018, <https://www.rfa.org/english/news/tibet/birthday-07052018151848.html>.

<sup>4</sup> "Shooting in Tawu on Dalai Lama's birthday: update" International Campaign for Tibet, July 26, 2013, <https://savetibet.org/shooting-in-tawu-on-dalai-lamas-birthday-update/>

<sup>5</sup> Ibid

<sup>6</sup> Wary Tibetans mark Dalai Lama's birthday quietly in China, Reuters, July 6, 2013, <https://www.reuters.com/article/us-china-tibet-dalailama-idUSBRE96502H20130706>

Numerous arrests and mistreatment of individuals who have peacefully gathered to express concerns about local government corruption, environmental destruction, language education or freedom of speech have led to the loss of civic spaces and civil society.

The two cases of Anya Sengdra and Tenzin Nyima illustrate the lack rights to freedom of assembly and the subsequent loss of civic space.

The case of Tibetan nomad activist Anya Sengdra exemplifies government repression of individuals who have peacefully assembled with legitimate concerns. On 6 December 2019, Sengdra was sentenced for “the crimes of provoking troubles, forming a mob to disturb social order, and other evil cases” by the Gade (Chinese: Gande) County people’s court in Golog (Guoluo) Prefecture in Qinghai province. He was detained after peacefully campaigning against corruption and for criticizing government policies. Since 2014, Sengdra founded a volunteer organization with other local Tibetan nomads to fight against local authorities’ abuse of power. When Sengdra invoked his right to appeal his sentence, his appeal was dismissed.

While Sengdra’s case demonstrates the effects of peaceful association, Tenzin Nyima’s case highlights the sometimes deadly consequences of peacefully protesting. On 9 November 2019, the 19-year-old Tibetan monk was detained for staging a small protest with three other monks from a local monastery in Wonpo, Kardze (Ch: Ganzi) Tibetan Autonomous Prefecture, Sichuan province. Nyima had briefly distributed leaflets and shouted slogans calling for Tibetan independence outside the local Wonpo government office. The protests occurred as local officials increasingly put pressure on forcibly resettled nomads and local residents to publicly praise the government’s “Poverty Alleviation” program.

When released after 6 months in detention, Nyima was re-arrested for sharing the news of the initial arrest online. In October 2020, two months into his second arrest, Nyima was released to his family for medical reasons. Hospital records show Nyima was paralysed and unconscious. Due to the severe nature of his condition, Nyima was discharged from two hospitals. He died soon after on 19 January 2021.

The two cases highlight the harsh consequences of expressing genuine grievances and socially organising to assemble or associate to seek resolutions. Their treatment is designed to dissuade other Tibetans from engaging in civic organization.

Hundreds of local Tibetans protested against the Chinese mining activity at the Gongngon Lari mountain in Amchok township, Sangchu (Xiahe) county, Kanlho (Gannan) Tibetan Autonomous Prefecture in Gansu province, on May 31, 2016. The Tibetans assembled to stage their protest after their concerns about exploitation of their land, environment and spirituality have been ignored for more than two decades, said a local Tibetan with firsthand knowledge of the protest. In the past, protest have been staged at the same location in the form of self-immolations on two occasions in November 2012.



With no accountability or effective remedy to stop mining, the local Tibetans assembled at the site to express their collective concern. But the police dispersed the protesters, and the local authorities undertook no measures to remedy the concerns over mining project. It is common for Tibetans to face arrest and imprisonment for expressing their concern over state projects.<sup>7</sup>

On November 3, 2014, hundreds of Tibetans assembled in Sangchu to walk to the Sangchu County government headquarters to raise their concerns over unfair compensation for land in their home areas. The unarmed demonstrators were blocked by club wielding policemen and metal barricades erected to stop them marching to the county government headquarters. Although not captured in a video clip circulating on social media, a Tibetan in the clip could be heard that the police were beating the demonstrators.<sup>8</sup>

Similarly, hundreds of Tibetans in Hortsang township in Sangchu county assembled peacefully to protest against seizure of their farmland on March 16 and 17, 2014. The farmlands were seized to construct highways to carry out mining and other industrial activities emitting harmful gases polluting the environment and destroying livestock.<sup>9</sup> Some of the protestors were detained. A local Tibetan, name withheld for security reasons, then told the Radio Free Asia that “They have been digging for gold for years knowing fully well of the Tibetan concerns over its effects on the environment. The Tibetans have appealed to the authorities several times but there has been no positive response”. “Our resistance to the exploitation of our environment did have an impact in slowing down the projects, but our concerns are being drowned by the strong support for the projects by the local county authorities.”

The Communist Party of China considers grassroots Tibetan associations as corroding their power and influence at the local level. In recent years, such associations have been labeled as evil gang and imprisoned under the government of China’s three year political-legal campaign (2018-2020) to crack down on “organized crime”. For example, Sangchu (Xiahe) County People’s Court in Kanlho (Gannan) Tibetan Autonomous Prefecture, Gansu Province, sentenced ten Tibetans, all members of a volunteer group called Namlha Monastery’s Folk Management Committee, to prison terms ranging from

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<sup>7</sup> Tibetans in Amchok protest mining project at holy Gong-ngon Lari mountain, International Campaign for Tibet, May 31, 2016, <https://savetibet.org/tibetans-in-amchok-protest-mining-project-at-holy-gong-ngon-lari-mountain/>

<sup>8</sup> Tibetan demonstrations over land, education policy, International Campaign for Tibet, November 4, 2014, <https://savetibet.org/tibetan-demonstrations-over-land-education-policy/#1>

<sup>9</sup> Hundreds of Tibetans Protest Land Seizure Over Gold Mining Activities, March 22, 2014, Radio Free Asia, <https://www.rfa.org/english/news/tibet/protest-03222014220107.html>

nine to 14 years after a two-day trial on June 28-29, 2020.<sup>10</sup> The ten Tibetans were respected community leaders who in 2013 requested compensation to local Tibetans for their property damage from state highway projects; raised concerns about construction of a slaughterhouse in their hometown in 2012; and raised funds and procured a piece of abandoned land for their local Namlha (Nanmula) monastery's use.

**2. Some groups face particular obstacles to their rights to FoAA and are at even greater risk of violations of such rights, due to intersecting forms of discrimination (including but not exhaustively women and girls, persons with disabilities, indigenous groups, LGBT persons, children, etc.) How has this translated into further gaps in access to justice and accountability? What are their specific situations, views and needs to ensure that these groups have access to justice and accountability?**

In general, Tibetans in the People's Republic of China are at greater risk of their rights to FoAA being violated due to their distinct ethnic identity. This has meant Tibetans are unable to organize to seek remedy for social injustices in areas of environmental safety, religious freedom, language education, discrimination in the labour market, and government corruption. The absence of legal protections that allow Tibetans to peacefully assemble and associate, and seek redress through the court has led to a rise in solo protests.

*Rise in solo protests by Tibetans*

In the light of the Chinese authorities' closing down all possible avenues for peaceful assembly and association to Tibetans, there has been a trend of peaceful solo protests since around 2014.<sup>11</sup> There appears to be a correlation between the occurrence of solo protests in two areas, mostly Ngaba (Aba) and Kardze (Ganzi), and high levels of securitization.

There have been 38 solo protests by Tibetans from 2014 to October 4, 2018.<sup>12</sup> Other protests may have occurred that are not known to the International Campaign for Tibet, given the tight constraints placed by Chinese authorities on information and the dangers Tibetans face in sharing news from inside Tibet.

One particular form of solo protest is self-immolations. From 2009, up until today, 156 Tibetans have self-immolated in Tibet. The latest case only became public recently

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<sup>10</sup> New report exposes fraudulent "anti-gang" trial of "Sangchu 10" Tibetans, International Campaign for Tibet, October 1, 2020, <https://savetibet.org/new-report-exposes-fraudulent-anti-gang-trial-of-sangchu-10-tibetans/>

<sup>11</sup> Brave solo protests show Tibetans' remarkable courage and steadfast loyalty to the Dalai Lama, International Campaign for Tibet, October 11, 2018, <https://savetibet.org/brave-solo-protests-show-tibetans-remarkable-courage-and-steadfast-loyalty-to-the-dalai-lama/>

<sup>12</sup> Ibid

though it occurred in 2015, due to the severe restrictions cited above. 26-year-old Shurmo died after lighting his body on fire around 1 pm on Sept. 17, 2015. His self-immolation occurred near a bus station in his native Shagchukha village in Nagchu county in Nagchu prefecture of the Tibet Autonomous Region.<sup>13</sup>

The Tibetan monastic community as a group continues to face obstacles in exercising their right to peaceful assembly. The monastic community has for decades come together to lead human rights grievances of the Tibetan people against the state or to bring positive changes to the society. However, ever since the pan-Tibet protests in 2008, the monastic community has come under extra scrutiny by the authorities to prevent embarrassing future demonstrations against the state policies.

In order to curb their organizing capabilities, the government of China has taken measures to control their assembly and routine activities. Such measures include downgrading the nominal autonomy of the monks to elect their committees in the monasteries first introduced in 1962 and reinstated in 1980 after the Cultural Revolution. Unlike the past practices of monks electing their members to the “Democratic Management Committees”, the government of China installed management committees since 2011 and directly appoints communist cadres to the management committees overseeing the activities of the monks in monasteries for “political stability” and “to establish harmonious monasteries”.

In order to control the ideologies of the monastic community from assembling against the state’s repression, the community has been subjected to state policies to sinicize their faith through the official Sinicization of religion policy in effect since the 19<sup>th</sup> Party congress in October 2017. Sinicization require the Tibetan monastic community to conform to the Chinese society, Party leadership and its core values. The state also implements another official policy termed as “Four standards for being advanced monks and nuns” on the monastic community since 2018. The four standards policy require the monastic community to be loyal to the Communist Party of China and embrace socialism with Chinese characteristics. State officials conduct relentless “re-education” classes in the monasteries and nunneries in implementation of the official policies of “Sinicization” and “four standards”.

Owing to the overall stepped-up controls on the monastic community in Tibet, the monks and nuns have had faced obstacles from assembling peacefully to air their grievances against the state’s repression on the Tibetan people and on monastic group in particular.

**3. How do you think the work of the Special Rapporteur can contribute to greater accountability for violations of the rights to FoAA and how can he concretely contribute to ensuring effective access to justice of persons exercising these fundamental freedoms?**

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<sup>13</sup> <https://www.savetibet.eu/latest/news/>

**A. Can you name measures and policies taken by a State or the UN that you think have been especially effective to ensure access to justice and accountability in the context of FoAA? Do you have any examples of good practices or strategies put forward by civil society to overcome the restrictions that individuals and organizations face in trying to access justice and accountability for violations of their rights to FoAA**

One measure that can help ensure access to justice in the context of FoAA and other civil and political rights is the promotion of a legal system with clear laws, which are enforced fairly and in a predictable and consistent manner so that individuals can seek justice without risk of detention. Procedural justice, which includes the right to a lawyer, to know your charge, to a defence, and to a fair trial and appeals process, is also essential in ensuring individuals who are unfairly detained can seek redress through the legal system.

The work of the Special Rapporteur is extremely important in order to ensure respect for the right to freedom of assembly and association by Tibetans in the PRC. It is important that the Special Rapporteur on FoAA asks the government of the PRC for information about individual cases of Tibetans arrested for peacefully exercising their right to FoAA. This is crucial to their chances of being released and survival.

Of particular importance is the statement by UN experts in June 2020 calling for the establishment of an independent United Nations monitoring mechanism of the human rights situation in the PRC, in particular in Tibet. It would also be helpful if the Special Rapporteur would ask to visit individuals who are imprisoned for exercising their right to FoAA.

**B. Can you share an inspiring story of how legal practitioners contributed to enjoyment of someone's right to FoAA or the access to justice and accountability of someone exercising their right to FoAA?**

N/A

**Peaceful Assembly**

**A. In your opinion, which measures and policies would have to be adopted in order to remove existing obstacles in access to justice and accountability for violations of the right to freedom of peaceful assembly? For example, how could protection of this in the context of law enforcement be increased, specifically regarding deprivation of liberty and use of force? Please specify if such measures exist in law but are not being applied.**

The Chinese Criminal Procedural Law (2012) lacks basic safeguards and rights pertaining to fair trial, deprivation of liberty, and the use of force, as enshrined in international human rights treaties.<sup>14</sup>

As also stated in the Concluding Observations of the Committee Against Torture in its review of China in 2015, Chinese Communist Party Politics and Law Committees should be “prevented from undertaking inappropriate or unwarranted interference with the judicial process”<sup>15</sup>, and thereby refrain from inhibiting judicial independence and autonomy of courts and judges. As with the issue of torture and ill-treatment, lack of judicial independence is a major obstacle for safeguarding the right to freedom of assembly and association.

**B. In your opinion, which measures could be taken to help legal practitioners to be able to better support you or those exercising their right to freedom of peaceful assembly? In the context of exercising your freedom of assembly (for example, as a protester or as an organizer) have you sought the services of lawyers before, during or after assemblies?**

- **If the answer is no, please provide details regarding the reasons (for example possible barriers in legislation or economic reasons).**

In our advocacy and research work, we have found it to be rare for Tibetans to seek the assistance of lawyers prior to protests, as there is a perception that the law does not protect Tibetans in practice. This was demonstrated by the language rights advocate Tashi Wangchuk who made numerous and failed attempts to secure legal representation for his language rights advocacy.<sup>16</sup>

**C. Are there existing barriers, in law and in practice, for lawyers to be able to protect those exercising their right to freedom of peaceful assembly in your country? Are lawyers able to participate in peaceful assemblies as monitors? If the answer is yes, are they being targeted for their work? Please provide details.**

There are many barriers, in law and practice, for lawyers to be able to protect and defend those exercising the right to FoAA in the PRC. Chinese defence lawyers who defended Tibetans arrested for, inter alia, exercising their right to FoAA have reported that they

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<sup>14</sup> Barriers to Exercising the Right to a Fair Trial in Tibet, TCHRD, July 2020. <https://tchrd.org/wp-content/uploads/2020/07/TCHRD-fair-trial-report-final-July-2020-1.pdf>

<sup>15</sup> CAT, Concluding observations on the fifth periodic report of China, CAT/C/CHN/CO/5, para. 23 d, 3 February 2016; <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsIEE2YuVt8GA5WKG3GEX%2BZEXqjnsVnWP%2BkQ6f9cmzWcEPIYdFWEXvIFmDTE3WtKbIKZXAKr5OVTwnh86Q4GNZXSmrqMf55xyaMPMcFusW3o2>

<sup>16</sup> New York Times, 22 May 2018, ‘A Tibetan tried to save his language. China handed him 5 years in prison’, <https://www.nytimes.com/2018/05/22/world/asia/tibetan-activist-tashi-wangchuk-sentenced.html>.



have “to be psychologically prepared to counter any risks or consequences”. For example, to be mentally prepared “when your lawyer’s license is revoked.”<sup>17</sup> One lawyer, Teng Biao, noted: “The biggest difficulty in representing Tibetan cases is that almost all Tibetan cases are excessively politicized. The authorities regard this as highly sensitive political case. Therefore, any case that dares to represent Tibetans, especially those human rights lawyers who publicly represent Tibetan cases are considered troublemakers and even dissidents.”<sup>18</sup>

**ENDS**



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<sup>17</sup> *ibid.*, at 12.

<sup>18</sup> *ibid.*, at 14.