

Religious Repression in Tibet: Special Report 2012



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Tibetan Centre for Human Rights & Democracy

Buddhism too recognises that human beings are entitled to dignity, that all members of the human family have an equal and inalienable right to liberty, not just in terms of political freedom, but also at the fundamental level of freedom from fear and want. Irrespective of whether we are rich or poor, educated or uneducated, belonging to one nation or another, to one religion or another, adhering to this ideology or that, each of us is just a human being like everyone else.

~ His Holiness the IVth Dalai Lama

Contents

I	Introduction	1
II	A Brief History of Buddhism in Tibet	5
III	Overview of Legal Framework Relating to the Freedom of Religion	9
	A. A General Look at the International Standards Protecting the Right to Freedom of Religion	9
	B. Chinese Law Relevant to Freedom of Religion.....	11
	1. International Obligations	12
	2. Constitution	13
	3. Criminal Law and Criminal Procedure Law	15
	4. The State Secrets Law: the Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Religious Work.....	18
	5. The National Regulation on Religious Affairs	20
	C. Conclusion	23
IV	The Current Situation – Chinese Policies towards Tibetan Buddhism.....	25
	A. Anti-Dalai Lama Campaign and “Patriotic Education”	25
	1. Principles of the Anti-Dalai Lama Campaign.....	26
	2. “Patriotic Education” Sessions.....	31
	B. Control Over Monastic Institutions	35
	1. State Administration For Religious Affairs, Management Measures for Tibetan Buddhist Monasteries, Order No. 8 (“the Management Measures”).....	36

2. Recent Adjustments: the Complete Long-Term Management Mechanism for Tibetan Buddhist Monasteries	41
3. “Modifications” to the Geshe System	43
4. Harmonious Model Monasteries and Patriotic Monks and Nuns	44
5. The “Nine Must-Haves” and the “Six Ones”	45
6. Measures Specific to the Tibetan Autonomous Region ..	48
7. Additional Examples of Repressive Measures at the Prefectural or Municipal Level	51
i. Measures for Dealing Strictly with Rebellious Monasteries and Individual Monks and Nuns in Kardze TAP, Sichuan Province	52
ii. Briefing Booklet on Law and Order – Lhasa Municipality Law and Order Information Department, Tibet Autonomous Region	54
8. Conclusion.....	57
C. Order No. 5: Management Measures for the Reincarnation of Living Buddhas in Tibetan Buddhism.....	58
D. Reactionary Measures.....	61
1. Bans on Holidays.....	61
2. Restrictions on Movement	62
3. Lockdowns, Heightened Security, and Violence.....	64
4. “Legal” Measures.....	68
V In-Depth Legal Framework and Analysis.....	71
A. Freedom of Religion or Belief – The Right Itself	72
1. Freedom to Adopt, Change, or Renounce a Religion or Belief	72
2. Freedom from Coercion.....	73
3. The Right to Manifest One’s Religion or Belief.....	77
a) Freedom to Worship.....	78
b) Places of Worship	81

c) Religious Symbols.....	84
d) Observance of Holidays and Days of Rest	86
e) Appointing Clergy.....	88
f) Teaching and Disseminating Materials	93
g) The Right of Parents to Ensure the Religious and Moral Education of their Children.....	96
h) Registration.....	99
i) The Right to Communicate with Individuals and Communities on ReligiousMatters at the National and International level	103
j) The Right to Establish and Maintain Charitable and Humanitarian Institutions and to Solicit and Receive Funding.....	108
B. Discrimination.....	110
1. Discrimination on the Basis of Religion or Belief	111
a) De Jure Discrimination.....	113
b) De Facto Discrimination	115
2. State Religion.....	118
C. Vulnerable Groups	122
1. Persons Deprived of Their Liberties.....	122
2. Protecting Minorities.....	123
D. Intersection of Freedom of Religion or Belief with Other Human Rights	127
1. Freedom of Expression	127
2. Right to Life, Liberty, and the Security of Persons....	131
E. Cross-cutting Issues	136
1. Derogation.....	136
2. Limitations.....	139
3. Legislative Issues	140
4. Defenders of Freedom of Religion or Belief.....	143
 VI Conclusion	 147



Introduction

The right to freedom of thought, conscience, and religion is a fundamental and universal right, first enshrined in Article 18 of the Universal Declaration of Human Rights (“UDHR”) in 1948. Despite its value to the international community, States continue to violate the right to freedom of thought, conscience, and religion across the globe. This is particularly true in Tibet, where the Chinese government – through law, policy, and practice – consistently represses the religious and other rights of the Tibetan Buddhists in the Tibetan Autonomous Region (“TAR”) and other Tibetan areas incorporated into Chinese provinces of Sichuan, Qinghai, Yunnan, and Gansu. Since 1999, the United States Commission on International Religious Freedom recommended that the People’s Republic of China be designated by the US Department of State as a “country of particular concern,” that is, a country whose government has engaged in or tolerated systematic and egregious violations of the universal right to freedom of religion or belief.¹ In fact, the Commission considers China to be one of the *most* egregious violators of religious freedom.²

The governing and sole party of the People’s Republic of China (“PRC”), the Communist Party of China (“CPC”) follows a Marxist, atheist ideology in which religion is considered a superstitious and unscientific product of natural and social oppression, exploited and used in backward societies to suppress the lower class and preserve social inequalities.³ As such, Marxism stipulates that in a socialist

1 U.S. DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011: CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) (2012) [hereinafter US COUNTRY REPORT 2012], *available at* http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=187481#wrapper.

2 U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, ANNUAL REPORT 2012 136 [hereinafter USCIRF], *available at* [http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscifr.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf).

3 THE INTERNATIONAL CAMPAIGN FOR TIBET, WHEN THE SKY FELL TO EARTH: THE NEW CRACKDOWN ON BUDDHISM IN TIBET 6 (2004), *available at* <http://72.32.136.41/files/documents/2004ReligionReport.pdf>.

society in which there is no class system, religion will naturally and inevitably disappear.⁴ Consequently, the PRC appears confident that the Tibetan peoples' religious faith and fervour will die once stronger economic and social progress is achieved.

In addition to ideological differences, the Chinese government links Tibetan Buddhism with the perceived fear of the Tibetan desire for separation from China. A strategy which, according to China, is promulgated by the Dalai Lama, the Central Tibetan Administration, and other foreign "hostile" and anti-Chinese forces.⁵ As a result, the Chinese government intends to "either eliminate the religious faith of the Tibetans or transform Tibet into an atheist region where the 'communal spiritual civilization' will be propagated to the Tibetan people."⁶ This is the underlying policy on which China's religiously repressive measures in Tibet are founded.

In 2008 the Tibetan Plateau experienced a wave of protests, during which thousands of Tibetans called for religious freedom, a free Tibet, and the return of their spiritual leader His Holiness the Dalai Lama to Tibet. Since then, government control over religious practice and the management of monastic institutions has been extraordinarily tight.⁷ Many of the monks, nuns, and other political prisoners arrested during the 2008 uprising still remain in detention today. Heavy restrictions on freedom of movement and the forced relocation of nomadic communities from their grasslands to small towns, effectively cutting them off from their traditional Buddhist culture, contribute to the virtual lockdown and undeclared martial law in place in Tibet today. As the US Commission on International Freedom noted in its 2012 report, "[t]he religious freedom conditions in Tibetan Buddhist areas of China remained acute, worse now than at any time over the past decade."⁸

The increased restrictions have resulted in 95 protest self-immolations in Tibet.⁹ A large number of the self-immolators have

⁴ *Id.*

⁵ *Id.* at 8.

⁶ TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, HUMAN RIGHTS SITUATION IN TIBET: ANNUAL REPORT 2002 136 [hereinafter TCHRD ANNUAL REPORT 2002].

⁷ U.S. DEPARTMENT OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, available at <http://www.state.gov/j/drl/rls/irf/2010/148863.htm>.

⁸ USCIRF, *supra* note 2, at 139.

⁹ As of 10 December 2012.

been monks and nuns who could no longer bear the oppression. Tibetan Buddhist monks have been known for their patience and resilience in the face of adversity. The case of these burning protests is clear evidence that Tibetan monks have been pushed to the extreme limits of human endurance and helplessness in the face of oppressive Chinese rule. Although the Chinese government tries desperately to conceal them, numerous videos, pictures, and news of the self-immolations have been leaked into the international community. These depictions capture the self-immolators calling for “religious freedom in Tibet,” and the return of their beloved spiritual leader, His Holiness the Dalai Lama.

This report is an in-depth analysis of the internationally protected right to freedom of religion and belief, and the ways in which the government of the PRC is continuously and systematically violating it in the context of Tibetan Buddhism. The first section provides a brief history of Tibetan Buddhism in Tibet, beginning with the introduction of Buddhism in Tibet in the 5th century C.E., and ending with an account of Tibetan Buddhism in Tibet today. The second section contains a general overview of both the international and Chinese laws that pertain to the right to freedom of religion. The third section of the report describes in detail some of the most religiously oppressive measures imposed by the Chinese government on Tibetan Buddhists.

The heart of this report is the fourth section, which is an analysis of the effect of China’s oppressive laws as they pertain to the right to freedom of religion. The structure of this section is borrowed from the framework for communications presented by the United Nations Special Rapporteur on Freedom of Religion or Belief.¹⁰ This framework most accurately incorporates the distinct yet interrelated issues that comprise the right to freedom of religion or belief. As such, the section is divided into five categories: the elements of the right to freedom of religion or belief and the right to manifest one’s religion or belief; discrimination based on religion or belief;

¹⁰U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Report of the Special Rapporteur on Freedom of Religion or Belief, *Report of the Special Rapporteur on Freedom of Religion or Belief*, para. 35, U.N. Doc: E/CN.4/2006/5 (9 Jan. 2006) (delivered at the 62nd Session of the Economic and Social Council) [hereinafter 2006 Report].

vulnerable groups whose right to freedom of religion requires special attention; the intersection of freedom of religion and other human rights; cross-cutting issues relating to the right to freedom of religion or belief, including limitations and derogations.¹¹ The last section draws the issues discussed in the report together in the form of recommendations to the People's Republic of China, the United Nations, and the international community as a whole.

¹¹ Because they are not pertinent to the arguments made in this report, five of the sub-categories are excluded: the right to conscientious objection, one of the elements of the right to manifest one's religion or belief, as this is not relevant to China's oppressive policies; the vulnerable groups as these could constitute entire reports in themselves; and the intersection between the freedom of religion and the prohibition on torture and other cruel, inhuman, or degrading treatment or punishment, as it relates to issues of religions permitting or encouraging torture and other cruel, inhuman, or degrading treatment or punishment, which is not the case in Tibetan Buddhism.

A Brief History of Buddhism in Tibet

“You know, religion is very harmful to the development of a nation. First of all, it acts as a hindrance to material progress and secondly, it weakens the race. Your mind is somewhat like a scientist’s, so you can understand what I mean. Religion is poison.” – Chairman Mao Zedong to His Holiness the Dalai Lama, 1959

Buddhism is believed to have come from India to Tibet in the 5th Century C.E. In Tibet, Buddhism grew into its own vibrant sect, referred to as Tibetan Buddhism. Tibetan Buddhism has played a crucial role in both the culture and identity of the Tibetan people. For instance, the religious canons were all written in Tibetan, making Tibetan Buddhism closely linked to the Tibetan language. The majority of Tibetans today are Buddhist.

The PRC’s leader Mao Zedong was famously hostile to religion, and spent many of the early years of his dictatorship converting monasteries and temples as well as monks and priests into secular state organizations and agents. In 1953, Buddhism in China was organized into the Buddhist Association of China (“BAC”), whose purpose was to place Buddhism under the leadership of the Communist Party. However, the 1954 Constitution officially endorsed religion, while the BAC strictly limited Buddhist activity and controlled the monastic institutions.¹²

Facing increased pressure and oppression, His Holiness the Dalai Lama followed by thousands of Tibetans fled to India in 1959. Between 1959 and 1966, the Chinese government increased its control over Tibet, targeting monasteries “as the backbone of Tibetan society.”¹³ It is estimated that by 1966, 80% of central Tibet’s 2,700

¹²FREE TIBET, CHRONOLOGY OF CHINESE POLICIES ON RELIGION IN TIBET, *available at* <http://www.freetibet.org/about/chronology>.

¹³*Id.*

monasteries were destroyed, and only 6,900 of 115,600 monks and nuns remained.¹⁴

The year 1966 marked the beginning of what is referred to as the Cultural Revolution. Led by Mao's "Red Guards," this period is marked by the government of China's violent attempt to obliterate religion. During this time, officials banned all religious activity while they vandalized and looted religious institutions, shrines, artefacts, and scriptures. Monks and nuns were subject to severe persecution carried out through indiscriminate arrests, torture, and killings. Official figures estimate that by 1978, only eight monasteries and 970 monks and nuns remained in the TAR.¹⁵ The monastic population had been reduced by 93%.¹⁶

When Mao Zedong died in 1976 and Deng Xiaoping rose to power, Chinese policies relaxed, resulting in a more open approach to religion, similar to that of the 1950s. With a focus on national reconstruction and modernization, the government took steps to right some of the wrongs of the Cultural Revolution, allowing the restoration of religious institutions and releasing some of the persecuted religious leaders. In 1980, Hu Yaobang, the then General Secretary of the CPC apologized for the previous failures of party policy.¹⁷ He launched a new policy in Tibet, based on the premise that religion cannot be eliminated by force, "religious freedom" should be permitted, and the Chinese government should cooperate with patriotic religious leaders to build a "unified and modern socialist state."¹⁸ In 1982, the Constitution of the PRC was revised, and included a provision for freedom of religion. The 1980s thus brought a period of moderate tolerance, allowing Tibetans to rebuild their monasteries and nunneries, restore clergy, and celebrate festivals.¹⁹

From 1987 to 1989, Tibetans staged a series of demonstrations calling for human rights and freedom, resulting in a security

¹⁴*Id.*

¹⁵*Id.*

¹⁶HUMAN RIGHTS LAW NETWORK & TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, IMPOSING MODERNITY WITH CHINESE CHARACTERISTICS: THE FATE OF TIBETAN CIVILISATION 270 (2011), [hereinafter IMPOSING MODERNITY].

¹⁷WHEN THE SKY FELL TO EARTH, *supra* note 3, at 7.

¹⁸*Id.*

¹⁹FREE TIBET, CHRONOLOGY OF CHINESE POLICIES ON RELIGION IN TIBET, *supra* note 12.

crackdown on major monasteries.²⁰ In 1994, the Chinese government shifted its religious policy from one of moderate control, to active suppression of religious growth, restricting religious practice to limits acceptable to the CPC. Still motivated by the belief that religion will voluntarily disappear, the rest of the 1990s and the beginning of the new millennium saw increasingly strict constraints on Tibetan Buddhism.

Zhu Weiqun, Executive Head of the United Front Work Department (the CPC agency that maintains relations with non-Communist party elite) summed up the Party's current policy toward Tibetan Buddhism during a visit to the TAR in April 2011. A Party-run newspaper described his remarks:

He [Zhu Weiqun] expressed his hopes that religious personages and believers will always implement the line, principle, and policies of the Party, unswervingly carry out struggle against the Dalai clique, expose the reactionary essence of Dalai, establish a sound and permanent mechanism for the management of monasteries, and ensure that all activities of monasteries will have rules to follow. In addition, their interpretations of religious doctrines and rules must be [in] line with social development and progress and ensure that Tibetan Buddhism will actively adapt itself to socialist society.²¹

This notion that Tibetan Buddhist followers require tight control to avoid undue influence by the Dalai Lama and therefore adapt to socialist society is more completely explored below.

²⁰*Id.*

²¹CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, ANNUAL REPORT 2011, *available at* <http://www.cecc.gov/pages/annualRpt/annualRpt11/AR2011final.pdf>.



Overview of Legal Framework Relating to the Freedom of Religion

Freedom of religion is an important fundamental right protected by a myriad of international legal instruments. In light of the current global climate of religious persecution and discrimination, freedom of religion is a “hot topic” that is heavily discussed and promoted at the international level. The first part of this section is a brief introduction to the freedom of religion and the specific rights it entails, which will be discussed in more detail in part four of this report. The second part of this section is an exploration of the law of the People’s Republic of China as it pertains to the freedom of religion, identifying both domestically enacted legislation and the PRC’s international obligations.

A. A General Look at the International Standards Protecting the Right to Freedom of Religion

The right to freedom of religion, more completely known as the freedom of thought, conscience, and religion, was first enshrined in Article 18 of the Universal Declaration of Human Rights (“UDHR”) in 1948. Article 18 states, “[E]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”²² In addition to the explicit right to freedom of religion, Article 2 guarantees that everyone is entitled to all of the rights in the UDHR regardless of their particular religious belief. This makes the right to freedom of religion universal across all religious practices.

²²Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 para. 18 (1948) [*hereinafter*, UDHR].

Following the UDHR, the two leading international authorities on the freedom of religion are the International Convention on Civil and Political Rights (“ICCPR”) and the United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (“the Declaration”). Article 18 of the ICCPR reiterates the UDHR, providing everyone with the right to freedom of thought, conscience, and religion, which includes the freedom to have or adopt a religion or belief of one’s choice, as well as the freedom “either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.” This freedom to manifest religion or belief may only be limited by law and only when necessary to protect public safety, order, health, or the fundamental rights and freedoms of others.²³ The ICCPR prohibits any form of coercion that would impair an individual’s freedom to have or to adopt religion or belief, and respects the autonomy of parents or legal guardians to ensure the religious and moral education of their children.²⁴ The Human Rights Committee, the United Nations body charged with protecting and clarifying the ICCPR, observed in paragraph 5 of its general comment 22 that the freedom to have or to adopt a religion or belief necessarily entails the freedom to choose a religion or belief, “including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”²⁵

In 1981, the United Nations General Assembly adopted the Declaration. Article 1 echoes the language of Articles 18 of the UDHR and ICCPR. Article 6 elaborates on what is entailed in the freedom of religion, namely, the freedoms to: worship or assemble in connection with a religion or belief, and to establish and maintain places for those purposes; establish and maintain appropriate charitable or humanitarian institutions; make, acquire and use the materials and articles related to the rites and customs associated with a religion or belief; write, issue, and disseminate relevant publications;

²³International Covenant on Civil and Political Rights (New York, 16 Dec. 1966) 999 U.N.T.S. 171, *entered into force* 23 Mar. 1976, art. 18(3) [hereinafter ICCPR].

²⁴*Id.* art. 18(4).

²⁵Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1, para. 5 (1994) [hereinafter HRCGC No. 22].

teach religion or belief in suitable venues; solicit and receive financial and other contributions; train, appoint, elect, or designate succession of religious leaders; observe days of rest and celebrate holidays and ceremonies; establish and maintain communications with individuals and communities in religious matters at the national and international levels. As in the ICCPR, the religious and moral education of children is left to parents and legal guardians.²⁶

The majority of the Declaration focuses on the need to prevent discrimination based on religion or belief. Article 2 articulates this right to freedom from discrimination by any State, institution, group, or individual on the grounds of religion or other belief. The Declaration defines intolerance and discrimination based on religion or belief as “any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”²⁷ Every form of discrimination on the grounds of religion or belief is considered “an affront to human dignity and a disavowal of the principles of the Charter of the United Nations.”²⁸ As such, all member states of the UN, including China, are called upon to enact legislation that will not only prevent and eliminate discrimination based on religion or belief,²⁹ but to proactively promote freedom of religion and belief in a practical and realizable manner.³⁰

B. Chinese Law Relevant to Freedom of Religion

As an active member of the international community, especially the United Nations (China is a permanent member of the Security Council and a member of the Human Rights Council³¹, among others), the PRC is tightly bound by international law. As such, China is

²⁶United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/684 (1981) [hereinafter Declaration].

²⁷*Id.* art. 2(2).

²⁸*Id.* art. 3.

²⁹*Id.* art. 4.

³⁰*Id.* art. 7.

³¹ After serving the maximum of two consecutive terms, China will step down from the Council at the end of 2012, see Chatham House, China and the International Human Rights System, October 2012, available at http://www.chathamhouse.org/sites/default/files/public/Research/International%20Law/r1012_sceatsbreslin.pdf

obliged to enact domestic legislation reflecting its international responsibilities. In this regard, China is liable at an international level to protect the freedom of religion within its borders. On the one hand, the PRC does fulfil its promise to the international community by proclaiming it protects human rights in its national laws. But on the other hand, Chinese law is full of justifications and “outs” to violate human rights, especially the freedom of religion. Despite the clear circumventions of domestic law by the Chinese government, the PRC often applauds itself for upholding human rights standards and fulfilling human rights obligations.³²

1. International Obligations

The UDHR is widely accepted as customary international law, adopted and respected as international legal standard to which all nations are subject. Beyond its customary status, China is bound to the principles enshrined in UDHR by virtue of being a member of the United Nations Human Rights Council. In its candidacy statement to join the Human Rights Council in 2006, China stated that, “the Chinese government respects the universality of human rights and supports the UN in playing an important role in the protection and promotion of human rights.”³³ In a similar manner, China, as a member of the United Nations is obligated to comply with the declarations set forth by the General Assembly, such as the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

Furthermore, the Vienna Convention on the Law of Treaties requires signatories of treaties to “refrain from acts which would defeat the object and purpose of a treaty it has signed.”³⁴ In this regard, the PRC, as a signatory to the ICCPR,³⁵ should at the very least not overtly violate terms of the Covenant, specifically Article 18 pertaining to the freedom of religion

³² Wang Guanqun, *Report says China fulfills all targets of its Human Rights Action Plan*, XINHUA, 14 July 2011, *available at* http://news.xinhuanet.com/english2010/china/2011-07/14/c_13984269.htm.

³³ AMNESTY INTERNATIONAL, *HUMAN RIGHTS IN PEOPLE’S REPUBLIC OF CHINA (2007)*, *available at* <http://www.amnesty.org/en/region/china/report-2007>.

³⁴ Vienna Convention on the Law of Treaties, art. 18, 1155 U.N.T.S. 331 (23 May 1969).

³⁵ China signed the ICCPR on 5 October 1998. Despite numerous statements of intent to ratify (see for example China’s response to recommendations set forth in REPORT ON THE WORKING GROUP OF THE UNIVERSAL PERIODIC REVIEW – CHINA, para. 1, (2009) UN Doc. A/HRC/11/25.

2. Constitution

The dichotomy between the government's outward declaration of allegiance to human rights standards on one hand and internal justifications to violate them on the other is clearly preserved in China's Constitution. According to the Constitution of the People's Republic of China, adopted on 4 December 1982, all citizens of the PRC are equal before the law, enjoying the same rights (set out in chapter II), and responsible for the same duties prescribed by the Constitution and other laws.³⁶ The same article declares that, "the State respects and preserves human rights."³⁷ More specifically in Article 36, citizens are granted the freedom of religious belief:

No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.³⁸

The opening sentence of the provision appears to provide unrestricted protection of the freedom of religious belief, including from discrimination. It is important to note however, the various ways in which the provision curtails the right. The first predicament is that the term "normal" is never defined, therefore authorizing the government to arbitrarily impose a subjective view of normal when

³⁶Constitution of the People's Republic of China of 1982, art. 33, *ZhonghuaRenminGongbeguoXianfa*, 1982 [hereinafter Xianfa (1982)].

³⁷*Id.*

³⁸ Note: the same language is echoed in Article 11 of the People's Republic of China Regional Ethnic Autonomy Law of 1984, which states, "Autonomous agencies in ethnic autonomous areas guarantee the freedom of religious belief to citizens of the various nationalities," and continues to recite this provision of the constitution. This is of particular importance to the Tibetan Autonomous Region and the various Tibetan Autonomous Prefectures. The language of the Law was retrieved from the Congressional-Executive Commission on China's Virtual Academy, *available at* <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=9507>.

determining which religious activities to protect and which to neglect. Similarly, it implies that what the State disapproves of is considered “abnormal,” and thus susceptible not only to being unprotected, but criminalized as well.

The next sentence, which prohibits the use of religion to engage in activities that disrupt public order or impair the health of citizens, has become progressively problematic in practice. As will be discussed in more detail, the Chinese government, especially since 2008, has increasingly used “harming social stability,” and “disrupting public order” as justification to detain and prosecute Tibetans engaging in peaceful protests against official policies infringing upon their fundamental rights, including their right to religious freedom.

Moreover, the next phrase of the above provision, which bars the use of religion to interfere with the educational system of the State, results in grave consequences in the Tibetan Buddhist context. Through this condition, the State is able to justify the numerous encumbrances it places on traditional monastic education, such as the coercive “patriotic education” sessions that disrupt customary Tibetan Buddhist learning, a law barring monks below age 18 from joining monasteries, and regulations enacted to control the monasteries and education system in general. By prohibiting any interference with education in the name of religion, the PRC is in fact able to interfere with religious education without lawful objection. As in the case of disrupting public order, any interference with State education and therefore any objections to State-imposed education or education laws are treated as criminal, met with arrest and prosecution.

Lastly, the final sentence of the provision stipulating that religious bodies and religious affairs are not subject to any foreign domination is a direct reference to the Dalai Lama and the “Dalai Clique.” This section allows the Chinese government to enact laws specifically prohibiting any contact with exiled Tibetan religious figures. It is significant in that all four heads of the four main schools of Tibetan Buddhism

and the indigenous Bon religion are living in exile, and are banned from “dominating,” that is, communicating with and leading, their religious followers.

The Constitution formally respects other interrelated fundamental rights as well. Citizens of the People’s Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession, and of demonstration according to Article 35. Article 37 further guarantees that the freedom of person of citizens is inviolable, in that no one may be arrested without the approval of a people’s procuratorate, or people’s court, prohibiting unlawful deprivation or restriction of citizens’ freedom of person, and unlawful search of the person of citizens. These seemingly inalienable rights are limited however, by the responsibility of citizens of the PRC to abide by the constitution and the law, keep state secrets, protect public order and respect social ethics.³⁹ The protection against discrimination enshrined in Article 4 is restricted by the prohibition of “any acts that undermine the unity of the ethnicities or instigate their secession.” Article 54 dictates the *duty* of citizens to “safeguard the security, honour, and interests of the motherland; they must not commit acts detrimental to the security, honour, and interests of the motherland.” Furthermore, judges cannot uphold the human rights protected in the Constitution, as they cannot apply the Constitution in court cases, since its interpretation is reserved exclusively to the Standing Committee of the National People’s Congress.⁴⁰ Thus the guarantee of freedom of religion, among other human rights, is more rhetoric than reality.

3. Criminal Law and Criminal Procedure Law

The extent to which the Constitution serves as a façade for the protection of religious freedom is illustrated in both the Criminal Law and Criminal Procedure Law of the PRC. While Article 251 of the Criminal Law purports to punish

³⁹Xianfa (1982), art. 53.

⁴⁰U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

the unlawful deprivation of freedom of religious belief by imprisoning the offending functionary of a State organ for not more than two years, Article 300 criminalizes certain religious activity. It states that, “whoever forms or uses superstitious sects or secret societies or weird religious organizations or uses superstition to undermine the implementation of the laws and administrative rules and regulations of the State” is sentenced to imprisonment for not less than three years, but not more than seven years, unless the circumstances are especially serious, in which case the offender shall be sentenced to imprisonment for not less than seven years.⁴¹ The disproportionate prison terms for one who infringes on religious freedom compared to one who “unlawfully” uses religion demonstrates the PRC’s religious priorities.

Similarly, in its annual law yearbooks, the Chinese government does not disaggregate crimes of endangering state security by individual offense, including the crime of illegally providing state secrets abroad, from religious activity.⁴² In this manner, the Chinese authorities are able to regulate religious activity and arrest dissidents under a broad category of endangering state secrets. Sentences imposed for state secrets crimes, and for other state security crimes, range from one year to life imprisonment, and in some cases, the death penalty.⁴³ The founding of independent political groups, illegal religious activities, illegal publications, and activities of illegal organizations are all criminalized as well. These groups include, among others, “hostile religious forces,” and “foreign hostile organizations or social groups.” Although never identified by name in any regulation, the State Security Bureau confirms the status of these organizations and groups in criminal prosecutions, suggesting the names and identities of these groups themselves are considered state secrets.⁴⁴ These provisions are indisputably in reference to the Dalai Lama and the Central Tibetan Administration.

⁴¹Xianfa (1982), art. 300.

⁴²HUMAN RIGHTS IN CHINA, STATE SECRETS: CHINA’S LEGAL LABYRINTH 213 (2007) [hereinafter CHINA’S LEGAL LABYRINTH].

⁴³*Id.*

⁴⁴*Id.* at 44.

During the March 2012 annual session, China's parliament, the National People's Congress ("NPC"), approved proposed changes to its CPL. While the latest amendments include for the first time the encouraging words "respect and safeguard human rights,"⁴⁵ they fail to outlaw the persistent use of enforced disappearance as a tool to crack down on critics of official policies. Perhaps the most disturbing revision is embodied in Article 73, which essentially legalizes the secret detention of persons charged with perceived political crimes. The revised law referred to as the "residential surveillance clause," allows authorities to detain suspects charged with "endangering state security," crimes of terrorism, or large-scale bribery in an undisclosed location for up to six months without contact with the outside world or communications with family.⁴⁶ The law is supposed to apply when "residential surveillance at the domicile may impede investigation."⁴⁷ Many fear that the terms "national security threats," and "terrorism," as well as the situations in which in home surveillance might "impede investigation," will be loosely defined to further exploit the law to carry out repressive practices.⁴⁸ Human rights activists and analysts expressed the very real concern that "article 73 may lead to increased instances of miscarriages of justice against Tibetans and Chinese citizens in general."⁴⁹

Directly contradicting international standards, Article 83 provides a further impediment in the revised CPL, requiring that authorities must notify the relatives of a detained suspect within 24 hours, *unless* the suspect is allegedly involved in

45 Criminal Procedure Law of the People's Republic of China, art. 2 (2012), taken from: LI CHANG-SHUAN, WORKING TRANSLATION OF AMENDMENTS TO THE CRIMINAL PROCEDURE LAW OF THE PEOPLE'S REPUBLIC OF CHINA, MARCH 14, 2012 1 (The Danish Institute for Human Rights, 2012) [hereinafter 2012 CPL], available at http://lawprofessors.typepad.com/files/120320-cpl-amendments_en_final.pdf. The Chinese version of the new law is available at http://www.law-lib.com/law/law_view.asp?id=378480.

46 *Id.* art. 73.

47 Yaxue Cao, *Criminal Procedure Law: What are they Amending?*, SEEING RED IN CHINA, 13 March 2012, available at <http://seeingredinchina.com/2012/03/13/criminal-procedure-law-what-are-they-amending>.

48 Benjamin Cost, *China Passes 'Secret Detention' law despite criticism from Netizens*, SHANGHAIIST, 15 March 2012, available at http://shanghaiist.com/2012/03/15/china_passes_secret_detention_law_d.php.

49 IRENE CHAN, LEGAL REFORM IN CHINA: QUELLING TIBETAN UNREST?, 45 S. RAJARATNAM SCHOOL OF INTERNATIONAL STUDIES COMMENTARIES, 2, (2012).

endangering state security or terrorism and notifying the family may impede the investigation.⁵⁰

4. The State Secrets Law: the Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Religious Work

To fully understand the scope of the crimes considered endangering state secrets, one must look at the vague and overbroad State Secrets law itself. The Law on the Protection of State Secrets of the People's Republic of China ("State Secrets Law") obliges state organs, armed forces, political parties, organizations, enterprises, institutions, and individual citizens, the duty to protect China's state secrets. The law is to be applied in conjunction with the 1990 Measures for Implementing the Law on the Protection of State Secrets of the People's Republic of China, the State Security Law of the People's Republic of China,⁵¹ as well as the Criminal Law and the Criminal Procedure Law. Article 9 of the State Secrets Law categorizes state secrets as: most confidential or "top secret," if disclosure would cause extremely serious harm; classified or "highly secret," if disclosure would cause serious harm; and confidential or "secret," if disclosure would cause harm.

A reflection of the priority to suppress political dissent, Article 2 defines important information on "international hostile organizations," "splittists organizations," and "hostile religious organizations" currently under investigation by a public security organ as Top Secret. Information regarding handling illegal gatherings, demonstrations, disturbances, riots, or other critical political incidents that have "major influence" on local social order is considered Highly Secret.⁵² As shall be seen later, these categories are of particular relevance to Tibetan Buddhism.

⁵⁰ 2012 CPL, art. 83.

⁵¹ Law of the People's Republic of China on Protection of State Secrets (2010), ZhonghuaRenminGongheguoFaluhuibian.

⁵² CHINA'S LEGAL LABYRINTH, *supra* note 42, at 125, 128,

In Article 3, the regulation defines Top Secret religious work as: strategies and measures for handling major public order emergencies involving religious matters; strategies under consideration for handling criminal activities involving the use of religion to carry out political infiltration or to engage in serious violations of the law; and guiding principles and strategies under consideration for handling major religious issues that involve foreign relations.⁵³ “Analyses of religious developments and situations, as well as important guiding principles and strategies under consideration for dealing with them” is considered Highly Secret,⁵⁴ while “reactions to important issues concerning the implementation of religious policies” and “internal-help guidelines for handling foreign affairs propaganda work” are considered Secret.⁵⁵ Internal issues are listed in Article 4 and range from “information on, and suggestions drawn upon regarding and arrangements for, important representatives of religious groups,” to “analyses of information on the trends of overseas religious organizations and their personnel,” to “information and statistical data that should not be disclosed to the public regarding religious organizations, religious institutes and religious activities,” among others.⁵⁶

The law further protects prison administration and conditions, labelling as Secret and thus precluding the disclosure of statistics on prisoner executions, “unusual” deaths in detention facilities, re-education plans for political and religious prisoners, data on “instances of police officers causing injuries or disabilities to prisoners,” and even general statistics on the number of prisoners held in detention at any given time.⁵⁷

Various state organs are authorized with the power to

53Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Religious Work, art. 3.1 (1995), Li Zhidong, ed. *Compendium of Laws of the People's Republic of China on the Protection of State Secrets*, (Circulation limited to departments, organizations and personnel doing state secrets protection work) (Changchun: Jilin People's Press, 1999).

54*Id.* art. 3.2.

55*Id.* art. 3.3.

56*Id.* arts. 4.1, 4.5, 4.6.

57CHINA'S LEGAL LABYRINTH, *supra* note 42, at 152.

define and classify information as “state secrets.”⁵⁸ Based on the Implementation Measures of 1990, information can be classified as a state secret both pre-emptively and retroactively: the former being based upon the potential harm of disclosure, and the later being based on the harm perceived to have occurred because of disclosure. In this respect, the scope of the State Secrets Law is boundless. An individual found guilty of disclosing, illegally obtaining, or illegally holding state secrets is subject to administrative and/or criminal punishment.⁵⁹ Article 35 of the 1990 Implementation Measures includes in the definition of disclosing: “allowing a state secret to be known by any individual that is not allowed to know such information;” and allowing information, “to go beyond the specified group of individuals allowed access” and not being able “to prove that such a disclosure of information did not take place.”

The fact that virtually every aspect of religious and political affairs is legally categorized as secret to one degree or another gives the Chinese government unfettered authority to create and carry out religiously oppressive regulations and policies in the name of protecting state secrets. Due to the “lack of clear and specific definitions [and] the role of objective perceptions,”⁶⁰ the state secrets framework is vulnerable to serious abuse by authorities. It is this broad and overreaching law that remains the main source of legitimization for the religious repression in Tibet today.

5. The National Regulation on Religious Affairs

The CPC United Front Work Department and the government State Administration for Religious Affairs (“SARA”) create and maintain religious laws and policies at the national level. In 2005, SARA enacted the National Regulation on Religious Affairs (“the Regulation”). Under the pretence of “ensuring citizens’ freedom of religious belief, maintaining harmony

⁵⁸Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Religious Work, *supra* note 53, art. 10-16.

⁵⁹CHINA’S LEGAL LABYRINTH, *supra* note 42, at 17.

⁶⁰*Id.* at 14.

among and between religions, preserving social concord and regulating the administration of religious affairs,”⁶¹ the law regulates religious institutions, sites for religious activities, religious personnel, religious property, and legal liability of State actors who violate the right to religious freedom as well as the legal liability of religious institutions and personnel who violate the regulations.

Article 2 of the Regulations protects citizens’ freedom of religious belief, prohibiting organizations and individuals alike from compelling citizens to believe in or not to believe in any religion, preventing discrimination based on religion, and promoting harmony and co-existence between citizens regardless of religion. A violation of Article 2 is subject to civil and criminal sanctions.⁶² In Article 3, the State restricts its role in protecting religion, which is limited to “normal religious activities” in accordance with the law. The meaning of “normal” religious activities is not defined in the Regulation or other Chinese law. Like all Chinese citizens, religious bodies, sites for religious activities, and religious personnel must not only abide by the Constitution, laws, regulations, and rules of China, but must also safeguard unification of the country, unity of all nationalities, and the stability of society.⁶³ As such, “no organization or individual may make use of religion to engage in activities that disrupt public order, impair health of citizens or interfere with the educational system of the State, or in other activities that harm State or public interests, or citizens’ lawful rights and interests.”⁶⁴

The Regulation grants autonomy and the right to self-governance, free from foreign domination, to all religions, though the Religious Affairs Bureau of the People’s government at or above the county level is authorized to administer religious affairs that involve State or public

61Regulation on Religious Affairs, art. 1 (1994), *ZhonghuaRenminGongheguoDifang Xing FaqiuHuibian*.

62*Id.* art. 39.

63*Id.* art. 3.

64*Id.*

interest.⁶⁵ Moreover, sites for religious activities must set up and record democratic management organizations,⁶⁶ which are subject to the guidance, supervision, and inspection by the relevant departments of government.⁶⁷

Religious bodies may compile and publish reference publications to be circulated within religious circles, but must comply with the provisions of the Regulations on Publication Administration, and may not contain contents which: jeopardize the harmonious co-existence between religious and non-religious citizens; jeopardize the harmony between different religions or within a religion; discriminate against or insult religious or non-religious citizens; propagate religious extremism; or contravene the principle of independence and self-governance in respect of religions.⁶⁸ The relevant competent government department shall impose administrative penalties and investigate criminal liability in the case of a violation to this provision.⁶⁹

As is customary in many countries, religious institutions and religious educational institutions must register, and notify the appropriate government body of any alterations or closings.⁷⁰ The same is true for sites of religious activities, religious structures, and statues, the establishment of which must be applied for and pre-approved by the government.⁷¹ Religious sites are subject to the inspection and monitoring of Religious Affairs Bureaus.⁷² Large-scale religious activities taking place outside of a site for religious activity must first be authorized by the government and are then subject to governmental control to “exercise the necessary administration in order to ensure the safe and orderly progress of the large-scale religious

65*Id.* art. 4.

66*Id.* art. 17.

67*Id.* art. 18.

68*Id.* art. 7.

69*Id.* art. 42.

70*Id.* arts. 6, 8, 24.

71*Id.* arts. 12-16.

72*Id.* art. 19.

activity.”⁷³ Both the appointment and leave of religious personnel must also be recorded with the government.⁷⁴ Any violations of the Regulation result in administrative, civil, and/or criminal penalties according to the nature and severity of the breach.⁷⁵

The Regulation applies to all religions across the PRC, but is merely a framework. At each level of government, the corresponding branch of SARA, the United Front Work Department, the specific government-run “religious” organization (such as the Buddhist Association of China), as well as other government bodies are authorized to create, uphold, and repeal more detailed laws and regulations as they see fit. Therefore, while the freedom of religion does technically exist in China, it is heavily regulated, monitored, and supervised by the atheist government.

C. Conclusion

The right to freedom of religion is enshrined in a number of international legal instruments since the UDHR. In the international realm, religious freedom is a fundamental right that must be respected without exception. China is accountable under international law as a member of the United Nations, the Human Rights Council, a signatory and a party to multilateral human rights treaties. Subsequently, Chinese legislation includes safeguards to formally protect the right to freedom of religion. At the same time, legislation in the PRC clearly disregards the notion that the right is fundamental and non-derogable (with a few exceptions). The law continuously proscribes limits and restrictions on the right to freedom of religion, often exploited to justify the oppressive policies imposed on the Tibetan Buddhists, discussed in the next section, below.

⁷³*Id.* art. 22; this is also true when a unit or an individual intends to alter or construct buildings, set up commercial service centers, holds displays or exhibitions, or makes films or television programs in a site for religious activities. *See id.* art. 23.

⁷⁴*Id.* art. 27 & 28.

⁷⁵*Id.* arts. 40-46.



The Current Situation – Chinese Policies towards Tibetan Buddhism

The government of China has numerous methods of enforcing religious repression on Tibetan Buddhism. In addition to the national laws mentioned above, the government has consistently enacted various policies that, even if not directly repressive, are carried out in a repressive manner. From traumatizing coercive “patriotic education” programs, to control over monastic institutions, to arbitrary arrests and detentions, the government rules religion with an iron fist. The following is an overview of the repressive measures employed by the government of the PRC in Tibet, aimed at weakening or even eliminating Tibetan Buddhism. While many of these measures have been employed for decades, the Chinese government has heightened the severity of their application in the four years following the 2008 uprisings.

A. Anti-Dalai Lama Campaign and “Patriotic Education”

At the very heart of the repressive policies against Tibetan Buddhism lies the Chinese government’s extreme hatred and fear of the Dalai Lama. Despite the 14th Dalai Lama’s constant campaign of peace and non-violence, the government of the PRC has targeted him and the “Dalai Clique,”⁷⁶ as the cause for social instability in the Tibetan region. The PRC claims he is a separatist, a “splittist”, and a “wolf in monk’s robes,” not to be trusted. As such, Tibetan policies are centered on eliminating the Tibetan peoples’ faith and love for the Dalai Lama, and coercively demanding allegiance to the Chinese

⁷⁶ The “Dalai Clique” is the nickname given by the Chinese government to the Tibetan Government in Exile, called the Central Tibetan Authority (“CTA”) and located in Dharamsala, India. The international community does not recognize the CTA as being a legitimate, independent, and autonomous government.

Motherland in its place. These practices are carried out through what is known as the Anti-Dalai Lama Campaign and “Patriotic Education.”

1. Principles of the Anti-Dalai Lama Campaign

The PRC’s view of the Dalai Lama can be summed up by former TAR party secretary Zhang Qingli’s statements at a March 2011 meeting of TAR delegates to the National People’s Congress: The Secretary of the TAR Committee, Qingli accused the Dalai Lama of being “the boss of splittism” and a “double dealer” who, “under the signboard of religion,” seeks to “deceive religious believers’ simple feelings.”⁷⁷ He has consistently warned of “a life and death struggle with the Dalai clique.”⁷⁸ Instead, he proposes the Communist Party as “the real Buddha” for Tibetans.⁷⁹ In February of 2009, the “Tibet Branch” of the Buddhist Association of China amended its charter, classifying the Dalai Lama as a threat to Tibetan Buddhism, and as the “ringleader of the separatist political associations, which seeks Tibetan independence.”⁸⁰ Most recently, the official *China Tibet Online* website launched a bitter attack on the Dalai Lama, accusing him of Nazi racial policies and inciting Tibetans to set themselves on fire.⁸¹

Filled with loathing and suspicion, the Chinese government throughout the PRC has made it a priority to attack and discredit the Dalai Lama of his moral authority and as the legitimate spiritual leader of the Tibetan people. Believing that tarnishing the image of the Dalai Lama would win over the hearts and minds of the Tibetan people, the Chinese government began to spread propaganda both in China and throughout the world. Efforts are particularly focused on the

⁷⁷Zhang Qingli, *Overall Situation in Tibet Stable*, XINHUA, 7 March 11 (translated in Open Source Center, 12 March 11).

⁷⁸FREE TIBET, FREE TIBET’S SUBMISSION TO THE CONSERVATIVE PARTY HUMAN RIGHTS COMMISSION FREEDOM TO BELIEVE: PROTECTING AND PROMOTING ARTICLE 18 FREEDOM OF RELIGION IN TIBET 13 (2010) [hereinafter FREE TIBET’S SUBMISSION], available at [http://www.freetibet.org/files/Freedom%20of%20religion%20evidence\(2\).pdf](http://www.freetibet.org/files/Freedom%20of%20religion%20evidence(2).pdf).

⁷⁹*Communists Hailed as “Living Buddha” for Tibet*, REUTERS, 2 March 2007, available at <http://in.news.yahoo.com/070302/137/6crl3.html>.

⁸⁰FREE TIBET’S SUBMISSION, *supra* note 78, at 13; Award Ceremony Speech by the Chairman of the Norwegian Nobel Committee, Egil Aarvik, 1989.

⁸¹China Accuses Dalai Lama of Nazi Policies, THE GUARDIAN, 25 Mar. 2012, available at <http://www.guardian.co.uk/world/2012/mar/25/china-accuses-dalai-lama-nazi>.

Western World,⁸² who generally sympathize with and support the Dalai Lama and his peaceful methods. Ignoring his role as religious leader, the Chinese government instead focused on his role as political leader, and are therefore able to label him a threat to national security. JampaPhuntsog (Pinyin: *XiangbaPingcuo*), Chairman of the Standing Committee of the TAR People's Congress, said that if the Dalai Lama "is indeed a religious person" he should "not dabble in" political issues⁸³

In 1994, Beijing banned any pictures of the Dalai Lama in Tibetan monasteries, and later in private houses, a violation of which results in a fine or imprisonment. The Deputy Secretary of the Communist Party in Tibet and vice-chairman of the regional government HaoPeng is quoted as justifying this drastic measure to the foreign press by saying, "[t]he Dalai Lama is not merely a religious figure, he is also a mastermind of separatist activities. No sovereign country in the world would allow the hanging of a portrait of a person like that."⁸⁴ In addition to pictures of the Dalai Lama, further regulations were enacted to ban all of his teachings in any form, Tibetan flags, and any other symbol seen as evidence of what the Chinese consider "splittist" activity. Although beginning in the monastic institutions, such policies spread to the lay-community as well, reaching even the nomads. Two to three times a year, Chinese security forces would go and search the tents of every nomadic group or clan, looking for flags, CDs of religious teachings from India and pictures of the Dalai Lama.⁸⁵

In September 2012, the Chinese authorities in Rebkong (Ch: Tongren) County issued a notice banning photographs of the Dalai Lama.⁸⁶

⁸²WHEN THE SKY FELL TO EARTH, *supra* note 3, at 16.

⁸³*QiangbaPuncog [XiangbaPingcuo]: The Dalai Lama Should Apply Himself to the Study of Buddhism and Stand Aloof From Worldly Affairs*, CHINA NEWS AGENCY, 16 March 11 (translated in Open Source Center, 16 March 2011).

⁸⁴FREE TIBET'S SUBMISSION, *supra* note 78, at 11.

⁸⁵HUMAN RIGHTS VIOLATIONS AND SELF-IMMOLATION: TESTIMONIES BY TIBETANS IN EXILE, INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH) AND THE INTERNATIONAL CAMPAIGN FOR TIBET (ICT) 6 (2012).

⁸⁶A Public Notice From Amdo Banning Photos of the Dalai Lama, High Peaks Pure Earth, available at <http://highpeakspureearth.com/2012/a-public-notice-from-amdo-banning-photos-of-the-dalai-lama/>

In contrast, the Dalai Lama is famous for the “Middle-Way Approach,” which, according to the Central Tibetan Government (“CTA”) aims to achieve peace through non-violence, mutual benefit, unity of nationalities, and social stability. This approach rejects the present status of Tibet under the PRC, but also does not call for the complete independence of Tibet. Through the Middle-Way Approach, the Dalai Lama and the CTA appeal instead to the government of China for genuine autonomy for all Tibetans living in the three traditional provinces of Tibet, within the framework of the PRC. Under this notion of autonomy, Tibetans would be entitled to a popularly elected legislature and executive through a democratic process, an independent judicial system, and control over Tibetan affairs such as religion, culture, education, economy, health, and environmental and ecological protection. The Chinese in return would control all external affairs: keep (a limited number of) armed forces in Tibet for its protection; maintain responsibility for the political aspects of Tibet; and manage international relations and defence.⁸⁷

The Dalai Lama promotes the Middle-Way Approach as a compromise meant to safeguard the interests of all concerned parties: protecting and preserving the Tibetan culture, religion, and national identity; ensuring the security and territorial integrity of the Chinese Motherland; and providing peaceful borders and international relations.⁸⁸ The policy was adopted by the CTA unanimously in 1988, and reaffirmed in 1996 and 1997.⁸⁹ Despite the efforts of the U.S. and other governments, the Chinese government and Communist Party officials continually refuse to meet with the Dalai Lama’s representatives to negotiate the Middle-Way Approach.⁹⁰

In March 2011, in spite of overwhelming opposition from both the Tibetan parliament-in-exile and Tibetan community

⁸⁷THE OFFICE OF HIS HOLINESS, THE DALAI LAMA, HIS HOLINESS’S MIDDLE WAY APPROACH FOR RESOLVING THE ISSUE OF TIBET [hereinafter MIDDLE WAY APPROACH], *available at* <http://www.dalailama.com/messages/middle-way-approach>.

⁸⁸*Id.*

⁸⁹*Id.*

⁹⁰USCIRF, *supra* note 2, at 140.

in general, the Dalai Lama formally renounced his political authority.⁹¹ He requested that the Tibetan body relieve him of his political duties, in an attempt to deepen the authority of the movement's democratic government.⁹² Analysts believe that his "retirement" did not mean that the Dalai Lama would cease to be recognized as the overall leader of the Tibetan cause.⁹³ With a heavy heart, parliament accepted his request, and a month later, elected Harvard-trained academic Lobsang Sangay, as the new *Kalon Tripa*.⁹⁴ One scholar of modern Tibet was quoted as writing in an email the significance of the Dalai Lama's attempt to promote democratization of the government not in Dharamsala, but in Tibet. Arguing that "if Tibetans there see him as having kept his word about letting the people vote for their leaders, whereas the Chinese government and the party have talked about this but not done it."⁹⁵

As both Tibet's spiritual leader and former political leader, the Dalai Lama is world renowned for his stance on non-violence. He has won multiple awards for his teachings, including the Nobel Peace Prize in 1989, the Mahatma Gandhi International Award for Reconciliation and Peace, and the prestigious Templeton Prize. After the attacks on New York on September 11, 2001, the Dalai Lama was quoted as arguing that, "terrorism cannot be overcome by the use of force because it does not address the complex underlying problems. In fact the use of force may not only fail to solve the problems, it may exacerbate them and frequently leaves destruction and suffering in its wake. Human conflicts should be resolved with

91 *Tibetan Parliament-in-exile Opposes Dalai's Decision to Retire*, THE TIMES OF INDIA, 5 Mar. 2011, available at <http://www.timesnow.tv/Tibetan-parliament-in-exile-opposes-Dalais-decision-to-retire/articleshow/4367854.cms>.

92 Jim Yardley and Edward Wong, *Dalai Lama Gives Up Political Role*, THE NEW YORK TIMES, 10 Mar. 2011, available at http://topics.nytimes.com/top/reference/timestopics/people/y/jim_yardley/index.html?inline=nyt-per.

93 *Id.*; DALAI LAMA, THE NEW YORK TIMES, 28 Apr. 2011, available at http://topics.nytimes.com/top/reference/timestopics/people/d/_dalai_lama/index.html.

94 *Kalon Tripa* is the title of Prime Minister. DALAI LAMA, THE NEW YORK TIMES, *supra* note 93.

95 Jim Yardley and Edward Wong, *supra* note 92.

compassion. The key is non-violence.”⁹⁶ With a fundamental belief that unhappy events are brought about by negative emotions, and that negative motivations produce “in the deepest sense, violent [actions], even though it may appear to be deceptively gentle,”⁹⁷ it is unsurprising that the Dalai Lama and the CTA obstinately opposed the violence of the 2008 protests. Appealing to his people, the Dalai Lama threatened to resign if Tibetans continued with the violence, even though it was perpetrated while unanimously calling for his return.⁹⁸ Moreover, when a Tibetan exile, Thubten Ngodup set himself on fire in protest when the Indian police broke up a hunger strike staged in New Delhi by the Tibetan Youth Congress, the Dalai Lama whispered in the dying man’s ear not to “pass over with hatred for the Chinese in your heart. You are brave and you made your statement, but let not your motive be hatred.”⁹⁹

Although the Chinese government accuse the Dalai Lama of inciting the dramatic self-immolations of Tibetans, he and the CTA maintain that they have always discouraged such drastic actions.¹⁰⁰ His Holiness the Dalai Lama has been quoted on the subject, in which he mourned, “[t]hese incidents of self-immolation are very very sad. The leadership in Beijing should look into the ultimate cause of these tragic incidents. These Tibetans have faced a tremendously desperate situation, otherwise nobody will commit such drastic acts.”¹⁰¹ When the Chinese Premier Wen Jiabao alluded to the Tibetan exiles’ participation in the self-immolations, the Dalai Lama reiterated

96 THE OFFICE OF HIS HOLINESS, THE DALAI LAMA, RELEVANT COMMENTS BY HIS HOLINESS THE DALAI LAMA SUBSEQUENT TO THE SEPT. 11, 2001 TERRORIST ATTACK ON THE US, *available at* <http://www.dalailama.com/messages/world-peace/9-11>, [hereinafter RELEVANT COMMENTS].

97 *Id.*

98 *Dalai Lama Threatens to Resign*, NEW YORK TIMES, 19 March 2008, *available at* <http://www.nytimes.com/2008/03/19/world/asia/19dalai.html>.

99 Peter Goodspeed, *Dying as a Political Act: Centuries-old Buddhist Tradition of Self-immolation Continues in China*, REUTERS, 17 Mar. 2012, *available at* <http://news.nationalpost.com/2012/03/17/dying-as-a-political-act-centuries-old-buddhist-tradition-of-self-immolation-continues-in-china>.

100 Central Tibetan Administration, *Three Generations Suffered Under Chinese Rule in Tibet*, 13 Mar. 2012, *available at* <http://tibet.net/2012/03/14/three-generations-suffered-under-chinese-rule-in-tibet>.

101 Claude Arpi, *Stomping All Over Tibet*, THE PIONEER, 21 March 2012, *available at* <http://www.dailypioneer.com/columnists/item/51276-stomping-all-over-tibet.html>.

an invitation to investigate, first offered after the 2008 Tibetan uprising. He is quoted as saying, “Prime Minister Wen Jiabao and foreign media, he mentioned all these crises started from India, from Dharamsala. Then I immediately responded, please send some Chinese officials. Check all our files and records of my talk [in] Tibetan. Most welcome. But nobody come. So this time also, if they come, start an investigation here. Most welcome.”¹⁰² Nonetheless, the government of the PRC continues to accuse the Dalai Lama and the CTA of anti-China activities, making the shaming and disgracing of the CTA and the Tibetan exiles a top priority.

2. “Patriotic Education” Sessions

For many decades, the Chinese government has tried to discredit the Dalai Lama. The last two decades have been met with increasingly aggressive rhetoric and policies, the most popular of which is “patriotic education.” Commonly referred to as “Love your Country, Love your Religion,” the campaign was originally launched as a five-year program in 1996, and has been expanding ever since.¹⁰³ The two main objectives of “patriotic education” (sometimes called “patriotic re-education,” and now almost always as “legal education”) are: to inculcate love for communism and the Chinese Motherland and place it before religion; and to compel recipients of the education to denounce the Dalai Lama and the “Dalai Clique.”¹⁰⁴

Originally meant for monastic institutions, “patriotic education” eventually spread to the lay community as well, especially schools and universities. Chinese authorities require professors to attend political education sessions and subsequently rid their syllabi of “separatist” ideas. In addition, many ancient or religious Tibetan texts are banned from the curriculum. Even outside of educational institutions,

102 Barbara Chai, *Dalai Lama Says He'd 'Welcome' Investigation of Tibetan Self-Immolations*, WALL STREET JOURNAL, 20 Mar. 2012, available at <http://blogs.wsj.com/speakeasy/2012/03/20/the-dalai-lama-on-the-tibetan-self-immolations>.

103 FREE TIBET'S SUBMISSION, *supra* note 78, at 7.

104 *Id.* at 8.

the lay community has been heavily exposed to “patriotic education.” For example, “patriotic education” spread to the rural Tibetan communities of Ngaba County following a period of protests and unrest. Facing imprisonment, the residents of Ngaba County were told to pledge eight points in front of a camcorder for public record. These pledges were: 1) I oppose the Dalai Lama; 2) I will not keep photos of the Dalai Lama in my house; 3) My thinking is not influenced by the Dalai Clique; I will not follow “splittism”; the conspiracy to split nationalities cannot succeed; I love the Communist Party; I will follow the Party no matter what; I recognize the Party’s great kindness.¹⁰⁵

While the campaign spreads across the Tibetan plateau, it primarily focuses on the monastic community. Chen Quanguo, TAR Party Secretary has stated time and again the need to have clergy who are “well educated about the ‘Dalai-clique’ and other ‘national splittist’ plans.”¹⁰⁶ “Patriotic education” is carried out by “work teams” (Tib: *ledonrukbag*) made up of Chinese and trusted Tibetan officials. The monastery or nunnery’s size, political past, and record of trouble determine how many individuals visit, for how long, and how frequently. There may be between 3 and 20 individuals in the work team who visit for between five days and four months.¹⁰⁷ During these visits, regular religious classes are cancelled to accommodate the “legal education” sessions. Movement of monks and nuns is severely restricted, prohibiting monks and nuns from leaving their respective monasteries and nunneries to visit other monasteries, nunneries, and spiritual teachers, and sometimes inhibiting monks and nuns from carrying out daily activities, such as shopping for food.¹⁰⁸ Missing sessions

105 INTERNATIONAL CAMPAIGN FOR TIBET, *TIBET AT A TURNING POINT: THE SPRING UPRISING AND CHINA’S NEW CRACKDOWN* 75 (2008), available at http://savetibet.de/fileadmin/user_upload/content/berichte/Tibet_at_a_Turning_Point_for_online.pdf.

106 TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, *HUMAN RIGHTS SITUATION IN TIBET: ANNUAL REPORT 2011* 56 [hereinafter TCHRD ANNUAL REPORT 2011].

107 FREE TIBET’S SUBMISSION, *supra* note 78, at 8.

108 Tibetan Centre for Human Rights and Democracy, *China Re-launches ‘Legal Education’ Campaign in TAR*, 17 May 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&id=224:china-re-launches-legal-education-campaign-in-tar&catid=70:2012-news&Itemid=162.

or not paying attention is strictly forbidden and results in punishments ranging between fines, preventative counselling, increased surveillance, and even expulsion.¹⁰⁹

During “patriotic education” sessions, work team officials stress the importance of denouncing the Dalai Lama who they claim is “not a religious leader,” but rather “misleads a few people and creates trouble and havoc in [the] country.”¹¹⁰ While the exact curriculum varies from monastery to monastery, the unifying characteristics include sessions on Chinese law and ideology, the history of Tibet according to the Chinese (in which Tibet has been a part of China since the Tang dynasty in the 7th Century A.D.), contemporary policies, and the evils of separatism. After reading and discussing these materials, monks and nuns must prove they are “patriotic,” through an examination, or signed pledge in which he or she denounces the Dalai Lama and the Central Tibetan Administration, opposes separatism, recognizes Gyaltzen Norbu, the Chinese appointed 11th Panchen Lama, as the “true” Panchen Lama, and expresses his or her love of, and unconditional allegiance to, China. Some monks and nuns reported that they were made to write a self-analytical essay on rejecting and denouncing the “blind faith” Tibetans have had towards the Dalai Lama,¹¹¹ fill out politically sensitive “questionnaires,”¹¹² and even write publicized articles extolling the virtues and greatness of the socialist system.¹¹³

“Patriotic education” gives enormous powers and immunity to the government law enforcing agencies to carry out political and “legal” strikes against the monasteries, stupas, temples and other cultural learning centres, which are periodically visited, inspected, and ransacked to uncover “anti-China and ‘splittist’ materials” such as history books, pamphlets and

109 FREE TIBET’S SUBMISSION, *supra* note 78, at 9; A BRIEFING BOOKLET ON LAW AND ORDER (Lhasa Municipality Law and Order Information Department, 2009).

110 TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, HUMAN RIGHTS SITUATION IN TIBET: ANNUAL REPORT 2008 104 [hereinafter TCHRD ANNUAL REPORT 2008].

111 TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, HUMAN RIGHTS SITUATION IN TIBET: ANNUAL REPORT 2009 113 [hereinafter TCHRD ANNUAL REPORT 2009].

112 TCHRD ANNUAL REPORT 2008, *supra* note 110, at 103-104.

113 TCHRD ANNUAL REPORT 2009, *supra* note 111, at 131.

literature from the exile Tibetans.¹¹⁴ Officials often conduct raids on monks' houses in which monks have been reportedly beaten and tortured, even if they were not at all connected to political activities.¹¹⁵

The implementation and execution of “patriotic education” has had traumatizing effects on the monastic community. Monks and nuns flee from their monasteries and nunneries because they face expulsion for refusing to comply with the strict campaign. As a result, many monasteries have been abandoned or closed.¹¹⁶ The monastic community has expressed feelings of psychological trauma, regrettably expressed in the form of suicide or attempted suicide, especially since 2008.¹¹⁷ The majority of monks and nuns who find refuge in India identify “patriotic education” as a prominent, if not the main reason for leaving Tibet.

Despite the disturbing effects the campaign has on the monastic community, the Chinese government continues to strengthen and spread it. As of May 2012, “legal education” campaigns have been launched in *all* the monasteries and nunneries in the TAR. TAR governor Pema Thinley stated that, “the successful implementation of legal education campaigns, which teach the monks and nuns to love the Chinese motherland, take pride in national identity, learn legal and civic awareness, have contributed to the protection of long-term stability in the region.”¹¹⁸ He also reaffirmed the belief that its continued implementation is “crucial for strengthening the management of monastic institutions and an important starting point for maintaining harmony and stability . . . providing guidance to Tibetan Buddhism in adapting itself to a socialist society is an effective way to resist the infiltration and sabotage from

114 TCHRD ANNUAL REPORT 2008, *supra* note 110, at 83.

115 TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, HUMAN RIGHTS SITUATION IN TIBET: ANNUAL REPORT 2007 69 [hereinafter TCHRD ANNUAL REPORT 2007].

116 TCHRD, *China Re-launches 'Legal Education' Campaign in TAR*, *supra* note 108.

117 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Summary of Cases Transmitted to Governments and Replies Received*, paras. 65-66, UN Doc. A/HRC/13/40/Add.1 (16 Feb. 2010) (delivered at the 14th Session of the Human Rights Council).

118 TCHRD, *China Re-launches 'Legal Education' Campaign in TAR*, *supra* note 108.

the Dalai clique.”¹¹⁹ This belief that the political education campaign is successful and effective demonstrates that the government has no intentions of ending the practice.

B. Control Over Monastic Institutions

A Chinese Communist Party document that emerged out of the Third Work Forum, entitled “A Golden Bridge Leading Into a New Era,” highlights the Party’s concerns over the link between monasteries and political activism. The document names religious institutions as “counter-revolutionary bases,” in which the “Dalai Clique” and others who infiltrate plots to take hold of districts belonging to the Communist Party.¹²⁰ This paranoid view of the monastic institutions combined with the CPC’s belief that the Tibetan religion is backward and a hindrance to economic development¹²¹ is the basis for the Chinese government’s desperate need to control religious institutions.

China’s policy for Tibetan monasteries, first introduced in 1962, provided that all monasteries were to be run by monks with only indirect supervisory involvement of government officials.¹²² While this was completely abandoned during the Cultural Revolution from 1966 to 1979, the 1980s brought back a policy allowing nominal self-rule, an autonomy upon which the authorities have slowly but steadily infringed since its introduction.¹²³ Before his death in 1989, one of Tibetan Buddhism’s most important spiritual leaders, the 10th Panchen Lama ChoekyiGyaltzen, widely wrote about how the monasteries “had lost their function and significance as religious organizations.”¹²⁴

Monastic institutions are controlled by a variety of governmental bodies at the national, provincial, prefectural, municipal, county,

119 *Id.*

120 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 10; A Golden Bridge Leading Into A New Era (Tibetan: *Dusvabsgsar par skyod-pa’igservzam*), a propaganda manual published by the Propaganda Committee of the TAR Communist Party as reference materials to publicize the spirit of the Third Forum on Work in Tibet (Tibetan People’s Publishing House, 1 October 1994).

121 TCHRD ANNUAL REPORT 2011, *supra* note 106, at 47.

122 Human Rights Watch, *China: Tibetan Monasteries Placed Under Direct Rule*, 16 Mar. 2012, available at <http://www.hrw.org/news/2012/03/16/china-tibetan-monasteries-placed-under-direct-rule>.

123 *Id.*

124 TCHRD ANNUAL REPORT 2011, *supra* note 106, at 51.

and village level. The State Administration for Religious Affairs (“SARA”) is a national body that was created in 1998 to ensure “normal” religious behaviour by religious citizens in all of China. Together with the Chinese Communist Party Central Committee’s United Front Work Department (“UFWD”), SARA makes most religious management policies at the national level.

Many organizations and regulations are specific to Tibetan Buddhism. The most prominent is the Buddhist Association of China (“BAC”), a patriotic religious organization under the leadership of the CPC, which serves as a link between the government and believers. These regulations and organizations apply distinctively to the Tibet, including the TAR and other Tibetan areas in Qinghai, Gansu, Sichuan, and Yunnan province. SARA (which at lower levels is called the Religious Affairs Bureau, or RAB), UFWD, and BAC can be further broken down to prefectural, municipal, county, and village levels. It is in this manner that twenty-four government organs, including the offices of public security, foreign affairs, and justice, were listed in regulations issued in Ngaba prefecture in Sichuan Province as involved in managing local monasteries in 2009.¹²⁵ The following is a non-exclusive list of the most repressive Chinese regulations enacted in Tibet.

1. State Administration For Religious Affairs, Management Measures for Tibetan Buddhist Monasteries, Order No. 8 (“the Management Measures”)

In 2009, the Chinese government issued a national-level regulation effective 1 November 2010, that along with the prefectural-level regulations, tighten and expand existing means of government control and monitoring of Tibetan Buddhist institutions. The stated purpose of the regulation is to ensure the normal functioning of temple management in order to safeguard the freedom of belief of the Tibetan people.¹²⁶ The preamble specifies that the provisions are

¹²⁵ *China: Tibetan Monasteries Placed Under Direct Rule*, *supra* note 122.

¹²⁶ Management Measures for Tibetan Buddhist Monasteries, preamble & art. 1 (2010),

ZhonghuaRenminGongheguoDifang Xing FaguiHuibian, [hereinafter Management Measures].

specific to Tibetan Buddhism in the TAR,¹²⁷ and the Tibetan areas in the provinces of Sichuan, Yunnan, Gansu, Qinghai, and Inner Mongolia, who have “extensive mass foundation and social influence: Tibetan Buddhist temples are not only places of religious activity, but at the grass-roots level, play an important role in the lives of the Tibetan people.”¹²⁸ Further stated in the preamble is the need to manage the Tibetan Buddhist temples from separatist forces, inside and outside, which undermine national unity and promote activities aimed at splitting the motherland.¹²⁹ These forces, the decree argues, seriously affect the normal order of Tibetan Buddhism and the religious life of believers, and disrupt the normal academic activities of the Tibetan Buddhist temples, to the point that the majority of Tibetan Buddhist groups strongly asked the Government to strengthen and standardize the management of temples, on a long-term effective management mechanism.¹³⁰

Purportedly in response, the order sets up Democratic Management Committees (DMC), consisting of elected religious representatives and citizens of the local village or neighbourhood committees.¹³¹ The members of the organizations are required to: uphold the Constitution, comply with national laws, regulations, and rules, support the reunification of the motherland, oppose ethnic division, and maintain religious and social harmony; be of good character with a certain prestige among secular citizens; have strong organization, coordination, and management capabilities, and be dedicated to religious civil service.¹³² The Democratic Management Committees are charged with an array of duties, ranging from administering and educating temple staff, to “organizing teachings regarding relevant laws, rules, regulations of the State and the country’s ethnic

127 The TAR is the only area of Tibet considered by the Chinese government to be “Tibet,” while the Sichuan, Yunnan, Gansu, and Qinghai provinces are considered to be “Tibetan areas.” In contrast, the Tibetans believe Tibet consists of the TAR as well as the Sichuan, Yunnan, Gansu, and Qinghai provinces.

128 Management Measures, preamble.

129 *Id.*

130 *Id.*

131 *Id.* art. 8.

132 *Id.* art. 10.

and religious policies, and national unity” (or “patriotic education”), to maintaining finances, donations, heritage, fire safety, environmental protection, and sanitation.¹³³ Members must be registered in local governments, and incompetent members must be replaced in a timely member.¹³⁴ Review committees evaluate and report on the work of the DMCs and the temples.¹³⁵ Both the DMCs and the temples are subject to government supervision and inspection, especially that of Religious Affairs Bureaus (“RAB”) and village level “peoples” or “masses” committees.¹³⁶

The government’s stated fear of “splittism” and foreign infiltration is blatant in the regulations. In Article 7, Tibetan Buddhist organizations and individuals are prohibited from being used to: undermine social order; impair the national education system, the health of citizens; or to harm national, social, and public interests or the activity of citizens’ legitimate rights and interests. Furthermore, directly reflecting the limitation in the constitution providing that “religious bodies and religious affairs are not subject to any foreign domination,”¹³⁷ temple services are explicitly prohibited from being affected by an outside individual or organization interference and domination. Foreigners must have permission to take part in temple activities, rituals, lectures, and legal teachings.¹³⁸

The Management Measures require large-scale religious activities to be requested, granted, and subsequently managed by government agencies of the relevant provinces and autonomous regions. Similarly protecting against gathering and possibly protesting, temple management should guard against any religious taboos that harm the religious feelings of citizens, undermine national unity and reunification of the motherland, or affects social stability. Any such “accidents” are

133 *Id.* arts. 11, 14, & 31.

134 *Id.* arts. 9, 13.

135 *Id.* art. 36.

136 *Id.* art. 35.

137 Xianfa (1982), art. 36.

138 Management Measures. arts. 7, 34.

to be immediately reported to the religious affairs department at or above the county level.¹³⁹

Under the Management Measures, every aspect of teaching and studying is subject to a complex bureaucratic process. Temples have a fixed number of both teachers and students, to be based on capacity and self-management capacities. Each DMC must apply for, justify a basis for, and receive approval for a fixed number of monks or nuns who may reside at monasteries or nunneries. The BAC determines the fixed number and records its decision with the county and provincial level Religious Affairs departments. All temple staff and students are to be registered at the provincial level.¹⁴⁰

The majority of the regulation addresses teaching staff and teaching procedures. Article 17 dictates that the number of teaching staff should not exceed the fixed amount allowed in each temple. The teaching staff is further to be “inventoried” each January and February, and recorded at the RAB at the county level or higher. The same is true for the teaching staff living at the Temple, the fixed number of which is determined by the DMC, and recorded at the county, or higher, level RAB.¹⁴¹

The order protects the “legitimate” rights and interests of the Tibetan Buddhist teaching staff, who must observe the Constitution, laws, regulations, and rules of China, as well as maintain national unity, national solidarity, and social stability, while promoting Tibetan Buddhism, and adapting to socialist society. All teaching staff must hold a certificate, and are subject to certain qualifications determined by the Buddhist Association of China in conformity with the State Administration for Religious Affairs.¹⁴² “Living Buddhas,”¹⁴³ the official Chinese term for reincarnated religious personalities, are to live at the temple and are subject

139 *Id.* art. 23.

140 *Id.* arts. 23, 15, 16, 29, respectively.

141 *Id.* arts. 17, 18.

142 *Id.* arts. 3, 4, 19, 26.

143 This term is used interchangeably with *tulkus*, the Tibetan term for such religious personalities.

to the DMC's authority. Lamas and other traditional monk staff must be nominated, seated, and educated by the DMC, approved by the village or town BAC, and recorded with the county, or higher, level Religious Affairs Bureau. All courses are to comply with the conditions set out in Article 24, that is, they must have a clear mission, a fixed place of learning and other infrastructure, are taught by qualified teachers, and have a legitimate source of funding. Courses are to be monitored by the DMC, supervised by the local BAC, and approved by the county- and provincial-level Religious Affairs departments. Local and national religious affairs provisions regulate all internal publications. Students must be at least 18 years of age.¹⁴⁴

According to the Management Measures, teachers who wish to engage in educational activities in different institutions must receive permission from the DMC of both the home and host institutions, as well as the BAC of the local governments in which the home and host institutions are located. If the institutions are located in separate counties, prefectures, or provinces, the teachers must receive permission from the RAB of the home and host institutions at each of those levels, respectively.¹⁴⁵ Article 28 outlines the bureaucratic procedures through which teaching staff may apply to teach at another temple: first he must make a written application to his home DMC followed by the village or town BAC; second he must provide documentary proof of the filing to the Religious Affairs Bureau at the county level, at which point the county RAB will (or will not) issue a written confirmation; third he is subject to an examination at the host temple to determine admission; if he passes, his teaching status is further subject to the approval of the BAC of the host town and county; finally both DMCs sign an agreement, the teacher is allowed to teach, but must return to his home temple in a timely manner.

Articles 37 through 42 outlines the sanctions for violating any of the preceding provisions, including removal, expulsion,

¹⁴⁴ Management Measures. arts. 20, 21, 25, 30, 27, respectively.

¹⁴⁵ *Id.* art. 22.

criminal investigation, and penalties. The village or town BAC is authorized to make the final determinations.

While the Management Measures for Tibetan Buddhist Monasteries is a national policy affecting Tibet, the laws are further detailed at the provincial and prefectural levels. Regulatory Measures on Tibetan Buddhist Affairs at monasteries and nunneries in 9 of the 10 Tibetan autonomous prefectures located outside the TAR have already taken effect or are moving through the legislative process.¹⁴⁶ The recurring themes mirror the State regulation, stricter in some cases. As a general rule, the regulations expand the role of village-level committees as the monitors and supervisors of monastic institutions, strengthen the power of DMCs to ensure that religious personnel adhere to government and Party policies, and provide for administrative and criminal punishments.

2. Recent Adjustments : the Complete Long-Term Management Mechanism for Tibetan Buddhist Monasteries

Recently, the Chinese government has tightened the already strict policy of temple management. This policy is known as the Complete Long-Term Management Mechanism for Tibetan Buddhist Monasteries, and has been described as, “critical for taking the initiative in the struggle against separatism,” aiming to “ensure that monks and nuns do not take part in activities of splitting up the motherland and disturbing social order.”¹⁴⁷ The new system is the result of a research project initiated by the United Front Work Department, as an “emergency response project” following the widespread unrest in Tibetan areas in 2008. The stated objectives of the new management scheme are to promote lasting political stability in the TAR and other Tibetan areas, establish harmonious monasteries, and ensure that monks and nuns have the freedom to perform their religious rituals.¹⁴⁸

¹⁴⁶ Congressional Executive Commission on China, *Tibetan Buddhist Affairs Regulations Taking Effect in Tibetan Autonomous Prefectures*, 10 Mar. 2011.

¹⁴⁷ *China: Tibetan Monasteries Placed Under Direct Rule*, *supra* note 124.

¹⁴⁸ *Id.*

Instead of allowing monks who comply with the stringent regulations run the temples, almost every monastery is now under the direct rule of government officials and Party cadres who are permanently stationed in each religious institution. The new policy replaces the DMCs, previously made up of monks who were *elected* by their own communities, with Monastery Management Committees (“MMC,” also referred to in Chinese as *zhusidanwei/gongzuo zu*, “monastic government work-unit”).¹⁴⁹ These *unelected* committees are made up of Communist Party cadres, enabling the Chinese authorities to keep tighter surveillance and control over Tibetan monastic institutions.¹⁵⁰

As of November 2011, more than 21,000 cadres were already spread out over 5,451 villages in the TAR.¹⁵¹ The new MMCs have already begun strengthening their rigorous rule, provoking many monks and nuns to leave their respective monasteries, leading to boycotts and subsequent closures.¹⁵² Local officials ordered heads of neighbourhood committees to ensure that no families shelter monks and ordered any absent monks to return within one month.¹⁵³ Two leading monasteries in the TAR however, Tashilhunpo (Ch: *Zhashilunbu*) in Shigatse (Ch: *Xigaze*) and Champaling (Ch: *Qiangbaling*) in Chamdo (Ch: *Qamdo*) will be allowed to retain their Democratic Management Committees without creating a committee of unelected officials above it because they “have actively explored the path of self-education and self-rule, creating an effective management pattern with their own characteristics” and thus have “achieved monastery self-rule and democratic management.”¹⁵⁴

149 *Id.*

150 Tibetan Centre for Human Rights and Democracy, *China Rewards Harmonious Monasteries, Patriotic Monks, Nuns*, 20 Apr. 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&catid=70:2012-news&id=212:china-rewards-harmonious-monasteries-patriotic-monks-nuns.

151 *Commentary Calls for Tighter Grip on Tibet*, SOUTH CHINA MORNING POST, 20 Mar. 2012.

152 *Chinese Government Cadres Take Over Tibetan Monasteries*, TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, 12 Mar. 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&catid=70:2012-news&id=173:chinese-government-cadres-take-over-tibetan-monasteries.

153 *Id.*

154 *China: Tibetan Monasteries Placed Under Direct Rule*, *supra* note 124.

Some areas of eastern Tibet outside the TAR will retain the DMCs, but are required to have a government official inserted as the deputy director of each committee who supervises, monitors, and reports to the government on the management of religious practice in local monasteries.¹⁵⁵ As were the DMCs, the MMCs are responsible for certifying that religious institutions and other spiritual sites are “politically correct,” and for “educating” or expelling non-conformists.¹⁵⁶

3. “Modifications” to the *Geshe* System

Geshes are the traditional teachers of Tibetan Buddhism. To become a *Geshe*, one must first spend years dedicated to the study of Tibetan Buddhism, and then pass an exam to earn the *GesheLharampa* degree. *Geshes* hold a significant role in the transmission of religious teachings and preservation of Tibetan culture. The Chinese authorities often deny *Geshes* registration, prohibiting them access to monasteries and opportunities to teach lay Tibetans.¹⁵⁷ The *Geshes* that are registered, the “politically correct” ones, are licensed to teach in rural areas, but only under the supervision of the relevant authorities.¹⁵⁸

For nearly 20 years, the *Geshe* exams were outlawed across China. In 2006, they were revived, but in a heavily politicized manner affecting its overall standard.¹⁵⁹ For example, the TAR government instituted a *Geshe* Degree Examination and Appraisal Committee. The committee is made up of 16 patriotic persons and under the close supervision of the lay officials of the Chinese Buddhist Associations and government offices and oversees the exams and conferral of degrees.¹⁶⁰ While candidacy for the *Geshe* degree was traditionally determined by one’s achievements in *Buddhist* studies, it is now determined by an exam on *politics* arranged by the work

155 *Id.*

156 *Id.*

157 TCHRD ANNUAL REPORT 2002, *supra* note 6, at 144.

158 *Id.*

159 IMPOSING MODERNITY *supra* note 16, at 276.

160 *Id.*

committee at their home monastery.¹⁶¹ Because of this, the number of actually qualified and learned *Geshes* has decreased significantly, resulting in a diminished transmission of Tibetan Buddhism, culture and language across the plateau. This is just one of the many tactics the Party uses to slowly and covertly obliterate Tibetan culture and religion.

4. Harmonious Model Monasteries and Patriotic Monks and Nuns

A new way in which the CPC exerts its control over Tibetan Buddhist monastic institutions is through the Harmonious Model Monasteries and Patriotic Monks and Nuns competition, launched by the Tibetan Buddhism Working Committee of the Buddhist Association of China on 6 June 2012. Monasteries will now hold an annual competition for monks and nuns who “excel in loving the Nation, loving the dharma, uphold the unification of the Motherland and unity of nationalities, vigorously study relevant official policies and religious knowledge, obey rules and regulations, protect cultural artefacts, take care of common property, respect the old and nurture the young and contribute to collective work”¹⁶² are simultaneously commended by the DMC as one who “loves the Nation and loves the Dharma” – a direct reflection of the “patriotic education” campaign (Love your Country, love your Religion) – as well as receive material rewards and promotions. Exceptional candidates are also recommended to the Nationality Religious Affairs offices. The program is another example of the policies ensuring that Tibetan monks and nuns are first “qualified citizens of the PRC, willingly safeguarding the state’s territorial integrity, national unity, social harmony and stability, and denounce all separatist discourses, behaviours and activities.”¹⁶³ When discussing the program, government officials reiterated that Tibetan Buddhism would only survive if religious activities

¹⁶¹ *Id.*

¹⁶² WHEN THE SKY FELL TO EARTH, *supra* note 3, at 57.

¹⁶³ *New Harmonious Monasteries’ Campaign Launched Across Tibet*, TIBETAN REVIEW, 7 Jun. 2012, available at <http://www.tibetanreview.net/news.php?id=10860>.

were carried out in a legal manner, and focused on safeguarding the State.¹⁶⁴

In the TAR, the program is said to have begun earlier in 2012, with half-yearly assessments of every monastery resulting in an award for the ones that “best obey all the Chinese laws.”¹⁶⁵ In April 2012 in Lhasa, the Chinese government held the first ceremony, recognizing 58 Monastery Management Committees, 6,773 monks and nuns, and 200 “outstanding cadres” posted in monasteries for their good work.¹⁶⁶ In addition to recognition, the recipients were given government subsidies including free pensions, medical insurance, and a free annual health check up.¹⁶⁷ TAR governor, PemaThinley, was quoted as saying that the awards have “greatly aroused the enthusiasm of many monks and nuns to contribute to social harmony and stability.”¹⁶⁸

While Chinese government praised itself for initiating a campaign in which clergy signed their names “resolving to comply with the law and the Dharma, choose right from wrong, advocate harmony and pursue peace,” reports indicate that the authorities first coerced monks and nuns in monasteries and nunneries around Lhasa to sign statements renouncing the Dalai Lama, and then exhibited them on national television.¹⁶⁹ A source who was present at the award ceremony reported, “they are surrounded on all sides by officials, but at the conclusion of the meeting when reporters ask them about their love for China, they don’t say a word.”¹⁷⁰

5. The “Nine Must-Haves” and the “Six Ones”

Another method of promoting Chinese ideology through deceptively “positive” methods is the intertwined policies of the “Nine Must-Haves” and the “Six Ones.” Under the

164 *Id.*

165 TCHRD, *China Rewards Harmonious Monasteries, Patriotic Monks, Nuns*, *supra* note 150.

166 *Id.*

167 *Id.*

168 TCHRD, *China Re-launches ‘Legal Education’ Campaign in TAR*, *supra* note 108.

169 TCHRD, *China Rewards Harmonious Monasteries, Patriotic Monks, Nuns*, *supra* note 150.

170 *Id.*

pretext of development, Beijing launched the “Nine Must-Haves” campaign in December 2011, requiring every Tibetan monastery, school, community centre, and household to have: 1) roads leading to the facilities; 2) a supply of water; 3) a source of electricity; 4) radio and television sets; 5) access to political movies; 6) a library; 7) copies of the CPC state-controlled newspapers, the *People’s Daily* and *Tibet Daily*; 8) a composite portrait of Mao Zedong, Deng Xiaoping, Jiang Zemin and Hu Jintao, representing four generations of Chinese communist leadership; and 9) a Chinese national flag.¹⁷¹ The campaign, meant “to strengthen and innovate the management policy of monasteries according to the law and to offer public service to the monks and nuns,”¹⁷² is forcibly imposed throughout the ethnically Tibetan regions. Party cadres at every level are ordered to vigorously implement the nine measures.¹⁷³ As of January 2012, more than 1 million CPC “core leaders” portraits and 1 million of the Chinese National Five-Starred flags had been sent to the TAR alone.¹⁷⁴

Tibet Daily, the state-run newspaper, published an article in which an unnamed monk praised the program for improving the overall environment of the temple, enriching the lives of the monks, and making religious practice more convenient. “Thank the Party and the government’s care,” he was quoted as saying.¹⁷⁵ But many see the program as just another tactic to infiltrate Chinese propaganda into the religious realm. The popular science books required in the “must-have” library now overshadow the religious doctrine and Buddhist philosophy that once dominated the monastic libraries. The road, it is argued, serves the purpose of easing the path for outside forces to visit, inspect, and control.¹⁷⁶ The radios and televisions broadcast government propaganda shows, and the leaders’ portraits meant to “express gratitude for the Party

171 Miles Yu, *Nine Must-Haves for Tibetans*, THE WASHINGTON TIMES, 2 Feb. 2012, available at <http://www.washingtontimes.com/news/2012/feb/1/inside-china-860205236/?page=all>.

172 TCHRD, *China Re-launches ‘Legal Education’ Campaign in TAR*, *supra* note 108.

173 Miles Yu, *supra* note 171.

174 *Id.*

175 Alan Ai, *Monks Praise Government’s “9 Must-Haves” Policy*, SHANGHAIIST, 13 Feb. 2012, available at http://shanghaiist.com/2012/02/13/tibet_daily_monks_praise_government.php.

176 Miles Yu, *supra* note 171.

and central government,” are part of the forced acceptance of the Motherland before Buddhism.¹⁷⁷ In this respect it is questionable whether the new modern amenities are meant to benefit the monastic community or the Party. In either case, the amenities are certainly provided at the heavy cost of religious freedom in favour of allegiance to the PRC.

Similar to the “Nine-Must-Haves,” the “Six Ones” is a regulation meant for the cadres stationed at monasteries. The regulation is translated from Chinese and reproduced below:

1. **Make one friend.** Each temple management official should try to be soul-mates with one or several monks/nuns to understand their difficulties in life and what’s going on in their mind.
2. **Visit one family.** Each temple management official to visit the families of one or more monks/nuns to understand what’s going on in their homes.
3. **Solve one problem.** To solve the most urgent, real problem facing the family of any monk/nun so as to make them feel the warmth of the party and government.
4. **Build one file.** Establish a file for every monk/nun to document in a detailed fashion their personal and family situation. This will aid in preparedness, understanding and management.
5. **Keep clear one communication channel.** Steady communications should be maintained between temple management officials and the families of monks/nuns through telephone, letters and house visits, so as to educate them to love the nation and love the religion, as well as to obey the law.
6. **Develop one mechanism.** To build temple management committees (with full-time officials) that temple management officials, monks/nuns and families are jointly responsible for. This is to develop a mechanism for building harmonious model temples.

177 Alan Ai, *supra* note 175.

As in the case of the “Nine Must-Haves,” the regulation is similarly deceptive. While they appear to encourage a better understanding and relationship between government cadres and the monks and nuns they oversee, these six points are actually used as a tool to better monitor the monks and nuns, their families, and the local Tibetan population. By digging into their lives, the cadres can more easily keep tabs on the Tibetan population and identify “trouble-makers.” Because they already have the information on file, investigations and interrogations based on separatist claims are faster and more efficient.

6. Measures Specific to the Tibetan Autonomous Region

The measures put forth by the Chinese government have been repressive and strict across the entire Tibetan plateau. Nonetheless, the area under the most threat continues to be the TAR, the only Tibetan-inhabited area considered “Tibet” by the Chinese government. The “Third Battle Campaign,” launched by the Regional Party Committee of the TAR and the TAR government reveals the continued perception of Tibetan Buddhism and its followers as a major threat to the Party. In the fall of 2011, TAR Party Secretary Chen Quanguo, announced the regime’s renewed battle in the TAR, unveiling the strategy to intensify “patriotic education” sessions in the monasteries, and crack down on religious affairs and activities that are not carried out “according to the law.”¹⁷⁸

Even before the current Management Measures for Tibetan Buddhist Monasteries, SARA passed The TAR Implementation of the Religious Affairs Regulations (“the Implementing Measures”) in 2006 (entered into force 1 January 2007). The Implementing Measures, after which the Management Measures for Tibetan Buddhist Monasteries are modelled, instituted Chinese state control over religious practitioners, reincarnated lamas, religious practice, and the places of practice of Tibetan Buddhism. In reality, the Implementing

178 TCHRD ANNUAL REPORT 2011, *supra* note 106, at 47.

Measures empower authorities with the legal backing to carry out the oppressive measures already in practice.

While reinforcing the freedom of religion and corresponding freedoms from coercion and discrimination,¹⁷⁹ Article 3 only protects the undefined “normal religious activity,” and must not be used to carry out activities such as those that harm national security or public security, impair the order of social management, infringe on citizens’ individual and democratic rights, or violate public and private property. Such activities are defined as criminal in Article 46. All levels of the PRC are given the authority in Article 5 to “actively guide religious organizations, venues for religious activities, and religious personnel in a *love of the country and of religion*, in protecting the country and benefiting the people, in uniting and moving forward, and in guiding the *mutual adaptation of religion and socialism*.” (Emphasis Added). Articles 7 and 8 explicitly empower village and town-level governments to oversee administrative and management issues regarding Tibetan Buddhist affairs. The registering of the establishment, modification, and cancellation of a religious organization is also outlined in Article 8, and any non-registered venues or organizations are strictly prohibited from organizing or conducting religious activities or accepting contributions of a religious nature.¹⁸⁰

Articles 10 and 11 limit the types of publications, audio, and visual materials that may be produced subject to approval from the TAR Religious Affairs Bureau. Similarly, registered (and only registered) organizations must petition the TAR Religious Affairs Bureau, after receiving consent from the prefectural RAB, to build any religious structures, such as an open-air religious statue, stupa, or prayer wheel temple (Tib: *manilhakhang*) outside a venue for religious activities. Rebuilding, expanding, or repairing venues for religious activities requires a petition and subsequent approval at the

179 Tibet Autonomous Region Implementing Measures for the “Regulation on Religious Affairs” (Trial Measures), (2006), *ZhonghuaRenminGongheguoDifang Xing FaguiHuibian*, [hereinafter Implementing Measures]

180 *Id.*

prefectural RAB, *after* obtaining consent at the county level. If the changes affect a unit for cultural relics protection, the approval must be reported to the department for cultural relics administration management. Article 25 allows religious venues to save a portion of entry fees and other income derived from tourism, and use it for maintenance, cultural relics protection, improving tourist facilities, and repairing the general environment.¹⁸¹

Religious personnel must be approved by and recorded with the RAB, but the power of looking for, finding, confirming, seating, and educating reincarnated lamas (Tib: *trulkus*) which is discussed in more detail in the next section, is officially transferred to the Chinese government. Registered personnel may conduct simple religious ceremonies at open-air burials or in religious citizens' homes, in accordance with religious citizens' requests, but may not carry out "such activities as initiations into monkhood or nunhood, consecrations, expounding Buddhist sutras, proselytizing, or cultivating followers outside of venues for religious activities" without prior approval from the RAB at the county level or above. Large-scale religious activities must be pre-approved by respective Religious Affairs Bureaus, and are subject to government departments at the county level or above to ensure the religious activity is carried out with safety and order.¹⁸²

When travelling for religious purposes within the region, clergy must carry proof from the local RAB in addition to his or her "religious personnel identification card," and report to the host institution's local RAB. To travel outside the region, the religious personnel must apply at the local RAB and report for "examination and approval" to the TAR's RAB, who, after internal approval, will consult with the RAB of the host RAB's province and prefecture, city, or town, before granting ultimate permission. Foreign religious personnel are subject to similar applications and approval as outlined in

181 *Id.*

182 *Id.*

Article 44, however overseas Tibetan “compatriots,” though allowed to participate in religious activities, may not lead them or engage in certain activities such as initiations into monkhood or nunhood, consecrations, expounding Buddhist sutras, proselytizing, or cultivating followers.¹⁸³

As in the Management Measures, the Implementing Measures set up DMCs, establish the qualifications for a religious venue to sponsor scripture study class, as well as the complex procedures involved in actually holding a scripture study class. Furthermore, the entire fourth section is dedicated to the legal liability of religious organizations and personnel, defining the administrative, civil, and criminal sanctions imposed as a result of a violation of any provision of the regulation. For example, if a venue for religious activities is rebuilt, expanded, or repaired without authorization, the government will order the suspension of construction and demolition of the structure. Similarly if a large-scale religious activity is organized across zones without the examination and approval of the BAC, the authorities will order the discontinuation of the activity and confiscate any gains. Moreover, the BAC may impose a fine of double to quadruple the amount of the gains. Finally, the government may also order the dismissal of the person(s) directly responsible for acting without authorization.¹⁸⁴

7. Additional Examples of Repressive Measures at the Prefectural or Municipal Level

As mentioned above, every level of government bears some responsibility to monitor and control the practice of Tibetan Buddhism. Thus, each province, prefecture, municipality, and individual monastery has a unique set of rules to regulate the religion. The following are just two regulations exemplary of the strict and oppressive nature of government policies.

183 *Id.*

184 *Id.*

i. Measures for Dealing Strictly with Rebellious Monasteries and Individual Monks and Nuns in Kardze TAP, Sichuan Province

In 2008, the government of Kardze (Ch: *Ganzi*) Tibetan Autonomous Prefecture located in Sichuan Province passed an order called Measures for Dealing Strictly with Rebellious Monasteries and Individual Monks and Nuns. The measures, passed in order to “defend social stability, socialist law and the basic interests of the people,”¹⁸⁵ are meant to clearly outline methods of dealing with “participants in illegal activities aimed at inciting the division of nationalities, such as shouting reactionary slogans, distributing reactionary writings, flying and popularizing the “snow lion flag” and holding illegal demonstrations.”¹⁸⁶

The first section addresses monk and nun “troublemakers,” and differentiates between those who have committed minor offences, greater offences, serious offences, and incited “splittism”. In the first case, if the offender admits his or her mistake and submits a written statement of guilt, the punishment is lockdown in the monastery or nunnery and re-education, with the head of household acting as guarantor that they will not commit any further offences. In the second case, if the offender is willing to admit his or her wrongdoing, he or she must undergo *re-education* (now euphemistically known as “legal education”) and make a sincere written confession of guilt in which he or she gives a full account of the main points of the offence. He or she is to be held in custody undergoing re-education until willing to do so. For a stubborn monk or nun who has committed a serious offence, the offender is to be counselled strictly, given a warning, stripped of their rights as religious practitioners and expelled from their monasteries, and held in custody doing re-education.

185 Ganzi TAP People’s Government, Measures for Dealing Strictly With Rebellious Monasteries and Individual Monks and Nuns, preamble (2008), *ZhonghuaRenminGongheguoDifang Xing FaguiHuibian*.

186 *Id.*

Those involved in “instigating “splittism” and disturbances, hatching conspiracies, forming organizations and taking a leading role” are liable for criminal sanctions, and can be disrobed, expelled, and permanently banned from serving as a religious practitioner. Monasteries are prohibited from taking them in, and face severe punishment for supporting and harbouring a “splittist.”¹⁸⁷

The second section dictates the procedures for dealing with troublemaking monasteries. Monasteries or nunneries with between 10 and 30 religious personnel participating in disturbances are “sealed off, searched, suspect persons detained according to law and any banned items they have hidden shall be confiscated.” All religious activities are cancelled and inmates are prohibited from leaving the premises until they are “cleaned up and rectified in the proper manner.” Any obstinate monks and nuns are liable to be expelled, disrobed, and sent home, with their residential cells demolished. Furthermore, *all* monks and nuns involved in the disturbances must re-register. The number of monks or nuns allowed to join the monastery is “reduced in accordance with the number who participated in the disturbances and the number expelled.”¹⁸⁸

Article 6 refers to monasteries in which the officials from the DMCs participate in the disturbance. In these cases, the local government may deploy officials to assume control of management during the period of purging and rectification. Failure to rectify results in investigation and eventual removal from the list of registered religious institutions, and permanent closure. Management Committees are subject to strict review as outlined in section three of the order. Therefore, Article 10 prescribes that committee members, *trulkus*, *khenpos*, and *Geshes*, even if not directly involved in the disturbance, must take a clear stand against the disturbance and be strict against those involved, or face re-education, severe criticism, and

187 *Id.*

188 *Id.*

submit to a detailed examination of their behaviour in front of the monastic community. The examination and an obliged written guarantee of commitment are to be repeatedly publicized in newspapers and on television.¹⁸⁹

Finally, Article 12 stipulates that any management committee officials, *trulkus*, *khenpos*, or *Geshes* who do in one way or another partake in disturbances or separatist activities will be stripped of all political rights of participation in government bodies, disrobed, stripped of the right to hold the incarnation lineage (in the case of *trulkus*), and investigated according to law, all of which is to be broadcast in prefectural newspapers and on television.

ii. Briefing Booklet on Law and Order – Lhasa Municipality Law and Order Information Department, Tibet Autonomous Region¹⁹⁰

The following is based on an excerpt from the law and order manual booklet implemented in the religious institutions across Tibet. Chapter Ten, discussed below, deals exclusively with the rules and regulations governing the religious institutions inside Tibet. The book was published in April 2009 by Lhasa Municipality “Law and Order” Information Department, TAR. Chapter 10 contains five sections: discipline guidelines for monks and nuns; duties of monks and nuns; vows to be observed by monks and nuns; serious enforcement of certain rules and regulations; and rules and regulations and the monastic code of conduct. Besides the last section, the majority of the chapter addresses political concerns and the need to love the country first. Very little speaks to the religious roles of monks and nuns and their duties to Tibetan Buddhism or the lay community.

The first two articles regarding discipline guidelines for

¹⁸⁹ *Id.*

¹⁹⁰ This is a leaked government document from a manual regulatory book obtained by TCHRD in April, 2009 reprinted in TCHRD ANNUAL REPORT 2009, *supra* note 111, at 146-152.

monks and nuns demonstrate the importance of cultivating “a resolute faith and respect for the Communist Party of China with clear conviction,” requiring monks and nuns not only to study, adhere to, and implement Socialist policies, but *display* their loyalty as well. Monks and nuns are specifically charged with safeguarding the Motherland and opposing separatism. In a perfect exhibition of contradiction, Articles 3 through 6 *require* monks and nuns to *voluntarily* serve their immediate authority and the government, discharge any duties assigned to them, protect, respect, and support the DMCs. Article 9 of this section addresses the regulations on leave, placing special importance on requests for leave during important religious dates and months. The Religious Affairs Bureau is empowered with the scrutiny to determine religious texts and prayers recited by monks and nuns, opposing, restricting, and censoring texts and prayers that “contain false and improper views,” which must be ‘stemmed out completely’ from religious institutions.¹⁹¹ Similarly in Article 14, DMCs are ordered to protect state secrets. Article 17 reiterates the need for local government approval before building or renovating *stupas*, temples, and monastic residences. In contradiction to these tight rules, the regulation does claim to protect monks and nuns, foster amicable relationships between DMCs and monks and nuns, ensure equal political, social, cultural, and constitutional rights, and promote democracy in monastic institutions, in Articles 7, 12, and 15 respectively. However even these protections do provide the DMCs with close monitoring and control over monks, nuns, their families, and the community at large.

Regarding the duties of monks and nuns, it is no surprise that the first duty states the right of monks and nuns to enjoy the freedoms provided by the Constitution, and fulfil their citizens’ duties. Again monks and nuns are told to take

¹⁹¹ Lhasa Municipality Law and Order Information Department, Tibet Autonomous Region, Briefing Booklet on Law and Order, sec. 1, art. 10 (2009), *ZhonghuaRenminGongheguoDifang Xing FaqiHuibian*.

up “serious *voluntary* personal initiative and endeavour to study the policies of the Party, the Constitution of the state and its legal system, and with unflinching conviction, they must oppose and fight “separatism,” while protecting the unity and harmony of the Chinese Motherland. This concept is essentially repeated in the second, third, and fourth duties conferred upon monks and nuns by the state, requiring the study of the Party and its laws, relaying this information to their disciples, and safeguarding the state by opposing separatism. Monks and nuns are “strictly forbidden to set up evil factions and secret organizations in the monastery and nunnery,” and must nurture good relationships amongst themselves.¹⁹²

The vows to be observed by monks and nuns echo these concerns, demanding respect for the Party and the socialist system, and encouraging the study of the CPC’s policies while *voluntarily* putting them into practice. The monks and nuns further vow to not listen to or watch “evil and anti-social propaganda” that threatens state security and national unity, let alone possess or disseminate such materials. Vows 7 and 8 describe in detail the process for procuring permission to leave, allowing for only three days at a time, while having more complex procedures for extended stays. Additionally, the monks and nuns must behave in an amicable, responsible, and obedient manner when outside of their home institutions.¹⁹³

The section on Serious Enforcement of the Following Rules and Regulations pertains almost entirely to maintaining social stability and opposing separatist views, defined as criminal offenses. Monks and nuns are to be excommunicated and expelled for shouting or disseminating materials containing subversive and separatist slogans, raising the Tibetan flag, taking part in protests or marches, inciting division and enmity in the name of religion, or partaking in other criminal activity. Monks and nuns

¹⁹² *Id.* sec. 2 art. 4.

¹⁹³ *Id.* see “vows.”

can also be expelled and excommunicated. This means they are disrobed and may not be accepted into any other monastery or nunnery for taking leave without specific reasons or staying beyond the granted period, leaving the monastery, entering the monastery through deceptive means, keeping disciples without permission from the RAB, voluntarily leaving the monastic institution and “willingly excommunicating him or herself.”¹⁹⁴

Finally, the rules and regulations and the monastic code of conducts are the only *actual* religious part of the entire chapter, prohibiting the monastic community from certain commonplace practices such as drinking, smoking, growing long hair, stealing, lying, killing, gambling, dancing, and wearing anything besides religious robes. As is to be expected, violations of the code of conduct carry penalties including fines, community service, religious reprimands, and even expulsion and excommunication.¹⁹⁵

8. Conclusion

Unyielding in the belief that Tibetan Buddhism and its followers are somehow a threat to national unity, the PRC’s government severely restricts freedom of religion in Tibet. As a general rule, all levels of government are known monasteries, making them tourist hotspots where they can show propaganda films and charge high entry fees, the proceeds of which are more often than not used to benefit something or someone other than the monasteries.¹⁹⁶ Authorities have taken to confiscating works of art, statues of gold, literature, and other religious relics (all of which “belong to the state”) from monasteries and selling them in the Beijing and international markets for high prices.¹⁹⁷ By “official orders” local government officials tear down residences at monasteries and nunneries, and restrict the construction of any new housing.¹⁹⁸ Religious Affairs

194 *Id.* see “serious enforcement.”

195 *Id.* see “rules and regulations.”

196 TCHRD ANNUAL REPORT 2002, *supra* note 6, at 145.

197 *Id.*

198 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 65.

Bureaus consistently refuse to issue official clergy or monk permits, and a February 2009 Ministry of State Security Social Order Working Guidelines made removing unauthorized and underage monks a priority.¹⁹⁹ The list of repressive measures imposed by the Chinese government on Tibetan Buddhism is seemingly endless because the decrees levied originate at each level of government, beginning with the State, ending with the Management Committees, and including every level in between.

C. Order No. 5 : Management Measures for the Reincarnation of Living Buddhas in Tibetan Buddhism

The Management Measures for the Reincarnation of Living Buddhas in Tibetan Buddhism, Order No. 5, (“the Reincarnation Measures”) were issued by the SARA in 2007, and took effect 1 September 2007. The highly controversial legislation dictates that all reincarnations of “living Buddhas” (reincarnated lamas or *trulkus*) in Tibetan Buddhism must be government approved, otherwise they are illegal or invalid. The Reincarnation Measures actually ratify the status quo in that they codify a large body of prior internal directives prepared by governmental and Party bodies which have effectively governed, in great detail, the process of selection, identification, and enthronement of reincarnations, since the early 1990s. In summary, the regulation imposes a ban on search for the reincarnates of prominent religious leaders, and prohibits recognized religious leaders from entering their monasteries. Instead, the Chinese government is the only authority that may determine whether a particular individual who dies can be reincarnated, whether a monastery is entitled to have a reincarnate in residence, and whether an individual is to be recognized as a *trulku*. In addition to conducting the search for a *trulku*, the Chinese government alone is responsible for the enthronement ceremony of the *trulku* at a particular monastery and providing him with all of his future religious training.

Article 2 of the Reincarnation Measures immediately stipulates

¹⁹⁹ INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

that reincarnated “living Buddhas” must respect and protect the principles of the unification of the state . . . and the normal order of Tibetan Buddhism. Referencing the Dalai Lama and the “Dalai Clique,” the article continues to state that reincarnated “living Buddhas” shall “not be interfered with or be under the dominion of any foreign organization or individual.” The third article outlines the conditions for a *trulku*: a majority of local religious believers *and the monastery* management organization requests the reincarnation; there is a real and continuous inheritance lineage; the monastery applying for the living Buddha reincarnation is registered as a Tibetan Buddhist place of religious activity and has the ability to train and raise the living Buddha. In contrast, Article 4 delineates who may *not* be reincarnated, namely one not regulated by religious doctrine, or one whose reincarnation has been ordered impermissible by the government at the county-level or above.

The application procedures are stated in Articles 5 and 6. First, the management organization at the monastery where the *trulku* is registered, or the local BAC submits the application to the county Religious Affairs Bureau.²⁰⁰ Upon the county RAB’s suggestions and approval, the application is sent to the provincial or autonomous regional RAB, who will examine and finally approve or disprove the application, unless the impact of reincarnating said applicant would have “a great impact,” in which case the SARA must approve. If the applicant has a particularly great impact, they must receive approval from the State Council, China’s cabinet. In the case of uncertainty as to the greatness of a *trulku*’s impact, the BAC will make the decision, and report it to SARA.²⁰¹

Once the application is approved, the corresponding Buddhist Association (corresponding the size of a *trulku*’s impact) establishes a guidance team, who oversees the finding of the reincarnated child, a process conducted by the DMC of the monastery where the *trulku* is registered, or the corresponding BAC. The provincial or TAR Buddhist Association has the sole authority to then seat the reincarnated child. No unauthorized groups or individuals may

200 Management Measures for the Reincarnation of Living Buddhas in Tibetan Buddhism (Order No. Five), art. 5 (2007), *ZhonghuaRenminGongheguoDifang Xing FaguiHuibian*, [hereinafter *Living Buddhas*].

201 *Id.*

conduct the search or the seating ceremony. This seating must then be recorded at the corresponding RAB, depending on the size of the reincarnated child's impact identical to that of the application. With the exception of the *trulkus* who have been approved by the provincial or TAR Religious Affairs Bureaus, in which case the installation must be recorded to SARA. Once installed, the corresponding BAC issues a "living Buddha permit," uniformly issued by BAC, and reported to SARA for the record.²⁰²

In the final stage, the DMC of the *trulku's* monastery formulates a training plan and recommends a scripture, both of which must then be approved by the local BAC and the provincial or autonomous regional RAB. Article 11 warns that any contravention of the aforementioned provisions, and anyone who carries out the living Buddha reincarnation affairs unauthorized, is liable for administrative and possibly criminal sanctions.²⁰³

In spite of the blatant irony of an atheist government carrying out a clearly religious procedure, SARA insists that, "the government only administrate religious affairs related to State and the public interests and will not interfere in the pure internal religious affairs."²⁰⁴ The Chinese government's fear of Tibetan Buddhism and especially Tibetan Buddhist leaders is flagrant in the regulation. The Reincarnation Measures strike at the heart of Tibetan belief system, by enforced appointment of Tibetan Buddhist masters and spiritual teachers. Moreover, the Chinese government has never defined the conditions for approval beyond simply stating the need to uphold national unity and be free from outside influence. Continuing a long and tiresome battle, senior Chinese officials maintain that the Chinese government fully intends to supervise the selection of the next Dalai Lama and to challenge the current Dalai Lama's views on the matter, and thus the traditional Tibetan system of finding reincarnations to ensure to unbroken lineage of Tibetan Buddhism.²⁰⁵

202 *Id.*

203 *Id.*

204 *Reincarnation of Living Buddha Needs Gov't Approval*, XINHUA, 4 Aug. 2007, available at http://www.chinadaily.com.cn/china/2007-08/04/content_5448242.htm.

205 CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, ANNUAL REPORT 2011, *supra* note 21, at 208.

D. Reactionary Measures

Despite the multiple precautionary measures listed above, Tibetan Buddhists continue to fight for their religious rights and the return of their spiritual leader, His Holiness the Dalai Lama, to Tibet. In typical tyrannical fashion, the Chinese government respond to any level of protest or disobedience with severe reactionary measures. As a general rule, the government employs extreme tactics to quash all dissidence in Tibet, ranging from banning holidays, restricting the monastic communities' freedom of movement, conducting lockdowns, heightening security to the point of violence, and finally using the guise of law to punish "nonconformists."

1. Bans on Holidays

Banning holidays began as a reaction to dissent but has become a routine practice in the Tibet. Consistently, the Chinese government publishes official prohibitions in the form of notifications or circulars during days of religious significance, such as the holy month of *SakaDawa*, the Dalai Lama's birthday, *GandenNgamchoe* (the death anniversary of a leading Tibetan Buddhist master, Je Tsongkhapa), and the 11th Panchen Lama's birthday.²⁰⁶ Local governments, especially in Lhasa, prohibit children from participating in religious activities, specifically ordering them to refrain from visiting monasteries or wearing sacred amulet threats or face expulsion.²⁰⁷ On other occasions, authorities have been known to post warnings to local Tibetans to "remain indoors or risk being shot at."²⁰⁸ One edict by the TAR Committee for Discipline Inspection and Supervision Department forbade Party members, cadres, and students from participating in all religious activities and rituals, the violation of which would result in severe punishment. Calling any participation a "serious violation of political discipline and stability work," the official notice proclaimed, "some Party members and cadres particularly some retired personnel who still believe in

206 TCHRD ANNUAL REPORT 2011, *supra* note 106, at 62.

207 TCHRD ANNUAL REPORT 2007, *supra* note 115, at 6.

208 TCHRD ANNUAL REPORT 2008, *supra* note 110, at 97-98.

religion, participate in religious activities, and illegally cross the border to attend religious teachings by the Dalai Lama.” Adding that, “such behaviour shows that their political stand is not strong, and the pendulum of their understanding of the struggle against separatist activities is not stable swinging openly towards the Dalai Lama.”²⁰⁹

2. Restrictions on Movement

In addition to bans on holidays, the Chinese government has taken to heavily restricting freedom of movement in the TAR and other Tibetan areas for both the monastic community and lay Tibetans. Major road, cities, and monasteries are flooded with roadblocks and checkpoints manned by local security officials, particularly around religiously and politically sensitive dates.²¹⁰ In addition to the stringent rules delineated for travel from their home monasteries and nunneries, the monastic population is subject to extra scrutiny at checkpoints.²¹¹ All pilgrims are required to obtain permit to go to the sacred mountain Mount Kailash in Ngari(Ch: *Ali*) Prefecture.²¹² These permits are routinely denied, and attempting to travel without one is a criminal offense.²¹³ Pilgrims are further required to carry personal identification cards (Ch: *shenfengteng*) and Chinese ration cards, the absence of which results in being turned away from checkpoints and pilgrimage locations.²¹⁴

As the capital of Tibet and centre of tourism, Lhasa is controlled by exceptionally stringent security measures. The People’s Armed Police are permanently stationed in the centre of Lhasa, and snipers emerge on the rooftops surrounding

209 *Official Chinese Notification Bans Tibetan Participation in Religious Activity*, TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, 25 May 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&id=226:official-chinese-notification-bans-tibetan-participation-in-religious-activities&catid=70:2012-news&Itemid=162.

210 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

211 *Id.*

212 FREE TIBET’S SUBMISSION, *supra* note 80, at 18.

213 *Id.*

214 *Police Checks Set Up Across Tibet*, RADIO FREE ASIA, 10 May 2012, available at <http://www.rfa.org/english/news/tibet/checks-05102012142812.html>.

the Jokhang temple during politically sensitive times.²¹⁵ Patrolling officers subject Tibetans arriving in the capital to meticulous screening.²¹⁶ Outside the city are numerous police surveillance stations and checkpoints to monitor approaching travellers, who must register with the police upon arrival and departure, and are strictly prohibited from remaining in the city for more than a month.²¹⁷ The number of these surveillance “dogs’ dens” in and around Lhasa is regularly increasing.²¹⁸

Travel outside of the country is nearly impossible, particularly for prominent religious and cultural figures, scholars, activists, and rural people who report “increased difficulties in obtaining new or renewing existing passports.”²¹⁹ While Party cadres in the TAR and Kardze Prefecture were overtly prohibited from sending their children abroad for educational purposes, tight controls on the Nepalese and Indian borders in reality prohibit all Tibetans from travelling, especially to India for religious, educational, and other purposes.²²⁰ In its 2012 Report on International Religious Freedom, the U.S. State Department noted that in 2011 only “739 Tibetan refugees transited Nepal through the Tibetan Reception Centre run by the UN High Commission for Refugees in Kathmandu en route to permanent refugee settlement in India, down from 874 in 2010 and 2,156 in 2007.”²²¹ Tibetans who cross the border back into Tibet (especially returning from India) are treated even more severely than those who are caught crossing over into Nepal. Removed of their residential permits and travel documents, pilgrims are detained, beaten, subjected to months of political education, and even still sometimes handed over to other Nepalese immigration authorities.²²² In 2011 thousands

215 Human Rights Watch, *China: Arbitrary Expulsions of Tibetans from Lhasa Escalate*, 19 Jun. 2012, available at <http://www.hrw.org/news/2012/06/19/china-arbitrary-expulsions-tibetans-lhasa-escalate>.

216 *Id.*

217 *Police Checks Set Up Across Tibet*, RADIO FREE ASIA, *supra* note 214.

218 *Id.*

219 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

220 *Id.*

221 *Id.*

222 *Tibetans Beaten, Forced into Exile While Returning from Pilgrimage*, TIBETAN REVIEW, 9 Jun. 2012, available at <http://www.tibetanreview.net/news.php?id=10873>.

of Tibetans attended the Kalachakra teachings given by the Dalai Lama in India, hundreds of which were arrested at the border and taken to political education sessions for months.²²³ A 2012 directive issued by the TAR Committee for Discipline Inspection and Supervision Department apparently warns pilgrims of the illegality of “crossing the border to attend the Dalai Lama’s teachings,” and threatens further review of these kinds of cases.²²⁴ These harsh regulations make it impossible for Tibetans wishing to escape the tyranny of China. They now face much more than just the difficult and life-threatening journey across the Himalayas.

3. Lockdowns, Heightened Security, and Violence

After any sort of protest or “unauthorized” celebration of a religious festival, Chinese authorities habitually heighten security to disproportionate measures and enforce lockdowns on monastic institutions. The most extreme cases of heightened security, lockdowns, and violence came after the string of protests that took place across the Tibetan plateau in 2008. Security forces from four different agencies were deployed to quell the protests: the People’s Armed Police, a paramilitary force whose role is to safeguard domestic security and maintain public order; the Public Security Bureau, the main police authority in China, responsible for day-to-day law enforcement; the People’s Liberation Army, the PRC’s armed forces; and the People’s Militia, a mixed professional-civilian institution who assist in maintaining public order.²²⁵ The security forces’ most radical response to the protests included opening fire indiscriminately on demonstrators.²²⁶

On 16 March 2008, in Ngaba County, the monks of Gomang Monastery were praying when two trucks filled with armed

223 Nirmala Carvalho, *Beijing Tells Party Members and Officials They Cannot Take Part in Religious Activities*, ASIANews.IT, 25 May 2012, available at <http://www.asianews.it/news-en/Beijing-tells-party-members-and-officials-they-cannot-take-part-in-religious-activities-24857.html>.

224 *Id.*

225 HUMAN RIGHTS WATCH, “I SAW IT WITH MY OWN EYES,” ABUSES BY CHINESE SECURITY FORCES IN TIBET, 2008-2010 17 (2010) (adapted from: DENNIS J. BLASKO, *THE CHINESE ARMY TODAY: TRADITION AND TRANSFORMATION FOR THE 21ST CENTURY* 18-19 (Routledge, 2006)).

226 *Id.* at 15.

police arrived, pulled down a Buddhist flag from the top of the monastery, and replaced it with the Chinese national flag. After removing the flag, the monks marched to the Ngaba Township, where they were joined by thousands of monks from Kirti Monastery, lay Tibetans, and students from the Ngaba County Middle School, all calling for the “return of the Dalai Lama,” “freedom for Tibet,” and for the “Chinese [to] leave Tibet.” After breaking the gate of the local police station and entering the compound, the police hurled tear gas shells and fired live ammunition at the protesters, killing and wounding an unknown number of Tibetans on the spot.²²⁷ A few days later, local officials accompanied by armed police conducted a search of Kirti Monastery while stringently imposing “patriotic education” sessions. For the next few days, thousands of soldiers surrounded the monastery while military aircraft hovered above as the police led systematic house-to-house searches in Tibetan homes around the area.²²⁸

Across the province, the monks of Tongkor Monastery in Zithang Township in Kardze Prefecture, joined by local Tibetans, marched toward the county government office demanding the release of two men who were detained for refusing to take part in “patriotic education.” The monks’ peaceful protest was met with forces from the PAP and the PSB, who fired live ammunition into the crowd, killing about 14 known Tibetans and injuring at least 83 others. Following the incident, the Chinese government sent nearly 4,000 soldiers in almost 100 armed vehicles to surround Tongkor Monastery. With orders to shoot on sight, the security forces ransacked the monastery, beat the monks, defaced religious scripture and pictures, and ordered the local schoolteachers to carry the sacks of confiscated scroll paintings to the site where they were burned.²²⁹

A few weeks earlier, the nuns of Pang-ri Nunnery in Kardze Prefecture faced a blockade “so severe that nuns had to procure

227 TCHRD ANNUAL REPORT 2008, *supra* note 110, at 92-93.

228 *Id.*

229 Tibetan Centre for Human Rights and Democracy, *Tongkor shooting survivor reaches exile with a harrowing tale*, 22 Nov. 2009.

permission from the Chinese authorities to attend hospital for medical treatment,”²³⁰ after leading their own march. The same was true in Lhasa, where the Religious Affairs Bureau placed Nyemo Monastery under lockdown for 40 days, during which monks were barred from leaving and re-entering the monastery, on penalty of expulsion.²³¹ The monks were not even allowed to leave to perform prayers in the houses of lay people upon their request, a Tibetan tradition over 1,500 years old.²³²

These practices continued even after the political uprisings in 2008. Monks and nuns have been subject to enforced curfews,²³³ endless days of political education, and monastic imprisonment. Two exiled Tibetans and a prominent writer said, citing sources on the ground, that in 2011, security forces detained 300 monks in Kirti Monastery for a month amid a crackdown sparked by a monk’s self-immolation.²³⁴ Kirti Rinpoche, the head of the Kirti Monastery, declared that the intensified restrictions imposed on the monasteries and monks were “literally a suffocating situation where monks are not allowed to do anything at all.”²³⁵ After repeated calls to the Ngaba County government and PSB went unanswered, the local Tibetans sat outside the monastery to protect it day and night from arresting authorities,²³⁶ “but the troops let out dogs to bite the people and after that, they beat them too.”²³⁷

Although the monastic community tends to bear the brunt, lay people also suffer the wrath of an angry government. Authorities also closed down monastic schools because students of the schools engaged in protests. These schools, the primary venue for children under 18 to learn Tibetan language, literature, and Buddhist philosophy, mostly catered to students from poor rural and nomadic areas where there

230 TCHRD ANNUAL REPORT 2008, *supra* note 110, at 109.

231 TCHRD ANNUAL REPORT 2009, *supra* note 111, at 134.

232 *Id.*

233 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

234 Sui-Lee Wee, *Chinese Forces Detain 300 Tibetan Monks for a Month-Sources*, REUTERS, 23 May 20012, available at <http://in.reuters.com/article/2011/05/23/idINIndia-57200420110523>.

235 *Id.*

236 *Id.*

237 *Id.*

are no other educational facilities. Monastic schools have long been the primary source of education in Tibet.

During religious festivals and politically sensitive periods in 2011, cellular phone and Internet services in the TAR, Sichuan, Qinghai, and Gansu provinces were curtailed.²³⁸ Websites were shut down and Internet cafes closed.²³⁹ The Lhasa Public Security Bureau required 104 Lhasa Internet café owners to attend an “Internet Cafe Security Management” meeting, where they had to sign a “responsibility document” pledging to ensure Internet security. The stated purpose of the meeting was to “purify the Internet, safeguard national security and ensure social stability.”²⁴⁰

In late January of 2012, Chinese security forces opened fire on unarmed Tibetan protestors on three occasions in three different counties, killing five and injuring over thirty.²⁴¹ In March 2012, *Sky TV* leaked secretly recorded video footage displaying Ngaba County in Sichuan Province “under a virtual lockdown and swamped by large Chinese paramilitary police. Huge numbers of Chinese military and riot gear personnel manned the entire area after a monk set himself on fire while calling for religious freedom.”²⁴² In June 2012, Chinese bloggers posted more than a dozen photographs of military vehicles in and around Lhasa, “including tanks, mobile artillery, armoured personnel carriers, and other heavy weaponry, sometimes in convoys of 20 or more similar vehicles.”²⁴³

Although the authorities continue to rationalize their behaviour by invoking the need to safeguard national security, there is no justification for such violent and extreme measures. Gatherings are generally non-violent, monks and

238 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

239 *Id.*

240 *Id.*

241 Central Tibetan Administration, *Int'l NGOs Tell UN the Current Situation in Tibet is Serious*, 15 Mar. 2012, available at <http://tibet.net/2012/03/15/int'l-ngos-tell-un-the-current-situation-in-tibet-is-serious>.

242 *Three Generations Suffered Under Chinese Rule in Tibet*, *supra* note 100.

243 *China: Arbitrary Expulsions of Tibetans from Lhasa Escalate*, *supra* note 215.

nuns peaceful, holiday celebrations religious. The national security reasoning is a stretch at best. Yet despite cries of outrage from the international community to China and the UN Human Rights Council,²⁴⁴ there appears to be no end to this incomprehensibly excessive response to both calls for religious freedom and commonplace religious practice.

4. “Legal” Measures

The Chinese government is notorious for disregarding political and civil rights in the name of “safeguarding social stability.” In the case of Tibet, *any* expression of disapproval or dissent, and in reality, any expression of religion, is considered a threat to national security, and is therefore classified as criminal. This was first seen during the Cultural Revolution when the government indiscriminately killed or imprisoned 93% of the clergy.²⁴⁵ The range of individuals charged with leaking state secrets includes journalists, lawyers, religious activists, ethnic minority rights activists and other human rights defenders.²⁴⁶ In this respect, the Chinese government systematically utilizes the Chinese legal system to legitimize Tibetan subjugation, consistently arresting, detaining, torturing, and forcefully disappearing Tibetan dissidents.

Article 35 of the Constitution guarantees the right to assembly as well as the freedom of speech, association, procession, and of demonstration. Under international law, a government can require prior notification of a peaceful assembly, as long as the restrictions on the right of assembly are “necessary.”²⁴⁷ A report by Human Rights Watch points out that “given that there is no known case of a Tibetan demonstration having ever been approved by the government, it appears that the Chinese government regularly and gratuitously restricts this right. In fact, authorities often use intimidation and threats to discourage people from participating in protests or other peaceful assemblies.”²⁴⁸

244 *Id.*

245 IMPOSING MODERNITY *supra* note 16, at 270.

246 CHINA’S LEGAL LABYRINTH, *supra* note 42, at 213.

247 “I SAW IT WITH MY OWN EYES,” *supra* note 225, at 65.

248 *Id.*

This policy was most disturbingly demonstrated during the 2008 protests, when the Tibetan people demanded freedom from China, freedom of religious belief and practice, and the return of the Dalai Lama to Tibet. While there is some dispute over the exact level of “peacefulness,” (the Chinese government argues that protesters were involved in looting, arson, assault, and other disturbances) it is undisputed that “these demands were not by guns and bullets.”²⁴⁹ And yet, since the 2008 uprisings, an abnormally large number of monks and nuns remain in detention, continually subject to “extrajudicial punishments,” such as enforced disappearances, beatings, and deprivation of food, water, and sleep. In some cases, such punishments have resulted in broken bones or other serious injuries, even death. It is also extremely important to note that the practice of religion is strictly prohibited in Chinese prisons.²⁵⁰ Defiance of this restriction results in beatings, torture, and lengthening of sentences.²⁵¹

The “Strike Hard” Campaign (Tib: *dungdektseñon*; Ch: *yanda*) is the most prevalent method the Chinese government uses to suppress the freedoms of expression, religion, and assembly in Tibet. First launched in 1983, the campaign is still meant as a *temporary* crackdown to curb rising crime rates and ease escalating social conflicts.²⁵² During the Campaign periods police are extra-vigilant and judicial authorities hand down swifter and harsher penalties.²⁵³ According to the Ministry of Public Security, it is purported to target extreme violent crime, gun and gang crime, telecom fraud, human trafficking, robbery, prostitution, gambling, and drugs across China.²⁵⁴ But in Tibet, the Strike Hard Campaign is used to stifle the Tibetan peoples’ voice against the Chinese government’s

249 TCHRD ANNUAL REPORT 2008, *supra* note 110, at 120.

250 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Addendum 6 to the Report of the Special Rapporteur on Freedom of Religion or Belief, Manfred Nowak: Mission to China* para. 67, U.N. Doc: E/CN.4/2006/6/Add.6 (10 Mar. 2006) (delivered at the 62nd Session of the Commission on Human Rights).

251 RONALD SCHWARTZ, RELIGIOUS PERSECUTION IN TIBET (1999).

252 Jin Zhu, “Strike Hard” Campaign Targets Violent Crimes, CHINA DAILY, 15 Jun. 2010, available at http://www.chinadaily.com.cn/china/2010-06/15/content_9977822.htm.

253 *Id.*

254 *Id.*

religious oppression.²⁵⁵ In 1996, during the second round nationally, but the first round in Tibet, the Strike Hard Campaign was used to arrest 492 monks and nuns and expel 9,997 others from their respective religious institutions.²⁵⁶

In 2009, Vice-Minister for Public Security, Yang Huanning, was quoted as telling security officials across the country that they must “strike hard against the destructive work of hostile forces inside and outside the country” that pose a threat to the government.²⁵⁷ He further encouraged police to target “racial separatists,” “terrorist forces,” and “religious extremists.”²⁵⁸ In June 2010, the Chinese government formally announced the fourth launching of the Campaign (the third was in 2001), for what was only supposed to be a period seven of months.²⁵⁹ Yet nearly two years later in April 2012, the TAR’s Public Security Bureau (“PSB”) continued to launch the campaign in the TAR, giving special powers to a group of Chinese officials who head the PSB.²⁶⁰ The program extends beyond the TAR, not only into other Tibetan areas, but also into Nepal, where the Chinese government engages the Nepalese government and its police force to collaborate with the Chinese police in suppressing Tibetans in Nepal.²⁶¹ Specifically targeting senior officials of the Tibetan monastic community, former monks and nuns, and former political prisoners, and other suspected individuals, the campaign intensifies political education and attacks “separatist activities.”²⁶²

255 Central Tibetan Administration, *China Planning Strike Hard Crackdown in Tibet and Nepal*, 16 May 2012, available at <http://tibet.net/2012/05/16/china-planning-strike-hard-crackdown-in-tibet-and-nepal>.

256 *Id.*

257 Verna Yu, *Warning Police will “Strike Hard at Hostile Forces,”* SOUTH CHINA MORNING POST, 29 December 2009.

258 *Id.*

259 *China Planning Strike Hard Crackdown in Tibet and Nepal*, *supra* note 255.

260 *Id.*

261 *Id.*

262 *Id.*

In-Depth Legal Framework and Analysis

*“It is better to die than to denounce, criticize, and attack His Holiness the Dalai Lama, to sign off documents denouncing His Holiness the Dalai Lama. It there is no place for us to worship and live, let us go somewhere else or die. If the Chinese authorities kill us, let us be killed. We have no regrets.”*²⁶³

This quote by the nuns of Pang-ri Nunnery accurately summarizes the collective feeling of the Buddhists in Tibet who, in contravention to international law, face religious repression, discrimination, and unimaginable hardships consistently at the hands of the Chinese government. The sheer number of self-immolations, both Tibet and abroad, is demonstrative of the pain and suffering of Tibetan Buddhists. As a rule, Buddhism prohibits suicide, even in the case of extreme and incurable suffering.²⁶⁴ However, some scholars argue that according to Buddhist scriptures, taking one’s own life is allowed for noble ends. For example, giving one’s life to save the lives of others.²⁶⁵ Leaked audio and video footage of self-immolations and protests in Tibet exhibit a recurring theme: the call for religious freedom and the return of the Dalai Lama. The atheist Chinese regime is neither able to understand nor counter the religious devotion that leads to such desperate acts.²⁶⁶ But the truth remains: Beijing’s repressive measures are illegal, violating every single aspect of the freedom of religion that the international community works to protect on a global level. What follows is an in-depth analysis of the multiple facets that

²⁶³ TCHRD ANNUAL REPORT 2008, *supra* note 110, at 109.

²⁶⁴ Peter Goodspeed, *supra* note 99.

²⁶⁵ *Id.*

²⁶⁶ Melinda Liu, *Tibetan Buddhist Self-Immolation Suicides Go Viral*, The Daily Beast, 26 Mar. 2012, available at <http://www.thedailybeast.com/articles/2012/03/26/tibetan-buddhist-self-immolation-suicides-go-viral.html>.

make-up the freedom of religion as defined by international law and elaborated by the United Nations Special Rapporteurs on Freedom of Religion or Belief, and how the Chinese government's oppressive policies infringe on each of those facets in the context of Tibetan Buddhism.

A. Freedom of Religion or Belief – The Right Itself

The freedom of religion or belief is complex, encompassing three sub-rights: the freedom to adopt, change, or renounce a religion or belief; freedom from coercion; and the right to manifest one's religion or belief. The right to manifest one's religion or belief can be further divided into 11 sub-categories, 10 of which are addressed below. There is an overwhelming amount of legal authority to support the freedom of religion in all of its aspects, including international covenants, case law, United Nations resolutions and comments, and findings by independent experts. Each is discussed in turn.

1. Freedom to Adopt, Change, or Renounce a Religion or Belief

Universally accepted international standards include the right to freedom of religion or belief, the right to adopt a religion of one's choice, the right to change religion, and the right to maintain a religion.²⁶⁷ This fundamental sub-right is not subject to any limitation.²⁶⁸ As previously mentioned, the freedom of thought, conscience, and religion was first codified in the Universal Declaration of Human Rights, and includes the right to change religion or belief.²⁶⁹ Article 1 of the 1981 United Nations Declaration of the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief states that this right includes "freedom to have a religion or whatever belief of [one's] choice," and that

²⁶⁷ U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Elimination of All Forms of Religious Intolerance*, para. 46, U.N. Doc: A/60/399, (30 Sept. 2005) (delivered at the 60th session of the General Assembly), [hereinafter *Elimination of All Forms of Religious Intolerance*].

²⁶⁸ *Id.*

²⁶⁹ UDHR, art. 18.

no one “shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.”²⁷⁰ Article 18 of the ICCPR echoes this language. In general comment No. 22 of the ICCPR, the Human Rights Committee²⁷¹ reasons that because the limiting clause contained in subsection 3 specifically mentions the rights delineated in subsection 2, but *not* those of subsection 1, Article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice.”²⁷²

“In Tibet, people can believe whatever they want as long as it is legal.”²⁷³ This notion is a clear violation of the unlimited freedom to adopt, change, or renounce a religion or belief. The Chinese Constitution allows citizens of China to enjoy freedom of religion and belief,²⁷⁴ but only to the extent that it is completely subordinate to the interests of the government, a limitation explicitly stated in Articles 33, 52, and 54 of the Constitution. Thus, Tibetans are free to believe in Buddhism, but not in the Dalai Lama or his teachings. They are free to believe in autonomy, but not in freedom. Tibetans are free to believe in GyaltsenNorbu, State-appointed 11th Panchen Lama, but not in GedhunChoekyiNyima, the Dalai Lama-recognized 11th Panchen Lama. In direct contravention to international law, the PRC has limited the freedom of religion and belief to the freedom of patriotic religion and patriotic belief. The unconditional freedom to adopt, change, or denounce a religion or belief is conditioned. China’s perversion of this right can only be considered a violation of international law.

2. Freedom from Coercion

Article 18 (2) of the ICCPR asserts that, “no one shall be subject to coercion which would impair his freedom to have

²⁷⁰ *Id.* art. 1.

²⁷¹ The Human Rights Committee is the UN body in charge of interpreting the International Covenant on Civil and Political Rights, and addressing any complaints received under it.

²⁷² HRCGC No. 22, para. 3.

²⁷³ TCHR D ANNUAL REPORT 2011, *supra* note 106, at 63 n.18.

²⁷⁴ Xianfa (1982), art. 36.

or to adopt a religion or belief of his choice.” The explicit prohibition of coercion demonstrates the drafters’ intent that the freedom provided in the prior paragraph is “so significant that any form of coercion by the State was impermissible, independently of whether the coercion was physical or in the form of State-sponsored incentives.”²⁷⁵ In paragraph 5 of its General Comment, the Human Rights Committee elaborates, defining coercion as “the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.” The term “coercion” is to be broadly interpreted, including State practices and policies meant to pressure religious conversion but not necessarily codified by law, such as those restricting access to education, medical care, or employment.²⁷⁶

In *Kang v. Republic of Korea*, the Human Rights Committee found the State’s “ideology conversion system,” and the “oath of law-abidance” system coercive.²⁷⁷ In that case, the author of the communication, an opponent of the State party’s military regime of the 1980s, distributed pamphlets criticizing the regime and its extensive use of security forces. As a result, the complainant was (unlawfully) arrested, tried, and convicted of espionage under the Republic of Korea’s National Security Law. While experiencing the “ideology conversion system,” the author was held in solitary confinement for 13 years and denied benefits as well as the opportunity for parole for his refusal to “convert” to the State ideology. The complaint argued that, “he was thus subjected to systematic discrimination on the basis of political opinion, and to treatment in prison which is neither compatible with his inherent dignity nor aimed at his reformation and social rehabilitation.”²⁷⁸ In its rebuttal, the State party argued that it replaced the “ideology conversion system” with an “oath of law-abidance system,” which requests but does not compel an oath from prisoners

²⁷⁵ *Elimination of All Forms of Religious Intolerance*, *supra* note 267, para. 50.

²⁷⁶ HRCGC No. 22, para. 5.

²⁷⁷ Human Rights Committee, *Yong-Joo Kang v. Republic of Korea*, (Communication No. 878/1999), UN Doc. CCPR/C/78/D/878/1999.

²⁷⁸ *Id.*

that they will abide by the law. The State alleged that the new system was not a prerequisite for release as was the previous conversion system, and was therefore not coercive.²⁷⁹

The Committee determined that both the “ideology conversion system” and the succeeding “oath of law-abidance system” were inherently coercive. Moreover, the Committee found that the State party failed to justify the necessity of the systems to limit the right to freedom of religion articulated in Article 18 of the ICCPR. Therefore, the Committee concluded, the State did violate the author’s right to freedom of thought, conscience, and religion because the measures were coercive.²⁸⁰

Although not having ratified the ICCPR and therefore ineligible for Committee review, on the merits, the government of China would be equally as accountable as the Republic of Korea. The Constitution of the PRC specifically prohibits State organs, public organizations, and individuals from compelling citizens to believe in, or not to believe in, any religion.²⁸¹ However this is simply not the reality in China. Both codified laws and practices implore government agents to compel citizens to not believe in their religions. For example, the “patriotic education” campaign is just as coercive as the “corrective” systems used in the Republic of Korea. Like the agents of the State in that case, the government of the PRC authorizes its agents to employ tactics such as threats, use of physical force, and penal sanctions to compel Tibetan Buddhists to recant their religious tenets and belief. “Patriotic education” seeks to break the will and alter the personality of the individual.²⁸² That is the very essence of coercion. At its best it is more coercive than the “oath of law-abidance system” and at its worst it is harsher than the “ideology conversion system.”

Similarly, as in *Kang v. Republic of Korea*, the PRC is unable

279 *Id.* at para. 4.2.

280 *Id.* at para. 7.2.

281 Xianfa (1982), art. 36.

282 FREE TIBET’S SUBMISSION, *supra* note 78, at 9.

to justify the coercive practices as being necessary for any of the permissible limitation enumerated in the ICCPR. In that case, the State argued that the practice was justifiable because the author sought to overthrow its Government, leaked state secrets, engaged in anti-state terrorist activities, and attempted to fuel anti-American feelings in Korea.²⁸³The Committee determined that espionage did not constitute a threat that necessitated limiting Article 18 to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.²⁸⁴The Chinese government's stated purposes for its coercive practices are almost identical, stating the need to protect national unity, state security, and other justifications that do not amount to those enumerated in the ICCPR. Therefore, the State's limitations on Article 18 are groundless.

In addition to the "patriotic education" system, the Harmonious Model Monasteries and Patriotic Monks and Nuns, and Nine Must-Have programs are equally coercive. Just as the Human Rights Committee found the Republic of Korea's "ideology conversion system" coercive because it provided incentivizing benefits for political conversion, so too would the Committee find the Harmonious Model Monasteries and Nine Must-Haves coercive. The Harmonious Model Monasteries program lures monasteries, nunneries, monks and nuns into being "patriotic" with the promise of prestigious awards and monetary returns. The Nine Must-Haves provides religious and educational institutions with previously unavailable government benefits on the condition that the institutions hoist the Chinese National flag, display portraits of Chinese leaders, and enlist in government propaganda media. While on the surface they appear less threatening than the "patriotic education" sessions, these practices are likewise forcibly imposed in an effort to abolish traditional Tibetan culture and compel patriotic conversion.

Chinese officials employ coercive tactics on an informal

²⁸³ Kang v. Republic of Korea, para. 4.2.

²⁸⁴ *Id.* at para. 7.2.

basis as well. For example, when a group of monks at the RawuShulten Monastery in Pashoe (Ch: *Basu*) in the TAR refused to hoist the Chinese national flag and display photos of Chinese leaders inside the monastery, they were expelled.²⁸⁵ After a woman died in police custody following her protest self-immolation, Chinese authorities would only release the body to her family on the condition that her family members signed a letter stating that her self-immolation was not political in nature.²⁸⁶ If these “peaceful” approaches to conversion fail, officials resort to more violent methods, subjecting defiant individuals to beatings, torture, and other forms of cruel, inhuman, or degrading treatment. The disobedient persons considered a grave threat because of their position or influence, are imprisoned or even forcibly disappeared.

The continued practice of conditioning Tibetan existence is inherently coercive, extending beyond religion and politics to every aspect of daily life. The PRC state organs, public organizations, and individuals consistently compel Tibetans to believe in (or not to believe in) at the very least aspects of religion, contradicting not only international laws promoting the freedom from coercion, but its own Constitution.²⁸⁷

3. The Right to Manifest One’s Religion or Belief

The right to manifest one’s religion or belief is by far the most extensive and elaborate facet to the freedom of religion. Both Article 18(1) of the ICCPR and Article 1(1) of the 1981 Declaration include the right to freedom of thought, conscience, and religion, “the right to either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.” In its general comment 22, the Human Rights Committee extends the concept of worship to include:

285 *Monks Expelled Over Chinese Flag*, RADIO FREE ASIA, 14 Feb. 2012, available at <http://www.rfa.org/english/news/tibet/flag-02142012154514.html>.

286 *Family of Deceased Told to Sign Letter Saying Self-Immolation Not Political*, PHAYUL, 7 Mar. 2012, available at <http://www.phayul.com/news/article.aspx?id=31024&t=1>.

287 Xianfa (1982), art. 36.

Ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae, and objects, the display of symbols, and the observance of holidays and days of rest. The observance and practice of religion or belief may include not only ceremonial acts but also such customs as the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language, customarily spoken by a group. In addition, the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.²⁸⁸

Unlike the freedom to adopt, change, and renounce a religion or belief, the freedom to manifest one's religion or belief may be subject to limitation, but only to those that are prescribed by law and "are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."²⁸⁹ Not only is this right not protected anywhere in the laws of the PRC, it is the right to manifest one's religion or belief that is *most* violated by oppressive Chinese laws, policies, and practices. It is worth noting however, that this right varies from region and province. Some localities implement only parts of national government policy, and allow for the freedom of worship openly, but such practices are exceptions to the larger rule.²⁹⁰

(a) Freedom to Worship

The first precept in the right to manifest one's religion or belief is quite palpably the freedom to worship. Article 1 of the 1981 Declaration and Article 18, paragraph 1, of ICCPR explicitly provide for the right "in publicor

²⁸⁸ HRCGC No. 22, para. 4.

²⁸⁹ ICCPR, art. 18(3); *Id.* art. 1(3).

²⁹⁰ USCIRF, *supra* note 2, at 138.

private, to manifest [one's] religion or belief in worship, observance, practice, and teaching.” The Declaration expounds upon this notion in Article 6, including in the right to freedom of thought, conscience, religion or belief, the freedom “to worship or assemble in connection with a religion or belief.” The same language is replicated in the Commission on Human Rights resolution 2005/40 (paragraph 4 (d)), the Human Rights Council resolution 6/37 (paragraph 9 (g)), and General Assembly resolution 65/211 (paragraph 12 (g)). Furthermore, in its General Comment 22, the Human Rights Committee explains, “the concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including . . . the use of ritual formulae, and objects.”²⁹¹

Despite this extensive authority, the Chinese government repeatedly interferes in Tibetan Buddhists' freedom to worship. At some religious sites, security forces continue to limit the number of times per week even lay Tibetans can enter the monastery to worship.²⁹² The “patriotic education” campaign is a large obstacle for monks and nuns to practice Tibetan Buddhism. “Patriotic education” sessions replace traditional Buddhist teaching and prayer sessions. Almost all daily monastic activity is put on hold. Monks are placed on lockdown and unable to perform customary prayer ceremonies in the homes of lay people, therefore restricting religious freedom of the lay people as well. Restrictions also limit the rights of monks and nuns to mark important ceremonies within the confines of their orders.²⁹³

The various State, provincial, county, prefectural, and municipal level regulations are further hindrances to the freedom to worship, requiring Tibetan Buddhists to obtain a permit before conducting large-scale outdoor religious

291 HRCGC No. 22, para. 4.

292 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

293 FREE TIBET'S SUBMISSION, *supra* note 78, at 19.

events, and completely prohibiting events broadly deemed to disrupt the unity of nationalities or impair social stabilities. Complete bans on certain religious events, discussed in more depth below, is an obvious denial of the right to worship. For example, on 21 February 2008, over 200 Tibetans, mostly monks, were arrested in Rebkong(Ch: *Tongren*) County in Qinghai Province after the Chinese authorities ordered to stop the gathering and celebration of *MonlamChenmo*, The Great Prayer Festival. A major religious holiday, thousands of monks assembled to recite texts and offer fervent prayers and eulogy to the Lord Buddha who is the source of all lineage teachings. It was an occasion where monks prayed for the well being of all sentient beings and universal peace.

Pilgrimages to holy sites, a prominent feature in Tibetan Buddhist practices, have become a difficult and bureaucratic process. The laws regulating movement greatly restrict pilgrims' ability to visit monasteries, hermits' caves and sacred mountains that have been consecrated and inhabited by past meditation masters and Buddhist scholars. The requirement to obtain a letter of authorization from local government is further aggravated by the multiple checkpoints and possibility of rejection and criminal detention for lack of proper identification and paperwork. These hardships are likely to have deterred at least some from making the pilgrimage, inhibiting believers from fully realizing this "integral dimension of the construction of society and self, transforming the body, consciousness and status of the pilgrim throughout the course of the journey."²⁹⁴

The limitations the Chinese government places on the freedom to worship, whether blatant or furtive are nonetheless apparent and improper. Based on the unfounded fear that any Tibetan Buddhist gathering is a threat to "national unity," the Chinese government continually justifies these religious restraints on the

294 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 60.

grounds of national security. The justification however is unsubstantiated, and therefore, as will be discussed further in the section on derogation below, illegal.

(b) Places of Worship

The right to worship or assemble in connection with a religion or belief necessarily entails the right to establish and maintain places for those purposes.²⁹⁵ In its latest resolution in 2012, the Human Rights Council further stressed the right of all persons to seek, receive, and impart information and ideas in these areas.²⁹⁶ The Human Rights Council has also urged states, “to exert the utmost efforts, in accordance with their national legislation and in conformity with international human rights and humanitarian law, to ensure that religious places, sites, shrines and symbols are fully respected and protected and to take additional measures in cases where they are vulnerable to desecration or destruction.”²⁹⁷ Within the past few decades, places of worship have been specifically targeted for violence, discrimination, and other forms of aggression, fostering particular concern within the international community. As such, the General Assembly adopted resolution 55/254 on the protection of religious sites on 31 May 2001, in which it condemned all acts or threats of violence, destruction, damage or endangerment, directed against religious sites. Restrictions on the places of worship are especially cumbersome, as the Special Rapporteur in 2005 noted: “[m]oreover, unlike other forms of violations of the right to freedom of religion or belief, attacks or other forms of restriction on places of worship or other religious sites and shrines in many cases violate the right not only of a single individual, but the

²⁹⁵ *Id.* art. 6(a); HRCGC No. 22, para. 5; U.N. Human Rights Council Res. 6/37, para. 9(g), in U.N. Human Rights Council, Report of the Human Rights Council on Its Sixth Session, 9(g), U.N. Doc. A/HRC/RES/6/37 (14 Dec. 2007), [hereinafter Res. 6/37].

²⁹⁶ U.N. Human Rights Council Res. 19/18, para. X, in U.N. Human Rights Council, Draft Report of the Human Rights Council on Its Nineteenth Session, para. 9(g), U.N. Doc. A/HRC/RES/19/18 (10 Apr. 2012), [hereinafter Res. 19/18].

²⁹⁷ Res. 6/37, para. 9(e); *see also* U.N. Comm'n on Human Rights, Human Rights Res. 2001/42, para. 4(e), U.N. Doc. E/CN.4/RES/2001/42 (25 Apr. 2001).

rights of a group of individuals forming the community that is attached to the place in question.”²⁹⁸

In the same vein, the 2002 United Nations Special Rapporteur on Freedom of Religion or Belief recognized “the process of returning land to indigenous people, as the touchstone of their identity, is thus a precondition for providing access to holy sites and burial grounds and hence for legitimate religious or spiritual activities.”²⁹⁹ Additionally, the Special Rapporteur specifically advised in 1997 that places of worship should be used exclusively for religious and not political purposes.³⁰⁰

The tight Chinese control over monastic institutions is a direct infringement on the freedom of religion with respect to places of worship. In addition to the SARA Management Measures for Tibetan Buddhist Monasteries and the Implementing Measures, there are general regulations governing venues for religious activities, measures for the registration of places for religious activities, measures for the annual inspection of places of religious activity. The local government regulates, monitors, and inspects every detail relating to places of worship, including permission to enter, personnel, publications, teachings, and relics, strictly limiting the right of all persons to seek, receive, and impart information and ideas in these sacred places.

With only two known exceptions, monasteries are managed completely by unelected Monastery Management Committees, and overseen by atheist government bodies.

298 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Report of the Special Rapporteur on Religious Intolerance, Asma Jahangir*, para. 51, U.N. Doc. E/CN.4/2005/61 (20 Dec. 2004) (delivered at the 61st Session of the Commission on Human Rights) [hereinafter *2005 Report of the Special Rapporteur*].

299 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Report of the Special Rapporteur on Religious Intolerance*, para. 150, U.N. Doc. E/CN.4/2002/73/Add.1 (20 Dec. 2004) (delivered at the 58th Session of the Commission on Human Rights).

300 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Report of the Special Rapporteur on Religious Intolerance: Visit to India*, para. 93, U.N. Doc. E/CN.4/1997/91/Add.1 (14 Feb. 1997) (delivered at the 53rd Session of the Commission on Human Rights) [hereinafter *1997 Report of the Special Rapporteur*].

In recent years, management committees began to use funds from the sale of entrance tickets or pilgrim donations for purposes other than the support of monks engaged in full-time religious study under the government policy of monastery self-sufficiency.³⁰¹

The construction, expansion, modification, and destruction of religious venues and other structures are contingent upon the approval of State organs. Spiritual leaders encounter difficulty re-establishing historical monasteries in rural areas, due to a lack of funding and government denials of permission to build and operate religious institutions. “Officials in some areas contended that these religious venues drained local resources and served as a conduit for political infiltration by the Tibetan exile community.”³⁰² While authorities destroy religious sites “on official order,” demolishing traditional hermitages.³⁰³ Some hotspots are cared for by the Chinese government to bolster tourism and the notion that there is religious freedom in Tibet. Similarly, authorities confiscate works of art, statues of gold, literature, and other religious relics from places of worship and sell them in the Beijing and international markets for high prices. The government in essence is thus responsible for the very destruction, damage, and endangerment it is supposed to protect.

Finally, the Chinese government practices are in clear contravention with the notion that places of worship should be used exclusively for religious and not political purposes, both by making places of worship more like museums than religious institutions, and by conduction its “patriotic education” campaigns in these places. The sheer number of regulations placing restrictions on places of worship alone is an indication that the PRC is in violation of the international right to freedom of religion.

301 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

302 *Id.*

303 *Chinese Troop Buildup in Tibet*, RADIO FREE ASIA, 12 Feb. 2012, *available at* <http://www.rfa.org/english/news/tibet/buildup-02172012164145.html>.

(c) Religious Symbols

The concept of worship extends to the display of symbols, which also includes the practice of wearing distinctive clothing or head coverings.³⁰⁴ Article 6 of the Declaration and 18 of the ICCPR include in the right to freedom of thought, conscience, religion or belief, the right to “make, acquire, and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief.” During the elaboration of the above-mentioned Comment, Committee member Rosalind Higgins stated that, “it was not the Committee’s responsibility to decide what should constitute a manifestation of religion.”³⁰⁵ In fact, she was resolutely opposed to the idea that “States could have complete latitude to decide what was and what was not a genuine religious belief. The contents of a religion should be defined by the worshippers themselves.”³⁰⁶ As such, the Special Rapporteur in 2006 further explained that a certain symbol may or may not be linked to any religious sentiment or belief, and “it would therefore be most inappropriate for the State to determine whether the symbol in question was indeed a manifestation of religious belief.”³⁰⁷

This idea was explored in 2009, when Switzerland banned the construction of minarets and amended the national Constitution accordingly. In response, the then-Special Rapporteur expressed her deep concern, arguing that the ban “amounted to an undue restriction of the freedom to manifest one’s religion and constituted clear discrimination against members of the Muslim community.”³⁰⁸

Religious symbols and the right to manifest them is of

304 HRCGC No. 22, para. 4.

305 See the Human Rights Committee discussion on 24 July 1992, Summary Records of the 1166th meeting of the forty-fifth session, para. 48

306 *Id.*

307 2006 Report, *supra* note 10, para. 41.

308 *Switzerland: UN expert on religious freedom regrets outcome of vote to ban construction of minarets*, 30 November 2009, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9649&LangID=e>

particular importance to the struggle against Chinese oppression in Tibet, where any image of the Dalai Lama is simultaneously celebrated as religious by the Tibetan Buddhists, and thus demonized as anti-social by the CPC. In direct contradiction to Rosalind Higgins' sentiments that neither the Committee nor the State are in an appropriate position to determine what is and what is not a genuine religious belief, the Chinese government refuses to acknowledge that the Dalai Lama's image and teachings are an integral element of Tibetan Buddhism, labelling them political instead. By defining him as political, the Chinese government is more easily able to justify the numerous laws banning anything to do with the Dalai Lama, including his photographs.

Chinese security forces routinely raid not only monastic institutions, schools, and government offices, but also the tents of every nomadic group or clan, looking for flags, CDs of religious teachings from India, and photographs of the Dalai Lama. When accused of being a separatist for possessing a photograph of His Holiness the Dalai Lama, Tibetans repeatedly explain in vain that having these items is only part of their religious beliefs.³⁰⁹ Yet their pleas for understanding and religious tolerance are met with persistent interrogations, beatings, and imprisonment. Even religious scrolls (Tib: *thangkas*) that contain drawings resembling that of the Tibetan flag and altars have been banned from *private* residences. School children are prohibited from wearing Buddhist blessing and sacred protection cords (Tib: *srungmdud*) to school.³¹⁰ When found, the authorities aim not just to confiscate the banned items, but also to humiliate and belittle those that possess them. Security officials deface photographs of the Dalai Lama, force monks to "step on his portrait,"³¹¹ and compel religious teachers to carry the items to the site

309 HUMAN RIGHTS VIOLATIONS AND SELF-IMMOLATION: TESTIMONIES BY TIBETANS IN EXILE, *supra* note 85, at 6.

310 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 11.

311 TCHRD ANNUAL REPORT 2008, *supra* note 110, at 94.

where they are burned.³¹²

While the right to manifest religious symbols is a freedom that can be curtailed under certain circumstances in international law, the right to believe in those religious symbols cannot, under any circumstances, be restricted. Nonetheless, the main objective of “patriotic education” is to compel individuals to denounce the Dalai Lama, Tibet’s spiritual leader and a central symbol of Tibetan Buddhism. This coercive demand simply cannot be justified. In Tibetan Buddhism, it is a major sin to denounce one’s highest spiritual teacher. This denunciation is a grievous violation of the most fundamental vow made by monks and nuns, and soils the symbol that serves as the foundation of all spiritual Tibetan Buddhist practice. Unlike other vows, this sin cannot be atoned.³¹³ Thus, even if the Chinese government could find legitimate reasons to ban the physical representations of the Dalai Lama, the policy of stomping him out of the hearts and minds of the Tibetan people is both fruitless and illegal.

(d) Observance of Holidays and Days of Rest

The right to manifest one’s religion must necessarily entail the freedom “to observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one’s religion or belief.”³¹⁴ As the Special Rapporteur in 1987 noted, this right is “particularly significant since it allows the faithful to perform a series of ceremonies and religious customs that often have cultural and traditional connotations. It is precisely this cultural aspect that is often viewed with suspicion by the authorities and combated by them.”³¹⁵ The Special Rapporteur continued to extend the right to observe holidays to include certain cultural

312 TCHRD ANNUAL REPORT 2002, *supra* note 6, at 122.

313 IMPOSING MODERNITY *supra* note 16, at 277.

314 *Id.* art. 6(h).

315 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Report of the Special Rapporteur on Religious Intolerance*, para. 57, U.N. Doc. E/CN.4/1987/35 (24 Dec. 1986) (delivered at the 43rd Session of the Commission on Human Rights) [hereinafter *1987 Report of the Special Rapporteur*].

ceremonies, such as the celebration of marriage and funeral ceremonies, certain rites ceremonies, including circumcision or coming of age celebrations.³¹⁶

The Chinese authorities consistently ban the celebration of holidays and religious festivals in Tibet. For example, any festivities surrounding the Dalai Lama's birthday on 6 July is strictly prohibited. Large outdoor celebrations require the government's preapproval, and are more often than not, denied without explanation. When local authorities banned the *Monlam* prayer festival at Kirti Monastery in Ngaba, one monk set himself on fire, as he carried a portrait of the Dalai Lama and shouted slogans calling for religious freedom in Tibet. Reports say Chinese security forces shot him before he collapsed to the ground.³¹⁷

In May 2012, the TAR Committee for Discipline Inspection and Supervision Department issued a notification banning members of the party, cadres, government officials, and students from participating in religious activities such as the holy month of SakaDawa, stating that participation in religious activities and rituals by Party members, cadres, and students "amounts to serious violations of political discipline and stability work," and imposing severe punishments for any such activity.³¹⁸

In June 2012 in Qinghai province, Chinese authorities blocked the funeral plans of a Tibetan protester, insisting the ceremony be held earlier than scheduled, and restricting participation of local Tibetans.³¹⁹ Concerned that security forces would take possession of the body, the monks of Zikar Monastery were forced to comply.³²⁰ Additionally, over 700 police deployed around the monastery and in the town enforced the restrictions, closely monitoring

316 *Id.*

317 TCHRD ANNUAL REPORT 2009, *supra* note 111, at 155.

318 Nirmala Carvalho, *supra* note 223

319 Rigden Dolma and Pema Ngodup, et. al., *China Blocks Funeral Plans*, RADIO FREE ASIA, 25 Jun. 2012, available at <http://www.rfa.org/english/news/tibet/funeral-06252012150547.html?searchterm=tibet>.

320 *Id.*

the funeral procedures.³²¹ In September and October of 2012, the monastery faced severe repression, losing many monks to arbitrary arrests and detentions.³²²

Although the local branches of the CPC rarely if ever provide explanations for banning holidays or denying permits for large-scale celebrations, the reasons are obvious. The Chinese government has always been fearful of large gatherings of Tibetans during any of the major religious celebrations, since the trends in the past show that the Tibetans tend to erupt into demonstrations, albeit peaceful. While the law provides a pretence of discriminate and justified means to prohibit religious ceremonies, in reality the government, wary of any expression of political dissent, instead imposes blanket bans over holidays and religious celebrations.

(e) Appointing Clergy

It may seem obvious that a religious sect should be permitted to appoint its own clergy. Indeed, in Article 6(g), the 1981 Declaration includes the freedom to “train, appoint, elect, or designate by succession appropriate leaders.” In expanding upon the freedom of religion granted in the ICCPR, the Human Rights Committee noted in General Comment 22 that, “the practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests, and teachers.”³²³ Governments are both called upon to guarantee minorities the right to train their clergy,³²⁴ and

³²¹ *Id.*

³²² Tibetan Centre for Human Rights and Democracy, *Monks Beaten, Detained in Nyitso Zilkar Monastery Raid*, 4 Sept. 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&id=286:monks-beaten-detained-in-nyitso-zilkar-monastery-raid&catid=70:2012-news&Itemid=162.

³²³ HRCGC No. 22, para. 4.

³²⁴ U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Interim Report of the Special Rapporteur of the Commission on Human Rights on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief – Addendum I*, para. 160(e), U.N. Doc. A/55/280/Add.1 (10 Sept. 2000) (delivered at the 55th Session of the General Assembly) [hereinafter *2000 Interim Report*].

to refrain from directly interfering in such rudimentary and essentially religious affairs.³²⁵

The Management Measures for the Reincarnation of Living Buddhas in Tibetan Buddhism (Order No. 5) are a direct violation of this freedom. Reincarnation is a core belief in Buddhism, and *trulkus* (reincarnate lamas) are of extreme importance in Tibetan society, presiding not only as religious, but social leaders within their communities as well.³²⁶

In Tibetan Buddhism, the doctrine of rebirth took on a distinctive form, recognizing chains of rebirth of particular reincarnate lamas or *trulkus*.³²⁷ According to this age-old belief, certain individuals can direct when and where their next rebirth will take place. The actual rebirth is determined by the individual's karma in both their past and present life, combined with their state of mind at the time of death. "While most individuals are "thrown" into their next rebirth without their own control, Tibetan Buddhists believe that individuals who have gained a high enough degree of realization (Tib: *rtogs pa*) can control their next rebirth."³²⁸

Therefore, the identification of reincarnate lamas is a complex procedure involving intricate rituals, interpretations, meditation experiences and dreams of high lamas and individuals close to the deceased, oracles, and tests imposed on the proposed child candidate.³²⁹ Employing these tactics, *trulkus* are traditionally identified by their main disciples.³³⁰ In this respect, the Dalai Lamas and the Panchen Lamas, who share a special spiritual and

325 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief – Addendum*, para. 139, U.N. Doc. A/51/542/Add.1 (7 Nov. 1996) (delivered at the 51st Session of the General Assembly) [hereinafter *Implementation of the Declaration*].

326 FREE TIBET'S SUBMISSION, *supra* note 78, at 11.

327 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 29.

328 *Id.*

329 *Id.*

330 TCHRD ANNUAL REPORT 2011, *supra* note 106, at 58.

teacher-disciple relationship, are particularly important in the recognition of the reincarnation of each other.³³¹

Despite these strong spiritual ties and religious implications, the Management Measures specifically reserve the authority to pick, seat, and train all lamas in the hands of the atheist government. This power is loosely based on the 1792 agreement between the Emperor Qianlong and the Tibetan government, in which the Tibetan government granted the Emperor's representative a role in the selection of the Panchen Lama and the Dalai Lama.³³² The truth is that most of the Dalai Lamas, including the 13th and 14th Dalai Lamas were selected and appointed by the Tibetans themselves, following Tibetan religious traditions of finding a *trulku*. The Golden Urn was never accepted by and large by the Tibetan people; in fact some of the Ambans, Qianlong's representatives stationed in Lhasa to oversee the Golden Urn, were never welcomed by the Tibetan public.³³³

Six months after Chinese authorities secretly removed the 11th Panchen Lama, Gedhun Choekyl Nyima and his parents from their hometown in Tibet, the Chinese government announced that it had selected its own Panchen Lama, Gyaltzen Norbu, by drawing his name from a golden urn. Known amongst the Tibetans as the "Panchen Zuma," the fake Panchen, Gyaltzen is the son of two Communist Party members. He has lived and been educated in Beijing, groomed by the CPC for a political role as the public face of Buddhism in China, and rarely appears in Tibet. When he does, his visits are carefully stage-managed and heavily policed.³³⁴ According to numerous Tibetan monks in Tibet, the UFDW and RAB officials frequently pressure monks to attend sessions presided over by the government-recognized Panchen Lama.³³⁵ In some monasteries, the

331 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 34.

332 *Id.* at 29.

333 TSEPON W.D. SHAKABPA, TIBET: A POLITICAL HISTORY, (Potala Publications, 1984).

334 FREE TIBET'S SUBMISSION, *supra* note 80, at 14.

335 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

authorities incentivize the monks with gifts, money, and flattering speeches in which they are encouraged to receive the Panchen Zuma graciously.³³⁶ School children too are presented with scarves and badges and told to welcome Gyaltzen with open arms, or be punished.³³⁷ In 2006, the then-Special Rapporteur on Freedom of Religion or belief Asma Jahangir publicly expressed her concern about the disappearance of the Panchen Lama, and condemned the government's "interference with the freedom of belief of the Tibetan Buddhists who have the right to determine their clergy in accordance with their own rites and who have been deprived of their religious leader."³³⁸

The Dalai Lama has stated that the institution of the Dalai Lama may very well die with him. As such, his plan is to, at around age ninety, consult the high Lamas of the Tibetan Buddhist traditions as well as the Tibetan public and other Tibetan Buddhist followers, to evaluate whether or not to continue the institution of the Dalai Lama,³³⁹ though his personal belief is that the Tibetan people will want it to continue.³⁴⁰ If the institution is to continue, His Holiness has proposed, as an alternative to the traditional reincarnation process, *appointing* his own successor, to be recognized as his emanation, a possibility available only to superior Bodhisattvas.³⁴¹ He explains that, "in some cases, one high Lama may have several reincarnations simultaneously, such as incarnations of body, speech and mind and so on."³⁴²

336 FREE TIBET'S SUBMISSION, *supra* note 78, at 15.

337 *Id.* at 14.

338 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Report of the Special Rapporteur on Freedom of Religion or Belief, *Addendum 1 to the Report of the Special Rapporteur on Freedom of Religion or Belief*, para. 95, U.N. Doc: E/CN.4/2006/5/Add.1 (9 Jan. 2006) (delivered at the 62nd Session of the Economic and Social Council).

339 *Id.*

340 Alex Perry, *A Conversation with the Dalai Lama*, TIME MAGAZINE, 18 Oct. 2004, available at <http://www.time.com/time/magazine/article/0,9171,725176,00.html>.

341 Kenneth Tan, *Dalai Lama May Give Up Reincarnating and Start "Emanating" Instead*, SHANGHAIIST, 25 Sept. 2011, available at http://shanghaiist.com/2011/09/25/dalai_lama_may_give_up_reincarnatin.php.

342 *Id.*

In any case, the spiritual leader made clear that “the person who reincarnates has sole legitimate authority over where and how he or she takes rebirth and how that reincarnation is to be recognized. It is a reality that no one else can force the person concerned, or manipulate him or her.”³⁴³ Time and again he has insisted that China’s Communist leadership can play no role in deciding who succeeds him as the 15th Dalai Lama, calling “Beijing’s meddling in the issue ‘a disgrace.’”³⁴⁴

The Chinese government reacted to the Dalai Lama’s statements with hostile disagreement. When responding to the suggested path of appointing rather than reincarnating a successor, Pema Thinley, the Chinese-appointed governor of the TAR was quoted as saying, “I don’t think this is appropriate. It’s impossible . . . we must respect the historical institutions and religious rituals of Tibetan Buddhism.”³⁴⁵ He further claimed the Dalai Lama had no right to abolish the institution of reincarnation, stating, “I am afraid it is not up to anyone whether to abolish the reincarnation institution or not.”³⁴⁶

So while the Chinese government continues to appoint lower-ranking *trulkus*, the fate of the Dalai Lama, both as an institution and a reincarnate remains to be seen. No doubt if he does reincarnate, the Chinese government will appoint its own Dalai Lama, as it did with the 11th Panchen Lama, and “then there will be two Dalai Lamas: one, the Dalai Lama of the Tibetan heart, and one that is officially appointed.”³⁴⁷

In addition to the Reincarnation Measures, which dictate how the CPC controls the selection, seating, and training of *tulkus*, the numerous Management Measures control the

³⁴³ *Id.*

³⁴⁴ Barbara Chai, *supra* note 102.

³⁴⁵ Sui-Lee Wee and Ben Blanchard, *China Says Dalai Lama Has to Reincarnate*, REUTERS, 7 Mar. 2011, available at <http://www.reuters.com/article/2011/03/07/us-china-npc-tibet-idUSTRE72624L20110307>.

³⁴⁶ *Id.*

³⁴⁷ Alex Perry, *supra* note 340.

selection and training of lower level clergy. The Measures influence the number of religious teachers that a temple may have, as well as approves the types of “religious” teachings they are allowed to teach. Finally, the BAC and Management committees are also charged with “educating” teachers, clergy, and other temple staff. In this respect, the Tibetan Buddhists are not really free to “choose religious leaders, priests, and teachers,” nor “train their clergy” as expressly allowed according to international law.

(f) Teaching and Disseminating Materials

The right to freedom of thought, conscience, religion or belief includes the freedom to write, issue, and disseminate relevant publications in these areas, and the right to teach religion or belief.³⁴⁸ The Human Rights Committee notes that acts integral to the conduct by religious groups of their basic affairs includes both “the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.”³⁴⁹ As with other rights afforded in conjunction with the freedom to manifest one’s religion or belief, the right to teaching and disseminating materials can be restricted, but only in very exceptional cases.³⁵⁰

The scope of publications is quite broad. For example, in *Kang v. Republic of Korea*, the distribution of communist leaflets was recognized by the Human Rights Committee as the manifestation of a belief in the sense of Article 18, paragraph 1.³⁵¹ Furthermore, Article 19 of the ICCPR protects freedom of expression, including the freedom to “seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of [one’s] choice.”³⁵²

348 *Id.* arts. 6(d) & 6(e); Res. 2005/40, para. 4(d); Res. 6/37, para. 9(g).

349 HRCGC No. 22, para. 4.

350 *Id.* art. 1(3); ICCPR 18(3).

351 *Kang v. Republic of Korea*.

352 See Manfred Nowak, UN Covenant on Civil and Political Right: CCPR Commentary 450-452 (2nd revised ed., N.P.Engel Publisher, 2005).

In Tibet, innumerable texts are banned. According to the Management Measures, government officials must approve all teaching materials before they are to be used in classrooms in the monastic institutions.³⁵³ Publications are tightly controlled by multiple regulations. For example, Article 10 of the Implementing Measures stipulates that “the publishing for public distribution of religious publications and audio and visual materials is handled in accordance with the national ‘Regulations on Publication Administration,’ ‘Regulations on Audio and Visual Materials Administration,’ and the Tibet Autonomous Region’s ‘Temporary Provisions on Improving the Management of the Religious Publishing Market.’” Article 10 further prohibits any content that, among other things, “disseminates or glorify ethnic separatism, religious extremism, and terrorism,” or “otherwise violates what is stipulated under laws and regulations.” It is through these overbroad provisions that the government can justify strictly prohibiting any information even remotely linked to the Dalai Lama. Religious leaflets, copies of which may be widely distributed amongst monks and locals, are not only retrieved, but also destroyed by local officials if they are considered to be a threat to national security.

Similarly, the right to teach, and subsequently to learn, is heavily monitored in Tibet. Public teachings are subject to constricting regulations, and restrictions are placed on general Buddhist teachings even beyond the monastic curriculum.³⁵⁴ The traditional transmission of Tibetan Buddhist knowledge and wisdom are scriptural and oral teachings.³⁵⁵ But scriptures are strictly censored, and religious teachers rigorously controlled.

Tibetan Buddhism greatly emphasizes religious and philosophical transmission through lineages called *brgyud*. Each *brgyud* is “believed to be an unbroken chain of

353 Management Measures, art. 30.

354 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 21.

355 TCHRD ANNUAL REPORT 2009, *supra* note 111, at 117.

spiritual transmission directly from the Buddha, passed on from teacher to student through to the present day.”³⁵⁶ Therefore, the authenticity of teachings is guaranteed by the teacher’s lineage.³⁵⁷ This role was traditionally held by a *Geshe*, who would authenticate this lineage by traveling between monasteries and other holy sites to receive teachings from a particular lama, or stay in another monastic institution for an extended period of study.³⁵⁸ But the traditional *Geshes* are often denied registration, and only government-approved *Geshes* can teach, and even then under strict supervision.

Even if granted registration, *Geshes* are subject to complex government laws regulating travel. Monks and nuns are required to acquire permission of both the sending and receiving counties, which greatly inhibits monks’ and nuns’ opportunities for advanced religious education.³⁵⁹ Those important religious leaders who have not already passed away, tend to flee Tibet in search of a freer religious education.³⁶⁰ In some small nunneries or monasteries, there is no teacher in residence, leaving large numbers of monks and nuns to study on their own for the most part, waiting for visiting teachers to impart traditional education.³⁶¹

As a result, one or more elements necessary in maintaining the unbroken chains of transmission is often missing, whether it be a lack of qualified lineage-holding teachers, religious texts, and/or students.³⁶² The consequence is the dying of Tibetan Buddhism and the correlating Tibetan identity. The definition, re-definition, and interpretation of the sacred teachings of Buddhist faith should be entirely managed by the practitioners and devotees of the Buddhist Doctrine, but is instead in the hands of an unrelenting atheist government.

356 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 21.

357 *Id.*

358 *Id.* at 22.

359 These restrictions on movements have made education especially difficult for nuns, for whom there are already fewer opportunities to study.

360 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 21.

361 *Id.* at 22.

362 *Id.* at 21.

(g) The Right of Parents to Ensure the Religious and Moral Education of their Children

The right of parents to ensure the religious and moral education of their children is repeatedly enshrined in international law. Article 18(4) of the ICCPR, Article 13(3) of the International Covenant on Economic, Social, and Cultural Rights, and Article 5(1) of the 1981 Declaration command State Parties to respect the liberty of parents or legal guardians to “ensure the religious and moral education of their children in conformity with their own convictions.” The Convention on the Rights of the Child further authorizes parents or legal guardians to direct their children to respect their parents, cultural identity, language and values, national values, ethnic values, as well as respect for different cultures, ethnicities, and nationalities.³⁶³

Article 5 of the 1981 Declaration delineates the role of religion in the lives of children. Paragraph 2 stipulates that “every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.” The Special Rapporteurs on Freedom of Religion or Belief often reiterates the role of parents, families, and legal guardians as an essential factor in the religious education of children, as opposed to schools, the government, and other elements that are not in conformity with the family’s own convictions.³⁶⁴

The provision of the constitution that provides for freedom of religion includes a stipulation that “no one may

³⁶³ Convention on the Rights of the Child, art. 14(2) (20 Nov. 1989) 1577 U.N.T.S. 3, 28 I.L.M. 1448 (1989), entered into force 2 Sept. 1990 [hereinafter CRC].

³⁶⁴ U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Report of the Special Rapporteur on Freedom of Religion or Belief*, para. 62, U.N. Doc. A/HRC/16/53 (15 Dec. 2010) (delivered at the 16th Session of the Human Rights Council).

make use of religion to . . . interfere with the education system of the state.” This limitation is poignant in the case of the Tibetans, whose traditional monastic education system has been at the very least “interfered with” at the hands of the State. There are three main ways in which the PRC’s government violates this freedom: minimum age requirements for joining monastic institutions; obliterating schools attached to monasteries and coercing mainstream education; the use of Chinese as the medium of instruction in public schools.

Even before officially enacted, the Chinese government imposed a ban on the admission of monks and nuns below the age of 18. “Respecting Tibetan rituals and traditions,” however, the requirement does not apply to reincarnated *trulkus*, who may begin their government-supervised monastic education before reaching age 18.³⁶⁵ An article published in the government-run newspaper the *Tibet Daily* claimed that Tibetan parents are more *willing* to have their children educated in modern education systems as opposed to sending their children to monasteries at a young age.³⁶⁶ What the article failed to mention was that the parents interviewed are only given the choice to send their children to “modern schools” or nothing, and are not presented the option of giving their children a monastic education. The article further stated that many monks interviewed did not express any reservation about the age requirement, and did not believe it would negatively impact the quality and standard of Tibetan Buddhist studies.³⁶⁷ In fact, these monks went so far as to say that the requirement has instead created more serious, efficient, and sophisticated monks.³⁶⁸

In reality, it takes nearly 30 years for an individual to fully learn the vast corpus of texts, commentaries, and treatises

365 TraDul, *Children Joining Monks Are Exception than the Norm in Tibetan Area*, TIBET DAILY, 27 July 2012, available at <http://tb.tibet.cn> (translated internally at TCHRD).

366 *Id.*

367 *Id.*

368 *Id.*

on various aspects of inner science in Tibetan Buddhism.³⁶⁹ To become a full-fledged scholar or have a doctorate in Buddhist philosophy, candidates spend decades engrossed in rigorous and continuous training and apprenticeship, usually beginning at age 6. By the time they reach 18, most children, especially in Tibet, have already chosen a path of education, occupation, or other pursuits, and are either no longer interested or no longer qualified to enter the monasteries. This ban goes directly against the parents' right to enlist their children in monasteries, who, once becoming adults, are free to disrobe should they so choose. Despite these regulations and the intensified efforts to uphold them, there are a number of "unofficial" and unregistered novice minors participating in monastic life, albeit to a lesser degree and under a shadow of fear.

Monastic schools have long been the primary source and backbone of education in Tibet, even for the lay community. It is the monastic schools that provide Tibetan language, literature, and Buddhist philosophy classes to children from poor rural and nomadic areas void of any educational facilities. However, under various guises, the government has taken to destroying these schools, or removing the children attending these schools. While "some of the children were placed in public schools to receive compulsory education, many others were provided with no alternative arrangements."³⁷⁰ Furthermore, authorities frequently pressure parents, especially CPC members or government employees, to withdraw their children from monasteries in their hometowns, private schools attached to monasteries, and Tibetan schools such as the Tibetan Children's Villages in India, by threatening the parents with their jobs or confiscating their identity documents, among other coercive measures.³⁷¹ It is in this way that parents are robbed of their right to provide a moral, cultural, and religious education for their children, and forced to assimilate according to CPC ideology.

369 TCHRD ANNUAL REPORT 2009, *supra* note 111, at 117.

370 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

371 *Id.*

Thus, the Chinese government continues to violate the rights of parents to ensure the religious and moral education of their children. In Tibet today, Tibetan schools are destroyed, culture and history rewritten, and language obliterated. The government is only concerned with its own political ideology and making patriotic Chinese citizens, and has no tolerance for Tibetan values or the best interest of the child.

(h) Registration

The international standards for registration are codified in a number of Commission on Human Rights³⁷² and Human Rights Council resolutions,³⁷³ which urge states “to review, whenever relevant, existing registration practices in order to ensure the right of all persons to manifest their religion or belief, alone or in community with others and in public or in private;” and “to ensure that, in accordance with appropriate national legislation and in conformity with international human rights law, the freedom for all persons and members of groups to establish and maintain religious, charitable or humanitarian institutions is fully respected and protected.”

The Special Rapporteurs on Freedom of Religion or Belief have outlined four main points to take into consideration regarding registration: it should not be compulsory – it should not be a precondition for practicing one’s religion, but only for the acquisition of a legal personality and related benefits; registration procedures should be quick and easy and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed; registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc.; no religious group should be empowered to decide about the registration of another

372 U.N. Comm’n on Human Rights, Human Rights Res. 2005/40, paras. 4(c) & 4(e), U.N. Doc. E/CN.4/RES/2005/40 (19 Apr. 2005) [hereinafter Res. 2005/40].

373 Res. 6/37, paras. 12(e) & 12(h); further reiterated in Res. 19/18, paras. 9(e) & 9(h).

religious group.³⁷⁴ The essence of the laws on registration is that freedom of religion or belief exists regardless of registration status.³⁷⁵ Laws that prohibit unregistered religious organizations from partaking in religious activities stand in direct contradiction with international human rights standards.³⁷⁶ Furthermore, international law condemns the use of criminal law to penalize the apparently peaceful exercise of religious freedom.³⁷⁷

Chinese law and practice undermines each and every point of consideration suggested by the Special Rapporteur.

Registration should not be compulsory: registration is absolutely a precondition for practicing one's religion. Under Article 6 of the Regulation for Religious Affairs, religious organizations must register in accordance with the rules established under the Regulations on the Registration and Management of Social Organizations. Religious groups and venues that are not registered, and therefore not state approved, may not even apply for permission to partake in a myriad of religious activities. They may not hold large-scale religious ceremonies, build religious structures or statutes, or hold religious study classes. *Trulkus* are considered invalid if not picked by and registered with the proper authorities. Monks and nuns must register before they may use the status of religious personnel to engage in religious activity: "religious personnel, after having received confirmation from a religious organization and having reported [this] for the record to the people's government religious affairs department at the county level or above, may engage in professional religious activities."³⁷⁸

374 2005 Report of the Special Rapporteur, *supra* note 298, para. 58.

375 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, Report of the Special Rapporteur on Freedom of Religion or Belief, *Asma Jabangir – Addendum – Mission to Turkmenistan*, para. 25, U.N. Doc. A/HRC/10/8/Add.4 (12 Jan. 2009) (delivered at the 10th Session of the Human Rights Council) [hereinafter 2009 Report Addendum].

376 *Id.* para. 23.

377 Human Rights Committee, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, 83rd Session, UN Doc. CCPR/CO/83/UZB (2005).

378 Implementing Measures, art. 29; Regulation on Religious Affairs, *supra* note 61, art. 27.

For example, in March 2012, 104 out of 200 monks from Karma Monastery in Chamdo (Ch: Qamdo) County, Chamdo Prefecture in the TAR were expelled from the monastery for not having proper identification papers, obtained upon registration.³⁷⁹ The monks were returned to their home villages where they received “re-education.”³⁸⁰ Once expelled, the monks are legally prohibited from joining *any* monastery, not just the one from which they were expelled.³⁸¹

Teachers and other religious personnel are also required to register with the government, and are subject to the conditions outlined in the BAC’s Measures for Confirming the Credentials of Tibetan Buddhist Professional Religious Personnel. Without registering (and for teachers, without receiving a teaching certificate), religious personnel are not only prohibited from performing their religious duties, but also expelled.³⁸²

Registration procedures should be quick and easy and not depend on extensive formal requirements in terms of the number of members or the time a particular religious group has existed:the procedures for registration are by no means simple. Government regulations position bureaucratic obstacles at every stage of registration, forcing organizations and individuals to petition and receive consent from local and sometimes higher level Religious Affairs Bureaus. Besides demonstrative patriotism, the standards and guidelines by which the government grants or denies consent appear to be completely arbitrary. Contrary to international guidelines, a group must have 50 or more members to apply for recognition as an official organization, among other requirements.³⁸³ Monastic

379 *Tibetan Protesters to Surrender*, RADIO FREE ASIA, 13 Mar. 2012, available at <http://www.rfa.org/english/news/tibet/action-03132012194041.html>.

380 *Id.*

381 Implementing Measures, art. 35.

382 Measures for Confirming the Credentials of Tibetan Buddhist Professional Religious Personnel, art. 11 (2010), *ZhonghuaRenminGongheguoDifang Xing FaguiHuibian*.

383 Regulations on the Registration and Management of Social Organizations, art. 10 (1998), *ZhonghuaRenminGongheguoDifang Xing FaguiHuibian*; other requirements: Possession of a physical site, citizens who are religious believers and who regularly take part in religious activity, an organized governing board, a set of operating rules, and a legal source of income.

institution must apply, justify a basis, and receive approval for a fixed number of monks or nuns who may reside at the monastery or nunnery, and a fixed number of teachers who may teach.³⁸⁴ According to the Measures for Confirming the Credentials of Tibetan Buddhist Professional Religious Personnel, the government takes into account the monastery's autonomous capacity, economic sustainability, and the number of local believers when determining such fixed numbers.³⁸⁵

Registration should not depend on reviews of the substantive content of the belief, the structure, the clergy, etc.: registration of religious organizations and personnel is in every way dependent on the consistent review of the substantive content of the belief, structure, clergy, etc. Monasteries, nunneries, monks, nuns, and other religious personnel must all be “patriotic,” to not only be registered, but to maintain their positions. The extensive conditions set out in the innumerable regulations managing Tibetan Buddhist temples and clergy are evidence enough that the government grants, denies, maintains, and retracts registration based on the management, patriotism, and substantive beliefs of the organizations and individuals.

No religious group should be empowered to decide about the registration of another religious group: while atheism is considered the anti-religion, it is still an ideology, consisting of a group of followers who believe, or in this case, adamantly do not believe, in the same thing. As a whole, the freedom of religion is the freedom of thought, conscience, religion, or belief. In the spirit of this definition, atheism is surely a belief that would be protected, and a group of atheists is no different from a group of followers of another religion or ideology. As such, an atheist group, that is, the CPC, is synonymous to any other “religious group,” and should therefore not be empowered to decide about the registration of another religious group, namely,

384 Management Measures, arts. 15-17.

385 Measures for Confirming the Credentials of Tibetan Buddhist Professional Religious Personnel, art. 7.

the Tibetan Buddhists. However, as has been discussed above, the CPC has the sole authority to decide about the registration (among other important religious decisions) of Tibetan Buddhist groups.

In summation, the Chinese government employs arduous registration procedures in order to hinder the ability of Tibetan monks, nuns, and teachers to practice their shared faith. These registration procedures run counter to the mindset of the international community's desire to promote religious freedom. The Chinese government thus employs suppressive tactics by deliberately disobeying the Special Rapporteur's guidelines on freedom of religion or belief.

(i) The Right to Communicate with Individuals and Communities on Religious Matters at the National and International level

Given the Chinese government's unfounded suspicions about the Dalai Lama and the "Dalai Clique," it comes as no surprise that the right to communicate with individuals and communities on religious matters at the national and international level is blatantly violated in Tibet. Yet, this right is so fundamental, it is preserved in the Universal Declaration of Human Rights. Article 13 guarantees everyone "the right to freedom of movement and residence within the borders of each state," as well as "the right to leave any country, including his own, and to return to his country."

The freedom to have communications in matters of religion and belief at the national and international levels necessarily means, "that no mention of religion should be included on passports, on identity card application forms or on any other administrative documents."³⁸⁶

³⁸⁶ U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief – Addendum*, para. 85, U.N. Doc. E/CN.4/1996/95/Add.1 (15 Dec. 1995) (delivered at the 52nd Session of the Commission on Human Rights) [hereinafter *Implementation of the Declaration Addendum*].

Furthermore, the 2012 Human Rights Council resolution 19/8 demands that “no official documents are withheld from the individual on the grounds of religion or belief and that everyone has the right to refrain from disclosing information concerning their religious affiliation in such documents against their will.”³⁸⁷

The Chinese government continues to violate this freedom in the context of Tibetan Buddhism. The final clause of Article 36 of the Constitution of the PRC, which allows for “freedom of religion,” explicitly states that religious bodies and religious affairs are not subject to any foreign domination, which could imply not just the Pope and his influence on underground Christians and others in the PRC, but also the Dalai Lama and other exiled Tibetan religious heads. Since the 2010 Management Measures, Tibetans in Tibet are officially barred from maintaining any contact with such important religious figures abroad.³⁸⁸

The Chinese authorities have been vigilant in their attempts to uphold this particular rule. At the national level, Tibetans face both bureaucratic and physical obstacles, that is, roadblocks and checkpoints, when travelling to religious sites and monastic institutions for religious teachings. Monks and nuns whose religious education previously consisted of a great deal of travel between monasteries are now confined to their home institutions. When not on police lockdown, they must jump through bureaucratic hoops to obtain permission to travel to other religious institutions. Even approval is restricted by time limitations. Police subject monks and nuns to extensive inspection at roadblocks, and turn them away for lack of proper documentation. In July 2012, one monk was reportedly beaten to death on his way home from studying at the DegeDzongsar Institute in Derge(Ch: *Dege*) County, KardzePrefecture.³⁸⁹ The authorities

387 Res. 19/18, para. 9(f).

388 See Management Measures, art. 34.

389 Amanda Peters, *Buddhist Monk in Eastern Tibet Beaten to Death by Chinese Authorities*, THE TIBET POST, 12 Jul. 2012, available at <http://www.thetibetpost.com/en/news/tibet/2699-buddhist-monk-in-eastern-tibet-beaten-to-death-by-chinese-authorities>.

stopped the monk at a police checkpoint, where he was arrested and searched.³⁹⁰ After finding several CDs and books in his bag, the police beat him so severely that he died soon after in Chamdo Hospital.³⁹¹ These oppressive practices have been an enormous hindrance on Tibetans' ability to communicate on religious beliefs. Whether because of actual interference or the fear thereof, Tibetan Buddhists are increasingly unable to travel for religious purposes.

The situation regarding opportunities to communicate internationally is even more dismal. Many Tibetans, particularly prominent religious and cultural figures, scholars, and activists continue to report difficulties obtaining new or renewing existing passports at their local Public Security Bureaus.³⁹² It is common for Tibetans to seek travel to Dharamsala, India for an audience with the Dalai Lama (an important religious rite for Tibetan Buddhists), to join religious communities, or to receive religious education. However, individuals are frequently denied the necessary documentation on religious grounds in direct contradiction to international law.

Because Tibetans continue to encounter substantial difficulties and obstacles in travelling to India, those seeking religious education and freedom often choose to illegally risk the dangerous journey to India via Nepal. On the Tibet-Nepal border, the Chinese "government increased its border forces to prevent Tibetans from crossing the frontier without permission and exerted pressure on the government of Nepal to forcibly return Tibetan refugees.³⁹³ Moreover, Chinese border police have been documented shooting at,³⁹⁴ and unlawfully detaining Tibetans seeking to cross the border from Tibet to Nepal.

390 *Id.*

391 *Id.*

392 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

393 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

394 Often referred to as the "Nangpa La Shooting Incident," the most well-covered example took place at the Nangpa La Pass between Tibet and Nepal in 2006, and was caught on camera. See for example the documentary on <http://defenceforumindia.com/forum/china/6027-documentary-about-nangpa-la-pass-shooting.html>.

These detentions have lasted “as long as several months and sometimes took place without formal charges.”³⁹⁵ As a result, the US Commission on International Religious Freedom reported that the tight border controls curtailed the number of Tibetans crossing into India via Nepal, accounting for 739 Tibetan refugees in 2011, 874 in 2010, down from 2,156 in 2007.³⁹⁶

As difficult as it can be to cross into Nepal, the stakes are even higher for individuals wishing to return to Tibet. The Chinese authorities suspect that anyone who has gone to India has been tainted by the poisonous “splittist” theories of the Dalai Lama, and therefore must be stopped before they impart their newly acquired knowledge to others in Tibet. Tibetans caught returning to their homes without legal travel documents are often detained for three to six months while undergoing patriotic education, sentenced to two years in prison, and stripped of any religious or political title they may have previously attained.³⁹⁷ However as recently as 6 February 2012, several hundred Tibetans returning from teachings in India with *valid* travel documents and not suspected of any criminal offense were detained and remain subject to political education in ad-hoc detention centres for an unknown period of time.³⁹⁸ Others who were not detained “said that they encountered at least 11 checkpoints on the road between the Nepal border and Lhasa, compared with the usual two or three, and that they were searched thoroughly at each one.”³⁹⁹ Travellers returning by air were subject to multiple searches at the airport upon arrival, lasting “from four to six hours.”⁴⁰⁰

It is not only the repressive policies themselves that are tyrannical, but also the manner in which the Chinese

395 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

396 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

397 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 24; Human Rights Watch, *China: End Crackdown on Tibetans Who Visited India*, 16 Feb. 2012, available at: <http://www.hrw.org/news/2012/02/16/china-end-crackdown-tibetans-who-visited-india>.

398 *Id.*; Note that there is no known law banning travel to India for religious teachings.

399 *Id.*

400 *Id.*

government agents choose to carry them out. For example, one man while trying to cross the border recounts, “They hit shoes on our head and said it was symbolic of His Holiness the Dalai Lama giving us blessings. Our religious sentiments were deeply hurt by their callous behaviours.”⁴⁰¹ In June 2012 *Radio Free Asia* reported the following news story:

Chinese border police have severely beaten and handed over to Nepal between late May and early June nine Tibetans – five men and four women – as they were returning home in the northern Tibetan region of Nagchu after a pilgrimage to India. The Chinese were reported to have detained the Tibetans on May 26 as they tried to cross the border checkpoint at Dram (Chinese: *Zhangmu*) and subjected them to severe beating over two days. After seven more days of detention and with their Tibet residential permits and travel documents confiscated, the Tibetans were handed over to the Nepalese immigration authorities, with a Chinese official from the border post taking the group all the way to Kathmandu.⁴⁰²

Although the PRC may argue that these people have been stopped and treated in such a degrading and inhumane way because they are Tibetan and not because they are Tibetan Buddhists (an argument that would still be in contravention to International and Chinese standards), the emphasis on “His Holiness the Dalai Lama giving [us] blessings,” and the “pilgrimage to India,” are indicative of the religious discrimination in withholding documents, stripping clergy of their religious titles, and restricting the international religious communication. Surely no one can argue that the government is protecting the Tibetans’ “right to leave any country, including his own, and to return to his country,” when the borders are controlled in such a manner.

401 TCHRD ANNUAL REPORT 2002, *supra* note 6, at 122.

402 *Tibetans Beaten, Forced into Exile While Returning from Pilgrimage*, *supra* note 222.

In March 2012, China's leader Hu Jintao announced in an internal speech a new Tibet-specific policy called "the Four Stabilities," designed in order to "keep a tight hand on the struggle against separatism."⁴⁰³ The new measures, announced on 31 May 2012 in the official *Renmin Wang* media outlet significantly increase controls on "internet use, text messages, phone ownership, music publishing, and photocopying, as well as intensified government propaganda through new TV channels, village education sessions, film showings, distribution of books, and the provision of satellite television receivers with fixed reception to government channels."⁴⁰⁴ The government is overt in its intentions to limit communication between Tibet and everything outside, claiming its purpose is to curtail the Dalai Clique's "sabotage activity" by firmly striking "against the criminal activity of creating and spreading rumours by using Internet and mobile phone text messaging."⁴⁰⁵ With every possible form of communication closely monitored and penalized, Tibetans are simultaneously subjected to increased propaganda efforts and effectively cut off from the outside world. Between these intensified media restraints and the heavy restrictions on travel that the PRC unambiguously infringes on the Tibetan Buddhists' right to communicate with individuals and communities on religious – and any other – matters at the national and international level.

(j) The Right to Establish and Maintain Charitable and Humanitarian Institutions and to Solicit and Receive Funding

The right to establish and maintain charitable and humanitarian institutions and to solicit and receive funding is enshrined in Article 6 of the 1981 Declaration, paragraph 4(e) of the Commission on Human Rights

403 Human Rights Watch, *China Attempts to Seal Tibet Outside Information*, 13 Jul. 2012, available at <http://www.hrw.org/news/2012/07/13/china-attempts-seal-tibet-outside-information>.

404 *Id.*

405 *Id.* quoting Hao Peng, a deputy party secretary of the TAR on May 30 2012, (*Xizang Ribao*, May 31, 2012).

resolution 2005/40, and paragraph 12(h) of the Human Rights Council resolution 6/38.

In addition to other methods, monasteries traditionally derived their main source of income from voluntary donations. Nonetheless, the CPC considers this practice “parasitic and exploitive,” creating a “drain on the economy and society.” As such, Party policy emphasizes the need for self-sufficiency in monastic institutions.⁴⁰⁶ While religious institutions have in fact become more or less self-sufficient - a requirement for registration, they still do rely on donations from the lay community.⁴⁰⁷ However, the monasteries are neither allowed to encourage nor ask for donations from the public and are not allowed to make the public work for them.⁴⁰⁸ In practice, authorities go so far as to utilize propaganda to discourage the local lay public from giving donations.⁴⁰⁹ In the TAR, foreign contributions are monitored, and religious organizations and venues for religious activities must accept them in accordance with the “Autonomous Region Measures on the Management of Overseas Contributions by NGOs and Individuals for Aid Projects.” If a religious organization or venue for religious activity accepts a foreign contribution without authorization, the RAB at the county level or above confiscates the contribution, and the persons responsible are to be dismissed and replaced.⁴¹⁰ These policy and practical obstacles, in addition to the inconsistent taxation on monasteries,⁴¹¹ constitute a violation of the right to establish and maintain charitable and humanitarian institutions and to solicit and receive funding.

406 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 58.

407 Making offerings and donations to religious institutions is also a spiritual act central to the Tibetan belief system. Tibetans donate to monasteries and nunneries and in turn, monks and nuns offer prayer ceremonies and conduct rituals.

408 “The monastery is not allowed to encourage nor ask for donations from the public and is not allowed to make the public work for them,” from: WAYS TO CONTROL MONASTERIES, TEMPLES AND HERMITAGES, LHASA CONTROL OFFICE (1997).

409 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 58.

410 Implementing Measures, art. 47.

411 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 58.

In April 2012, after a deadly earthquake struck Jyekundo (Ch: *Yushu*) Tibetan Autonomous Prefecture in Qinghai Province, monks and nuns played a crucial role in the humanitarian relief efforts. The local authorities allowed this assistance in the immediate aftermath of the disaster, but in the following weeks, “the authorities restricted the ability of monks outside Yushu to assist in relief efforts, often insisting that monks return to their home monasteries.”⁴¹² The Chinese government reportedly restricted prayer gatherings,⁴¹³ prevented monks and nuns from providing much-needed assistance, and disregarded the victims’ need for spiritual and religious humanitarian relief.

B. Discrimination

Discrimination based on religion is by its very nature an infringement on the right to religious freedom. At the international level it is considered a particularly heinous offense:

Discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.⁴¹⁴

These notions are the backbone of the 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief from which much of international religious tolerance standards are based. Whether inter-religious discrimination, general intolerance, or favouritism of members of the State religion, discrimination on the basis of religion or belief is simply impermissible.

⁴¹² INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

⁴¹³ *Id.*

⁴¹⁴ *Id.* art. 3.

1. Discrimination on the Basis of Religion or Belief

Discrimination on the basis of religion or belief is prohibited in a number of international legal instruments. The most directly applicable instrument is the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. Though not yet adopted as a Convention, it is the most comprehensive international standard for the protection of religious freedom and takes a strict stance against any discrimination on the basis thereof. In Article 2, the Declaration declares that no one shall be subject to discrimination on the grounds of religion or belief by “any State, institution, group of persons, or person.”⁴¹⁵ The second part of the provision protects against formal (*de jure*) and actual (*de facto*) discrimination. *De jure* discrimination is discrimination written into the laws of a State, and must be immediately eradicated by amending or repealing the offending law. In contrast, *de facto* discrimination refers “to the effects of laws, policies or practices . . . [and that] States should immediately adopt measures that are likely to lead to its elimination as soon as possible.”⁴¹⁶

Article 4 of the Declaration requires all States to take effective measures, legal or otherwise, to prohibit, prevent, and eliminate discrimination on the grounds of religion or belief, and fully promote the equal “exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life” of religious minorities.

In addition to Article 18 of the ICCPR, which protects the right to freedom of thought, conscience, and religion, Articles 2, 5, and 26 of the Covenant deal specifically with the discriminatory aspect. Article 2 requires State parties to respect the rights in the covenant “without distinction of any kind, such as . . . religion.” Article 5 (1) declares that no rights enshrined in the Covenant can be used as a justification to

415 *Id.* art. 2(1).

416 2009 Report Addendum, *supra* note 375, para 37.

infringe on the other protected rights of another person or group, unless within the boundaries of the detailed limitations. Finally, Article 26 states that all persons are equal before the law, entitled to equal protection of the law, and States must “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . religion.”⁴¹⁷

Other international instruments protecting against discrimination on the basis of religion include the International Covenant on Economic, Social, and Cultural Rights,⁴¹⁸ to which China is party,⁴¹⁹ and the International Covenant on the Elimination of All Forms of Racial Discrimination.⁴²⁰

Recently, the Human Rights Council echoed previous resolutions of the former Commission on Human Rights in 2012, taking a more progressive stance on eradicating discrimination on the basis of religion.⁴²¹ In the Commission on Human Rights resolution 2005/40, the Commission pressed states to ensure that public officials and civil servants respect different religions and beliefs and do not discriminate on those grounds,⁴²² recognizing “that the exercise of tolerance and non-discrimination by all actors in society is necessary for the full realization” of religious freedom.⁴²³ It urged states to provide all necessary and appropriate education or training to carry out such a level of tolerance and acceptance.⁴²⁴

The Commission further advised States to increase their efforts to “combat hatred, intolerance, and acts of violence,

417 ICCPR, art. 26.

418 ICESCR: Art. 2 (2): “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind such as religion.”

419 Signed 27 October 1997, Ratified 27 March 2001

420 Ratified 29 December 1981, in article 5, States parties undertake to “guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of . . . the right to freedom of thought, conscience and religion.”

421 Res. 19/18, para. j (“Urges States to take all necessary and appropriate action, in conformity with international human rights obligations, to combat hatred, discrimination, intolerance and acts of violence, intimidation and coercion motivated by intolerance based on religion or belief, as well as any advocacy of religious hatred that constitutes incitement to discrimination, hostility and violence, with particular regard to members of religious minorities in all parts of the world.”).

422 Res. 2005/40, para. 4(g).

423 *Id.* para. 9

424 *Id.* para. 4(g).

intimidation and coercion motivated by intolerance based on religion or belief, with particular regard to religious minorities,”⁴²⁵ promote understanding, tolerance, and respect for differing religions and beliefs, specifically through the use of teachers and education.⁴²⁶ With the goal of promoting mutual respect and understanding, the Commission emphasized the importance of dialogue among and within religions or beliefs.⁴²⁷

Throughout their mandates, the Special Rapporteurs on the Freedom of Religion or Belief have advised States to promote ideals of tolerance and understanding between religions and beliefs through education beginning at the earliest stages of childhood and continuing through university curricula and teaching staff.⁴²⁸ States need to ensure that they strike at the roots of discrimination, prohibiting against segregated classes, condemning racism, and positively reinforcing tolerance in schools.⁴²⁹

The following have also been suggested to promote non-discrimination: contributions by the media to educate society on the importance of freedom of religion and belief and direct the public towards greater tolerance; dialogue between and within religious groups; and democracy and development.⁴³⁰

(a) *De Jure* Discrimination

Of the two types of discrimination, *de jure* and *de facto*, *de jure* is by far the easier to eliminate, as it simply requires changing laws, and not cultural attitudes and practices that may have been ingrained in people for centuries. Article 36 of the Constitution of the PRC prohibits discrimination against citizens who believe in, or do not believe in, religion. This provision of the Constitution is quite complicated. It does not protect

425 *Id.* para. 8(a).

426 *Id.* para. 8(b) & (c).

427 *Id.* para. 10.

428 1987 Report of the Special Rapporteur, *supra* note 315, para. 106.

429 2000 Interim Report, *supra* note 324, para. 116.

430 See e.g., *Id.* para. 117; 1987 Report of the Special Rapporteur, *supra* note 315, para. 108.

against discrimination based on belief, as prescribed by international law. It prohibits discrimination against citizens based on whether or not they have a religion, but not based on their *specific* religion, and therefore belief. From a semantic standpoint, the law appears to infer that while a state organ, organization, or individual cannot discriminate against a citizen because he is a theist, they can discriminate against a citizen because of his *specific* beliefs, for example, because he believes in Tibetan Buddhism. In this respect, the law differentiates only between what the CPC considers the “right” citizens – those who are atheist – and everyone else – those who are theist.

Moreover, the Chinese Constitution does not prevent discrimination against a group of citizens based on their religion. The closest the law comes to protecting groups is Article 4, which prohibits discrimination and oppression against any ethnicity, “equalizing” minority ethnicities with the majority. In this way, the government is able to even *de jure* discriminate against the Tibetan *Buddhists*, because they are not discriminating against the ethnic Tibetans for believing in religion, but for believing specifically in Tibetan Buddhism. Thus the numerous oppressive regulations that are directed only towards Tibetan Buddhism (for example the Management Measures for Tibetan Buddhist Monasteries and the Management Measures for the Reincarnation of Living Buddhas in Tibetan Buddhism) though inherently discriminatory based on religion, are legitimate under Chinese law. Therefore, the laws of China themselves are in violation of the international covenants and standards that protect against discrimination based on religion or belief, to which it is liable. As such, these laws should be immediately amended or repealed.

(b) *De Facto* Discrimination

Eradicating *de facto* discrimination based on religion, may be more difficult, but is arguably more important. It is much simpler to rewrite laws than it is to change the effects of laws, government policies, and actual practices. In China, even if the laws were perfectly written to protect discrimination, Chinese policies and the methods by which they are carried out are unquestionably discriminatory towards theists, and in particular towards Tibetan Buddhists. The government and police forces alike have little or no respect for Tibetan Buddhist beliefs, as demonstrated by the incident at the Tibet-Nepal border where the border patrol officers hit the Tibetan Buddhists on their heads with shoes, saying it was symbolic of His Holiness the Dalai Lama giving them blessings. During “patriotic education” and monastic raids, officials torment monks and nuns for their religious beliefs, humiliate them, and disrespect their religious symbols, for example by making monks stomp on portraits of the Dalai Lama.

Monks and nuns are frequently denied basic services, such as accommodations at hotels, “particularly during sensitive times, including the period around the Beijing Olympics, the 60th anniversary of the country on 1 October 2009, and the Shanghai World Expo in 2010.”⁴³¹ Religious personnel specifically are denied the right to freedom of movement. They are more strictly searched at the increased security blocks around Lhasa and other places in Tibet, facing harassment, beatings, and expulsion from the region.⁴³² Most importantly, monks and nuns continue to comprise the majority of political prisoners in China.

431 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

432 *China: Arbitrary Expulsions of Tibetans from Lhasa Escalate*, *supra* note 215.

Tibetan Buddhist children are discriminated against, as the government regularly denies them access to education by closing down local schools because they are attached to monasteries, and by imposing a minimum age requirement on joining monastic institutions. Buddhist students are highly discouraged from attending any religious functions or visiting temples during holidays, at the oftencarriedout threat of expulsion. They are neither allowed to wear religious symbols, nor display images of their spiritual leader the Dalai Lama. Moreover, it is those in search of a Tibetan Buddhist education that are most often denied passports and other necessary documentation to travel outside the country.

Even before the monastic community was attacked, the Tibetan cadres and State employees were barred from participating in any religious activity. In the 1990s, cadres and State employees were prohibited from circumambulating, offering prayers and lighting butter lamps during the holy month of SakaDawa, with expulsion as the punishment.⁴³³ In 2000, Tibetan cadres were forced to withdraw their children from Tibetan exile schools in India as well as monasteries and nunneries, or otherwise lose their jobs.⁴³⁴ Families whose children are caught trying to escape or known to have escaped to India are charged hefty fines.⁴³⁵

To serve in any government capacity means to endure “patriotic education” and publicly denounce the Dalai Lama, the refusal of which amounts to a political case with the possibility of imprisonment.⁴³⁶ Government workers are not allowed to wear traditional Tibetan clothes or carry traditional prayer beads to work.⁴³⁷ Not only are they prohibited from publicly practicing

433 IMPOSING MODERNITY *supra* note 16, at 280.

434 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 52.

435 *Id.*

436 IMPOSING MODERNITY *supra* note 16, at 267.

437 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 52.

Tibetan Buddhism, but also all Party members and officials are to put forth bold propaganda regarding materialism and atheism, in an effort to “cast off the negative influence of religion.”⁴³⁸

Despite being in place since the 1990s, these bans and policies are repeatedly published, reminding Party members, cadres, and government officials of their duty to denounce religion and “ensure stability.” The most recent TAR directive notifies this group of Tibetan Buddhists that “no matter how much credit any official or party member has earned so far or how high one’s position is, the failure to ensure stability would lead to immediate firing.”⁴³⁹ The TAR Committee Discipline and Inspection Department also called for the strengthening of supervision and inspection work, the failure for which led to the demotion or firing of 19 officials in Tibet, both Tibetan and Chinese, in the first few months of 2012.⁴⁴⁰

The myriad of international legal instruments listed in the beginning of this section encourage States to take *all necessary measures* to prevent, prohibit, and eliminate discrimination based on religion, implying that States may have to reach beyond the law-making process to fulfil their international obligations. As such, States are obliged to combat hatred and intolerance, end violence, and cease coercive and intimidation methods motivated by intolerance at a practical level, and use methods suggested by the Special Rapporteurs on Freedom of Religion or Belief and Human Rights

438 *Id.* at 53.

439 NirmalaCarvalho, *Beijing Tells Party Members and Officials They Cannot Take Part in Religious Activities*, ASIANEWS.IT, 25 May 2012, available at: <http://www.asianews.it/news-en/Beijing-tells-party-members-and-officials-they-cannot-take-part-in-religious-activities-24857.html>.

440 *Id.*; see e.g., Tibetan Centre for Human Rights and Democracy, *China Demotes 6 Tibetan Officials in TAR*, 17 May 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&id=225&Itemid=162 (“On 17 May 2012, the Chinese government-owned *xizangradio.com* reported that six Tibetans were fired from their high-ranking posts in ToelungDechen County in Lhasa Prefecture, TAR. Three among the six fired officials were DawaTsering, the Vice-Party Secretary of TolungDechen County; Passang, the Vice-Head of the County Religious Affairs Bureau and NyimaWangdue, the head of the County Religious Affairs Bureau.”).

Resolutions. But the Chinese government refuses to employ any of these suggested methods. Instead, officials and police continue to enjoy impunity for their overtly disrespectful and offensive behaviour towards the religious. Instead of encouraging a curriculum aimed at tolerance for religions in schools, the authorities ban religious Buddhist scriptures, defame the Dalai Lama, criticize Tibetan Buddhism as superstitious and backwards, and blame it for the lack of economic progress. The government uses the media to spread propaganda about the dangers of religion and Tibetan Buddhism in particular, when it should be using the media to promote harmony between religions and equality amongst all people. Lastly, despite the many opportunities to engage in a dialogue with the Dalai Lama, the Chinese government not only will not meet with him themselves, but they condemn other governments for doing so.⁴⁴¹ By using the suggested methods in the exact opposite way as advised, the CPC is demonstrating to the international community that it has no interest in curtailing, let alone eliminating discrimination based on religion; especially not Tibetan Buddhism.

(2) State Religion

According to international law, State religion is not in itself incompatible with human rights, but “the State should not, however, take control of religion by defining its content, concepts or limitations, apart from those which are strictly necessary,” and outlined in the relevant legal instruments.⁴⁴² This point was accentuated by Abdelfattah Amor, the second Special Rapporteur on Freedom of Religion or Belief in his report to the then Commission on Human Rights, in which he emphasized that, “it is not the business of the State or any

⁴⁴¹ See for e.g.: *David Cameron's Dalai Lama meeting sparks Chinese protest*, BBC, 16 May 2012, available at <http://www.bbc.co.uk/news/uk-politics-18084223>, and Liu Chang, *Why Western leaders should refrain from meeting with Dalai Lama*, XINHUA, 16 May 2012, available at http://news.xinhua-net.com/english/indepth/2012-05/16/c_131591592.htm.

⁴⁴² *Implementation of the Declaration Addendum*, *supra* note 386, para. 81.

other group or community to act as the guardian of people's consciences and encourage, impose or censure any religious belief or conviction."⁴⁴³

Additionally, discrimination based on religion or belief is closely linked to issues of State religion. Specifically, "the fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the [ICCPR], nor in any discrimination against adherents to other religions or non-believers."⁴⁴⁴ In General Comment 22, the Human Rights Committee elaborated on the types of discriminatory measures to be avoided, such as those that restrict eligibility for government service to followers of the state religion, give economic privileges to them, or impose "special restrictions on the practice of other faiths."⁴⁴⁵ The Committee continued to state that even a set of beliefs, if "treated as official ideology in constitutions, statutes, proclamations of ruling parties, etc., or in actual practice,"⁴⁴⁶ cannot be used to infringe upon any of the human rights enumerated in the ICCPR, specifically Article 18 (referring to the freedom of religion).

Firstly, in China, the government takes control of religion by defining its content, concepts, and limitations, by only protecting "normal" religious activity, a concept defined only in the minds of the ruling party. The State is constantly in the business of acting as the guardian of people's consciences and encouraging, imposing and censoring religious beliefs and convictions through its oppressive laws, policies, and practices. Such control over religion is impermissible.

Secondly, although neither the Constitution of the PRC nor the Constitution of the CPC overtly declares it, China is

⁴⁴³ 1997 Report of the Special Rapporteur, *supra* note 300, para. 99.

⁴⁴⁴ HRCGC No. 22, para. 9.

⁴⁴⁵ *Id.*

⁴⁴⁶ *Id.* para. 10.

officially atheist.⁴⁴⁷ The Communist Party of China, the ruling and sole party of the country, proclaims itself to be atheist in accordance with its Marxist roots,⁴⁴⁸ and Party members are more or less required to be atheist.⁴⁴⁹ It is debatable whether an Atheist State, atheism being the anti-religion, can constitute a country with a State religion. However, Marxism-Leninism and Mao Zedong ideology is enshrined in both the constitutions of the CPC⁴⁵⁰ and PRC,⁴⁵¹ proclaimed as the official ideology by the ruling party, the CPC, and in fact practiced as the controlling ideology. Thus, for all intents and purposes, Marxism-Leninism-Maoist Ideology is the State Ideology, or State “Religion.” After all, it is the freedom to religion *or belief*. This State “Religion” cannot infringe on the internationally protected rights of individuals, nor result in discrimination of non-believers. Nevertheless, the CPC consistently restricts Party eligibility to atheists who believe in the Party ideology, gives economic privileges to “believers,” and imposes special restrictions on the practice of other faiths.

In 1999, the CPC launched a three-year campaign called the “Three Stresses,” aimed at encouraging cadres and other members of society to adopt atheism.⁴⁵² The campaign was adapted in Tibetan areas “to focus on the ‘problems’ of religious belief amongst party and government members, particularly their faith in the Dalai Lama.”⁴⁵³ While Party member requirement policy has loosened over the years, allowing some Party members to secretly practice religion,

447 Some parties mistakenly believe that this requirement is in the constitution (see for example: Zhang Yi, *CPC Members ‘Must be Atheist,’* GLOBAL TIMES, 20 December 2011, available at <http://www.globaltimes.cn/NEWS/tabid/99/ID/689115/CPC-members-must-be-atheist.aspx>), but in fact, the requirement is to accept the Party’s program and Constitution. The Party happens to believe in Marxism, which itself is an atheistic ideology, but if the Party should decide to believe in another ideology or religion, its members would be required to follow suit.

448 *Render unto Caesar: The Party’s Conservative Wing Finds Religion – and Dislikes it*, 11 Feb. 2012, THE ECONOMIST, available at <http://www.economist.com/node/21547287>.

449 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 55.

450 Xinhua (1982), preamble.

451 *Id.*

452 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 55; the three stresses are: the stress of study, theory and sound healthy trends.

453 *Id.*

atheism continues to be prominent in the political training of government cadres.⁴⁵⁴ Moreover, the UFWD recently published an essay in the party journal, in which Zhu Weiqun, a deputy minister from the Department, warned against the rise of religious believers in the Party, arguing that religion might take over the party, “losing the guiding position of Marxism, and dividing the party.”⁴⁵⁵ Still, even in the TAR and the other Tibetan areas, “ethnic Han CPC members hold almost all top government, police, and military positions,”⁴⁵⁶ as opposed to Tibetan Buddhists.

The CPC imposes its beliefs on both non-party members and followers of other religions. The “patriotic education” campaign is an epistemological example of this. The government makes sure to enforce its Marxist ideology through widespread propaganda and tight control over media. In schools, the CPC controls the curricula, texts, and other course materials, even in places that according to the Constitution, are supposed to be autonomous, such as the TAR and the other Tibetan areas. Authorities in Tibetan areas also require professors and students at institutions of higher education to attend political education sessions that emphasize the majority’s ideology.⁴⁵⁷ Refusal to take part in political education results in diminished prospects for promotion, while overt criticism results in public reprisal.⁴⁵⁸ In these ways, among others, the PRC is in violation of its responsibilities to protect religious freedom and eliminate discrimination based on religion, and should be held accountable.

C. Vulnerable Groups

1. Persons Deprived of Their Liberties

People deprived of liberty, that is, the imprisoned or otherwise detained, are already subject to many legitimate constraints

⁴⁵⁴ *Id.*

⁴⁵⁵ THE ECONOMIST, *supra* note 448 (quoting the December 2011 Communist Party of China’s Journal, *Qiushi* (Seeking Truth)).

⁴⁵⁶ U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

⁴⁵⁷ *Id.*

⁴⁵⁸ *Id.*

that they must be allowed to continue to enjoy their rights to manifest their religion or belief “to the fullest extent compatible with the specific nature of the constraint.”⁴⁵⁹ Rules 41 and 42 of the Standard Minimum Rules for the Treatment of Prisoners provide for both the freedom to practice religion by attending religious services and possessing religious books and the appointment of a qualified representative of a religion in prison.⁴⁶⁰ International law recommends that States train personnel of detention facilities to respect the religious rights of inmates.⁴⁶¹ Moreover anyone whose rights and freedoms, including the freedom of religion or belief, have been violated should have the right to an effective complaints mechanism and subsequent remedies.⁴⁶²

In the PRC, there is no right to freedom of religion or belief in prison. The absence of any such protection in the Prison Law of the People’s Republic of China,⁴⁶³ is an indication that at the legislative and policy level, the right to freedom of religion is not important enough to maintain when individuals are deprived of their liberty. At the practical level, those deprived of liberty are prohibited from manifesting religion. They may not celebrate religious holidays or conduct prayers. There is certainly no right to have a qualified Tibetan Buddhist representative, nor are monks and nuns allowed to continue their studies or possess religious texts while in prison. Tibetan Buddhists deprived of their political liberties are thus simultaneously further deprived of their religious freedom.

2. Protecting Minorities

Minorities are especially vulnerable to violations of human rights, by virtue of being a subgroup of any given State. As a result, the international community places particular

459 HRCGC No. 22, para. 8.

460 Standard Minimum Rules for the Treatment of Prisoners, E.S.C. Res. 663C, Supp. No. 1, U.N. ESCOR, 24th Sess., U.N. Doc. E/3048 (Aug. 30, 1955) amended by E.S.C. Res. 2076, Supp. No. 1, at 35, U.N. ESCOR, 62d Sess., U.N. Doc. E/5988 (May 13, 1977).

461 *Elimination of All Forms of Religious Intolerance*, *supra* note 267, para. 86.

462 *Id.* para 87.

463 See Prison Law of the People’s Republic of China (1994), *ZhonghuaRenminGongheguoFaluHuibian*.

importance on their protection. In States where a majority of the population shares the same religion, ethnicity, and language, the ICCPR commands that the minorities “shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”⁴⁶⁴

As one Special Rapporteur on the Freedom of Religion or Belief noted, any violation of the right to freedom of religion *and* the right to belong to an ethnic group or to a minority is more than two separate infringements: “the combination of the two offences creates a new, more serious offence – an aggravated discrimination – which, while of varying intensity, is by its very nature a separate concept.”⁴⁶⁵ In this respect, the Tibetan people, discriminated against not only for their ethnic identity but also for their religious beliefs are victims of aggravated discrimination, which cannot be tolerated.

Tibetan Buddhists are the quintessential minority group, as they are both ethnic and religious minorities in the PRC. Moreover, Tibetan identity is greatly based on their religion, culture, and language, all of which are oppressed in Tibet. The resulting severe persecution to which they are subject surely amounts to the aggravated discrimination described above, for their freedom of religion and the right to belong to an ethnic group are consistently violated.

In direct contravention to Article 4 of ICERD, which “condemn[s] all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin,”⁴⁶⁶ the CPC is responsible for propagating the Doctrine of Superiority

464 ICCPR, art. 27; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities G.A. Res. 47/135, 47 UN GAOR, 47th Sess., Supp. (No. 49) at 210, UN Doc. A/47/49 (1993), art. 1.

Note: in Article 30 of the Convention on the Rights of the Child, the same rights are granted to children belonging to such a minority.

465 Amor, “Racial Discrimination and Religious Discrimination: Identification and Measures” A/CONF.189/PC.1/7 (13 April 2000), pp. 4-5, para. 6.

466 International Convention on the Elimination of All Forms of Racial Discrimination, 7 Mar. 1966, 660 U.N.T.S. 195 (1966), *entered into force* 4 Jan. 1969. China ratified the treaty on 29 December 1981.

throughout China, and especially amongst Tibetans. In schools, the Chinese government promulgates politicized education, teaching a Marxist analysis of history, which places cultures as being at different stages of development. Under this theory, the Chinese are considered to be superior to the Tibetan people who are portrayed as backward and ignorant barbarians, attached to foolish superstitious ways and in desperate need of transformation through integration.⁴⁶⁷ In an attempt to “unify the Chinese people,” the government is responsible for a policy of encouraging an influx of Chinese into traditionally Tibetan-inhabited areas, enticing them with the promise of better living conditions, increased work opportunities, and higher wages.⁴⁶⁸ The flooding of Chinese migrants into Tibetan cities is part of a systematic practice of assimilating Tibetans at the cost of their traditional religion, culture, and language.

In many ways, the threat to the Tibetan language is due to this forced assimilation. The use of Chinese has become increasingly necessary for Tibetan students to find work after their formal education is over. This is especially true in urban areas where Chinese migrants now make up the majority of the economy, and have no reason to learn Tibetan.⁴⁶⁹ Daily life activities are conducted in Chinese. Signs are written predominately in Chinese, sometimes accompanied by a much smaller (and hard to see) Tibetan translation below.⁴⁷⁰ Bus timetables, transportation tickets, warning signs, monastic reports, doctors’ reports, medicine names, and other basic necessities are written in Chinese.⁴⁷¹ Addresses on a letter written in Tibetan won’t reach their intended destination, even within the TAR.⁴⁷² Consequently, Tibetans, especially students and government workers, mix Chinese words into Tibetan, even when there is a Tibetan equivalent for

467 TCHRD ANNUAL REPORT 2002, *supra* note 6, at 57.

468 IMPOSING MODERNITY *supra* note 16, at 251.

469 *Id.*

470 Woeser, *Impoverished Matö County*, HIGH PEAKS PURE EARTH, 12 October 2011, *available at* <http://www.highpeakspureearth.com/2011/10/impoverished-mato-county-by-woeser.html>.

471 IMPOSING MODERNITY *supra* note 16, at 252.

472 Published by SerthangThekchenChoeling Monastery in Golok, Northeastern Tibet in 1996.

the Chinese word, contributing to the gradual death of the Tibetan language.⁴⁷³

Tibetan language is a cornerstone of Tibetan identity. The Chinese government once promised to uphold the study and use of the Tibetan language,⁴⁷⁴ even guaranteeing that all classes, at least in the TAR, would be taught in Tibetan.⁴⁷⁵ In reality however, the PRC's policies have done anything but steadily contributed to the undermining of Tibetan language. In contradiction to its international obligations, China has completely failed to "take appropriate measures" ensuring adequate opportunity for the minority Tibetans to learn and preserve their mother tongue.⁴⁷⁶

While some schools teach Tibetan during the first years of education, others have *no* curriculum in the Tibetan language.⁴⁷⁷ Even when the Tibetan language is used, the curriculum is translated from Chinese, importing the Chinese government approved notions of Tibetan history and culture.⁴⁷⁸ The further along one progresses in receiving education, the more classes he or she will be taught in Chinese. Similarly, the further east in Tibet, the more likely classes are taught in Chinese, even in elementary schools.⁴⁷⁹

Chinese was introduced as the medium of instruction in preschool even in rural areas, with Tibetan merely offered as a separate language subject.⁴⁸⁰ In October 2011, Chinese became the main medium of instruction in primary schools too, offering Tibetan only as a language class.⁴⁸¹ Subsequently, over 1,000 primary school teachers have been fired since

473 IMPOSING MODERNITY *supra* note 16, at 249 n.2.

474 *Id.* at 217.

475 *Id.* at 218.

476 *Id.* at 219.

477 UNITED STATES DEPARTMENT OF STATE, 2010 HUMAN RIGHTS REPORT: CHINA (INCLUDES TIBET, HONG KONG, AND MACAU)93 (2011), <http://www.state.gov/documents/organization/160451.pdf>.

478 *Id.*

479 *Id.*

480 See Education Law of the People's Republic of China, art. 10 (1995) ZhonghuaRenminGongheguoFaguiHuibian (stating in part: "The state shall help all minority nationality regions develop educational undertakings in light of the characteristics and requirements of different minority nationalities.").

481 IMPOSING MODERNITY *supra* note 16, at 250.

2010 simply because they were not fluent in Chinese.⁴⁸² All education beyond the primary level is conducted entirely in Chinese. Therefore, Tibetans pursuing higher education must pass an entrance exam, given in Chinese, or return home to work.⁴⁸³

Because the Chinese government views religious ideology as disorder in society and power behind the Dalai Lama's "splittist" activities, the CPC has systematically created laws, policies, and practices that "eliminate harmful old ideology, old ethics, old traditions, and old customs," in an effort to "establish a Tibetan socialist spiritual civilization."⁴⁸⁴ These acts amount to aggravated discrimination, against the Tibetans as an ethnic minority and religious minority. In addition to discriminating against Tibetan Buddhists, the PRC creates and encourages an environment that, in violation of its international responsibilities, promotes the Doctrine of Superiority. Therefore, not only is the government denying Tibetans the internationally and constitutionally protected right "in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language," but it is explicitly and actively working to eliminate every aspect of Tibetan identity.

(D) Intersection of Freedom of Religion or Belief with Other Human Rights

Human rights are recognized and defined at an individual level, each intrinsically significant and valuable. At the same time, human rights are fundamentally interdependent. The existence of one right does not preclude the importance of another. To the contrary, the promotion of one often relies substantially on the subsistence of another. The Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993 proclaimed that,

⁴⁸² *Chinese medium teaching begun for preschool rural Tibetans*, TIBETAN REVIEW, 17 November 2011, available at <http://www.tibetanreview.net/news.php?id=9883>.

⁴⁸³ IMPOSING MODERNITY *supra* note 16, at 219.

⁴⁸⁴ WHEN THE SKY FELL TO EARTH, *supra* note 3, at 54.

“all human rights are universal, indivisible, and interdependent and interrelated.”⁴⁸⁵

The right to freedom of religion or belief needs other human rights to be fully exercised. It is profoundly interconnected with the freedom of expression, freedom of assembly, the right to life, the right to liberty, the right to information, the right to be free from discrimination, and the right to be free from torture, cruel, inhuman, and other degrading forms of treatment or punishment. Many of these have been discussed in the context of Tibet above. Below is an examination of how the Chinese government, in violating Tibetan Buddhists’ freedom of religion, also violates the freedom of expression, and the rights to life and to liberty.

1. Freedom of Expression

The freedom of religion or belief and freedom of expression are interdependent, interrelated, and mutually reinforcing. The right to freedom of expression is an essential element in the right to freedom of religion or belief.⁴⁸⁶ In the UDHR, the right to freedom of opinion is combined with the right to express opinions, without interference.⁴⁸⁷ This notion is repeated in Article 19 of the ICCPR, which protects the universal right to hold opinions without interference, and the freedom of expression, including the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” While the succeeding article prohibits “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence,”⁴⁸⁸ the Commission on Human Rights resolution 2005/40 warns against misusing this provision and subsequently “equating any religion with terrorism.”⁴⁸⁹

485 World Conference on Human Rights, Vienna Declaration and Programme of Action, 12 July 1993, UN Doc. A/CONF.157/23, para 5.

486 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief and the Special Rapporteur on Contemporary Forms of Racism on the Incitement to Racial and Religious Hatred and the Promotion of Tolerance, para. 41, U.N. Doc A/HRC/2/3 (20 Sept. 2006) (delivered at the 2nd Session of the Human Rights Council).

487 UDHR, art. 19.

488 ICCPR, art. 20.

489 Res. 2005/40, para. 11.

The rights to “freedom of speech, of the press, of assembly, of association, of procession, and of demonstration,” are enshrined in Article 35 of the Chinese Constitution. Nonetheless, the Chinese government frowns upon the open expression of opinions, preferring instead to carefully control the media and school systems, and punishing dissidents whose expressed opinions do not align with those of the CPC. For Buddhists in Tibet, this oppressive policy is practiced to a heightened degree. The government requires permits to hold large-scale religious gatherings, which are often denied, controls all religious publications and teachings, and immediately deploys security forces at the first sign of protest. The reality remains that “Tibetans cannot protest. They cannot peacefully gather – if you do, you might get shot. You can’t have hunger strikes; you can’t have rallies.”⁴⁹⁰ This point was most clearly demonstrated during the 2008 uprisings in which Tibetans across the plateau called for freedom of religion, freedom for Tibet, the return of the Dalai Lama, and respect for human rights. In addition to arresting and imprisoning thousands of protestors, the government levied intensified restrictions on expression and enhanced security measures in response.

Despite the Human Rights Commission’s cautions against equating religion with terrorism, the PRC openly accuses the Dalai Lama, Tibetan Buddhism’s highest spiritual leader, of being a terrorist and inciting terrorist activities. The Chinese government called Buddhist institutions, “counter-revolutionary bases,”⁴⁹¹ which led to the various managing measures and accompanying propaganda efforts that so restrict Tibetan Buddhist practice. The laws and policies that violate the right to display religious symbols directly infringe on the freedom of expression. The “patriotic education” campaign is specifically designed to remove dissidents from government and monastic positions, as are the *Geshe* system,

490 Peter Goodspeed, *supra* note 99; Lobsang Sangay, Prime Minister of the CTA in response to recent wave of self-immolations.

491 WHEN THE SKY FELL TO EARTH, *supra* note 3, at 10; THE PROPAGANDA COMMITTEE OF THE TAR COMMUNIST PARTY, A GOLDEN BRIDGE LEADING INTO A NEW ERA (Tibetan: Dusrabsgsar par skyod-pa’igserzam), (Tibetan People’s Publishing House, 1 October 1994)

prefecture level “measures for dealing strictly with *rebellious* monasteries and individual monks and nuns,” and other restrictive regulations. Moreover, the “Six Ones” is a program implemented in the monastic institutions to keep watch over the monks and nuns, their families and the lay community to more easily identify “trouble-makers.” In all of these cases, any calls for religious freedom or the return of the Dalai Lama result in disciplinary measures, expulsion, and even arrest.

Under the guise of promoting harmony and protecting against discrimination, the Chinese regulatory framework sets out a number of conditions for the publication of religious works.⁴⁹² For example, publications that “broadcasts or glamourizes ethnic ‘splittism,’” religious extremism or terrorism,” or “violates laws and regulations as they are decreed” are prohibited.⁴⁹³ These two provisions are broadly applied to prevent the publication and distribution of both traditional and new Tibetan Buddhist works. Even the photocopying of materials is stringently controlled. In the TAR, an administrative measure launched in May 2010 requires printing stores to obtain detailed personal information from the person seeking to print or copy documents in addition to a description of the content and the number of copies to be printed.⁴⁹⁴ The TAR government can more easily monitor who is printing, copying, and intending to distribute banned or politically sensitive materials. At a practical level in Lhasa and other areas heavily inhabited by the Chinese migrants, many religious scriptures and texts written in Tibetan are not printed or copied, because the printing shop owners cannot read Tibetan, and therefore “cannot legally print a document whose contents they cannot describe.”⁴⁹⁵

Lastly, it is indisputable that the Chinese government’s strict monitoring and restrictions on communication are a further violation of the right to freedom of expression. Controlling

492 FREE TIBET’S SUBMISSION, *supra* note 78, at 16.

493 *Id.*

494 *Id.* at 17.

495 *Id.*

the Internet, the media, and even mobile phones, the CPC greatly restrains how and what opinions people can freely express, both in public and in *private*. The stated goal of course is to monitor the information that comes into Tibet as well as the information that goes out. Consequently, people cannot communicate the injustices occurring in Tibet: blogging, posting photos, contacting relatives abroad about “politically sensitive” issues like self-immolations, protests, or general distress over the lack of religious freedom are met with immediate penalties, including detention and arrest.

Although guaranteed by law, the reality is that there is no freedom of expression in Tibet. The relationship between the freedom of expression and the freedom of religion is so profound that the infringement of one results directly in a violation of the other. The laws, policies, and practices that prohibit Tibetans from gathering for religious ceremonies, copying, distributing, or even reading traditional religious scripture, picking their own religious teachers, and from airing their grievances either in public or in private, unequivocally breach the rights to the freedom of expression, and subsequently the freedom of religion.⁴⁹⁶

2. Right to Life, Liberty, and the Security of Persons

Article 3 of the UDHR enshrines the right of every person to life, liberty, and the security of persons. These rights are perhaps the most important in international law, and are therefore the most discussed. As such, this report does not attempt to engage in a lengthy discussion about the rights to life and liberty,⁴⁹⁷ but rather give a brief explanation of the rights and their correlation with the freedom of religion. This relationship is expressed in the Human Rights Council Resolution 19/8 of 2012, in which the Council urges States to “ensure that no one within their jurisdiction is deprived

⁴⁹⁶ For more about the extent to which the PRC suppresses the right to expression in the Tibetan context, see TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, *DISSENTING VOICES: TARGETTING THE INTELLECTUALS, WRITERS, AND CULTURAL FIGURES* (2010).

⁴⁹⁷ TCHRD does have many other publications that do discuss this. See tchrd.org for more information.

of the right to life, liberty or security of person because of religion or belief, and that no one is subjected to torture or other cruel, inhuman or degrading treatment or punishment, or arbitrary arrest or detention on that account, and to bring to justice all perpetrators of violations of these rights.”⁴⁹⁸

The ICCPR is explicitly focused on these rights. In Article 6, the Covenant grants every human being “the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” The Covenant does allow for the death penalty, but only for the most serious crimes and not contrary to other provisions of the Covenant or other international legal instruments.⁴⁹⁹ The penalty of death can only be carried out pursuant to a final judgment rendered by a competent court.⁵⁰⁰ The right to liberty is preserved in Article 9 of the Covenant, guaranteeing everyone the right to liberty and security of person, prohibiting arbitrary arrest and detention, and firmly limiting deprivation of liberty to the grounds and procedures established by law.⁵⁰¹

Theoretically, these rights are protected. The Constitution of the Peoples’ Republic of China states in Article 37:

The freedom of person of citizens of the People’s Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people’s procuratorate or by decision of a people’s court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens’ freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited.

In actuality however, this principle is hardly safeguarded. The Criminal Procedure Law (CPL) provides little protection for these basic human rights. Article 3 of the CPL charges public security organs with investigation, detention, power

⁴⁹⁸ Res. 19/18, para. 9(b); similar language is taken from earlier resolutions: Res. 2005/40, para. 4(f); Res. 6/37, para. 9(i).

⁴⁹⁹ ICCPR art. 6(2).

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.* art. 9(1).

of arrest, and preliminary inquiry in criminal cases, while the People's Procuratorates are responsible for approving arrests, conducting investigations, and initiating public prosecution of the cases directly accepted by the procuratorial organs.⁵⁰² Article 59 elaborates that all arrests of criminal suspects or defendants are subject to approval by a People's Procuratorate or a People's Court. The use of torture to extract confessions is strictly prohibited in Articles 18 and 43.

However, even these few provisions are frequently disregarded or otherwise circumvented.⁵⁰³ The Chinese government and especially the security forces are routinely involved in illegal sweeps and raids on monastic institutions, arbitrary arrests, arbitrary deprivations of liberty, torture to gain information and confessions, enforced disappearances, and other forms of extrajudicial punishments.⁵⁰⁴ Moreover there is a systematic lack of due legal process in judicial proceedings.⁵⁰⁵ This is especially true in the context of Tibetans exercising their supposed freedom of religion under the charge of "separatism" or "leaking state secrets".

In the aftermath of the 2008 protests, thousands were detained. Of the 824 Tibetans that make up the political prisoners recorded in the Congressional Executive Commission on China's Political Prisoner Database, approximately 58 percent are Tibetan Buddhist religious professionals such as monks, nuns, and *trulkus* as of September 2010.⁵⁰⁶ As of December 2012, the political prisoner database maintained by TCHRD showed that about 70 per cent of the prisoners was either monks or nuns.⁵⁰⁷ These are only the recorded cases, and the actual number and conditions of religious personnel (or lay people protesting for religious freedom) in judicial or extrajudicial detention facilities is unknown, mostly because

502 2012 CPL, art. 3.

503 MIKE McCONVILLE, ET. AL., CRIMINAL JUSTICE IN CHINA: AN EMPIRICAL INQUIRY, *Police Powers in Relation to Detention and Arrest* (Edward Elgar Publishing Limited 2011).

504 "I SAW IT WITH MY OWN EYES," *supra* note 225; see TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, INTO THIN AIR (2012).

505 *Id.*

506 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

507 Human Rights Situation in Tibet, Annual Report 2012, TCHRD, available at www.tchrd.org

the number of prisoners held in detention nationwide is classified as “secret” state level secrets.⁵⁰⁸

The practice of arbitrarily detaining religious personnel and withholding information is common in Tibet, and amounts to an enforced disappearance.⁵⁰⁹ In January 2012, four monks including a *trulku* were arrested at an Internet café following a protest in Drango (Ch: *Luhuo*) county in Kardze TAP.⁵¹⁰ While there were rumours that one of them died at the hands of the Chinese security officers,⁵¹¹ the authorities have not issued any information on the monks and their whereabouts remain unknown.⁵¹² Similarly, after a monk’s self immolation in early 2012, security forces detained about 300 monks from Kirti monastery, releasing no information as to their whereabouts or well-being.⁵¹³

The Public Security Bureau routinely subject secretly detained prisoners to the “Re-Education Through Labor” system or other forms of detention not subjected to judicial review.⁵¹⁴ The U.S. Commission on the International Freedom of Religion reported that in 2011, an unknown number of Tibetans were detained, arrested, and/or sentenced as a result of their political or religious activity. Many prisoners were

508 Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Judicial Administration Work, art. 2(C)(2) (1995), National Administration for the Protection of State Secrets, ed., *Selected Regulations on State Secrets and the Specific Scope of Each Level of Secrets* (Revised Edition, Classified as “Highly Secret”), 56-58, [hereinafter State Secrets in Jud. Admin. Work].

509 United Nations Commission on Human Rights, Declaration on the Protection of All Persons from Enforced Disappearance, art. 1 (2), UN Doc. E/CN.4/RES/1992/29 (28 February 1992), and United Nations General Assembly, International Convention for the Protection of All Persons from Enforced Disappearance, arts. 1 & 3, UN Doc. A/61/488 (20 December 2006).

510 Tibetan Centre for Human Rights and Democracy, *Four Tibetan Monks Remain Disappeared After Drango Crackdown*, 1 May 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&id=216:four-tibetan-monks-remain-disappeared-after-drango-crackdown&catid=70:2012-news&Itemid=162.

511 Tibetan Centre for Human Rights and Democracy, *Monk “Disappears” From Hospital After Police Beatings*, 19 September 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&id=291:monk-qdisappearsq-from-hospital-after-police-beatings&catid=70:2012-news&Itemid=162.

512 Four monks were sentenced after about ten months’ of enforced disappearance. See Tibetan Centre for Human Rights and Democracy, *Four Tibetan Monks Remain Disappeared After Drango Crackdown*, 1 May 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&id=216:four-tibetan-monks-remain-disappeared-after-drango-crackdown&catid=70:2012-news&Itemid=162.

513 Sui-Lee Wee, *supra* note 234.

514 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

held in extrajudicial RTL prisons and never appeared in public court.”⁵¹⁵ Under Re-Education Through Labour (Ch: *Laojiao*), security officers send people accused of “minor crimes” to forced labour camps for up to four years without ever standing trial. Those lucky enough to be in a known prison are subject to vigilant monitoring. In March 2012, the prisons and detention centres in the TAR received an internal notice prohibiting all prisoners from meeting with their families and friends.⁵¹⁶ Even lawyers and legal advisers are required to obtain permission from the chief warden to see their clients, and are given a limited amount of time to do so.⁵¹⁷

In direct contravention of the PRC’s responsibilities under the Convention Against Torture, numerous sources report unbearable conditions in treatment. Detainees, especially monks and nuns, are subject to beatings, and deprivation of food, water, and sleep for long periods,⁵¹⁸ in addition to shackling, torture, and other abusive treatment.⁵¹⁹ The U.S. Commission reported that Tibetans returning from Nepal in 2011 “suffered torture while incarcerated or otherwise in official custody, including electric shocks, exposure to cold, and severe beatings, as well as being forced to perform heavy physical labour.”⁵²⁰ This is all in addition to intense political re-education sessions that result in punishments for “insufficient” loyalty to the state.⁵²¹ Additionally, because of the State Secrets Law, the authorities have no obligation to disclose the number of “new prisoner executions and unusual deaths in prisons, juvenile detention facilities, and re-education through labour facilities.”⁵²² In some cases, security forces reportedly secretly dispose of the bodies of those who died in

515 *Id.*

516 Central Tibetan Administration, *Prisoner Meeting Barred in Tibetan Autonomous Region*, 3 May 2012, available at <http://tibet.net/2012/05/03/prisoner-meeting-barred-in-tibet-autonomous-region/>.

517 *Id.*

518 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

519 “I SAW IT WITH MY OWN EYES,” *supra* note 225, at 10; United Nations Committee against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Concluding Observations, China, UN Doc. CAT/C/CHN/CO/4, 12 December 2008.

520 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

521 *Id.*

522 State Secrets in Jud. Admin. Work, *supra* note 508, art. 2(B)(1) (Highly Secret).

detention or during interrogation, instead of being returned to their families.⁵²³

Public officials endorse or at least consent to this behaviour.⁵²⁴ In the name of public security, they order the search, detention, arrest, and even mistreatment of those who appear to be a threat when exercising their religious rights or calling for religious freedom. The concepts of right to life, liberty, and the security of persons are foreign for Tibetan Buddhists. The systematic practice of ignoring these rights is only one aspect in a meticulous long-term policy of eradicating Tibetan Buddhism in its traditional form.

E. Cross-cutting Issues

1. Derogation

The ICCPR allows for derogation from the rights in the Covenant only “in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed,” and only to the extent “strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”⁵²⁵ However, the second section of the same provision provides that “no derogation from articles . . . 18 [the right to freedom of thought, conscience, and freedom] may be made under this provision.” Thus, derogation from the right to freedom or belief is subject only to the limitations set out in Article 18 of the ICCPR, which dictates that any limitations must be prescribed by law and “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”⁵²⁶

523 INTERNATIONAL RELIGIOUS FREEDOM REPORT 2010, *supra* note 7.

524 “I SAW IT WITH MY OWN EYES,” *supra* note 225, at 10; United Nations Committee against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention, Concluding Observations, China,

525 ICCPR, art. 4(1).

526 *Id.* art. 18(3).

The Human Rights Committee is strict in its interpretation of these two articles, which must be read together. The Committee emphasizes that “limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.”⁵²⁷ Asma Jahangir, a previous Special Rapporteur on Freedom of Religion or Belief warned against countries drawing a link between terrorism and religion, which “in turn, may have contributed to provoking even more acts of religious intolerance leading to violence.”⁵²⁸ She further stresses that derogation is not allowed in times of State emergency or because of national security reasons so that States will “avoid equating certain religions with terrorism.”⁵²⁹ In 2009, the Special Rapporteur reiterated this point in the context of her country visit to Turkmenistan. In her report, she found that Article 3 of the country’s Religious Organizations Law was contrary to international law because it allowed for the practice of freedom of religion to be restricted to ensure national security, among other legitimate justifications.⁵³⁰

The Chinese government uses the rule of law to make religious acts criminal, accusing those performing acts integral to the conduct of basic Tibetan Buddhist affairs of “leaking state secrets” and “endangering state security.” Almost all Tibetan Buddhist religious activities are linked to “splittism” and therefore deemed “unlawful.”⁵³¹ Human Rights Watch reported on a disclosure from judicial authorities from Kardze TAP, which “reflects that the crime of ‘inciting separatism’ was used against peaceful protesters to sentence them to lengthy jail terms.”⁵³²

The law is cleverly written to reinforce these ideas. For

527 HRCGC No. 22, para. 8.

528 *2005 Report of the Special Rapporteur*, *supra* note 298, para. 59.

529 *Id.* para 60.

530 *2009 Report Addendum*, *supra* note 375, para. 23.

531 TCHRD ANNUAL REPORT 2007, *supra* note 115, at 56.

532 “I SAW IT WITH MY OWN EYES,” *supra* note 225, at 57.

example the SARA Management Measures for Tibetan Buddhist Monasteries was enacted specifically to weed out influential teaching staff that represent separatist forces, undermine national unity, and engage in activities that split the motherland, and to protect against the separate sabotage carried out by the “Dalai Clique.”⁵³³ The Management Measures, the Implementing Measures, the Reincarnation Measures and virtually every other religious law prohibits and provides sanctions for religious organizations, venues, teachers, and publications that undermine national unity and reunification of the motherland, or affect social stability. While not using the phrase “national security,” these laws are similar to Religious Organization Law, in that they improperly use the argument of national security to curtail the freedom of religion or belief. For example, Article 3 of the Implementing Measures states that “religious organizations, venues for religious activities, and religious personnel may not use religion to carry out activities such as those that harm national security or public security, impair the order of social management, infringe on citizens’ individual and democratic rights, or violate public and private property.” Religious organizations, venues for religious activities, and religious personnel in violation of this provision, namely, harming national security or public security, impairing the order of social management, etc. are subject to administrative, criminal, and civil penalties.⁵³⁴

In addition, the government-ordered directives prohibiting Tibetans from celebrating holidays and imposing travel restrictions are essentially efforts by the Chinese government to “temporarily” derogate from the right to religious freedom. The *Guardian* newspaper’s reporter based in Beijing told the UN Human Rights Council in March 2012 that “Tibet today is virtually locked down and undeclared martial law is in place.”⁵³⁵ The government justifies its repressive rules and practices as necessary to protect national unity and promote social stability. As the *Guardian* suggests, the

533 Management Measures, preamble.

534 Implementing Measures, art. 46.

535 *Int’l NGOs Tell UN the Current Situation in Tibet is Serious*, *supra* note 231.

Chinese authorities are effectively trying to argue a constant State of Emergency to restrict freedom of religion or belief indefinitely.

Despite warnings against it, the Chinese government continues to equate Tibetan Buddhism in its “unsupervised” form as terrorism and a threat to national unity. Chinese officials have described the recent wave of self-immolations as “terrorism in disguise” and a separatist plot inspired by the Dalai Lama.⁵³⁶ Religious leaders are consistently charged with terrorist activity for every day religious acts.⁵³⁷ If the practice and belief system of Tibetan Buddhism presented a legitimate threat to the national security of the Chinese government, the international community might support the restrictions in some form. But the fact remains that the Dalai Lama promotes a nonviolent Middle-Way Approach, involving a genuinely autonomous status within the PRC, and therefore this “derogation” is unlawful.

2. Limitations

As noted above, international law does allow for limitations in some circumstances: those prescribed by law and necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.⁵³⁸ Likewise, the limitations must be “directly related and proportionate to the specific need on which they are predicated.”⁵³⁹ For example the concept of limitations based on protecting morals “must be based on principles not deriving exclusively from a single tradition.”⁵⁴⁰ Similarly, the justification of “instability” does not mean that a government can issue a total ban on an aspect of religious freedom where it is not strictly necessary to maintain order.

536 Peter Goodspeed, *supra* note 99.

537 TCHRD ANNUAL REPORT 2002, *supra* note 6, at 146.

538 ICCPR, 18(3); CRC, *supra* note 363, art. 14(3); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, art. 12(3) (18 Dec. 1990), 2220 U.N.T.S. 93, 30 I.L.M. 1517 (1991), *entered into force* 1 July 2003; Res. 2005/40, para. 12; Res. 6/37, para. 14.

539 *Id.*

540 *Id.*

Moreover, the Human Rights Committee explains that, “the freedom from coercion to have or to adopt a religion or belief and the liberty of parents and guardians to ensure religious and moral education cannot be restricted.”⁵⁴¹ In a country visit to Greece, the Special Rapporteur found that the constitutional provision limiting freedom of worship to “known” religions, without any legal definition of such was prejudicial.⁵⁴² In a visit to Turkey, the Special Rapporteur declared some of the constitutional limitations too broad, specifically the provision limiting religion when it “violates the indivisible integrity of the State with its territory and nation.”⁵⁴³

In addition to national security grounds, the Chinese government often limits the right to freedom based on concerns for public safety, order, and morals, but not out of *necessity*. For example, the religious holiday *SakaDarwa* poses no direct threat to public safety or order, but is banned on those grounds because the government fears large-scale gatherings of Tibetan Buddhists. Therefore the ban is neither necessary, because there is no threat, nor proportionate, as it is a complete ban as opposed to a permissible restriction based on time, place, or manner.

Campaigns like “patriotic education” are justified on notions of state interest, which is not one of the specified and thus permissible grounds for such severe restrictions on the freedom to religion or belief. In the alternative, the government justifies the program on the basis of moral grounds, arguing, “that socialism forms part of the body of principles which underpin the state.”⁵⁴⁴ But this too is a misuse on the ability to limit, as it is grounded in protecting morals “deriving exclusively from a single tradition,” namely the CPC’s ideology. Furthermore, as has been discussed, the program is inherently coercive, the protection from which is one of the religious rights that can under no circumstances be limited.

541 HRCGC No. 22, para. 8.

542 *Implementation of the Declaration*, para. 133.

543 2000 *Interim Report*, *supra* note 324, para. 125.

544 FREE TIBET’S SUBMISSION, *supra* note 78, at 9.

Finally, the Chinese Constitution and subsequent laws only protect “normal” religious activity, but like the “known religions” provision in the Greek Constitution, this term is never defined, and therefore prejudicial, determined by a subjective viewpoint of “normal.” Other provisions of the laws restricting the freedom of religion based on the notion of “endangering state security” or leaking state secrets” are, like the provision in the constitution of Turkey, entirely too broad to justify limiting religious freedom. In these respects, the government of the PRC is unlawfully restricting Tibetan Buddhism.

3. Legislative Issues

As international legal instruments, the ICCPR, ICESCR, the Declaration, and other covenants and resolutions all stress the importance of States adopting all appropriate measures, in particular legislative measures, to guarantee and give effect to the right to freedom of religion or belief, in a non-discriminatory manner.⁵⁴⁵ Criminal legal protections and the establishment of effective remedies for the victims of violations of the right to freedom of religion or belief are further encouraged by international law.⁵⁴⁶

Special Rapporteurs also suggest creating an independent authority to monitor racial and religious discrimination, in particular, aggravated discrimination, and “to make proposals for legislative, economic, and social reforms.”⁵⁴⁷ It is of the utmost importance that this authority is genuinely autonomous, that is, that its members are independent of the government.⁵⁴⁸ Similarly, the Special Rapporteurs have cautioned against restricting government posts to members of

⁵⁴⁵ ICCPR, art. 2(2); ICESCR art. 2 (1), CEDAW, art. 3; Declaration, arts. 4(2) & 7; Res. 2005/40, para. 4(a); Res. 6/37, para. 9(a); Res. 19/18, para.9.

⁵⁴⁶ See for e.g. A/CONF.189/PC.1/7, paras. 120, 121

⁵⁴⁷ U.N. World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, Geneva, Switzerland, 1-5 May 2000, *Reports, Studies, and Other Documentation for the Preparatory Committee and the World Conference*, para. 143, U.N. Doc. A/CONF.189/PC.1/7 (13 Apr. 2000).

⁵⁴⁸ *Id.*

a certain religion or belief.⁵⁴⁹

The PRC is not completely void of legislation that guarantees the right to freedom of religion or belief. Article 36 of the Chinese Constitution provides for the protection of “normal” religious activities and prohibits discrimination on religious grounds. Article 251 of the CPL imposes criminal sanctions for any functionary of a State organ who unlawfully deprives a citizen of his or her freedom of religious belief.

In the legislation of the PRC, it is not so much what *is* written into law as what *is not* that presents a problem. The term “normal religious activity,” which appears in the Constitution as well as every religious regulation (promulgated to “protect ‘normal’ religious activity”) is never defined either by scope or application. In effect, the use of the term “normal religious activity,” in the Constitution as well as the various Tibetan-Buddhism-specific regulations reflects the Chinese policy that the practice of religion, and especially Tibetan Buddhism, is not valid or legal until expressly sanctioned by the government. Similarly, the charges of “endangering state security,” “disrupting social order,” and the term “terrorist organization” in the CPL are not defined, resulting in broad interpretations, “including the criminalization of non-violent protests in the politically restive regions like Tibet.”⁵⁵⁰

While Chinese law provides for religious organizational and monitoring bodies such as SARA, the religious affairs bureaus, and the Democratic Management Committees, none of these are independent from the government. As such these organizations work not to uphold the freedom of religious belief and protect from religious discrimination, but rather to further the interests of the CPC and filter out “defiant” Tibetan Buddhists from society and especially the monastic community.

549 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Special Rapporteur on Freedom of Religion or Belief, *Interim report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir*, para. 9, U.N. Doc A/65/207 (29 Jul. 2010) (delivered at the 65th Session of the General Assembly).

550 TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY, TIBET PROTESTS IN 2008-2009: PROFILES OF KNOWN TIBETANS WHO DIED IN THE PROTESTS 24 (2010) [hereinafter TIBET PROTESTS].

After the Special Rapporteur on Freedom of Religion or Belief made a country visit to China in 1994, he made the following recommendations to the Chinese authorities regarding legislation. The government has complied with none of them as of yet.⁵⁵¹

- Provide a constitutional guarantee of respect for freedom to *manifest* one's religion or belief (emphasis added)
- Steps should be taken to adopt a provision explicitly mentioning the right of persons under the age of 18 to freedom or belief
- Adopt a text recognizing the right to freedom of belief and freedom to manifest one's belief for all, including members of the Communist Party and other socio-political organizations.
- With reference to places of worship, the notion of a "fixed place" should be defined so as to clarify legally the particular terms, conditions and restrictions applying to worship at home. Adopt a more precise definition of the criteria for the registration of places of worship, especially the number of believers and the qualifications of members of religious orders.
- With regard to religious freedom in general, introduce in the medium term of a law on religious freedom, so as to harmonize all the pertinent legal texts, remedy legal ambiguities and, in keeping with established international standards, overcome the particular fears and sensitivities prompted by the distinction between nationals and foreigners.

4. Defenders of Freedom of Religion or Belief

The international community recognizes the importance of non-governmental organizations (NGOs) in protecting the freedom of religion or belief, in promoting the implementation of the Declaration on the Elimination of All Forms of

⁵⁵¹ Amor, "Implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" E/CN.4/1995/91 (22 December 1994), pp. 14-28.

Intolerance and of Discrimination Based on Religion or Belief, and highlighting cases of religious intolerance, discrimination, and persecution.⁵⁵² As such, international legal instruments and the Special Rapporteurs have consistently praised and encouraged NGOs and individuals for their efforts in promoting the freedom of religion, and discouraged States from intimidating and retaliating against human rights defenders, cautioning that they will be “scrutinized persistently by the judiciary, the media and civil society.”⁵⁵³

Nonetheless, the Chinese government continues to restrict, intimidate, and retaliate against NGOs and other human rights defenders.⁵⁵⁴ As has been discussed above, any calls for human rights and religious freedom are met with severe repercussions ranging from expulsion from a monastic institution, to arbitrary arrest, to torture. The government’s response to the self-immolations, the most drastic call for Tibetan rights, involves heightened security, increased crackdowns, mass arrests, and even firing on unarmed protesters by security personnel.⁵⁵⁵ Dissent in any form is simply not allowed, and the PRC employs every method available to suppress it.

In 2009 Chinese officials shut down a Chinese legal research centre known as Gongmeng, confiscated the computers and other equipment, and revoked the licenses of more than 50 lawyers that worked there, all because of its human rights work.⁵⁵⁶ Likewise, after the 2008 uprising in Tibet the judicial authorities in Beijing prohibited a group of 18 prominent Chinese civil rights lawyers from providing legal assistance to

552 Res. 19/18, para. 11; Res. 2005/40, para. 17; G.A. Res. 64/164, U.N. Doc A/RES/64/164 (17 Mar. 2010), para. 13.

553 U.N. Office of the High Commissioner for Human Rights [UNOHCHR], Report of the Special Rapporteur on Freedom of Religion or Belief, *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir*, para. 48, U.N. Doc: A/HRC/6/5 (20 Jul. 2007) (delivered at the 6th Session of the Human Rights Council).

554 For more information, see Tibetan Centre for Human Rights and Democracy, *Senior Monk Sentenced to 7 Years for Sharing Information*, 21 August 2012, available at http://www.tchrd.org/index.php?option=com_content&view=article&id=274.

555 *Videos and Messages of Three Tibet Self-immolators Released*, Tibetan Review, 10 May 2012, available at <http://www.tibetanreview.net/news.php?cp=6&&id=10773>.

556 Liu Yong, *China Shuts Down Legal Center, Revokes Licenses*, ASSOCIATED PRESS, 17 July 2009.

the Tibetan detainees of the protests.⁵⁵⁷ While the common practice of arresting, disappearing, and torturing Tibetans who call for religious freedom persists, so does the ban on providing legal assistance.

One of the biggest concerns of the international community is that the PRC consistently prohibits access in Tibet to diplomats, the media, UN organs, independent rapporteurs, and the Red Cross. Foreign journalists must receive often-denied permits to visit the TAR, and can travel only through highly structured government-organized tours, where the constant presence of government minders makes independent reporting difficult.⁵⁵⁸ Government officials frequently expel foreign journalists from Tibetan areas, despite a 2008 rule allowing them to conduct reporting without the permission of local authorities.⁵⁵⁹ According to the CTA, “one journalist team reported that their car was suspiciously rammed by another vehicle. Reporters have been followed, questioned for hours, asked to write confessions and had their material confiscated.”⁵⁶⁰ Domestic journalists generally do not report on repression in Tibetan areas, as those who do are promptly censored and sometimes face punishment.⁵⁶¹ Domestic journalists are tightly controlled and their jobs are conditioned on their political reliability.⁵⁶²

Still, concerned governments such as the US, Canada, and many of the European countries raise the Tibetan issue and especially that of religious freedom in international forums such as the UN Human Rights Council. There, they consistently call on China to grant access to outside observers, and to guarantee Tibetans their universally protected rights.⁵⁶³

557 Human Rights Watch, *China: Rights Lawyers Face Disbarment Threats*, 30 May 2008, available at http://china.hrw.org/press/news_release/china_rights_lawyers_face_disbarment_threats.

558 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

559 *Id.*

560 *Int'l NGOs Tell UN the Current Situation in Tibet is Serious*, *supra* note 231.

561 U.S. DEPT. OF STATE COUNTRY REPORT 2012, *supra* note 1.

562 *Id.*

563 International Campaign for Tibet, *Europe, US, Canada Raise Tibet at UN Human Rights Council: Call on China to Grant Rights and Access to Outside Observers*, 28 Jun. 2012, available at <http://www.savetibet.org/media-center/ict-press-releases/europe-us-canada-raise-tibet-un-human-rights-council-call-china-grant-rights-and-access>.

In response, the Chinese authorities react defensively, for example, by telling the European Union they want to hold human rights talks only once a year instead of twice.⁵⁶⁴ It is these types of reactions that reinforce the notion that the PRC is aware of the numerous human rights violations going on, especially in Tibet, but is unwilling to address them.

⁵⁶⁴ Andrew Retiman, *China Keen to Scale Down EU Human Rights Talks*, EUOBSERVER.COM, 14 Jun. 2012, available at <http://euobserver.com/china/116613>.



Conclusion

Despite the international community's commitment to the rights to freedom of thought, conscience, and religion, the CPC's laws, policies, and practice continue to inhibit these universal principles. China's repression of Tibetan Buddhism is a concrete example of the unwillingness of the Chinese government to abide by international norms and standards. Because the Chinese State is so fundamentally repressive against religious freedom, there needs to be some serious policy changes in the way the Chinese government conducts its treatment of Tibetans. The policies that lead to this repression, however, are so ingrained in Communist Chinese policy and practice, that there is little optimism that change will occur in the near future. In order to transform its repressive mentality, the Chinese government needs a greater commitment to respecting human rights, as well as policies that are conscious of comprehensive religious freedom. For instance, China must stop using such firm regulations of everyday monastic life. These heavy regulations on the manner in which monasteries conduct religious ceremonies, education, and employment result in a discriminatory outcome which greatly hinders the ability of Tibetan Buddhists to practice their faith of choice. Buddhism has often been described as a religion of peace. As such, the Chinese government needs to allow Tibetan Buddhists to practice their convictions without the fear of being labelled as separatists or even terrorists.

Recommendations

A. To the Government of the People's Republic of China:

1. Ratify the International Convention on Civil and Political Rights, as promised in the response to the recommendations set forth in the 2009 Universal Periodic Review.
2. Strengthen the protection of Tibetan people's religious, civil, socio-economic and political rights. In accordance with the

Constitution, allow Tibetans to fully exercise their human rights, to preserve their cultural identity, and to ensure their participation in decision-making.

3. Clarify and restrict the State Security Laws to be transparent, fair and legitimate protections of National Security. China should cease naming those wishing to practice their faith of choice as “splittists” or the “Dalai Clique.”
4. Release those, especially Tibetan Buddhist monks and nuns, imprisoned and disappeared for exercising their universal human right to practice their religion of choice. Additionally, those who have been accused of “counterrevolutionary acts” should no longer be exiled from their places of worship.
5. Amend domestic laws in order to better promote religious freedom. For instance, relax the laws regarding registration of places of worship so that the registration procedures no longer form a hindrance to the practice of Tibetan Buddhism.
6. Amend the Constitution to abolish the distinction between “normal” and “abnormal” religious activity.
7. Allow monasteries to conduct education of young monks and nuns under the age of eighteen. Along this line, allow education to be conducted in the Tibetan language.

B. To the United Nations Human Rights Council:

1. Conduct an in-country visit of China, focusing on the Tibetan areas of the country and publish a report of the findings.
2. Encourage the PRC to adhere to the international conventions to which China is already party, and sign and ratify those to which it is not.

C. To the International Community:

1. Cease creating new economic contracts with the PRC until the Chinese government addresses the dire human rights situation in Tibet.
2. Pressure China to fulfil its human rights obligations and promote the right to freedom of religion and belief.
3. Provide asylum for Tibetan victims of human rights violations.