



**Banned Expressions**

**Stifling Creativity and  
Dissent in Tibet**

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## Introduction

In his essay, *Soul of Poetry*, the influential Tibetan poet, Yidam Tsering (1933-2004)<sup>1</sup>, likened the poets to nightingales who sing through their poems the hopes and aspirations, pain and agony, of their people. He further wrote, “as long as the people live a life of million years, the poet will be able to sustain a life of million years.” He called on the intellectuals and artists – such as poets, musicians, painters, essayists, and sculptors, to love their people, by representing their joys and sorrows, hopes and despair, pain and pleasure. For Yidam Tsering, artists not only take into account human suffering, but also transfigure them into works of art that serve like “water quenching the thirst of birds”. The creation of the artist, therefore, provides a new dawn of hope to a society going through crises – be they induced by internal decay, political oppression and a combination of both. In other words, the role of the artist is to serve as the unofficial spokesperson of the people, the conscience of society, by bringing attention to issues that are generally brushed aside by the powers that be, and their capacity to challenge the status quo. In the words of the English poet Percy Bysshe Shelly (1792-1822), artists are “the unacknowledged legislators of the world.”<sup>2</sup>

In Tibet, writers, poets, intellectuals and artists have become a soft target for the Chinese authorities mainly for their courage and conviction to expose and contradict the official propaganda narratives on Tibet. Since 2008, there has been an unprecedented surge in artistic expression and intellectual activism among young Tibetans educated in the Chinese system.<sup>3</sup> These courageous individual Tibetans have dared to speak the truth in a system that penalises free expression and silences critical voices calling for freedom and justice.

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1 Tibet's Leading Poet Dies at the Age of 71, 23 December 2004, World Tibet News Network, [http://www.tibet.ca/en/newsroom/wtn/archive/old?y=2004&m=12&p=23\\_5](http://www.tibet.ca/en/newsroom/wtn/archive/old?y=2004&m=12&p=23_5)

2 A Defence of Poetry <http://www.bartleby.com/27/23.html>

3 For more, see *Dissenting Voices* (2010): Targeting the Intellectuals Writers and Cultural Figures, *Tibetan Centre for Human Rights and Democracy* (hereafter “TCHRD”) <http://www.tchrd.org/2010/08/dissenting-voices-2010-targeting-the-intellectuals-writers-and-cultural-figures/>

Information is heavily controlled and censored in Tibet. Both private and public communications are monitored through a maze of overbroad and vague laws and regulations that has steadily encroached upon the space for free expression and access to information. A growing number of Tibetans are charged for allegedly violating the controversial State Secrets Law<sup>4</sup> and State Security Law<sup>5</sup>, both categorised under the so-called national security crimes, which allow secret detention of suspects in police custody for weeks and months without access to legal remedies. Torture and other inhumane treatments are used routinely during police interrogation and investigation to force confession.

New regulations on the Internet and phone use implemented since the late 2011 have put added restrictions on the fast shrinking space of free expression in Tibet.<sup>6</sup> Under a set of new regulations implemented since November 2011, all users of Internet, fixed line and mobile phone users in Tibet Autonomous Region (TAR), are required to submit their real identities to service providers. This regulation was introduced in TAR one year before the National People's Congress, China's parliament passed similar rules into law.<sup>7</sup> That the regulation was passed due to political considerations can be easily gauged from the comments made by Xu Zhitao, an official on Tibet-related issues from the United Front Work Department of the Communist Party of China Central Committee. The Chinese government funded *Global Times* quoted Xu as saying, "It is possible for extremists and separatists to take advantage of the Internet to create, forward and spread rumours that may paralyze ethnic unity in Tibet to their advantage."<sup>8</sup> By June 2013, China had

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4 Law of the People's Republic of China on Guarding State Secrets, *lawinfochina.com*, <http://www.lawinfochina.com/display.aspx?lib=law&id=1191&CGid=>

5 State Security Law of the People's Republic of China, *china.org.cn*, <http://www.china.org.cn/english/China/218754.htm>

6 China completes Internet, phone monitoring scheme for Tibet, 19 June 2013, *Reuters*, <http://www.reuters.com/article/2013/06/19/us-china-tibet-idUSBRE95I0FI20130619>

7 Tibet accomplishes real-name registration of web, phone users, 16 June 2013, *China Daily*, [http://www.chinadaily.com.cn/business/2013-06/19/content\\_16638374.htm](http://www.chinadaily.com.cn/business/2013-06/19/content_16638374.htm)

8 Tibet govt tightens Internet rules, 5 May 2012, *Global Times*, <http://www.globaltimes.cn/content/707875.shtml>



brought all users of Internet and phones in TAR under the state surveillance machinery.<sup>9</sup>

In light of relentless self-immolation protests, the Chinese government has upped the ante on state surveillance networks including the newly-implemented campaigns of the controversial Grid Management System,<sup>10</sup> Benefit the Masses (Ch: qiangji huimin),<sup>11</sup> and the so-called Comfortable Housing<sup>12</sup> project, all aimed at further tightening the control over Tibetan people. A large number of Tibetans have been arrested or sentenced for sharing information or images about events in Tibet over the Internet or phone. Often during sensitive political anniversaries, Tibetans and Uighurs are discriminated against and put under house arrest or simply asked to leave temporarily as happened with the Tibetan writer and poet Tsering Woeser and her husband. In November 2012, weeks before the Party's 18<sup>th</sup> Congress, Woeser was asked to leave Beijing by state security officers while her husband, the Chinese writer Wang Lixiong was given the same order sometime after his wife left for Lhasa.<sup>13</sup> There are other less known Tibetan writers and intellectuals who continue to come under attack for exercising peaceful dissent and freedom of expression.

The intricate web of government censorship and surveillance coupled with continued violations of basic human rights have almost led to an information blackout in Tibet, if not for the courage of individual Tibetans, who continue to share information on the ground realities,

9 *Supra note 6.*

10 Grid locked: With the help of experts from Beijing, Tibet tightens its systems of surveillance, 22 July 2013, *The Economist*, <http://www.economist.com/news/china/21579848-help-experts-beijing-tibet-tightens-its-systems-surveillance-grid-locked>; see also How Does China Control Lhasa?, 5 September 2013, rukor.org, <http://rukor.org/how-does-china-control-lhasa/>

11 China: 'Benefit the Masses' Campaign Surveilling Tibetans, 19 June 2013, Human Rights Watch ('HRW') [http://www.hrw.org/sites/default/files/related\\_material/Tibet%20-%20Countryside%2020130618.pdf](http://www.hrw.org/sites/default/files/related_material/Tibet%20-%20Countryside%2020130618.pdf)

12 China: End Involuntary Rehousing, Relocation of Tibetans, 27 June 2013, *Human Rights Watch*, <http://www.hrw.org/news/2013/06/27/china-end-involuntary-rehousing-relocation-tibetans>

13 Unwelcome at the Party, 6 November 2012, *New York Times*, [http://www.nytimes.com/2012/11/07/opinion/in-china-unwelcome-at-the-party.html?\\_r=1&](http://www.nytimes.com/2012/11/07/opinion/in-china-unwelcome-at-the-party.html?_r=1&)

knowing they risk being subjected to the brutal and inhumane punishment meted out to prisoners of conscience in Chinese prisons. China has blocked UN human rights monitors from visiting Tibet on fact-finding missions. The United Nations High Commissioner for Human Rights noted that there were 12 outstanding requests for official visits to China by Special Rapporteurs on various human rights issues, including one by the Special Rapporteur on freedom of religion and belief.<sup>14</sup> In November 2012, Jampa Phuntsok (pinyin: Qiangba Puncog), the chairman of the TAR People's Congress, the rubber stamp regional-level legislature was quoted as saying, ““(Those) who think there are any problems in Tibet, human rights problems, arrogantly wanting to pursue investigations, to use these situations to propose entering Tibet, (I’m) afraid we feel it’s inappropriate.”<sup>15</sup>

At its 79th Congress held in Iceland from 9 to 12 September 2013, the PEN International in a resolution called on the Chinese government to “allow Tibetans to preserve their own language which not only represents the true identity of Tibetans, it also contains the important world heritage of Tibetan Buddhism. Tibetans should be allowed to preserve, exercise freely, and study in their own language, without interference.”<sup>16</sup> A global annual census on imprisoned journalists conducted by the Committee to Protect Journalists (CPJ) promoting press freedom revealed that 10 of 27 known journalists imprisoned in China were Tibetans.<sup>17</sup> Six were Uyghurs. In 2013, the PEN International reported the arrest of 65 Tibetan writers,

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14 A/HRC/WG.6/17/CHN/2, 7 August 2013, <http://www.ohchr.org/EN/HRBodies/UPR/Pages/CNSession17.aspx>

15 China says no to foreign rights monitors for Tibet, 9 November 2012, *Reuters*, <http://www.reuters.com/article/2012/11/09/us-china-congress-tibet-idUSBRE8A80QP20121109>

16 PEN International resolution calls for preservation of Tibetan language, 20 September 2013, *Central Tibetan Administration*, <http://tibet.net/2013/09/20/pen-international-resolution-calls-for-preservation-of-tibetan-language/>

17 Number of jailed journalists sets global record: A special report by the Committee to Protect Journalists, 11 December 2012, *Committee to Protect Journalists*, <http://www.cpj.org/reports/2012/12/imprisoned-journalists-world-record.php>

artists and cultural figures in 2011 alone.<sup>18</sup> It was a significant jump from the previous year when 15 Tibetans were arrested for making public their opinions in writing.<sup>19</sup>

A revealing consequence of China's draconian laws, its practice of censorship, and routine reprisals against human rights defenders is that the majority of Tibetan writers and intellectuals use pseudonyms to conceal their identity. The overwhelming use of pseudonyms highlights the fear and uncertainty with which they exercise the right to freedom of expression and opinion. The use of pseudonym is primarily driven not by choice but by fear of official retribution. Speaking out against government policies and other excesses are criminalised, in violation of China's own domestic laws as well as international human rights law.

This report details some of the recent and past cases of Tibetan writers, intellectuals and artists who have been arrested and sentenced for merely exercising their right to freedom of expression and opinion. Many of the individuals highlighted in this report grew up after 1959 and the dark years of Cultural Revolution. Thus, many did not experience the Chinese incursion into Tibet in the 1950's, yet are ever aware of the authoritarian structure of the Chinese government and the Tibetan people's protracted struggle for human rights and human dignity. The high costs paid by many educated and conscientious Tibetan individuals for exercising their basic rights and freedoms only testifies to the rigid, brutal system of repression instituted by the Chinese authorities in Tibet.

By daring to refute China's official narrative of events surrounding the 2008 Uprising,<sup>20</sup> these courageous Tibetans represent a significant new challenge to the Chinese authorities.

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18 PEN International Launches Report on Creative Freedom in China (2013), *PEN International*, <http://www.pen-international.org/newsitems/china-report/>

19 *Ibid.*

20 Dissenting Voices (2010): Targeting the Intellectuals Writers and Cultural Figures, August 2010, *TCHRD*, <http://www.tchrd.org/2010/08/dissenting-voices-2010-targeting-the-intellectuals-writers-and-cultural-figures/>

China's strict monitoring and restrictions on communication are a further violation of the right to freedom of expression and information. Controlling the Internet, the media, and mobile phone communications, the Chinese authorities greatly restrain how and what opinions people can express, both in public and in private. The stated goal is to monitor the information coming into and leaving Tibet. Consequently, people cannot communicate the injustices occurring in Tibet: blogging, posting photos, contacting relatives abroad about "politically sensitive" issues like self-immolation protests or general distress over the lack of religious freedom are met with immediate penalties, including detention and arrest. Likewise, people are denied access to information that contradicts the official narratives. Like other basic rights and freedoms guaranteed by Chinese law, the reality is there is no freedom of expression and opinion in Tibet.

## **Tibetan writers in the aftermath of the 2008 protests**

In 2008, a peaceful protest march started in Lhasa on 10 March, the anniversary of 1959 Tibetan National Uprising day, spread like a wildfire all over Tibetan plateau. In the history of Tibet since 1959, it was the largest scale and most sustained protest ever staged against Chinese rule.

Tibetans from all walks of life joined the protests: monks, nuns, elderly laymen and women, farmers and nomads, and students of all levels, all of them standing up in open revolt against their Chinese rulers. Carrying the portraits of the Dalai Lama and Tibetan national flag, Tibetan protestors raised slogans calling for the return of the Dalai Lama, freedom and human rights in Tibet. China's response to Tibetan protestors was harsh and brutal. Soldiers and paramilitary police fired live ammunition on unarmed protestors, killing hundreds of them. Many of them were arrested and sent to Re-education Through Labour camps where they were tortured and often killed. From Drepung Monastery alone, 600 monks were arrested on 25 April 2008, their heads covered in black hoods, and taken to Gormo (Ch: Golmud) in Qinghai Province by train and

held in a military prison.<sup>21</sup> Many of the monks disappeared, today their family and friends still have no means of knowing the fate of their loved ones.

The events surrounding the 2008 Uprising have had profound and transformational effects on Tibetan society. In the wake of China's brutal suppression of the Uprising, a vibrant resurgence in Tibetan nationalism is occurring across the Plateau, affecting a broad cross-section of Tibetan society. Led by Tibetan writers, intellectuals, musicians, artists, teachers, students, activists, and bloggers, many of whom are internet-savvy and fluent in both Chinese and Tibetan, and Tibetans are boldly rising up to express their views and to challenge the Chinese government's grossly distorted narrative of the causes and consequences of the 2008 Uprising.

In response to the growing threat posed by thinkers, writers, and artists and the spread of the Internet, the Chinese government has exhibited a marked expansion in its strategy to maintain "social stability" in Tibet. The intimidation tactics are not only directed at protesters who take to the streets, raise a Tibetan flag, or shout Tibetan freedom slogans in public. The express aim of the current wave of attacks is to exact severe punishment on dissident voices, spreading fear among those who dare to take up their pens; use Internet or voice peaceful dissent, or camera equipment to exercise their right to freedom of opinion, expression and information in Tibet.

The historic 2008 protests and the brutal Chinese crackdown galvanised the Tibetan writers, intellectuals, and artists, inspiring them to record and make public the injustices inflicted on the Tibetan people. When hundreds of people were killed, arrested, imprisoned and tortured for merely participating in non-violent protests, intellectuals had to heed their conscience by taking a clear, ethical stand despite the enormous risks it entailed. As the editors

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21 Senior monk-scholars, with no political record, sentenced to life and 15-20 years imprisonment – crackdown continues at Drepung, 21 December 2010, *International Campaign for Tibet*, <http://www.savetibet.org/senior-monk-scholars-with-no-political-record-sentenced-to-life-and-15-20-years-imprisonment-crackdown-continues-at-drepung/>

of the banned Shar Dungri (“Eastern Snow Mountain”) journal reflected:

“In the year [2008] that turned out like a raging storm, in which every activity, coming, staying and going, and when the mountains, rivers and forests and all that is alive therein came under an iron net, with gun barrels trained upon them, who has the stomach to risk their life in a show of brazen defiance? On the other hand, how could we remain cowed in fear like sheep?”<sup>22</sup>

A significant majority of writers and intellectuals who faced the wrath of the Chinese government had been employed in state-run institutions. The fact that even those under state patronage had spoken out only illustrates the severity and brutality of the Chinese response to Tibetan protests. One of the most prominent writers who risked his life by speaking out against the Chinese crackdown is Tragyal, a staff at the Nationalities Publishing House in Xining who wrote under the pseudonym Shogdung (“Morning Conch”).<sup>23</sup> Tragyal came into public prominence after he edited a series of books called “Self-series.” Authored by young intellectuals from the Tibetan province of Amdo, the book glorified the self/ego as the driving force of human progress rather than negating it as taught by Tibetan Buddhism. Secular and progressive in his outlook and highly critical of traditional Tibetan thoughts, he often attacked what he believed to be the conservatism of Tibetan people and their superstitious religious beliefs. Through their writings, the writers of this series suggest that the conservative nature of traditional Tibetan religious thoughts have pacified the Tibetan people, preventing them from achieving human greatness. Such critical attitude towards Tibetan tradition was the reason why the Chinese government initially allowed the publication of his writings.

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22 A GREAT MOUNTAIN BURNED BY FIRE: China’s Crackdown in Tibet, 10 March 2009, *International Campaign for Tibet*, [http://www.savetibet.org/wp-content/uploads/2013/05/ICT\\_A\\_Great\\_Mountain\\_Burned\\_by\\_Fire.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/ICT_A_Great_Mountain_Burned_by_Fire.pdf)

23 Dissenting Voices (2010): Targeting the Intellectuals Writers and Cultural Figures, August 2010, *TCHRD*, <http://www.tchrd.org/2010/08/dissenting-voices-2010-targeting-the-intellectuals-writers-and-cultural-figures/>



However, Tragyal had a revelation of sorts when ordinary and 'superstitious' Tibetan farmers and nomads rose up in open rebellion against Chinese repression in 2008. Their courage to sacrifice for freedom and justice persuaded Tragyal to review some of his own presuppositions regarding Tibetan resistance. China's brutal and bloody suppression of the 2008 Uprising inspired Tragyal to write a book called *Nam Sa Go Che* ("The Line Between Sky and Earth") that acknowledged some of his own "erroneous thoughts" in the past.

Acknowledging and honouring the bravery of Tibetan protestors, the book severely condemned Chinese atrocities in an unusually strong language. Tragyal criticised the Chinese leadership for instituting the "cruellest form of dictatorship in Tibet." He further asserted, "Tibet has been turned into a hell, into a demons' prison, where naked bloodshed and terror reign." The book then outlined in detail the Gandhian non-violent and civil disobedience tactics that he asked Tibetan people to adopt in order to secure freedom and justice. Given the ideas advocated in the book and threats they posed to the Chinese regime, the book was immediately banned and Tragyal was arrested. He was held in Xining No. 1 Prison for about six months on charges of 'splittism' and was released in October 2010 on 'bail pending trial'.<sup>24</sup> Under China's Criminal Procedure Law, the 'bail pending trial' restricts the liberty of movement even after the suspect is released, providing no immunity from future arrest. The longest period of 'bail pending trial', which is a different version of parole, could last for a year.<sup>25</sup> Despite his release, Tragyal and many others remain at risk of further persecution at the hands of the authorities, their only guarantee of safety being that they can no longer write or speak against the government.

Another writer persecuted for bearing witness to violent repression of the 2008 uprising was Tashi Rabten, who wrote under the

24 Tibetan writer "Shogdung" released on "bail pending trial", 15 October 2010, Phayul.com, <http://www.phayul.com/news/article.aspx?id=28351>

25 Criminal Procedure Law of the People's Republic of China, Congressional-Executive Commission on China, <http://www.cecc.gov/resources/legal-provisions/criminal-procedure-law-of-the-peoples-republic-of-china>



pseudonym The'urang. A student at Northwest Nationalities University in Lanzhou, Tashi Rabten penned a book titled *Thag Yig* (Blood Letters),<sup>26</sup> which cost him a four-year prison sentence.<sup>27</sup> He was secretly arrested on 26 July 2009 and sentenced almost two years later in June 2011. The book is a detailed account of the 2008 protests and the bloody crackdown on Tibetan protestors. It featured essays and poems that refuted official Chinese propaganda that the protests were instigated by Tibetan exiles under the leadership of the Dalai Lama. He blames the Chinese government and their repressive policies of attacking every fabric of Tibetan culture, which he claimed led to the uprising. A passionate and firm believer in universal values of democracy, freedom and human rights, he condemned the Chinese political system as the worst form of dictatorship that would one day be swept away by the winds of democratic change blowing throughout the world – perhaps a reference to the Arab spring that toppled a host of long running dictatorships in the Middle-East. For instance, in one of his essays titled, 'Fighting for Universal Human Rights is an Act of Seeking Truth,' he writes:

On this earth beneath the vast sky, although freedom and democracy belong to the entire humanity, they will never belong to those who oppress by practicing dictatorship. Be it individuals, organizations, governments or nations, it is a universal truth that those who oppress by practicing dictatorships, their hands and legs will be crushed under the rolling boulder called freedom, equality and democracy.<sup>28</sup>

Tashi Rabten's open advocacy of democracy and freedom is further strengthened by his belief in the principle of non-violence. While condemning the Chinese rule in Tibet as "dictatorial" and "hellish",

26 "Bad News" – Tibetan Bloggers Report the Arrest of Writer Tashi Rabten, 3 August 2009, *High Peaks Pure Earth*, <http://highpeakspureearth.com/2009/bad-news-tibetan-bloggers-report-the-arrest-of-writer-tashi-rabten/>

27 Tibetan writer Tashi Rabten sentenced to four years in Ngaba, 1 July 2011, *International Campaign for Tibet*, <https://www.savetibet.org/tibetan-writer-tashi-rabten-sentenced-to-four-years-in-ngaba/>

28 Theu'rang: Fighting for universal human rights is an act of seeking truth, 14 March 2013, *TCHRD*, <http://www.tchrd.org/2013/03/theurang-fighting-for-universal-human-rights-is-an-act-of-seeking-truth/>

he leaves no stones unturned when it comes to condemning violence on the part of Tibetan protestors. He writes:

Any nation or people aspiring for democracy must respect the life of every individual citizen without any discrimination. Amid our non-violent struggle, however, we witnessed some ugly incidents of looting, burning, smashing and killing. Such incidents violate human rights and sacredness of human lives and thus pollute, and are a blot on, the non-violent struggle of our people.<sup>29</sup>

His courage to stay true to the universal ideals of freedom, democracy and non-violence is viewed by China as a threat to its one-Party system.

In other writings, Tashi Rabten attacked the subtle effects of China's development and modernization policies, which he referred to as 'sweet lies' that would eventually poison the Tibetan soul. For instance in one of his essays titled, 'They Treat Us Like Animals', he strongly condemned the invasion of mass tourism, and lack of knowledge and respect for Tibetan culture and way of life among domestic Chinese tourists. He points out that the avarice inherent in Chinese consumerism has turned every aspect of Tibetan culture into commodities to be used as entertainment for tourists, deepening the resentment of Tibetans:

Why do [Chinese] tourists point their cameras on the faces of elderly Tibetans and take their pictures? Do these tourists not have a sense of ethics and morality? ... [T]he fact that they keep taking pictures of our people, our mountains and our villages – despite knowing that such actions are unethical, immoral and illegal – clearly shows what kind of status our people enjoy. They treat us like animals lacking the ability of speech.<sup>30</sup>

In November 2012, a letter written by Tashi Rabten from his cell

<sup>29</sup> *Ibid.*

<sup>30</sup> "They treat us like animals", 7 May 2013, *TCHRD*, <http://www.tchrd.org/2013/05/they-treat-us-like-animals/>

in Mianyang Prison appeared on a Tibetan blog. In the letter, a defiant Tashi Rabten remembers fellow imprisoned writers such as Nyen and Garmi, as well as great western thinkers such as Tolstoy as source of inspiration as he spends time in captivity:

Here, although our bodies are like corpses confined in the darkness, our thoughts resemble gold and are always shining brightly. The wisdom of the great thinkers like Tolstoy, Rousseau, Hugo and Baudelaire are showing me light in the darkness and they have been showing me that freedom is limitless.<sup>31</sup>

The yearning for and the dream to restore Tibet's ancient greatness is also the theme of Choepa Lugyal's (Pseudonym: Meycheh or The Flame) writings. Chopa Lugyal is a young Tibetan writer and political analyst from Yazi (Ch: Xunhua) County of Tsoshar (Ch: Haidong) Prefecture in Qinghai Province.<sup>32</sup> On 19 October 2011, he was arrested from his home in front of his wife on unspecified ground. His home was ransacked and his personal computer and a banned copy of the Shar Dungi journal confiscated by police. His whereabouts and formal charges remain unknown.

A friend of Theurang and one of the contributors to Shar Dungi journal, Choepa Lugyal published books such as *Ge Cho Gyang Jel* (Vision of Gendun Chopel) and *Misem Nyingtop* (Power of the Human Spirit). Through his visionary encounters with the pioneering Tibetan poet Gendun Chopel, he conjures up an image of a Tibet that is mighty, strong and sovereign, rich with both material and spiritual civilization that made the Land of Snows one of the forces to reckon with in Central Asia in the seventh century. This vision of a glorious Tibetan nation is contrasted with the current subjugated status of the Tibetan people, and calls upon the Tibetan people to draw inspiration from their nation's great historical past, to rejuvenate the power of the Tibetan spirit (Tib: nyingtop), the

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31 Tashi Rabten Writes A Letter From Prison, 7 November 2012, *High Peaks Pure Earth*, <http://highpeakspureearth.com/2012/tashi-rabten-writes-a-letter-from-prison/>

32 Writer Meycheh arrested, 28 October 2011, *TCHRD*, <http://www.tchrd.org/2011/10/writer-meycheh-arrested/>

spirit of the a Tibetan nation, so that it can throw off the shackles of Chinese rule and regain its place as a sovereign nation in Asia and the world.

The demand for basic human freedoms is the theme of the writings of another banned writer and intellectual Jangtse Dhonkho (Pseudonym: Nyen or the wild one). Published in Shar Dungri, Dhonkho's essay "What Human Rights Do We Have Over Our Bodies?" explains why Tibetan people rose up in open rebellion on 14 March 2008:

Have the many, many years of bullying and abuse in every town and village, examples of which are endless, the spiteful games ... the many, many years of digging the earth and upturning rocks ... eloquent trickery, bias and face-saving, falsehood propping up falsehood, blaming the innocent and alternating rough with smooth, has all this incited rage in the Tibetan people?<sup>33</sup>

Denying the Chinese accusation that the protestors were "thugs indulging in looting, smashing, burning and beating," Dhonkho writes that they were fighting, without any external support, for basic human rights against a government 'blind to karmic cause and effect, unwilling and unable to spare the lives of those at its mercy.' Dhonkho bears witness to the violent deaths of unarmed Tibetan protestors at the hands of Chinese paramilitary troops:

Shikalo, a man in his forties from Charo Township in Ngaba County, was beaten to death on false charges. His precious life has fizzled out. This father and cornerstone of his household leaves behind him a widow and three orphans, weeping inside. [T]hen there was the story of two monks from Kirti Monastery in Ngaba, Toesam and Jinpa, who were driven by the present situation to take their own lives in prison.<sup>34</sup>

33 Like Gold That Fears No Fire: New Writing from Tibet (2009), *International Campaign for Tibet*, <http://www.savetibet.org/wp-content/uploads/2013/05/Like-Gold.pdf>

34 *Ibid.*

Dhonkho further exposes the Chinese government's propaganda machinery – its electronic and print media – for misleading the world community regarding the protests:

If one just sat watching the official TV news, it would scrub your brain clean. That news channel sullied our image so much that Tibetans watching it would be depressed by its oblivious attitude ... those displays of falsehood propping up falsehood are confident of presenting the distortion of history as truth.<sup>35</sup>

Dhonko, 33 years old at the time was detained from his home on 21 June 2010. In addition to being a writer and prize-winning poet, he was also the director of the Ngaba County government's local history committee and author of several books including "Red-minded," "Zombie," and "Skill." On 30 December 2010, the Ngaba (Ch: Aba) Intermediate People's Court sentenced Dhonko and fellow writer Buddha to four years in prison, while his colleague Kelsang Jinpa was sentenced to three years.

Writer Kelsang Jinpa (Pseudonym: Garmi or The Blacksmith) exposed China's repressive policy by holding the Chinese government responsible for the widespread 2008 protests on five decades' of misrule. With bitter irony, he condemns the lies of the Chinese government and its propaganda apparatus that continue to label Tibetan protests as mere instances of "beating, smashing, looting and burning." Like Dhonko, he strongly denies the official propaganda that exiled Tibetans instigated the protests.

In his essay, *The Case for Lifeblood and Life-force*, Kelsang Jinpa testifies to the killings of innocent Tibetans, including teenagers, by the Chinese police. He asserts that the dictatorial nature of the Chinese regime is proven when it brands every peaceful protest as acts of 'beating, smashing, looting and burning'. This demonstrates the Chinese government's failure to resolve contentious political and social issues through dialogue and negotiation. He documents the killing of more than 20 young innocent Tibetans, "whose lives

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35 *Ibid.*

appeared no more than a worm to be crushed underfoot [of the Chinese rulers].”<sup>36</sup>

Jinpa criticises the Chinese system in Tibet as unfair and unjust, denying equality to the Tibetan people, as promised by the ideals of Leninism and Marxism enshrined in the Chinese Constitution. He especially targets the Chinese legal system and its abuse by the one-Party system as a tool to prop up the dominance of the dictatorship of the Chinese Communist Party (CCP). Further, he justifies the right of Tibetan people to secede from the People’s Republic of China (PRC) and establish their own sovereign, independent state based on Marxist/Leninist principles. He writes:

Marxism-Leninism requires strict equality between nationalities, and absolutely opposes the oppression of nationalities. Where there is no such equality, Marxism-Leninism regards it as legitimate for minority nationalities even to seek secession.<sup>37</sup>

Reminiscent of Vaclav Havel’s essay, *The Power of the Powerless*,<sup>38</sup> Jinpa invokes Chinese constitutional provisions particularly those based on the Marxist-Leninist thought, and blames the CCP for not staying true to its own founding ideals of equality and justice. He attempts to draw similarities between the 2008 Tibetan uprising and the 4 May 1919 movement of the Chinese people for democracy and freedom.

Lunpo Nyukthog (‘the fool with pen’)<sup>39</sup> is another Tibetan writer who criticises the Chinese government for failing to meaningfully implement the rights provided in the Chinese Constitution for ethnic minorities to develop their own language, culture, religion and economy. This failure to respect the equality of nationalities, as advocated by Leninist and Marxist principles, is responsible for

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36 A GREAT MOUNTAIN BURNED BY FIRE: China’s Crackdown in Tibet, 10 March 2009, pp. 99, *International Campaign for Tibet*, [http://www.savetibet.org/wp-content/uploads/2013/05/ICT\\_A\\_Great\\_Mountain\\_Burned\\_by\\_Fire.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/ICT_A_Great_Mountain_Burned_by_Fire.pdf)

37 *Ibid.*

38 *Ibid.*

39 *Ibid.*



the protests by Tibetan people for secession. Like Kelsang Jinpa, he justifies demands for a different state, to secede Tibet from China, according to Leninist and Marxist principles. He quotes Marx who wrote:

Since strict equality between nationalities is necessary, the oppression of nationalities can be absolutely opposed. Where there is no such equality and a nationality feels oppressed, popular aspiration even for secession is legitimate.<sup>40</sup>

Apart from this violation of the Leninist-Marxist principles, Lunpo Nyukthog exposes government corruption and dictatorial nature of the local CCP cadres who, instead of working for public interest, misuse their power for personal gains. He shares an interesting anecdote about the narcissistic self-delusion and corrupt practices of a local CCP leader:

In 2006, it was said that the head of a county in a pastoral area in Ngaba prefecture was performing the life-story of king Songtsen Gampo in a bar at night. It was said that this drunken Songtsen Gampo demanded an equally drunken princess Wench'eng and many 'ministers' bow down and prostrate to him. The local officials and inhabitants tell the life stories of this county leader, sometimes as a king, sometimes a general, sometimes an emperor. Such are the rotten officials indulging in corruption and reactionary behaviour, playing with the future of the Tibetan people and with karmic cause and effect as if they were toys.<sup>41</sup>

Lunpo Nyukthong warns that such corruption and blind hubris on the part of the CCP cadres breeds revolutionary fervour among the public and force them to look for all kinds of means to undermine the one-Party rule. Like other writers, he publicly calls for the civil society to engage in real actions that can change the repressive status quo, asserting that the only way to usher in meaningful democracy is to fight for it instead of waiting for it. The only way of fighting for it is to expose what he calls a "mentality of corruption" that

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40 *Ibid.*

41 *Ibid.*



infects the current CCP rulers. Reflecting the views held by another imprisoned writer Kunga Tsayang<sup>42</sup> (Pseudonym: Gangnyi or 'the son of snowland'), Lunpo Nyukthog asserts that China's repressive policies are actually driving some Tibetans to pursue secession.

Lunpo Nyukthog's assessment of China's destructive policies is telling in that it exposes the farce of the Chinese government's so-called stability maintenance policy, under which many Tibetans are punished for 'separatist' acts, when in reality it is the Chinese government's utter failure to protect human rights and human dignity that is driving an increasing number of Tibetans to reject Chinese rule.

For years, the Chinese government has pursued a policy of 'maintaining harmony and stability' under the leadership of Hu Jintao and now Xi Jinping. Under the pretence of maintaining stability, voices critical of Chinese policies have been brutally suppressed by sending dissidents and activists to prison. Any whisper about the Dalai Lama or civil discussions about official policies are criminalized as separatist acts that endanger state security.

The mere sharing of information about human rights abuses and crimes against humanity are deemed criminal pursuant to the overbroad "State Secrets Law". This policy has only contributed to further violation of human rights and misuse of the legal system, thereby making it impossible to hear, let alone address, the long-held grievances of the Tibetan people. In light of these facts, writer Kunga Tsayang calls the CCP leaders the instigators of instability in Tibet: the "real splittists", "real disturber of stability", and "real separatists".<sup>43</sup>

China's failure to grant meaningful autonomy to the Tibetans as provided in the Regional Ethnic Autonomy Law is the main thrust of Sonpo's ("Survivor") writings. Sonpo advocates political reforms within the current CCP-dominated system. His essay "That is a Lie"

42 Tibetan writer-photographer sentenced, 19 November 2009, *TCHRD*, <http://www.tchrd.org/2009/11/tibetan-writer-photographer-sentenced/>

43 Who are the real separatists? 26 March 2009, translation by *tibetwrites.org*, <http://www.tibetwrites.org/?Who-are-the-real-separatists>

highlights the discrimination and repression endured by Tibetans and other minority nationalities. He calls for equality and justice for minorities who constitute less than 2 per cent of PRC's 1.3 billion population. Sonpo writes:

The fact is the new China led by the Communist Party has instituted the fundamentals of majoritarianism, by doing away with democracy altogether. It wouldn't be unreasonable to say that majoritarianism is the worst form of all systems. What is the nature of majoritarianism? It is the dominance over and bullying of the minority by the majority. If that were not so, how could there be talk of mutual equality between nationalities?<sup>44</sup>

Sonpo asserts that it is the 'tyranny of the majority' that the privileges enjoyed exclusively by the overwhelming 98 per cent of the PRC population have become the root cause of the problem for the remaining 2 per cent. As long as this 'majoritarianism' continues and minorities are treated as second and third class citizens, the PRC will continue to face problems of instability in the near future. Sonpo further asserts that the dream of One China cannot be realized so long as the PRC continues to be run as an authoritarian dictatorship led by the CCP.

While secular, progressive writers and intellectuals are waging their resistance to injustices through political and human rights discourse, the monastic intellectuals appeal to the moral and human conscience of the Chinese leadership. The writings of imprisoned writer and monk, Gartse Jigme, currently serving a five-year prison term, make a strong case in favour of the courage and compassion of the Tibetan people and Tibetan Buddhist principles. Gartse Jigme's writings have been one of the most courageous voices to come out of Tibet in recent years. After months of secret detention, on 14 May 2013 he was sentenced to five years in prison for publishing a two-

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44 A GREAT MOUNTAIN BURNED BY FIRE: China's Crackdown in Tibet, 10 March 2009, pp. 75, *International Campaign for Tibet*, [http://www.savetibet.org/wp-content/uploads/2013/05/ICT\\_A\\_Great\\_Mountain\\_Burned\\_by\\_Fire.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/ICT_A_Great_Mountain_Burned_by_Fire.pdf)

volume book titled *Tsenpoi Nyingtob (Courage of Tibetan Kings)*.<sup>45</sup> The humanistic values of Tibetan Buddhism require kings to rule their subjects with love and compassion – in accordance with the ten virtues of Buddhist Dharma (Tib: *Lha Chos Gewa Chu*). Given China's repressive policies in Tibet, Gartse Jigme believes that the Chinese leadership has failed to abide by the virtues of love and compassion thereby forfeiting its legitimacy to govern the Tibetan people. Such a betrayal of humanistic values deeply saddens him, forcing him to openly confront the regime in the hope that it might correct its erroneous policies.

At the heart of Gartse Jigme's writings is his opposition to China's relentless campaign to demonise the Dalai Lama and the Tibetan spiritual leader's vision of a genuinely autonomous Tibet where all Tibetan-inhabited areas can meaningfully exercise their autonomous rights under the jurisdiction of Chinese Constitution and the Regional Ethnic Autonomy Law. For decades, China has run a denunciation campaign against the Dalai Lama, calling his ideas the principal cause of instability inside Tibet, accusing him of being a 'wolf in a sheep's clothing' and seeking independence in the name of autonomy. By relentlessly running political education campaigns, the Chinese government has forced monks, nuns and lay people to denounce the Dalai Lama as the root cause of all unrest in Tibet. However, Gartse Jigme contends that the anti-Dalai Lama campaign is the real cause of Tibetan grievances. As he writes:

In the hearts of more than ninety nine per cent of the Tibetan population, the Dalai Lama dwells like a ray of sun. Therefore, no Tibetan will accept the constant demonization of the Dalai Lama. Such a demonization is unbearable. They will make every effort to resist it. If Chinese government truly believes in democracy, then it must seriously take into account the wishes of the Tibetan people to see the return of the Dalai Lama.<sup>46</sup>

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45 Tibetan writer sentenced to 5 yrs in prison for writing book on self-immolation, 21 May 2013, *TCHRD*, <http://www.tchrd.org/2013/05/tibetan-writer-sentenced-to-5-yrs-in-prison-for-writing-book-on-self-immolation/>

46 *Ibid.*

The Chinese government, however, fears that 'return of the Dalai Lama' would threaten the one-Party rule in Tibet. As presented in his Strasbourg proposal in 1988, the Dalai Lama calls for the reunification of the three traditional provinces of Tibet and setting up of a genuine democratic system in Tibet whereby Tibetan people shall have the final authority to elect their own leaders, much along the lines of liberal democratic system of governance, with checks and balances among the three branches of government - legislature, executive and judiciary.

The establishment of a democratic system of governance is possible only with the end of the one-party authoritarian rule in Tibet. This fear of a possible regime collapse motivates the Chinese government to criminalise any one calling for the return of the Dalai Lama to Tibet as a 'separatist bent on destroying the unity of the motherland.'

In the eyes of the Chinese authorities, Gartse Jigme committed the most heinous of crimes by calling on the Chinese government to conduct negotiations with the representatives of the Dalai Lama, an act that eventually cost him five years of freedom.

Moreover, Gartse Jigme exposes the death and destruction Tibetan people suffered at the hands of the Chinese authorities in the past – the tens of thousands of Tibetans who perished in the early years of Chinese invasion and during the dreadful Cultural Revolution period. He asserts that these historical memories of bloodshed are deeply entrenched in the psyche of the Tibetan people, something that cannot be wiped out easily through mere propaganda and repression. His writings contradict China's claim that its rule has brought "liberation and well being" to the Tibetan people.

## **New persecution of writers and singers and self-immolation protests**

A whole chapter in Gartse Jigme's second volume of *Courage of Tibetan Kings* is dedicated to the self-immolation protests in Tibet. Since 2009 in Tibet, 123 Tibetans have committed self-

immolations, of which 102 are known to have died, calling for the return of the Dalai Lama and freedom in Tibet. China's response to these protests has been brutal and intentionally slanderous: the self-immolators are branded as either mentally deranged people, or as tools of the exile Tibetans bent on 'destroying the unity of the Chinese motherland.' They were called 'criminals and terrorists,' and those who sympathise with them or simply offer condolences to their family members are punished with arbitrary detention, torture, and harsh prison sentences. Such repressive tactics on the part of the Chinese government have caused deep resentment in the hearts of the Tibetan people. Through his writings, Gartse Jigme attempts to salvage the human dignity of the Tibetan self-immolators, calling them freedom fighters rather than 'criminals engaged in terrorists acts or violating the principles of Buddhism.' In fact, he contends that the demands of the self-immolators resonate deeply with the "aspirations of the 99 per cent of Tibetan population." As he writes:

The truth is that no particular organization or lama instigated the martyrs to commit self-immolations. They were motivated by the sufferings of their fellow six million Tibetans. As such they are heroes ... [B]y neglecting the demands of the self-immolators, they have shown that they consider more than 99 per cent of the Tibetan population as their enemies ... [S]acrificing one's life for the wellbeing of sentient beings and fellow countrymen are not only acts in accord with Buddhism, but also with the higher forms of Mahayana Buddhist teachings. Only an evil regime or its running dogs will consider them as acts of terrorism.<sup>47</sup>

The Chinese propaganda labelling self-immolators and their sympathizers as criminals has been criticised by another banned and imprisoned monk-intellectual Tritsun (Pseudonym: Tri Bhoë Trak) from Tongkyap Monastery in Gade (Ch: Gande) County in Golog (Ch: Guoluo) Prefecture, Qinghai Province.<sup>48</sup> Tritsun's book

47 *Ibid.*

48 Monastery under siege as monks face expulsion while another detained for writing book on immolations, 19 March 2013, *TCHRD*, <http://www.tchrd.org/2013/03/monastery-under-siege-as-monks-face-expulsion-while-another-detained-for-writing-book-on-immolations/>

On 3 February 2012, Dawa Dorjee, a writer in his 20s, was arrested from Gonggar Airport in Lhasa and taken to an undisclosed location. Dawa had published the book *Lahm (Road)*, which discusses democracy, freedom and human rights. He hails from Diru (Ch: Biru) County in Nagchu (Ch: Naqu) Prefecture, Tibet Autonomous Region (TAR). To date, his whereabouts has remained unknown.<sup>52</sup>

On 12 February 2012, another popular Tibetan monk-writer, Norbu Tsering, 28, was sentenced to two years' imprisonment. In 2008, Norbu Tsering had written an essay titled *If You Have Oppression and Repression, I have Compassion and Truth*.<sup>53</sup> Less than three years later, in 2011, he was arrested. He is currently being held in Chushul Prison in the outskirts of Lhasa. His exact charges are unknown.

## **“Ear Splitting” Sound – Banned Tibetan songs**

Music is one of the most powerful forms of human expression. Unlike other forms of art, music is a popular and powerful medium of expression, having the potential to reach out to a large number of people, irrespective of differences in language, culture, literacy, etc. Music can easily touch the souls of the masses, awakening them from their emotional and intellectual numbness, thus inspiring them to perform courageous and inspiring acts for freedom and justice. No wonder in the history of freedom struggles around the world, music played a powerful role in communicating to and awakening the consciousness of the public.

In Tibet, a growing number of Tibetan artists and musicians have taken to expressing themselves through songs that echo the dreams and aspirations of the Tibetan people for their right to survive as a distinct people, with distinct culture, language, religion and way

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four-others-sentenced-to-more-than-5-years-in-prison/

52. *Supra note* 31.

53. *Ibid.*



of life. The common theme of many of these songs relate to the return of the Dalai Lama to Tibet and reunification of Tibetans in and outside of Tibet. As a result, Tibetan singers are targeted by Chinese government, suffering torture and even deaths in prison for their songs. The rise of native arts and music presents a formidable challenge to the Chinese government's propaganda apparatus. In Tibet and China, all avenues of self-expression be it literature, music, or arts are controlled by the highly intrusive and sophisticated propaganda apparatus of the Chinese government. A considerable number of singers enjoy government patronage on the condition that they only sing officially approved songs and lyrics expressing gratitude for the Chinese Communist Party. The government-sanctioned songs project a happy, prosperous Tibet. Unsurprisingly, songs and writings about the reality on the ground, pride in Tibetan cultural identity, or devotion to the Dalai Lama are termed reactionary and therefore, illegal.

A key example is that of popular Tibetan folk singer Lolo. Rooted in ancient Tibetan folk tradition, his song 'Raise the Tibetan flag, Children of the Snowland,' calls for Tibet's independence:

For the sake of protecting Tibet's independence  
Our kings resisted the red Chinese leaders  
From the true meaning of the middle path  
Raise the Tibetan flag, children of the Snowland!

For the sake of the return of the Protector  
For the sake of the uniting the Tibetans home and abroad  
From the wounds of the souls in flames  
Raise the Tibetan flag, children of the Snowland!<sup>54</sup>

For the crimes of 'raising the snow lion flag,' and for seeking 'the return of the protector' or the Dalai Lama, Lolo was arrested and sentenced to six years in prison in Qinghai Province. The harsh Chinese response is not surprising, for Lolo's references to Tibetan history and identity, the potent symbols of Tibetan nationhood like

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54 A Song by Lolo: "Raise the Tibetan Flag, Children of the Snowland", 5 December 2012, *High Peaks Pure Earth*, <http://highpeakspureearth.com/2012/a-song-by-lolo-raise-the-tibetan-flag-children-of-the-snowland/>



the snow-lion flag and the Dalai Lama, could provoke Tibetans to rise up and rebel against the Chinese authorities.

Lobsang Jinpa, 31, a monk from the besieged Nyatso Zilkar Monastery in Yushu Tibetan Autonomous Prefecture (Qinghai Province) penned the lyrics of "Raise the Tibetan Flag". On 23 February 2013, he was sentenced to five years in prison on unknown charges after being detained on 1 September 2012.<sup>55</sup>

In recent years, many Tibetan artists have sung songs in memory of self-immolation protesters and about repressive conditions in Tibet. Two Tibetan singers, Pema Thinley and Chakdor, currently serving prison terms, have sung songs bearing witness to the suffering of the Tibetan people under Chinese rule.<sup>56</sup> Their songs deals with agony and despair faced by Tibetans in a system built on lies and violence, and boldly present a way out of this 'myriad hellish sufferings,' by making possible the 'return of the Yeshin Norbu,' the lord protector Dalai Lama, to Tibet.

One of their songs pay tribute to the first Tibetan self-immolators, Lobsang Tashi aka Tapey and Phunstok, who the singers believe to be martyrs who gave up their lives for the greater cause of Tibetan people, for freedom and justice, thereby refuting China's accusation that they were 'insane' and 'terrorists' aimed at destroying the 'Chinese motherland':

Martyr Lobsang Tashi

You are the protector of the Land of Snows

You show the great path of victory

For freedom you burned

Martyr Lobsang Phunstok

You are the protector of the Land of Snows

From the deep lush forest engulfed in windstorms

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55 Two Tibetans, monk and singer, sentenced to prison, 13 March 2013, *TCHRD*, <http://www.tchrd.org/2013/03/two-tibetans-monk-and-singer-sentenced-to-prison/>

56 Two Tibetan singers secretly sentenced but whereabouts unknown, 13 June 2013, *TCHRD*, <http://www.tchrd.org/2013/06/two-tibetan-singers-secretly-sentenced-but-whereabouts-unknown/>

The lion roared for truth and justice  
Bearing witness for freedom you sacrificed your life.<sup>57</sup>

Another song exposes the brutal and violent nature of Chinese rule in Tibet, showing how Tibetans resisting such violence are treated by the Chinese authorities, making it impossible for them to live freely and with dignity:

Soldiers surround the monasteries  
Patriots are put in prison  
In the land of death devoid of karmic law  
Tibetans are powerless.  
In the times of the ruthless Chinese Communist Party  
How can there be a future for the Land of Snows?<sup>58</sup>

These songs evoke memories of torture and violence, the resultant scars and wounds, which the singers believe will never be healed without freedom:

The precious lives of thousand ancestors  
The wounds of the past decades  
Inflicted by the poisoned arrows  
Can they be wiped out from our hearts?<sup>59</sup>

Oftentimes when people are denied access to free information and free choices, as they are under authoritarian regimes, the yearnings of the oppressed people assume mythical and messianic proportions. Their nostalgia for an idyllic, perfect past creates tensions that could seriously undermine the survival of a regime.

Phuljung, a physically challenged singer from Ngaba, currently in secret detention,<sup>60</sup> reflects this clearly in his songs. The title of his music album is *Tibetan Dreams*, a reference to the aspiration of

57 'So many myriad hellish sufferings': Persecution of Tibetan artists, 17 June 2013, *TCHRD*, <http://www.tchrd.org/2013/06/so-many-myriad-hellish-sufferings-persecution-of-tibetan-artists/>

58 *Ibid.*

59 *Ibid.*

60 Police Detain Tibetan Singer, 21 August 2012, *Radio Free Asia*, <http://www.rfa.org/english/news/tibet/singer-08212012124409.html>

the Tibetans inside Tibet to see the return of their spiritual leader Dalai Lama to Tibet. His songs praise the Dalai Lama and the exile Tibetan political leader Lobsang Sangay, as leaders of the Tibetan people respectively sitting on 'golden' and 'silver' thrones.<sup>61</sup> Unlike official Chinese representation of Tibetans as 'barbaric, uncivilised and ignorant,' Phuljung refers to Tibetans as 'kind, compassionate, and just people', and urges his fellow compatriots to speak in 'pure Tibetan' language.<sup>62</sup>

## Conclusion

Bearing witness to the violence and injustice inflicted upon the Tibetan people, their culture and identity, is the greatest service rendered by Tibetan artists, intellectuals, poets and writers. Their dream is to represent the wishes of the Tibetan people for genuine freedom and harmony, which, according to them, is manifested symbolically by the return of the Dalai Lama to the Potala Palace in Lhasa, Tibet.

Putting their lives at risk by enduring harsh prison terms, a growing number of Tibetan writers, artists and intellectuals are documenting and reflecting on the pain and despair experienced by fellow Tibetans living under Chinese rule. They emphasise the importance of restoring justice to the Tibetan people and upholding their human rights.

Their confidence stemming from the fact that they are doing the right thing, by remaining true to their conscience, whether that conscience is drawn from the ideals of Buddhism, as Gartse Jigme does, or from Marxist-Leninist principles, as Sonpo and others do, or from the historical consciousness of Tibet being a distinct civilization under the assault of foreign civilization, as represented by the writings of Theurang and Meychek. By invoking the human conscience and common human ideals of freedom and justice

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61 A Song by Phuljung: "Kind Lama", 19 December 2012, *High Peaks Pure Earth*, <http://highpeakspureearth.com/2012/a-song-by-phuljung-kind-lama/>

62 *Ibid.*

through various means, such as Tibetan history, culture, religion combined with secular Western progressive philosophies of liberty, equality and democracy, the creative expression of Tibetan writers and musicians strike not just at the heart of China's authoritarian structure but also at the regime's legitimacy.

## **I. Freedom of Expression and Opinion: International Norms**

The right to freedom of expression and opinion is one of the most important conditions for the full realisation of human freedom and justice. The right to freely and fearlessly express opinions contributes toward the robust development of human creativity, the sense of critical consciousness, and native instrumentality. These rights assume added importance in oppressive societies where governments and vested powers endeavour to strictly control information about human rights abuses.

Furthermore, the PRC's government has signed and/or ratified numerous international treaties, which guarantee fundamental human rights, including those related to discrimination, torture, and economic, social, cultural and political rights.<sup>63</sup> As a party to these treaties the PRC is legally bound by these obligations and must perform them in good faith. By virtue of its membership in the United Nations, the PRC is legally bound "to fulfill in good faith" the obligations assumed by them in accordance with the UN Charter, including "promoting and encouraging respect for human rights and fundamental freedoms." The right to freedom of opinion and expression is universally recognized under in Article 19 of both the Universal Declaration of Human Rights (UDHR)<sup>64</sup> and the International Covenant on Civil and Political Rights (ICCPR).<sup>65</sup>

63 Ratification of International Human Rights Treaties – China, *University of Minnesota Human Rights Library*, <http://www1.umn.edu/humanrts/research/ratification-china.html> (Last visited 25 November 2013)

64 The Universal Declaration of Human Rights, *Office of the High Commissioner for Human Rights*, <http://www.ohchr.org/EN/UDHR/Pages/UDHRIndex.aspx> (last visited 25 November 2013)

65 International Covenant on Civil and Political Rights (ICCPR), *Office of the High Commissioner for Human Rights*, <http://www.ohchr.org/en/professionalin->

Article 19 of the ICCPR elaborates upon the rights to freedom of opinion and the freedom to express the opinion without interference in the UDHR. In the UDHR, the right to freedom of opinion is combined with the right to express opinions, without interference. 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."<sup>66</sup> Although not legally binding, the UDHR is a fundamental constitutive document of the United Nations. Article 19 of both the ICCPR and UDHR are legally binding on China as part of customary international law.

In defence of creative and artistic freedom, a Tibetan writer writing under the pseudonym, Mar Jang-nyug, quotes article 27 of the UDHR in his recently published book, *Ancestors' Tomb*, before making a passionate argument in favour of individual rights. He wrote:

The rights of individuals and communities do not fall from the sky. Lord Buddha did not give those rights. The gods and kings did not give those rights. Nations did not bestow those rights. The rights of people remain with the state. The individual citizens are the ends for which the state is established. The individuals do not exist for the state. The state has a duty to protect the inalienable rights of its citizens.<sup>67</sup>

Article 27 of the UDHR states: "Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which

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terest/pages/ccpr.aspx (last visited 25 November 2013)

66 *Ibid.*

67 Dissenting Voices Series: *Ancestor's Tomb*, 14 August 2013, *TCHRD*, <http://www.tchrd.org/2013/08/dissenting-voices-tchrd-releases-english-translation-of-ancestors-tomb/> (last visited 25 November 2013)

he is the author." This principle is also in Article 15 of ICESCR.<sup>68</sup>

China signed the ICCPR in 1998, and has on several occasions expressed its intent to ratify the instrument. During China's second cycle of Universal Periodic Review, the government again proved evasive in its professed intention to ratify the ICCPR. In its national report submitted for the second UPR in October 2013, the Chinese government claimed that "currently, the relevant organs of the national Government are continuing steadily to pursue administrative and legislative reforms in preparation for ratifying the Convention"<sup>69</sup>

Even if China has yet to ratify the covenant, 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."<sup>70</sup> The object and purpose of the ICCPR is to recognize the rights derived from the inherent dignity of each person. Imprisoning writers, intellectuals, and artists, for exposing the real situation on the ground in Tibet and thus contradicting government-sponsored propaganda undermines the inherent dignity of Tibetans to describe their life. Severe punishments not only punish the targeted individuals but also discourage others from speaking. When propaganda takes precedence over the true expression of opinions the state no longer exists to serve the people, but the people are manipulated and coerced into serving an oppressive state.

Under article 19 of the ICCPR, the right to freedom of expression and opinion comprises three different elements: (a) the right to hold opinions without interference; (b) the right to seek and receive information and the right of access to information; and (c) the right to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through

68 International Covenant on Economic, Social and Cultural Rights, Office of the High Commissioner for Human Rights, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

69 China's National Report submitted for Universal Periodic Review, A/HRC/WG.6/17/CHN/1\*, 5 August 2013, <http://www.ohchr.org/EN/HR-Bodies/UPR/Pages/CNSession17.aspx>

70 VIENNA CONVENTION ON THE LAW OF TREATIES, <http://www.oas.org/legal/english/docs/Vienna%20Convention%20Treaties.htm>



any other media of one's choice. Moreover, article 27 of ICCPR is crucial for guaranteeing the artistic freedoms of persons belonging to ethnic, religious or linguistic minorities.

The right to freedom of opinion is absolute and may not be limited in any way. As the Human Rights Committee, the United Nations body charged with protecting and clarifying the ICCPR, observed in its General Comment no. 10 that the no exception or restriction to derogate the right to hold opinions without interference.<sup>71</sup>

The right to express that opinion may only be limited when necessary and provided for by law. The Johannesburg Principles on National Security, Freedom of Expression and Access to Information<sup>72</sup> is another international legal document that has gained wide acceptance since its adoption in 1995. They define the circumstances when the freedom of expression may be limited. The Johannesburg Principles call for the right to freedom of expression and information to be restricted only by unambiguous and narrowly drawn laws. Such laws must have the genuine purpose of protecting against legitimate national security interests. Similarly, access to information may only be restricted when a state can demonstrate that the restriction is necessary to protect legitimate national security concerns.

The Johannesburg Principles clearly state that peacefully advocating for non-violent change of government policies or the government itself, criticism of the nation or its agencies/officials, and communication concerning human rights transgressions should never be the subject of free speech restrictions.

In her 14 March 2013 report to the Human Rights Council, the UN Special Rapporteur in the field of cultural rights, Farida Shaheed has

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71 General Comment No. 34, Human Rights Committee, 102nd session, Geneva, 11-29 July 2011, <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

72 The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996). University of Minnesota Human Right Library, <http://www1.umn.edu/humanrts/instree/johannesburg.html>

encouraged “States to critically review their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration their obligations to respect, protect and fulfill this right.”<sup>73</sup> The report states that the “right to freedom of expression is an important condition for the fulfillment of artistic freedoms and shows how governments use laws and regulations to restrict artistic freedoms driven by political, religious, cultural or moral, or lie in economic interests.”<sup>74</sup> However, China has increasingly used its legal system to persecute and silence any kind of opposition critics of official policies. Rather than following international standards on that allow limit freedom of expression except in very limited circumstances, China has expanded its limitation on freedom of expression to specifically target artistic expression and legitimate dissent in Tibet.

An overwhelming majority of Tibetan writers, intellectuals, and artists have published accounts of government repression of human rights defenders and the flawed, unjust system of the Chinese government. Their accounts have challenged official versions of events in Tibet since the outbreak of 2008 protests. However, the UN Special Rapporteur on Freedom of Expression on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, has asserted in his report to Human Rights Council on 7 September 2012 that governments subjugate freedom of expression when they demand that only official version of events be reported. The Special Rapporteur believes that “laws that penalize the expression of opinions about historical facts are incompatible with the obligations that the ICCPR imposes on States parties in relation to the respect for freedom of opinion and expression.”<sup>75</sup>

International human rights law on the right to freedom of includes “expression of views and opinions that offend, shock or disturb.”<sup>76</sup>

73 Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed - The right to freedom of artistic expression and creativity, [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/23/34](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/23/34)

74 Ibid.

75 General comment No. 34, Human Rights Committee, 102nd session, Geneva, 11-29 July 2011, <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

76 Report of the Special Rapporteur on the promotion and protection of

Moreover, the Human Rights Council in its resolution 12/16 has ruled that restrictions should never be applied to discussion of official policies and political debate or reporting on human rights, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.<sup>77</sup> By restricting the freedom of expression for writers, artists, and intellectuals, China has disregarded Human Rights Council resolutions, reports by UN Special Rapporteurs, the Johannesburg Principles, the spirit and letter of the human rights system, and its own international obligations.

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the right to freedom of opinion and expression, Human Rights Council, Seventeenth session, A/HRC/17/27, 16 May 2011, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

77 A/HRC/RES/12/16 on Freedom of opinion and expression, 12 October 2009, [http://ap.ohchr.org/documents/sdpage\\_e.aspx?b=10&se=100&t=11](http://ap.ohchr.org/documents/sdpage_e.aspx?b=10&se=100&t=11)

## II. Freedom of Expression: Chinese Legal Provisions

The Chinese Constitution protects freedom of speech and freedom of the press. Article 35 of the Chinese Constitution provides that citizens “enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”<sup>78</sup> China’s constitutional guarantees also include the right to criticize any state organ or functionary. According to the Regulations on the Administration of Publishing, “all levels of the People’s Government shall ensure that citizens are able to legally exercise their right to freedom of publication.”<sup>79</sup>

The Constitution of the PRC also includes formal, explicit guarantees for human rights. Article 33 which guarantees to Chinese citizens equal treatment before the law, was amended in March 2004 to include “[t]he State respects and preserves human rights.”<sup>80</sup>

However, such guarantees are rendered meaningless by other ambiguous, overbroad legal provisions regarding the disclosure of “state secrets” and incitement of “subversion,” as well as PRC’s system of censorship, media control, and telecommunications regulations. Constitutional guarantees of free speech are overpowered by other provisions that impose vague and over-broad affirmative duties on citizens. For example, Article 51 states that the exercise of citizens’ freedoms cannot be infringed on China’s interests; Article 52 requires Chinese citizens to safeguard “the unity of the country;” Article 54 states, “it is the duty of citizens of the PRC “to safeguard the security, honor and interests of the motherland;” and Article 53 obliges Chinese citizens, organizations, and public organs to “keep state secrets.”

Chinese authorities systematically exploit legal tools to punish

78 Constitution of the People’s Republic of China, [http://www.npc.gov.cn/englishnpc/Constitution/node\\_2824.htm](http://www.npc.gov.cn/englishnpc/Constitution/node_2824.htm)

79 Regulations on the Administration of Publishing, Congressional-Executive Commission on China (CECC), <http://www.cecc.gov/resources/legal-provisions/regulation-on-the-administration-of-publishing-chinese-and-english-text>

80 *Supra* note 73.

citizens who peacefully express political opposition or advocacy for human rights. Because the National People's Congress Standing Committee is charged with interpreting the Constitution, Chinese courts are loath to apply and interpret it, which allows the authorities to limit citizens' freedoms and expand their duties with impunity. The number of political detentions in China is on the rise, despite Beijing's claims regarding the enjoyment of freedom of expression by citizens in the PRC.

Last year, the Chinese government enacted the National Human Rights Action Plan (NHRAP) for 2012-2015.<sup>81</sup> This plan articulated many human rights goals. In particular, the NHRAP (2012-2015) "vow[ed] to take effective measures to ensure that all channels of self-expression are unblocked and that citizens' freedom of speech and right to be heard are protected in accordance with the law." The action plan also calls for strengthening institutional guarantees to ensure journalists' right to be informed, gather materials and publish information, as well as criticize and supervise.

More than a year after the enactment of this plan, arrests and sentencing of Tibetans peacefully exercising their right to freedom of expression have only increased at an alarming rate. The problem with China's public articulation of human rights action plan is that they remain mere plans with no real intention to put them into practice. Furthermore, like the recognition of rights in the Chinese Constitution, human rights are only recognized only to be subject to an exception so broad the right becomes meaningless. In the Constitution, this is achieved by imposing duties on the citizens. In the NHRAP (2012-2015), this is accomplished by relying on a legal system that in practice is more likely to restrict than protect human rights. This worrying abuse of legal system is used to justify crackdown on expressions of legitimate grievances; Tibetan writers, artists and intellectuals are detained, tortured and imprisoned through arbitrary application of China's Criminal Law provisions. Crimes listed in articles 102-113 of the Criminal Law<sup>82</sup> have

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81 Full Text: National Human Rights Action Plan of China (2012-2015), 11 June 2012, *Xinhua*, [http://news.xinhuanet.com/english/china/2012-06/11/c\\_131645029.htm](http://news.xinhuanet.com/english/china/2012-06/11/c_131645029.htm)

82 Criminal Law of the People's Republic of China, *china.org*, <http://www.china.org>

profound impacts on the right to freedom of expression, the most fundamental of which is that pertaining to state secrets.

The NHRAP (2012-2015) is not China's first human rights action plan. The first action plan was enacted for 2009-2010.<sup>83</sup> Due to the lack of serious implementation of the first NHRAP,<sup>84</sup> China faces serious roadblocks in the execution of the current plan. The Chinese government needs to take the human rights goals and principles in the action plan seriously. This includes abandoning the mentality that human rights must yield to the states' interest and propaganda.

Systemic problems with the judicial system of the PRC cannot be ignored in the context of ongoing crackdown on writers, intellectuals, and artists. The Chinese judiciary's susceptibility to interference by the CCP officials is undoubtedly facilitating the escalating attack on Tibetans' freedom of expression and information under the guise of maintaining "social stability" and "ethnic unity." Quite simply access to justice is non-existent for Tibetan political detainees.

The lack of an independent judiciary in the PRC is perpetuated by the lack of transparency and accountability in the China's justice system. The problem contributes to a culture of secrecy in the governing structures, and facilitates widespread impunity for Party officials in instances of arbitrary detention and flagrant official reprisals. The judiciary of the PRC is widely regarded as subservient to the Communist Party and its stronghold on power. The courts, the prosecuting organ, and the police operate under the supervision of the CCP.

Judges in the PRC are subject to significant external interference that limits their independence and routinely denies justice to defendants accused of violating "state security" and/or "state secrets" laws. Local government bodies influence courts by controlling judicial

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china.org.cn/english/government/207320.htm

83 Full Text: National Human Rights Action Plan of China (2009-2010), [http://english.gov.cn/official/2009-04/13/content\\_1284128.htm](http://english.gov.cn/official/2009-04/13/content_1284128.htm)

84 Promises Unfulfilled: An Assessment of China's National Human Rights Action Plan, 11 January 2011, *Human Rights Watch*, <http://www.hrw.org/reports/2011/01/11/promises-unfulfilled-0>



funding and appointments — influence which is frequently used to protect local interests. The influence of local people's congresses over court decisions has been on the rise since the early 1990's. Interference by Party officials in court proceedings and collusion between police, prosecutors, and judges is commonplace in the judicial system, particularly in "politically sensitive cases." Party interference in criminal trials and the stripping of procedural protections for Tibetan political detainees means that criminal proceedings are often little more than a show, where the result is known before the proceedings begin.

Chinese authorities also rely on the crime of "subversion of State power"<sup>85</sup> to systematically label peaceful expression of opposition as a threat to national security. Article 105 of the Criminal Law provides for sentences of up to life imprisonment for attempts to subvert state power or 15 years for inciting such subversion. In flagrant violation of international norms, "speech in and of itself is interpreted as constituting incitement of subversion," with no genuine analysis by judges regarding whether such speech posed an actual threat to national security.

In China, it is illegal to publish a book, newspaper, or magazine as a journalist without a license from the General Administration of Press and Publication ("GAPP").<sup>86</sup> Every book, newspaper, or magazine must have a unique serial number that is only available through the GAPP, and the GAPP works closely with the Central Propaganda Department in this process. The Chinese government's propaganda department keeps a tight control over all avenues of expression and communication. In March 2013, China announced plans to merge GAPP and the State Administration of Radio, Film and Television into a single regulatory authority to oversee the press, publication, radio, film and television sectors.<sup>87</sup>

85 "Where Does the Crime 'Subversion of State Power' Come From?" by Woesser, 20 January 2010, High Peaks Pure Earth, <http://highpeakspureearth.com/2010/where-does-the-crime-subversion-of-state-power-come-from-by-woesser/>

86 On GAPP and other Agencies Responsible for Censorship in China, see CECC's link <http://www.cecc.gov/agencies-responsible-for-censorship-in-china>.

87 China to merge press, broadcasting regulators, 10 March 2013, *Xinhua*,

In 2010, presumably in response to widespread international criticism regarding the abuses of power carried out by China's state secrets framework, on 29 April 2010 the National People's Congress Standing Committee issued a revised version of China's State Secrets Law (1989), to take effect 1 October 2010. This revision is ostensibly an element of China's broader efforts to "reform" the CCL and CPL to bring them into line with the ICCPR—policy commitments evinced in China's first ever Human Rights Action Plan (2009-2010).<sup>88</sup>

The Central government news agency claims that the revised Law on the Protection of State Secrets (2010) contains a new definition narrows the scope of state secrets. Despite such claims, the definition of "state secrets", the 2010 Law continues to suffer from problems of vagueness and over-breadth. The definition of state secrets in both the 1989 and 2010 laws "preserves the broad categories that give officials wide discretion to declare information a state secret, including the catch-all Item 7."<sup>89</sup>

Furthermore, no language in the new law suggests that the evinced list is meant to be exhaustive. Thus, the U.S. Congressional-Executive Commission on China "ECC" concluded that the revised law does not appear to narrow the definition's scope.<sup>90</sup>

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[http://news.xinhuanet.com/english/china/2013-03/10/c\\_132221769.htm](http://news.xinhuanet.com/english/china/2013-03/10/c_132221769.htm)

88 Full Text: National Human Rights Action Plan of China (2009-2010), 13 April 2009, [http://english.gov.cn/official/2009-04/13/content\\_1284128.htm](http://english.gov.cn/official/2009-04/13/content_1284128.htm)

89 National People's Congress Standing Committee Issues Revised State Secrets Law, CECC, 20 May 2010, available at <http://www.cecc.gov/pages/virtualAcad/index.php?showsingle=140456> (last visited 25 November 2013).

90 See Dissenting Voices, TCHRD, 2010, ("There are several reasons that this additional language does not narrow the scope of state secrets. First, the 1989 Law already contained an implicit requirement that information is considered a state secret if disclosure would result in some harm to "state security and interests" (Article 9). Second, the references to "politics, economy, national defense, foreign relations" are not exhaustive, as indicated by the use of "among others" (*deng*). Third, such categories are broad enough to encompass a wide array of information. Finally, officials may still rely on the catch-all Item 7 to declare information a state secret.")

Article 28 of the revised law tightens requirements on Web and telecommunications service providers operating in China regarding state secrets and Internet use. The new law “obligates network operators and service providers to cooperate with the police, state security officials and prosecutors in investigating leaks of state secrets. On discovering a leak, they must promptly block it and report it to higher authorities.”<sup>91</sup>

In 2011, Chinese authorities in Tibet Autonomous Region began implementing new Internet regulations, which require Internet and mobile phone service providers to collect personal information about users when they sign up for Internet access, landline, or mobile phone service.<sup>92</sup> The ‘real name registration’ requirements allow authorities to more easily identify online commentators or tie mobile use to specific individuals, making it easier to regulate and censor information on the Internet and to monitor phone conversations. In this regard, the UN Special Rapporteur on Freedom of Expression on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, has raised concerns stating that “legitimate online expression is being criminalized in contravention of States’ international human rights obligations, whether it is through the application of existing criminal laws to online expression, or through the creation of new laws specifically designed to criminalize expression on the Internet.”<sup>93</sup> The Special Rapporteur further stated that such regulations are often “justified on the basis of protecting an individual’s reputation, national security or countering terrorism, but in practice are used to censor content that the Government and other powerful entities do not like or agree with.”<sup>94</sup>

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91 Jonathan Ansfield, China Passes Tighter Information Law , 29 April 2010, *New York Times*, available at [http://www.nytimes.com/2010/04/30/world/asia/30leaks.html?\\_r=1&partner=rss&emc=rss](http://www.nytimes.com/2010/04/30/world/asia/30leaks.html?_r=1&partner=rss&emc=rss). (last visited 25 November 2013).

92 Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27, 16 May 2011, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

93 *Ibid.*

94 *Ibid.*

Despite theoretical provisions pertaining to the right to freedom of expression codified in Chinese laws, there exists a gaping chasm between international norms and the practices of the Chinese government regarding freedom of expression and opinion. Despite the repeated statements that any law restricting the international right to freedom of expression must be narrowly written to achieve a specific limited purpose, the Chinese laws rely on broad terms that only have a passing relationship to achieving the permissible goals. Chinese authorities systematically exploit this vague language to carry out abusive, political prosecutions against those peacefully expressing their views or sharing information from inside Tibet.

In recent years, the authorities have focused their prosecutions against artists, writers, and intellectuals who are merely exercising their right to freedom to hold an opinion and the freedom to express that opinion. Furthermore, by espousing an official policy of demonizing the Dalai Lama and his supporters as "separatists" bent on splitting the Chinese motherland, the Chinese government has embarked on a ruthless campaign to suppress Tibetan identity as well as dissident voices inside Tibet by characterizing any such expression as "splittist."

## PROFILE OF WRITERS, INTELLECTUALS AND ARTISTS CURRENTLY SERVING PRISON TERMS

### 1. **Kunchok Tsephel Gopeytsang: Writer, Editor, Teacher; Sentenced to 15 years in prison**



On 26 February 2009, Chinese security officials in Machu (Ch: Maqu) County arrested Kunchok Tsephel Gopeytsang, an official in a Chinese government environmental department and founder of an influential website created to preserve and promote Tibetan culture. Tsephel was convicted of “distributing state secrets” and on 12 November 2009 was sentenced to 15 years imprisonment. The charges are widely believed to stem from content on his website ([www.tibetcm.com](http://www.tibetcm.com)), and for sharing information outside Tibet regarding

the brutality committed against Tibetans and the detention of monks at monasteries by the People’s Armed Police.

Age thirty-nine at the time of his arrest, Kunchok Tsephel was seized from his home in the early hours of the morning. Chinese authorities ransacked his home and confiscated his computer, camera and mobile phone. From the day of his arrest his family had no information of his whereabouts until they were summoned to court on 12 November 2009 to hear the verdict and sentencing. Tsephel’s trial at the Intermediate People’s Court of Kanlho Tibetan Autonomous Prefecture was conducted behind closed-doors—

common practice in China when criminal proceedings are alleged to involve “state secrets.”

A resident of Nyulra Township in Machu County, Tsephel was born into a nomadic family in 1970 and studied both the Tibetan and Chinese languages. In 1989, he came to exile in India and enrolled at the Tibetan School in Suja, Bir where he studied Tibetan and English for three years. He returned to Tibet in 1994 after the completion of his studies.

Tsephel’s 2009 arrest was not the first time Tsephel found himself detained at the hands of the CCP authorities. In the third month of Tibetan lunar calendar in 1995, PSB officials of Gansu Province arrested Tsephel on questionable grounds regarding his suspected involvement in political activities. All the while professing his innocence, he was kept under custodial detention for two months and was subjected to torture and forced interrogation before being released without charges.

In 1996, Kunchok Tsephel undertook English and Chinese language studies at Beijing Nationality University. Between 1997 and 1999, he studied English at Northwest Nationalities University in Lanzhou. In 2004, he was recruited as a Tibetan and English language teacher at the Tibetan Middle School in Machu County.

In 2005, in collaboration with a young Tibetan poet Kyabchen Dedrol, Tsephel started a self-funded website called Chodme. Their website was under strict supervision for many years, and was shut down on numerous occasions in 2007 and 2008. Undaunted, the duo continued to courageously operate their website until the time of Tsephel’s arrest in February 2009.

According to latest information received from his relatives in India, Gopeytsang “served four years of his sentence in Dingxi prison, Lanzhou, Gansu Province, before being transferred in August 2013 to a new prison nearby where conditions are harsher and there are serious concerns for his health. His family is allowed to visit him once every two months, and they report being only permitted to



“speak to him in Chinese via intercom behind a glass screen,” reports the PEN International who highlighted Gopeytsang’s case on the Day of the Imprisoned Writers in 2013.<sup>95</sup>

**Buddha Kyab, a poet and a translator living in exile in India, wrote the following poem in honour of his imprisoned older brother Kunchok Tsephel Gopyetsang to mark the Day of the Imprisoned Writers on 15 November 2013:**

## YOU

Like this, you  
Left for the [welfare] of your parents and siblings  
Leaving them behind in deep pain and agony

Like this, you  
Left for the [welfare] of your spouse and children  
Leaving them behind in deep pain and agony

Like this, you  
Left for the welfare of your comrades and childhood  
friends  
For the promise of a better future

Like this, you  
Fell into the hands of forces that destroy freedom and  
justice  
For the sake of freedom and justice

Like this, you  
Journeyed into a realm of darkness without peace  
and equality  
For the sake of peace and equality

Like this, you

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95. News: Day of the Imprisoned Writer 2013, 15 November 2013, PEN International, <http://www.pen-international.org/newsitems/day-of-the-imprisoned-writer-2013/>

Walked into the torture chamber speaking our for  
rights

For the sake of our cause and our people

In short, like this

You have been tied down by a 15-year sentence in  
prison

Forced to suffer far away from your loved ones

To secure the glory of our ancestors

For freedom, justice, peace and equality

Until now, for the sake of these values

From the homes of ancestors

Many have taken this path

Many have taken this path forever

Following in their foot-prints

Many are preparing to leave

Thinking about them

Tears of many parents and siblings have merged into  
a common river

Tormenting the hearts of many wives and children

Sending to the wind [of the four] directions the  
sadness of many comrades and childhood friends

Many who advocate for nationality and identity

Many who fight for Freedom and justice

Many who think of peace and equality

Many who embrace love and solidarity

They remember and talk about you and your  
comrades

Respect you and your comrades

From the depth of their hearts

From the base of their bones

**2. Dolma Kyab (Pseudonym: Lobsang Kelsang Gyatso): Writer, Intellectual and Teacher. Sentenced to 10 years and 6 months in prison**



Dolma Kyab was a writer and a history teacher at a middle school in Lhasa. He was detained in March 2005 and sentenced to ten and a half years in prison on 16 September 2005 apparently in connection with his unpublished book, "The Restless Himalaya" [Ch: Sao Dong De Ximalayashan]. He was charged of 'espionage' and 'illegal border crossing'.

The Restless Himalaya contained discussions on human rights, democracy, history, literature and culture. The book also contained his opinions on the destruction of the Tibetan environment under Chinese policy, including pollution of rivers and land by uranium mining. In November 2005, writing from prison, Dolma Kyab himself attributed his conviction to this unpublished book. The manuscript of The Restless Himalayas, originally written in Chinese, was later translated in Tibetan and published by Tibetan exiles in India.

Dolma Kyab hails from Tsojang Tibetan Autonomous Prefecture in Qinghai Province. He studied history and geography at Qinghai Normal University and graduated in 1999, doing postgraduate studies at Beijing University until 2002.

In November 2003, Dolma Kyab left Tibet to travel to India where he studied English and Hindi. While in exile, he worked on his manuscript, which includes chapters on Tibetan history, geography, sovereignty, democracy, and religious belief.

Dolma Kyab is an Honorary Member of the English and German PEN Centres.

### **Preface and First Chapter of “The Restless Himalayas” By Dolma Kyab**

On the “Day of the Imprisoned Writer 2013”, High Peaks Pure Earth remembers Tibetan writer and teacher Dolma Kyab, sentenced to ten and a half years in prison March 2005.

High Peaks Pure Earth has translated articles in the past by Woesser that have been about or referred to Dolma Kyab. In her 2010 piece, “May the Deities Protect the Snowland”, Woesser wrote of Dolma Kyab: “He is truly a Bodhisattva as written about in ancient texts, compassionate and wrathful, these come in turns in his writings, there is self-redemption but he is also helping to save others! I can’t help but wonder why he wrote such things, he wrote alone, he was taken away alone, he sits alone in prison ... I want to bow to Dolma Kyab, because I have never before seen a Tibetan inside Tibet using the language of the coloniser, using history and reality, especially all aspects of today’s reality, to tell us the facts about being colonised and the way out of being colonised.”

The preface and first chapter of Dolma Kyab’s unpublished Chinese language manuscript “The Restless Himalayas” are presented below. The emotional preface gives way to a summary of Tibetan history, a strong basis for the rest of the book that is comprised of fifty seven chapters, concluding remarks and an afterword.

Here it should be noted that the last four paragraphs of the English translation of Chapter 1 were lifted from a report published in 2009 by the International Campaign for Tibet titled “Like Gold That Fears No Fire” and available for download. The report features an in-depth introduction to Dolma Kyab’s case as well as many essays and commentaries by Tibetans worth reading or re-reading.

## **“The Restless Himalayas”**

**By Dolma Kyab**

### Preface

I grew up in the swaddling clothes of my people. I saw that my people lived in the highest place in the world. However, I lay on the ground, and, looking at the world, I cried. Those were tears of reason.

I grew up with the love of my parents. When the foreheads of my ageing parents became covered with the wrinkles of their love for me, I cried. Those were tears of emotion. It was because of this that I decided to do something for my people and for those people who were like my parents. I knew that dedicating my life for my people would be difficult. I wanted to persuade people with my reasoning, not act as a model for others to follow. There was virtually no way for me to know if the future would provide me with any opportunity to contribute to this cause.

But I have a dream – that one day, we will invite our honoured spiritual leader, the Dalai Lama, to return home. I hope that all Tibetans take good care of our homeland. Our beloved Dalai Lama, who loves us more than anyone else, is about to come home. He will be together with us forever.

I also have another dream – that one day, those children who have been drifting out in foreign lands, away from their parents, will return home, putting an end to an era of motherly longing; that all children can forever be together with their parents.

I also have another dream – that one day, we will be free...

### Chapter 1: On the Historical and Geographical Concept of Tibet

There is a great need to explain the concept of “Tibet”. For many years, in efforts to reduce the overall scope of Tibet, the majority of

people have continuously referred to "Tibet" in narrow terms, in order to achieve ulterior political motives. To allow people to more easily gain a clear understanding of the concept of Tibet and the entire scope of that term, I will discuss, in the following chapters, the accuracy of the term "Tibetans", the topographical range of the area of "Tibet" and the ethnic group referred to by the term "Tibetans." I will support my explanations with historical and geographical concepts.

Historical geography is a traditional cross-disciplinary science that studies past historical events in relationship to the land on which they occurred through the use of chronology and organisation, resulting in a narration of past historical events and present experiences. Historical geography is also used to provide a guide for the future that is as accurate as possible. As a branch of geography, historical geography overlaps with the study of geopolitics, desert historical geography, the expansions and contractions of territory, ruins, the changes of rivers, agricultural historical geography, population historical geography, administrative region changes, flora and fauna changes and so on.

We emphasise the principles of geopolitics in explaining the concept of Tibet. According to natural geographic divisions, Tibet includes the entire Qinghai-Tibet Plateau. This is determined by the common traits shared by this region's climate, precipitation, vegetation and terrain. The Qinghai-Tibet Plateau could also be called the Tibet Plateau. In terms of cultural geography, this region not only includes the Qinghai-Tibet Plateau, but also includes the southwest Hexi Corridor, the Sichuan Basin and west to northwest Yunnan-Guizhou Plateau, southern Himalayas and the Ladakh region. This is primarily because of the cultural commonalities of these areas, combined with similarities in geographical environment. In terms of geopolitics, Tibet is comprised of three large regions: Ü-Tsang, Amdo and Kham. Tibet is not the name of an ethnic group; rather, it refers to regions occupied mostly by Tibetans that also include geopolitical regions occupied by Mongolians and Chinese. More precisely, it is the name of a country. The term "Xizang", as it has always been used by the Chinese government, refers only to the



Ü-Tsang region. In using the term this way, their goal is to confuse or alter the concept of Tibet, and thus disperse the power of Tibetans and achieve their own long-held goals of controlling Tibet.

It is immensely important to gain an exact understanding of the term "Tibet." In the Chinese language, "Tibet" was known as "Tubo" during the Tang Dynasty; "West Bo" during the Song Dynasty; and "Ü-Tsang, Ngari and Three Surrounding Regions" during the Yuan Dynasty. None of these terms included Amdo or Kham. During the Ming Dynasty, the word "Ü-Tsang" became encompassed by the word "Tibet". In 1663, the Qing Dynasty government stated that Tibet was the general term that referred to the three regions of Ü-Tsang, Amdo and Kham. After China invaded and began to occupy Tibet, the Chinese reduced the size of the area known as Tibet to just the Lhasa region. However, the real Tibet includes all of the areas known today as the Tibet Autonomous Region, Qinghai and Gansu, Sichuan, Yunnan and Ladakh.

The Chinese words "Zang ren" and "Xizang ren" [both terms translated as Tibetan in English] refer to two different concepts. "Zang ren" refers to the ethnic group that resides [primarily] in Ü-Tsang, Amdo and Kham – in other words, the regions known today as the Tibet Autonomous Region, Qinghai, Gansu, Sichuan and Yunnan. The term "Xizang ren", however, refers to all of the ethnic groups that reside in Ü-Tsang, Amdo and Kham – namely, the Tibetans, Mongolians, Han Chinese, Hui and other peoples throughout the Qinghai-Tibet Plateau and the southwest part of the Hexi Corridor, the northwestern part of the Sichuan Basin and the northwestern part of the Yunnan-Guizhou Plateau and the Ladakh region of Kashmir. Because the vast majority of "Xizang ren" are "Zang ren," over a long period of time the English term "Tibet" has developed to encompass the two separate concepts of "Xizang ren" and "Zang ren." In other words, all the peoples of Tibet make up "Tibet", and the ethnic Tibetans, specifically, are "Tibetans". Thus, many nations of the world today are not nations comprised of just one ethnic group; at least, this is not the case for Tibet. There are many nations that are similar. For example, the Hindustani people comprise the majority of the population of India, and people have grown accustomed to referring to the Hindustani people as "Indian"

or “Indians”. At the same time, the term “Indian” refers not only to the Hindustani people residing in that country, but also encompasses the Telegu, Bangladeshi, Sikhs, etc. Another example is Britain, as its main ethnic group, the English, make up 80% of the country’s population. But besides ethnically English people, there are also the Scottish, Welsh, Irish and others. However, the world – England itself, included – refers to this country as “England” referring also to all of the people living there as “English”. In Chinese, these two terms are translated as “Yingguo” [“England”] and “Yingguo ren” [“English”]. Thus, with regards to Tibet, we must make clear the sphere of influence encompassed in the objective reality and the universal usage of these terms. If one were to say that the borders of Tibet include only the Ü-Tsang area, that would be as laughable as saying that China only refers to the area around Beijing, or that the United States is comprised only of the area around Washington, D.C. The government of China has its reasons for referring to Ü-Tsang as Tibet. If Tibet were to one day become its own independent country, then it would be separated into two parts—much like Outer and Inner Mongolia. The Amdo region of northeastern Tibet and other regions would most likely become permanent colonies of China, therefore permanently losing their freedom.

To be clear, for the understanding of Tibetans, the term “Tibet”, as I will use it throughout the chapters of this work, refers to the name of the country comprised of all of the areas of the Tibetan region; the term “Tibetans” refers to all of the peoples residing within the borders of Tibet. Furthermore, the country of Tibet is a classic buffer state – a buffer state between China and India. More importantly, the country of Tibet is a region of peace – a peaceful, neutral Buddhist nation. Anyone who understands Tibet from the viewpoint of the Chinese is dividing Tibet into two regions: Eastern Tibet and Western Tibet.

I realise that because the Chinese government refers to “Xizang” as “Tibet”, foreigners who are not familiar with the facts will believe the Chinese government’s definitions of these terms. However, we Tibetans and others who are familiar with Tibet absolutely do not believe the Chinese government’s explanation. The real masters of

Tibet are not the Americans nor the British – and even more so not the Chinese; rather, it is the Tibetans. Could it be that the Chinese people have forgotten the widely-accepted and internationally-recognised principle of “self-determination?”

A Chinese scholar once informed me that Tibetans sometimes refer to China as Zhina. The word “Zhina” comes from Sanskrit, and Tibetans began using this term around the Southern Song Dynasty. “Zhina” refers to the Qin, Han, Three Kingdoms, Wei, Jin, Northern and Southern Dynasties, Sui, Tang and Song Dynasties. After Tibet was incorporated into the territory of China during the Yuan Dynasty, the Sanskrit term for “China” then included Tibet – this is the reasoning presented to me by that Chinese scholar. However, we must remind everyone that the entire 13th and 14th centuries belonged to the era of the Mongolian Empire. The Yuan Dynasty was a part of the Mongolian Empire. In fact, it was the last part of the Mongolian Empire. Therefore, it should not be considered part of the history of China. Therefore, when Tibetans referred to China as Zhina, this term naturally did not include Tibet. Likewise, in the Tibetan language, the words for China and Tibet are very distinctly different from one another. China is referred to as “Gyana,” and Tibet is called “Gangjong”—the names of two independent political regions.

For the sake of limiting the size of this work, in the following chapters I will not re-explain in detail my argument as to why Tibet should or should not be considered part of China. My aim is to merely offer an explanation of the regions included in the area of Tibet (Ü-Tsang, Amdo and Kham). Those who wish to gain a better understanding of Tibetan politics may please refer to Tibetan historian Shakabpa’s book “The Political History of Tibet” and the Dutchman Mr. Van Praag’s book “The Status of Tibet” etc.

It should be known that understanding the realm and range of Tibet and understanding that Tibet was formerly a viable independent nation before being colonised by China is of great benefit to all Tibetan people in understanding ourselves. In the world famous epic (Tibetan poem) King Gesar there is the famous axiom “If I know not myself, how can I know this land?” Therefore, it is only when

we understand ourselves that we then have the power to understand this land that belongs to us. In fact, such an understanding is a great unifying force behind a spirit of rejuvenation. It pushes us a step further towards understanding ourselves, and initiates an understanding of the world. And as such our hopes will no more be dreams.

I remember when China's Mr. Deng Xiaoping said to a western leader "There are people who want to split Tibet from China, to take Tibet away, but I don't think they are able." We were so simple in those days, and we too firmly believed that there was no one to take Tibet away. But today, my generation of Tibetans who have grown up in a colony firmly believe in another truth, that Tibet will always belong to Tibetans; and if China believes an 'ability' is needed to take Tibet away then our generation of Tibetans has that ability and then our next generation will have that ability too. Tibetans believe that there are no tigers in this world that cannot be slain, only people who dare not slay them.

We Tibetans are rallying our strength with every passing generation, and even with their guns the Chinese government won't be able to deal with us. It is the wish of we Tibetans that both parties will wisely choose dialogue, and that too is the wish of the Chinese government and people. The key to this beautiful peaceful wish lies with the Chinese government, and not with us, the children of this colony.

Within the concept of the Tibetan realm of which we speak, the existence of any concepts of Tibet's history and geography and concepts of plans for future undertakings on Tibet must be expressed in such a way as to completely satisfy doubting Tibetans as well as Chinese people who accept nothing about Tibet. This is our duty as Tibetans, while the supporters of mass actions are responsible for an unattainable burden of proof. In particular, a spirit of unity – an attitude of being able to conquer everything that ails us – does not help if we are passive. A far more welcome and greater undertaking is being able to see more clearly a correct strategy.

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### **3. Lhamo Kyab: Teacher. Status: Sentenced to fifteen years in prison**

Lhamo Kyab, a teacher from Nagchu Prefecture (TAR) was born to the Nyenpatsang family in Nagchu. She was the only daughter amongst three children. After finishing her education she completed a teaching course in Nagchu. She taught Tibetan and Chinese languages and mathematics at a local school for 25 years, beginning in 1982.

Kyab was sentenced to 15 years in prison in January 2010 for suspected involvement in political activities. Officials from the PRC's intelligence bureau arrested Kyab in the middle of 2008, just days after she joined a primary school in Nagchu's Diru County. Kyab was whisked away with her head covered with a black scarf and taken to her home in Nagchu. Authorities raided her house before taking her to a secret detention centre in Sangyib. Lhamo was kept in detention and interrogated for roughly 18 months before the harsh prison sentence was handed down against her in January 2010. Very little information is available about her trial, suggesting that she faced charges of "endangering state security." Lhamo Kyab never joined the Chinese Communist Party. Nevertheless, local Tibetans, including government officials, students and the general populace, respect for her person sincere commitment to educating Tibetans about Tibet's culture and traditions.

### **4. Trintse: Monk, blogger, writer, calligrapher. Sentenced to nine years in prison.**

Trintse hails from Ngaba. He is a 29 year-old monk from Kirti Monastery, and was actively engaged in writing and blogging before his arrest on 29 March 2008. Trintse is also an award-winning calligrapher, regarded as the best in his area. In November 2008, Trintse was sentenced to nine years in prison on charges of "revealing state secrets." The details of his conviction are unavailable.

## **5. Paljor Norbu: Master printer. Status: Sentenced to seven years in prison**

Master printer Paljor Norbu was arrested on October 31, 2008. In November he was sentenced in a secret trial to seven years in prison. He was 81 years old at the time he was seized. Norbu began printing at the age of 11 in an independent Tibet. He was 21 years old when Chinese tanks first invaded eastern Tibet. Following the 1959 Tibetan National Uprising, he was imprisoned because he had been employed as a printer by the Tibetan government. Norbu ran a family printing business in the Barkhor in Lhasa that had published Buddhist texts for monasteries for generations. Since his arrest in October 2008, his print shop has been closed and all of his employees, which numbered in the dozens, have been discharged. The PSB confiscated wooden blocks used in the printing process, suggesting that his detention was related to providing publications, and not for participating in demonstrations. One source indicates that he was arrested for printing “prohibited materials” including the Tibetan flag. Although the details of the government’s case against him are unavailable, the seven-year sentence is consistent with a charge of “inciting separatism.”<sup>96</sup>

## **6. Lolo: Singer, artist. Sentenced to 6 years in prison**



Lolo, 29, is a well-known Tibetan singer and artist who was detained on 19 April 2012 in Yulshul Tibetan Autonomous Prefecture in Qinghai Province. He was detained in connection with an album titled “Raise Tibet Flags”. The album contained 14 songs which called for freedom in Tibet and the return of His Holiness the Dalai Lama to his homeland, solidarity with those Tibetans who self-immolated for

96 See Paljor Norbu’s full profile at <http://freetibetanheroes.org/hero-profiles/paljor-norbu/> [Accessed on 22 November 2013]



their country and reunification of the Tibetan people.

Lolo hails from Dhomdha town in Yulshul county, eastern Tibet has been detained by Chinese authorities a few months after releasing his album that contained 14 songs. Lolo is son of father Jamyang Choegyul and mother Choekyid Dolma.

On 23 February 2013, Lolo was sentenced to 6 years in prison for singing “politically charged” lyrics by a Chinese court in Xining.

### **7. Dhondup Wangchen: Researcher, filmmaker. Sentenced to six years in prison**



Dhondup Wangchen, 35, was detained on 26 March 2008 in Kawasumdo County, Tsolho Tibetan Autonomous Prefecture, Qinghai Province, shortly after completing interviews for *Leaving Fear Behind*, a documentary film. The film contained interviews with over 100 Tibetans, many of whom spoke openly on camera regarding their views of the Dalai Lama, the Beijing Olympics, as well as life under Chinese rule. Dhondup Wangchen was formally arrested in July 2008 under suspicion of

“inciting separatism and stealing, secretly gathering, purchasing, and illegally providing intelligence for an organization, institution, or personnel outside the country.” Jigme Gyatso, a monk who assisted Wangchen with the making of the film was detained on 23 March 2008. Jigme Gyatso was released but detained again. Since September 2012, the whereabouts of Jigme Gyatso has remained unknown. The footage of *Leaving Fear Behind* was smuggled out of Tibet prior to their arrest.

Dhondup is suffering from Hepatitis B—a condition he contracted

following his arrest and is reportedly being denied adequate medical treatment. He was reportedly brutally mistreated by Chinese authorities in an attempt to extract a confession from him.

Chinese authorities' treatment of Wangchen has run afoul of both Chinese Criminal Procedure law, and international standards regarding the right to a fair trial. Officials told lawyer Li Dunyong, who Wangchen's family hired, that he would not be allowed to defend Wangchen, and instead, the government appointed a lawyer to defend him. Both Amnesty International and Human Rights Watch issued statements condemning his arrest and prosecution.

The six year sentence against Wangchen was announced on 28 December 2009. In May 2010, he was transferred to Xichuan labour camp in Qinghai Province where conditions are thought to be very harsh. In January 2013, Filming for Tibet, a website dedicated to the imprisoned filmmaker reported that Wangchen has been transferred to Qinghai Provincial Women's Prison, the main prison for women in China's Qinghai province. During prison meeting with is relatives in January 2013, he spoke of previous harsh treatment at Xichuan labour camp, including several months of solitary confinement that started in March 2012.

### **8. Gangkye Drupa Kyab: Writer, teacher, author, father. Sentenced to 5 years and 6 months in prison**



Gangkye Drupa Kyab, 34, is a popular Tibetan writer and teacher from was first detained on the night of 15 February 2012 by a group of about 20 Public Security Bureau (PSB) officers from his home in Serta (Ch: Seda) County. His house was raided and his wife, Wangchuk Lhamo, was given no explanation despite repeated appeals at the time of detention. Since then, the whereabouts of Gangkye Drupa

Kyab remained unknown to family and friends until his sentencing early this month. For 17 months, he was detained incommunicado with the PSB releasing no information about his whereabouts or condition.

On 1 August 2013, Gangkye Drupa Kyab was sentenced to five years and six months in prison for alleged political activities by Nyagchu (Ch: Yajiang) County People's Court in Kardze (Ch: Ganzi) Tibetan Autonomous Prefecture, Sichuan Province.

Gangkye Drupa Kyab was born in Gephen Village of Ragtam Township in Kardze Tibetan Autonomous Prefecture. He attended primary school in Ragtam Township and middle school in Serta County. After completing a teacher-training course in Kardze County, he worked as a teacher in Dartsang and Horshul townships. At the time of his arrest, he was working as a teacher at a school founded by Khenpo Tsultrim Lodoe in Drango (Ch: Luhuo) County in Kardze. In addition to being a teacher, he was a prolific writer. Among his many writings, one of the most well known is the book titled "Sajhi Tragdi Marpo" (Blood Letters of 2008) which was published by exile Tibetans in India. The book detailed the violent repression of 2008 protests in Tibet contradicting official accounts touted in Chinese state media. He also wrote the book, 'Dedhon Ghi Mikchu' (Tears of the Past).

### **9. Kunga Tsayang (Pseudonym: Gangnyi): Monk, Writer, Essayist, and Amateur Photographer Sentenced to 5 Years.**



Kunga Tsayang, is a monk from Labrang Tashikyil Monastery and passionate writer, essayist, blogger, chronicler and an amateur photographer who wrote under the pseudonym "Sun of Snowland" (Tibetan: Gang Nyi). He was arrested by the Public Security Bureau (PSB) officers on

17 March 2009. Born in Golok Chikdril, Tsayang was 20 years old at the time of his arrest. According to multiple sources, Tsayang was seized from his living quarters during a midnight raid by PSB personnel on Labrang Monastery, Sangchu (Ch: Xiahe) County, in Malho (Ch: Huangnan) Tibetan Autonomous Prefecture, Gansu Province. On 12 November 2009, in a closed-door trial, Kunga Tsayang was sentenced to 5 years in prison by the Kanlho (Ch: Gannan) Intermediate People's Court for "disclosing state secrets."

Tsayang's arrest and prison term stem from allegations that he had posted political essays on a website known as "Jottings" (Tibetan: Zin- dris). He is the courageous author of several essays which challenged the Chinese government's policies regarding Tibet, including 'Who Is the Real Splittist?', 'Who Is the Real Disturber of Stability?', 'We, Tibetans, are the Real Witnesses', and 'Who Is The Real Instigator of Protests?'

Educated at the Institute of Buddhist Dialectics at Labrang Monastery and in Beijing, Kunga Tsayang was known to take great pride in his ancestral Tibetan roots. He was regarded a serious writer and photographer with dreams of becoming a professional photographer. Kunga had traveled widely throughout Tibet and documented the environmental degradation on the Tibetan plateau and the impact on the Tibetan people. His travelogues chronicled the unique characteristics of Tibetan topographical features, culture, customs, and religious heritage.

Tsayang had reportedly been under the close watch of the Chinese authorities in Sangchu County prior to his arrest, yet he dared to continue his travels to the far reaches of Tibet and China to carry out photo journalism. His presence at Labrang Monastery had generally been limited to important prayer rituals and ceremonies.

Kunga also worked for Nyenpo Yutsae Kyekham, a Tibetan conservation protection group, which distributed materials to schools and conducted education campaigns about the Tibetan environment and the need to protect endangered species. He was reported to have been on an environmental expedition that

discovered an endangered bird, thought only to be found in Tibet. Tsayang had also been working on setting up a new school at the Yakra Monastery.

### **10. Dokru Tsultrim: Monk, editor, writer. Sentenced to 4 years and 6 months**



Dokru Tsultrim, a writer and monk was arrested on 2 April 2009 from a monastery in Gemo on suspicion of having produced “reactionary” writings in two articles that criticized the Chinese government and supported the “separatist forces of the Dalai Lama.” He was freed one month later. Tsultrim was again detained by Public Security Bureau (PSB) officers from Gomang Monastery in Ngaba County on 24 May 2010 and was held at a detention centre in Barkham in Ngaba Prefecture (Sichuan Province). PSB officers reportedly arrived at the monastery without an arrest warrant, searched Tsultrim’s room and demanded to see his laptop computer. Tsultrim was planning to publish a compilation of articles written in the aftermath of the April 2010 earthquake in Kyegudo in Yushu Tibetan Autonomous Prefecture (Qinghai Province), which his relatives fear may have led to his arrest. He edited the now-banned literary journal called Khawei Tsesok (Life of Snow).

On 7 May 2011, Dokru Tsultrim was sentenced to 4 years and 6 months in prison by the Intermediate People’s Court in Barkham, capital of Ngaba Tibetan and Qiang Autonomous Prefecture. He was charged of “inciting to split the nation”.

Dokru Tsultrim was born in 1983 in Mangra (Ch: Guinan) County in Tsolho (Ch: Hainan) Tibetan Autonomous Prefecture, Qinghai Province. He was a monk at Gomang Monastery in Ngaba County.

**11. Tashi Rabten (Pseudonym: Theu'rang): Writer, editor, university student; Sentenced to 4 years in prison**



Tashi Rabten was a student, writer and literary editor at the Northwest Minorities University in Lanzhou in Gansu Province. He was detained on 6 April 2010 along with Druklo (Pseudonym: Shokjang), another student-writer, when approximately 16 Chinese security personnel raided their university hostel and ransacked their rooms. The arresting authorities proceeded to confiscate their Tibetan language books, mobile phones, laptop computers and course materials.

A native of Dzoerge County in Ngaba prefecture, Rabten was due to graduate from the university in 2010. In 2009, Tashi Rabten authored a book, also banned, entitled *Written in Blood*, which focused on issues of democracy, the 2008 Uprising, and the brutal Chinese suppression thereof. Reportedly being handled by the Chinese as a “political matter,” Rabten had published about 1,000 copies of the book and managed to distribute more than 400 copies before the Chinese authorities banned it.

Tashi is one of the brave young thinkers of the new Tibetan generation—fluent in Tibetan and Chinese, Internet-savvy, and having grown up in a Chinese-ruled Tibet. In addition to his studies, he edited *Eastern Snow Mountain*, a literary magazine that quickly drew the ire of the Chinese government following the publication of an edition that dared to refute state narratives of the 2008 Uprising. The issue included details of the custodial beating and death of Paltsal Kyab, a 45-year old nomad at the hand of Chinese authorities in May 2008. Essays also expressed grief over two monks



who had been driven to suicide in the face of severe treatment by Chinese authorities.

The Eastern Snow Mountain journal was promptly banned. However, copies of the magazine had already circulated in the Qinghai and Gansu provinces of TAR, and beyond. The essays were originally written in the Amdo dialect of Tibetan; the authors largely anonymous. Therefore, the risk associated with the publication fell naturally, and squarely, on the editorial staff, led courageously by Tashi Rabten.

On 2 June 2011, the Ngaba Intermediate People's Court sentenced Tashi Rabten to four years in prison on charges of "inciting to activities to split the nation".

## **12. Jangtse Dhonko (Pseudonym: Nyen): Writer, Intellectual and Ressearcher; Sentenced to 4 years in prison**



Jangtse Dhonko aka Nyen ("The Wild One") is a Tibetan writer and intellectual who worked in the Chinese government-run Ngaba Regional Historical Research Centre. Nyen was detained on 21 June 2010. Chinese authorities accused Nyen of writing a "reactionary" essay titled "What Human Rights Do We Have Over Our Bodies?", which criticised the Chinese government's bloody suppression of the 2008 protests.

The essay was published in the banned journal, Shar Dungi (Eastern Snow Mountain). Nyen had previously received an award for an article, which appeared in another literary journal, Drangchar (Cold Rain).

Nyen was born in 1978 in Kyungchu County, Ngaba Prefecture,

Sichuan Province. He was also a member of Sichuan Province Writers Association. He is a well-known writer and prize-winning poet, and also the director of the Ngaba county government's local history committee. He is the author of several books including "Red-minded," "Zombie," and "Skill."

On 30 December 2010, the Ngaba Intermediate People's Court sentenced Nyen to four years in prison.

### **13. Budar: Poet, Writer and Doctor; Sentenced to 4 years in prison**

Budar is a writer, poet, and medical doctor whose work is regarded as influential in Tibetan society. He wrote a book called Rolang (Zombie), which was published by Gansu Ethnic Printing Press and became very popular among Tibetans. Budar was editor of Tibetan language periodical "Modern Self". He was accused of reactionary writings in the essay 'Hindsight and reflection' under the pen name 'Buddha' in the banned literary journal, Shar Dungi.

Budar was born in 1979 in Ngaba County and graduated with a Doctor of Medicine (MD) degree from Chongqing University. At the time of his arrest, he was working in a hospital in Barma town in Ngaba County. On 30 December 2010, he was sentenced to 4 years in prison.

### **14. Kelsang Tsultrim (Pseudonym: Gyitsang Takmik): Monk, writer, activist. Sentenced to 4 years in prison**

Kalsang Tsultrim was detained on 16 December 2010 primarily for recording and distributing 2,500 VCDs wherein he explains Tibetan history since Chinese rule, lack of human rights in Tibet, and the struggles, hopes, and aspirations of Tibetan people inside Tibet. The hour-long video testimony, recorded on 19 July 2009, was widely distributed in Tibet with some copies of the recording making its way into exile Tibetan community in India. He was arrested in Sangchu (Ch: Xiahe) County in Kanlho (Ch: Gannan) Tibetan Autonomous Prefecture, Gansu Province. The Public Security Bureau of Tsoe

(Ch: Hezuo) City who had called him for questioning detained him without due process of law.

In December 2011, a year after his detention and arrest, the Kanlho (Ch: Gannan) Intermediate People's Court sentenced him to four years in prison on unknown charges.

Kalsang Tsultrim was first arrested on 27 July 2010 from Dzoegé (Ch: Ru'ergai) County in Sichuan Province for "committing political error". In September 2010, despite enquiries from around 40 friends and family members, local officials refused to divulge any information about his whereabouts or condition. Since his arrest, he had been detained at different locations. On 15 October 2010, he was released on the condition that he would not participate in any political activities but was arrested again in December 2010.

Kelsang Tsultrim is also the author of a book called Miyul La Phul Ve Sempa, which illustrates the concerns of the Tibetan people.

In addition to being a writer and activist, Kalsang Tsultrim was also a monk at Gyitsang Gaden Choeckorling Monastery in Sangchu County.

### **15. Kirti Kyab: Teacher, Editor, Writer; Sentenced to 3 years in prison**



Kirti Kyab was detained in March 2010 along with four other teachers from the Nationalities Teachers Training College in Barkham County in Ngaba Tibetan Autonomous Prefecture. The teachers were seized from the school campus, where Tibetans had on March 10 and 14th worn chupa (the Tibetan national dress) and lit butter lamps in an expression of solidarity and mourning for the

victims of the 2008 Uprising.

Kirti Kyab was also accused of being the editor of Shar Dhungri ("Eastern Snow Mountain") which had been critical of the Chinese government policies, and of providing financial support to students to publish a literary magazine called "Thunderbolt."

He was a graduate of North West University for Nationalities and teacher at Ngaba Prefecture's Middle School for Nationalities. He was sentenced to 3 years in prison.

Kirti Kyab's prison term ended in March 2013, however, TCHRD has received no confirmation on his release.

### **16. Kelsang Jinpa (Pseudonym: Garmi): Poet, editor; Sentenced to 3 years in prison**



Kelsang Jinpa, a poet and writer from Sangchu (Ch: Xiahe) County, Kanlho Tibetan Autonomous Prefecture, Gansu Province. He was detained on 19 July 2010 from his home by the Ngaba Public Security Bureau officers. He studied briefly at the India-based Kirti Monastery. Kelsang Jinpa, together with Buddha, was an editor of the "Modern Self" periodical. Writing under the pen name 'Garmi' ('the Blacksmith'), Kelsang Jinpa published 'The Case for Lifeblood and Life-force' in the

banned literary journal, Shar Dungi.

Kelsang Jinpa was born in 1977 in Sangchu County. At the time of his arrest, he was living and working in Ngaba County as a businessman, poet and editor. On 30 December 2010, he was sentenced to 3 years in prison. Many close to the writer believe that

he was punished for his essay, 'The Case for Lifeblood and Life-force'.

**17. Jigme Gyatso: Monk, assistant to filmmaker Dhondup Wangchen. Status: Disappeared since September 2012**

Jigme Gyatso, 42, a Labrang Tashikhyil monk, was detained in Linxia City, Gansu Province on March 23, 2008 in connection with the making of the documentary film *Jigdral (Leaving Fear Behind)*. He was reportedly severely tortured and interrogated by Chinese prison guards during his detention—mistreatment which caused him to faint several times in his cell. Gyatso was released on October 15, 2008, and re-arrested from his residence in Sangchu County, Kanlho by the Sangchu County Public Security Bureau on March 10, 2009. His release was reported on May 3, 2009, however he is likely in a very insecure situation and subject to surveillance by state authorities.

**18. Wangdue: AIDS Program NGO worker. Status: Sentenced to life in prison**

Wangdue, 44, was born in Taktse County, Lhasa Municipality, in the TAR and was most recently employed as a HIV/AIDS Prevention Program Officer with the Burnet Institute—a prominent medical research and public health NGO based in Melbourne, Australia. Wangdue was detained from his home by the Lhasa PSB on March 14, 2008, and his whereabouts remained unknown until October 27, 2008 when the Lhasa Intermediate People's Court announced his sentence of life imprisonment. According to the Lhasa Evening News, Wangdue violated articles 110 and 111 of the Criminal Law of the PRC, constituting the crime of espionage, endangering state security and providing intelligence illegally to organizations outside of China. His "criminal" acts were passing information regarding China's national security outside Tibet, re-producing CDs branded as harmful to China's state security, and posting handbills that were aimed at "splitting the nation." He had previously been detained on March 8, 1989 and sentenced to three years of "re-education through labour" ("RTL") following his alleged involvement in a period of

unrest in Lhasa. He later served an additional five years after he signed a petition which stated the 1951 17-Point Agreement was forced on an independent Tibet. Three others were sentenced for allegedly collaborating with Wangdue. Migmar Dhondup received a fourteen years, Phuntsog Dorjee a nine years, and Tsewang Dorjee eight years sentence for allegedly collaborating with Wangdue to send information outside Tibet.

### **19. Migmar Dhondup: Community Development NGO Worker.**

**Status: Sentenced to fourteen years in prison**

Migmar Dhondup, in his early thirties, worked for the Kunde Foundation, an NGO working with to help marginalized and impoverished communities. He is from Tringi County in Shigatse Prefecture, TAR and is known as a passionate conservationist. On 27 October 2008 he was sentenced to 14 years in prison for “espionage” for collecting “intelligence concerning the security and interests of the state and provid[ing] it to the Dalai clique... prior to and following the ‘March 14’ incident.” Migmar was convicted under Article 110 of the criminal law for conspiring with Wangdue in “an underground intelligence network.” His crime was the alleged distribution of CD-ROMs and leaflets prepared by Wangdue that incited “splitting the nation” and a “Tibetan people’s uprising.” Dhondup’s previous work as a tour guide, including on the exploration of hundreds of ancient sites in upper Tibet with an American archaeologist, was said to give him great pride in his cultural identity.

### **20. Yeshe Choedron: Doctor (retired). Status: Sentenced to 15 years in prison**

Yeshe Choedron, a retired medical doctor, may have been detained as early as March 2008 and may be imprisoned in Chushur Prison near Lhasa. The official Lhasa Evening News reported that the Lhasa People’s Intermediate Court sentenced Yeshe Choedron to 15 years’ imprisonment for allegedly “providing intelligence and information harmful to the security and interests of the state” to



“the Dalai clique’s security department.” The case was related to the unrest in Lhasa on 14 March 2008. The court convicted Choedron of “espionage” (Criminal Law, Art. 110), finding that she accepted a task and “financial aid” from the exile Tibetan administration. No information is available about the evidence against her, her access to legal defense, or her place of imprisonment.

## **21. Karma Samdrup: Environmentalist, Philanthropist and businessman. Status: Sentenced to 15 years in prison**

Prominent businessman and philanthropist Karma Samdrup, once lauded by the Chinese Communist Party as a model citizen and praised for his conservation efforts on the Tibetan plateau, was detained on 3 January 2010 in Chengdu on charges of tomb-robbing stemming from an incident dating back to 1998. However, it is widely believed that the prosecution was in direct reprisal for his defense of his two brothers, Chime Namgyal (38) and Rinchen Samdrup (44)—both environmentalists who were arrested on 7 August 2009 after accusing a police official in Chamdo Prefecture of poaching of endangered species.<sup>97</sup>

The forty two year-old Karma Samdrup is married to Dolkar Tso. The couple has two daughters who attend a primary school in Chengdu. On 24 June 2010, after six months of incarceration, during which Karma endured severe beatings, forced interrogation, and inhumane treatment by State authorities, the Bayingolin Mongol Autonomous Prefecture Intermediate Court convicted Samdrup on charges of grave-robbing and sentenced him to fifteen years in prison, deprivation of political rights for five years, and a fine of \$1,500.<sup>98</sup>

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97 Fears for three environmentalist brothers as ‘gaunt’ Karma Samdrup on trial after torture, 24 June 2010, International Campaign for Tibet, available at <http://www.savetibet.org/fears-for-three-environmentalist-brothers-as-gaunt-karma-samdrup-on-trial-after-torture/>

98 Andrew Jacobs, Tibetan Environmentalist Receives 15-Year Sentence, 24 June 2010, New York Times, available at [http://www.nytimes.com/2010/06/25/world/asia/25tibet.html?\\_r=0](http://www.nytimes.com/2010/06/25/world/asia/25tibet.html?_r=0)

On 3 July 2010 (the same day his brother Rinchen Samdrup was sentenced to five years in prison), Karma's lawyers and members of

his family submitted materials for an appeal hearing.<sup>99</sup> The appeal was rejected on 7 July, the same day it was reportedly received by the judicial authorities, who then waited nearly a month to inform Karma's defense attorneys.

Karma Samdrup has long been known for his generosity and conservation ethic. In 1995 he established Medong Village Primary School in Zerong township, Gongjue County, Chamdo, TAR. In 1998, he set up the first Tibetan medicine shop in Guangdong province, in the south of China. He also established a local office of the Tibet Development Fund and supported health insurance programs, including direct support for poor households of Chamdo prefecture. Samdrup's interest in ecological activities grew more pronounced around the year 2000. He founded the award-winning Snowland Great Rivers Environmental Protection Association ("SGREPA"), which enjoyed full accreditation with the Chinese government and pioneered historic ecological work.<sup>100</sup> SGREPA appears to be at the root of labelling Tibet's wild expanses the "Third Pole"<sup>101</sup> and was instrumental in eradicating the use of wildlife pelts on the Tibetan Plateau. In 2006 Karma was ceremoniously recognized as China's "philanthropist of the year" during a broadcast on the state-run CCTV. He was also known to donate items from his personal collection to state-owned museums.

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99 A sharp knife above his head: the trials and sentencing of three environmentalist brothers in Tibet, 4 August 2010, available at [http://www.savetibet.org/wp-content/uploads/2013/05/a\\_sharp\\_knife\\_above\\_his\\_head.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/a_sharp_knife_above_his_head.pdf)

100 Landmark Sentencing? June 30, 2010, *TibetInfoNet*, available at <http://www.tibetinfo.net/content/update/162>

101 Third Pole is a term borrowed from paleo-climatology and refers to the Himalaya and the Tibetan Plateau, where climate change is having serious impacts on glacial and ecological systems; See Jane Qiu, China: The third pole, *NATURE*, 23 2008, available at <http://www.nature.com/news/2008/080723/full/454393a.html>

## APPENDIX A.

### List of known Tibetan writers, intellectuals and artists detained, disappeared and sentenced

S. No.	Name	Age at detention	Date of detention	Status	Date of Sentencing
1.	Kunga Tsayang	20	17 March 2009	Sentenced to 5 Years	November 2010
2.	Kunchok Tsephel Gopeytsang	39	26 February 2009	Sentenced to 15 years	November 2009
3.	Tashi Rabten	25	6 April 2010	Sentenced to 4 years	2 June 2011
4.	Lolo	29	19 April 2012	Sentenced to 6 years	23 February 2013
5.	Ugyen Tenzin	25	February 2012	Sentenced to 2 years	20 March 2012
6.	Gangkye Drupa Kyab	33	15 February 2012	Sentenced to 5 years and 6 months	1 August 2013
7.	Dhondup Wangchen	35	26 March 2008	Sentenced to 6 years	28 December 2009
8.	Trintse	29	29 March 2008	Sentenced to 9 years	November 2008
9.	Kirti Kyab		March 2010	Sentenced to 3 years	Sentenced in secret
10.	Dokru Tsultrim	27	24 May 2010	4 years and 6 months	7 May 2011

11.	Jangtse Dhonko	33	21 June 2010	4 years	30 December 2010
12.	Budar/ Buddha	34	21 June 2010	4 years	30 December 2010
13.	Choepa Lugyal	NA	19 October 2011	Detained	Unknown
14.	Dolma Kyab	31	2005	10 years and 6 months	16 September 2005
15.	Tritsun	26	11 March 2012	Sentenced in secret	April 2013
16.	Gartse Jigme	36	1 January 2012	Sentenced to 6 years in prison	14 May 2013
17.	Kelsang Yarphel	37	14 July 2013	Detained	Unknown
18.	Chakdor	32	July 2012	Sentenced to 2 years in prison	February 2013
19.	Pema Trinley	22	July 2012	Sentenced to 2 years in prison	February 2013
20.	Nyagdompo	NA	NA	Disappeared	Unknown
21.	Khenrap	NA	NA	Disappeared	Unknown
22.	Kelsang Tsultrim	30	16 December 2010	Sentenced to 4 years in prison	December 2011
23.	Dawa Dorjee	27	3 February 2012	Disappeared	Unknown
24.	Norbu Tsering	28	2011	Sentenced to 2 years	12 February 2012
25.	Kelsang Jinpa	33	19 July 2010	Sentenced to 3 years	30 December 2010

26.	Tenpa Lodoe	NA	29 December 2010	Disappeared	Unknown
27.	Tsering Tenzin	NA	3 January 2011	Disappeared	Unknown
28.	Trintse	29	29 March 2008	Sentenced to 9 years	November 2008
29.	Paljor Norbu	81	31 October 2008	Sentenced to 7 years	November 2008
30.	Sogtruk Sherab	NA	20 September 2012	Detained	Unknown
31.	Amchok Phuljung	NA	3 August 2012	Detained	Unknown
32.	Choksal	NA	29 July 2012	Detained	Unknown
33.	Tashi Dhondup aka Mewod		14 July 2012	Detained	Unknown
34.	Kelsang Gyatso aka Gomkul		14 July 2012	Detained	Unknown
35.	Athar	33	February 2012	Sentenced to 3 years	29 April 2012
36.	Choegon	19	25 September 2011	Detained	Unknown
37.	Shawo Tashi	40	November 2012	Sentenced to 5 years	Unknown
38.	Tsultrim Gyaltzen aka Shogdril	27	11 October 2013	Detained	Unknown
39.	Lobsang Namgyal aka Sangmig	26	Around 15 May 2012	Detained	Unknown
40.	Kelsang Yaphel	About 37	14 July 2013	Detained	Unknown

41.	Tsering Tenzin <sup>1</sup>	unknown	3 January 2011	Detained	Unknown
42.	Migmar Dhondup	Early 30s	2008	Sentenced to 14 years	27 October 2008
43.	Phuntsog Dorjee		2008	Sentenced to 9 years	27 October 2008
44.	Tsewang Dorjee		2008	Sentenced to 8 years	27 October 2008
45.	Karma Samdup	Early 40s	3 January 2010	Sentenced to 15 years	24 June 2010
46.	Rinchen Samdup	44	7 August 2009	Sentenced to 5 years	3 July 2010
47.	Yeshe Choedron	54	March 2008	Sentenced to 15 years	7 November 2008

## RECOMMENDATIONS

### To the government of People's Republic of China (PRC):

- Ratify the International Covenant on Civil and Political Rights (ICCPR)
- Cease torturing and jailing Tibetans for peacefully expressing their opinions and criticisms against government policies
- Cease misusing of domestic legal provisions particularly the State Secrets Law and the State Security Law to punish legitimate dissent and opposition
- Stop implementing real-name registration regulations for internet users and service providers
- Cease monitoring and surveilling online and phone



communications by ending the practice of online censorship and intercepting phone conversations

### **To the United Nations Human Rights Council:**

- Adopt a resolution urging the U.N. General Assembly to endorse the Johannesburg Principles on National Security, Freedom of Expression and Access to Information
- Continue to expose the lack of freedom of expression and information in Tibet through the mandates of the Special Rapporteurs and the broader engagements of the U.N. Human Rights system
- Demand that the government of the PRC fulfill its obligation to respect, protect, and fulfill the human right to freedom of expression and access to information by taking tangible and measureable steps towards closing the gap between its domestic practices and international norms and standards.
- Ensure open trials and adequate legal representation to all defendants accused of state security crimes.

### **To the International Community:**

- Encourage and pressure China to ratify International Covenant on Civil and Political Rights (ICCPR)
- Explicitly engage U.N. Human Rights mechanisms on the PRC's violations of Tibetans' fundamental civil and political rights under the guise of protecting national security.
- Make specific inquiries about the cases of individuals highlighted in this report, and demand accountability from the Chinese leadership.
- Encourage the Chinese government to tolerate freedom of expression and opinion for the genuine growth of human development in the PRC.

## **APPENDIX B: Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information**

**The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, U.N. Doc. E/CN.4/1996/39 (1996).**

### **INTRODUCTION**

These Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg.

The Principles are based on international and regional law and standards relating to the protection of human rights, evolving state practice (as reflected, *inter alia*, in judgments of national courts), and the general principles of law recognized by the community of nations.

These Principles acknowledge the enduring applicability of the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights and the Paris Minimum Standards of Human Rights Norms In a State of Emergency.

### **PREAMBLE**

The participants involved in drafting the present Principles:

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

Convinced that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law;

Reaffirming their belief that freedom of expression and freedom of information are vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Taking into account relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the UN Basic Principles on the Independence of the Judiciary, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights;

Keenly aware that some of the most serious violations of human rights and fundamental freedoms are justified by governments as necessary to protect national security;

Bearing in mind that it is imperative, if people are to be able to monitor the conduct of their government and to participate fully in a democratic society, that they have access to government-held information;

Desiring to promote a clear recognition of the limited scope of restrictions on freedom of expression and freedom of information that may be imposed in the interest of national security, so as to discourage governments from using the pretext of national security to place unjustified restrictions on the exercise of these freedoms;

Recognizing the necessity for legal protection of these freedoms by the enactment of laws drawn narrowly and with precision, and which ensure the essential requirements of the rule of law; and

Reiterating the need for judicial protection of these freedoms by independent courts;

Agree upon the following Principles, and recommend that appropriate bodies at the national, regional and international levels undertake steps to promote their widespread dissemination, acceptance and implementation:

## I. GENERAL PRINCIPLES

1. Freedom of Opinion, Expression and Information

1.1. Prescribed by Law

1.2. Protection of a Legitimate National Security Interest

1.3. Necessary in a Democratic Society

2. Legitimate National Security Interest

3. States of Emergency

4. Prohibition of Discrimination

## II. RESTRICTIONS ON FREEDOM OF EXPRESSION

5. Protection of Opinion

6. Expression That May Threaten National Security

7. Protected Expression

8. Mere Publicity of Activities That May Threaten National Security

9. Use of a Minority or Other Language

10. Unlawful Interference With Expression by Third Parties

## III. RESTRICTIONS ON FREEDOM OF INFORMATION

11. General Rule on Access to Information

12. Narrow Designation of Security Exemption

13. Public Interest in Disclosure

14. Right to Independent Review of Denial of Information
15. General Rule on Disclosure of Secret Information
16. Information Obtained Through Public Service
17. Information in the Public Domain
18. Protection of Journalists' Sources
19. Access to Restricted Areas

#### IV. RULE OF LAW AND OTHER MATTERS

20. General Rule of Law Protections
21. Remedies
22. Right to Trial by an Independent Tribunal
23. Prior Censorship
24. Disproportionate Punishments
25. Relation of These Principles to Other Standards

### I. GENERAL PRINCIPLES

#### **Principle 1: Freedom of Opinion, Expression and Information**

- (a) Everyone has the right to hold opinions without interference.
- (b) Everyone has the right to freedom of expression, which includes 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 or her choice.
- (c) The exercise of the rights provided for in paragraph (b) may be subject to restrictions on specific grounds, as established in international law, including for the protection of national security.

(d) No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.

### **Principle 1.1: Prescribed by Law**

(a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.

(b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

### **Principle 1.2: Protection of a Legitimate National Security Interest**

Any restriction on expression or information that a government seeks to justify on grounds of national security must have the genuine purpose and demonstrable effect of protecting a legitimate national security interest.

### **Principle 1.3: Necessary in a Democratic Society**

To establish that a restriction on freedom of expression or information is necessary to protect a legitimate national security interest, a government must demonstrate that:

(a) the expression or information at issue poses a serious threat to a legitimate national security interest;

(b) the restriction imposed is the least restrictive means possible for protecting that interest; and

(c) the restriction is compatible with democratic principles.

### **Principle 2: Legitimate National Security Interest**



(a) A restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government.

(b) In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.

### **Principle 3: States of Emergency**

In time of public emergency which threatens the life of the country and the existence of which is officially and lawfully proclaimed in accordance with both national and international law, a state may impose restrictions on freedom of expression and information but only to the extent strictly required by the exigencies of the situation and only when and for so long as they are not inconsistent with the government's other obligations under international law.

### **Principle 4: Prohibition of Discrimination**

In no case may a restriction on freedom of expression or information, including on the ground of national security, involve discrimination based on race, colour, sex, language, religion, political or other opinion, national or social origin, nationality, property, birth or other status.

## **II. RESTRICTIONS ON FREEDOM OF EXPRESSION**

### **Principle 5: Protection of Opinion**

No one may be subjected to any sort of restraint, disadvantage or

sanction because of his or her opinions or beliefs.

### **Principle 6: Expression That May Threaten National Security**

Subject to Principles 15 and 16, expression may be punished as a threat to national security only if a government can demonstrate that:

- (a) the expression is intended to incite imminent violence;
- (b) it is likely to incite such violence; and
- (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such violence.

### **Principle 7: Protected Expression**

(a) Subject to Principles 15 and 16, the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restrictions or penalties. Expression which shall not constitute a threat to national security includes, but is not limited to, expression that:

- (i) advocates non-violent change of government policy or the government itself;
- (ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials <sup>3</sup>, or a foreign nation, state or its symbols, government, agencies or public officials;
- (iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;
- (iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

(b) No one may be punished for criticizing or insulting the nation, the

state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency

Expression, whether written or oral, can never be prohibited on the ground that it is in a particular language, especially the language of a national minority.

### **Principle 10: Unlawful Interference With Expression by Third Parties**

Governments are obliged to take reasonable measures to prevent private groups or individuals from interfering unlawfully with the peaceful exercise of freedom of expression, even where the expression is critical of the government or its policies. In particular, governments are obliged to condemn unlawful actions aimed at silencing freedom of expression, and to investigate and bring to justice those responsible.

## **III. RESTRICTIONS ON FREEDOM OF INFORMATION**

### **Principle 11: General Rule on Access to Information**

Everyone has the right to obtain information from public authorities, including information relating to national security. No restriction on this right may be imposed on the ground of national security unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest.

### **Principle 12: Narrow Designation of Security Exemption**

A state may not categorically deny access to all information related to national security, but must designate in law only those specific and narrow categories of information that it is necessary to withhold in order to protect a legitimate national security interest.

### **Principle 13: Public Interest in Disclosure**

In all laws and decisions concerning the right to obtain information, the public interest in knowing the information shall be a primary consideration.

### **Principle 14: Right to Independent Review of Denial of Information**

The state is obliged to adopt appropriate measures to give effect to the right to obtain information. These measures shall require the authorities, if they deny a request for information, to specify their reasons for doing so in writing and as soon as reasonably possible; and shall provide for a right of review of the merits and the validity of the denial by an independent authority, including some form of judicial review of the legality of the denial. The reviewing authority must have the right to examine the information withheld.

### **Principle 15: General Rule on Disclosure of Secret Information**

No person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure.

### **Principle 16: Information Obtained Through Public Service**

No person may be subjected to any detriment on national security grounds for disclosing information that he or she learned by virtue of government service if the public interest in knowing the information outweighs the harm from disclosure.

### **Principle 17: Information in the Public Domain**

Once information has been made generally available, by whatever means, whether or not lawful, any justification for trying to stop further publication will be overridden by the public's right to know.

### **Principle 18: Protection of Journalists' Sources**

Protection of national security may not be used as a reason to compel a journalist to reveal a confidential source.

### **Principle 19: Access to Restricted Areas**

Any restriction on the free flow of information may not be of such a nature as to thwart the purposes of human rights and humanitarian law. In particular, governments may not prevent journalists or representatives of intergovernmental or non-governmental organizations with a mandate to monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict except where their presence pose a clear risk to the safety of others.

## **IV. RULE OF LAW AND OTHER MATTERS**

### **Principle 20: General Rule of Law Protections**

Any person accused of a security-related crime involving expression or information is entitled to all of the rule of law protections that are part of international law. These include, but are not limited to, the following rights:

- (a) the right to be presumed innocent;
- (b) the right not to be arbitrarily detained;
- (c) the right to be informed promptly in a language the person can understand of the charges and the supporting evidence against him or her;
- (d) the right to prompt access to counsel of choice;
- (e) the right to a trial within a reasonable time;

- (f) the right to have adequate time to prepare his or her defence;
- (g) the right to a fair and public trial by an independent and impartial court or tribunal;
- (h) the right to examine prosecution witnesses;
- (i) the right not to have evidence introduced at trial unless it has been disclosed to the accused and he or she has had an opportunity to rebut it; and
- (j) the right to appeal to an independent court or tribunal with power to review the decision on law and facts and set it aside.

### **Principle 21: Remedies**

All remedies, including special ones, such as habeas corpus or amparo, shall be available to persons charged with security-related crimes, including during public emergencies which threaten the life of the country, as defined in Principle 3.

### **Principle 22: Right to Trial by an Independent Tribunal**

(a) At the option of the accused, a criminal prosecution of a security-related crime should be tried by a jury where that institution exists or else by judges who are genuinely independent. The trial of persons accused of security-related crimes by judges without security of tenure constitutes a prima facie violation of the right to be tried by an independent tribunal.

(b) In no case may a civilian be tried for a security-related crime by a military court or tribunal.

(c) In no case may a civilian or member of the military be tried by an ad hoc or specially constituted national court or tribunal.

### **Principle 23: Prior Censorship**

Expression shall not be subject to prior censorship in the interest of protecting national security, except in time of public emergency which threatens the life of the country under the conditions stated



in Principle 3.

### **Principle 24: Disproportionate Punishments**

A person, media outlet, political or other organization may not be subject to such sanctions, restraints or penalties for a security-related crime involving freedom of expression or information that are disproportionate to the seriousness of the actual crime.

### **Principle 25: Relation of These Principles to Other Standards**

Nothing in these Principles may be interpreted as restricting or limiting any human rights or freedoms recognized in international, regional or national law or standards.

(Footnotes)

1 Four Tibetans Arrested over 2 Books in Ngaba, 3 June 2011, VOA News, <http://morigin.voatibetanenglish.org/a/1265343.html>

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