

INEVITABLE IMPRISONMENT:

Arbitrary Detention and Its Effect on the Exercise of Universal Rights in Tibet



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Tibetan Centre for Human Rights and Democracy

TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY

The Tibetan Centre for Human Rights and Democracy is a registered non-governmental and a non-profit organization established in 1996 in Dharamsala in North India. TCHRD's mission is to monitor, research and document human rights situation in Tibet, and to advocate for human rights principles and democratic concepts in Tibet and in diaspora.

TCHRD conducts regular, systematic investigation of human rights situation in Tibet and monitors human rights policies of the People's Republic of China. Every year, TCHRD publishes annual report, thematic reports, and testimonies of victims of human rights violations, biweekly newsletters, press releases and briefings on human rights issues in Tibet. TCHRD maintains a political prisoners database that have been expanded into full-fledged human rights documentation and archive resources.

TCHRD attends the UN Human Rights Council sessions as well as other regional, national and international conferences. Such participation is aimed at highlighting human rights situation in Tibet and lobbying and networking on the promotion and protection of human rights in Tibet. TCHRD actively engages with the UN human rights mechanisms and special procedures by submitting reports and cases of specific human rights violations in Tibet. TCHRD organizes workshops, talk series, public discussions and campaigns on human rights and democracy in the exile Tibetan community.

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Cover photo: Chinese armed police parade detained Tibetans in Ngaba (April 2008)

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ABBREVIATIONS & ACRONYMS

CPL	Criminal Procedure Law
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
HRC	Human Rights Committee
HRW	Human Rights Watch
NGO	Nongovernmental Organization
PRC	People's Republic of China
TAR	Tibet Autonomous Region
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review
WGAD	Working Group on Arbitrary Detention

INTRODUCTION

On 27 January 2016, Tibetan entrepreneur and language rights advocate Tashi Wangchuk was detained and subsequently held in secret for several weeks.¹ His relatives were not informed of his arrest until 24 March.² Before his detention, Mr. Tashi maintained a microblog that stressed the need to protect Tibetan culture and asked that Chinese officials assist in this effort.³ He also advocated for Tibetan language education, arguing that schools should adopt mother-tongue-based education so that Tibetan children would become fluent in their mother tongue.⁴ For his advocacy efforts, the government of People's Republic of China (PRC) charged Mr. Tashi with inciting separatism, an offense that could result in a 15-year prison sentence.⁵ As of December 2016, he was still in pretrial detention.⁶ Arbitrary deprivations of liberty such as this are not uncommon in Tibet. In fact, many Tibetans have witnessed an increase in human rights violations at the hands of PRC authorities. From 2013 to 2015, the largest proportion of detentions took place in the Tibet Autonomous Region (TAR), whereas between 2008 and 2012, a large majority of political incidents and detentions involving Tibetans took place in the eastern Tibetan areas that are located in Qinghai, Gansu, and Sichuan provinces.⁷ Many of those detained and prosecuted most

1 China Charges Tibetan Education Advocate with Inciting Separatism, *New York Times*, March 30, 2016, available at: http://www.nytimes.com/2016/03/31/world/asia/china-tibet-tashi-wangchuk.html?_r=0

2 Ibid.

3 Ibid.

4 Ibid.

5 Ibid.

6 China: Release Tibetan language advocate from unlawful detention, TCHRD, 30 December 2016, available at <http://tchrd.org/china-release-tibetan-language-advocate-from-unlawful-detention/>

7 Relentless: Detention and Prosecution of Tibetans Under China's 'Stability Maintenance'

recently have been local community leaders, environmental activists, and villagers involved in social and cultural activities.⁸ Moreover, since 2013, lay and religious leaders of rural communities have received unusually heavy sentences for expressions of dissent.⁹ The offenses that received the longest sentences during this period included possessing or sending a sensitive image or text on one's cellphone or computer, trying to assist victims of self-immolations, leading protests against mining or government construction projects, and organizing village opposition to unpopular decisions by local officials.¹⁰ The authorities also treated activities such as campaigns supporting environmental protection, complaints about education policies, and efforts at local conflict resolution as criminal acts.¹¹ Human Rights Watch (HRW) reports that, "In the previous three decades, the authorities had rarely accused people from these sectors of Tibetan society of involvement in political unrest. Buddhist monks and nuns, who constituted over 90 percent of political detainees in Tibet in the 1980s, represent less than 40 percent of the 479 cases," collected by HRW from 2013 to 2015.¹² Moreover, apart from 19 cases alleging violent crimes, the overwhelming majority of activities that led to detentions— such as taking part in nonviolent protests, shouting slogans, distributing images or messages on social media, or contesting a decision by local officials—appear to have been legitimate, peaceful forms of expression of opinion protected under international law.¹³

nance' Campaign, *Human Rights Watch*, May 2016, at pg. 74, available at: "Detentions became almost as frequent there as in all the eastern Tibetan areas combined. In the TAR from 2013 to 2015, 179 detentions, including 45 cases resulting in sentences, were reported, more than in any other province-level Tibetan area. The number of politicized detentions in the TAR increased by 76 percent in 2012 and by 88 percent in 2013. Apart from self-immolations, which remained almost entirely an eastern Tibetan phenomenon, the TAR became once again an important focus of unrest and dissent."

8 Ibid., at pg. 2.

9 Ibid., at pg. 4.

10 Ibid., at pg. 4.

11 Relentless, *HRW*, at pg. 34.

12 Ibid.

13 Ibid., at pg. 34.

The right to be free from arbitrary or unlawful deprivation of liberty is an established principle of international human rights law grounded in widespread international practice. Its use by government actors is prohibited by customary international law and the domestic law of almost every state.¹⁴ Granted, there are several legitimate deprivations of liberty recognized under international law, such as that of convicted persons or those accused of serious offences. Yet the myriad legal justifications for detaining an individual cannot answer for the PRC's baseless arrests and detentions of ordinary Tibetans. Recent research shows a significant increase since the 1990s in the types of activities that lead to detention, including giving moral support to the families of imprisoned protesters, giving speeches about Tibetan language use, running a literacy campaign, petitioning, criticizing local environmental policies, and seeking the return of confiscated land.¹⁵ None of these activities contain criminal behavior. It is thereby illegal under international law to arrest or detain a civilian on such grounds. The PRC carries out this policy in spite of international law in order to achieve its political goals. The systematic silencing and subjugation of the Tibetan population is a clear violation of human rights which must be stopped.

Overview

Distinguishing a legitimate deprivation of liberty from an illegal and arbitrary detention is essential. In Resolution 1991/42, the United Nations (UN) Commission on Human Rights “considered as

14 Working Group on Arbitrary Detention, *United Nations Basic Principles and Guidelines on the right of anyone deprived of their liberty to bring proceedings before a court*, para. 11, U.N. Doc. WGAD/CRP.1/2015, available at: <http://www.ohchr.org/Documents/Issues/Detention/DraftBasicPrinciples/March2015/WGAD.CRP.1.2015.pdf>. “It appears in numerous international instruments of universal application and has been introduced into the domestic law of almost all States. Lastly, arbitrary detention is regularly denounced within national and international forums.”

15 Relentless, *HRW*, at pg. 35.

arbitrary those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights (UDHR) or in the relevant international instruments ratified by States.”¹⁶The UDHR provides that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”¹⁷It further provides that “[e]veryone has the right to freedom of peaceful assembly and association.”¹⁸Any detention based on the exercise of these fundamental rights is expressly arbitrary under international law. Despite this, the PRC has recently passed new legislation that defines public activism and peaceful criticism of the government as state security threats; it also strengthens censorship, surveillance and control of individuals and groups, and deters individuals from campaigning for human rights.¹⁹

Under the new laws, authorities throughout PRC wield ever-greater power to arrest and detain citizens without any regard for rights recognized under international law.²⁰With arbitrary deprivations of liberty on the rise in Tibet, and given the new legal justifications available to PRC officials, the international community must continue to monitor and fight against these severe violations of human rights.

The first section of this report assesses the international standards against arbitrary detention, with a discussion of the various standard-setting institutions and the ways in which these principles are enforced.

16 OHCHR, *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, 3, available at: <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

17 Universal Declaration of Human Rights, Art. 19.

18 UDHR, art. 20.

19 China: Reverse Downward Rights Spiral, *Human Rights Watch*, January 27, 2016, available at: <https://www.hrw.org/news/2016/01/27/china-reverse-downward-rights-spiral-0>

20 China's new National Security Law a serious setback to human rights in Tibet, TCHRD, 9 July 2015, available at: <http://tchrd.org/chinas-new-national-security-law-a-serious-setback-to-human-rights-in-tibet/>

The second section surveys the current scope and severity of arbitrary detention in Tibet by offering the most recent case studies. In so doing, it also critically evaluates the new laws and methods that the PRC employs to carry out deprivations of liberty in Tibet and explains how each type represents a violation of international human rights law.

The third section explores the international enforcement mechanisms currently available to combat the PRC's arbitrary detention violations in Tibet – analyzing the strengths and weaknesses of the available accountability measures. The report will conclude with recommendations to end arbitrary deprivations of liberty in Tibet.

INTERNATIONAL HUMAN RIGHTS NORMS ON ARBITRARY DETENTION

Within the UN system there are two human rights entities with the primary responsibility of setting the international standards against the use of arbitrary deprivation of liberty: the International Covenant on Civil and Political Rights (ICCPR), an international human rights treaty, and the Working Group on Arbitrary Detention (WGAD), a charter-based body under the United Nations Human Rights Council (UNHRC).

The ICCPR is the primary legal instrument prohibiting arbitrary detention. Article 9(1) establishes:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.²¹

The International Court of Justice (ICJ) has conferred significant weight to the ICCPR and its complementary treaty body, the Human Rights Committee (HRC), as standard-bearing texts of international customary law. Though not authoritative, the ICCPR is highly persuasive according to the ICJ. In *Ahmadou Sadio Diallo* (Republic of Guinea v. Democratic Republic of the Congo) the court applies “great weight to the interpretation adopted by” the HRC, since it was established specifically to supervise the application of ICCPR. “The point here,” writes the court, “is to achieve the necessary clarity and the essential consistency of international law.”²² By granting the HRC

21 International Covenant on Civil and Political Rights (ICCPR), Article 9(1).

22 AhmadouSadioDiallo (Guinea v. Congo), 30 November 2010, para 66. 46 I.L.M. 712.avail-

such persuasiveness in international customary law, the ICJ makes the ICCPR binding on states regardless of their membership status to the treaty. Customary law is both the oldest source of international law and the one that generates rules binding on all States.²³ Customary law is said to have two elements: 1) there must be widespread and consistent State practice and 2) there has to be what is called “*opinio juris*,” usually translated as “a belief in legal obligation.”²⁴ Thus, in spite of the PRC failing to ratify the ICCPR, the prohibition against arbitrary detention applies to PRC actions in Tibet.

The second institution helping define arbitrary detentions is WGAD, one of the 55 Special Procedures under the UNHRC created “to address either specific country situations or thematic issues in all parts of the world.”²⁵ Special Procedures that monitor human rights issues in specific countries or territories are known as country mandates. Other Special Procedures that monitor a human rights issue of particular concern worldwide are known as thematic mandates. WGAD is a thematic mandate tasked to investigate cases of deprivation of liberty imposed arbitrarily throughout the world. In the discharge of its mandate, WGAD refers to the relevant international standards set forth in the UDHR as well as the relevant international instruments

able at: <http://www.icj-ij.org/docket/files/103/16244.pdf>. “The interpretation above is fully corroborated by the jurisprudence of the Human Rights Committee established by the Covenant to ensure compliance with that instrument by the States parties ... Since it was created, the Human Rights Committee has built up a considerable body of interpretative case law, in particular through its findings in response to the individual communications which may be submitted to it in respect of States parties to the first Optional Protocol, and in the form of its ‘General Comments’. Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled.”

23 Greenwood, C. (2008). Sources of International Law: An Introduction, *available at*: http://untreaty.un.org/cod/avl/pdf/is/Greenwood_outline.pdf.

24 Ibid.

25 Office of the High Commissioner on Human Rights, Human Rights Bodies, *available at* <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

accepted by the States concerned, in particular the ICCPR, the Convention Relating to the Status of Refugees of 1951, and the International Convention on the Elimination of All Forms of Racial Discrimination, as well as, when appropriate, a selection of additional standards.²⁶

WGAD sets international legal standards by formulating “deliberations” on matters of general nature. These statements “develop a consistent set of precedents and assist States, for purposes of prevention, to guard against the practice of arbitrary deprivation of liberty.”²⁷ To date, WGAD has adopted nine deliberations spanning a wide range of issues including house arrest, rehabilitation through labor, immigrants and asylum-seekers, issues related to psychiatric detention, and deprivation of liberty linked to/resulting from the use of the internet.²⁸ By means of these deliberations, WGAD defines how deprivation of freedom, linked with such situations, may become arbitrary.²⁹

WGAD also releases annual reports that express its observations on different institutions, legal insufficiencies, policies, and judicial practices which, in its opinion, create cases of arbitrary deprivations of liberty.³⁰ These reports highlight best practices for safeguarding against arbitrary detention, confirming in them a “constant jurisprudence on the prohibition of all forms of arbitrary deprivation of liberty, and demonstrating that it is general practice accepted as law, constituting customary international law and a peremptory norm (*jus cogens*).”³¹ The international human rights regime thus vests a standard-setting power

26 Methods of work of the Working Group on Arbitrary Detention, Human Rights Council, 4 August 2015, pg. 2-3.

27 Deliberations, The Working Group on Arbitrary Detention, OHCHR, available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Deliberations.aspx>

28 Deliberations, The Working Group on Arbitrary Detention, OHCHR.

29 Ibid.

30 Annual Reports, *Working Group on Arbitrary Detention*, OHCHR, available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Annual.aspx>

31 Ibid., at para 11.

in these institutions, the ICCPR and WGAD, to determine what constitutes an arbitrary deprivation of liberty.

Defining Arbitrary Detention

The international human rights law grants every person the right to be free from arbitrary or unlawful deprivations of liberty. This prohibition applies to all situations, including criminal proceedings, administrative detention, military detention, security detention, and detention under counter-terrorism measures.³² This right, however, may suffer limitations during states of emergency in accordance with Article 4 of the ICCPR.³³ A State is allowed to limit or suspend the enjoyment of certain rights in cases of officially proclaimed public emergencies which threaten the life of the nation.³⁴ Such limitations or suspensions are permitted only “to the extent strictly required by the exigencies of the situation” and may never involve discrimination solely on the ground of race, color, sex, language, religion or social origin.³⁵

The UN Human Rights Commission Resolution 1997/50 finds a deprivation of liberty not arbitrary if it results from a final decision taken by a domestic judicial instance and which is (a) in accordance with domestic law; and (b) in accordance with other relevant international standards set forth in the UDHR and the relevant international instruments accepted by the States concerned.³⁶ In discerning which deprivations of liberty amount to arbitrary and illegal acts under the UDHR and other international instruments, WGAD defines five

32 Basic Principles and Guidelines on the right of anyone deprived of their liberty to bring proceedings before a court, *WGAD*, at para. 9.

33 Fact Sheet No. 26, The Working Group on Arbitrary Detention, 3, *OHCHR*, available at: <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

34 ICCPR, at Art. 4.

35 *Ibid.*

36 Fact Sheet No. 26, *WGAD*.

categories amounting to violations:

Category I - When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him);

Category II - When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights;

Category III - When the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character;

Category IV - When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy;

Category V - When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.³⁷

In Tibet, the PRC carries out arrests and detentions constituting violations of each of these five categories, which provides an adequate structure in which to frame the various arbitrary deprivations of liberty occurring today.

³⁷ Relentless, *HRW*, at pg. 3.

ARBITRARY DETENTION IN TIBET

The PRC has never provided a comprehensive legal defense of its violative practices in Tibet, which makes it difficult to gain a wide perspective on its human rights violations. The PRC's close protection of state secrets has long been considered a priority of the State, "both because it is a part of a broader political culture of secrecy, and because it is a key tool for maintaining political control."³⁸ However, one can draw some conclusions from the limited public information available to observers. It shows an increase in state control over daily life, increasing criminalization of nonviolent forms of protest, and at times disproportionate responses to local protests.³⁹ These practices are part of a policy known as *weiwen* or "stability maintenance" that has expanded targeted repression in Tibet, particularly in the countryside.

A shift in the PRC's policy occurred in 2011. Following a public parade in the main square of Lhasa on 10 October 2011, the PRC sent teams of cadres to strategic areas in order to investigate both criminal and political incidents.⁴⁰ The following year saw a 76 percent increase in politicized detentions, almost all of which came from rural

38 Human Rights in China, *State Secrets: China's Legal Labyrinth*, pg. 1 (2007) *available at*: http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC_StateSecrets-Report.pdf "The PRC state secrets system, implemented through a CPC-controlled hierarchy of government bodies, is comprised of state secrets laws and regulations that work in tandem with the PRC's state security, criminal procedure and criminal laws, to create a complex, opaque system that controls the classification of—and criminalizes the disclosure or possession of—state secrets."

39 Relentless, *HRW*, at pg. 1.

40 *Ibid.*, at pg. 14. "Party cadres in China ... work ... according to contracts in which they undertake the prevention of political incidents, crimes, Falun Gong activities, and other forms of "disorder" in their areas. By the same token, cadres can attract significant funding from higher government bodies if they claim to have discovered signs of a potential dissident group or organization in their area that needs to be neutralized."

areas.⁴¹ In late 2012, the PRC replicated its tactics by deploying urban cadres in additional areas and the number of politicized detentions in the region rose by 88 percent over the preceding year.⁴²

When the PRC introduced stability measures in the two Tibetan autonomous prefectures in Sichuan Province that have large Tibetan populations, it coincided with exceptional increases in public security spending.⁴³ According to HRW, “Between 2002 and 2009, expenditure on public security increased by 619 percent in Ngaba (Ch.: Aba) and by 957 percent in Kardze (Ch.: Ganzi), compared to an average increase of 374 percent in the 19 other prefecture-level units in Sichuan province.”⁴⁴ These figures suggest, according to HRW, that from about 2007 officials in at least some Tibetan areas obtained stability maintenance funds at nearly twice the rate of officials in PRC as a whole.⁴⁵ A wide variety of authoritarian tactics, ranging from enforced disappearances to discriminatory policing of Tibetans, resulted in human rights violations defined under WGAD’s prohibition of arbitrary detention. The following sections explore in detail how each of the PRC’s policies violates the prohibition against arbitrary detention in Tibet.

Category I – Secret detentions with no legal basis

On 19 March 2015, a Tibetan writer named Drukar Gyal (penname: Shokjang), also known as Druk-lo, was detained by PRC officials.⁴⁶ The arrest was carried out in complete secrecy, only confirmed by

41 Ibid., at pg. 76.

42 Relentless, *HRW*, at pg. 76.

43 Ibid. at pg. 16-17.

44 Relentless, *HRW*, at pg. 17.

45 Ibid.

46 TCHRD condemns arbitrary detention of Tibetan writer Shokjang, TCHRD, 21 April 2015, available at: <http://www.tchrd.org/tchrd-condemns-arbitrary-detention-of-tibetan-writer-shok-jang/#>

Shokjang's friends after the fact. The police did not disclose that Shokjang had been arrested, nor did they file formal charges against him.⁴⁷ As is commonly the case in Tibet, Shokjang was detained without the police furnishing any kind of formal documents authorizing the detention or arrest.⁴⁸ International law views most harshly those cases in which a citizen is detained "when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty."⁴⁹ Nighttime and early morning raids are on the rise in Tibet, resulting in secret extrajudicial deprivations of liberty without any adequate legal justification. WGAD writes, "Secret and/or incommunicado detention constitutes the most heinous violation of the norm protecting the right to liberty of human beings under customary international law. The arbitrariness is inherent in these forms of deprivation of liberty as the individual is left outside the cloak of any legal protection."⁵⁰ In some cases, authorities only disclose the arrest of someone several weeks after taking the person from their home.

In recent years, self-immolation-related cases received particularly harsh treatment from authorities without any legal basis.⁵¹ Observers feel that such victims were targeted "seemingly for having failed to prevent a self-immolation or for having shown sympathy for the victim afterwards."⁵² In December 2014, after a 19-year-old nomad woman immolated herself in Ngaba county, Ngaba prefecture, Sichuan province, the father (Chime Dorje, also known as Chidor), mother (Chenpa), and brother (Yime) were detained under no formal charges.⁵³ Between 2013 and 2015, at least four similar cases were

47 Ibid.

48 Ibid.

49 Fact Sheet No. 26, *WGAD*.

50 Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, *WGAD*, para.60, U.N. Doc. A/UNHRC/22/44 (24 December 2012), http://www.ohchr.org/Documents/HRBodies/UNHRCouncil/RegularSession/Session22/A.UNHRC.22.44_en.pdf

51 Relentless, *HRW*, at pg. 44.

52 Relentless, *HRW*, at pg. 44.

53 Tibetan woman, 19, dies of self-immolation: Police detain family members, TCHRD, 23 December 2014, available at: <http://tchrd.org/tibetan-woman-19-dies-of-self-immolation>

reported, including the conviction of Yarphel, the uncle of a 25-year-old traditional artist who self-immolated in Rebkong county, Malho prefecture, Qinghai province. Yarphel was given a one-year, three-month sentence for leading the funeral procession for his nephew.⁵⁴ Each of these cases represents a violation under Category I because nothing indicates what crime the defendants had allegedly committed or why the court handed down such long sentences. The international courts have clearly defined precedent. In late 2015 a victim in the Gambia was arrested without any notification of the charges against him for a period lasting beyond the 72 hours permitted in the domestic framework.⁵⁵ WGAD was of the view that such a detention was “indeed a category I arbitrary detention.”⁵⁶ The detention of Tibetans is frequently much more intrusive, secretive, and baseless. As noted by HRW, “These should not constitute criminal offenses under domestic Chinese law and appear inconsistent with the principles of individual criminal responsibility, the ban on collective punishment, and the right to freedom of expression under international law.”⁵⁷ As such, they are clear arbitrary deprivations of liberty.

Secret arbitrary detentions have been called the “ultimate silencing tactic,” because a disappeared person is aware he or she has been placed outside the protection of the law,⁵⁸ and is therefore at far greater risk of torture and other forms of cruel, inhuman, and degrading treatment and punishment.⁵⁹ Deaths and ill-health of detainees continue to be

lation-police-detain-family-members/

54 Uncle of Tibetan self-immolator sentenced to prison, TCHRD, 4 March 2013, available at: <http://tchrd.org/uncle-of-self-immolator-sentenced-to-prison/>

55 Opinion No. 50/2015 concerning Alhagie Abdoulie Ceesay (The Gambia), WGAD, available at: http://www.ohchr.org/Documents/Issues/Detention/Opinions2015AUV/Opinion%202015%2050_TheGambia_Ceesay_AUV.pdf

56 Ibid.

57 Relentless, HRW, at pg. 45.

58 International Convention on Enforced Disappearances, at art. 2.

59 Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, *Human Rights Council*, para. 10–15, U.N. Doc. A/56/156 (Jul. 3, 2011).

serious problems in Tibet.⁶⁰ Since 2012, TCHRD has documented the details of 20 known Tibetans who died in detention or shortly after release, due to mistreatment in custody. Not only does the absence of formal charges deprive detainees of the opportunity to defend themselves, secret detentions dramatically reduce the accountability of the authorities and endanger the health and safety of the detained victims. Deprivations of liberty that lack a formal charge and take place in secrecy deprive the detainee of fundamental protections of the law, as demonstrated in the case of Shokjang and many other Tibetans.



A file photo of Shokjang

In one of his blog posts, which became a cause for his imprisonment, Shokjang recounted the terror he experienced during his arbitrary arrest: “I was in a hotel in Rebkong. Late at night, two people wearing police uniform and army uniform and carrying guns came inside saying they needed to search the place. When I asked them to

⁶⁰ Death in Detention: TCHRD Submission to UN Committee Against Torture, TCHRD, 29 October 2015, available at <http://tchrd.org/death-in-detention/>

show some documentary proof, they pointed their guns at me and loudly intimidated me. That was the first time I have experienced the terror of facing the barrel of a gun pointed at me. Such unspeakable, unimaginable intimidation embittered me towards the Rebkong security [forces]. Confronted with those, whether policemen or gangsters I knew not, I wrote that [account of events] in the hope of getting the protection of the security authorities and the public.⁶¹

Deaths in Detention since 2012

1. Khenrap Tharchin, 40, died from beatings and torture in prison after he was imprisoned in 2008.¹
2. Gyalpo, 30, a monk of Gaden Chokhor Monastery, Phenpo, north east of Lhasa was tortured to death by the prison authority after taking part in protest in Phenpo on 26 March 2008.²
3. Tenzin Choedak, 35, a Tibetan social activist died two days after his release from prison. He was imprisoned for acting as a ringleader of the March 2008 protests in Lhasa, Tibet.³
4. Yeshe Lhakdron, 25, a nun, died after suffering severe torture during detention. She was detained along with two other nuns after 2008 uprising in Tibet.⁴
5. Goshul Lobsang, died of torture injuries in the year 2014 while he was in detention.⁵
6. Gyerig Thar, died of injuries a few months after he was detained allegedly for taking part in 18 March 2012 demonstration.⁶
7. Karwang, 36, a monk at Nyagrang monastery in Nyagrang County was beaten to death in detention in the year 2012.⁷
8. Kardo, a monk died in detention on 28 April 2013. He was allegedly arrested for possessing speech records of the Tibetan spiritual leader His Holiness the Dalai Lama.⁸

61 Popular Tibetan blogger asserts his innocence in letter from prison, International Campaign for Tibet, 4 April 2016, available at: <https://www.savetibet.org/populartibetan-blogger-asserts-his-innocence-in-letter-fromprison/>

9. Kunchok Dakpa, a youth from Chamram Village in Diru Township was severely beaten and tortured to death during his secret detention.⁹
10. Trigyal, died from torture by Chinese authorities while serving a 13-year prison, allegedly sentenced for refusing to fly a Chinese flag in 2016.³¹
11. Jinpa Tharchin, 18, succumbed to injuries while in custody. He was among the Three Tibetans who died of untreated gunshot wounds after Chinese authorities fired on peaceful protesters in Sichuan Province and refused to treat the dozens who were injured and detained.³²
12. Karmey, was severely beaten to death while in police detention on 7 December 2014.³³
13. Lobsang Yeshe, 64, a village head and father of eight children, died in detention on 19 July 2015. He was detained along with seven other Tibetans for holding peaceful demonstrations against China's failure to account for the suicide protest by two other Tibetans.¹⁰
14. Tashi Paljor, 34, a monk at the Wenpo monastery in Chamdo (Ch: Changdu) prefecture in TAR, died after he was severely beaten in custody. He was arrested on suspicion of politically sensitive writings.¹¹
15. Tsewang Gyalpo, 60, succumbed to injuries while in custody. He was among the Three Tibetans who died of untreated gunshot wounds after Chinese authorities fired on peaceful protesters in Sichuan Province and refused to treat the dozens who were injured and detained.¹²
16. Yeshe, 42, died in detention. He was among the Three Tibetans who died of untreated gunshot wounds after Chinese authorities fired on peaceful protesters in Sichuan Province and refused to treat the dozens who were injured and detained.¹³
17. Tulku Tenzin Delek Rinpoche, 65, a prominent Tibetan reincarnate lama and philanthropist Tenzin Delek Rinpoche from Lithang, Kardze (Ch: Ganzi) Tibetan Autonomous Prefecture in Sichuan Province, died in July 2015, despite repeated appeals for him to

be released for urgent medical treatment. He died while serving life imprisonment at Chuandong prison near Chengdu, capital of Sichuan Province, People's Republic of China.¹⁴

18. Tashi, 30, Police officers subjected Tashi to severe beatings and torture in detention. Unable to bear the brutal torture, he killed himself on 11 March 2016.¹⁵
19. Yuduk Nyima, 40, a native of Dzakhok township in Kardze (Ch:Ganzi) Tibetan Autonomous Prefecture's Dege (Dege) county, was severely beaten by police who then tried to move him to the Dege county seat. However, he died on the way while still in police custody.¹⁶
20. Bachen Gyewa, a headman of Ushung village in Gyashoe Yangshok Township in Diru (Ch: Biru) County in Nagchu (Ch: Naqu) Prefecture of TAR, died in custody in Driru County on 21 November 2014.¹⁷

¹ Tibetan political prisoner who opposed patriotic reeducation campaign dies, *Radio free Asia*, 9 August 2016, available at: <http://www.rfa.org/english/news/tibet/tibetan-political-prisoner-who-opposed-patriotic-reeducation-campaign-dies-08092016160702.html>

² Diru Crackdown: Senior Tibetan Buddhist scholar beaten to death in police custody, *TCHRD*, 19 December 2013, available at: <http://tchrd.org/diru-crackdown-senior-tibetan-buddhist-scholar-beaten-to-death-in-police-custody/>

³ Remembering the fearless 'ghost' Tenzin Choedrak (1981-2014), *TCHRD*, 13 January 2013, available at: <http://tchrd.org/remembering-the-fearless-ghost-tenzin-choedrak-1981-2014/>

⁴ Tibetan nun disappeared since 2008 died of torture, *TCHRD*, 30 June 2016, available at: <http://tchrd.org/tibetan-nun-disappeared-since-2008-died-of-torture-in-chinese-police-custody/>

⁵ Goshul Lobsang tortured with pain-inducing injections, leaves a defiant note after untimely death, *TCHRD*, 31 March 2014, available at: <http://tchrd.org/goshul-lobsang-tortured-with-pain-inducing-injections-leaves-a-defiant-note-after-untimely-death/>

⁶ Painful death for Tibetan man injured in police violence, *TCHRD*, 5 February 2013, available at <http://tchrd.org/painful-death-for-tibetan-man-injured-in-police-violence/>

⁷ Tibetan Monk Tortured, Dies in Custody, *TCHRD*, 19 June 2012, available at: <http://tchrd.org/tibetan-monk-tortured-dies-in-custody/>

⁸ Chinese police beat monk to death over banned cassettes, *Radio Free Asia*, 14 May 2013, available at: <http://www.rfa.org/english/news/tibet/cassettes-05142013132742.html>

⁹ Repression escalates in Tibet's Diru County: Tibetan youth beaten to death, 2 others given heavy sentences and another disappeared, *TCHRD*, 7 February 2014, available at: <http://tchrd.org/repression-escalates-in-tibets-diru-county-tibetan-youth-beaten-to-death-2-others-given-heavy-sentences-and-another-disappeared/>

¹⁰ DEATH IN DETENTION: China refuses to release body of former village head turned political prisoner to family members, *TCHRD*, 23 July 2015, available at <http://tchrd.org/death-in-detention-china-refuses-to-release-body-of-former-village-head-turned-political-prisoner-to-family-members/>

¹¹ Three more detained Tibetan protesters die from gunshot wounds, *Radio Free Asia*, 19 August 2014, available at: <http://www.rfa.org/english/news/tibet/wounds-08192014131944.html>

¹² Tibetan youth is killed by police during election clash in Golog, *Radio Free Asia*, 19 December 2014, available at: <http://www.rfa.org/english/news/tibet/clash-12192014164344.html>

¹³ Three more detained Tibetan protesters die from Gunshot wounds, *Radio Free Asia*, 19 August 2014, available at: <http://www.rfa.org/english/news/tibet/wounds-08192014131944.html>

¹⁴ 38. Prominent Tibetan reincarnate lama Tenzin Delek Rinpoche dies in prison, *TCHRD*, 13 July 2015, available at: <http://tchrd.org/prominent-tibetan-reincarnate-lama-tenzin-delek-rinpoche-dies-in-prison/>

¹⁵ Tibetan man kills self in detention to avoid custodial torture, *TCHRD*, 6 April 2016, available at: <http://tchrd.org/tibetan-man-kills-self-in-detention-to-avoid-custodial-torture/>

¹⁶ One Tibetan killed, another presumed dead in Sichuan's Kardze, *Radio Free Asia*, 1 July 2016, available at: <http://www.rfa.org/english/news/tibet/killed-07012016144036.html>

¹⁷ Extrajudicial killing, arbitrary detention and religious repression continue in restive Tibetan county, *TCHRD*, 15 Dec 2014, available at: <http://tchrd.org/arbitrary-arrests-extrajudicial-killing-and-religious-repression-continue-in-restive-tibetan-county/>

Category II - When the deprivation of liberty results from the exercise of fundamental rights or freedoms

WGAD establishes that a detention, even one carried out under the auspices of valid domestic law, can be an arbitrary deprivation of liberty if it “results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the UDHR and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR.”⁶²

The PRC has recently introduced penalties that authorize the arrest and detention of civilians under the National Security Law, Anti-Terrorism Law, and Revised Criminal Law. Under these laws, Tibetans have been arrested and charged for acts including speech making, campaigning to improve literacy in the community, and even purchasing yaks from a slaughterhouse to prevent their death.⁶³ Before these most recent laws were introduced in Tibet, it is highly unlikely that the allegedly wrongful activities would have been seen as political issues or resulted in detention.⁶⁴ A loosely defined criminal act, seen in many of the recent provisions of the PRC’s new state security laws, gives authorities strong domestic legal footing to curb perceived threats from social activists and government critics.⁶⁵ According to HRW data, the courts in the PRC convicted 152 of 153 Tibetans brought before them for political offenses.⁶⁶ The convicted detainees were given prison sentences with an average length of 5.7 years, and

62 Opinions adopted by the Working Group on Arbitrary Detention at its seventy-fourth session, *WGAD*, 30 November – 4 December 2015, available at: http://www.ohchr.org/Documents/Issues/Detention/Opinions2015AUV/Opinion%202015%2043_Thailand_Munkong__AUV.pdf, pg. 1.

63 Relentless, *HRW*, at pg. 31-32.

64 Relentless, *HRW*, at pg. 32.

65 China Adopts Sweeping National-Security Law, *The Wall Street Journal*, available at: <http://www.wsj.com/articles/china-adopts-sweeping-national-security-law-1435757589>

66 Relentless, *HRW*, at pg. 64.

a median sentence of 4 years.⁶⁷ Most Tibetans detained for political reasons in the 2013-2015 period were detained for participating in peaceful public protests that involved shouting slogans, producing leaflets, or putting up posters criticizing the government.⁶⁸ Under the international human rights regime, the criminalization of exercising universal rights is an arbitrary deprivation of liberty. The following sections explore the recent PRC legislation in detail, examining the specific effects to human rights in Tibet.

National Security Law

The PRC's National Security Law, passed on 1 July 2015, is the centerpiece of a series of laws recently passed to give authorities a broad mandate to exercise harsh and suppressive tactics against citizens. Article 15 of the law writes:

The State guards against, stops, and lawfully punishes acts of treason, division of the nation, incitement of rebellion, subversion or instigation of subversion of the people's democratic dictatorship regime; guards against, stops, and lawfully punishes the theft or leaking of state secrets and other conduct endangering national security; and guards against, stops, and lawfully punishes acts of infiltration, destruction, subversion or separatism by foreign influences.⁶⁹

The fear amongst human rights defenders lies in the ambiguities of these offenses, which "make it impossible for people to know what behavior is actually prohibited," and allow authorities to prosecute anyone they

67 Ibid.

68 Ibid., at pg. 29.

69 National Security Law of the People's Republic of China, *Council on Foreign Relations*, available at: <http://www.cfr.org/homeland-security/national-security-law-peoples-republic-china/p36775>

deem to be a threat.”⁷⁰ WGAD prohibits this practice, noting that a detention premised upon an arbitrary piece of legislation can be an arbitrary deprivation of liberty.⁷¹ The UN High Commissioner on Human Rights Zeid Ra’ad Al Hussein publicly criticized the PRC’s National Security Law, stating,

“This law raises many concerns due to its extraordinarily broad scope coupled with the vagueness of its terminology and definitions. As a result, it leaves the door wide open to further restrictions of the rights and freedoms of Chinese citizens, and to even tighter control of civil society by the Chinese authorities than there is already.”⁷²

Based on these ambiguities, many recent criminal proceedings against Tibetans exhibit broad interpretations of the law. On 31 January 2013, Dugkar Kyab and Yangmo Kyi were sentenced to three and four years respectively for “picking quarrels and provoking trouble.”⁷³ Exile Tibetan sources reported that they had been merely helping others recover the body of a self-immolator in order to return it to the family.⁷⁴ In at least six cases of Tibetans sentenced on self-immolation-related crimes, the official reports revealed a startling indifference to evidence of illegality. In February 2013, a 60-year-old Tibetan nomad, Aku Gyatak aka Gyadehor, was sentenced to four years in prison for

70 William Nee, China Adopts Sweeping National-Security Law, *The Wall Street Journal*, available at: <http://www.wsj.com/articles/china-adopts-sweeping-national-security-law-1435757589>

71 Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, *WGAD*, para.63.

72 UN human rights chief says China’s new security law is too broad, too vague, *Office of the High Commissioner of Human Rights*, available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16210&LangID=E#sthash.g4Fth0YL.OjLqojcO.dpuf>

73 Relentless, *HRW*, at pg. 73.

74 Six Tibetans in Gansu sentenced after protecting body of self-immolator in aggressive drive to criminalize self-immolations, International Campaign for Tibet, 4 February 2013, available at: <http://www.savetibet.org/six-tibetans-in-gansu-sentenced-after-protecting-body-of-self-immolator-in-aggressive-drive-to-criminalize-self-immolations/>

“inciting splittism” because three months earlier he had brought cash and other goods “to console families of self-immolators.”⁷⁵

The new law has also been used to issue long sentences to target influential Tibetan leaders. Thardoe Gyaltzen, the administrator and chant master of Drongna Monastery in Diru, was accused of possessing images of the Dalai Lama and recordings of his speeches and Buddhist teachings.⁷⁶ In December 2013 he was sentenced to 18 years in prison for “inciting splittism.” A court in Chabcha, Qinghai sentenced seven Tibetan students to three to four years each for “illegal assembly” during a November 2012 demonstration without offering any other details about the incident that led to their convictions.⁷⁷ Sources reported that the students had merely taken part in a peaceful protest against an official booklet distributed in their school that described Tibetan self-immolators as “terrorists” and the Dalai Lama as a “political itinerant.”⁷⁸

The ICCPR protects under Article 21 the right of peaceful assembly. “No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, ... the protection of public health or morals or the protection of the rights and freedoms of others.”⁷⁹ Criminalizing the rights of free expression and freedom of assembly allows for the inhumane prosecution of Tibetans in violation of Category II as defined by WGAD.

75 Tibetan singer secretly sentenced to five years in prison amid major crackdown in Rebkong, TCHRD, 29 August 2013, available at: <http://tchrd.org/tibetan-singer-secretly-sentenced-to-five-years-in-prison-amid-major-crackdown-in-rebkong/>

76 Monk sentenced to 18 years in prison in restive Diru County, TCHRD, 4 April 2014, available at: <http://tchrd.org/monk-sentenced-to-18-years-in-prison-in-restive-diru-county/>

77 Chabcha student protesters sentenced up to four years, TCHRD, 17 April 2013, available at: <http://tchrd.org/chabcha-student-protesters-sentenced-up-to-four-years/>

78 China alienates, angers Tibetan students with political education, TCHRD, 29 November 2012, available at: <http://tchrd.org/china-alienates-angers-tibetan-students-with-political-education/>

79 ICCPR, Art. 21.

Anti-Terrorism Law

The PRC adopted its first counter-terrorism legislation in December 2015. The law has drawn a great deal of skepticism from rights activists, media networks, and Western governments.⁸⁰ For the past several years, PRC officials have invoked terrorism as a main concern of “stability maintenance” work in Tibet.⁸¹ In July 2013, Deng Xiaogang, a senior PRC official who oversees the police and judicial system in TAR, told a meeting of the People’s Armed Police in Lhasa that they should remain “pioneers in the maintenance of social stability, fists against sudden incidents, and the edge of the knife against terrorism.”⁸² There has been little indication of any credible terrorist threat in the TAR.⁸³ WGAD acknowledges that counter-terrorism measures might require “the adoption of specific measures limiting certain guarantees, including those relating to detention and the right to a fair trial” in a very limited manner, but it has repeatedly stressed that “in all circumstances deprivation of liberty must remain consistent with the norms of international law.”⁸⁴ The PRC’s new Anti-Terrorism Law fails in this regard. It describes the term “terrorism” as:

“any proposition or activity -- that, by means of violence, sabotage or threat, generates social panic, undermines public security, infringes on personal and property rights, and menaces government organs and international organizations -- with the

80 China’s First Anti-Terrorism Law: An Analysis, *Institute for Defense Studies and Analyses*, available at: http://www.idsa.in/idsacomments/china-first-anti-terrorism-law_apsingh_290316

81 New aggressive “counter-terrorism” campaign expands from Xinjiang to Tibet with increased militarization of the plateau, International Campaign for Tibet, 15 October 2014, available at: <http://www.savetibet.org/new-aggressive-counter-terrorism-campaign-expands-from-xinjiang-to-tibet-with-increased-militarization-of-the-plateau/>

82 Relentless, *HRW*, at pg. 27

83 *Ibid.*

84 Deliberation No. 9 concerning the definition and scope of arbitrary deprivation of liberty under customary international law, *WGAD*, para. 71.

aim to realize certain political and ideological purposes.”⁸⁵

International observers posit that this vague new law “has less to do with physical threats to China and is more directed towards the expansion of restrictions.”⁸⁶ Commenting on the new law, Chinese dissident activist Hu Jia argues, “[w]hat it is used for is not terrorism, but rather in the name of combating terrorism, it attacks all kinds of protests, particularly group and street protests. It creates all kinds of emergency situations where it can monitor and severely restrict citizens and groups.”⁸⁷ With such a wide range of interpretations available, PRC officials can manipulate the law in ways that serve a political motive. The number of prosecutions in PRC on state security and terrorism charges doubled in 2015.⁸⁸ At least a dozen human rights lawyers and activists in that period were charged with “subversion of state power” and “incitement of subverting state power.”⁸⁹

Electronic Surveillance & Arbitrary Detention

WGAD notes, “the freedom to impart, receive and seek information via the Internet is protected under international law in the same way as any other form of expression of opinions, ideas or convictions.”⁹⁰ As such, a detention that stems from expressing views over the Internet is as violative as a detention resulting from other forms of free expression. Surveillance technology has become a major part of police operations in Tibet, with extensive use of video monitoring, so-called

85 China adopts first counter-terrorism law in history,” *Xinhuanet*, available at: http://news.xinhuanet.com/english/2015-12/27/c_134956054.htm

86 China’s First Anti-Terrorism Law: An Analysis.

87 Ibid.

88 China: State Security, Terrorism Convictions Double, *Human Rights Watch*, available at: <https://www.hrw.org/news/2016/03/16/china-state-security-terrorism-convictions-double>

89 Ibid.

90 Compilation of Deliberations - Deliberation No. 8 on deprivation of liberty linked to/ resulting from the use of the internet, *WGAD*, pg. 12, available at <http://www.ohchr.org/Documents/Issues/Detention/CompilationWGADDeliberation.pdf>.

social stability databases, monitoring of individual residents and their movements, and profiling.⁹¹ Between 2013 and 2015, possession of information or images that were not approved by the government, and distributing these via phones or other forms of social media, was the second most frequent action that led to detention or prosecution among the cases reported by HRW – 71 people, or 15 percent of the total.⁹² These cases oftentimes involved photographs of the Dalai Lama or footage of a street protest captured and shared via a mobile phone, and nearly a third of the cases involved images or information relating to self-immolations.⁹³

Examples demonstrating the PRC's abuse of electronic information include the case of Tsering Dondrub, who was detained on or about 21 June 2015 for posting images of the Tibetan flag and the Dalai Lama on WeChat.⁹⁴ His detention was part of intensified restrictions on the Tibetan community surrounding the Dalai Lama's 80th birthday.⁹⁵ In addition, Chopel, a 46-year old monk from Rongwo Monastery, was detained on 10 July 2015 on suspicion that he kept photos of the Dalai Lama on his mobile phone and shared with friends online.⁹⁶ In May 2014 two Tibetans were sentenced in Chamdo prefecture for "picking quarrels and provoking trouble."⁹⁷ However, a court document revealed by exile Tibetans showed that the two defendants had used their phones to transmit images of Tibetans

91 Relentless, *HRW*, at pg. 14.

92 *Ibid.*, at pg. 30.

93 Relentless, *HRW*, at pg. 14.

94 TCHRD concerned over detention of Tibetan man for celebrating Dalai Lama's 80th Birthday, TCHRD, 25 June 2015, available at: <http://tchrd.org/tchrd-concerned-over-detention-of-tibetan-man-for-celebrating-dalai-lamas-80th-birthday/>

95 Annual Report 2015, *Tibetan Centre for Human Rights and Democracy*, pg. 55, available at: <http://www.tchrd.org/annual-report-2015/>

96 Tibetan monk detained on suspicion of possessing and sharing Dalai Lama's photos, TCHRD, 9 September 2015, available at: <http://tchrd.org/tibetan-monk-detained-on-suspicion-of-possessing-and-sharing-dalai-lamas-photos/>

97 Two Tibetans receive harsh prison sentences for online anti-fur campaign, TCHRD, 18 September 2014, available at: <http://tchrd.org/two-tibetans-receive-harsh-prison-sentences-for-online-anti-fur-campaign/>

wearing traditional Tibetan robes trimmed with leopard fur, along with captions criticizing Tibetans for wearing such clothes.⁹⁸ HRW notes, “criticism of the use of animal furs from endangered species is associated with support for the Dalai Lama.”⁹⁹ The court found that the defendants had sent the images to a WeChat group with 15 members.

Possession of information about a self-immolation even without dissemination was sometimes enough basis for a prison sentence. Ngawang Tobden, a 20-year-old student, was sentenced in February 2013 to two years of re-education through labor after he was stopped for a routine check in the street and found to have pictures of Tibetan self-immolations and the banned Tibetan flag on his mobile phone.¹⁰⁰ In 2016, arbitrary detention of Tibetans related to electronic surveillance continued unabated. In August, two Tibetan monks were arbitrarily detained by armed security forces and remain disappeared to this day. Lobsang Sherab¹⁰¹ and Gendun Dakpa,¹⁰² both monks from Thangkor Socktsang Monastery, were detained at around midnight from their monastic quarter on 24 August at Thangkor Town in Dzoeg County.¹⁰³ Both monks were detained on suspicion that they shared information with outsiders about peaceful protests staged by Tibetan nomads against government land seizures in KaBharma Village in Thangkor. In November, nine Tibetans were handed

98 Ibid.

99 Relentless, HRW, at pg. 72.

100 Tibetans Imprisoned for Text, Images as Immolations Continue, Dui Hua Human Rights Journal, 21 March 2013, available at: <http://www.duihuahrjournal.org/2013/03/tibetans-imprisoned-for-text-images-as.html>

101 Chinese Police Detain a Second Tibetan Monk at ThangkorSocksang Monastery, Radio Free Asia, 9 September 2016, available at: <http://www.rfa.org/english/news/tibet/second-09092016172606.html>

102 Tibetan Monk Vanishes in Police Custody After Being Detained, Radio Free Asia, 8 September 2016, available at: <http://www.rfa.org/english/news/tibet/vanishes-09082016172741.html>

103 China ‘disappears’ two monks in connection with protests against land grab, TCHRD, 25 October 2016, available at: <http://tchrd.org/china-disappears-twomonks-in-connection-with-protests-against-landgrab/>

draconian sentences after being held incommunicado for about a year because they had created WeChat group chats or participated in online discussions related to the 80th birthday celebration of the Dalai Lama in Ngaba.¹⁰⁴ In March, three Tibetans, two laymen and a lay woman, were detained for discussing the exile Tibetan election in a WeChat group chat in Matoe (Ch: Maduo) County in Golog (Ch: Guoluo) Tibetan Autonomous Prefecture, Qinghai Province.¹⁰⁵ In September, two Tibetan monks, Jinpa Gyatso, 39, and Kelsang Monlam, 37, were each sentenced to one year and a half for sharing information and images of a self-immolation protest on the internet in Sangchu (Ch: Xiahe) County in Kanlho (Ch: Gannan) Tibetan Autonomous Prefecture (TAP), Gansu Province. They had been arbitrarily detained separately on 4 June 2015 and held in prolonged incommunicado detention before their sentencing on 12 September.¹⁰⁶ In December, four Tibetans were detained in connection with Tashi Rabten's self-immolation video clips. Bhenkho, Tenpa, Dorjee and Tsezin Lhamo were detained incommunicado on the suspicion that they took photos and videos of Rabten's self-immolation on 8 December in Machu (Ch: Maqu) County, Kanlho Tibetan Autonomous Prefecture, Gansu Province, in the Tibetan Province of Amdo.¹⁰⁷ In May, a monk named Jamyang Lodroe, 35, was detained from a hospital in Barkham County in Ngaba Tibetan Autonomous Prefecture and since then has not been seen and heard. Local Tibetans believe that his arbitrary

104 China jails Tibetans for celebrating Dalai Lama's Birthday: Nine gets varying terms of 5-14 years, TCHRD, 07 December 2016, available at: <http://tchrd.org/china-jails-tibetans-for-celebrating-dalai-lamas-birthday-ten-tibetans-get-varying-terms-of-6-to-14-years/>

105 China detains three for social media discussion of Tibetan exile election, Radio Free Asia, 01 July, 2016 available at: <http://www.rfa.org/english/news/tibet/chinese-arrest-three-04012016171702.html?searchterm=utf8:ustring=Rongsher>

106 Two Tibetan monks sent to prison for sharing information about self immolation, TCHRD, 19 September 2016, available at: <http://tchrd.org/twotibetan-monks-sent-to-prison-for-sharing-information-about-self-immolation/>

107 China detains four Tibetans linked to self immolation videos, self immolator's wife subjected to severe interrogation and intimidation, TCHRD, 14 December 2016, available at: <http://tchrd.org/china-detains-four-tibetans-linked-to-self-immolation-videos-self-immolators-wife-subjected-to-severe-interrogation-and-intimidation/>

detention was caused by his online writings on politically sensitive topics that he had shared with other Tibetans.¹⁰⁸ The international prohibition against detaining civilians for public expressions and online activity alike renders the PRC's detention of Tibetans based on oppressive electronic surveillance a clear violation.

Revised Criminal Law

The Standing Committee of the National People's Congress issued an amendment to its Criminal Law on 25 February 2011. The amendment went into effect on 1 May of that year. Since then Tibetans have been increasingly prosecuted under Article 232 of the Revised Criminal Law, which charges sympathizers of self-immolators with intentional homicide.¹⁰⁹ The Supreme Court issued an opinion in December 2012 stating that persons who "organize, direct, and plot [self-immolations], as well as those who actively participate in inciting, coercing, enticing, abetting, or assisting others to carry out self-immolations, will be held criminally liable for intentional homicide."¹¹⁰ Since then, local monks, writers, community leaders, and bystanders who were accused of assisting or encouraging a self-immolator or of supporting the principle of self-immolating in some way have received harsh and inhumane sentences for free expression protected under international law.¹¹¹

In August 2011, three Tibetan monks in Ngaba, Sichuan province were found guilty and sentenced to 10, 11, and 13 years in prison for having "plotted" or "assisted" in the protest because they "hid the injured monk and prevented emergency treatment."¹¹² Three monks from

108 Two Tibetan Monks Detained in Ngaba on Unknown Charges, Radio Free Asia, 26 May 2016, available at <http://www.rfa.org/english/news/tibet/charges-05262016150613.html>

109 Relentless, *HRW*, at pg. 26.

110 *Ibid.*

111 *Ibid.*

112 Another two Tibetan monks sentenced in self-immolation, murder case, Xinhuanet,

Zilkar Monastery in Tridu (Ch.: Chenduo) County, Qinghai Province, were detained on suspicion of providing information to foreign media about a double self-immolation. One of the monks, Tsultrim Kalsang, received a 10-year sentence for “intentional homicide” in July 2013 from a court in Xining, Qinghai.¹¹³ In November 2012, two monks from Kangtsa Township in Yadzi (Ch: Xunhua) County, Tsonub (Ch: Haidong) Prefecture, Qinghai Province, received sentences of three years each after they visited the home of a self-immolator and led prayers or sought donations to assist his family, according to exile reports.¹¹⁴ On 31 January 2013, Dugkar Kyab and Yangmo Kyi received three and four years in prison respectively by a court in Sangchu (Ch.: Xiahe) County, Gansu Province, based on the fact that they “Created disturbances near the self-immolation site [that] resulted in a crowd gathering, causing a chaotic scene, and disrupting both business in the shopping area and road traffic.”¹¹⁵ In September 2013, Rinchen Dargye, a 41-year-old Tibetan businessman, was detained in Tawu (Ch.: Daofu) County, Sichuan Province, for preventing authorities from removing the body of a monk who had self-immolated.¹¹⁶

Rights outlined in the UDHR and ICCPR, including, but not limited to, the right to freedom of thought, conscience and religion, the right to hold opinions without interference, and the right to freedom of expression are commonly the cause of detentions in Tibet.¹¹⁷ As HRW notes, a number of countries have laws that criminalize suicide and attempts to intentionally advise, encourage, incite, abet, or assist

31 August 2011, available at: http://news.xinhuanet.com/english2010/china/2011-08-31/c_131085859.htm

113 China sentences Tibetan monk to 10 yrs in prison, TCHRD, 18 July 2013, available at: <http://tchrd.org/china-sentences-tibetan-monk-to-10-yrs-in-prison/>

114 Two monks sentenced to 3 yrs in prison for holding prayers for self-immolator, TCHRD, 5 June 2013, available at: <http://tchrd.org/two-monks-sentenced-to-3-yrs-in-prison-for-holding-prayers-for-self-immolator/>

115 China sentences another 6 Tibetans over self-immolation, Global Times, 31 January 2013, available at: <http://www.globaltimes.cn/content/759478.shtml>

116 “Tibetans Punished Over Burning Protest and for Pulling Down Chinese Flag,” Radio Free Asia, 17 September 2013, <http://www.rfa.org/english/news/tibet/punished-09172013154807.html>

117 ICCPR, arts.18 and 19.

another in committing suicide. “However, the statements and films produced by Chinese authorities ... do not provide clear evidence of a criminal act by those defendants. Instead, they reflect government efforts to politicize the justice process at the expense of defendants’ rights.”¹¹⁸The PRC commits a Category II arbitrary deprivation of liberty by detaining Tibetans for exercising fundamental human rights, either online or in public life. Regardless of the domestic legal footing, international law does not permit detentions for expressing free thought.

Category III - When the total or partial non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character

The PRC revised its Criminal Procedure Law (CPL) in 2012. Many observers hoped the amendments would better protect suspects’ rights and ensure a more fair criminal justice system. Instead, the changes have enabled the PRC to intimidate and harass dissenting civilians through arbitrary detention. The amendments “place undue restrictions on the right to legal counsel, the right to family notification of arrest and/or detention, [and] the right against self-incrimination.”¹¹⁹These can amount to a Category III violation of arbitrary detention. On 4 May 2015, WGAD released a report outlining the basic principles and guidelines on the right of anyone deprived of their liberty to bring proceedings before a court. WGAD sought the views of States, UN agencies, intergovernmental organizations, treaty bodies, in particular, the HRC, other special procedures, national human rights institutions, NGOs and other relevant stakeholders. The resulting document is “based on international law, standards and recognized good practice,

¹¹⁸ Relentless, *HRW*, at pg. 40-41.

¹¹⁹ Plight and Prospects, at pg. 45.

and are intended to provide States with guidance on fulfilling, in compliance with international law, their obligation to avoid the arbitrary deprivation of liberty.”¹²⁰ It deems the right to challenge the lawfulness of detention before a court “a self-standing human right, the absence of which constitutes a human rights violation.”¹²¹

Under the PRC’s new rules, law enforcement agencies have the power to detain persons suspected of crimes related to national security or terrorism in a designated location of the agencies’ choice for up to six months, and they are allowed to deny suspects’ access to a lawyer for the duration of the detention.¹²² The CPL amendment enables the practice of “residential surveillance at a designated place.”¹²³ This allows investigations that involve the vaguely-defined crimes of “endangering state security” or “terrorism,” to carry out residential surveillance at an undisclosed location.¹²⁴ The family can be informed of the fact that the person is being detained under residential surveillance, but may not necessarily learn of the location of the residential surveillance.¹²⁵ The CPL also maintains that a suspect has a right to retain a lawyer.¹²⁶ Article 37 states that detention facilities have up to 48 hours to arrange for a lawyer to meet with the suspect from the time a lawyer makes such a request.¹²⁷ However, the thin protection offered under Article 37’s requirement does not apply when a suspect is accused of an offense involving “endangering state security” or “terrorism.”¹²⁸ Any meeting with the detainee must be approved by

120 Basic Principles and Guidelines on the right of anyone deprived of their liberty to bring proceedings before a court, *WGAD*, Summary.

121 *Ibid.* at para. 2.

122 China: Amendment of Criminal Procedure Law, *Global Legal Monitor*.

123 The Anatomy of a Crackdown: China’s Assault on its Human Rights Lawyers, *China Law & Policy*, available at: <http://chinalawandpolicy.com/tag/criminal-procedure-law/>

124 Criminal Procedure Law, Art. 73, available at: <http://chinalawtranslate.com/criminal-procedure-law/?lang=en>

125 The Anatomy of a Crackdown: China’s Assault on its Human Rights Lawyers, *China Law & Policy*, available at: <http://chinalawandpolicy.com/tag/criminal-procedure-law/>

126 Criminal Procedure Law, art. 73, applying art. 33.

127 Plight and Prospects, at pg. 45.

128 China: Amendment of Criminal Procedure Law, *Global Legal Monitor*.

the police.¹²⁹ Despite a suspect's right to retain a lawyer, as defined in Article 37, even a lawyer must seek special permission to meet a client.¹³⁰

In addition, prior to the amended CPL in 2012, authorities were required to produce a detention warrant before detaining a suspect.¹³¹ But the new Article 83 only requires the police to receive approval from the chief of Public Security Bureau above the county level in order to place someone under residential surveillance at a designated place.¹³² Residential surveillance pending investigation is permitted for up to six months.¹³³ Under such circumstances, legal assurances such as due process rights for detainees are effectively withdrawn.¹³⁴

Finally, in post-arrest investigative detentions, Articles 154 and 156 allow a detention to be extended up to six months if “the investigation cannot be concluded.”¹³⁵ These amendments to the CPL grant PRC authorities excessive discretion to detain civilians without cause. In Tibet, a deprivation of liberty based on either “endangering state security” or “terrorism” can amount to a human rights violation if the fundamental right to a fair trial is denied. The data collected by HRW shows that two-thirds of Tibetan detainees from 2013 to 2015 were not formally arrested and, to the extent of the information available, were not prosecuted or sent for trial.¹³⁶ During this period, if the police recommended that a detainee be investigated for a possible prosecution, it took at least three months before a decision was made on whether or not to charge that person with a crime.¹³⁷

129 Criminal Procedure Law, Art. 37.

130 Ibid.

131 China: Amendment of Criminal Procedure Law, *Global Legal Monitor*.

132 Criminal Procedure Law, Art. 83.

133 Ibid., Art. 77.

134 Relentless, *HRW*, at pg. 27.

135 China: Amendment of Criminal Procedure Law, *Global Legal Monitor*.

136 Relentless, *HRW*, at pg. 59.

137 Ibid.

“During those months,” notes HRW, “almost all detainees would have remained in custody, as bail is extremely rare in Tibetan cases.”¹³⁸ The 153 Tibetan detainees who were prosecuted between 2013 and 2015 waited in detention for an average period of six months before trial.¹³⁹ Detentions that do not provide the right to challenge their lawfulness can constitute a Category III arbitrary deprivation of liberty. In many recent instances, the PRC’s amended CPL has been invoked to curtail the rights of Tibetans in this manner.

INCOMMUNICADO DETENTION OF TSEGON GYAL



On 24 December 2016, Chinese authorities charged a prominent former Tibetan political prisoner of ‘inciting to split the country’ (煽动分裂国家罪) after holding him incommunicado for more than two weeks at Kangtsa (Ch: Gangcha) County Detention Centre

¹³⁸ Ibid.

¹³⁹ Ibid.

in Tsojang (Ch: Haibei) ‘Tibetan Autonomous Prefecture’ (TAP) in Qinghai Province.

Tsegon Gyal was charged of the crime on 24 December and a copy of his arrest warrant was sent to his family on the same date. Mr Gyal has been in the custody of the Tsojang Prefecture State Security Bureau officers since 9 December, after he was arbitrarily detained on the same date in Dashi (Ch: Ha’ëyan) County in Tsojang TAP.

Since his detention, Mr Gyal has not been allowed to meet with his family and relatives, nor has he been provided access to legal representation. In detention, Mr Gyal launched a ‘silent protest’ (以沉默对抗) by refusing to respond to the State Security Bureau officers who had been interrogating him. “Tsegon Gyal knows that the interrogation process is simply a tool for the state security officers to extract forced confession and that no amount of honest response would help him prove his innocence,” a close friend of Mr Gyal told TCHRD.

With Mr Gyal refusing to speak, it is difficult to understand on what basis the authorities charged him of the crime. By exercising his right to silence, Mr Gyal was also protesting against the denial of his right to hire a lawyer and seek legal protection. But Chinese Criminal Procedure Law contains weak protection against self-incrimination, or the right to be presumed innocent. Article 14 (g) of International Covenant on Civil and Political Rights asserts the right not to be compelled to testify against oneself as well as the right not to confess guilt. This right becomes all the more crucial when a person is detained incommunicado and vulnerable to torture and coercive interrogations.¹⁴⁰

140 Charged of inciting separatism, detained former Tibetan political prisoner Tsegon Gyal on ‘silent protest’, TCHRD, 29 December 2016, available at <http://tchrd.org/charged-of-inciting-separatism-detained-former-tibetan-political-prisoner-tsegon-gyal-on-silent-protest/>

ARBITRARY DETENTION OF TASHI WANGCHUK



Tibetan businessman and language rights activist Mr Tashi Wangchuk, 31, has been in pre-trial detention since 27 January 2016 in Kyegudo (Ch: Yushu) Tibetan Autonomous Prefecture, Qinghai Province. His arbitrary detention took place more than a month after an interview of him appeared in the *New York Times*¹⁴¹ on his efforts to file a lawsuit against the local Chinese authorities for their failure to protect and promote Tibetan culture and language. On 24 March, he was formally charged¹⁴² of inciting separatism despite the fact that he has no record of advocating Tibetan independence or separatism.

During his 11 months' detention, Mr Wangchuk was investigated¹⁴³ more than once by the Yushu Public Security Bureau (PSB) officers on the politicized charge of inciting separatism. The focus of the

141 Tibetan Entrepreneur Has Been Illegally Detained, Family Says, *New York Times*, 10 March 2016, available at <https://www.nytimes.com/2016/03/11/world/asia/china-tibet-tashi-wangchuk.html>

142 China Charges Tibetan Education Advocate With Inciting Separatism, *New York Times*, 30 March 2016, available at <https://www.nytimes.com/2016/03/31/world/asia/china-tibet-tashi-wangchuk.html>,

143 Police in China Push for Trial of Tibetan Education Advocate, *New York Times*, 30 August 2016, available at <https://www.nytimes.com/2016/08/31/world/asia/china-tibet-tashi-wangchuk.html>

investigation was the interviews he gave to the overseas media organization. During this period, the procuratorate officers asked the police for additional investigation, the results of which were then submitted in late August. In September, the procuratorate sent the case to the Yushu Intermediate People's Court.

In December, the procuratorate asked the court to send the case back for further investigation following which Mr Wangchuk will be subjected to further investigation that the procuratorate claimed would be completed by 4 January 2017.¹⁴⁴As of 20 March 2017, Chinese authorities had not made public the status of Mr Wangchuk's case and he still remains in pretrial detention.

Category IV - When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy

Alongside the PRC's draconian laws, administrative measures to detain Tibetans are also a violation of international human rights law.¹⁴⁵ Article 9 of the ICCPR ensures the protection of those detained under any form of arrest or detention, including administrative

¹⁴⁴ Chinese Prosecutors Ask Court for More Time in Detained Tibetan's Case, New York Times, 28 December 2016, available at <http://tchrd.org/china-release-tibetan-language-advocate-from-unlawful-detention/>

¹⁴⁵ Human Rights Action Plan - Tibet, *Tibet Justice Center*, available at: https://www.tibet-initiative.de/fileadmin/users/tibet-initiative/politik/ITN_UN_HRAP-T_No-Bleed.pdf. "Since the start of the occupation of Tibet in 1950, but increasingly since 2008, China has targeted Tibetan human rights defenders," at pg. 20. See also: *Pliht and Prospects: The Landscape for Cause Lawyers in China*, at pg. 69-70, available at: http://www.leitnercenter.org/files/Pliht%20and%20Prospects_FULL%20FOR%20WEB.pdf; reviews... have consistently found systematic violations of obligations under the Convention, including routine use of torture against criminal suspects, abuses leading to deaths in custody, administrative detention and the ongoing use of 'reeducation through labor,' and secret detentions."

order.¹⁴⁶The PRC employs methods including formal detention of individuals deemed likely to commit an offense in the future, even if they had not carried out an offense so far, as well as the use of informal or extralegal detention of people who had not committed a formal offense in order to give them “legal education.”¹⁴⁷Types of administrative detention considered dangerous to the rights of civilians by WGAD include preventive detention, detention in emergency or exceptional situations, detention on counter-terrorism grounds, immigration detention, and administrative penal law detention.¹⁴⁸In early 2012, an estimated 2,000 - 3,000 Tibetans were detained and given various forms of political re-education for two to three months in schools, hotels, army camps, and other ad hoc premises after returning from religious teachings given by the exiled Dalai Lama in India.¹⁴⁹ In March 2015, a leading official appeared to refer to such measures when he advocated that stability maintenance work to “strengthen the detention of key individuals ... in order to do a good job of ideological education and guidance.”¹⁵⁰

This method has been recently utilized against critically acclaimed and award-winning Tibetan director, writer and producer Pema Tsenden.¹⁵¹ According to media reports, Pema Tsenden was detained on the night of 25 June 2016 at the baggage claim area of Xining airport. In the process of retrieving his luggage after a flight, an altercation ensued between Pema Tsenden and the airport security officers, which led to the arrival of additional security personnel who then handcuffed and detained him without any explanation.¹⁵² The Xining Airport Public

146 AhmadouSadioDiallo (Republic of Guinea v. Democratic Republic of the Congo), para. 77.

147 Relentless, *HRW*, at pg. 24-25.

148 AhmadouSadioDiallo. atpara. 68.

149 Relentless, *HRW*., pg. 24-25.

150 Ibid.

151 TCHRD condemns detention and ill-treatment of noted Tibetan director PemaTsenden, *TCHRD*, available at:<http://tchrd.org/tchrd-condemns-detention-and-ill-treatment-of-noted-tibetan-director-pema-tsenden/>.

152 Ibid.

Security Bureau charged Pema Tseden with “disturbing public order” and punished him to five days “administrative detention” before taking him to an administrative detention facility in Tsongkha (Ch: Ping’An) town in Tsoshar (Ch: Haidong) city. While in detention, he suffered dizziness, chest tightness, and numbness of limbs, and was later taken for emergency treatment at a hospital in Ping’An.¹⁵³ Though forms of administrative detention such as this may not be labeled as criminal punishments, WGAD classifies these punishments as Category IV violations of arbitrary deprivation of liberty if they are prolonged and not subject to judicial review.

Category V - When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings

Recent developments in Tibet illustrate a widespread policy of cultural suppression implemented by the PRC at the grass roots level to criminalize cultural practices and use arbitrary detention as an essential tool. When a deprivation of liberty is based on grounds of culture, ethnic identity, or religion, it constitutes an arbitrary detention under international law. In September 2013, the PRC introduced a series of new re-education measures in local villages around Tibet.¹⁵⁴ These included major policy approaches that included “social management,”

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¹⁵⁴ Relentless, *HRW*, at pg. 78.

“social rectification,” and “preventive control” that required officials to shift the focus of security policy to “preventive” approaches to policing.¹⁵⁵ Approximately one in 10 cases of detention in Tibet between 2013 and 2015 were for cultural, religious, or social activities, and many of them “were likely not thought of by the participants at the time as political challenges to the government.”¹⁵⁶

In Tibet, the PRC has used these methods to suppress through detention those who advocate for Tibetan culture and identity. The 2013 annual work report of the TAR Higher People’s Court stated the need to “innovate new methods of social management and engage fully in the core work of stability maintenance, so as not to give any opportunity to the separatists and to ensure continuous long-term and comprehensive security in society.”¹⁵⁷ The policy included measures such as requiring local residents to fly national flags from the roofs of their houses. This triggered a protest in one village that resulted in a number of detentions, which were in turn followed by more protests and additional detentions.¹⁵⁸

Spending on public security increased throughout China five-fold between 2004 and 2014, but expenditures in Tibetan regions grew at significantly higher rates during the same period.¹⁵⁹ For example, in two Tibetan prefectures of Sichuan province, expenditure on public security between 2002 and 2009 increased as much as three times as fast as in the non-Tibetan areas.¹⁶⁰ As part of its “stability maintenance” program, the PRC introduced village-level police stations or police posts throughout Qinghai in October 2015.¹⁶¹ That month 5,000 police officials deployed to villages to carry out work such as “preventive

155 Ibid., at pg. 24.

156 Ibid., at pg. 31.

157 Ibid., at pg. 24.

158 Ibid., at pg. 78.

159 Relentless, *HRW*, at pg. 15.

160 Ibid.

161 Ibid., at pg. 22.

control of social stability, fighting crime, monitoring social media and Internet messaging, gathering information, and management of the actual population.”¹⁶² Shortly thereafter, a high-level official announced a new security scheme in Malho (Ch.: Huangnan) prefecture that included “assisting, managing and controlling key persons,” especially in townships and villages, to “vigorously eliminate the danger of instability.”¹⁶³ In practice, this policy has resulted in widespread discriminatory targeting and detention of those who advocate for Tibetan culture.

According to exile Tibetan reports, a respected abbot named Gyurme Tsultrim was detained in November 2013 for giving a speech about the importance of Tibetan language in Nangchen (Ch: Nangqian) County in Yulshul (Ch: Yushu) Tibetan Autonomous Prefecture.¹⁶⁴ Similarly, eight Tibetans from Chamdo (Ch: Changdu) County in TAR were detained for allegedly campaigning to improve literacy in their community the next year.¹⁶⁵ In March 2013, two Tibetan school students were each sentenced to four years for leading a protest of over a thousand students against the reduction in the use of Tibetan language in the school syllabus.¹⁶⁶ Singer and music-producer Pema Rigzin was detained by public security officials in May 2013 for producing politically themed songs including “We Should Learn Tibetan.”¹⁶⁷ Similarly, police detained singer Gebe (or Gebhe) after he performed a song that called on Tibetans not to “ignore our

162 Relentless, *HRW*, at pg. 22.

163 *Ibid*.

164 China Detains Two Senior Tibetan Monks, Radio Free Asia, 17 December 2013, available at <http://www.rfa.org/english/news/tibet/detains-12172013153645.html>

165 Chinese Authorities Detain Eight Tibetans Over Links to Grassroots Campaign, Radio Free Asia, 6 January 2014, available at <http://www.rfa.org/english/news/tibet/movement-01062014193533.html>

166 Chabcha student protesters sentenced up to four years, TCHRD, 17 April 2013, available at <http://tchrd.org/chabcha-student-protesters-sentenced-up-to-four-years/>

167 Tibetan Musician Who Produced Songs For Popular Singer is Jailed, Radio Free Asia, 1 December 2014, available at <http://www.rfa.org/english/news/tibet/song-12012014195105.html>

mother tongue” or “forsake all our traditions.”¹⁶⁸ In December 2014, three Tibetans were detained in Qinghai province, for trying to vote in a village election for the leader of a local voluntary organization instead of for the officially approved candidate.¹⁶⁹ Another case involved 19 monks from four monasteries in Lhasa who apparently had not taken part in political education sessions in their monasteries. Seven other detainees were Tibetans who had organized petitions to release a local religious leader from prison or return confiscated land.¹⁷⁰ The new stability maintenance measures also involved a drive to reform the management of certain monasteries in Nagchu Prefecture. Local residents and monks resisted the reforms, and the authorities responded by detaining a number of people and closing several monasteries.¹⁷¹ Finally, a number of detentions in recent years were based on opposition to environmentally or culturally damaging mining operations or government construction projects.¹⁷²

The recent evidence of widespread detentions throughout Tibet based on cultural or religious activities gives clear indication that the PRC is utilizing its police power to systematically target and discriminate against Tibetan identity. On these grounds, the PRC commits human rights violations as defined by WGAD under Category V.

168 Tibetan Protest Singer Is Said to Be Under Arrest, *New York Times*, 28 May 2014, available at https://sinosphere.blogs.nytimes.com/2014/05/28/tibetan-protest-singer-is-said-to-be-under-arrest/?_r=0

169 Nearly 70 Tibetans Detained Following Clash Over Forced Vote, *Radio Free Asia*, 7 January 2014, available at <http://www.rfa.org/english/news/tibet/vote-01072015144955.html>

170 Relentless, *HRW*, at pg. 32.

171 *Ibid.*, at pg. 78.

172 *Ibid.*, at pg., 38.

ARBITRARY AND SECRET DETENTION OF CHOESANG GYATSO

Chinese authorities detained Tibetan monk Choesang Gyatso¹⁷³ on 29 May 2016 in Mangra (Ch: Guinan) County in Tsolho (Ch: Hainan)



Tibetan Autonomous Prefecture, Qinghai Province. The reason for his detention remains unknown and authorities did not inform his family about the detention. A monk of Lutsang Monastery, Gyatso led a voluntary association set up to promote education on Tibetan language and culture among children in Tibetan nomadic areas. He was also the editor of the Tibetan language journal, ‘The Sound of Hoofbeats’.

Gyatso had been detained previously for about a month and then released without explanation, and remained under close surveillance of the authorities.

¹⁷³ Tibetan Monk Detained a Second Time, Vanishes Into Police Custody, Radio Free Asia, 17 June 2016, available at <http://www.rfa.org/english/news/tibet/vanishes-06172016151332.html>

HUMAN RIGHTS MONITORING & ENFORCEMENT MECHANISMS

The PRC is bound not only by international law, but also by domestic law, to protect against arbitrary deprivations of liberty.¹⁷⁴ However, in the PRC, laws on paper do not accurately reflect State practice in reality. Several laws, particularly those that protect the individual from State abuses, are not enforced.¹⁷⁵ Laws that purportedly protect human rights, such as the 1992 Law on the Protection of Women's Rights and Interest, were intentionally designed not to be utilized by victims, nor do they provide adequate legal remedies. Instead, they operate almost entirely at the discretion of the State.¹⁷⁶ Taking into account this disconnect between laws on paper and in practice, the international legal system is equipped with means of enforcing universal human rights standards. Both treaty-based bodies and charter-based bodies possess enforcement mechanisms that entail certain strengths and limitations.

174 Constitution of the People's Republic of China], Art. 37, National People's Congress, Adopted at the Fifth Session of the Fifth National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on December 4, 1982 (As amended 1988, 1993, 1999, 2004) *available at*:http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm. "Freedom of the person of citizens of the People's Republic of China is inviolable. No citizens may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful detention or deprivation or restriction of citizens' freedom of the person by other means is prohibited, and unlawful search of the person of citizens is prohibited."

175 Laws on Paper vs. Law in Practice, *The Wall Street Journal*, Nov. 21, 2011, *available at*: <http://blogs.wsj.com/chinarealtime/2011/11/21/in-china-laws-on-paper-vs-law-in-practice/> "[T]he white paper claims that China has developed 'a comparatively complete legal system to protect human rights' – a statement contradicted by the country's continuing repression of dissent and heightened censorship of the media, and by an ongoing assault on lawyers who lawfully assert their clients' rights."

176 J. Hecht, "The Legal Protection of Women's Rights in China: Discretionary Enforcement of Human Rights Norms," 1995 China Rights Forum 4-5.

International human rights treaties like the ICCPR create legal obligations on State parties depending on whether the State has ratified, acceded, or signed the agreement. Ratification defines the international act whereby a state indicates its consent to be bound to a treaty.¹⁷⁷ Accession is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification.¹⁷⁸ The PRC has not ratified or acceded to the ICCPR. However, it signed the treaty on October 5, 1998. Signing the ICCPR creates an obligation to refrain, in good faith, from acts that would defeat the object and the purpose of the treaty.¹⁷⁹ The ICCPR is highly persuasive on international customary law and the PRC regularly corresponds with WGAD upon request, which evidences that the PRC feels itself bound by international law to protect against the arbitrary deprivation of liberty. While the HRC wields significant power to enforce the provisions of the ICCPR, it requires the consent of the State party. The PRC has also not agreed to the jurisdiction of the ICCPR's First Optional Protocol, which limits the ICCPR's enforcement capacity within China. Only if a State is party to the First Optional Protocol can the HRC consider individual complaints that allege a violation of an individual's rights under the ICCPR.¹⁸⁰

The WGAD complaint procedure, not limited by State consent, is therefore a more powerful enforcement tool in the present context. As a charter-based body, WGAD holds a different set of enforcement tools. Its methods are quasi-judicial, its opinions are non-binding, and it has no direct enforcement power of its own.¹⁸¹ “These features

177 Ibid.

178 J. Hecht, “The Legal Protection of Women's Rights in China”.

179 What is the difference between signing, ratification and accession of UN treaties?, *Dag Hammarskjöld Library*, available at: <http://ask.un.org/faq/14594>.

180 Human Rights Committee, *International Justice Resource Center*, available at: <http://www.ijrcenter.org/un-treaty-bodies/human-rights-committee/>

181 Jared M. Genser and Margarat K. Winterkorn-Meikle, *The Intersection of Politics and International Law: the United Nations Working Group on*

pose limitations, but are also critical to the mechanism's effectiveness by allowing it to provide a politically viable alternative to treaty-based human rights enforcement mechanisms.¹⁸² WGAD's opinions are not technically binding, but they can serve as a catalyst for information sharing among NGOs and governments, raise awareness about particular types of problems, increase government accountability, and ultimately lead to the release of detainees.¹⁸³ WGAD can address human rights concerns in any part of the world because their mandate does not require consent of the State.¹⁸⁴

WGAD acts on information regarding alleged cases of arbitrary detention by sending urgent appeals and communication to concerned Governments to clarify and/or bring to their attention these cases.¹⁸⁵ Notably, WGAD is the only non-treaty-based mechanism whose mandate expressly provides for consideration of individual complaints.¹⁸⁶ The following four stages accurately describe WGAD's complaint procedure.

Stage 1: Bringing the matter to the attention of WGAD

An essential catalyst to WGAD's work is receiving information of alleged arbitrary detention from many sources, including individuals directly concerned, their families, their representatives, NGOs, Governments, and intergovernmental organizations.¹⁸⁷ WGAD does not require local remedies to be exhausted in order for a

Arbitrary Detention in Theory and Practice, Columbia Human Rights Law Review, at pg.104.

182 Ibid..

183 Ibid.

184 Ibid.

185 Individual Complaints and Urgent Appeals, *OHCHR*, available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>

186 Ibid.

187 Ibid.

communication to be declared admissible.¹⁸⁸In addition, since 1993, the Commission on Human Rights has authorized WGAD to take up cases on its own initiative when its attention is drawn to sufficiently substantiated allegations of arbitrary deprivation of liberty.¹⁸⁹

When WGAD receives a communication from an eligible entity, it will take one of the following measures:

- If the person has been released, for whatever reason, following the referral of the case to WGAD, the case is filed through an opinion. WGAD reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;
- If WGAD considers that the case is not one of arbitrary detention, it shall render an opinion to that effect. WGAD can also make recommendations in this case if it considers it necessary;
- If WGAD considers that further information is required from the Government or from the source, it may keep the case pending until that information is received;
- If WGAD considers that the arbitrary nature of the detention is established, it shall render an opinion to that effect and make recommendations to the Government.¹⁹⁰

Stage 2: Offering the Government an opportunity to refute the allegations

WGAD attaches great importance to the adversarial character of its procedure. The communication received by WGAD is forwarded to the Government concerned through diplomatic channels with an

188 Ibid.

189 Towards Universal Participation and Implementation, Fact Sheet #5, *United Nations*, pg. 3, available at: https://treaties.un.org/doc/source/events/2010/Press_kit/fact_sheet_5_english.pdf.

190 Fact Sheet No. 26, at pg 5.

invitation to communicate back within 90 days.¹⁹¹ The Government is expected to comment on the allegations made, both as to the facts and the applicable legislation, and disclose the progress and outcome of any investigations that may have been ordered. If the Government desires an extension of this time limit, it is required to inform WGAD of the reasons for requesting one, so that it may be granted a further period of a maximum of two months in which to reply.¹⁹²

Stage 3: Offering the source an opportunity to make comments on the Government's response

A reply sent by to WGAD from the Government concerned is transmitted to the original source of the complaint for final comments.¹⁹³ If the Government does not communicate its response within the 90-day deadline, or within the extended deadline, WGAD may take a position on the case on the basis of all the information available to it.¹⁹⁴

Stage 4: The Working Group's opinion

In light of the information collected under the adversarial process, WGAD adopts one of the following measures in a private session:

- If the person has been released, for whatever reason, following the reference of the case to WGAD the case is filed; WGAD, however, reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

191 Ibid.

192 Ibid.

193 Ibid.

194 Ibid.

- If WGAD considers that the case is not one of the arbitrary deprivation of liberty, it shall render an opinion to this effect;
- If WGAD considers that further information is required from the Government or the source, it may keep the case pending until that information is received;
- If WGAD considers that it is unable to obtain sufficient information on the case, it may file the case provisionally or definitively;
- If WGAD decides that the arbitrary nature of the deprivation of liberty is established, it shall render an opinion to that effect and make recommendations to the Government.¹⁹⁵

The opinions rendered by WGAD shall be brought to the attention of the UNHRC in its annual report. Governments, sources, and other parties should inform WGAD of the follow-up action taken on the recommendations made by WGAD in its opinion.¹⁹⁶ This will enable WGAD to keep the UNHRC informed of the progress made and of any difficulties encountered in implementing the recommendations, as well as of any failure to take action.¹⁹⁷

Urgent appeals

WGAD has also developed an “urgent action” procedure for cases in which there are sufficiently reliable allegations that a person may be detained arbitrarily and that the alleged violations may be time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or ongoing damage of a very grave nature to victims

¹⁹⁵ Fact Sheet No. 26, at pg 5.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

in the event of the continuation of the detention.¹⁹⁸ In exceptional cases, the urgent action procedure may also be resorted to in other circumstances when WGAD deems that the situation warrants such an appeal. In such cases, an urgent appeal is sent to the Government requesting that it take appropriate measures to ensure that the detained person's right not to be detained arbitrarily is respected.¹⁹⁹

Field Missions

In some instances, WGAD additionally operates through country visits, opening a direct dialogue with the Government concerned and representatives of civil society. Discussions conducted during such visits with the judicial, penitentiary and other officials concerned, as well as with detainees, help WGAD to understand the underlying reasons for instances of arbitrary deprivation of liberty.²⁰⁰ Such visits take place on the basis of an invitation from the Government concerned.²⁰¹

Human Rights Complaint Procedure

Another accountability measure available to oppose human rights violations in Tibet is the complaint procedure introduced by the UNHRC.²⁰² The UNHRC adopted its new complaint procedure on 18 June 2007 to address “consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.”²⁰³

198 Ibid.

199 Fact Sheet No. 26, at pg 5..

200 Ibid., at pg. 5-7.

201 Ibid. at pg. 5.

202 Human Rights Council Complaint Procedure, *OHCHR, available at:* <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCCComplaintProcedureIndex.aspx>

203 Ibid.

The procedure is confidential and applies to all States.²⁰⁴ It receives communications from individuals, groups, or NGOs that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations. NGOs with or without consultative status to the UNHRC are eligible to submit complaints, but anonymous complaints are not considered.²⁰⁵

A complaint can be lodged at any time. However, domestic remedies must first be exhausted, unless such remedies would be ineffective or unreasonably prolonged.²⁰⁶ The Complaint Procedure can only process complaints submitted in writing. It is advisable to limit the complaint to 10-15 pages and additional information may be submitted at a later stage.²⁰⁷ Complaints submitted should include a description of the relevant facts in as much detail as possible, providing names of alleged victims, dates, location and other evidence.²⁰⁸ They should also include the purpose of the complaint and the rights allegedly violated. All communications found to be manifestly ill-founded or anonymous will be discarded.²⁰⁹

Acceptable Criteria for a Human Rights Complaint

The UNHRC defines the admissibility of a communication related to a violation of human rights and fundamental freedoms with the following criteria:

204 Human Rights Council Complaint Procedure, A Conscientious Objector's Guide to the International Human Rights System, *available at*:<http://co-guide.info/mechanism/human-rights-council-complaint-procedure>

205 Ibid.

206 Ibid.

207 Human Rights Council Complaint Procedure, A Conscientious Objector's Guide to the International Human Rights System, *available at*:<http://co-guide.info/mechanism/human-rights-council-complaint-procedure>.

208 Ibid.

209 Ibid.

- It is not manifestly politically motivated and its object is consistent with the Charter of the United Nations, the UDHR and other applicable instruments in the field of human rights law;
- It gives a factual description of the alleged violations, including the rights which are alleged to be violated;
- Its language is not abusive. However, such a communication may be considered if it meets the other criteria for admissibility after deletion of the abusive language;
- It is submitted by a person or a group of persons claiming to be the victims of violations of human rights and fundamental freedoms, or by any person or group of persons, including NGOs, acting in good faith in accordance with the principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and claiming to have direct and reliable knowledge of the violations concerned. Nonetheless, reliably attested communications shall not be inadmissible solely because the knowledge of the individual authors is second-hand, provided that they are accompanied by clear evidence;
- It is not exclusively based on reports disseminated by mass media;
- It does not refer to a case that appears to reveal a consistent pattern of gross and reliably attested violations of human rights already being dealt with by a special procedure, a treaty body or other United Nations or similar regional complaints procedure in the field of human rights;

- Domestic remedies have been exhausted, unless it appears that such remedies would be ineffective or unreasonably prolonged.²¹⁰

If a complaint is taken up after initial screening, the allegation of human rights violations will be transmitted to the State concerned with a request for information.²¹¹ The State shall reply no later than three months after the request has been made.²¹² If necessary, this deadline may however be extended.²¹³ A Working Group of the Human Rights Council, such as WGAD, will then consider the complaint and the reply received from the State, and make a recommendation to the UNHRC, usually in the form of a draft resolution or decision on the situation referred to in the complaint.²¹⁴ As a general rule, the period of time between the transmission of the complaint to the State concerned and consideration by the Council shall not exceed 24 months.²¹⁵ Following the report by the Working Group, the UNHRC can either: 1) discontinue considering the situation, if no further action is needed; 2) keep the situation under review, and request further information from the State concerned; 3) keep the situation under review and appoint an independent expert to monitor the situation and report back to the UNHRC; 4) discontinue reviewing the situation under the confidential complaint procedure in order to take up a public consideration; or 5) recommend to the OHCHR to assist the State concerned.²¹⁶

210 Ibid.

211 Human Rights Council Complaint Procedure, *OHCHR*, available at: <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>.

212 Ibid.

213 Ibid.

214 Ibid.

215 Ibid.

216 Human Rights Council Complaint Procedure, *OHCHR*.

Universal Periodic Review

In the same General Assembly resolution that created the UNHRC on 15 March 2006, the Universal Periodic Review (UPR) was introduced as a unique process in which all UN Member States are subject to review of their human rights record. Under the auspices of the UNHRC, the UPR is a state-driven process that reviews each state every four and a half years. Reviews are comprised of an interactive discussion between the state under review and other UN Member states, during which time any UN member can pose questions, comments and/or make recommendations to the state under review.²¹⁷ The UPR will assess the extent to which states respect their human rights obligations set out in: (1) the UN Charter; (2) the UDHR; (3) human rights instruments to which the state is party; (4) voluntary pledges and commitments made by the state; and, (5) applicable international humanitarian law.²¹⁸ It offers a reminder to each UN Member State of their responsibility to fully respect and implement all human rights and fundamental freedoms.²¹⁹ As established, the ICCPR's prohibition against arbitrary deprivation of liberty applies to the PRC as customary international law.

217 Basic facts about the UPR, *OHCHR*, available at: <http://www.ohchr.org/EN/HR-Bodies/UPR/Pages/BasicFacts.aspx>.

218 Basic facts about the UPR, *OHCHR*, available at: <http://www.ohchr.org/EN/HR-Bodies/UPR/Pages/BasicFacts.aspx>.

219 Universal Periodic Review, *OHCHR*, available at: <http://www.ohchr.org/EN/HR-Bodies/UPR/Pages/UPRMain.aspx>.

CONCLUSION

In recent years, the PRC has been on a relentless path to achieve total control over all forms of opposition throughout Tibet. Arbitrary detention is a principal tool in suppressing political and cultural dissidents. Using both extra-judicial measures, such as enforced disappearances, and acting under the guidance of newly introduced laws like the National Security Law and the Anti-Terrorism Law, the authorities have been relentless in committing countless human rights violations. Tibetans have suffered disproportionately in this period. A massive influx of Chinese paramilitary troops throughout Tibet has placed any and all members of Tibetan society in danger of arbitrary arrest and detention. The overwhelming surveillance and punishment of Tibetans is intended to quell all forms of protest, including self-immolations, peaceful street marches, artistic expression, and political and cultural writings. In detaining innocent Tibetans for exercising their universal human rights, the PRC violates international law. Tibetans should never be detained for exercising their right to peaceful assembly or their right to free expression, whether it be in public or on the Internet. It is time for the PRC to face consequences for these actions.

First, the PRC should release all persons who are detained under no charge or for any conduct protected under international human rights law. It should also immediately ratify the ICCPR and allow international human rights observers entry into Tibet for purposes of verifying that human rights are respected. Furthermore, the PRC should grant all detainees in Tibet access to legal representation. Finally, the National Security Law, the Anti-Terrorism Law, the Criminal Law, the Criminal Procedure, and other domestic laws that endanger human rights must be repealed or amended to prevent the

violation of international law in their enforcement. The international community must remain vigilant to ensure that these measures are taken. Using the enforcement mechanisms available under the UN system, including the WGAD complaint procedure and the UNHRC complaint procedure, NGOs can continue to bring the issue of human rights in Tibet to the forefront of discussions on the PRC. International agencies, including the UN High Commissioner for Human Rights and the Special Procedures, in addition to other UN Member States, should tirelessly utilize the authority vested in them to ensure that human rights in Tibet are continually presented to the PRC on the international stage. The PRC has been diligent in creating an authoritarian system of political and cultural oppression in Tibet through arbitrary detention. The effects have been devastating. Only an equally passionate and vigorous defense of international human rights in Tibet will halt the unjust and arbitrary detention of innocent Tibetans.



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