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The 2008 Tibet Uprising, the largest series of protests against Chinese rule since 1959, has had transformational effects on Tibetan society. The experience and aftermath of the events of 2008 have led to a vibrant literary and cultural resurgence in Tibet. Exhibiting a new kind of “intellectual heroism,” courageous Tibetans are gradually rising to express their views about the lack of freedoms in Tibet and to challenge State accounts of the causes and consequences of the 2008 Uprising.

In response to this increase in dissident activity, the government of the People's Republic of China has undertaken a marked campaign to spread fear and intimidation in Tibet by cracking down on Tibetan intellectuals, writers, and cultural figures. In the wake of the 2008 Uprising, an alarming number of outspoken Tibetans have been arrested, beaten, forcibly interrogated, and imprisoned by CCP security officials over the content of their writing or artistic work.

This Special Report explores the severe repression of Tibetans' free speech rights since 2008. Detailed case studies and legal analysis illustrate the Communist Party's use of vague “State security” laws to punish dissident voices in Tibet. The report also includes profiles of over 60 Tibetan intellectuals and cultural figures that have been targeted by State authorities since the 2008 Uprising.



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**DISSENTING VOICES**



# DISSENTING VOICES

*Targeting the Intellectuals,  
Writers & Cultural Figures*



བོད་ཀྱི་འགྲོ་བ་མིའི་ཐོབ་ཐང་དང་མང་གཙོ་འཕེལ་རྒྱས་ལྗེ་གནས་ཁང་།  
**Tibetan Centre for Human Rights & Democracy**

# TCHRD

## Tibetan Centre for Human Rights and Democracy

The Tibetan Centre for Human Rights and Democracy (TCHRD) is the first Tibetan non-governmental organization to be formed with the mission to promote and protect human rights of Tibetans in Tibet and to educate the exile Tibetan community on human rights concepts and democratic principles. TCHRD is independent of the Tibetan Government-in-exile, and is based in Dharamsala, India. It is funded by donations from individual supporters and foundations around the world. It was founded in January 1996 and was registered as an NGO on 4 May 1996.

TCHRD conducts regular, systematic investigations of human rights abuses in Tibet and publishes research documents on various human rights issues confronted by the Tibetan people in Tibet. TCHRD organizes various educational programmes like workshops, talk series, and public discussions in an effort to empower the Tibetan exile community to play an important participatory and vigilant role in a democratic future Tibet. TCHRD attends the UN Commission on Human Rights and takes part in other national and international conferences to highlight the human rights situation in Tibet.

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Tibetan Centre for Human Rights & Democracy

This report is dedicated to all those Tibetans inside Tibet who, through their indomitable spirit and despite personal risk, continue to raise their voices in the struggle for basic human rights.

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## SUMMARY

The year 2008 marked the largest series of protests against Chinese rule in Tibet since 1959. A vibrant literary and cultural resurgence has emerged in Tibet in the wake of the 2008 Uprising, and feelings of Tibetan nationalism have perhaps never been so strong. Courageous Tibetans are gradually rising to share their views of life under Chinese rule.

Communist Party authorities in the People's Republic of China are spreading fear and intimidation in Tibet by systematically exploiting legal tools to punish dissident activity. Since 2008, over 60 Tibetan intellectuals, writers, artists, students and cultural figures have been harassed, detained, beaten, interrogated, and/or imprisoned over the content of their work. Virtually any expression of Tibetan identity is branded as a threat to the Motherland, hence subject to severe punishment under China's vague, labyrinthine "endangering state security" (ESS) laws. The alleged "criminal" activity often consists of merely writing or publishing essays that are inconsistent with Party doctrine, or sharing information about human rights transgressions occurring in Tibet.

This report highlights the escalating attack on freedom of expression and information in Tibet since the 2008 Uprising. The report includes:

- A description of the literary and cultural resurgence occurring in Tibet
- A discussion of State authorities' use of ESS crimes to carry out abusive political prosecutions of dissident figures inside Tibet
- Detailed case studies of several well-known Tibetans imprisoned since 2008, including *Kunga Tsayang* (essayist and photographer), *Kunchok Tsephel* (writer and webmaster), *Shogdung* (editor, writer and official intellectual), *Tashi Rabten* (university student and writer/editor), *Tashi Dhondup* (popular musician), and *Karma Samdrup* (prominent businessman and environmental philanthropist).
- An explanation of why the repression of dissident voices in Tibet clearly violates international norms regarding freedom of expression and access to information
- Profiles of over 60 Tibetan intellectuals and cultural figures targeted since 2008

# Introduction

Since the incursion of the People's Liberation Army into Tibet in 1950, spreading fear and intimidation through military might and strict security measures has been a hallmark of the People's Republic of China's ("PRC") strategy to maintain its iron-fisted rule in the Himalayan region. Yet, the ominous cloud that descended upon Tibet in the 1950's is growing in its and scope. In the wake of the Uprising of spring 2008, the largest series Tibetan protests against Chinese-rule since 1959, the repression of fundamental freedoms by the Chinese Communist Party ("CCP") has intensified markedly.

The widespread violation of civil and political rights of Tibetans is not a new story. Tibetans have suffered from decades of religious repression, arbitrary detention, brutality, ethnic discrimination, and Draconian restrictions on freedom of expression and information. Historically, the targets of the CCP's efforts to maintain "social stability" in Tibet have been the monastic communities; approximately 70% of the political prisoners in Tibet are monks and nuns.<sup>1</sup> However, it appears that State authorities are using the recent political unrest in Tibet as justification to further suffocate Tibetans' free speech rights. Despite its obligations under the Constitution of the PRC<sup>2</sup> and international law<sup>3</sup> to uphold the freedom of expression, including the freedom to criticize the government, the CCP routinely exploits vague domestic legal provisions to criminalize the peaceful expression of Tibetan intellectuals and cultural figures regarded as "politically dangerous."

The 2008 Uprising, which began in Lhasa on March 10 and swept across the Tibetan plateau, were largely spontaneous and overwhelmingly peaceful, in most cases starting with a prayer session or non-violent demonstration led by monks or nuns and joined by civilians.<sup>4</sup> Despite the CCP's efforts to block information on its brutal crackdown on the protests, the world watched with horror as images and stories exposing the shocking brutality of the Chinese military and security forces found their way onto Internet websites.

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

There is a huge disparity between the CCP's accounts of the 2008 Uprising and the direct experience of those who witnessed the events.<sup>5</sup> Thus, the rise among Tibetans is fueled in part by an undeniable need for people to share their stories—to share the Truth. Furthermore, the sheer horror of the crack-down of the protests and the marked militarization of Tibetan areas has compelled many Tibetans to express their sorrow and grief over the massive losses of life and lack of freedoms in Tibet.

Apparently, China's repressive policies and denial of freedoms in Tibet has only increased anger and defiance towards Chinese rule. The spontaneous series of protests that swept across the Tibetan Plateau demonstrated a unified and parallel resistance to Chinese rule. The post-Uprising expansion of "Patriotic re-education," which forces Tibetans to renounce the Dalai Lama and indoctrinate them with Communist ideology, is having the "spectacular effect of building a unified Tibetan nationalism."<sup>6</sup>

Tibet saw a series of political protests in the late 1980s resulting in the imposition of Martial Law in 1989 by the then Tibetan Autonomous Region ("TAR") Party Secretary, Hu Jintao. Despite the Martial Law, the protests, mostly led by monks and nuns who suffered severe religious persecution in Tibet, not only continued sporadically but began to take on both political and economic dimensions, spreading amongst the lay populace.

Relatively quiet during the 1980's and 1990's, Tibetan dissidents and intellectuals have been "re-energized by the leadership's violent response to the 2008 protests and subsequent blanket of suppression."<sup>7</sup> The expanding national consciousness among Tibetans, which is also touching farmers and ordinary people, has perhaps never been so strong.

As street-side political protests were crushed in 2008 under the CCP's crack-down in Tibet that led to mass arrests and claimed the lives of over two



hundred Tibetans, expressions of Tibetan resentment, sorrow, and nationalism in writing and song have blossomed. The resurgence of cultural and dissident activity clearly undermines Beijing's efforts to influence international opinion by manipulating the media, demonizing the "Dalai clique," and by otherwise maintaining a chokehold on the flow of information and freedom of expression inside Tibet.

The current crackdown by no means represents the first instance of Tibetan writers being imprisoned for their literary or cultural work.<sup>8</sup> However, in response to the growing threat posed by thinkers, writers, and artists and the development of information technology (i.e. the Internet), the CCP has exhibited a marked expansion in its strategy to maintain "social stability" in Tibet. The CCP's intimidation tactics are not only being directed at those who would take to the streets<sup>9</sup> or dare to raise a Snow Lion flag or shout Tibetan independence slogans in public. The apparent aim of the current wave of attacks is to exact severe punishment on dissident voices, spreading fear among those who dare to take up their pens, keyboards, voices, or camera equipment to document events or express their views.

PRC authorities are using the 2008 Uprising as justification to stifle the freedom of speech of Tibetan intellectuals, writers, and cultural figures. Over 60 such individuals have been subject to harassment, intimidation, and abuse, including arbitrary arrest, forced interrogation, and the imposition of lengthy prison sentences. Tibetan school administrators, teachers, and government servants are being detained and fired from their jobs, and students expelled from school, for expressions of Tibetan solidarity. In many cases, targeted individuals are subject to severe beatings, cruel and inhuman treatment, and torture.

This report highlights how the crackdown on the freedom of expression in Tibet is being carried out as "in accordance with the law" through various measures in the Chinese legal system. By characterizing virtually any form of dissent or expression of Tibetan identity as "splittist," China is waging a ruthless political battle in Tibet using vague, overbroad "endangering state security" laws. In its May 2010 report *Raging Storm*, the International Campaign for Tibet ("ICT") observed that "[f]or the first time since the end of the Cultural Revolution in 1976, singers, artists and writers have been the target of a drive against Tibetan culture in which almost any expression of Tibetan identity not validated by the state can be branded 'splittist.'<sup>10</sup>

Moreover, CCP officials are grossly exploiting the all-encompassing legal definition of “state secrets” in the PRC to punish Tibetans for merely documenting or sharing information about environmental, social, and human rights conditions. China’s laws regarding “state secrets” have been widely criticized as inconsistent with international norms and standards regarding the freedom of expression, providing fertile ground for flagrant abuse of power. Furthermore, once arrested, Tibetans’ due process rights are being systematically violated through extra-judicial sentencing, closed-door trials, denial of adequate legal counsel, political interference in trials, and other means of denying access to justice.

The recent prosecution of prominent businessman, philanthropist, and conservationist **Karma Samdrup** raises even greater concerns over the Chinese crackdown because of the nature of his prior warm relationship with Chinese authorities.<sup>11</sup> Mr. Samdrup’s case indicates that the CCP “appear(s) to be expanding their reach and targeting even those previously considered allies or at least innocuous.”<sup>12</sup>

This report analyzes the contemptible crackdown on the peaceful expressions of Tibetan writers, artists, intellectuals, and cultural figures in the wake of the 2008 Uprising. **Chapter II** outlines international norms and standards regarding the freedom of expression and information. **Chapter III** contains an overview of relevant laws and regulations in the PRC regarding the freedom of expression and information. **Chapter IV** describes the literary and cultural resurgence that has blossomed in Tibet in the wake of the 2008 Uprising. **Chapter V** illustrates how PRC authorities have markedly expanded the climate of fear and intimidation in Tibet by targeting intellectuals and cultural figures. In **Chapter VI**, this report delves into the “legal labyrinth” of the PRC’s laws and regulations on protecting “state secrets,” illustrating how Party authorities exploit vague, overbroad legal definitions to carry out political prosecutions of Tibetans. **Chapter VII** explores the application of laws against “subversion” or “inciting splittism”<sup>13</sup> in the PRC to punish expressions of Tibetan identity or criticism of Chinese rule. In **Chapter VIII**, this report describes how State authorities in the PRC are using “espionage” charges to suppress fundamental freedoms in Tibet. **Chapter IX** covers the CCP’s attacks on Tibetan pop and folk music figures and ordinary citizens for producing, performing, or possessing songs that contains so-called “reactionary” lyrics. **Chapter X** describes the CCP’s expansion of “patriotic re-education” campaign to school, and the consequences for students, teachers, and school leaders. In **Chapter XI**, the report highlights how the lack of an independent judiciary in the PRC leads to political interference in trials and the resultant injustices for jailed

Tibetan dissidents. **Chapter XII** discusses the attack against prominent businessman and philanthropist Karma Samdrup and several of his family members. These cases are used to anchor an analysis of other means of stifling dissent in Tibet, including the PRC “Re-education Through Labor” system, repressive controls on civil society and the abuse of “petitioners.”<sup>14</sup> **Chapter XIII** contains a conclusion and recommendations. **Appendix A** consists of **profiles** of over 60 Tibetan intellectuals, artists, and cultural figures that have been targeted by CCP authorities over the peaceful exercise of fundamental free speech rights. In **Appendix B**, contains the full text of the *Johannesburg Principles on National Security, Freedom of Expression, and Access to Information*.

## **CHAPTER II**

### **FREEDOM OF EXPRESSION: INTERNATIONAL NORMS & STANDARDS**

Over the last two decades the PRC has become increasingly involved in the international community. The PRC’s Communist Party leaders have signed and or ratified numerous international treaties which guarantee fundamental human rights, including those related to discrimination, torture, women, children, and economic, social and cultural rights.<sup>15</sup> China has signed and ratified the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of the Child. The PRC has signed, but not yet ratified the International Covenant on Civil and Political Rights (“ICCPR”).

By virtue of its membership in the United Nations (“UN”), the PRC is legally bound “to fulfill in good faith” the obligations assumed by them in accordance with the UN Charter, including “promoting and encouraging respect for human rights and for fundamental freedoms...”<sup>16</sup> The Universal Declaration of Human Rights (“UDHR”) was explicitly adopted for the purpose of defining the meaning of the words “fundamental freedoms” and “human rights” appearing in the UN Charter. Although not legally binding, the UDHR is a fundamental constitutive document of the United Nations widely regarded by Human Rights experts as having acquired legal force as part of customary international law.<sup>17</sup> The UDHR has thus contributed “to render human rights the common language of humankind.”<sup>18</sup>

The right to freedom of opinion and expression are universally recognized under the UDHR and ICCPR. China signed the ICCPR in 1998, and has on several occasions expressed its intent to ratify the instrument.<sup>19</sup> In the PRC government's National Human Rights Action Plan 2009-10 ("HRAP") issued in April 2009, officials declared that the ICCPR constituted one of the "fundamental principles" on which the plan was based. The PRC committed itself to "continue legislative, judicial, and administrative reforms to make domestic laws better linked with this Covenant, and prepare the ground for approval of the ICCPR."<sup>20</sup>

### **A. Freedom of Opinion, Expression, and Information as Guaranteed by the ICCPR**

Freedom of opinion and expression is "an essential test right" for any nation.<sup>21</sup> The right to freedom of opinion and expression serves as an important indicator regarding the protection of other human rights and fundamental freedoms. Closely linked to the rights to freedom of association, assembly, thought, conscience and religion, and participation in public affairs, the right to freedom of expression clearly demonstrates the indivisibility of all human rights.<sup>22</sup>

Under article 19 of the ICCPR, the right to freedom of opinion and expression comprises three different elements: (a) the right to hold opinions without interference; (b) the right to seek and receive information and the right of access to information; and (c) the right to impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of one's choice.<sup>23</sup> Thus, the interrelated rights to access and impart information are a key component of the right to freedom of expression.

The right to freedom of opinion is absolute and may not be limited in any way.<sup>24</sup> However, the freedom of expression is not absolute. The ICCPR recognizes that such rights "may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals."<sup>25</sup>

Such restrictions and limitations must be interpreted in accordance with principles derived from international human rights law. Under article 19, in imposing free speech restrictions, States must balance the legitimate aim they seek to protect against the fundamental right to freedom of expression.<sup>26</sup> The crux of the balancing is therefore centered on the context-based concept of necessity.

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

Adopted by 37 experts on international law, national security, and human rights on October 1, 1995, the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*<sup>27</sup> (hereinafter, Johannesburg Principles) address the lack of clarity under international law regarding the scope of legitimate restrictions on freedom of expression and information on national security grounds.<sup>28</sup> Distilled from existing standards from a variety of sources of international and comparative law, the Johannesburg Principles outline the rights and responsibilities of governments in this context.

The Johannesburg Principles have gained widespread acceptance, and are arguably considered norms of customary international law.<sup>29</sup> One year after their adoption, Abid Hussain, the UN Special Rapporteur on Freedom of Opinion and Expression, recommended that the UN Human Rights Commission endorse them.<sup>30</sup> They have been repeatedly noted in the annual resolutions of UN Human Rights bodies on freedom of expression,<sup>31</sup> and have been referred to by courts around the world.<sup>32</sup> In addition, the Johannesburg Principles are referenced regularly by UN Special Rapporteurs.<sup>33</sup> Recognizing that governments justify the commission of serious violations of human rights as necessary to protect national security, the obligations set out in the Johannesburg Principles are clearly aimed at curbing abuses of power.

The Principles establish that laws restricting the right to freedom of expression and information must be *unambiguous and narrowly drawn*.<sup>34</sup> Such laws must have the *genuine purpose* of protecting against *legitimate national security interests*.<sup>35</sup> Similarly, access to information may only be restricted when a state can demonstrate that the restriction is *necessary* to protect legitimate national security concerns.<sup>36</sup>

In order for a state to criminalize expression on the basis of national security, the expression must be *intended* to incite imminent violence, and a *direct and immediate connection* must exist between the speech and the violence.<sup>37</sup> In other words, freedom of expression “can only be restricted in the most serious cases of a direct political or military threat to the entire nation.”<sup>38</sup> The *burden* of demonstrating the validity of free speech restrictions *rests with governments*.<sup>39</sup>

The Johannesburg Principles clearly state that peacefully advocating for non-violent change of government policies or the government itself, criticism of the nation or its agencies/officials, and communication concerning human rights transgressions should *never* be the subject of free speech restrictions.<sup>40</sup> Furthermore, punishment for disclosure of “secret” information is unlawful if the disclosure does not actually harm or is not likely to harm a legitimate national security interest, *or* if the public interest in knowing the information outweighs the harm from disclosure.<sup>41</sup> Further, those accused of security-related crimes are entitled to all minimum guarantees against arbitrary detention and for the right to fair trial in an independent and impartial court.<sup>42</sup>

Mr. Frank la Rue, current UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, has clearly affirmed the obligations of states as evinced in the Johannesburg Principles. Mr. La Rue has warned governments that “laws imposing restrictions must be accessible, concrete, clear, and unambiguous...” and “must not be arbitrary or unreasonable and must not be used as a means of political censorship or silencing criticism of public officials or public policies.”<sup>43</sup>

### **C. The Massive Gap Between International Standards and the PRC’s Practices**

As this report shows in the context of the current crackdown on Tibetan intellectuals and cultural figures, a gaping chasm exists between international norms and the practices of the PRC regarding freedom of expression and information. State authorities systematically exploit vague and over-broad legal definitions in the state secrets legal framework to carry out abusive, political prosecutions against those peacefully expressing their views or sharing information from inside Tibet. Furthermore, by espousing an official policy of demonizing the Dalai Lama and his supporters as “separatists,” the CCP has embarked on a ruthless campaign to suppress Tibetan identity as well as dissident voices inside Tibet by characterizing any such expression as “splittist.”

## **CHAPTER III**

### **FREEDOM OF EXPRESSION AND INFORMATION: OVERVIEW OF THE LAW OF THE PEOPLE'S REPUBLIC OF CHINA<sup>44</sup>**

Every nation faces the challenge of balancing protections for freedom of expression with national security concerns. As a nation ruled by a Communist regime intent on keeping its stronghold on power, freedom of expression and information in the PRC are tightly controlled through a vast legal framework of censorship and control of print and broadcast media.<sup>45</sup> Nevertheless, in recent years, the government of the PRC has expressed intent to bring its domestic laws into alignment with international standards.<sup>46</sup>

During the 2009 United Nations Human Rights Council Universal Periodic Review (“UPR”) of the PRC, the Chinese delegation claimed that “no individual or press has been penalized for voicing their opinions or views,” and that China’s laws provide “complete guarantees” on freedom of expression.<sup>47</sup> Indeed, protections for freedom of speech and freedom of the press exist, on paper, in the PRC Constitution. However such guarantees are disemboweled by other overbroad legal provisions regarding the disclosure of “state secrets” and incitement of “subversion,” as well as PRC’s system of censorship, media control, and telecommunications regulations. State officials systematically exploit legal tools to punish citizens who peacefully express political opposition or advocacy for human rights. The number of political detentions in China is on the rise, despite Beijing’s claims regarding the peoples’ enjoyment of freedom of expression in the PRC.<sup>48</sup>

#### **A. Constitutional Law**

Article 35 of the Constitution of the PRC provides that citizens “enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”<sup>49</sup> The PRC’s constitutional guarantees also include the right to criticize any state organ or functionary.<sup>50</sup> According to the *Regulations on the Administration of Publishing*, “all levels of the People’s Government shall ensure that citizens are able to legally exercise their right to freedom of publication.”<sup>51</sup>



The Constitution of the PRC also includes formal, explicit guarantees for human rights. Article 33, which guarantees to Chinese citizens equal treatment before the law, was amended in March 2004 to include “[t]he State respects and preserves human rights.” The addition of the clause has been considered a landmark achievement. Shortly after the measure was approved by the National People’s Congress, Premier Wen Jiabao told a news conference “Th[is] amendment of the Chinese constitution [is] of great importance to the development of China. We will make serious efforts to carry them out in practice.”<sup>52</sup> Importantly, however, in a telling statement of the tension in Chinese law, Jiabao also emphasized that “unity and stability are of overriding importance.”<sup>53</sup>

Despite the existence of these provisions and the CCP’s verbal assurances of implementing them, free speech guarantees under the Chinese Constitution are overpowered by other provisions imposing vague and over-broad affirmative duties on citizens. For example, Article 52 requires Chinese citizens to safeguard “the unity of the country;”<sup>54</sup> Article 54 states that “it is the duty of citizens of the PRC to “to safeguard the security, honor and interests of the motherland;”<sup>55</sup> and Article 53 obliges Chinese citizens, organizations, and public organs to “keep state secrets.”<sup>56</sup>

Vague, over-broad, circular, and arbitrarily applied classification of matters involving “state secrets,”<sup>57</sup> or activities which “incite subversion of state power”<sup>58</sup> completely undermine China’s domestic free speech guarantees. By using legal tools to silence criticism and dissent, State authorities consistently characterize their assault on the freedom of expression and information in the PRC as in accordance with the law.

## **B. Gross Abuse of Power: Disclosing “State Secrets” & “Inciting Subversion”**

The duties to “safeguard the unity of the country” and to “keep state secrets” are implemented in the PRC through a vast network of laws and regulations pertaining to “endangering state security” (“ESS”) that essentially criminalize political activism. ESS crimes were formerly referred to as “counter-revolutionary” crimes. Codified in Articles 102-113 of the Criminal Law of the PRC, these crimes have profound impacts on the right to freedom of expression, the most fundamental of which is that pertaining to state secrets.

The duties imposed on citizens by the Constitution of the PRC to “keep state secrets” are implemented through the Law on Protection of State Se-



crets (1989).<sup>59</sup> As chapter VI illustrates in detail, vague and all-encompassing definitions of the types of information that constitute “state secrets” in the PRC severely undermine the freedom of expression and information. The complex “state secrets” framework criminalizes the possession and disclosure of huge categories of information, enabling CCP authorities to use the law as a *sword* to initiate arbitrary<sup>60</sup> and abusive political prosecutions.

The over-broad definition of “state secrets” in Chinese law also deeply impacts the realization of Chinese citizens’ access to information. The law is used as a *shield* to conceal massive amounts of information, thereby cultivating a culture of secrecy in Chinese administration. The result is that the workings of the government of the PRC are inherently lacking in both transparency and accountability.

The CCP also relies on the crime of “subversion of State power” to systematically label peaceful expression of opposition as a threat to national security. Article 105 provides for sentences of up to life imprisonment for attempts to subvert state power or 15 years for inciting such subversion.<sup>61</sup> In flagrant violation of international norms, “speech in and of itself is interpreted as constituting incitement of subversion,”<sup>62</sup> with no genuine analysis by judges in the PRC regarding whether such speech posed an actual threat to national security.<sup>63</sup>

On several occasions, the TAR Communist Party and government officials have called for a swift and quick judicial process to strike back at the “separatists” and the “Dalai clique.”<sup>64</sup> The complete failure on the part of the authorities to differentiate between expressions that pose an actual threat to state security and those that do not reveals how power is abused by the CCP to silence voices of dissent.

### **C. Communist Party Control of the News Media**

The Press Freedom organization placed China at the 168th position in their 2009 Press Freedom index out of 175 countries,<sup>65</sup> and top Chinese officials consistently emphasize that news media in China plays a subservient role to the CCP. In a June 2008 speech, the President and Party General Hu Jintao stated that journalists should “promote the development and causes of the Party and the state” and that their “first priority” is to “correctly guide public opinion.”<sup>66</sup>

The media is regularly ordered not to report on “politically sensitive” topics—a power that was publicly affirmed in a 2008 interview by Deputy

Director Wu Hao.<sup>67</sup> The Party's Central Propaganda Department ("CPD") dictates what stories can and cannot be covered, and how to cover them.

For example, Party officials banned journalists from outside Qinghai province from covering the large earthquake that struck the Yushu Tibetan Autonomous Prefecture ("TAP") on April 14, 2010. In addition, a top Party official insisted that Chinese media emphasize the government's response to the disaster, the "good(ness)" of the Communist Party, and ethnic groups "uniting" in disaster relief.<sup>68</sup> Party directives also reportedly sought to downplay the role of Buddhist monks in responding to the disaster. In this manner, authorities establish an official narrative of events while censoring other sources of information that may be critical of the government.

## **Spotlight**

### **Information War:**

#### **Internet Censorship, Media Manipulation & the 2008 Tibet Uprising**

The intensification of the CCP's active Internet censorship and media manipulation during and following the Tibetan protests of 2008 provide a telling example of how the CCP co-opts these services to serve the Party's goals. In the first days of the protests, Chinese media devoted little coverage to the topic, but when the reporting increased the focus was on violence committed against the ethnic Han population.<sup>69</sup> The Chinese media denounced the Dalai Lama as a "wolf with the face of a human and the heart of a beast."<sup>70</sup> Officials expelled foreign journalists from the protest areas, and news reports and footage of the protests were censored. Cell phone, landline, and Internet transmissions were also reportedly disrupted in Tibetan areas of western China and some foreign Web sites (including YouTube) and foreign satellite news telecasts about the protests were blocked.<sup>71</sup>

## **D. Prior Restraints**

The CCP maintains a chokehold on freedom of the press in China through a multitude of laws and regulations, including licensing requirements aimed at official censorship, or "prior restraints." In the PRC, it is illegal to publish a book, newspaper, or magazine as a journalist in China without a license from the General Administration of Press and Publication ("GAPP").<sup>72</sup> Every book, newspaper, or magazine must have a unique serial number that is only available through the GAPP, and the GAPP works closely with the CPD in this process.<sup>73</sup> Such restrictions have a chilling

effect on free speech in China, and are used as a pre-text to punish various forms of universally guaranteed peaceful expression.<sup>74</sup>

In 2010, Party authorities announced new restrictions on media freedom in the PRC. Effective July 1, the new regulations “forbid exchange of articles and reports among newspapers of the provinces and the barring of news media to do their own investigative reporting on national and international issues.”<sup>75</sup> In effect, Chinese newspapers are now under legislative orders only to reproduce stories on international issues, as authorized by the State-owned news agency, *Xinhua*, further ensuring the content and circulation of information within the PRC will remain consistent with CCP doctrine.<sup>76</sup>

### **E. Government Licensing of Websites**

All websites in China must be licensed by or registered with the Ministry of Information Industry (“MII”).<sup>77</sup> Additional licenses are required in order for a site to provide news content or audio or video services.<sup>78</sup> The MII’s registration system amounts to a *de facto* licensing scheme because it gives the government discretion to reject an application based on content.<sup>79</sup> The failure to register or obtain a license for a website can and does result in the website being shut down and fines for the operators.<sup>80</sup>

### **F. Active Filtering and Censorship of Political and Religious Content**

The Chinese government systematically censors political and religious content on the Internet. Internet regulations, which also apply to cell phone services, include broad and vague prohibitions on information “harming the honor or interests of the nation,” “disrupting the solidarity of peoples,” “disrupting national policies on religion,” and “spreading rumors.”<sup>81</sup> These legal concepts are not defined.

Chinese law also places affirmative duties on Internet and cell phone service providers, including those based outside of China, to filter and remove content the CCP deems politically sensitive. Furthermore, such enterprises are required by law to report suspicious activities to authorities.<sup>82</sup> Computer hackers from China actively attack email accounts of Chinese human rights activists and engage in espionage activities of overseas dissident groups and governmental bodies. In January this year Google threatened to pull out of China due to attacks on Chinese human rights activists’ Gmail accounts.<sup>83</sup>

In a ground-breaking investigative report, the Canadian cyber-research group *Citizen Lab* found that Chinese hackers actively carry out espionage activities on Tibetan computer systems and governmental networks in 138 countries.<sup>84</sup> In July 2009 the CCP strengthened Internet restrictions by requiring websites to require new users to provide their actual names as a condition for posting a comment—a “move that could have a chilling effect on free expression.”<sup>85</sup> Even without real names, comments are traceable by officials through Internet Protocol Addresses. An October 2007 report on Chinese Internet censorship released by *Reporters Without Borders and Chinese Human Rights Defenders* identified 400 - 500 key words that were banned—words that companies actively censored to avoid fines.<sup>86</sup>

### **G. New Restrictions on Photocopying**

In May 2010 the Chinese government announced a new set of regulations aimed at stifling the freedom of expression and information inside Tibet. Any business providing photocopy services will now be required to apply for a permit from the government and to record indentifying information about their clients.<sup>87</sup> Photocopier services will also be required to monitor and document the *contents* of any documents being reproduced.<sup>88</sup>

The new regulations, which were reportedly already being implemented in Tibet in May 2010, likely impose affirmative duties on photocopy service providers to report the reproduction of any material that may be regarded as “politically sensitive” to the State security organ. Sources in Lhasa have confirmed that the new rules appear to apply only to materials written in the Tibetan language.<sup>89</sup>

### **H. Open Government Initiative**

As mentioned, the right to access and impart information is an essential element of the freedom of expression and opinion. The CCP has insisted that it is implementing reforms to promote Chinese citizens’ “right to information.”<sup>90</sup> In May 2008, the *Regulations on Open Government Information* (“OGI”), ostensibly aimed to enhance governmental transparency, went into effect. The regulations give citizens the right to request information from the government and to challenge agency refusals to disclose information.<sup>91</sup>

To date, the efficacy of the OGI Regulations has been woefully inadequate, primarily due to the lack of an independent judiciary in China and over-broad, vague definitions of the type of information that constitutes a “state

secret.” The OGI regulations contain a gaping exception that prohibits agencies from disclosing information that involves state secrets—an exception that has been routinely used as a “shield” by officials to refuse information access.<sup>92</sup> Furthermore, judicial bodies in China have shown reluctance to challenge an agency’s classification of information as involving state secrets.<sup>93</sup>

Although freedom of expression exists in the PRC on paper and in the verbal assurances of CCP officials, A vast network of laws and regulations are being exploited to serve the Party objectives of maintaining its authoritarian grip on power. The abusive use of these legal tools has escalated dramatically since 2008 to quell a vibrant cultural and literary resurgence occurring in Tibet.

## **CHAPTER IV**

### **CULTURAL RESURGENCE IN TIBET**

*Tibetans, carrying dignity on their backs, bearing pain, are gradually rising.*

*-Tibetan Writer “Son of Snow”*

In response to the 2008 Uprising, State authorities drastically increased the amount of military and security personnel in the Lhasa area and elsewhere in Tibet. The brutal suppression of the wave of demonstrations was characterized by excessive use of force and zero tolerance for expressions of resistance to CCP rule.<sup>94</sup> The overt display of force and intimidation restored, at least outwardly, some semblance of “social stability” in Tibetan areas. However, the 2008 Uprising had profound impacts across a range of Tibetan society. Indeed, the experience of the 2008 unrest had *transformative* effects across the Tibet.

Since the Chinese incursion into Tibet in 1950, Tibetans have experienced untold suffering in the form of religious repression, ethnic discrimination, economic marginalization, environmental degradation, gross human rights violations, and the loss of hundreds of thousands of lives.<sup>95</sup> Decades of authoritarian misrule and systematic repression by the CCP in Tibet, described by the Dalai Lama as a “rule of terror” reflective of a “cultural genocide,”<sup>96</sup> boiled over into a spontaneous and overwhelmingly peaceful series of protests that began in the Lhasa area on March 10, 2008 and spread across the Tibetan Plateau.

In this regard, the 2008 Uprising is inextricably linked with the widespread expression of Tibetans' frustration with the PRC's misrule. The series of demonstrations in 2008 were therefore political in nature, genuinely manifesting expressions of Tibetan identity and reflecting a desire for greater autonomy. The 2008 Uprising must be regarded in the context of the broader issues that dominate Sino-Tibetan relations—resolution of the “Tibetan issue.”

The 2008 Uprising and its aftermath left an agonizing, yet in many ways inspiring impression on the hearts and minds of Tibetans and Tibet supporters. The CCP's propaganda campaign to suppress the truth about the causes and consequences of the protests, and the sheer horror of experiencing fellow Tibetans suffer at the hands of Chinese brutality, has inspired an unprecedented outpouring of emotion and criticism from inside Tibet. Furthermore, despite Party leaders' attempts to block the flow of information, communication technology helped disseminate reports that the protests had spread across the Plateau in March and April 2008. The spontaneity and breadth of the resistance to Chinese rule has cultivated a strong sense of unity and solidarity across a broad range of Tibetan society.

### **A. Wolf in Monk's Clothing or the “Middle Way”**

The CCP consistently placed the blame for the unrest on the Dalai Lama, arguing that he incited violence and disobedience in support of independence for Tibet—a position that is at odds with both the experience of ordinary Tibetans and with common sense. The CCP has consistently cast the Dalai Lama as a separatist, a “wolf in monk's clothing” who is intent on splitting the Motherland.<sup>97</sup> One Party official even portrayed the Dalai Lama as being directly engaged “in the evil deeds of separating the motherland by means of beating, smashing, looting, and burning under the disguise of a lama and under the signboard of Buddhism.”<sup>98</sup>

CCP officials cling to this preposterous position, despite the Dalai Lama's unwavering insistence on non-violence<sup>99</sup> and his long-standing acceptance of Tibet remaining under Chinese sovereignty. Since 1988, the Dalai Lama has professed adherence to a “Middle Way”<sup>100</sup> position which advocates for true autonomy for Tibet under the framework of the Constitution of the PRC. The “Middle Way” approach, which has prompted criticism from segments of Tibet society that favor a more vigorous, pro-independence position, strives for the creation of a political entity comprising the three traditional provinces of Tibet, without seeking independence from the PRC.<sup>101</sup> Further, according to the Middle Way approach, the Central Gov-

ernment of the PRC would have the responsibility “for the political aspects of Tibet’s international relations and defense, whereas the Tibetan people should manage all other affairs pertaining to Tibet, such as religion and culture, education, economy, health, ecological and environmental protection.”<sup>102</sup> Furthermore, when the 2008 protests broke out in March, the Dalai Lama threatened to resign from his position as political leader of Tibet if the situation spiraled violently out of control,<sup>103</sup> and he has since encouraged Tibetans to “reach out” to Chinese people through dialogue and Sino-Tibetan friendship associations.<sup>104</sup>

## **B. Suppressing the Truth: Conflicting Accounts of Deaths and Casualties**

According to Chinese authorities, 22 people lost their lives in the “rioting,” mostly Han Chinese. State media reports of the protests emphasized the actions of a small number of violent Tibetan protesters that included looting and burning of Chinese-owned businesses. Furthermore, Party officials bluntly denied the use of excessive force in quelling the demonstrations.<sup>105</sup>

In stark contrast to the official narrative of the events, according to information received by Tibetan Centre for Human Rights and Democracy (“TCHRD”) <sup>106</sup> and the Central Tibetan Administration (“CTA”), 160 - 220 Tibetans lost their lives in relation to the 2008 Uprising.<sup>107</sup> The sheer horror of the crackdown, and the gross disparity between State accounts of the incidents and the actual experience of Tibetans, has prompted an unprecedented outpouring of emotion from Tibetans and inspired many to share their views in word and song.

## **C. Transformative Effects**

When protesters who have taken to the streets are beaten, shot, arrested, mistreated, sentenced, and some executed, it is natural that organic expressions of peaceful resistance would take to other forms. The CCP’s failed policies and brutal repression have thereby fueled the current cultural and literary resurgence in Tibet. Apparently, China’s violent suppression of the protests has only seemed to foment deeper levels of anger, resentment, and criticism of Chinese rule in Tibet. In the wake of the 2008 Uprising, two years of arrests, secret trails, and torture allegations in Tibet have prompted deep reflection across Tibetan society.<sup>108</sup>



Describing the transformative effect of the 2008 uprising, Woesser<sup>109</sup> wrote: *“Having been through the events of 2008 that shook the world, Tibet is no longer the Tibet of the past, and the Tibetan people are no longer the Tibetan people of the past – everything has undergone a genuine transformation. If one pretends to be aloof and indifferent and thinks that blood can just be washed away and that the truth can be covered over; or that atrocities will not be condemned and suffering will not be pondered; if one acts as though nothing ever happened and thinks life goes on as before and the sun will rise as ever, this is just self-deception. . . . Tibetans are breaking through the silence, and there are more and more instances of these voices being bravely raised, encouraging ever more Tibetans.”*<sup>110</sup>

Nyen, in an essay published in the banned literary magazine *Eastern Snow Mountain*, wrote “even if this current disturbance can be quelled with armed force, the wounds thereby inflicted and stench of the blood spilled have filled the minds of the coming generation. . . . The greatest mental suffering of Tibetans is not that there is no place to complain about their sufferings but that they are not allowed to complain.”<sup>111</sup>

According to Woesser, who visited Lhasa in 2008, “[t]he national consciousness of Tibetans has never been so strong,” noting that the feeling was noticeable even among farmers and ordinary people, who are becoming increasingly conscious of their Tibetan identity. “I never heard this expressed so strongly before this time,” Woesser said. Elderly Tibetans have reportedly been publishing memoirs of massacres by Chinese troops during the 1950s, and middle-aged Party functionaries are openly questioning their roles in the bureaucracy of the PRC.<sup>112</sup> According to Robbie Barnett, director of the modern Tibetan studies program at Columbia, “[p]eople are no longer hiding behind the tradition of self-censorship that comes from fear. What we’re seeing is a new kind of intellectual heroism.”<sup>113</sup>

#### **D. New Generation of Tibetans**

Many of the Tibetans carrying forward the literary and cultural resurgence in Tibet belong to a growing class of intellectuals who are fluent in both Chinese and Tibetan and savvy regarding the use of the Internet. Many of the individuals highlighted in this report grew up in a China-occupied Tibet. Many did not experience the Chinese incursion into Tibet in the 1950’s, yet are ever-aware of the political struggle of their people for self-determination, as well as the emergence of a renaissance in Tibetan cultural identity.<sup>114</sup> Writers, using the print and Internet, are at the forefront of this cultural renewal, which is also blossoming among singers, educators, artists, students, and ordinary members of Tibetan society.<sup>115</sup>



Examples are seen in the works of the writer **Tragyal** (penname *Shogdung*)<sup>116</sup> and the musician **Tashi Dhondup**,<sup>117</sup> both of whom were arrested over the content of their work. Shogdung had previously been regarded as friendly with the CCP for characterizing Tibet's traditional Buddhist culture as an impediment to the region's modernization and development, but the tone of his writing shifted dramatically following the 2008 Uprising.<sup>118</sup> In a stark contrast to his earlier work, in *The Line between Sky and Earth*, an "unauthorized"<sup>119</sup> book published after the Uprising, Shogdung apologizes for his earlier views on Tibetan Buddhism, describes Tibet as "a place of terror," and directly challenges Party representations of events in March 2008.<sup>120</sup>

The music of Tashi Dhondup, a popular musician from Tibet's Amdo region, is described as reflecting the trauma of the Tibetan people.<sup>121</sup> After a 2009 CD release called *Torture Without Trace*, Tashi Dhondup was detained and sentenced to 15 months of "Re-education through Labor."<sup>122</sup>

By daring to refute China's official narrative of events surrounding the 2008 Uprising, these courageous writers, intellectuals, and artists, many of whom are still in Tibet, represent a significant new challenge to the Beijing authorities. Many of the post-uprising literary expressions trace the cause of the protests that swept across the plateau "not in some phantom instigation of the 'Dalai clique' but 'in the tragic Tibetan history that began in the 1950s and the shortcomings of China's Tibet policy.'"<sup>123</sup>

## **E. New Alliances with Chinese Intellectuals**

The cultural resurgence in Tibet has also encompassed signs of solidarity with Chinese intellectuals. In June 2009, The Beijing academic and legal research organization *Open Constitution Initiative* ("OCI") issued a report challenging the CCP's insistence that the Dalai Lama incited the unrest and identified failures in China's policy toward Tibet as the true cause of the 2008 Uprising. The research panel discovered that the "3.14 incident" was caused by the confluence of many factors, including psychological loss created by development, discontent among economic classes, the question of migrants, influences from abroad, religious sentiment, and on-scene "mass reactions," which cannot be simply reduced to "splittist violence."<sup>124</sup> In July, one month later, CCP authorities detained the OCI's cofounder, Xu Zhiyong, fined the organization approximately \$200,000, and then shut it down.<sup>125</sup>

## **F. Like Gold That Fears No Fire**

In 2009, the International Campaign for Tibet compiled a collection of writings reflective of the current literary resurgence occurring in Tibet: *Like Gold that Fears No Fire*.<sup>126</sup> The expression comes from a common Chinese saying (zhen jin bu pa huo lian) meaning truth cannot be undermined.<sup>127</sup> Indeed, in the words of the BBC's Paul Moss, Tibetan writers mostly avoided taking on political themes prior to 2008, but after the uprising the "artistic gloves came off."<sup>128</sup> In the words of Tibetan poet *Son of Snow* Dhondup, "Tibetans, carrying dignity on their backs, bearing pain, are gradually rising."<sup>129</sup>

Anjam, a Tibetan writer and poet who lives in exile in Dharamsala, India observed "the literature of Tibet has been transformed since [March] 2008; it has taken on a new direction and is expressing new dreams. Some Tibetan writers have also taken on the responsibility of expressing their real feelings and facts about the situation in Tibet to the outside world. Many of these Tibetan writers represent the hearts of the Tibetan people inside Tibet through their writing."<sup>130</sup>

## **CHAPTER V**

### **THE EXPANDING SCOPE OF THE CRACKDOWN ON TIBETANS**

The CCP's heavy-handed response to the 2008 Uprising was reminiscent of the Martial Law period which was imposed in Lhasa on March 8, 1989 for 13 months under the then TAR Party Secretary Hu Jintao, now President of the PRC. The CCP security apparatus detained thousands of Tibetans, often using excessive force, and unarmed protesters were shot dead in the streets.<sup>132</sup> Many died as a result of beatings in custody, several monks and nuns committed suicide, and some were found in psychologically unstable conditions upon release.<sup>133</sup> Monks and nuns were locked inside their monasteries and nunneries, and a strict and heavy police presence was imposed on all cities and most towns of any significant size, severely restricting freedom of movement.<sup>134</sup>

The 2008 Uprising resulted in a massive surge in the number of Tibetan political detainees and prisoners.<sup>135</sup> The Congressional-Executive Commission on China's ("CECC") Political Prisoner Database ("PPD") recorded the detention or imprisonment of 517 Tibetans in 2008 and an additional

153 Tibetans in 2009.<sup>136</sup> Due to the CCP's tight restrictions on the flow of information from inside the TAR, these statistics undoubtedly fall far short of the actual numbers. However, from 2000 to 2007, a span of eight years, the PPD reported the *total* number of Tibetan political prisoners detained at 210, or an annual average of approximately 26.<sup>137</sup> TCHRD's figures of the number of Tibetans reportedly detained or imprisoned since March 2008 are substantially higher than the PRC's figures.<sup>138</sup>

Although the demonstrations were not limited to monastics,<sup>139</sup> Tibetan Buddhist monks and nuns comprise the vast majority of those detained or imprisoned for participation in the 2008 Uprising.<sup>140</sup> These statistics are consistent with the overwhelming trend inside Tibet that for the last thirty years it was primarily monks and nuns who challenged the Draconian rule of the communist government.<sup>141</sup>

Ganzi (Kardze) TAP saw the highest concentration of political detentions in 2008.<sup>142</sup> The Buddhist monastic communities' central role in the 2008 Uprising precipitated a calculated and pointed response from the CCP in Kardze. On June 28, 2008 CCP officials issued order number 2, entitled *Measures for dealing strictly with rebellious monasteries and individual monks and nuns*.<sup>143</sup> Order number 2 reflects Chinese authorities' relentless suppression of, and attempted undermining of, the institution of Tibetan Buddhism. Repressive on its face, the order is not unlike edicts of the Cultural Revolution. According to the order, "[t]hose monasteries with 10-30 of monks or nuns participating in disturbances will be sealed off, searched, suspect persons detained according to law and any banned items they have hidden shall be confiscated. All religious activities will be suspended, inmates will be prohibited from leaving the premises, and they will be cleaned up and rectified in the proper manner."<sup>144</sup>

"Disturbances" may include any expression of Tibetan nationalism, such as raising the banned Tibetan flag, possessing pictures of the Dalai Lama, or shouting slogans such as "Long Live the Dalai Lama." Further, rectification takes the form of forced "Patriotic re-education"<sup>145</sup> campaigns whereby the Buddhist monks and nuns are forced to renounce their Supreme Spiritual Leader, the Dalai Lama. The CCP has even escalated its vitriolic attack on the Dalai Lama, and the Uprising seems to have emboldened State authorities to intensify their repression by brazenly branding virtually any expression of Tibetan identity as "splittist."

The People's Armed Police ("PAP") and Public Security Bureau ("PSB") of the PRC continue to carry out their tasks of maintaining "social stability"

in Tibet by seeking to deter political protests, and immediately putting a halt to any demonstration by detaining protesters, often by using excessive force.<sup>146</sup> CCP authorities have also augmented security along the border with Nepal to stem the flow of refugees (and information) out of Tibet.<sup>147</sup> In the context of increasingly closer ties between Beijing and Kathmandu, Nepalese border forces are forcibly returning Tibetan refugees to PRC authorities.<sup>148</sup> To this day, the streets of Lhasa continue to be heavily patrolled by Chinese military and security personnel, and roads through rural Tibetan areas are dotted with military checkpoints.<sup>149</sup>

### **A. Using the Law to Swiftly Strike Back at “Separatists”**

By late April 2008, Chinese courts were sentencing Tibetans to lengthy jail terms for their involvement in pro-Tibet protests. On April 29, 2008, China’s state media announced that 30 Tibetans had been sentenced to three years to life imprisonment in connection with the “revolt” in March of 2008.<sup>150</sup> On several occasions, State officials in the TAR called for a swift judicial process to strike back at the “separatists” and the “Dalai clique.” Party leaders urged “the usage of law as a tool to strike back at the enemies.” On April 4, 2008, the Lhasa Deputy Party Secretary announced that 800 Tibetans would be brought before a court for participating in protests. The swift rendering of verdicts against protesters was certainly intended to strike fear and intimidation in the hearts and minds of Tibetans.

### **B. Spreading Fear and Intimidation: The Targeting of Intellectuals and Cultural Figures**

The outpouring of sentiment over the causes and consequences of the 2008 protests in Tibet, expressed in words, images, and song, has prompted wide spread official reprisal by CCP authorities. Dozens of Tibetan intellectuals have been detained for peacefully expressing their views in the wake of the 2008 Uprising. Numerous Tibetans have been given stiff criminal sentences under the State Secrets Law for merely passing along information about the situation in Tibet. In recognition of the threat to Beijing’s propaganda campaign to influence international opinion on the Tibet issue, CCP authorities have embarked on a marked campaign to instill terror into Tibetans by striking hard at intellectuals and cultural figures, many of whom were previously regarded as politically moderate and secular.

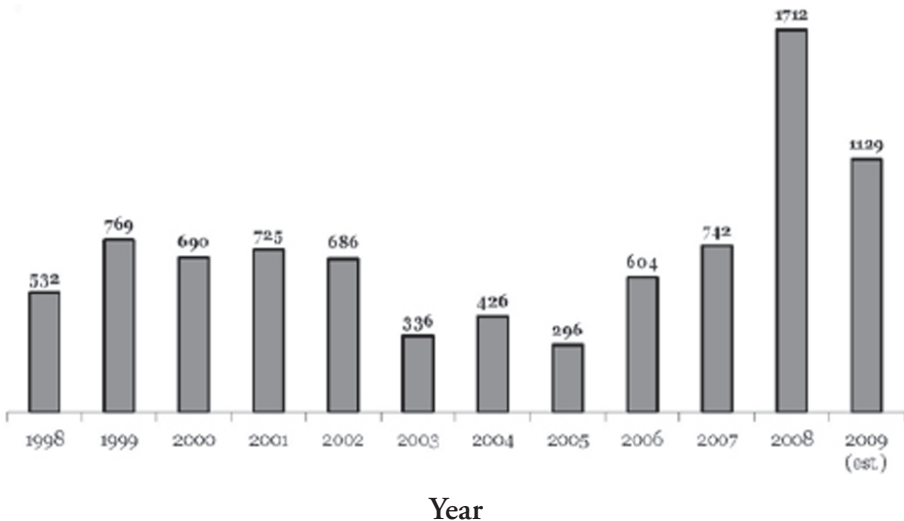
State authorities have used the overwhelmingly peaceful 2008 Uprising as a justification to launch a systematic attack on leaders and thinkers in the

Tibetan community—those individuals who express ideas about what it means to be Tibetan. The political context of the crackdown is complex, believed by some analysts to be more attributable to over-zealous local officials than to the Central government in Beijing.<sup>151</sup> Nevertheless, the pattern of arbitrary, abusive persecution of Tibetan intellectuals is clear, and marks a shift in Chinese authorities' usual targets of suppression—members of Tibetan Buddhism's monastic communities.

### **C. Increases in Endangering State Security (ESS) Prosecutions & Sentences**

The number of criminal prosecutions for ESS crimes in the PRC is rising sharply. From 2007 to 2008 ESS arrests more than doubled, and “more arrests and indictments for ESS were carried out in the PRC in 2008 and 2009 than in the entire five-year period from 2003 to 2007.”<sup>152</sup> Statistics show that China's ethnic minorities, including Tibetans and Uyghurs, are bearing the brunt of the spike in ESS indictments.<sup>153</sup> With a conviction rate at close to 98% in criminal cases in China,<sup>154</sup> ESS arrests almost inevitably lead to trial and conviction. China's Supreme People's Court also observed that ESS defendants are being punished more harshly. 2009 saw a 20% increase in sentences of at least five years imprisonment.<sup>155</sup>

**Individuals Arrested for Endangering State Security<sup>156</sup>**



**Kunchok Tsephel**, an official in a Chinese environmental department and founder of a Tibetan cultural website, was sentenced to 15 years in prison in a closed-door proceeding after being detained in the early morning hours of February 26, 2009 and having his house ransacked and his computer, camera and mobile phone seized.<sup>157</sup> It is believed that the charges relate to content on his website and to the alleged passing on of information about the 2008 Uprising.<sup>158</sup>

In 2009, **Wangdue**,<sup>159</sup> a Tibetan who was employed in Lhasa as Program Officer for the Barnett Institute, a prominent Australian public health NGO, received a life sentence on charges of “espionage” for copying “splittist” CD-ROMs and leaflets and sending “intelligence” to “the Dalai Clique.”

**Norzin Wangmo**,<sup>160</sup> a writer and Communist Party cadre and mother of two from Ngaba Trochu County of Ngaba “TAP,” was detained in April 2008 and reportedly subjected to horrific mistreatment and torture in detention. On November 3 Wangmo was sentenced to five years in prison; her crime was using the telephone and internet to pass on news about the brutal suppression of pro-Tibet protests.

**Tashi Rabten**<sup>161</sup> (pen-name Te’urang), writer, university student, and brave young thinker, shared his views on the 2008 Tibetan uprising in a book called *Written in Blood*. On April 6, 2010, Rabten was seized from his dormitory room at Northwest Minorities University in Lanzhou in Gansu. His whereabouts and charges against him are currently unknown. He is believed to be held in detention in Chengdu, Sichuan Province<sup>162</sup> and will surely face an ESS prosecution.

Tibetan filmmaker **Dhondup Wangchen**<sup>163</sup> is serving a 6 year sentence for making a film that was critical of human rights conditions in Tibet. *Leaving Fear Behind* was primarily a compilation of interviews conducted with ordinary Tibetans, who spoke openly on camera regarding their views of the Beijing Olympics and their views on the Chinese government.<sup>164</sup> Mr. Wangchen’s trial was conducted behind a veil of secrecy; his family was never informed of the charges, and Qinghai authorities refused a request by foreign diplomats to observe his trial.<sup>165</sup> Reportedly suffering from Hepatitis B for which he is not receiving treatment, Wangchen is currently serving his sentence doing hard labor.

**Golog Jigme Gyatso**,<sup>166</sup> a monk and friend of Wangchen who assisted in the filming of *Leaving Fear Behind* also spent seven months in jail in 2008,

and was rearrested March 2009 and released a month later.<sup>167</sup> Mr. Gyatso was reportedly beaten and tortured while in detention—hung by his feet from the ceiling for hours and tied to a chair for days.

The 2010 prosecution of businessman and environmental philanthropist **Karma Samdrup**<sup>168</sup> raises great concerns over the Chinese crackdown on Tibetan cultural figures. An antique dealer named philanthropist of the year in 2006 by China's state-run China Central Television for his environmental efforts in Tibetan areas, Mr. Samdrup was previously praised as a "model citizen" throughout China. The days of his warm relationship with the CCP are now a distant memory. Samdrup was detained on January 3, 2010; on June 24, he was sentenced to 15 years in prison for "excavating ancient cultural relics and tombs;" charges that date from an incident in 1998 for which he was briefly detained but never formally charged.

The widely-held view is that the current charges against Karma Samdrup were "trumped up" following his defense of his two brothers, fellow environmentalists, who accused local officials in eastern Tibet of poaching protected species. Karma's younger brother, **Chime Namgyal**,<sup>169</sup> is serving a 21-month sentence of re-education through labor for "harming national security." **Rinchen Samdrup**,<sup>170</sup> Karma's older brother, was sentenced on July 3, 2010 to five years in prison for "inciting splittism" for allegedly posting an article about the Dalai Lama on his website.

The plights of the aforementioned individuals clearly indicate that a crackdown on Tibetan intellectuals, leaders, and cultural figures is underway. Each was detained arbitrarily and sentenced to prison for exercising their fundamental right of freedom of expression and information.

It is, of course, no coincidence that targeted attacks on dissenting voices in Tibet coincide with the resurgence in Tibetan identity that has emerged since spring 2008. According to Tibet scholar Robbie Barnett, "we can see very clearly that in the last two years Chinese security forces in Tibetan areas have significantly shifted their targets from monks, lower-middle class activists, nuns, etc., to intellectuals, seen as cultural figures, and this is because those people were involved and were mobilized by the Chinese reaction to the protests of March 2008."<sup>171</sup> Barnett also observed that "[t]he Chinese have had a consistent focus on people who have ideas, people who think and who might inspire others to think about what it means to be Tibetan."<sup>172</sup>



## CHAPTER VI

### ABUSE OF POWER: DISCLOSING “STATE SECRETS”

Laws and regulations regarding the protection of “state secrets” are a primary tool being used by officials in the PRC to beat back the upsurge in Tibetan dissident activity since 2008, thereby severely restricting the right to freedom of expression and information inside Tibet. This chapter delves



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into the legal labyrinth of the PRC’s state secrets legal framework, describing how the law is used as both a *sword* to punish dissidents and a *shield* to conceal massive amounts of information. By criminalizing the possession or dissemination of broad and ill-defined categories of information, Party officials systematically exploit the state secrets laws to buttress its authoritarian reign.

This chapter discusses relevant aspects of China’s state secrets framework and its linkages with the state security law, criminal law and criminal procedure law. After covering the legal bases, the chapter explains how vague, malleable legal definitions pave the way for arbitrary political prosecutions. This chapter includes detailed case studies of **Kunga Tsayang** and **Kunchok Tsephel**, two courageous Tibetan intellectuals currently serving jail sentences on “state secrets” charges for writing articles critical of the Chinese government and for sharing information regarding human rights and environmental conditions in Tibet. Then this chapter highlights how China deprives those accused of state secrets crimes with minimum guarantees regarding the right a fair trial by denying them access to a meaningful legal defense and conducting proceedings behind a veil of secrecy. The final section of this chapter outlines how the application of China’s state secrets framework inside the PRC reflects an extreme departure from international legal standards regarding the freedom of expression and information.

#### **A. State Secrets: Legal Bases**

The PRC’s “state secrets” legal framework originated in June 1951 in the *Provision Regulation on Protecting State Secrets*. The current framework, which imposes the duty to protect state secrets on all of China’s state organs, armed forces, political parties, organizations, enterprises, institutions, and individual citizens, was codified in the 1988 *Law on the Protection of State*



*Secrets of the People's Republic of China* (hereinafter “State Secrets Law”), which went into effect in May 1989.<sup>174</sup> In 1990, China's National Administration for the Protection of State Secrets (“NAPSS”) promulgated a set of “Implementation Measures”<sup>175</sup> that further defined the country's definition and scope of “state secrets.”<sup>176</sup>

China's state secrets framework is linked to the State Security Law<sup>177</sup> (1993) and the Criminal Law (1979, amended 1997, 1999, 2001, 2002, 2005), which establish administrative and criminal sanctions for violations of state secrets and state security provisions.<sup>178</sup> In addition, the Criminal Procedure Law (1997) establishes procedures for investigation, prosecution, and defense of state secrets and state security cases. Numerous laws and regulations relating to the work of lawyers, accountants, and the use of telecommunications complement China's expansive state secrets legal framework.<sup>179</sup>

## **B. Power to Classify Information**

Under article 9 of the State Secrets Law, state secrets fall into three categories: (1) most confidential (“top secret:” if disclosure would cause extremely serious harm); (2) classified (“highly secret:” if disclosure would cause serious harm); and (3) confidential (“secret:” if disclosed would cause harm). Articles 10 – 16 imbue Party organs with broad powers to define and classify information as a “state secret.” Article 10 authorizes “the state secret guarding department together with the Ministries of Foreign Affairs, Public Security, and State Security and other central organs” to determine the scopes and categories of state secrets.<sup>180</sup> Article 11 empowers State organs that produce state secrets to classify them accordingly.<sup>181</sup>

The Implementation Measures (1990) provide for both *retroactive* and *pre-emptive* classification of information as a state secret. Retroactive classification is based on the *consequences* of disclosure, whereas preemptive classification is based upon determination of *potential* harm if disclosed.<sup>182</sup> The subjectivity inherent in analyzing information in relation to its potential harm provides fertile ground for arbitrary determinations, and abuse of power.<sup>183</sup>

Communist Party officials and government servants, as well as ordinary citizens, are subject to strict penalties for disclosing state secrets. Internal research conducted by the Internal Affairs and Judicial Committee of the National People's Congress revealed that “many state bureaucracies and corporations arbitrarily classify their documents as state secrets for fear of being accused of leaking state secrets.”<sup>184</sup> Hence, a culture of secrecy is en-

demic within CCP government structures. Common practice is to keep everything secret; disclosure is the exception.<sup>185</sup>

### **C. Scope of State Secrets Law**

The “long arm” of China’s State Secrets Law reaches virtually every aspect of social existence and expression. Article 20 extends the reach of the law to newspapers, journals, books, maps, materials with illustrations and captions, and audio and video products and in the production and broadcast of radio and television programs and films.<sup>186</sup> Article 24 provides that “[n]o state secrets shall be divulged in private contacts or correspondence.”

### **D. Problems of Over-Classification, Subjectivity, and Arbitrariness**

Under China’s State Secrets Law<sup>187</sup> state secrets are defined as “matters that are related to state security and national interests.” Article 8 of the State Secrets Law establishes six types of state secrets matters, and includes a seventh “catch-all” provision, as follows:<sup>188</sup>

1. Major policy decisions on state affairs,
2. Building of national infrastructure and activities of the armed forces,
3. Diplomatic activities, activities related to foreign countries...,
4. National economic and social development,
5. Science and technology,
6. Activities for safeguarding state security and investigation of criminal offenses, and
7. Other matters that are classified as state secrets by the NAPSS

The 1990 Implementation Measures’ provisions for retroactive and preemptive classification further broaden the scope of the state secrets legal definition.<sup>189</sup> Under article 4 of the Measures, state secrets classification is supported if disclosure *could* result in any of the following consequences:<sup>190</sup>

1. Endangering the ability of the state to consolidate and defend its power,
2. Affecting national unity, ethnic unity or social stability,
3. Harming the political or economic interests of the state in its dealings with foreign countries,

4. Affecting the security of state leaders or top foreign officials,
5. Hindering important security or defense work of the state,
6. Causing a decrease in the reliability, or a loss of effectiveness to, the measures used to safeguard state secrets,
7. Weakening the economic and technological strength of the state,  
or
8. Causing state organs to lose the ability to exercise their authority according to law.

The all-encompassing definition of state secrets in Chinese law and regulations “give officials wide latitude to declare almost any information a state secret.” Chinese authorities are given immense discretion to claim that a citizen possessed or leaked state secrets in order to punish political activity. Clearly, China’s state secrets framework allows for “serious abuse by authorities because of a lack of clear and specific definitions [and] the role of subjective perceptions . . . .”<sup>191</sup> Using the State Secrets Law and the Implementation Measures, the CCP criminalizes the publication or dissemination of any such information without prior authorization, with little or no regard to the actual contents of the writings. Furthermore, the law and regulations establish categories of information that *may* be classified as involving state secrets, but is not a state secret *per se*.<sup>192</sup> The result is these categories are “malleable and subject to arbitrary and politicized manipulation.”<sup>193</sup>

### **Case Study: Kunga Tsayang**

Kunga Tsayang: Monk, Writer, Essayist, and Amateur Photographer Sentenced to 5 Years.

Kunga Tsayang, is a monk from Amdo’s Labrang Tashikyil Monastery and passionate writer, essayist, blogger, chronicler and an amateur photographer who wrote under a pen name “Sun of Snowland” (Tibetan: Gang Nyi). Tsayang was arrested by the State PSB on March 17, 2009.<sup>194</sup> Born in Golok Chikdril, Tsayang was twenty years old at the time of his arrest. According to multiple sources, he was seized from his living quarters during a midnight raid by PSB personnel on Labrang Monastery, Sangchu County, Gannan “TAP,” Gansu Province. On November 12, 2009, in a closed door trial Kunga Tsayang was sentenced to 5 years in prison by the Kanlho Intermediate People’s Court for “disclosing state secrets.”

Tsyang’s arrest and prison term stem for allegations that he had posted political essays on Tibet to a website known as “*Jotting*” (Tibetan: Zin-

dris). He is the courageous author of several essays which challenged the Chinese government's policies regarding Tibet, including *Who Is the Real Splittist?*, *Who Is the Real Disturber of Stability?*, *We, Tibetans, are the Real Witnesses*, and *Who Is The Real Instigator of Protests?*



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

Characteristics of Tibetan topographical features, culture, customs, and religious heritage.

Tsayang had reportedly been under the close watch of the Chinese authorities in Sangchu County, Gansu Province prior to his arrest, yet he dared to continue his travels to the far reaches of Tibet and China to carry out photo journalism. His presence at Labrang Monastery had generally been limited to important prayer rituals and ceremonies.<sup>195</sup>

Kunga also worked for Nyenpo Yutsae Kyekham, a Tibetan conservation protection group, which distributed materials to schools and conducted education campaigns about the Tibetan environment and the need to protect endangered species.<sup>196</sup> He was reported to have been on an environmental expedition that discovered an endangered bird, thought only to be found in Tibet. Tsayang had also been working on setting up a new school at the Yakra Monastery.

The courageous passages that follow, excerpted from *Who are the Real Splittists?*, indicate that Tsayang's writing was in direct response to the disparity between the CCP's accounts of the situation in Tibet, and the actual experiences of those living under the repressive Chinese government and witnessed, with their own eyes, the brutal suppression the of 2008 protests.

*“China Television, Lhasa TV and others, while ignoring the truth, have excessively branded all Tibetans as separatists. This has caused an incurable communal injury between the Chinese brothers and sisters, and Tibetans leading to*

*Chinese disliking the Tibetans and Tibetans holding animosity towards the Chinese. I, as a person, am forced to accept the fact that this was the biggest factor causing a split among the nationalities. [...] Tibetans are driven to a desperate position because of them being accused of doing things, which they never did, and small incidents were exaggerated and paraded before the world. Even Tibetans who worked for the Party for over two to three decades were accused and the Chinese news media, the experts that they are in fabricating lies, went to schools and universities where there are only a handful of Tibetan students to accuse them and to witch-hunt them. Such excessive misinformation and wrongful acts have caused a huge chasm and disturbance in the minds of Tibetan officials and students who have absolute love for Chinese brothers and sisters and liking for the Communist Party of China. This has left a feeling of 'racial hatred' in their minds. This is the negative consequence of their incompetent reporting.*

*I have always believed that soldiers are heroes protecting national security, building harmony amongst people and helping economic developments. However, this year all these proved wrong because of their biased actions, killing of innocent people, their plundering and ransacking of properties and shops, their expertise in suppressing dissents and their lawless marauding style. I state this based on facts and the actual events as it happened in Ngapa regions of Amdo and Kanlho regions [in Eastern Tibet.]”*

Apparently, the Party leadership's efforts to expel foreign journalists, manipulate the media, block foreign news broadcasts, and tightly control the flow of information seem to have compelled courageous Tibetans like Kunga Tsayang to assume personal risk to share the Truth with the world.

## **E. State Secrets and “Intelligence”**

China has also broadened the scope of what constitutes a state secret by creating a new category of classified information, *intelligence*. “Intelligence” in Article 111 of the Criminal Law was defined by the Supreme People's Court as “items which involve the security and interests of the nation, but which are not public or which, according to relevant regulations, should not be made public.”<sup>197</sup> Intelligence has been treated almost interchangeably with state secrets, and has been incorporated into Article 111 of the Criminal Law as a matter distinct from leaking state secrets.<sup>198</sup> In application, the scope of intelligence is “about as wide as state secrets, covering ‘[i]mportant political, economic, military, scientific, and technological information.’”<sup>199</sup>

The law of the PRC also draws distinctions between domestic and external disclosure of state secrets. Under article 32 of the State Secrets Law, individuals can be subjected to criminal sanctions for disseminating information outside of China, even in the absence of “serious circumstances.” This broad definition of “intelligence” can encompass virtually *any* account of the operations and activities of the Chinese military and/or security apparatus. Thus, simply sending an email to a Tibetan exile group containing information about the 2008 Uprising can constitute a punishable “intelligence” leak.

## **F. China’s State Secrets Law and the Internet**

The full range of issues regarding freedom of information and government censorship of the Internet in the PRC is beyond the scope of this report. In short, the PRC has enacted regulations that specifically address state secrets in the context of Internet usage. The *Interim Provisions on the Administration of Internet Publication* (2002) states that Internet publications may not carry content which “harms the honor or the interests of the nation,” or “spread(s) rumors, disturbing social order, disrupting social stability.”<sup>200</sup>

Regulations expand the duties and restrict rights of Internet users as compared to those established in the Constitution and Criminal Law. In China, “[t]he administration of the protection of secrecy of online information shall adhere to the principle of ‘those who go online shall bear responsibility.’ Anyone who provides or disseminates information to internationally networked sites must go through secrecy protection examination and approval.”<sup>201</sup> Furthermore, “those persons who set up [websites] shall conscientiously perform secrecy protection duties and establish sound administration systems to strengthen supervision and monitoring.”<sup>202</sup>

These regulations effectively establish a system of prior restraints and censorship whereby internet sites containing politically sensitive content are subject to prior approval or are blocked, removed, or shut down. These restrictions routinely exceed the restrictions on the freedom of expression as guaranteed in the ICCPR and elaborated in the Johannesburg Principles.<sup>203</sup>

Despite this clear conclusion, the CCP’s *White Paper on the State of the Internet in China* (June 8, 2010) claimed that the regulation of the Internet in the PRC “guarantees freedom of speech” and is “consistent with international practice.”<sup>204</sup> The white paper claims the PRC’s policies “clearly prohibit the spread of information that contains contents subverting state power,

undermining national unity, infringing upon national honor and interests, [and] inciting ethnic hatred and secession....” However, no clear definition of these concepts exist in the law of the PRC.<sup>205</sup>

### **Case Study: Kunchok Tsephel**



On February 26, 2009, Chinese security officials in Machu County arrested Kunchok Tsephel, an official in a Chinese government environmental department and founder of an influential website created to preserve and promote Tibetan culture. Tsephel was convicted of “distributing state secrets” and on November 12, 2009 was sentenced to 15 years imprisonment. The charges are widely believed to stem from content on his website ([www.tibetcm.com](http://www.tibetcm.com)),<sup>206</sup> and for sharing information outside China regarding the brutality committed against Tibetans and the detention of monks at monasteries by the PAP.<sup>207</sup>

Age thirty-nine at the time of his arrest, Kunchok Tsephel was seized from his home in the early hours of the morning. Chinese authorities ransacked his home and confiscated his computer, camera and mobile phone. According to sources, from the day of his arrest his family had no information of his whereabouts until they were summoned to court on November 12 to hear the verdict and sentencing. Tsephel’s trial at the Intermediate People’s Court of Kanlho TAP was conducted behind closed-doors—common practice in China when criminal proceedings are alleged to involve “state secrets.”

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

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



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

In 2005, in collaboration with a young Tibetan poet Kyabchen Dedrol,<sup>208</sup> Tsephel started a self-funded website called *Chodme*. Their website was under strict supervision for many years, and was shut down on numerous occasions in 2007 and 2008. Undaunted, the duo continued to courageously operate their website until the time of Tsephel's arrest in February 2009.

Sources reported that Tsephel was denied access to a lawyer and his family is still unclear as to the details of the charges against him and the crimes of which he was convicted.

## **G. Derogation from Procedural Protections**

The Criminal Procedure Law (“CPL”) of China establishes substantial barriers to a defendant's access to justice when a case is deemed to involve state secrets. The derogations from procedural protections in state secrets cases fall into three main categories: limitations on access to evidence, the right to counsel, and an open trial.<sup>209</sup> These have been deemed the “three difficulties” faced by defense lawyers advocating on behalf of state secrets defendants.<sup>210</sup>

Under Article 45 of the CPL, “(e)vidence involving state secrets shall be kept confidential.”<sup>211</sup> Such guarding of evidence logically prevents attorneys from preparing an adequate defense for the accused. Article 96 of China's CPL requires suspects to obtain approval from the investigating organ before a lawyer may be appointed.<sup>212</sup> Furthermore, a lawyer must obtain permission from governmental authorities before s/he is allowed to meet with the criminal suspect.<sup>213</sup> Prosecutors are authorized to send people to be present at the meeting. Finally, under Article 152 of the CPL, cases involving state secrets are not heard in public, allowing the CCP to cloak the proceedings behind a veil of secrecy.<sup>214</sup> Cases “involving state secrets” have been officially defined as those where case *details* or the *nature* of the case involve state secrets.<sup>215</sup> So in addition to state secrets crimes *per se*, defendants face these obstacles to justice in any case where the Procuratorate (prosecuting organ) or others invoke state secrets matters into evidence.<sup>216</sup> The PRC's systematic denial of the procedural safeguards of those it charges

with state secrets crimes violates the ICCPR's universally recognized minimum guarantees regarding the right to a fair trial, including the right to adequate time for the preparation of a defense, and the right to assistance of counsel of one's own choosing.<sup>217</sup>

## **H. 2010 Revision to State Secrets Law**

Presumably in response to widespread international criticism regarding the abuses of power carried out by China's state secrets framework, on April 29, 2010 the National People's Congress Standing Committee issued a revised version of China's State Secrets Law (1989), to take effect October 1, 2010. This revision is ostensibly an element of China's broader efforts to "reform" the CCL and CPL to bring them into line with the ICCPR—policy commitments evinced in China's first ever Human Rights Action Plan of 2009-10.<sup>218</sup>

The Central government news agency claims that the revised Law on the Protection of State Secrets (2010) contains a new definition narrows the scope of state secrets. Despite such claims, the definition of "state secrets" in the 2010 Law continues to suffer from problems of vagueness and overbreadth. The definition of state secrets in both the 1989 and 2010 laws "preserves the broad categories that give officials wide discretion to declare information a state secret, including the catch-all Item 7."<sup>219</sup> Furthermore, no language in the new law suggests that the evinced list is meant to be exhaustive. Thus, the U.S. Congressional-Executive Commission on China "ECC" concluded that the revised law does not appear to narrow the definition's scope.<sup>220</sup>

Article 28 of the revised law tightens requirements on Web and telecommunications service providers operating in China regarding state secrets and Internet use. The new law "obligates network operators and service providers to cooperate with the police, state security officials and prosecutors in investigating leaks of state secrets. On discovering a leak, they must promptly block it and report it to higher authorities."<sup>221</sup>

## **I. The PRC's State Secrets Law and Violations of International Norms**

China's State Secrets Law flagrantly violates international norms regarding the freedom of expression, as evinced under the Johannesburg Principles. The all-encompassing definition of state secrets clearly violates the standard

that laws regarding restrictions on freedom of expression be “accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.”<sup>222</sup>

Although international law places the burden of demonstrating the validity of any free speech restrictions on the government,<sup>223</sup> under the State Secrets Law of the PRC, the burden of proof rests on its citizens. The Johannesburg Principles also require state governments to show that the information at issue poses a serious threat to a legitimate national security interest.<sup>224</sup>

The common practice in the PRC is diametrically opposed to widely recognized international standards. According to the CECC, “[A]uthorities in China do not consider whether a given publication actually represented any realistic threat to national security. Instead, courts only look at whether a given publication’s contents were inconsistent with the Communist Party’s current political dogma. Publications that question or criticize the Party line are deemed a threat for that reason alone, and their *actual or potential impact on national security or the public’s safety is completely ignored.*”<sup>225</sup> Often, state secrets “crimes” consist merely of the “unauthorized publication of articles that expressed opinions inconsistent with or critical of, the leaders and policies of the communist Party and the Chinese government.”<sup>226</sup>

## CHAPTER VII

### INCITING “SPLITTISM” & SUBVERSION OF STATE POWER: LEGAL TOOLS TO PUNISH DISSENT

In addition to the State Secrets Law, authorities in the PRC have consistently used Articles 103 and 105 of the Criminal Code as a tool to silence criticism and dissent from inside Tibetan areas as being “reactionary” or “splittist.” Even before the 2008 Uprising, Chinese Courts had convicted 131 Chinese citizens of “splittism” under the 1997 Criminal Law, based on information about official charges in the PPD as of October 31, 2007. Only one person, Huang Qi, is known to be convicted of splittism or undermining national unity who is not a Tibetan, Uyghur, or Mongol.<sup>227</sup>

#### **A. Attacking the Dalai Lama as a Separatist**

The categorical branding of expressions of Tibetan nationalism or identity as “splittist” is connected to Beijing’s longstanding campaign to demonize

the XIV<sup>th</sup> Dalai Lama. At the “Third Tibet Work Forum” in Beijing until July 20-23, 1994, Party General Secretary and President of China Jiang Zemin insisted that “the Dalai clique” is a “factor of instability.”<sup>228</sup> State authorities have identified Tibetan nationalism as a snake, and the Dalai Lama as a “serpent’s head,” and have been using a propaganda slogan that, “to kill a serpent (Tibetan Issue), one must cut off its head (the Dalai Lama).”<sup>229</sup> Realizing that the PRC was losing the propaganda war on the “Tibet issue,” the CCP brands the Dalai Lama as a separatist, a “wolf in monks clothing.” Attacking the Dalai Lama is official Party policy, and the so-called “Dalai clique” is consistently accused of colluding with “western enemy forces” to incite separatist sentiments among Tibetans.<sup>230</sup>

The Party policy of attacking the Dalai Lama continues unabated. At the “Fifth Tibet Work Forum” held January 18-20, 2010, in Beijing, President Hu Jintao and Premier Wen Jiabao reconfirmed their resolve to protecting “stability” by striking at a separatist threat posed by “the Dalai clique.”<sup>231</sup> Such accusations defy logic and are an obvious attempt to manipulate public opinion on the Tibet issue and create internal tension among the Tibetan community.

## **B. Subversion and Splittism in Chinese Criminal Law**

Article 103 of the Chinese Criminal Law (“CCL”) proscribes “incit[ing] others to split the State or undermine unity of the country...”<sup>232</sup> Under article 105 of the CCL, “plot[ting] or carry[ing] out the scheme of subverting the State power or overthrowing the socialist system” can carry sentences of up to life in prison.<sup>233</sup> Both articles are linked with the PRC’s “State Security Law,”<sup>234</sup> which proscribes “any act endangering the security, honor, and interests of the State.”<sup>235</sup> Article 4 of this law authorizes the criminal prosecution of organizations or individuals that have committed any act endangering the state security of the PRC.

The State Security Law employs a broad conception of activities which may endanger state security. Under the law, an “act endangering the State security” includes plotting to subvert the government and stealing, secretly gathering, buying, or unlawfully providing *State secrets*.<sup>236</sup> The incorporation of “state secrets” into the state security law opens the door for abusive, arbitrary prosecutions. According to Human Rights Watch, the CCP’s application of article 103 “criminalizes protected speech and violates the right to freedom of expression by conflating criticism of the government and its policies with a state security threat.”<sup>237</sup>

In application, Chinese courts “make no attempt to assess whether the speech in question posed an actual threat to national security.”<sup>238</sup> The UN Special Rapporteur on Torture observed that the vague wording of China’s national security crimes provide police and prosecution authorities with wide discretion for the abusive suppression of freedom of expression.<sup>239</sup> The UN Working Group on Arbitrary Detention, after its visit to China in 1997 expressed concern that the PRC’s state security laws would be used to punish the exercise of internationally-protected rights and freedoms:

“Under Article 105, even communication of thoughts and ideas or, for that matter, opinions, without intent to commit any violent or criminal act, may be regarded as subversion. Ordinarily, an act of subversion requires more than mere communication of thoughts and ideas.... [The law] makes no attempt to establish standards to determine the quality of acts that might or could harm national security...[and] provides a rationale for restricting fundamental human rights and basic freedoms.”<sup>240</sup>

More than a decade after the Working Group’s observations, a 2008 report by CHRD substantiated these concerns. According to the report, the evidence in “subversion” prosecutions “often consists of no more than the writings of an individual or simply shows that he/she circulated certain articles containing dissenting views, without any effort to show that the expression had any potential or real subversive effect. That is to say, speech in and of itself is interpreted as constituting incitement of subversion.”<sup>241</sup>

Article 105 also identifies spreading *rumors* as a form of incitement to subvert State power. In prosecutions against Tibetans, “rumors” has been attached to any expression that diverges from official narratives or Party ideology. For example, even prior to the 2008 Uprising, in November 2008, the Chengdu Intermediate People’s court in Sichuan province sentenced freelance writer and journalist **Chen Daojun** to three years in prison for inciting subversion. Prosecutors cited essays Chen wrote criticizing the government’s policies toward China’s ethnic Tibetan minority.<sup>242</sup>

The effect of the abusive application of Article 105 in the PRC “not only directly affects those prosecuted under the article but also creates an atmosphere of intimidation and fear that has the effect of more generally constraining the exercise of rights and freedoms in China.”<sup>243</sup> While concerned about publication of “subversive” material in any form, the Chinese authorities are especially uneasy about the use of the Internet to publish material that is deemed “subversive.”

### **C. Pre-2008 Uprising “Splittism” and “Subversion” Prosecutions**

Prior to the 2008 Uprising, Tibetans were prosecuted for “splittism” and/or “subversion” for simply shouting slogans for the return of the Dalai Lama to Tibet, printing Snow Lion flag<sup>244</sup> or pro-Tibet leaflets, and calling for greater freedoms for Tibetans. For example, **Ronggyal Adrag**, a Tibetan nomad, was sentenced to eight years in prison by a court in Sichuan province on November 20, 2007 on the dual charges of attempting to “subvert state power” and “split the country.” His “crime” was standing before a crowd gathered at a horse-racing festival on August 1, 2007 and calling for the Dalai Lama’s return to Tibet, freedom of religion, the releases of Gedun Choekyi Nyima (the Panchen Lama<sup>245</sup> identified by the Dalai Lama) and Tenzin Delek Rinpoche, a Buddhist teacher from the same area imprisoned in 2002. Some reports allege Adrag may have also publicly called for Tibetan independence.<sup>246</sup> “Although we are free to move our bodies, we cannot express what is in our hearts,” said Adrag.<sup>247</sup> This bold, public expression by Ronggyal Adrag may have precipitated the broader currents of the 2008 Uprising. On August 21, 2007, security officials in Lithang County (Ganzi TAP, Sichuan Province) detained 3 nephews of Ronggyal Adrag: **Adrug Lupoe** (Lopoe), **Adrug Gyatso**, and **Adrug Nyima**. Adrug Lupoe, a Lithang Monastery monk was detained when he arrived at the police station to seek his uncle’s release. Xinhua reported that the Ganzi Intermediate People’s Court sentenced Adrag Lopoe on November 20 to 10 years in prison on charges of espionage and inciting splittism. Charges against **Jamyang Kunkhyen**, a Tibetan musician and school teacher sentenced to nine years in prison in 2007 for “carrying out splittist activities,” were also reportedly linked to his possession of a camera at the festival when Ronggyal Adrag climbed onto the stage.<sup>248</sup>

### **D. Post-Uprising Crackdown on “Splittism” and “Subversion”**

As mentioned in this report, CCP authorities have been and are currently using the 2008 Uprising as an excuse to expand the scope of activities criminally punishable as splittist or subversive to include peaceful, internationally protected forms of expression. Essays, books, blog posts, and songs that express Tibetan identity, honestly convey the experience of being Tibetan under Chinese rule, or are otherwise inconsistent with Party policy, are being targeted; the authors, artists, and intellectuals responsible for them are being detained and charged Under articles 103 and 105 of the CCL as separatists.

## Case Study: Shogdung

*“I am naturally terrified at the thought that once this essay has been made public, I will eventually have to endure the hot hells and cold hells on earth. I may ‘lose my head because of my mouth,’ but this is the path I have chosen, so the responsibility is mine.”*

Tragyal (*pen name Shogdung the line between Earth and Sky*, meaning “Morning Conch”), a forty-seven year old leading Tibetan intellectual, philosopher and writer who had long been closely associated with the CCP, was detained by Chinese security personnel April 23, 2010. On May 28, Tragyal’s family was informed that he was being held in Xining Detention Center No. 1 on the charges of “instigating to split the motherland.”<sup>249</sup>



Editor at the Qinghai Nationalities Publishing House in Xining, Tragyal is the highest-profile Tibetan writer to face arrest amidst an escalating crackdown on Tibetan intellectuals and cultural figures since the 2008 Uprising.<sup>250</sup> His arrest is undoubtedly connected to content in his newest book, *The Line Between Sky and Earth*, which was characterized by a western scholar as “one of the most open and daring critiques of the Chinese Communist Party policies in Tibet over the last 50 years.”<sup>251</sup>

On April 13, 2010 Tragyal’s family-run bookshop was closed by authorities and 35 copies of his book were confiscated. At 5:30 P.M. on April 23 six police officers detained him at his office, brought him to his home and carried out “a meticulous search of his study,” which concluded at 10:00 P.M.<sup>252</sup> After midnight, officers returned to his home and confiscated two computers, documents, and pictures.<sup>253</sup> Later, at 3:30 A.M., officers arrived once again to Tragyal’s home and informed his family that he was being held on suspicion of “inciting separatism.” Yeshe Tsomo, his daughter, said the family was unaware of his whereabouts since the police took him from their home. “We’ve been to the detention center more than 20 times, but we have never been allowed in.”<sup>254</sup>

Tragyal’s views were previously regarded among Tibetans as “resembling [those] of the Chinese Communist Party.”<sup>255</sup> He authored several well-known books and a 1999 article which characterized Tibet’s traditional Buddhist culture as an impediment to the region’s modernization, devel-



opment and integration with the rest of China.<sup>256</sup> He also penned prominent articles published in the *Qinghai Daily*, the Party paper.

However, the tone of his writing shifted dramatically following the spring of 2008. *The Line between Sky and Earth*, was unauthorized—produced without an ISBN number, outside the normal publishing channels within China.<sup>257</sup> Despite its unofficial status, the book sold out on its initial print run of 1,000 copies, largely on a word-of-mouth basis.<sup>258</sup>

In the book Shogdung apologizes for his earlier views on Tibetan Buddhism and monks' roles in Tibetan society, describes Tibet as “a place of terror,” and directly challenges Party representations of events in March 2008.<sup>259</sup>

*As to how they [the Chinese authorities] have transformed Tibet into a terrifying battle ground: ever since they [Tibetans] have launched [literally, the peaceful movement], all corridors in the monasteries have become archery grounds, they have aligned their tanks and guns. It makes one's hair stand on end. At most of the junctions of monasteries and villages, soldiers parade. Such places are full of spies. It is so frightening! It makes one shiver with fear. At the top of the houses, in the streets and in the main places, they have hidden secret weapons. Spies are waiting. My flesh is petrified, my bones hurt. Tourists or pilgrims are searched at the point of the gun, they are interrogated and required to register and to do all sorts of such things. It is freezing, it feels so cold. Most of the monks have been expelled to towns, most town-dwellers are locked in their houses. They [the authorities] listen and watch on the sly letters, phones, computers, websites, tea-houses, cafes.*

*They have made everyone, be they close or distant, powerless, helpless and desperate. In daytime, they run like jackals. At night, they sneak in like bandits. Without warning, they attack chapels and meeting halls in monasteries, and homes and families in towns. They search houses from top to bottom, and again from top to bottom. They look for pictures of the Victorious One [the Dalai Lama]. They look for hidden weapons. Incidentally, they look for money. They look for valuables. They throw holy images on the floor and trample them. They say that people with a human face have the heart of beasts and are wolves wearing monk's robes.*

*If one is a Tibetan, one is not allowed to stay at a hotel, one is 'welcomed' with the request to take off one's hat and shoes at airports, one does not get a ticket. One is not hired for jobs. Because of the deceptive propaganda, Tibetans are looked at with an air of mixed fear and terror. They are targets of suspicion. To sum up, Tibetans are considered like terrorists, they are treated like mindless children who are put under great pressure.*

*Actually, it is not the first time this has happened. Ever since we have been conquered by dictators, in a series of campaigns, we have been beaten, struggled against, seized, arrested, condemned, sentenced, massacred. They have made us unable or afraid to move, to speak, to think. Everything and everyone has become inert because of fear. These inhuman methods have been going on for more than 50 years.*

Amidst his daring discussion of the systematic repression of Tibetans by the Chinese state, Shogdung stresses the importance of maintaining a resistance approach based in principles of non-violence and civil disobedience. *The Line Between Sky and Earth* cites statistics that indicate that historically, non-violent resistance movements have been more successful.<sup>260</sup>

### **Open Letter About the Kyegudo Earthquake**

Shogdung's arrest occurred within days of him signing an open letter criticizing the Chinese authorities' handling of the emergency response to the 7.1 magnitude earthquake that struck the Tibetan area of Kyegudo (Yushu TAP) on April 14, 2010.<sup>261</sup> The letter, dated 21 April and signed by six other Tibetan writers, expressed condolences to the quake victims and encouraged Tibetans not to send donations through official state channels, including China's Red Cross. Tragyal himself had requested to visit the quake zone but was refused by state authorities. A passage from the letter follows:

*As the news from the mouthpiece for the Party organizations can not be believed, we dare not believe in the Party organizations. The Party organization ordered to temporarily suspend sending people to the disaster area for political purposes. For this reason, we in faraway Xining out of concern for you and your suffering send you this letter, apart from this, there is nothing else we can do.*<sup>262</sup>

The "political purposes" to which the letter referred was likely a response to China's exploitation of the disaster to influence international opinion. The CCP expelled Buddhist monks, who had been an integral part of the quake response, from the quake zone and the state Propaganda Department issued a directive to the media to downplay the role of monks in the relief effort.<sup>263</sup> According to Robbie Barnett, director of the modern Tibetan studies program at Columbia University, the monks' contributions to the quake relief effort "pose a dilemma for the communist leadership."<sup>264</sup> Soon after his detention, the website (<http://www.sangdhor.com/>) that his open letter appeared on was shut down.<sup>265</sup>

## Paying the Price

Like others highlighted in this report, Shogdung seemed keenly aware of the risk associated with publishing *The Line Between Sky and Earth*. He reportedly had been detained briefly in April 2008, and according to Ursula Gauthier, a Beijing-based correspondent for the French magazine “Le Nouvel Observateur” who met with Shogdung two weeks before his arrest, he exhibited a “somewhat fatalistic courage – [knowing] that he would have to ‘pay the price’ of the last book he had published....”<sup>266</sup> According to sources in the Tibetan area of Amdo, upon visiting his father on the occasion of his 80<sup>th</sup> birthday, Shogdung foreshadowed that it might be the last time they would ever see each other. On that same visit he threw *\*lung tra\** (prayers on small pieces of paper or prayer flags) in a mountainous area above his hometown—a ritual he had not practiced since his childhood.<sup>267</sup>

Although Shogdung faces charges of supporting Tibetan independence or “splittism,” a Western scholar who has read the book in Tibetan said: “I have not read anywhere in Shogdung’s book that he calls for separation or independence from China. He says Tibetans should keep the spirit of the peaceful revolution in which they have engaged since 2008.”<sup>268</sup>



It appears that Tragyal’s case had been deliberately delayed by the Xining People’s Procuratorate (state prosecutor).<sup>269</sup> According to Beijing-based lawyer Pu Zhiqiang, who defended jailed Tibetan environmentalist and businessman Karma Samdrup,<sup>270</sup> “[i]f the court wants to go ahead with the trial, it won’t wait one minute, and if it doesn’t, it will ignore the case for years.”<sup>271</sup>

## E. The Communist Party Uses the Same Tactics Against Ethnic Uyghur

Abusive, political prosecutions under the guise of “national security,” such as that carried out against Shogdung, are, of course, not limited to ethnic Tibetans. The case of Uyghur journalist and webmaster Gheyret Niyaz illustrates that the CCP is co-opting “state security” law to systematically suppress the freedom of expression in the PRC, particularly in relation to areas that have experienced ethnic unrest.

The plight of Uyghurs, a distinct, predominantly Muslim Turkic minority within the PRC, is eerily similar to that of Tibetans. Uyghurs have long suffered from “ethnic discrimination, oppressive religious controls, and continued poverty and joblessness despite China’s ambitious plans to develop its vast northwestern frontier.”<sup>272</sup> And so are the methods of systematic suppression of the freedom of expression being used by Chinese authorities. In July 2010, Gheyret Niyaz was sentenced to 15 years in prison for endangering state security. At the time of his detention on Oct. 4, 2009 Niyaz, 51 was employed as a journalist at the official *Xinjiang Economic Daily*.<sup>273</sup> The arrest of Niyaz came as a huge shock to Uyghurs because he was widely regarded as pro-government, even warning officials in the Xinjiang Uyghur Autonomous Region (“XUAR”) that ethnic riots could be imminent.

In the wake of the July 5, 2009 Urumqi riots, Niyaz gave interviews to several foreign publications in which he “criticized the unequal distribution of wealth in Xinjiang and accused authorities of heavy-handedness in their campaign to fight Uyghur ‘separatism.’” According to one source, Police said “he did too many interviews with foreign media...”<sup>274</sup>

### **Case Study: Tashi Rabten**

*“Whoever tries to cover up the loss of the precious lives of our people, lay and monastic, men and women, it cannot be hidden from history”*

– by ‘Nyen’ (the ‘Wild One’), in the ‘Eastern Snow Mountain’



Concern is mounting over the harassment and detention of Tashi Rabten (pen-name Te’urang), a student, writer and literary editor at the Northwest Minorities University in Lanzhou in Gansu. Rabten was detained on April 6, 2010 along with Druklo (*pen-name Shokjang*), another student-writer, when approximately 16 Chinese security personnel raided their university hostel and ransacked their rooms. The arresting authorities proceeded to confiscate their Tibetan language books, mobile phones, laptop computers and course materials. At the time of this writing, neither the criminal charges (if any) of which Rabten is accused, nor his whereabouts can be confirmed. However, he is believed to be incarcerated in Chengdu, the provincial capital of Sichuan.<sup>275</sup>

A native of Dzoerge County in Ngaba prefecture, Rabten was due to graduate from the University in 2010. In 2009, Tashi Rabten authored a book, also banned, entitled *Written in Blood*, which focused on issues of democracy, the 2008 Uprising, and the brutal Chinese suppression thereof. Reportedly being handled by the Chinese as a “political matter,” Rabten had published about 1,000 copies of the book and managed to distribute more than 400 copies before the Chinese authorities banned it.<sup>276</sup>

Tashi is one of the brave young thinkers of the new Tibetan generation—fluent in Tibetan and Chinese, Internet-savvy, and having grown up in a Chinese-ruled Tibet. In addition to his studies, he edited *Eastern Snow Mountain*, a literary magazine that quickly drew the ire of the CCP following the publication of an edition that dared to refute state narratives of the 2008 Uprising. The issue included details of the custodial beating and death of Paltsal Kyab, a 45-year old nomad at the hand of Chinese authorities in May 2008.<sup>277</sup> Essays also expressed grief over two monks haven been driven to suicide in the face of severe treatment by Chinese authorities.

*Eastern Snow Mountain* was promptly banned. However, copies of the magazine had already circulated in the Qinghai and Gansu provinces of TAR, and beyond. The essays were originally written in the Amdo dialect of Tibetan; the authors largely anonymous.<sup>278</sup> Therefore, the risk associated with the publication fell naturally, and squarely, on the editorial staff, led courageously by Tashi Rabten.

Evidently, the risk involved with carrying the publication forward was palpable—yet the inspiration to do so undeniable. The writers and editors, quite literally, could not remain silent. The following is a passage from the Afterward of the banned magazine:<sup>279</sup>

*The magazine staff and associates did not commit to the foolishness of smashing this egg against a rock and knowingly leaping into an abyss out of rashness or for the sake of reputation. We did so out of the pain of separation from the tens of thousands of souls caught up in this deplorable violence, and the tormenting thirst for freedom, democracy and equality for those who should have them but do not.*

*In this way, it has come into your hands out of a determination to vindicate the many who succumbed to the tribulations of 2008.*

*In this way, it has appeared as a sketch of the history written in the blood of a generation. In this way, now that it is finally appearing, we are relieved of a*

*great weight, but are bound by a mental burden from which there is no release – that is bringing the next Eastern Snow Mountain’ to you next year and the year after.*

*If ‘Eastern Snow Mountain’ survives, it must do so with integrity, and if it dies, it must do so with glory!*

*-The Editors*

Rabten was known to have been under surveillance for some time, and the April 2010 detainment was not Rabten’s first run-in with Chinese authorities in recent years. According to reports, Rabten “disappeared” on July 26, 2009 after returning home to Western Sichuan province from college for the summer. A resident in Tashi’s home region stated that Mr. Rabten was detained by the Public Security Bureau and taken to Barkham (capital of the Ngaba TAP in Sichuan). He was assumed to be held in the prefecture’s PSB detention center.<sup>280</sup> Numerous news reports from early mid August 2009 indicated that Rabten’s friends of family did not hear from him for weeks following his disappearance.<sup>281</sup> Details of his treatment while in custody in 2009 or the exact length of this detainment remain sketchy. At the time of this writing, Tashi Rabten’s university graduation unfortunately appears to be a far-off dream; his whereabouts, status, and well-being remain unknown.

## **CHAPTER VIII**

### **“ESPIONAGE:” COLLUSION WITH THE “DALAI CLIQUE”**

In addition to “subversion” and “splittism” charges, the PRC has also used the charge of “espionage” to prosecute individuals for disseminating information to the outside world about the situation in Tibet. The recipient organizations are almost invariably identified as core members of the “Dalai Clique,” including the Dharamsala, India-based security department of the Central Tibetan Administration (government in exile), the *Tibetan Youth Congress*, and *Gu Chu Sum*.<sup>282</sup> Under the State Security Law (1993) and the Criminal Law of the PRC, collusion with outside individuals and organizations brings “state secrets” charges within the ambit of “endangering state security.” The PRC has prosecuted several Tibetans for “espionage” and illegally supplying information about the 2008 protests to the “Dalai Clique” under Articles 110 and 111 of the Criminal Law.



## **A. Articles 110 & 111 of the Criminal Law of the PRC**

Under Article 110, “joining an espionage organization or accepting a mission assigned by the organization or its agent” can bring a prison sentence of 10 years to life imprisonment.<sup>283</sup> Given the link between “espionage” and the “state secrets” framework, an organization seeking access to virtually any type of information from inside Tibet, without CCP authorization, can easily be labeled as such. Numerous Tibetan organizations<sup>284</sup> based in India that are part of what the Communist Party leaders refer to collectively as “the Dalai Clique” fall into this category.

Under Article 111, authorities can charge anyone who “steals, spies into, buys, or unlawfully supplies State secrets or intelligence for an organ, organization or individual outside the territory of China.”<sup>285</sup> “Minor circumstances” bring the consequences of “imprisonment of not more than five years, criminal detention, public surveillance, or deprivation of political rights.”<sup>286</sup> However, the law fixes punishment at “not less than five years,” but if the circumstances are “especially serious,” the law authorizes prison terms of up to life imprisonment or death. Numerous cases illustrate that the information transmitted need not be actually connected to intelligence or espionage.<sup>287</sup> Moreover, actual transmission of information is not required; an attempted transmission of the so-called “intelligence” or “state secrets” is enough to trigger criminal charges.<sup>288</sup>

## **B. Supreme People’s Court Interpretations**

The Supreme People’s Court, in its *Interpretation of Certain Issues Regarding the Specific Application of the Law When Trying Cases of Stealing, Gathering, Procurating or Illegally Providing State Secrets or Intelligence Outside of the Country* (hereinafter Interpretation of Certain Issues) defines the punishments for this particular set of crimes based on the “seriousness” of the circumstances of the “crime.”<sup>289</sup> Procuratorates are given wide latitude to determine such “seriousness” by the vague wording in the laws relating to national security of the PRC.

Two articles in the Interpretation of Certain Issues are particularly problematic in the context of the crackdown on Tibetan writers and cultural figures. Article 5 imposes a “knows/should know” standard for providing matter “not marked” to anyone outside of the country.<sup>290</sup> Article 6, extends the scope of punishment for “espionage” crimes to any act of sending materials over the Internet that might contain state secrets or intelligence.



Further, “[b]ecause the provision separates the disclosing of information from harm that results, it is clear that the “especially serious consequences” provision can be invoked regardless of finding objective harm.<sup>291</sup> Numerous Tibetans have been accused of “espionage” or “supplying intelligence” crimes for exercising their fundamental human rights during and after the 2008 Tibet uprising:

**Table 1:**

**Lhasa Intermediate People’s Court: Punishing Tibetans for Sharing Information With “The Dalai Clique”<sup>292</sup>**

**Case Study: Wangdue**

TIBETAN NAME	ALLEGED ACTIVITY	CRIMINAL CHARGE	CRIMINAL LAW	SENTENCE DATE	SENTENCE LENGTH
Migmar Dondrub	Distributed "splittist" CD-ROMs and leaflets; sent "intelligence" to "the Dalai Clique"	"Espionage"	Art. 110	October 27, 2008	14 years
Phuntsog Dorje	"Collected intelligence;" "illegally sent intelligence abroad [to "the Dalai Clique"] via Wangdu"	Unlawfully provided "intelligence" to an organization or individual outside of China	Art. 111	October 27, 2008	9 years
Tsewang Dorje	"Collected intelligence;" "illegally sent intelligence abroad [to "the Dalai Clique"] via Wangdu"	Unlawfully provided "intelligence" to an organization or individual outside of China	Art. 111	October 27, 2008	8 years
Sonam Dragpa	Joined "the Dalai Clique's "Tibetan Youth Congress;" collected and sent "intelligence" to the TYC	Unlawfully provided "intelligence" to an organization or individual outside of China	Art. 111	October 27, 2008	10 years
Yeshe Choedron	Received "financial aid" from "the Dalai Clique's 'Security Department'" for providing "intelligence and information"	"Espionage"	Art. 110	November 7, 2008	15 years
Sonam Tseten	Collected and provided "intelligence" to "the Dalai Clique's '9, 10, 3' [Gu Chu Sum] splittist organization"	Unlawfully provided "intelligence" to an outside organization or individual	Art. 111	November 7, 2008	10 years

Born in Taktse County, Lhasa Municipality, in the TAR, Wangdue was 41 years of age when he was arbitrarily detained by the Lhasa PSB from his home on March 14, 2008, in the midst of an intense military and security crackdown. His whereabouts remained entirely unknown until October 27, 2008 when the Lhasa Intermediate People’s Court announced that he had been sentenced to life imprisonment and deprivation of political rights.

Fluent in Chinese, Wangdue was formerly a monk from the Jokhang Monastery (about 25 kilometers east of Lhasa), where he also served as a guide for Chinese tourists. He was most recently employed by the Burnet Institute—a prominent medical research and public health NGO based in Melbourne, Australia. Wangdue was a Program Officer for Burnet Institute’s HIV/AIDS Prevention Program in Lhasa. Since 2001, the Burnet program supported HIV/AIDS awareness in various brothels around Lhasa city, and in schools in neighboring counties and towns, and organized talks in various nightclubs mushrooming in the holy city. The NGO also published and printed numerous education booklets, posters and pamphlets on HIV/AIDS awareness in Tibetan and Chinese language for free distribution. Numerous schools and government offices including the TAR Police Academy invited the NGO to give lectures on HIV/AIDS awareness to their students, staffs and recruits.

According to the official report given in the Lhasa Evening News dated November 8, 2008, Wangdue violated articles 110 and 111 of the Criminal Law of the People’s Republic of China constituting the crime of espionage, endangering state security and illegally providing intelligence to organizations outside of China.<sup>293</sup>

The March 2008 arrest at the hands of the Chinese authorities was not Wangdue’s first. He was detained on March 8, 1989 and sentenced to three



years of “re-education through labor” (RTL) at Sangyip Prison following his alleged involvement in a period of unrest in Lhasa. His three year RTL sentence was extended by five years (to a total of eight) after he signed a petition which stated the 1951 17-Point Agreement<sup>294</sup> was forced on an independent Tibet. He served the additional five

years in Lhasa’s notorious Drapchi Prison.

Three other Tibetans received stiff sentences for allegedly collaborating with Wangdue to send information outside Tibet: **Migmar Dhondup** received a fourteen year sentence, **Phuntsog Dorjee** a nine year sentence, and **Tsewang Dorjee** an eight year sentence for their crimes. The Lhasa Evening News, an official media outlet of the Chinese Communist Party, identified *Tibetan Youth Congress* (which the Chinese state media calls a “terrorist” organization akin to Al-Qaida)<sup>295</sup> and *Gu Chu Sum* as the recipient exile organizations.

According to the Lhasa Evening News report, Wangdue allegedly colluded with the Dalai Clique's "Security Department." His so-called criminal acts were passing information regarding China's national security outside Tibet, reproducing CD's branded as harmful to China's state security, and posting handbills that were aimed at "splitting the nation."

Wangdue was branded a recidivist by the Lhasa City Intermediate People's Court, which punished him severely. The life sentence imposed on Wangdue, and the others mentioned in this section, were unprecedented in their severity for passing information outside Tibet. The sentence was clearly meant to intimidate Tibetans.

In the wake of his detainment by the Chinese authorities, information concerning Wangdue was scant. In November 2008, the Burnet Institute confirmed that they had not heard from him since March, although he was still listed as a staff member on their website for months after his detainment. The Lhasa propaganda department and the court offices refused to comment on the case.<sup>296</sup>

Selflessly serving the Lhasa community in a public health capacity, Wangdue's efforts should have been applauded by Chinese authorities. Instead, he was seized from his home, held incommunicado for months, and then permanently deprived of his personal liberty.

## **CHAPTER IX**

### **"REACTIONARY SONGS:" CRACKDOWN ON TIBETAN MUSIC AND POP CULTURE**

The Chinese Communist Party has long held the belief that music and the arts are a means to influence the masses—a "screw in the whole machine" to spread its propaganda and to promote Party allegiance.<sup>297</sup> The CCP's focus on music and the arts as a propaganda tool has resulted in continued and systematic suppression of Tibetan music and pop culture by characterizing music that expresses Tibetan identity, devotion to the Dalai Lama, or sorrow over lost lives or the lack of freedoms in Tibet as "reactionary." The term "reactionary" is widely used by Chinese authorities to vilify virtually any expression of Tibetan identity or anti-government sentiment as criminal in nature. Numerous Tibetans have been detained since 2008 for singing reactionary songs, or for possessing such songs or cell phone ring tones.

## **A. Music In Tibet**

Music is a vibrant aspect of the cultural traditions of Tibet. The telling of Buddhist parables through song by wandering storytellers dates back to the 12<sup>th</sup> century. Chanting in Tibetan or Sanskrit is an integral part of Tibetan



Buddhism, and Tibetan folk music has a rich tradition of being passed on orally and serving as “the repository for Tibetan culture itself.”<sup>298</sup> Tibetan folk music reflects the mosaic of all aspects of Tibetan lifestyle and beliefs—a diverse and prolific musical heritage that resonates with the essential Tibetan constituent of compassion.<sup>299</sup> There is a saying

in Tibet that “anyone with a mouth can sing, and with legs can dance,” and songs were often sung while working in the fields, shepherding or tending to crops, gathering with family and friends, and celebrating special occasions such as the Tibetan New Year and religious festivals.<sup>300</sup>

Music has long been outlet for emotion and an expression of Tibetan culture unparalleled in its authenticity.<sup>301</sup> Tibet’s “street song” tradition reflects a history of musicians in Lhasa using songs to express political and social commentary and satire.<sup>302</sup>



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In the wake of the 2008 Uprising, Communist Party officials have set the sights of their suppression of this traditional, melodic form of expression in Tibet. At a December 23, 2008 press conference, Xin Yuanming, Deputy Director of the Lhasa City PSB confirmed that his unit had cracked down on “rumor mongering” and “rumor spreading” in the form of “reactionary songs.”<sup>304</sup>

In May 2010, CCP authorities at a high school near Shigatse banned 27 popular Tibetan-language songs, including

“The Hope of the Son of the Snow-City,” and “The Five-Colored Prayer Flags (Tibetan-language version),”<sup>305</sup> in audio, video, digital media, or ringtone format.<sup>306</sup> Authorities warned of severe repercussions for anyone caught in possession of them.

Bhuchung D. Sonam described the situation: “Like other aspects of Tibetan life, traditional music and performing arts are being stifled by constant censorship, deliberate distortion, and comprehensive sinicization. Tibetan musicians who do not reinforce Beijing’s propaganda and campaigns are persecuted.”<sup>307</sup>

## **B. Music as a Core Component of Propaganda**

The current crackdown on musical expression in Tibet is consistent with the CCP’s long-held view that music and art are critical propaganda tools. During the 1950’s and 1960’s the CCP launched massive public song and dance campaigns to disseminate political ideology through lyrics with the purpose of impressing upon the masses the supposed benefits of Communist rule. Mao Zedong stated that “[m]usic is no longer an end in itself, but a vital weapon in the struggle.”<sup>308</sup>

The traditional performing arts were completely banned during the Cultural Revolution. Those caught singing Tibetan songs were accused of harboring “bourgeoishabits,” publicly humiliated, and forced to undergo “struggle sessions.”<sup>309</sup> In the 1990’s, in an effort to legitimize its rule in Tibet, the CCP sent Tibetan song and dance troupes abroad to create the façade that Tibetan culture was being protected.<sup>310</sup>

## **C. Tibetan Folk Singer Targeted**

Apparently, a revival of Tibetan folk music can be deemed to pose a national security threat. On March 30, 2008, **Drolmakyi**, a 31-year-old single mother, singer, and member of the local government council was arrested while she was hanging laundry on her balcony in Dawu, Golog Prefecture. Drolmakyi had recently opened a night club in Dawu village where she and other local singers performed *dunglen*, a relatively new style of Tibetan folk music noted for its slow, sad, hypnotic style and known to express nostalgia for the old Tibetan ways. The club was also used to train illiterate Tibetan women to sing in order to gain financial independence.<sup>311</sup>

Drolmakyi was detained without charges for nearly two months before being released in May 2008. Her release was secured by the payment of large fees by family and friends. Agreeing not to appear in public nor speak about her detention was likely a condition of Drolmakyi’s release.<sup>312</sup>

## Case Study: Tashi Dhondup

### *Unable To Meet*

-Tashi Dhondup

*When I think about it I am unfortunate  
I am unable to meet the Precious Jewel  
Even though I wish, I have no freedom  
If I think about this I am unfortunate*

*When I think about it I am unfortunate  
I am unable to wave the Snow Lion Flag  
Even though I wish, I have no freedom  
If I think about this I am unfortunate  
When I think about it I am unfortunate  
I am unable to sing a song about loyalty  
Even though I wish, I have no freedom  
If I think about this I am unfortunate  
Even though I wish, I have no freedom  
If I think about this I am unfortunate*

Born on April 15, 1979 into a family of nomads in Sarlang, Yugan County, Malho Prefecture, Qinghai province, Tashi Dhondup had emerged as one of the most popular singers in eastern Tibet. He was a member of Henan Mongolian Autonomous Region Arts Troupe.



On December 3, 2009, Tashi Dhondup, a 30 year-old singer from the eastern Tibetan region of Amdo, was detained by police while dining at a restaurant with his wife and two friends in Xining, the capital of Qinghai province. Officials in Central Henan province had issued a warrant for his arrest, for allegedly composing subversive songs and on “suspicion of incitement to split the nation.”<sup>313</sup> Four police officers drew their weapons on Tashi Dhondup after he initially refused their orders to stand up.<sup>314</sup> He was then handcuffed, forced into a police vehicle as his wife wept and grabbed one of the officer’s legs in an attempt to hold him back. Dhondup was quickly taken to a police station in Xining. His family was not notified of his whereabouts until December 6,

when his father was contacted and told to bring warm clothes for him. When Mr. Dhondup's father arrived at the detention center, he was told his son was undergoing "education" and permission to see him was denied. Tashi reportedly endured severe beatings and torture while in detention.<sup>315</sup> He is currently serving a 15 month "Re-education Through Labor" sentence.<sup>316</sup>

Dhondup was reportedly detained and brutally beaten for several days in September 2008 over "counter-revolutionary content" in a song entitled "The Year of 1959," the year that the Dalai Lama fled to India from Tibet.<sup>317</sup>

Less than a year later, Tashi Dhondup was reportedly interrogated by Yulgan Mongol Autonomous County police, and warned not to sing songs with reactionary lyrics. Investigators found that Tashi Dhondup had continued to sing "1959," which described "a dark year, a year of fear, a year of internal conflicts, the killing of citizens by a black earth."<sup>318</sup>

Dhondup, whose wife recently gave birth to their first child, was reportedly in hiding in the Xining area after Chinese authorities had banned his music<sup>319</sup> following the October 2009 release of a CD entitled *Torture Without Trace*. His music had become very popular in the region, as evidenced by the prompt selling of 5,000 copies of the newly released album. The banned album consists of 13 songs expressing nostalgia for the exiled Tibetan leader His Holiness the Dalai Lama and sadness over the CCP's brutal suppression of the 2008 Uprising.<sup>320</sup>

*Torture Without Trace* included the tracks "Unable to Meet," "Waiting With Hope," "For That I Shed My Tears," "Tibet Has Good Karma," as well as the title track. Remarkably, Tashi Dhondup was arrested and sentenced over songs, the lyrics for which were written by someone else. According to official documents from the Huangnan Prefecture Re-education Through Labor Management Committee, "because the writer of the 'Tibet independence' songs' words and music had escaped, interrogation of the criminal suspect [Dhondup] was pursued."<sup>321</sup>

The evidence in the case were the CDs themselves, testimony from police and other witnesses that Dhondup regularly performed the songs, and Dhondup's "confession." According to the RTL Management Committee's documents, Tashi Dhondup's songs "twist the facts and are reactionary in nature."<sup>322</sup>



## **D. Illegal Downloading of Songs and Ringtones**

Since 2008, numerous reports emerged of Tibetans being arrested for downloading banned songs or having subversive ringtones on their cell phones. In December 2008, the China News Service reported that “[a]fter the violent incident in March, some people with ulterior motives under the scheming and encouragement of the Dalai splittist clique intentionally spread rumors and incited ethnic feelings, threatening national and personal security.”<sup>323</sup> In December 2008, Xin Yuanming, the deputy police chief in Lhasa, reported that police had detaining 59 people and cracked 48 cases of “rumour-mongering.”<sup>324</sup> Chinese Police had been combing through Lhasa’s markets looking for vendors selling reactionary songs.

Woeser, in an article entitled *What Kind of Songs are Reactionary Songs?* commented on the round-up in Lhasa over alleged reactionary music:

*“What is the motive for doing so? Are the authorities really mad at Tibetans for loving ‘reactionary songs’ so much that they have to arrest a group of people, otherwise, it would not have the effect of punishing them as a warning to others? Or is it the case that they cannot find ‘Tibetan separatists’ any more and downloading songs which miss His Holiness and miss one’s hometown has become the felony? Or is it the case that the hungry ghosts in the six realms, who are making a living on ‘anti-splittist’ activities, are creating some enemies to the great party with new tricks.”*<sup>325</sup>

## **E. School Expulsions over Reactionary Ringtones**

The crackdown on “reactionary ringtones” ‘has affected Tibetan students as well. TCHRD received information that Chinese police are carrying out routine searches of students’ personal belongings in government-run schools in Tibetan areas as part of its broader patriotic re-education campaign.’<sup>326</sup> According to a twenty-five year-old female Tibetan refugee from Lhasa that arrived in Dharamsala in June 2010 and was interviewed by TCHRD staff, students caught with banned music on their mobile phones are being expelled from school in the Lhasa area.<sup>327</sup>

## CHAPTER X

### **ACADEMIC INTIMIDATION: REPRESSION OF STUDENTS, TEACHERS & SCHOOLS IN TIBET**

Another indication of the expanding crackdown on Tibetans' fundamental human rights of Tibetans is seen in the intensification and expansion of the CCP's "patriotic re-education campaign" to include primary and secondary schools. Originally started in 1996, the main aims of the campaign are to "inculcate love for the Motherland"<sup>328</sup> and to deprecate Tibetans' spiritual leader the Dalai Lama as a "separatist." Propaganda films that misrepresent Tibet's history as a repressive feudal society and celebrate the PRC as the "great liberator" are a regular feature of the campaigns.<sup>329</sup>

Prior to the 2008 Uprising, re-education efforts were primarily implemented in the monasteries and nunneries, which were regarded as the main source of "separatist" activities.<sup>330</sup> However, it is clear that CCP authorities in Tibet are now forcibly implementing patriotic education programs on the lay populace and school communities.<sup>331</sup>

This systematic, coerced indoctrination of children with Communist Party ideological ideas contravenes international standards regarding parental rights over their children's education.<sup>332</sup> Patriotic re-education's forcible exposure to communist ideology and demonization of the Dalai Lama therefore represents a gross attack on Tibetans' fundamental, universally recognized civil liberties.

Information received by TCHRD clearly indicates that teachers, students, and school administrators in Tibet are suffering consequences where patriotic re-education campaigns are challenged. The act of simply wearing traditional Tibetan dress to school can be grounds for expulsion.

*In my school, every Friday we would wear the Tibetan dress, the chupa, instead of our school uniform. The Chinese authorities implemented a political re-education program and we had to stop wearing our traditional dress. Any teachers that expressed patriotic or nationalistic views for Tibet were sent away. They were sent away to other schools.<sup>333</sup>*

## **A. Patriotic Re-education in Buddhist Monasteries in Tibet**

Patriotic education campaigns have long been used by the PRC to promote “stability” within Tibet, until recently, primarily in monasteries. The infamous campaigns have forced monks and nuns to denounce their spiritual guru, to abuse their highly respected lamas, and to perform acts which are otherwise prohibited under monastic vows and codes of conduct. Chinese authorities have required such denunciations as a condition for continuing life as a monk or nun.<sup>334</sup>

For example, in September 2007 a massive “patriotic education” campaign was unleashed in all the monastic institutions in Lihang County following a series of protests in the region.<sup>335</sup>

Any sign of resistance to patriotic re-education constitutes grounds for arrest and sentencing by Chinese authorities. **Jamyang Tenzin**, a 35-year-old monk of Yonru Geyden Rabgayling Monastery, was detained on October 3, 2007 for opposing the “work team” conducting the re-education sessions in the Monastery in Lihang County by calling for a long life for the Dalai Lama and decrying the lack of religious freedom in Tibet. Around July 3, 2009, after nearly two years in detention, Jamyang Tenzin was sentenced to three years in jail on unspecified charges by the Kardze Intermediate People’s Court.<sup>336</sup>

Forcing members of Tibetan Buddhism’s monastic communities to endure the irreconcilable demands of patriotic re-education is a blatant form of religious persecution that leads to extreme psychological trauma. The number of monks and nuns that have committed suicide is on the rise<sup>337</sup> despite the fact that taking one’s own life is considered a heinous sin in violation of basic precepts of Buddhist doctrine.

## **B. Expansion of Patriotic Re-education to Schools**

In the wake of the 2008 Uprising, patriotic re-education is being intensified and deliberately expanded to lower grade levels in schools.<sup>338</sup> Even prior to the spring 2008 Uprising, the U.S. State Department noted that “[a]uthorities in Tibetan areas required professors and students at institutions of higher education to attend political education sessions in an effort to prevent separatist political and religious activities on campus.”<sup>339</sup>

TCHRD received a report from a former Lhasa Middle School student and newly arrived refugee that the overwhelming majority of Tibetan students from his former school harbor disdain for the patriotic re-education campaigns.<sup>340</sup> This is likely due to psychological discord inherent in Tibetans being forced to denounce the Dalai Lama, as well as the climate of fear and intimidation that accompany Chinese authorities' tactics to ensure compliance and conformity to Chinese rule:



After the Uprising on March 14, 2008 the Chinese regularly held meetings in my school. They threatened the students: Any students trying to work with politics would be arrested, and their families would be in danger.<sup>341</sup>

### **C. Chinese Government Mandates “Ethnic Unity Education”**

On November 28, 2008, the Chinese Ministry of Education and State Ethnic Affairs Commission issued a new set of rules regarding mandatory ideo-political content to be taught in grade three of elementary school and extending to high school and vocational schools.<sup>342</sup> The classes must use teaching materials approved by the government, and course content must give special focus to “safeguarding the unification of the motherland” and “opposing separatism.” Students in high school are taught to accept the “superiority of the Communist Party’s and [Chinese] state’s ethnic minority policy,” which the curriculum claims guarantees ethnic minorities’ freedom of religious belief and rights to “preserve and reform” their customs.<sup>343</sup>

The disingenuousness of these claims is stark in the face of the systematic religious repression that has occurred throughout Tibet for decades. Moreover, amidst the expanding patriotic re-education, the CCP has banned all expressions of Tibetan religion at schools. According to first-hand reports received by TCHRD, students are prohibited from keeping any religious items such as rosaries on school grounds, including on their person. The Centre received reports that students are being frisked by school disciplinarians during morning assemblies, and are not allowed to visit temples or monasteries.<sup>344</sup> Students caught with photographs of the Dalai Lama are being expelled from school.<sup>345</sup>

## **D. Resistance and Consequences**

Students, teachers, and administrators who express Tibetan identity or resist the re-education are being met with expulsions, fines, and dismissals from their posts. Tibetans are reportedly being forced to make a thumb imprint with ink on documents which denounce the Dalai Lama and to express allegiance with the Motherland. This repressive policy is being intensified despite indications that these coercive programs have had the opposite effect of increasing resistance to Chinese rule, and have led to a rise in Tibetan nationalism.<sup>346</sup> The CCP remains intent on infusing its educational vision for Tibet with the untenable objective of turning Tibetans' hearts against the "Dalai clique."

Students found to break the rules of patriotic re-education are being expelled from school without explanation.<sup>347</sup> Work teams are implementing the campaigns through school competitions, both between classes and between schools. Students who do not take part in the competition are punished, fined, and forced to clean the school compound.<sup>348</sup>

Evidently the CCP's strategy of forced indoctrination is not working. March and April 2010 saw a huge number of detentions and expulsions of Tibetan students and teachers from schools and academic institutions in eastern Tibet. The incidents took place at the Machu Tibetan Nationality Middle School, the Kanlho Tibetan Middle School No. 3, the Primary School in Driru County, the Khar Primary School in Serthar County, the Serthar Buddhist Institute, and Barkham Teachers Training Institute and North-west National Minorities' University in Lanzhou.<sup>349</sup>

This shameful treatment of students and teachers by Party organs demonstrates minimal tolerance for dissenting voices in academic institutions. TCHRD received reports that authorities held students as young as 11 to 15 years old in detention. By indoctrinating Tibetans with their own revisionist version of Tibetan history, ethnic discrimination is embedded into the fabric of the re-education campaigns.

### **Case Study: Machu Middle School**

A series of events at the Tibetan Middle School of Machu, consisting of approximately 1500 students, illustrates the Chinese government's escalating crackdown on the fundamental freedoms of Tibetan students, teachers, and school administrators. At about 12PM on March 14, 2010 approximately 30 students from the Tibetan Middle School in Machu, located in

the far west region of Gansu, staged a peaceful protest to decry their lack of freedoms and to mark the second anniversary of the 2008 Uprising against China's repressive rule in Tibetan areas. The students were apparently angered by restrictions on their freedoms in advance of the anniversary of the March 10, 1959 uprising that forced the Tibetan spiritual leader, the Dalai Lama, into exile. According to reports, State authorities had intensified security measures at the school in the lead-up to March 10, preventing students from even leaving the school grounds and banning a planned forum on the topic of "Tibetan experiences of joy and sorrow."<sup>350</sup>

According to reports, the student protesters were joined by 500 to 600 other Tibetans. In addition to calling for resolution of the Tibet situation through dialogue, the demonstrators shouted slogans such as "Free Tibet," "Long life for His Holiness the Dalai Lama," and "Chinese get out of Tibet."<sup>351</sup> Within 30 minutes, the peaceful protesters were surrounded by armed Chinese security forces, and at least 40 people were detained on March 14. Following this incident, in an obvious display of intimidation, approximately 3,000 armed police were deployed throughout the town. The school was surrounded by armed security forces and all the students were locked inside the campus. The entire Machu area was reported to be in the grips of a climate of tension and fear.

In addition to the reports of over 40 detentions on March 14, school administrators suffered consequences as a result of the peaceful, student-led demonstrations. **Kyabchen Dedrol**,<sup>352</sup> the school's headmaster, and two assistants—**Do Re**<sup>353</sup> and **Choekyong Tseten**<sup>354</sup>—were dismissed from their jobs following the protests. Sonam Tse, the head of the Machu Public Security Office, was reported to have been relieved of his title as well.<sup>355</sup> Choekyong Tseten was secretly whisked away by Public Security Bureau officials—at the time of this writing there is still no information on his whereabouts.<sup>356</sup> Concerned students submitted petitions to State authorities in Machu County seeking reinstatement of the three sacked school heads and vowed to carry on with more protests until their demands were met.

During the afternoon of April 3, 2010 Machu Middle School students staged another protest over the firing of the school's head master and two of his Tibetan assistants.<sup>357</sup> On April 6 **Tsering Dhondup** of Ngulra Rulsa Village, and **Thupten Nyima** of Muru Ngakor Village, were expelled over their participation in the protest on March 14.<sup>358</sup> Both were later detained in the Machu PSB Detention Centre for their alleged roles in organizing the demonstrations.<sup>359</sup>

Students at Machu Middle School began a hunger strike on April 22, demanding the release and reinstatement of Choekyong Tseten, along with the reinstatement of Kyabchen Dedrol and Do Re. The students also levied demands that the Chinese government cease its forced inclusion of communist doctrines and policies in school curriculum.<sup>360</sup>



Details of the incidents remain sketchy due to the CCP's tight controls on the flow of information from Tibetan areas. Specific details regarding the continued detainment of students, teachers, or administrators are therefore unavailable. However, according to reports, the school remained under military lockdown for some time following the

protests of March and April 2010.

The situation at Machu Middle School deteriorated even further in late April. Twenty-one teachers from the school were fined 20 to 60 thousand *yuan* (\$8,785) for “bad management” and for teaching “subversive” topics. According to sources in the area, the fines were for failing to “give the students a good education on a daily basis and supervising well their daily activity.”<sup>361</sup> The fines will be withheld from teachers’ salaries for six months or one year.<sup>362</sup>

## **E. Educational Costs to Tibetan Students**

The PRC's obsessive need to maintain social stability in Tibet through patriotic re-education campaigns comes at a serious educational cost to Tibetan students. Students accused of participating in “political” activities have been forced to drop out of school, and schools with a reputation for breeding political activism have been forced to close.<sup>363</sup> A 16 year-old student from Sichuan Province provided this account of Chinese retribution resulting in the denial of education to hundreds of students:

*In Kardze, there are separate Tibetan and Chinese schools. One day local authorities accused Tibetan students of breaking government rules. They dismissed the student, and as a result there was a clash between Tibetan and Chinese teachers. The Tibetan teachers were all transferred. Before this incident, there were 500 students in the school, and the Chinese offered financial assistance to poor students. They stopped this [financial assistance] after the incident, and the poor students*



*had to stop going to school. There were other schools they could attend, but they were very expensive; so many of the poor students didn't go to school at all. They also stopped allowing new students to enroll. Now there are only 200 students at the school. I think the authorities were trying to close the school. I think this was because of the politics – the Chinese authorities believe students are too involved in politics, and they are afraid of that.*<sup>364</sup>

## **CHAPTER XI**

### **JUSTICE DENIED: COMMUNIST PARTY INTERFERENCE IN THE JUDICIARY OF THE PRC**

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

The lack of an independent judiciary in the PRC translates into minimal transparency and accountability in the nation's justice system. The problem contributes to a culture of secrecy in CCP governing structures, and facilitates widespread impunity for Party officials in instances of arbitrary detention and flagrant official reprisal, of which there are many examples contained in this report. The judiciary of the PRC is widely regarded as subservient to the Communist Party and its stronghold on power.<sup>365</sup> The courts, the prosecuting organ, and the police operate under the supervision of the CCP.<sup>366</sup> Perhaps most telling of all is that the conviction rate of those accused of criminal activity in China is astounding nearly 98%,<sup>367</sup> evidencing a strong presumption of guilt in the judicial system.<sup>368</sup>

#### **A. External Influence**

Judges in the PRC are subject to significant external interference that limits their independence and routinely denies justice to defendants accused of "state security" and/or "state secrets" crimes.<sup>369</sup> Local government bodies influence courts by controlling judicial funding and appointments—influence which is frequently used to protect local interests.<sup>370</sup> The influence of local people's congresses over court decisions has been on the rise since the

early 1990's.<sup>371</sup> Interference by Party officials in court proceedings and collusion between police, prosecutors, and judges is commonplace in the judicial system, particularly in "politically sensitive cases."<sup>372</sup> Communist Party interference in criminal trials and the stripping of procedural protections for Tibetan political detainees means that criminal proceedings are often a "sham," with the result having been determined before the "trial" actually occurs.

### **Case Highlight: Karma Samdrup**

The sentencing of **Karma Samdrup** to 15 years in prison on trumped up "grave-robbing" charges, covered in detail in Chapter XII, provides a telling example. The charges stemming from Samdrup's purchase of antiquities in 1998 "resurfaced" in 2009 after Samdrup's brothers accused a local official of poaching endangered species and Karma began agitating for their release. International observers agree that the charges were fabricated and the conviction pre-ordained.<sup>373</sup> The ten page "opinion" in Karma Samdrup's criminal proceeding was posted within hours of the close of the trial at midnight on June 24, 2010. During the trial the judge received envelopes and text messages, disrupting the proceedings and suggesting obvious external influence. The prosecution relied on blatantly altered documentary evidence, which was deemed "solid and ample" by the Bayingguoleng Prefecture Intermediate People's Court. On the day of Karma Samdrup's sentencing, his two Chinese lawyers remarked that "[t]he sharp knife was already raised above his head, ready to fall in an instant."<sup>374</sup> On July 7, 2010, Karma's appeal was rejected on the very same day it was received by judicial authorities.

In 2009 a group of prominent Chinese civil rights lawyers issued an open letter offering to provide legal assistance to the Tibetan detainees. Judicial authorities in Beijing threatened to discipline these lawyers and suspend their professional licenses unless they withdrew their offers of assistance.<sup>375</sup> The Chinese authorities claimed that the Tibetan protesters were "not ordinary cases, but sensitive cases" and asked law firms to dissociate themselves from the individual signatories or to terminate their employment.<sup>376</sup> Following through on their threats, Beijing authorities have refused to renew the license of **Jiang Tianyong**, a Chinese lawyer who had taken up the defense of Tibetan protesters, for two consecutive years.<sup>377</sup> With such high politicized background, Tibetan defendants stand little chance of benefiting from meaningful legal representation and the due process of law to which they are entitled under both international law<sup>378</sup> and the law of the PRC.<sup>379</sup>

## **B. Veil of Secrecy**

The PRC judiciary's subservient role to the CCP is exacerbated in the context of "endangering state security" cases. As mentioned earlier in this report,<sup>380</sup> the Criminal Procedure Law of the PRC denies defendants in cases deemed to involve "state secrets" the right to an open trial. In many instances, individuals charged with "state security" crimes, such as inciting subversion, are also denied open trials.<sup>381</sup> It is common, therefore, for the trials of Tibetan political detainees to be conducted behind closed doors, creating fertile ground for interference by Party officials. Moreover, although some progress has been reported, opinions rendered by Chinese trial judges are routinely lacking in legal reasoning which supports their decisions.<sup>382</sup> A March 2009 Human Rights Watch report stated that the organization had "examined dozens of court reports, statements by leading officials, local judicial statistics, and official Chinese press reports," and that the Chinese government had "refused every external request for a real accounting of the detention, arrest and sentencing of those involved with the Tibetan protests."<sup>383</sup> HRW's analysis concluded that the judicial system in Tibetan autonomous areas was "so highly politicized as to preclude any possibility of protesters being judged fairly."<sup>384</sup> The same can be said of the intellectuals, writers, artists, and cultural figures facing state security charges in the wake of the 2008 Uprising.

## **CHAPTER XII**

*"How is it that such a good man can be made to suffer so much?"*

Dolkar Tso, wife of Karma Samdrup

### **OFFICIAL REPRISAL: THE ARBITRARY ATTACK ON KARMA SAMDRUP AND FIVE FAMILY MEMBERS**

The targeted harassment and prosecution of Tibetan businessman and philanthropist Karma Samdrup and several members of his family garnered widespread media attention in the summer of 2010 as indicative of a broadening crackdown on outspoken and influential Tibetan intellectuals and cultural figures.<sup>385</sup> In flagrant acts of intimidation and official reprisal, Karma Samdrup and brothers Chime Namgyal and Rinchen Samdrup, once lauded by the CCP as ideal Tibetans, were detained, forcibly interrogated, horribly mistreated, denied meaningful representation, and subsequently sentenced to prison terms or "re-education through labor." Their cases raise

troublesome concerns about the future prospects of Sino-Tibetan relations. The persecution of Karma, Chime, and Rinchen, as well as three of their cousins, is explored below. This chapter also spotlights three legal tools used by CCP officials in its marked campaign against the freedom of expression in Tibet: (1) “Re-education Through Labor,” the PRC’s extra-judicial system of punishment; and (2) tight controls over civil society; and (3) the abuse of petitioners.

## **I. Karma Samdrup Sentenced to 15 Years in Prison on Trumped-Up Charges**

Prominent businessman and philanthropist Karma Samdrup, once lauded by the Chinese Communist Party as a model citizen and praised for his conservation efforts on the Tibetan plateau, was detained on January 3, 2010 in Chengdu on charges of tomb-robbing stemming from an incident dating back to 1998. However, it is widely believed that the prosecution was in direct reprisal for his defense of his two brothers, Chime Namgyal (38) and Rinchen Samdrup (44)—both environmentalists who were imprisoned on August 7, 2009 after accusing a police official in Chamdo Prefecture of poaching of endangered species.<sup>386</sup>



The forty two year-old Karma Samdrup is married to Dolkar Tso. The couple has two daughters who attend a primary school in Chengdu. On June 24, 2010, after six months of incarceration, during which Karma endured severe beatings, forced interrogation, and inhumane treatment by State authorities, the Bayingolin Mongol Autonomous Prefecture Intermediate Court convicted Samdrup on charges of grave-robbing and sentenced him to fifteen years in prison, deprivation of political rights for five years, and a fine of \$1,500.<sup>387</sup> On July 3, 2010 (the same day his brother Rinchen Samdrup was sentenced to five years in prison), Karma’s lawyers and members of his family submitted materials for an appeal hearing.<sup>388</sup> The appeal was rejected on July 7, the same day it was reportedly received by the judicial authorities, who then waited nearly a month to inform Karma’s defense attorneys.

### **A. Prior Warm Relations with the CCP**

The prosecution of Karma Samdrup is particularly alarming because of his prior warm relations with the Chinese Communist Party. Fluent in Chi-

nese, Mr. Samdrup was exceptionally successful under Chinese rule while maintaining a strong Tibetan identity. Karma's success as a businessman, philanthropist, and conservationist led him to be regarded as somewhat of a role model to other Tibetans. His brothers were also regarded by the CCP as ideal Tibetans. A widely-acclaimed book praising the three for their work, *Tianzhu* ("Heavenly Beads"), was published in China in 2009. Samdrup dealt in antiquities and Tibetan cultural relics, leading him to be commonly known as the "King of Heavenly Beads." However, in a foreshadowing of the brothers' chilling relations with the government, the book was suddenly banned throughout the PRC for no apparent reason and despite its lack of political content.<sup>389</sup>

## **B. Philanthropist and Conservationist**

Karma Samdrup has long been known for his generosity and conservation ethic. In 1995 he established Medong Village Primary School in Zerong township, Gongjue County, Chamdo, TAR. In 1998, he set up the first Tibetan medicine shop in Guangdong province, in the south of China. He also established a local office of the Tibet Development Fund and supported health insurance programs, including direct support for poor households of Chamdo prefecture. Samdrup's interest in ecological activities grew more pronounced around the year 2000. He founded the award-winning *Snowland Great Rivers Environmental Protection Association* ("SGREPA"), which enjoyed full accreditation with the Chinese government and pioneered historic ecological work.<sup>390</sup> SGREPA appears to be at the root of labeling Tibet's wild expanses the "Third Pole"<sup>391</sup> and was instrumental in eradicating the use of wildlife pelts on the Tibetan Plateau. In 2006 Karma was ceremoniously recognized as China's "philanthropist of the year" during a broadcast on the state-run CCTV. He was also known to donate items from his personal collection to state-owned museums.

## **C. Trumped-up Charges**

The charges against Karma stem from his purchase of a carpet, clothing and a wooden coffin in Xinjiang in 1998 that were thought to have been pilfered from an ancient tomb located in a protected area. At that time, the Chinese authorities refused to prosecute Samdrup because the actual looters had already been apprehended, the evidence in the case was lacking, and Karma had a license to deal in such items.<sup>392</sup> This is what makes the revival of the charges in 2010, based on almost exactly the same evidence from 1998, so dubious.

In an *Asia Weekly* interview with Pu Zhiqiang and Li Huiqing (Karma's defense team) following the verdict, Pu stated that on December 27, 2009 the Xinjiang Regional Politics and Law Committee's Law Enforcement Group claimed to have "discovered an old case during the course of their work for which they considered Karma Samdrup's criminal responsibility should be pursued." Three days later, the charges had been changed and the case had been put on file for investigation and prosecution with the Bayingolin PSB.<sup>393</sup>

#### **D. Official Reprisal**

Before his arrest on January 3, Karma had gone to the detention center where his two brothers were imprisoned. After hearing of their mistreatment at the hands of prison authorities, he began agitating for their release.<sup>394</sup> Soon thereafter, Karma himself was arrested and imprisoned.

Pu Zhiqiang conjectured that Karma's troubles with Chinese authorities may also have been related to his support for mass petitions in his home area of Gonjo County in Tibet. Karma had offered ideas to a group of Zirong villagers for petitioning the Beijing government over grievances related to their compensation for farmlands. According to Pu, however, Karma had urged the villagers to trust the government and to give the Party space to resolve the problems.

Karma's environmental protection work may also have made him some enemies among businesspersons whose profitability suffered as a result. His prominence and ability to attract funds into the region may also have created hostility and led to rivalries with territorial local Party leaders.<sup>395</sup>

#### **E. Mistreatment in Detention**

On June 22, 2010, the first day of his three-day trial, Karma Samdrup pleaded not guilty and told the court that he endured daily beatings from the police and fellow prisoners during his interrogation. His mistreatment at the hands of Chinese authorities included enduring days without food or sleep, being soaked with cold water in the dead of winter, and being drugged with a substance that made his eyes and ears bleed, apparently in an effort to force him to sign a confession.<sup>396</sup> He appeared "frail and gaunt" after 6 months in detention; Dolkar Tso, Karma's wife estimates he lost 40 pounds in custody.

## **F. Trial Irregularities**

The trial of Karma Samdrup has been widely criticized by international observers, Tibet experts, and Pu Zhiqiang, his defense attorney. Pu told reporters that he was denied access to Mr. Samdrup for six months. The two were allowed to meet only for 30 minutes on the eve of the trial, which was originally scheduled for June 1, then suddenly postponed. Their entire exchange was videotaped by the police.

Pu also described blatant evidence tampering and a “mysterious witness” that suddenly appeared on the second day. Nearly the entire record pertaining to Karma’s trial had been altered.<sup>397</sup> Signatures were added to documents, and Samdrup’s lawyers’ requests to see the prosecutors’ case file, as required by law, went unheeded. Finally, on June 21, the day before the rescheduled trial was to start, Karma’s lawyers were allowed to make copies of the file, but parts of the material had been removed.<sup>398</sup>

During the first two days of the trial, a court police officer approached the judge numerous times and handed him an envelope. When Pu inquired, suggesting that the judge was receiving instructions, the envelopes stopped. However, then the judge started receiving text messages which disrupted the proceedings, clearly suggesting outside influence.<sup>399</sup>

The judge refused to delve into Mr. Samdrup’s claims of having been beaten and drugged during his 6-month period of pre-trial detention. “The court completely ignored the facts, trampled on the legal system and violated Karma’s humanity,” said Pu.<sup>400</sup>

Karma’s three day trial came to a close around midnight on June 24. The ten-page Chinese language opinion was made available within hours of the sentencing—strongly suggesting that the decision was “preordained,” according to Nicholas Bequelin, a researcher at Human Rights Watch.<sup>401</sup> Human Rights Watch also stated that Samdrup’s case showed “serious and repeated violations of China’s own criminal procedure law.”<sup>402</sup>

## **II. Chime Namgyal Sentenced to 21 Months of “Re-education Through Labor”**

Thirty-eight year old environmentalist Chime Namgyal, younger brother of Karma Samdrup, was detained on August 7, 2009 and subsequently sentenced, without trial or legal defense, to 21 months of “re-education through labor” (“RTL”) by the Chengdu Reeducation Through Labor Com-



mittee. The Committee’s “decision,” dated November 13, 2009, alleged that Mr. Namgyal had established an illegal environmental organization in his home village of Gonjo, although he and his brother Rinchen Samdrup had tried to register the group with the Chinese government.



Prior to his arrest, Mr. Namgyal had been widely regarded as a pillar of his community who steered clear of political matters. Namgyal organized litter-collection, tree-planting, and nature patrols to stop the hunting of endangered species. His trouble started after the *Voluntary Environmental protection Association of Kham Anchung Senggenamzong*, the organization he founded and directed with his brother, accused a local police official of hunting protected species in a nature preserve.

According to the RTL Committee’s decision, Namgyal “illegally collected three digital disks of information and video footage about the environment, the natural resources and the religion of Changdu prefecture ... provided pictures and material for the illegal publication ‘Forbidden Mountain, Prohibited Hunting’ ... privately collected some propaganda material from the Dalai clique ... and organized the local residents into irregular petitioning of the authorities... therefore severely interfering with state power organizations at the local level and effectively harming social stability.”<sup>403</sup> According to Human Rights Watch, “the description of the charges suggests that Chime Namgyal was a cause of potential embarrassment to the local authorities rather than a threat to national security.”

## **SPOTLIGHT:**

### **Re-Education Through Labor: A “Hot-Bed of Injustice”**

Despite its policy commitments under the Human Rights Action Plan 2009-10 and its claim of “remarkable progress in the improvement of its legal system,” Chinese authorities continue to operate “one of the world’s largest and most notorious arbitrary detention systems—the Re-education Through Labor (“RTL”) camps.”<sup>404</sup> RTL is an administrative punishment system in which police are vested with extra-judicial and extra-legal authority. RTL “Management Committees” control the entire process without constraint or external, independent review. Further, The system’s “legal remedies” are entirely ineffectual.<sup>405</sup>

RTL detainees are held in labor camps without charges, trials, or legal defense for up to three years for so-called “minor offenses.” RTL administrators also reserve the right to extend sentences by an additional year. According to China Human Rights Defenders, the RTL system is often used to punish human rights defenders, political dissidents, “petitioners” and others who the government deems “trouble-makers.” According to official documents, the “targets” for RTL include those who “disturb social order” and “incite disturbances.”

### **Deplorable Conditions**

The RTL labor camps are notorious for deplorable conditions, horrific mistreatment of prisoners, and torture. RTL detainees are subjected to heavy manual labor for long hours in unsafe environments, lack of basic labor protections, and receive very little, if any compensation for their work. Detainees are fed cheap, poor quality food, but their families are forced to pay miscellaneous “fees” such as “food subsidies” and medical expenses for the detainees.<sup>406</sup> Detainees often have little access to clean water or adequate sanitary facilities, and are often denied visits from their families. RTL detainees “are often subjected to beatings, torture and other forms of mistreatment such as solitary confinement, verbal abuse, and sleep deprivation.”<sup>407</sup> These abuses are sometimes carried out by fellow detainees (called “supervisors”) for “defiance,” such as the inability to perform assigned work in time, regardless of whether the inability is due to illness. Detainees are often given little or no medical attention when they become ill; if they get treatment at all, detainees often have to pay.<sup>408</sup>

### **No Oversight**

In theory, RTL Management Committees comprised of local government officials examine and render decisions on whether to send an individual to RTL. However, in 1984 this authority was transferred to the Public Security Bureau.<sup>409</sup> The RTL Management Committee acts as a mere figurehead; the PSB not only sends people to RTL, it also possesses the authority to review and approves such applications.<sup>410</sup>

Chinese Human Rights Defenders has also noted that the RTL system is fertile ground for abuses of power, and constitutes a “hotbed of injustice”<sup>411</sup> in that it enables Chinese authorities to send people to labor camps after a Procuratorate has refused to charge a crime because of insufficient evidence.<sup>412</sup>

## **RTL Violates Chinese Law & International Legal Standards**

Such extra-legal, extra-judicial powers vested in police authorities, and the concomitant denial of due process, constitute flagrant violations of the fundamental right to be protected from arbitrary deprivation of personal freedom and right to a fair trial.<sup>413</sup> The PRC's RTL system has been heavily criticized by U.N.<sup>414</sup> and international human rights organizations.<sup>415</sup> Chinese Civil Society has also called on the PRC government to abolish RTL<sup>416</sup> and replace it with a system that is consistent with international norms regarding the deprivation of liberty.

### **III. Rinchen Samdrup: Sentenced to Five Years for Incitement to Split the Country**

Rinchen Samdrup, who founded the *Voluntary Environmental Protection Association of Kham Anchung Senggenamzong* with his brother Chime Namgyal in 2003 in the TAR near Sichuan Province, was forcibly seized from his home along with his brother on August 7, 2009. The mother of the three brothers, who is in her mid-seventies, was beaten unconscious when armed police, led by Chamdo Prefecture Deputy Party Secretary Chen Yue, detained Chime and Rinchen.<sup>417</sup> Reportedly unconscious for several hours, the men's mother was brought to a hospital in Yushu in nearby Qinghai Province where she underwent surgery.



On July 3, 2010, the Chamdo Intermediate People's Court convicted Rinchen of "incitement to split the country," and sentenced him to a five year prison term, with deprivation of political rights for three years. He was accused of posting an article about the Dalai Lama on his website.<sup>418</sup>

Like his brother Karma,<sup>419</sup> Rinchen had also previously won praise from official Chinese media and Party officials. An article by Chinese environmental journalist Feng Yongfeng, translated into English by ICT,<sup>420</sup> acclaimed Rinchen for being "a protector of the environment" who "exudes the pure tranquility of an intellectual." Wang Dongshen, Chamdo Prefecture Deputy Party Secretary said that Rinchen's conservation efforts were "an extremely beneficial supplement to the government's environmental work."<sup>421</sup>

Rinchen Samdrup is a self-taught Tibetan medicine practitioner, computer expert, environmental expert, magazine editor and video filmmaker.<sup>422</sup> His environmental NGO, jointly founded in the 11 villages of the Zirong River valley, was joined by 1,700 local volunteers. The group enjoyed support from international conservation groups, having won a major environmental prize from Ford Motor Company in 2006 and received grant support from the Jet Li One Foundation.<sup>423</sup> The group was involved in reforestation projects, mobilizing local villagers to report illegal poaching, and also published a small magazine.<sup>424</sup> Regarding the reforestation projects, Yongfeng reported that “[t]he villagers were so excited they couldn’t sleep, and they sang and danced as they went deep into the mountains to plant trees.”<sup>425</sup>

However, after accusing local officials of poaching protected species (along with his brother Chime) Rinchen was jailed on August 7, 2009 and reported being brutally mistreated in detention. According to Rinchen’s daughter, who was detained for ten days in 2009 when she went to Beijing to appeal for her father, the family members have not been allowed to meet him since his detention.

During the trial, Mr. Samdrup’s family members were allowed inside the courtroom but were not permitted to meet with him. Rinchen’s daughter stated that her father looked very weak during the proceedings,<sup>426</sup> and his lawyer, Xia Jun, said he had not been able to meet with Samdrup since his first court appearance in January.

## **SPOTLIGHT:**

### **The CCP’s Tight Control Over Civil Society**

Despite the increase in the number of civil society groups engaging socio-economic issues in the PRC, Chinese authorities exert systematic control over non-governmental organizations (“NGOs”) as a means of reining in dissent in “politically sensitive” areas. The Chinese Government requires all NGOs in China to register with and be approved by the Ministry of Civil Affairs (“MCA”), a process that first entails securing a sponsor organization, generally a governmental department or government affiliated organization. Organizations are also subject to an annual review by their sponsoring office as well as the MCA.<sup>427</sup> The inherent difficulties associated with securing governmental sponsorship force many NGOs in China to forgo the process, leaving them vulnerable to being arbitrarily targeted for closure.

Despite clear obligations to respect the freedom of assembly under both international and domestic law,<sup>428</sup> there are numerous recent cases of civil society groups, such as those defending human rights, being harassed and shut down over their “politically sensitive” activities.<sup>429</sup> According to Human Rights Watch, “[t]he government’s insistence on registration and operational requirements that few organizations can meet leaves NGOs in a chronically vulnerable position.”<sup>430</sup>

#### **IV. Three Cousins Arbitrarily Detained: Sonam Choephel, Rinchen Dorje, and Tashi Topgyal**

Three cousins of Karma, Chime, and Rinchen have also been arbitrarily targeted by the Chinese security apparatus.<sup>431</sup> After organizing a group to petition in Beijing on Rinchen Samdrup’s behalf, **Sonam Choephel** was sentenced to one and a half years of re-education through labor. Another cousin, **Rinchen Dorjee**, a monk who had served as Karma’s interpreter, was arrested in March while meditating in a cave as part of his hermit vows.<sup>432</sup> His whereabouts remain unknown.

On July 7, 2010, the UK Times reported that the sixth member of the Samdrup family was arbitrarily detained while in Lhasa. **Tashi Topgyal**, a teacher in his early thirties, was seized by a dozen Chinese security personnel from a home on July 5, 2010.<sup>433</sup> Mr. Topgyal had reportedly traveled to Lhasa seeking to hire a lawyer who could help discover the whereabouts of Rinchen Dorjee, who had disappeared after his March 2010 arrest. According to the Times, Topgyal had traced Rinchen Dorjee to a hospital in Xinjiang, where he had been treated for burns. Chinese Police explained that the burns were the result of electric prods used on him during an escape attempt.<sup>434</sup>

#### **SPOTLIGHT: Petitioner Abuse**

The official attacks on the cousins and extended family of the Karma Samdrup illustrate the systemic problem of abuse of “petitioners” in the PRC. The “letters and visits” system provides a legal avenue outside the judicial system for citizens to present their grievances to authorities, but many citizens face various forms of official retribution, including harassment, violence, or detention in illegal “black jails,” reeducation through labor centers, or psychiatric institutions.<sup>435</sup> Petitioners who make it to Beijing are often forcibly returned to their hometowns and face violence at the hands of local authorities or are sent to re-education through labor camps because of their petitioning activities.<sup>436</sup>

#### **IV. Worrisome Significance of the Convictions**

The cases brought against Rinchen Samdrup, Chime Namgyal, and Karma Samdrup were described by Human Rights Watch as “test cases” for the Chinese Government because these men “embody the characteristics the government says it wants in modern Tibetans – economically successful, lending support to only approved cultural and environmental pursuits, and apolitical – yet they, too, are being treated as criminals.”<sup>437</sup> The cases raise a number of concerns regarding the increasing vulnerability of Tibetan cultural figures to politically motivated, arbitrary prosecutions.

There is no escape from the conclusion that the sudden revival of twelve year-old grave-robbing allegations against Karma Samdrup was a flagrant act of reprisal. Although Karma’s prominence may have created hostility among notoriously territorial local Party leaders,<sup>438</sup> his prosecution, only months after the publication in the PRC of a book lauding his life, suggests the involvement of higher levels of the Chinese leadership.<sup>439</sup> He was detained in Sichuan and immediately taken to Xinjiang to face the freshly resurfaced charges. Chinese authorities must also have expected significant international attention on the case due to Karma Samdrup’s prominence, and prior warm relations with the Party.

The prosecutions of Karma, Chime, and Rinchen are likely intended to send a strong message of intimidation to the Tibetan civil society that has been working to improve social and environmental conditions in the area. To many of them, Karma was regarded as a role model. His life reflected the possibility of working within, rather than against, the Chinese system while maintaining a strong identity rooted in Tibetan culture. The 15 year sentence imposed on Samdrup will likely undercut any feelings of security or hope among Tibetans regarding living within the Chinese system.

Robbie Barnett, director of the modern Tibetan studies program at Columbia University, stated about Karma’s case “[t]his conviction is going to set back China’s policies in Tibetan areas and further depress the hope and confidence people had in the Chinese government.” Nicholas Bequelin, a Human Rights Watch researcher called the conviction “not only a huge blow for the Chinese legal system but for Tibetan-Chinese relations.”<sup>440</sup> According to Woesser, “people are very angry, but they are also afraid. The feeling is that if someone as influential as Karma can be taken down, none of us is safe.”<sup>441</sup>

## **CHAPTER XIII**

### **CONCLUSION & RECOMMENDATIONS**

While all State governments must weigh national security concerns with its citizens' inter-related rights to freedom of expression and information, the situation in Tibet is anything but balanced. While the Communist Party leadership of the People's Republic of China holds itself out to the world as being increasingly committed to protecting the fundamental civil and political rights of its citizens, the opposite is true. Despite its policy commitments evinced in the Human Rights Action Plan 2009-10 and ostensible efforts at "reform," the CCP is tightening its chokehold on freedom of expression and information in Tibet by targeting Tibetan intellectuals, writers, and cultural figures. In stark contrast to the Party leadership's claims that "no individual or press has been penalized for voicing their opinions or views,"<sup>442</sup> CCP officials are escalating their attack on fundamental human rights in Tibet.

As detailed in this report, these arbitrary attacks on Tibetans are carried out by exploiting vague, overbroad "state security" legal tools. As such, stiff prison sentences for sending a text message or writing an article are characterized as in accordance with the law. Politically motivated against Tibetans who express discontent with Chinese rule, the judiciary of the PRC directly serves Party objectives by amplifying the impact of the legal tools wielded to stifle the freedom of expression in Tibet under the banner of maintaining "social stability."

Indeed, PRC officials appear to be using the 2008 Uprising as a justification to escalate a campaign to stifle dissent and suppress Tibetan nationalism by striking fear and intimidation into the hearts of a new generation of courageous thinkers and cultural figures who are increasingly willing to express their opinions. By utterly failing to differentiate between peacefully expressed opinion and activity that poses an actual threat to state security, the CCP continues to carry out abusive political prosecutions to silence critics and maintain its authoritarian rule over Tibet. Those accused of "endangering state security" crimes are systematically denied a fair trial. These troublesome facts reveal that a massive gap still exists between the practices in the PRC and international norms and standards in the civil and political rights arena. The international community must not accept at face value cosmetic improvements in the PRC's laws and CCP leaders' professed commitment to improving its human rights record. Until dissenting voices in Tibet are not persecuted for exercising their fundamental



human rights, the world must recognize the PRC's stated policy commitments regarding the freedom of expression and access to information as the empty promises they are.

## **Recommendations:**

### **To the Government of the People's Republic of China:**

- the categories of information involved, thereby reducing its potential for arbitrary, abusive, political prosecutions  
Cease conflating peacefully expressed dissenting opinions and expressions of Tibetan nationalism with activity intended to incite subversion of state power. Where prosecutions are carried out and guilty verdicts rendered over expressed opinion or shared information, explain in detail how the expression at issues poses a threat to a legitimate national security interest.

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

Adopt a resolution urging the U.N. General Assembly to endorse the *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*

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

### **To State Governments:**

Explicitly engage U.N. Human Rights mechanisms on the PRC's violations of Tibetans' fundamental civil and political rights under the guise of protecting national security.

- Make specific inquiries about the cases of individuals highlighted in this report, and demand accountability from CCP officials.
- Encourage the PRC to tolerate freedom of opinion and expression for the genuine growth of human development in China.

**PROFILES OF TIBETAN INTELLECTUALS,  
WRITERS & CULTURAL FIGURES  
TARGETED SINCE THE SPRING 2008  
UPRISING<sup>443</sup>**

1) Tashi Rabten (Pen name; Te'urang)



**Occupation:** Student, Writer, Editor  
**Status:** Detained, whereabouts unknown

Tashi Rabten, a student, writer, editor, and “brave young thinker” at the Northwest Minorities University in Lanzhou in Gansu was detained on April 6, 2010 and is believed to be held in Chengdu, Sichuan Province. Rabten was detained along with Druklo (pen-name Shokjang), another student-writer, when approximately 16 Chinese Public Security Bureau personnel raided their university hostel and ransacked their rooms.

Originally from Dzoerge County in Ngaba (Kham), Rabten was on track to graduate from university this year. He shared his views on the 2008 Uprising in a book called *Written in Blood*. Rabten also served as the editor of *Shar Dugri* (Eastern Snow Mountain), a literary magazine that was banned over content related to the 2008 Tibetan protests. At the time of this writing, neither the criminal charges against him nor his whereabouts can be confirmed.

For more details on Tashi Rabten, see the Case Study in Chapter VII of this report.

2) Druklo (pen name Shokjang)



**Occupation:** Student, writer  
**Status:** Detained and released in poor physical and mental condition

A student at the Northwest Minorities University in Lanzhou in Gansu, Druklo was arrested on April 6, 2010 along with Tashi Rabten. Druklo was in very poor physical and mental condition after being released from custody on May 8. He was

reportedly subject to sleep deprivation and long sessions of interrogation. The authorities reportedly claimed Druklo had “connections with the Tibetan Youth Congress” as well as with Shingsa Rinpoche, a politically active Tibetan exile—charges which Druklo denied.

Druklo was reportedly tortured while detained and was released in a condition that robbed him of his usual intellectual capacity to write. “From what we have heard it seems he has been tortured so much that a severe damage has been caused to him physically or mentally,” said Tenzin Choeying of the Students for Free Tibet, India.

### 3) Kunchok Tsephel



**Occupation:** Website Founder, Official in PRC Environmental Department

**Status:** Sentenced to 15 years in prison

On February 26, 2009, Chinese security officials in Machu County arrested Kunchok Tsephel Gopeytsang, an official in a Chinese government environmental department and founder of *Chodme* (“Butter Lamp,” [www.tibetcm.com](http://www.tibetcm.com)), an influential website created to preserve and promote Tibetan culture. A resident of Nyul-ra Township, Machu County, Gannan TAP, Gansu Province, Kunchok Tsephel was thirty-nine at the time of his arrest. He was seized from his home in the early hours of the morning after authorities ransacked his home and confiscated his computer, camera and mobile phone.

On November 12, 2009, the Intermediate People’s Court of Kanlho sentenced Tsephel to 15 years imprisonment for “distributing state secrets” after a closed-door trial. The charges are widely believed to stem from content on his website and for sharing information about the security crackdown surrounding the 2008 Uprising. Tsephel was detained for two months by PSB officials in Gansu Province in 1995 on questionable grounds regarding suspected involvement in political activities.

For more details on Kunchok Tsephel, see the Case Study in Chapter VI of this report.

#### 4) Kunga Tsayang (Pen name: Gang Nyi)



**Occupation:** Monk, writer, essayist, blogger, amateur photographer

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

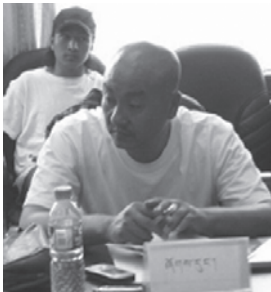
Kunga Tsayang is a monk from Amdo's Labrang Tashikyil Monastery. A passionate writer, essayist, blogger, chronicler and amateur photographer who wrote under a pen name "*Sun of Snowland*," Tsayang was arrested by the Chinese PSB on March 17, 2009.

Born in Golok Chikdril, Tsayang was twenty years old at the time of his arrest. According to multiple sources, he was seized from his living quarters during a midnight raid by PSB personnel on Labrang Monastery, Sangchu County, Gannan TAP, Gansu Province. On November 12, 2009, in a closed door trial, Kunga Tsayang was sentenced to 5 years in prison by the Kanlho Intermediate People's Court for "disclosing state secrets."

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

For more details on Kunga Tsayang, see the Case Study in Chapter VI of this report.

#### 5) Tragyal (Penname: Shogdung)



**Occupation:** Writer and book shop owner

**Status:** Detained, trial delayed.

A forty-five year old leading Tibetan intellectual, philosopher, writer and editor at the Qinghai Nationalities Publishing House in Xining, Tragyal was detained by Chinese security personnel on April 23, 2010. His family was informed a month later that he is being held in Xining Detention Center No. 1 on charges of "instigating separatism." Tragyal's family-run bookshop had been ordered closed by authorities ten day before his arrest.

Tragyal, had long held views that had been closely associated with the Chinese communist Party. However, his new book *Nam-Sa Go-Jhe* (“*The Line Between Sky and Earth*”), which was released following the 2008 Uprising, was described by a western scholar as “one of the most open and daring critiques of the Chinese Communist Party policies in Tibet over the last 50 years.” Tragyal’s arrest occurred within days of him signing an open letter criticizing the Chinese authorities’ handling of the emergency response to the 7.1 magnitude earthquake that struck the Tibetan area of Kyegundu on April 14, 2010. In veiled language, the letter urged Tibetans to donate quake relief through “someone one can trust” to avoid “corruption.” Tragyal was also detained briefly in April 2008.

For more details on Tragyal, see the Case Study in Chapter VII of this report.

## 6) Kirti Kyab



**Occupation:** Teacher, Editor, Writer

**Status:** Detained, whereabouts unknown

Kirti Kyab was detained in March 2010 along with four other teachers from the Nationalities Teachers Training College in Barkham County (Ngaba TAP). The teachers were seized from the school campus, where Tibetans had on March 10 and 14th worn chupa (the Tibetan national dress) and lit butter lamps in an expression of solidarity and mourning for the victims of the 2008 Uprising. Kirti Kyab was also accused of being the editor of *Shar Dhungri* (“Eastern Snow Mountain”) which had been critical of the Chinese government policies, and of providing financial support to students to publish a literary magazine called “Thunderbolt.”

## 7) Khang Kunchok

**Occupation:** Student, Magazine founder, editor

**Status:** Sentenced to two years on prison, release unconfirmed.

Khang Kunchok, founder of the magazine *Nanjia* and former editor of the Kirti Monastery’s *Kangsel Metok*, was detained by security forces on March 20, 2008 while protesting the indiscriminant killing of Tibetans by State authorities on March 16<sup>th</sup>. Kunchok was studying at the Aba Nationalities Teacher’s College in Barkham, the prefectural capital, where he was likely

detained. A court sentenced Kunchok to two years in prison, but no information is available regarding the criminal charge against him or his place of imprisonment.

#### 8) Sungrab

**Occupation:** Student, writer

**Status:** Detained

Sungrab, a computer student from Machu County, Kanhlo TAP was detained on April 24, 2010. He had recently compiled an English-Tibetan dictionary. No information regarding charges, if any, place of detention, or well-being is available.

#### 9) Trintse

**Occupation:** Monk, blogger, writer, calligrapher

**Status:** Sentenced to nine years in prison.

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

#### 10) Gedun Tsering

**Occupation:** Monk, writer

**Status:** At risk

A nineteen year-old monk from Mewa Serthi Village, Ringtha Monastery in Zungchu County in Ngaba, Gedun Tsering published a book entitled *Tears* on January 12, 2010. He reportedly has not yet been detained but his family has been questioned by security personnel and Gedun Tsering likely in very serious danger. No further details are available.

## 11) Dhondup Wangchen:



**Occupation:** Researcher, film-maker

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

Dhondup Wangchen, 35, was detained on March 26, 2008 in Kawasumdo County, Tsolho TAP, Qinghai Province shortly after completing interviews for *Leaving Fear Behind*, a documentary film. The film contained interviews with over 100 Tibetans, many of whom spoke openly on camera regarding their views of the Dalai Lama, the Beijing Olympics, as well as life under Chinese rule. Dhondup Wangchen was formally arrested in July 2008 under suspicion of “inciting separatism and stealing, secretly gathering, purchasing, and illegally providing intelligence for an organization, institution, or personnel outside the country.” Jigme Gyatso,<sup>444</sup> a monk who assisted Wangchen with the making of the film was detained on March 23, 2008. The footage was smuggled out of Tibet prior to their arrest.

Dhondup is suffering from Hepatitis B—a condition he contracted following his arrest and is reportedly being denied adequate medical treatment. He was reportedly brutally mistreated by Chinese authorities in an attempt to extract a confession from him.

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

The six year sentence against Wangchen was announced on December 28, 2009. He was likely tried in Xining. In May 2010 the New York Times reported<sup>445</sup> that he was transferred to a labor camp in Qinghai Province where conditions are thought to be very harsh. Wangchen’s family has been unable to obtain information about his condition.



## 12) Jigme Gyatso



**Occupation:** Monk, assistant to film-maker Wangchen

**Status:** Detained and released

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

## 13) Norzin Wangmo



**Occupation:** CCP cadre

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

State security officials detained Communist Party cadre Norzin Wangmo, 35, the mother of two children, in April 2008. Her alleged “crime” was sending emails and making phone calls abroad about the situation in Tibet. Authorities reportedly brutally tortured her after detaining her.

Norzin Wangmo lived in Heishui (Trochu) County, Aba TAP, Sichuan Province, where she worked for the Heishui Judicial Bureau. Wangmo was also a writer. While in detention, an article she wrote entitled “Games of Politics” was published in the magazine “Popular Arts.” A court sentenced her to five years’ imprisonment on November 3, 2008. Details are not available about the criminal charges against Norzin Wangmo, or her place of imprisonment.

See Norzin Wangmo’s profile at <http://www.freetibetanheroes.org/home.php/profiles/norzin-wangmo> (last visited Aug. 5, 2010).

#### 14) Wangdue



**Occupation:** AIDS Program NGO worker

**Status:** Sentenced to life in prison

Wangdue, 41, was born in Taktse County, Lhasa Municipality, in the TAR and was most recently employed as a HIV/AIDS Prevention Program Officer with the Burnet Institute—a prominent medical research and public health NGO based in Melbourne, Australia.

Wangdue was detained from his home by the Lhasa PSB on March 14, 2008, and his whereabouts remained unknown until October 27, 2008 when the Lhasa Intermediate People's Court announced his sentence of life imprisonment. According to the Lhasa Evening News, Wangdue violated articles 110 and 111 of the Criminal Law of the PRC, constituting the crime of espionage, endangering state security and providing intelligence illegally to organizations outside of China. His "criminal" acts were passing information regarding China's national security outside Tibet, reproducing CDs branded as harmful to China's state security, and posting handbills that were aimed at "splitting the nation."

He had previously been detained on March 8, 1989 and sentenced to three years of "re-education through labor" ("RTL") following his alleged involvement in a period of unrest in Lhasa. He later served an additional five years after he signed a petition which stated the 1951 17-Point Agreement was forced on an independent Tibet.

Three other were sentenced for allegedly collaborating with Wangdue: Migmar Dhondup received a fourteen years, Phuntsog Dorjee a nine years, and Tsewang Dorjee eight years sentence for allegedly collaborating with Wangdue to send information outside Tibet.

For more details on Wangdue, see the Case Study in Chapter VIII of this report.

### 15) Migmar Dhundup



**Occupation:** Community Development NGO Worker

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

Migmar Dhundup, in his early thirties, worked for the Kunde Foundation, an NGO working with to help marginalized and impoverished communities. He is from Tringi County in Shigatse Prefecture, TAR and is known as a passionate conservationist.

On October 27, 2008 he was sentenced to 14 years in prison for “espionage” for collecting “intelligence concerning the security and interests of the state and provid[ing] it to the Dalai clique...prior to and following the ‘March 14’ incident.”

Migmar was convicted under Article 110 of the criminal law for conspiring with Wandgue<sup>446</sup> in “an underground intelligence network.” His crime was the alleged distribution of CD-ROMs and leaflets prepared by Wangdue that incited “splitting the nation” and a “Tibetan people’s uprising.” Dhundup’s previous work as a tour guide, including on the exploration of hundreds of ancient sites in upper Tibet with an American archeologist, was said to give him great pride in his cultural identity.

### 16) Tashi Gyatso



**Occupation:** Monk

**Status:** Detained/disappeared

On April 8, 2010 public security officials detained Tashi Gyatso, a monk from Sarma Monastery, located in Machu County, Gannan (Kanlho) TAP, Gansu Province. PSB officials had warned Sarma monks the previous day, April 7, they had knowledge of “splittist” activities being carried out at the monastery. Police suspected Tashi Gyatso of “accessing and sharing banned Tibetan content on the Internet, speaking by phone with foreign [Tibetan] contacts, and connecting a television in his room to watch foreign broadcasts.” According to Phayul, authorities allegedly found equipment to receive Voice of America, a banned Tibetan-language radio broadcast, in Tashi’s room.

17) Yeshe Choedron



**Occupation:** Doctor (retired)  
**Status:** Sentenced to 15 years in prison

Yeshe Choedron, a retired medical doctor, may have been detained as early as March 2008 and may be imprisoned in Qushui Prison. The Lhasa Evening News reported that the Lhasa People’s Intermediate Court sentenced Yeshe Choedron to 15 years’ imprisonment for allegedly “providing intelligence and information harmful to the security and interests of the state” to “the Dalai clique’s security department.” The case was related to the unrest in Lhasa on March 14, 2008. The court convicted Choedron of “espionage” (Criminal Law, Art. 110), finding that she accepted a task and “financial aid” from the Tibetan Government in Exile. No information is available about the evidence against her, her access to legal defense, or her place of imprisonment.

18) Tashi Dhondup



**Occupation:** Singer  
**Status:** Sentenced to 15 months Re-education Through labor

Born on April, 1979, Tashi Dhondup was as one of the most popular singers in eastern Tibet. Tashi Dhondup, from Amdo, was detained by police on December 3, 2009 in Xining, the capital of Qinghai province. He had released a CD entitled *Torture Without Trace* in October 2009 containing 13 songs (promptly banned) expressing nostalgia for the exiled Tibetan leader His Holiness the Dalai Lama and sadness over the plight of the Tibetan people. Authorities accused Dhondup of “inciting splittism” by performing “reactionary songs.” Tashi was reportedly severely beaten while in detention and is currently serving 15 months of “re-education through labor. Dhondup was previously detained for several days in Sep



Torture Without Trace CD Cover

tember 2008 over “counter-revolutionary content” in a song entitled “The

Year of 1959,” the year the Dalai Lama fled to India from Tibet. For more details on Tashi Dhundup, see the Case Study in Chapter IX. Music videos and translations of his lyrics are available at <http://www.highpeakspureearth.com/2010/03/torture-without-trace-five-songs-by.html>.

### 19) Palchen Kyab



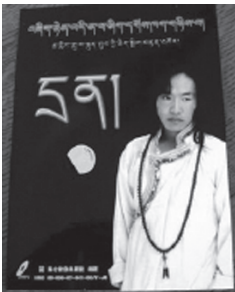
**Occupation:** School Principal, Singer, founder of literacy project

**Status:** Detained, then released

Palchen Kyab, in his early thirties, founded the Machen Cultural Aid Group which conducts child literacy programs in nomadic areas. Kyab also served as principal of the Mayul Dargye private school and provided assistance to local singers for making CDs and DVDs.

In 2007, Kyab recorded a DVD with Lhundrup, which contained the song *Skar maI 'og gi skyo sgug* (“Sadness/suffering Under the Stars”) which was branded “subversive” by CCP authorities. Sources reported that his arrest stemmed from political content in his songs, as well as his work preserving Tibetan language and culture. He was also accused of associating with an individual who printed Snow Lion flags during the 2008 Uprising in Golog. Kyab, who is from Golog TAP, Qinghai Province (Amdo), was arrested around March 31, 2008 along with Dabe (comedian) and Drolmakyi (folk singer, activist, and music company founder). The three were taken to Xining for detention. The CECC reported that Kyab was released in July 2009, after 16 months in detention. His well-being and whereabouts are not known.

### 20) Lhundrup



**Occupation:** Musician

**Status:** Detained/released in 2008

Lhundrup, a popular musician and singer from Golog, TAP, Qinghai province, produced a DVD with Palchen Kyab (Profile #19) in 2007 that obliquely referred to the Dalai Lama’s flight from Tibet to India (“The sun and the moon have departed through

the mountain pass. The person who gave hope is gone.”) The lyrics were deemed “political” by Chinese authorities.

## 21) Drolmakyi



**Occupation:** Folk Singer, activist, night club owner, music group founder  
**Status:** Detained and released

Drolmakyi, a 31-year-old single mother, singer, and member of the local government council was arrested around March 31, 2008 while she was hanging laundry on her balcony in Dawu, Golog Prefecture. Drolmakyi had recently opened a night club in Dawu, where she and other local singers performed *dunglen*, a relatively new style of Tibetan folk music known to express to nostalgia for the old Tibetan ways. The club was also used to train illiterate Tibetan women to sing in order to gain financial independence.<sup>446</sup> Drolmakyi was detained without charges for nearly two months before being released in May 2008. Her release was reportedly secured by the payment of large fees by family and friends.

## 22) Dabe (Dawa Thar)



**Occupation:** Comedian  
**Status:** Detained and released in 2008

Dabe is a comedian from Golop TAP, Qinghai Province (Amdo) famous for his shoulder-length hair and beard. He was detained in late March 2008 and held in detention for one month before being released in late April 2008. Dabe was reportedly released with a shaved head. Dabe escaped to India and is currently living in the Dharamsala area. An interview with Dabe, conducted after his arrival in India, was published in *Spyi tshogs me long* (“Mirror of Society”) in January 2010.



23) **Tenzin (Danzeng)**



**Occupation:** Musician, shop owner

**Status:** detained/released

Public security officials in Lhasa city detained Tenzin, a singer who hailed from the Tibetan region of Amdo. Police accused Tenzin, who owns a Lhasa music shop, of downloading “illegal music” from the Internet. The “illegal” aspect of the music was apparently related to political content, not piracy. A police crackdown on “reactionary” music was underway at the time. Information is not available about where Tenzin was detained, the length of his detention, or any charges.

24) **Paljor Norbu**



**Occupation:** Master printer

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

Master printer Paljor Norbu was arrested on October 31, 2008. In November he was sentenced in a secret trial to seven years in prison. He was 81 years old at the time he was seized. Norbu began printing at the age of 11 in an independent Tibet. He was 21 years old when Chinese tanks first invaded eastern Tibet. Following the 1959 Tibetan National Uprising, he was imprisoned because he had been employed as a printer by the Tibetan government. Norbu ran a family printing business in the Barkhor in Lhasa that had published Buddhist texts for monasteries for generations. Since his arrest in October 2008, his print shop has been closed and all of his employees, which numbered in the dozens, have been discharged.

The PSB confiscated wooden blocks used in the printing process, suggesting that his detention was related to providing publications, and not for participating in demonstrations. One source indicates that he was arrested for printing “prohibited materials” including the Tibetan flag. Although the details of the government’s case against him are unavailable, the seven year sentence is consistent with a charge of “inciting separatism.”

See Norbu Paljor’s profile at <http://www.freetibetanheroes.org/home.php/profiles/paljor-norbu> (last visited Aug. 5, 2010).



## 25) Choekyong Tseten

**Occupation:** School Administrator

**Status:** Fired and detained

Choekyong Tseten disappeared on March 17, 2010 after he was fired from his position as Assistant Headmaster of the Machu Tibetan Middle School in Machu County, Kanlho TAP, Gansu Province. He was secretly whisked away by the PSB and held at an undisclosed location.

The official reprisal against Choekyong Tseten was related to a series of peaceful protests staged by students in March and April 2010. Sources in the area relayed that Tseten was accused of “failing to supervise well.” On 3 April, students staged a protest over the sacking of Choekyong Tseten, as well as Tseten’s fellow school Administrators, and Kyabchen Dedrol and Do Re, who were also detained and fired (see profile #’s 26 and 27). On April 22, 2010, Machu Middle School students staged a hunger strike demanding that all three be released and reinstated.

For more details on the events of March/April 2010 at Machu Middle School, see the Case Study in Chapter X.

## 26) Kyabchen Dedrol



**Occupation:** Headmaster at Machu Tibetan Middle School, writer

**Status:** Fired from job

Dedrol was born in Machu in 1977 and is regarded as among the most promising Tibetan writers of his generation. He is also an active blogger. He was serving as the Headmaster at Machu Tibetan Middle School—a position he lost as a result of peaceful demonstrations staged by school students in March and April 2010. No further information is available.



## 27) Do Re

**Occupation:** Teacher and Assistant headmaster, Machu Tibetan Middle School

**Status:** Fired from his job

Do Re was dismissed from his position at Machu Middle School following the peaceful demonstra-

tions by students staged there in March 2010. Infuriated by these actions by Chinese authorities, students staged further protests, including a hunger strike, demanding his release and reinstatement. No further information is available.

### 28) Ngulra Tobden



**Occupation:** Tibetan language teacher

**Status:** Detained

Chinese PSB official authorities in Machu County arrested 40-year-old Tibetan language teacher, Topden, of Machu Tibetan Nationality Primary School on March 28, 2010 for unknown reasons. Topden was an ordained monk and joined Nyulra Ngenthok Monastery after completing his primary schooling. In 2000, he escaped into exile in India to pursue his studies after refusing to comply with the PRC's "Patriotic re-education" campaign at the monastery. He escaped into India and continued his studies at a Tibetan school in Dharamsala until his return to Tibet in 2006. No further information is available.

### 29) Tsering Dhondrup

**Occupation:** Student at Machu Tibetan High School

**Status:** Detained, status unknown

Tsering Dhondrup, 17, was detained on March 28, 2010 at the same time as his teacher, Tobden. No further information is available. In March and early April 2010, students of the middle school, led by its seniors, staged a series of peaceful protests against the local government (See case study in Chapter X).

### 30) Thubten Nyima Gyalpo

**Occupation:** Student at Machu Tibetan High School

**Status:** Detained, status unknown

Thubten Nyima Gyalpo, 17, was detained March 28, 2010 at the same time as his teacher, Tobden. No further information is available. In March and early April 2010, students of the middle school, led by its seniors, staged a series of peaceful protests against the local government. (See case study in Chapter X).

31) **Sonam**

**Occupation:** Teacher at Nationalities Teachers Training College in Barkham  
**Status:** Detained

Sonam, a teacher at Nationalities Teachers Training College in Barkham, from Doege County in Ngaba TAP, was reportedly detained by PSB officials on March 27, 2010 along with four other teachers from the vocational college. Authorities detained the teachers after students in area schools wore *chupa* (traditional Tibetan clothing) and lit butter lamps on March 10 and 14, 2010, to signify mourning for Tibetans killed, injured, or detained during the 2008 Uprising.

Sonam was a monk at Kirti Monastery in Dharamsala before returning to Tibet and studying at Northwest Nationalities University in Lanzhou, Gansu Province. He was being held at Barkham County Detention Center. No further information is available.

32) **Dolha**

**Occupation:** Teacher at Nationalities Teachers Training College in Barkham  
**Status:** Detained

Dolha, a teacher at Nationalities Teachers Training College in Barkham County, TAR, Sichuan Province was detained by PSB officials on March 27, 2010 after area students demonstrated in observance of the March 10 and 14<sup>th</sup> anniversaries of the Tibet Uprising. No further information is available.

33) **Unknown**

**Occupation:** Headmaster of Tibetan Middle School in Tsoe  
**Status:** Fired from his job

The Headmaster of the Tibetan Middle School in Tsoe was dismissed from his post after students staged peaceful protests. According to several sources, Tibetan students from the Kanlho Middle School and Tsoe City Middle School demonstrated peacefully in the streets on March 16, 2010. All of the students had been prevented from leaving their schools since March 10 due to increased security measures around of the anniversaries of the 1959 and 2008 Uprisings. Around 30 or 40 students took part in the protest, which was quickly broken up after the students were surrounded by armed

police. More than 20 students were detained, and as of May 2010 were believed to be still in custody for questioning and “education.” No further information is available.

#### 34) Agya

**Occupation:** Head of Nationalities Teachers Training College in Barkham  
**Status:** Fired from her job, and re-assigned Agya was reportedly removed from her post as Head of the Nationalities Teachers Training College in Barkham as a consequence for peaceful student protests in the area in March 2010.

#### 35) Rangjung



**Occupation:** Writer, TV journalist

**Status:** Detained, released, at risk

Rangjung, 26, the father of two children, was taken away by police on September 11, 2008 just before midnight by officials from the Kardze TAP, in which Serthar County is located. He was working as a news reporter and a newscaster for the Serthar Television station. At the time of his detention, security personnel also impounded two laptops from his room. Authorities claimed that the computers contained “political” documents.

Rangjung was born to a nomadic family in Palshul Rogsa in Serthar County, Kardze TAP. He received his elementary education at Nyitoe Primary School in Serthar County. After his secondary education, he completed a teacher-training course at Dardo Teacher Training College in Dartsedo in Sichuan Province. Rangjung taught for a brief period at a school in Nyitoe Township before joining the Serthar Television station.

In addition to his work at the broadcasting service, Rangjung had composed various articles and had already published two books, *Dhung shen kharpo* (“*Pure Loyalty*”) and *Himalaya Reboed* (“*Himalaya Call for Hope*”), that deal with Tibetan history, culture, literature and arts. He had also composed and edited a Tibetan song on a compact disc entitled *Tsenpoe Boe*. He was reportedly released without charges after a month in detention. Rangjung’s whereabouts remain unknown.

### 36) Goyon

**Occupation:** Writer

**Status:** Detained and released, at risk

At about 11:30PM on June 5, 2010 Goyon was detained with two other writers (Thuram Sertha Sherab and Sertha Sherab, profile #s 37 & 38)) while dining in a Tibetan area of Chengdu City. A group of plain clothes police stormed the restaurant, threatened the three writers, and sprayed them with a gas that rendered them temporarily unconscious. Authorities also confiscated the writers' wallets, mobile phones, cameras, and other valuables.

Goyon, from Kham, is a member of the Tibetan Pen Association and editor of the annual magazine Tibet and *Purgyal kyi Manshey* ("Soul of Ancient Kings"). He was brought to a detention center where he was reportedly beaten and tortured with electrical equipment while being interrogated by Chinese police in an attempt to extract a confession regarding political activities. Finding no evidence of criminal activity, police released Goyon the next morning, but warned that he was subject to re-arrest at any time.

### 37) Thupten Gedun Sangpo

**Occupation:** Writer

**Status:** Detained and released, at risk

Thupten Gedun Sangpo, a writer from Kham and member of the Tibetan Pen Association and editor of the annual magazine Tibet and *Purgyal kyi Manshey* ("Soul of Ancient Kings"), was detained on June 5, 2010 while dining with Goyon (see profile #36) in Chengdu City. Sangpo was reportedly released the next morning after enduring severe beatings and torture, and was warned of being subject to re-arrest at any time.

### 38) Sertha Sherab

**Occupation:** Freelance Writer

**Status:** Detained and released, at risk

Sertha Sherab, a freelance writer, was detained, beaten, and threatened along with Goyon and Thupten Gedun Sangpo (see profile #s 36 & 37) on June 5, 2010 while dining in Chengdu City.

### 39) Tashi Dorjee

**Occupation:** Director, Regional Tibetan Sports Association

**Status:** Detained

Tashi Dorjee, a forty-six year-old educated Tibetan was born in Pelyul County. He was detained in Pelyul County, Kardze TAP, Sichuan Province in 2009. Tashi is a former civil servant for the PRC government. In 200 he was appointed to the position of Director of the Regional Tibetan Sports Association (“RTSA”), an organization established by local Tibetans to promote sporting competitions among villagers. He was also known to help impoverished villagers in his area, and had sponsored the Dokhor Sakya Monastery through profits of a shop which he owned. Officials at the Chengdu Detention Center refused to allow Tsering Norbu, Tashi’s brother, to visit him in prison. When Tsering asked the reason for his brother’s arrest authorities, authorities reportedly accused him of involvement in political activities.

Locals suspect that Tashi’s arrest stems from the flag of the RTSA, the organization’s symbol, which contains two snow lions on a red background. RTSA was closed down after Tashi’s arrest. He is reportedly still being held in detention in Chendgu. No further information is available.

### 40) Karma Samdrup



**Occupation:** Businessman, Philanthropist, Conservationist

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

Karma Samdrup (42) is a successful businessman, philanthropist, and conservationist from the Chamdo Prefecture in the TAR who dealt in Tibetan antiquities. He was detained on January 3, 2010 on trumped up charge of grave-robbing—charges that had been dismissed in 1998. It is widely believed that the prosecution was in direct reprisal for his defense of his two brothers, Chime Namgyal (see profile #41) and Rinchen Samdrup (see profile #42), both environmentalists who were imprisoned in August 2009 after accusing a police official in Chamdo Prefecture of poaching of endangered species. Karma was once lauded by the CCP as an ideal

Tibetan, having been recognized as Philanthropist of the Year in 2006 on a state-run TV broadcast. Karma's success as a businessman, philanthropist, and conservationist led him to be regarded as a somewhat of a role model; an example of the possibility of thriving under the Chinese system while maintaining strong Tibetan cultural identity.

On 24 June 2010, after six months of incarceration, during which Karma endured severe beatings and torture, a court in Xinjiang sentenced him to 15 years imprisonment. The trial was criticized as having numerous irregularities, including denial of an adequate legal defense. His appeal was rejected on July 7, 2010.

For more details about Karma Samdrup, see Chapter XII (I) of this report.

#### 41) Chime Namgyal



**Occupation:** Conservationist

**Status:** Sentenced to 21 months Re-education through Labor

Thirty-eight year old environmentalist Chime Namgyal, younger brother of Karma Samdrup, was detained on August 7, 2009 and subsequently sentenced, without trial or legal defense, to 21 months of “re-education through labor” (RTL) by the Chengdu RTL Committee. His trouble started after the environmental organization he founded with his brother Rinchen Samdrup (see profile #42) accused a local police official of hunting protected species. Prior to his arrest, Mr. Namgyal had been widely regarded as a pillar of his community.

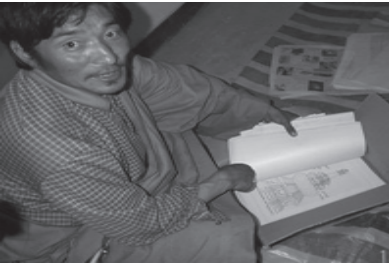
According to the RTL Committee's decision, Namgyal “illegally collected three digital disks of information and video footage about the environment, the natural resources and the religion of Chengdu prefecture ... provided pictures and material for the illegal publication *Forbidden Mountain, Prohibited Hunting* ... privately collected some propaganda material from the Dalai clique ... and organized the local residents into irregular petitioning of the authorities... therefore severely interfering with state power organizations at the local level and effectively harming social stability.” Human Rights Watch analysts stated “the description of the charges suggests that Chime (Jigme) Namgyal was a cause of potential embarrassment to the local authorities rather than a threat to national security.”



Namgyal, who suffers from a physical disability, has been hospitalized since June 11 for serious injuries sustained while in custody.

For more details on Chime Namgyal, see Chapter 12 of this report.

#### 42) **Rinchen Samdrup**



**Occupation:** Conservationist

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

Rinchen Samdrup, who ran an award-winning environmental group, the *Voluntary Environmental Protection Association of Kham Anchung Senggenamzong* with his brother Chime in the TAR near Sichuan Province, was jailed on August 7, 2009. On July 3, 2010, the Chamdo Intermediate People's Court convicted him of "incitement to split the country," and sentenced him to a five year prison term. He was accused was posting an article about the Dalai Lama on his website.

Rinchen Samdrup is a self-taught Tibetan medicine practitioner, computer expert, environmentalist, magazine editor and video filmmaker. Like his brother Karma (see profile # 40), Rinchen had previously won praise from official Chinese media. However, after accusing local officials of poaching protected species Rinchen was forcibly seized from his home, at which time his mother was beaten unconscious. According to Rinchen's daughter, family members have not been allowed to meet him since his detention. The daughter also said her father looked very weak during the trial. Rinchen Samdrup's lawyer, Xia Jun, was not able to meet with Rinchen since his first court appearance in January.

For more details on Chime Namgyal, see Chapter 12 of this report.

#### 43) **Rinchen Dorjee**

**Occupation:** Monk, Karma's cousin and Interpreter

**Status:** Detained

Rinchen Dorjee (40), cousin of Karma Samdrup, is a monk who had served as Karma's interpreter. He was arrested by PSB forces in March 2010 while meditating in a cave as part of his hermit vows. Rinchen Dorjee was traced by family member Tashi Topgyal (see profile #45) to a hospital in Xinjiang,

where Rinchen had been treated for burns. Police claimed the burns were the result of electric prods used on Dorjee during an escape attempt. Rinchen Dorjee's whereabouts and well-being remain unknown.

#### 44) Sonam Choephel

**Occupation:** Farmer, environmentalist

**Status:** Sentenced to 18 months of Re-education through laLbor

Sonam Choephel (60) was detained in March 2010. He is a cousin of Karma Samdrup (profile #40). At the end of 2009, Choephel was sentenced to 18 months of re-education through labor for "being the instigator of a group of villagers appealing to the higher authorities." Sonam had organized a group to petition in Beijing on Rinchen Samdrup's behalf. No further details are available.

#### 45) Tashi Topgyal

**Occupation:** Teacher

**Status:** Detained

On July 7, 2010, the UK Times reported that the sixth member of the Samdrup family was arbitrarily detained in Lhasa. Tashi Topgyal, Karma Samdrup's cousin, a teacher in his early thirties, was seized by a dozen PSB personnel from a home in Lhasa on July 5, 2010. Mr. Topgyal had reportedly traveled to Lhasa seeking to hire a lawyer who could help discover the whereabouts of Rinchen Dorjee (profile #44), who has not been seen or heard from since his March 2010 arrest. In response to Tashi's arrest, Dolkar Tso (Karma Samdrup's wife) stated "I don't know what this threat and terror now proliferating like cancer cells will bring to our family... [Tashi] is the only person from Zirong village with an education. I appeal to Buddha and to the world to help to find him!"

#### 46) Lhamo Kyab



**Occupation:** Teacher

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

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

Lhamo Kyab was sentenced to 15 years in prison in January 2010 for suspected involvement in political activities. Officials from the PRC's intelligence bureau arrested Kyab in the middle of 2008, just days after she joined a primary school in Nagchu's Driru County. Kyab was whisked away with her head covered with a black scarf and taken to her home in Nagchu. Authorities raided her house before taking her to a secret detention centre in Sangyib. Lhamo was kept in detention and interrogated for roughly 18 months before the harsh prison sentence was handed down against her in January 2010. Very little information is available about her trial, suggesting that she faced charges of "endangering state security."

Lhamo Kyab never joined the Chinese Communist Party. Nevertheless, local Tibetans, including government officials, students and the general populace, respect for her person sincere commitment to educating Tibetans about Tibet's culture and traditions.

#### 47) Tsering Dhondup

**Occupation:** Head of the Bureau of Historical Editors of Malho

**Status:** Fired from his job

In October 2009 Tsering Dhondup was fired from his government job as Head of Bureau of Historical Editors of Malho in the Tibetan area of Amdo. ICT reported that Tsering's firing occurred within months of his privately published novel called *Rlung dmar 'ur 'ur* ("The Red Wind Howling").

#### 48) Jamyang Kyi



**Occupation:** Television producer, musician, activist, blogger

**Status:** Detained and released

Jamyang Kyi was born in 1965 in Jador Radza County in Amdo and worked in the Tibetan language section of state-owned Qinghai TV for two decades. She was detained on April 1, 2008 by plainclothes state security officers who ushered her from her office. Security personnel went to Jamyang Kyi's home, searched and confiscated her computer, her mailing list, and contact numbers and took all these away. She was accused of sending text messages to 17 of her friends, including Woesser, the Beijing-based Tibetan blogger. The Chinese secret services found that Jamyang Kyi had sent details of the unrest and the killing of Tibetans in Ngaba (Amdo).

Kyi has performed and lectured in the United States (2006) and is widely travelled. Her music comprises elements of both modern pop and traditional Tibetan folk music. Her CD and video releases include “Prayer,” “Fortunate Events,” “Distant Lover,” and “Karma.” She also authored two books.

She was reportedly released on bail on May 20, 2008. After her release, she wrote an account of her detention in which she reported being tied down and enduring “unbearable torture” during interrogations.<sup>447</sup>

*“They constantly tried to use various methods to make me betray others... Each interrogation session aroused a different kind of fear in me. One day in the middle of an interrogation, I thought instead of enduring this, it would be better to be killed by a single bullet.”*

#### 49) Chamdo Rinzang

**Occupation:** Writer

**Status:** Detained and released

In autumn 2008 Chamdo Rinzang published two books *Nga’I pha yul dang zhi ba’I gcing grol* (“My home and peaceful Liberation”) and *Nga’i pha yul dang gzab nyan* (“My hometown: listening carefully”) which were accounts mass-killings, torture, and imprisonments during the Chinese invasion of villages in the Bya mdo area of Amdo in Tibet from 1958 through the Cultural Revolution. He was reportedly detained in 2006 and released later that year, and detained again on July 16, 2009. He was released to his family in August 2009 suffering from “serious mental trauma,” unable to eat, drink or move by himself.

#### 50) Go Sherab Gyatso

**Occupation:** Monk, Writer

**Status:** Detained and released

Go Sherab Gyatso is the author of the book *Nga tsho sad ran* (“We Need To Wake Up”), published in 2007. He is a monk at Kirti Monastery in Ngaba TAP, Sichuan Province. Gyatso was imprisoned in the first half of 2008. ICT reported that he was released in January 2009. No further information is available.

51) **Woeser**



**Occupation:** Writer, blogger

**Status:** Restricted status including no passport

Born in 1966, Woeser is among the most prolific Tibetan bloggers. In 2003 she resigned from her job in Lhasa after her book *Notes on Tibet* was banned for containing “serious political mistakes” by glorifying the Dalai Lama. When Woeser refused to confess her “errors,” she found herself unemployed. In 2003 she was removed from the TAR Literature Association, her housing was confiscated, and her medical and retirement benefits were suspended.

Woeser is under strict surveillance and was put under house arrest in Beijing briefly in 2008. Her blogs have been routinely blocked inside the PRC. During her visit to Lhasa in August 2008, public security officials searched the home of Woeser’s mother in Lhasa, confiscated computers and questioned Woeser for eight hours.

Much of the news that Woeser reports on is received by email or by internet phone service, which carries risk for the senders. In April 2009, 13 of her friends, including Norzin Wangmo, were still in detention, some facing charges that they illegally disseminated details of arrests and protests to the outside world. In 2009 she described her feeling of personal security as “sitting on the edge of a cliff.”

52) **Droku Tsultrim**

**Occupation:** Monk, editor, writer

**Status:** Detained in 2009 and again in 2010

Droku Tsultrim, a writer and monk was arrested on April 2, 2009 from a monastery in Gemo on suspicion of having produced “reactionary” writing for two articles that criticized the Chinese government and supported the “separatist forces of the Dalai Lama.” He was freed one month later. Tsultrim was again detained from Gomang monastery in Ngaba County on May 24, 2010 and was reportedly being held at a detention centre in Barkham in Ngaba County. He edited a banned magazine called “Life of Snow.”

PSB officials reportedly arrived at the monastery without an arrest warrant, searched Tsultrim's room and demanded to see his laptop computer. Tsultrim was planning to publish a compilation of Tibetan youths' expressions in the aftermath of the in Kyengdu, which his relatives fear may have led to his arrest. Family members of Droku Tsultrim have been barred from visiting him.

53) Nyen (pen-name)

**Occupation:** Writer

**Status:** Detained, whereabouts unknown.

Nyen ("The Wild One") is a Tibetan writer who was employed in the State-run Ngaba Regional Historical Research Centre. Nyen was reportedly arrested on June 21, 2010 by local CCP security officials.<sup>449</sup> Authorities accused Nyen of writing a "reactionary" essay entitled *What Human Rights Do We Have Over Our Bodies?*<sup>450</sup> which commented on the CCP's bloody suppression of the 2008 Uprising. The essay was published in the banned *Shar Dungri* (Eastern Snow Mountain), which was edited by Tashi Rabten and Druklo (profile #s 1&2 of this report). Nyen had previously received an award for an article which appeared in the magazine "Cold Rain."

54) Budar

**Occupation:** Writer, Doctor

**Status:** Detained, whereabouts unknown

Budar is a writer, poet, and medical doctor whose work is regarded as influential in Tibetan society. He wrote a book called *Rolam* (Eng: Zombie), which was published in Gansu Ethnic Printing Press and became very popular among Tibetans. Budar was accused of reactionary writing that may have been published in *Shar Dungri* (Eastern Snow Mountain, edited by Tashi Rabten and Druko, profile #s 1 & 2.)<sup>451</sup>

55) Lhundrup

**Occupation:** Student, writer

**Status:** Committed suicide

Lhundrup, a junior high school student at the Number One Middle School in Jianza County in Malho TAP, Qinghai province, took his own life by jumping from the third floor of the school's teaching block on October 18

2008. He was born to a family of nomads. Woesser wrote “he hoped that Tibetan students and teachers would actively use the Tibetan language and strive for the protection and continuation of the people’s culture.”

### 55) Kalsang Tsultrim



**Occupation:** Writer

**Status:** Detained

Kalsang Tsultrim, pseudonym of Gyitsang Takmig, is a monk at Gyitsang Gaden Choekorling Monastery in Sangchu County (Ch:Xiahe), KhanlhoTAP, Gansu Province. Kalsang Tsultrim had recorded and distributed video testimonials explaining Tibetan history since the Dalai Lama’s escape into exile, the lack of human rights in Tibet, and the struggles, hopes, and aspirations of Tibetan people inside Tibet.

The newly videotaped information received from Tibet appeals to the international community to act swiftly on behalf of the Tibetan people who are victims of human rights violations.

The hour long video testimony was recorded on July 18, 2009. It was later edited and related video footage and snaps were inserted for the final VCD version that was widely distributed in many Tibetan areas in Gansu, Qinghai and Sichuan Province.

Kalsang Tsultrim was arrested on July 27, 2010 at Dzoge County in Sichuan Province. He is suspected of committing political error and had been on the move for up to a year to remain safe from the authorities.

### 56) 21 Teachers at Machu Middle School

**Occupation:** Teachers

**Status:** fined 20 to 60 thousand *yuan* (\$8,785)

Twenty-one teachers at the Machu Tibetan Middle School were fined for failing to “give students a good education on a daily basis and supervising well their daily activity.” The fines were handed down in the wake of students demonstrations in March and April 2010.



57) 11 Tibetans detained for producing/distributing VCD *Chag krum dmar*

CCP authorities arrested eleven Tibetans, mostly monks, accusing them of producing and distributing subversive material in *Chakdrum Marpo* (“Bloody Omen”), a video CD. Released on September 1, 2009, *Chakdrum Marpo* contains songs with lyrics expressing nostalgia for the Dalai Lama and sadness over the death of Tibetans during the 2008 Uprising. It also expressed views regarding mining exploitation by the PRC authorities in Tibet. The video CD incorporated images of beatings and killings of Tibetans by State security forces during the 2008 Uprising.

Eleven Tibetans from Tsakho and Khakhor Monasteries in Mateo County, Golog TAP, Qinghai Province, were arrested on December 4, 2009 by county PSB officials.

*Chakdrum Marpo* was reportedly jointly produced by five monks from two different monasteries in Tsakho Township:

**Three monks of Tsakho Monastery:**

1. **Abbot Ngagsung** (23)
2. **Nobay**
3. **Sherab Nyima** (25 yr old Yogi)

**Two monks from Khakhor Monastery:**

1. **Trulku Tsepak** (28)
2. **A monk whose name is not known.**

Around 5000 copies of the VCD were distributed free of cost by six other Tibetans in and around Mateo County. Six individuals were detained in connection with the distribution of the VCD. Officials reportedly fined each man accused of distributing the VCDs 10,000 yuan, released all six on bail, and gave them until December 10 to recover the VCDs or be returned to detention. No further information is available. The six individuals detained for distributing *Chakdrum Marpo* are:

1. **Gaybo** (41) a former abbot of Tsakho Monastery
2. **Gowang** (23), a monk of Tsakho Monastery
3. **Tashi Nyima** (33), Disciplinary head of Tsakho Monastery
4. **Markyi** (40), abbot of the Khakhor Monastery
5. **Khenpo** (25), a monk of Khakhor Monastery
6. **Garab Dorjee** (46), a layman from Tsakho Township

**(End Notes)**

- <sup>1</sup> *Uprising in Tibet 2008*, Tibetan Centre for Human Rights and Democracy Special Report, at 5, available at [http://www.tchrd.org/publications/topical\\_reports/uprising\\_in\\_tibet/uprising\\_in\\_tibet.pdf](http://www.tchrd.org/publications/topical_reports/uprising_in_tibet/uprising_in_tibet.pdf) (last visited Aug. 4, 2010).
- <sup>2</sup> See Chapter III, *infra*.
- <sup>3</sup> See Chapter II, *infra*.
- <sup>4</sup> *Uprising in Tibet 2008*, TCHRD, *supra* note 1, at 6.
- <sup>5</sup> According to the PRC, 19 people, mostly Han Chinese, lost their lives in the “rioting” in Tibet, for which Chinese authorities have placed the blame on the Dalai Lama and his “clique.” However, the TCHRD places the figure of Tibetan lives lost at the hands of Chinese at over 160, mostly by extra-judicial means such as indiscriminant firing into crowds of protesters. The Tibetan Government in exile has placed the number of Tibetans killed during the Uprising of 2008 at over 200. Fact Sheet: Tibetan Deaths Under China’s Crackdown since March 2008, Central Tibetan Administration, Dept. of Information and International Relations (DIIR), March 20, 2009.
- <sup>6</sup> China’s “patriotic education” campaign strengthening Tibetan Nationalism, Phayul, available at <http://www.phayul.com/news/article.aspx?id=20666> (last visited Aug. 4, 2010).
- <sup>7</sup> Kent Ewing, *Tibet crackdown breeds more dissent*, ASIA TIMES, May 25, 2010, available at <http://www.atimes.com/atimes/China/LE25Ad01.html> (last visited Aug. 4, 2010).
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- <sup>9</sup> John Garnaut, *China’s hardline wins conformity but not hearts and minds*, THE AGE, June 30, 2010, (“In central Lhasa, armed police standing in formation, rifles at the ready, look to be a display of deliberate intimidation.”), available at <http://www.theage.com.au/world/chinas-hard-line-wins-conformity-but-not-hearts-and-minds-20100629-zj53.html> (last visited Aug. 4, 2010).
- <sup>10</sup> *A Raging Storm, The Crackdown on Tibetan writers and artists after Tibet’s Spring 2008 Protests*, International Campaign for Tibet (ICT), [hereinafter Raging Storm], at 6, available at [http://www.savetibet.org/files/documents/Raging\\_Storm\\_complete.pdf](http://www.savetibet.org/files/documents/Raging_Storm_complete.pdf) (last visited Aug. 4, 2010).
- <sup>11</sup> See Chapter XII, *infra*.
- <sup>12</sup> Cara Anna, *China now pressuring Tibetans outside politics*, Associated Press, June 18, 2010, available at <http://www.msnbc.msn.com/id/37784145/> (last visited Aug. 4, 2010).
- <sup>13</sup> “Splittism” is a term used liberally by Chinese authorities to refer to “separatist” activities aimed at splitting the Motherland.
- <sup>14</sup> “Petitioner” is a term used to describe an individual or group of Chinese citizens that has sought redress directly with the central Beijing government for a grievance with a governmental organ.

- <sup>15</sup> *State Secrets: China's Legal Labyrinth*, Human Rights in China (HRIC) (2007), [hereinafter *Legal Labyrinth*], at 5, available at [http://www.hrichina.org/public/PDFs/State-Secrets-Report/HRIC\\_StateSecrets-Report.pdf](http://www.hrichina.org/public/PDFs/State-Secrets-Report/HRIC_StateSecrets-Report.pdf) (last visited Aug. 4, 2010).
- <sup>16</sup> Charter of the United Nations, articles 1 & 2, (signed June 26, 1945) available at <http://www.un.org/en/documents/charter/chapter1.shtml> (last visited Aug. 4, 2010).
- <sup>17</sup> See e.g., *Filartiga v. Pena-Irala*, 630 F. 2d 876 (1980) (US Circuit Court of Appeals, 2<sup>nd</sup> Circuit).
- <sup>18</sup> Audio Visual Library of International Law, United Nations, available at <http://untreaty.un.org/cod/avl/ha/udhr/udhr.html> (last visited Aug. 4, 2010).
- <sup>19</sup> United States Congressional-Executive Commission on China (CECC) 2009 Annual Report, [hereinafter *CECC 2009 Annual Report*] notes to Section II: Freedom of Expression, at note 4, available at <http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf> (last visited Aug. 16, 2010) (“In February 2009, during the UN Human Rights Council’s Universal Periodic Review of the Chinese Government’s human rights record, the Chinese Government supported recommendations made by Member States that China ratify the ICCPR. At the time, Chinese officials also said China was in the process of amending domestic laws, including the criminal procedure law and laws relating to reeducation through labor, to make them compatible with the ICCPR. UN GAOR, Hum. Rts. Coun., 11th Sess., Report of the Working Group on the Universal Periodic Review—China, A/HRC/11/25, 3 March 09, paras. 63, 114(1)”).
- <sup>20</sup> See State Council Information Office, National Human Rights Action Plan of China (2009–2010), Xinhua (Online), April 13, 2009, introduction, sec. V(1).
- <sup>21</sup> *Legal Labyrinth*, at 5.
- <sup>22</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue, UN Doc. A/HRC/14/23 (April 20, 2010), at para. 27, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.23.pdf> (last visited Aug. 4, 2010).
- <sup>23</sup> *Id.* at para. 24 (emphasis added).
- <sup>24</sup> *Id.* at para. 114.
- <sup>25</sup> International Covenant on Civil and Political Rights (“ICCPR”), article 19(3), available at <http://www2.ohchr.org/english/law/ccpr.htm> (last visited Aug. 4, 2010).
- <sup>26</sup> Toby Mendel, *The Johannesburg Principles: Overview and Implementation*, Article 19, at 3, February 7, 2003, available at <http://www.article19.org/pdfs/publications/jo-burg-principles-overview.pdf> (last visited Aug. 4, 2010).
- <sup>27</sup> Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, October 1, 1995, [hereinafter *Johannesburg Principles*], Appendix B.
- <sup>28</sup> *The Johannesburg Principles: Overview and Implementation*, *supra* note 26, at 7.
- <sup>29</sup> *Legal Labyrinth*, *supra* note 15, at 6.
- <sup>30</sup> Report of the Special Rapporteur, Promotion and protection of the right to freedom of opinion and expression, Mr. Abid Hussein, at para. 154, UN Doc. E/CN.4/1996/39 (March 22, 1996).
- <sup>31</sup> See e.g., Commission on Human Rights Resolution 1996/53, preamble, U.N. Doc. E/CN.4/1996/53 (1996).
- <sup>32</sup> See, e.g., *Gamini Athukoral “Sirikotha” and Ors v. Attorney-General*, 5 May 1997, S.D. Nos. 1-15/97 (Supreme Court of Sri Lanka) and *Secretary of State for the Home Department v. Rehman* [2001] UKHL 47 (House of Lords).

- 33 See e.g., Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, at page 43, U.N. Doc. A/HRC/11/2/Add.1 (May 29, 2009).
- 34 *Johannesburg Principles*, principle 1.1(a).
- 35 *Id.* at principle 1.2 (emphasis added) A free speech restriction is based on national security concerns is *not legitimate* “if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing....” *Id.* at principle 2(b).
- 36 *Id.* at principle 11.
- 37 *Id.* at principle 6 (emphasis added) (“Expression may be punished as a threat to national security only if a government can demonstrate that: (a) the expression is intended to incite imminent violence; (b) it is likely to incite such violence; and (c) there is a direct and immediate connection between the expression and the likelihood or occurrence of such event.”).
- 38 *Legal Labyrinth*, *supra* note 15, at 6.
- 39 *Johannesburg Principles* at principle 1(d).
- 40 *Id.* at principle 7.
- 41 *Id.* at principle 15 (emphasis added).
- 42 *Id.* at principle 20.
- 43 Mr. Frank La Rue, *supra* note 22, at para. 79.
- 44 Freedom of opinion and expression in China is a broad and dizzying topic, the full breadth of which is beyond the scope of this report. This chapter provides a backdrop for further analysis by presenting an overview of the PRC’s laws relevant to the crackdown on Tibetan intellectuals and cultural figures.
- 45 See generally, He Qinglian, *The Fog of Censorship: Media Control in China*, Human Rights in China (2008), available at <http://www.hrichina.org/public/PDFs/Reports/HRIC-Fog-of-Censorship.pdf> (last visited Aug. 6, 2010).
- 46 See Human Rights Action Plan 2009-10, *supra* note 20.; See also Open Government Initiative, Chapter III(F), *infra*.
- 47 UN GAOR, Hum an Rights Council, 11th Sess., Report of the Working Group on the Universal Periodic Review—China, , para. 71, UN Doc, A/HRC/11/25 (March 3, 2009).
- 48 Joshua Rosenzweig, Dui Hua Foundation, testimony to the Congressional-Executive Commission on China, Aug. 3, 2010, available at [http://www.duihua.hk/outreach/testes/testimonies/test\\_2010\\_CECC\\_0803\\_written.htm](http://www.duihua.hk/outreach/testes/testimonies/test_2010_CECC_0803_written.htm) (last visited Aug. 10, 2010).
- 49 Constitution of the People’s Republic of China, Article 35, available at <http://english.peopledaily.com.cn/constitution/constitution.html> (last visited Aug. 15, 2010).
- 50 Constitution of the People’s Republic of China, Article 41.
- 51 Regulations on the Administration of Publishing, (December 25, 2001), at article 5, available at <http://www.cecc.gov/pages/virtualAcad/exp/explaws.php?PHPSESSID=f1898bb6598e1c46f08d09472288aaa3#publishinglaw> (last visited Aug. 15, 2010).
- 52 Edward Cody, *China Amends Constitution to Guarantee Human Rights*, THE WASHINGTON POST, March 14, 2010, available at <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A57447-2004Mar14> (last visited Aug. 10, 2010); Constitution of the People’s Republic of China, Article 33.
- 53 Edward Cody, *supra* note 52.
- 54 Constitution of the People’s Republic of China, Article 52.
- 55 Constitution of the People’s Republic of China, Article 54.

56 Constitution of the People's Republic of China, Article 53.

57 See Chapter VI, *infra*.

58 See Chapter VII, *infra*.

59 1998 Law on the Protection of State Secrets of the People's Republic of China, promulgated September 1, 1988 and effective May 1, 1989 (full text in Legal Labyrinth, *supra* note 15, at 81.)

60 Arbitrary detention is defined within the United Nations as the deprivation of personal liberty if one of the following criteria is met: (1) there is clearly no legal basis for the detention; (2) the detention is based on the exercise of rights guaranteed under the UDHR and the ICCPR; or (3) there is serious noncompliance with fair trial standards under the UDHR and other international human rights instruments.

61 Article 105 of the Criminal Law of the People's Republic of China, *available at* <http://www.cecc.gov/pages/newLaws/criminalLawENG.php> (last visited Aug. 4, 2010).

62 *Inciting Subversion of State Power: A Legal Tool for Prosecuting Free Speech in China*, Chinese Human Rights Defenders, January 8, 2008. *available at* [http://web.archive.org/web/20080516023332/http://www.crd-net.org/Article/Class9/Class11/200801/20080108225721\\_7032.html](http://web.archive.org/web/20080516023332/http://www.crd-net.org/Article/Class9/Class11/200801/20080108225721_7032.html) (last visited Aug. 4, 2010).

63 CECC 2009 Annual Report, at 46.

64 *China jails 17 Tibetans in a "swift and quick" court proceeding*, TCHRD Press Release; April 29, 2008, *available at* <http://www.tchrd.org/press/2008/pr20080429a.html> (last visited Aug. 4, 2010).

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68 *Communist Party Controls Media Coverage of Yushu Earthquake*, CECC, *available at* <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=139627> (last visited Aug. 4, 2010).

69 United States Congressional-Executive Commission on China (CECC) 2008 Annual Report, at 60, *available at* [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_house\\_hearings&docid=f:45233.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:45233.pdf) [hereinafter CECC 2008 Annual Report] (last visited Aug. 4, 2010).

70 *Id.*

71 *Id.*

72 CECC 2009 Annual Report, at 53.

73 Regulations on the Administration of Publishing, issued December 25, 2001, effective February 1, 2002, art. 26.

74 CECC 2008 Annual Report, at 65.

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76 *Id.*

77 Measures for the Administration of Internet Information Services, issued September 20, 2000, effective September 25, 2000, art. 4, *available at* <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=1570> (last visited Aug. 16, 2010) (All non-commercial Web site operators must register.).

- 78 Registration Administration Measures for Non-Commercial Internet Information Services, issued January 28, 2005, effective March 20, 2005, art. 5, *available at* <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=12212> (last visited Aug. 16, 2010).
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- 80 *Id.* at page 63.
- 81 Measures for the Administration of Internet Information Services, *supra* note 77, art. 15.
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- 92 *Id.*
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111 *Id.* at 42.

112 *Tibetan Writer’s Intellectual Journey Leads to Trial*, *supra* note 108.

113 *Id.*

114 *Like Gold*, at 6.

115 *Raging Storm*, *supra* note 10, at 6.

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117 See Case Study, Chapter IX, *infra*.

118 *Tibet crackdown breeds more dissent*, *supra* note 7.

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- 157 *Fears for missing Tibetan writer; continued crackdown on writers and artists*, ICT, August 6, 2009, available at <http://www.savetibet.org/media-center/ict-news-reports/fears-missing-tibetan-writer-continued-crackdown-writers-and-artists> (last visited Aug. 5, 2010).
- 158 See Case Study, Chapter VI, *infra*.
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- 160 See Profile #13, Appendix A, *infra*.
- 161 See Case Study, Chapter VII, *infra*.
- 162 *Fears for missing Tibetan writer*, ICT, *supra* note 157.
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- 168 See Chapter XII, *infra*.
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- 175 1990 Measures for Implementing the Law on the Protection of State Secrets of the Peoples' Republic of China, Issued by the NAPSS, promulgated and effective May 25, 1990 (full text in *Legal Labyrinth*, *supra* note 15, at 94).
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384 *Id.*  
385 Andrew Jacobs, *Tibetan Environmentalist Receives 15-Year Sentence*, NEW YORK TIMES, June 24, 2010, available at <http://www.nytimes.com/2010/06/25/world/asia/25tibet.html?ref=tibet> (last visited Aug. 5, 2010).  
386 Fears for three environmentalist brothers as ‘gaunt’ Karma Samdrup on trial after torture, ICT, June 24, 2010, available at <http://www.savetibet.org/media-center/ict-news-reports/fears-three-environmentalist-brothers-%E2%80%98gaunt%E2%80%99-karma-samdrup-trial-after-torture> (last visited Aug. 5, 2010).  
387 *Tibetan Environmentalist Receives 15-Year Sentence*, *supra* note 385.  
388 *A sharp knife above his head*, *supra* note 374, at 7.  
389 Robert Barnett, *Expanding Crime and Punishment in Tibet*, July 3, 2010, available at <http://www.project-syndicate.org/commentary/barnett2/English> (last visited Aug. 5, 2010).  
390 *Landmark Sentencing*, June 30, 2010, TibetInfoNet, available at <http://www.tibetinfo.net/content/update/162> (last visited Aug. 5, 2010).

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- 392 *Tibetans Fear a Broader Crackdown*, *supra* note 254.
- 393 *A sharp knife above his head*, *supra* note 374, at 22.
- 394 *Tibetan Environmentalist Receives 15-Year Sentence*, *supra* note 384.
- 395 *Landmark Sentencing*, *supra* note 390.
- 396 *Tibetans Fear a Broader Crackdown*, *supra* note 254.
- 397 *Id.*
- 398 *A sharp knife above his head*, *supra* note 374, at 23.
- 399 *Id.* at 25.
- 400 *Tibetan Environmentalist Receives 15-Year Sentence*, *supra* note 385.
- 401 *Id.*
- 402 *China: Drop Charges Against Tibetan Environmental Philanthropist*, Human Rights Watch, June 10, 2010, available at <http://www.hrw.org/en/news/2010/06/10/china-drop-charges-against-tibetan-environmental-philanthropist> (last visited Aug. 5, 2010).
- 403 *Id.*
- 404 *Re-Education through Labor Abuses Continue Unabated: Overhaul Long Overdue*, Chinese Human Rights Defenders (2009), at 7 – 10, available at <http://chrnet.org/2009/02/04/research-reports-article-2/> (last visited Aug. 5, 2010).
- 405 *Id.* at 1.
- 406 *Id.* at 11.
- 407 *Id.* at 12.
- 408 *Id.* at 13.
- 409 Ministry of Public Security and the Ministry of Justice, “Notice on RTL and the Nullification of Inmates’ City Passports” (effective since 1984); see *Id.* at note 14.
- 410 *Re-Education through Labor Abuses Continue Unabated*, CHRDR, *supra* note 404, at 6.
- 411 *Id.* at 7.
- 412 *Id.*; Liu Jie case study at 14.
- 413 *Re-Education through Labor Abuses Continue Unabated*, CHRDR, *supra* note 404, at 1. As an administrative punishment mechanism, RTL contravenes article 37 of the Constitution of the PRC which states that “[n]o citizen may be arrested except with the approval or by decision of a people’s procuratorate or by decision of a people’s court. . . . Unlawful deprivation or restriction of citizens’ freedom of person by detention or other means is prohibited. . . .” RTL’s system of extra-judicial deprivation of liberty blatantly violates numerous international legal standards enshrined in the ICCPR, including article 9(4), article 8(3), and article 10(1). The system also departs from the U.N. *Standard Minimum Rules for the Treatment of Prisoners* and the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.)
- 414 See, eg. Report of the Working Group in Arbitrary Detention, Mission to China (addendum), at paras. 43-59, U.N. Doc. E/CN.4/2005/6/Add.4 (Dec. 29, 2004).
- 415 *Reeducation Through Labor in China*, Human Rights Watch (1998), available at <http://www.hrw.org/campaigns/china-98/laojiao.htm> (last visited Aug. 5, 2010).
- 416 *Re-Education through Labor Abuses Continue Unabated*, CHRDR, *supra* note 404, at 17.
- 417 *A sharp knife above his head*, *supra* note 374, at 4 (Chen Yue is believed to still be in the same

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418 *Brother Gets Five Years*, Radio Free Asia, July 4, 2010, available at <http://www.rfa.org/english/news/tibet/rinchen-samdrup-sentenced-07042010151600.html> (last visited August 5, 2010).

419 See section I, Chapter XII, *supra*.

420 *Award-winning Tibetan environmentalist on trial today*, ICT, July 3, 2010, available at <http://www.savetibet.org/media-center/ict-news-reports/award-winning-tibetan-environmentalist-trial-today/> (last visited Aug. 5, 2010).

421 *Id.*

422 *Id.*

423 *Brother Gets Five Years*, *supra* note 418. Jet Li is a famous Chinese actor that has appeared in both Chinese and American films.

424 *China Jails Tibetan Environmentalist*, Reuters, July 3, 2010, available at <http://www.nytimes.com/2010/07/04/world/asia/04tibet.html?scp=3&sq=Karma%20Samdrup%20&st=cse> (last visited Aug. 5, 2010).

425 *Award-winning Tibetan environmentalist on trial today*, *supra* note 420 (quoting from *Rinchen Samdrup, the planter of trees in "Heavenly Beads,"* CHINA ENVIRONMENT NEWS, at 8, February 3, 2010).

426 *Brothers Get Five Years*, *supra* note 418.

427 *Reining in Civil Society: The government's use of laws and regulations to persecute freedom of association*, Chinese Human Rights Defenders (2009), at 6, available at <http://chrndnet.org/wp-content/uploads/2009/10/final.pdf> (last visited Aug. 5, 2010).

428 Article 22 of the International Covenant of Civil and Political Rights (ICCPR) states that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests [and] [n]o restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordr public), the protection of public health or morals or the protection of the rights and freedoms of others.” The right to freedom of association is also guaranteed under Article 35 of the Chinese Constitution.

429 The Open Constitution Initiative, a Beijing-based progressive legal think-tank, was fined and shut down as being “illegal” by “falsely registered as a commercial enterprise in view of carrying out civic non-commercial activities” following publication of a report that challenged state accounts of the causes of the 2008 Tibet protests. The week before OCI was declared illegal, the Beijing Justice Bureau had posted on its website a notice revoking the licenses of 53 lawyers associated with the group.

430 *China: Chokehold on Civil Society Intensifies*, Human Rights Watch, April 12, 2010, available at <http://www.hrw.org/en/news/2010/04/11/china-chokehold-civil-society-intensifies> (last visited Aug. 13, 2010).

431 *Id.*

432 Jane Macartney, *Tibetan teacher 'disappears' into Chinese gulag*, THE TIMES, July 27, 2010, available (*premium*) at <http://www.thetimes.co.uk/tto/news/world/asia/article2591650.ece#> (last visited Aug. 5, 2010).

433 *Id.*

434 *Id.*

435 CECC 2009 Annual Report, at 238.

436 *Id.*

437 *China: Drop Charges Against Tibetan Environmental Philanthropist*, HRW, *supra* note  
402.

438 *Landmark Sentencing*, *supra* note 390.

439 *Id.*

440 *Tibetan Environmentalist Receives 15-Year Sentence*, *supra* note 385.

441 *Tibetans Fear a Broader Crackdown*, *supra* note 254.

442 UN GAOR, Human Rights Council, 11th Sess., Report of the Working Group on the  
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446 See Profile # 14, *supra*.

447 Barbara Demick, *China Silences a Tibetan Folk Singer*, L.A. TIMES, June 8, 2008, *available at*  
<http://articles.latimes.com/2008/jun/08/world/fg-singer8/> (last visited august 5, 2010).

448 See <http://www.highpeakspureearth.com/2008/11/they-by-jamyang-kyi.html> (last visited  
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449 Are Gyumey, *Two More Tibet Writers Arrested*, TIBET TIMES, *available at* [http://  
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## **THE JOHANNESBURG PRINCIPLES ON NATIONAL SECURITY, FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION**

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- Principle 1: Freedom of Opinion, Expression and Information
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- Principle 22: Right to Trial by an Independent Tribunal
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- Principle 24: Disproportionate Punishments
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**The Johannesburg Principles on National Security, Freedom of Expression and Access to Information**

## **PREAMBLE**

### **The participants involved in drafting the present Principles:**

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world; Convinced that it is essential, if people are not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law; Reaffirming their belief that freedom of expression and freedom of information are vital to a democratic society and are essential for its progress and welfare and for the enjoyment of other human rights and fundamental freedoms;

Taking into account relevant provisions of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, the UN Basic Principles on the Independence of the Judiciary, the African Charter on Human and Peoples' Rights, the American Convention on Human Rights and the European Convention on Human Rights; Keenly aware that some of the most serious violations of human rights and fundamental freedoms are justified by governments as necessary to protect national security;

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

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

Recognizing the necessity for legal protection of these freedoms by the enactment of laws drawn narrowly and with precision, and which ensure the essential requirements of the rule of law; and Reiterating the need for judicial protection of these freedoms by independent courts; Agree upon the following Principles, and recommend that appropriate bodies at the national, regional and international levels undertake steps to promote their widespread dissemination, acceptance and implementation:

## **I. GENERAL PRINCIPLES**

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

- (a) Everyone has the right to hold opinions without interference.
- (b) Everyone has the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his or her choice.
- (c) The exercise of the rights provided for in paragraph (b) may be subject to restrictions on specific grounds, as established in international law, including for the protection of national security.
- (d) No restriction on freedom of expression or information on the ground of national security may be imposed unless the government can demonstrate that the restriction is prescribed by law and is necessary in a democratic society to protect a legitimate national security interest. The burden of demonstrating the validity of the restriction rests with the government.

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

- (a) Any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is unlawful.
- (b) The law should provide for adequate safeguards against abuse, including prompt, full and effective judicial scrutiny of the validity of the restriction by an independent court or tribunal.

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

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

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

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

- (a) the expression or information at issue poses a serious threat to a legitimate national security interest;
- (b) the restriction imposed is the least restrictive means possible for protecting that interest; and

(c) the restriction is compatible with democratic principles.

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

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

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

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

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

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

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

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

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

No one may be subjected to any sort of restraint, disadvantage or sanction because of his or her opinions or beliefs.

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

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

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

**Principle 7: Protected Expression**

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

(i) advocates non-violent change of government policy or the government itself;

(ii) constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials;

(iii) constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief, to military conscription or service, a particular conflict, or the threat or use of force to settle international disputes;

(iv) is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.

(b) No one may be punished for criticizing or insulting the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agency or public official unless the criticism or insult was intended and likely to incite imminent violence.

**Principle 8:** Mere Publicity of Activities That May Threaten National Security Expression may not be prevented or punished merely because it transmits information issued by or about an organization that a government has declared threatens national security or a related interest.

**Principle 9:** Use of a Minority or Other Language Expression, whether written or oral, can never be prohibited on the ground that it is in a particular language, especially the language of a national minority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

- (a) the right to be presumed innocent;
- (b) the right not to be arbitrarily detained;
- (c) the right to be informed promptly in a language the person can understand of the charges and the supporting evidence against him or her;
- (d) the right to prompt access to counsel of choice;
- (e) the right to a trial within a reasonable time;
- (f) the right to have adequate time to prepare his or her defence;
- (g) the right to a fair and public trial by an independent and impartial court or tribunal;
- (h) the right to examine prosecution witnesses;
- (i) the right not to have evidence introduced at trial unless it has been disclosed to the accused and he or she has had an opportunity to rebut it; and
- (j) the right to appeal to an independent court or tribunal with power to review the decision on law and facts and set it aside.

##### **Principle 21: Remedies**

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

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

- (a) At the option of the accused, a criminal prosecution of a security-related crime should be tried by a jury where that institution exists or else by judges who are genuinely independent. The trial of persons accused of security-related crimes by judges without security of tenure constitutes a prima facie violation of the right to be tried by an independent tribunal.
- (b) In no case may a civilian be tried for a security-related crime by a military court or tribunal.

## GLOSSARY OF TERMS AND ABBREVIATIONS

CCL	The Criminal Law of the PRC; adopted in 1979, amended 1997, 1999, 2001, 2002, 2005
CCP	Chinese Communist Party; founded in July 1921
CECC	United States Congressional-Executive Commission on China; created by the U.S. Congress in October 2000 with the legislative mandate to monitor human rights and the development of the rule of law in China, and to submit an annual report to the President and the Congress ( <a href="http://www.cecc.gov">www.cecc.gov</a> ).
CPD	The PRC's Central Propaganda Department
CPL	Criminal Procedure Law of the PRC; the revised CPL came into effect on January 1, 1997
CTA	Central Tibetan Administration: Tibet's democratic Government in Exile in Dharamsala, Himachal Pradesh, India <b>Dalai Clique</b> Party term for the XIV <sup>th</sup> Dalai Lama and His network of supporters; characterized by the CCP as harboring separatist sentiments <b>ESS</b> Endangering State Security; Articles 102 – 103 of the CCL constitute ESS crimes, including “subversion,” inciting “splittism,” disclosing “state secrets,” and “espionage”
ICCPR	International Covenant on Civil and Political Rights; PRC leaders signed the ICCPR in 1998, and have expressed their intent to ratify this fundamental international human rights instrument
Lama (Tib)	The Tibetan term for a respected religious teacher, equivalent to the Sanskrit term guru. A lama is not necessarily a monk, although monasticism is preferred for all lamas in the Gelugpa School.
PRC	The People's Republic of China

<b>TAP</b>	“Tibet Autonomous Prefecture;” there are 10 of these administrative areas (below the level of province or region) created outside “TAR” by CCP authorities, located in northern and eastern Tibet (in the Tibetan provinces of Kham and Amdo)
<b>TAR</b>	“Tibet Autonomous Region:” formally created by China in 1965, this area of central and western Tibet, covering the area of west of the Yangtse River and south of the Kunlun Mountains, is the only area recognized by China as being “Tibet”
<b>PAP</b>	Peoples’ Armed Police of the PRC; a paramilitary force primarily responsible for civilian policing in the PRC
<b>Patriotic re-education</b>	Initiated in 1996 in Tibet’s monasteries and nunneries, “patriotic re-education” campaign was designed to purge the influence of the Dalai Lama, to indoctrinate monks and nuns with political ideology, and to crack down on dissident activities; carried out extensively in religious institutions and labour camps, and spreading to schools in Tibet
<b>PPD</b>	Political Prisoners Database, administered by the CECC ( <a href="http://ppd.cecc.gov">ppd.cecc.gov</a> ).
<b>Procuracy</b>	A Chinese judicial agency responsible for investigating and prosecuting criminal cases; it also handles complaints against police, prison officials and other branches of the administration
<b>PSB</b>	Public Security Bureau, local level police force responsible for detaining and arresting suspects and for pre-trial custody
<b>Reactionary</b>	Party term for forms of expression that challenge CCP rule or criticize CCP policy in Tibet

<b>RTL</b>	Re-education Through Labor; China's system of extra-judicial and extra-legal punishment in which accused are sentenced to hard labor for up to three years (with one year extension possible) without charges, trial, or legal defense.
<b>Splittism</b>	Party term for the movement for Tibetan independence or any nation alist sentiments
<b>UDHR</b>	Universal Declaration of Human Rights
<b>U.N.</b>	United Nations
<b>Work Team</b>	Specially formed units of government personnel sent to conduct "patriotic re-education" in an institution or locality