

# Ending Impunity: Crimes Against Humanity in Tibet



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# I. Introduction

On 6 July 2013, hundreds of Tibetans gathered to conduct *sangsol*, a Tibetan Buddhist ritual of burning incense and juniper leaves, to celebrate His Holiness Dalai Lama's 78th birthday Tawu (Ch: Daofu/Dawu) County in Kardze (Ch: Ganzi) Tibetan Autonomous Prefecture, Sichuan Province. As Tibetans gathered to celebrate the birthday of their spiritual leader, the local People's Armed Police (PAP), quickly surrounded the Tibetans. After the PAP smashed the Tibetan worshippers' car windows, the abbot of Tawu Nyatso Monastery and other senior monks tried to defuse the escalating tension. All attempts at negotiating an end to situation vanished when Tsering Norbu (Ch: Cireng Nuobu) ordered the PAP officers under his command to beat the Tibetans and shoot them with live ammunition and tear gas.<sup>1</sup> Fourteen known Tibetans were taken to the hospital for gunshot wounds. Many others were beaten and robbed by the police. A 72-year-old layman Yama Tsering and a local

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<sup>1</sup> "More injured by gunshots than earlier reported in Tawu," *TCHRD*, 17 July 2013, available at: <http://www.tchrd.org/2013/07/more-injured-by-gunshots-than-earlier-reported-in-tawu-shootings/>.

environmental activist, Gyaltzen, both sustained broken ribs.<sup>2</sup> Dekyi Gonpo has permanently lost hearing in one ear.<sup>3</sup>

In ordinary circumstances, the responsibility for shooting at unarmed people conducting a religious ritual would stop with Tsering Norbu, who ordered the shooting. Local officials would investigate, suspend, reprimand, and possibly prosecute Tsering Norbu for giving the order. The PAP officers he commanded could also face consequences. However, in Tibet, Tsering Norbu is more likely to be promoted than punished. This is because his order to fire upon the Tibetans was pursuant to a policy of repression that has existed in Tibet since 1950 and has only become harsher since the mass protests throughout Tibet in 2008. This widespread policy makes the circumstances surrounding the 6 July shooting anything but ordinary. Under international criminal law, these circumstances make the implementation of the policy through use of torture, arbitrary detention and murder, crimes against humanity. Responsibility for the crimes against humanity in Tibet does not end with people like Tsering Norbu but can be followed up through the rank and file of Chinese Communist Party (CCP) to the government officials responsible for creating and implementing the government's Tibet policy.

Since the Chinese army rolled into Tibet in 1950, the CCP has attempted to control Tibet through the use of force.<sup>4</sup> In 1959,

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<sup>2</sup> "Environmental activist suffers broken ribs after savage beatings in Tawu," TCHRD, 10 July 2013, available at <http://www.tchrd.org/2013/07/environmental-activist-suffers-broken-ribs-after-savage-beatings-in-tawu/>

<sup>3</sup> "More injured by gunshots than earlier reported in Tawu," TCHRD, 17 July 2013, available at: <http://www.tchrd.org/2013/07/more-injured-by-gunshots-than-earlier-reported-in-tawu-shootings/>.

<sup>4</sup> Andreas Lorenz, "Tibetan Exposes China from the Inside," *Der Spiegel*, 16 July 2013, available at: <http://www.spiegel.de/international/world/tibetan-official-to-expose-chinese-abuses-from-the-inside-in-book-a-911405-druck.html>.

there were widespread protests against the Chinese occupation, 87,000-430,000 Tibetans died and the Dalai Lama, the head of the Tibetan government, fled to India.<sup>5</sup> Sporadic periods of mass protests and crackdowns have punctuated the constant repression of human rights in Tibet ever since. In 1988, the People's Republic of China's (PRC)'s Public Security Bureau chief, Qiao Shi, adopted a policy of "merciless repression" in Tibet.<sup>6</sup> The following year, mass protests in Lhasa were suppressed by the use of force. Twenty-years later, in 2008, major protests spread throughout Tibet and the PRC again responded with torture, mass arrests, beatings, and killings.<sup>7</sup> Since 2009, the Chinese government has sought to prevent the international community from learning about the situation in Tibet and continued to impose strict measures to "maintain stability". The situation has become so dire that Tibetans have been setting themselves on fire to protest the PRC's occupation. The 6 August 2013 self-immolation of 39-year-old Karma Ngedon Gyatso was the 121st self-immolation protest against China's repressive policies in Tibet since 2009.<sup>8</sup>

In the 63 years since the People's Liberation Army (PLA) first came into Tibet, international law has changed dramatically. In the last 20 years, international criminal law has developed

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<sup>5</sup> "Tibet's History," *Free Tibet*, available at: <http://www.freetibet.org/about/tibets-history/>.

<sup>6</sup> United Press International, "Beijing to Take hard Line on Tibet: Policy of 'Merciless Repression' of Protests Announced," *The Los Angeles Times*, 19 July 1988, available at: [http://articles.latimes.com/1988-07-19/news/mn-6137\\_1\\_merciless-repression](http://articles.latimes.com/1988-07-19/news/mn-6137_1_merciless-repression); See also 450 Tibetans murdered in Lhasa riot of March '89 - Chinese journalist presents documentary evidence, Claude Arpi, *Tibetan Review*, September 1990, available at [http://www.claudearpi.net/maintenance/uploaded\\_pics/1989Massacre\\_Bakhor.pdf](http://www.claudearpi.net/maintenance/uploaded_pics/1989Massacre_Bakhor.pdf)

<sup>7</sup> "Tibet's History," *Free Tibet*, available at: <http://www.freetibet.org/about/tibets-history/>.

<sup>8</sup> "Tibetan Monk Self-Immolates and Dies in Nepal," *Radio Free Asia*, 6 Aug. 2013, available at: <http://www.rfa.org/english/news/tibet/burn-08062013021843.html>.

substantially. Today, individuals can be held criminally responsible for war crimes, genocide, and crimes against humanity. Originally, these crimes and their attribution to individuals were only codified in treaties and resolutions creating international criminal tribunals. Now they are binding on all States as customary international law.<sup>9</sup> The Rome Statute, which created the International Criminal Court (ICC) is the most definitive statement of the existing customary international law concerning the definition of international crimes and their attribution to individuals.<sup>10</sup> Even when individuals cannot be prosecuted by the ICC, their conduct can still violate international law as defined by the Rome Statute.

In 1998, the United Nations (UN) General Assembly convened a diplomatic conference in Rome to draft a treaty that would create the world's first permanent international criminal court.<sup>11</sup> The result of that conference was the Rome Statute, which would create the ICC after 60 States acceded to the Rome Statute.<sup>12</sup> This condition was met and the ICC was created on 1 July 2002. Today, 122 States have acceded to the Rome Statute.<sup>13</sup> Since then, numerous international and domestic courts have relied on the Rome Statute as a source

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<sup>9</sup> *Continental Shelf Cases (Germany/Denmark; Germany/Netherlands)*, Judgment, International Court of Justice Reports 1969, p. 3 at ¶171

<sup>10</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 77 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>11</sup> "Establishment of an international criminal court," GA Res. 51/07 (17 Dec. 1996); "Establishment of an international criminal court," GA Res. 52/160 (15 Dec. 1997) available at: [http://untreaty.un.org/cod/diplomaticconferences/icc-1998/docs/english/vol2/a\\_conf\\_183\\_gares.pdf](http://untreaty.un.org/cod/diplomaticconferences/icc-1998/docs/english/vol2/a_conf_183_gares.pdf).

<sup>12</sup> Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9, adopted July 17, 1998, entered into force July 1, 2002 Art. 126(1) [hereinafter Rome Statute].

<sup>13</sup> "Ratification of the Rome Statute," *Coalition for the International Criminal Court*, accessed on 31 July 2013, available at: <http://www.iccnw.org/?mod=romeratification>.

of definitive statement regarding international criminal law and modes of liability.<sup>14</sup>

The ICC became the crowning achievement in the revival of international criminal justice. The idea of a permanent international criminal court dates back to before World War I but was infeasible until after the Cold War.<sup>15</sup> The creation of the International Criminal Tribunal for Yugoslavia (ICTY) in the early 1990s revived the idea of a permanent international criminal court. Proponents of international criminal justice say that it functions to end impunity and ensures that people are accountable for the commission of international crimes. The ICC turned the general promise of international criminal justice into action. The use of international criminal justice at *ad hoc* tribunals, like the ICTY, was important to the development of international criminal law, but the decision to create a tribunal for a specific situation was made by political bodies at the UN and always made after an atrocity had occurred – sometimes decades after. As a permanent international criminal court, the ICC promise that the prosecution for international crimes will not be delayed unnecessarily or be entirely reliant of international politics. The ICC can also prevent the escalation of conflicts through the prosecution of crimes against humanity and attempts to commit international crimes in a way that previous international criminal tribunals, which were established to

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<sup>14</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 77 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04 (providing examples from the International Criminal Tribunal for Yugoslavia, the European Court of Human Rights, the Inter-American Court of Human Rights, the United Kingdom, and the United States).

<sup>15</sup> See Ved P. Nanda, "The Establishment of a Permanent International Criminal Court: Challenges Ahead," 20 *Human Rights Quarterly* 413 (1998).

respond to the commission of international crimes, could not.<sup>16</sup>

The ICC cannot function in a bubble where it is entirely independent of international politics, but compared to the *ad hoc* tribunals the ICC is much less dependent on the international political situation. Despite the political influences in some potential cases, the ICC has zealously prosecuted international crimes. Some critics have said that the Office of the Prosecutor (OTP) is too zealous.<sup>17</sup> The largest political limitation placed on the ICC is its jurisdiction. The ICC relies on the consent of States for jurisdiction and that consent is a political decision. However, the lack of consent from powerful States including the United States, Russia, and the PRC demonstrates the seriousness of the ICC. Some international treaties are viewed as aspirational and not creating real enforceable obligations for States. As such, States can accept these treaties without risk. However, States know that consenting to the ICC's jurisdiction is a real commitment. This has been the basis for both their signature and non-signature.<sup>18</sup> Some States, such as the United States, refused to consent to the ICC because, among other reasons, consenting to the ICC could lead to the prosecution of United States officials.<sup>19</sup> Other States with a history of human rights

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<sup>16</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 4 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>17</sup> See e.g. International Justice Desk, "Moreno Ocampo slammed for abuse of power; chief ICC prosecutor denies allegations," *Radio Netherlands Worldwide*, 22 July 2009, available at: <http://www.rnw.nl/international-justice/article/moreno-ocampo-slammed-abuse-power-chief-icc-prosecutor-denies-allegations>; see also, Elsa Kania, "The ICC at 10," *The Institute of Politics at Harvard University*, available at: <http://www.rnw.nl/international-justice/article/moreno-ocampo-slammed-abuse-power-chief-icc-prosecutor-denies-allegations>.

<sup>18</sup> See Beth A. Simmons and Allison Danner, "Credible Commitments and the International Criminal Court," 64 *International Organizations* 225 (2010).

<sup>19</sup> Adam M. Smith, *AFTER GENOCIDE: BRINGING THE DEVIL TO JUSTICE* at 37-40 (2009).



abuses consented to the ICC because the possibility of prosecution from an external international body made commitments to protect human rights more credible.<sup>20</sup> In both cases, the creation of the ICC shaped how States acted. Even States that refuse to consent to the ICC are not immune from its effect on international criminal law. The ICC is now the most authoritative voice concerning the definition of the most serious international crimes. Even when these crimes cannot be prosecuted, they establish a baseline for acceptable conduct. States and individuals can and do cross this line but they do so at their own risk.

Before the ICC and the growth of international criminal justice, the commission of serious international crimes was only a minor political concern, especially if the crimes and their consequences stayed within international borders.<sup>21</sup> The ICC is the culmination of a rapid change in global justice. Before the ICTY, international criminal justice did not play a meaningful role in international law or international relations. Eleven years later in 2004, the International Criminal Court had opened its first investigation.<sup>22</sup>

The rapid development and acceptance of international criminal justice do not mean it is universally accepted. Critics of international criminal justice have become more vocal as it has become more active. A frequent source of criticism is that the ICC is not immune from politics. Powerful States

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<sup>20</sup> See Beth A. Simmons and Allison Danner, "Credible Commitments and the International Criminal Court," 64 *International Organizations* 225 (2010).

<sup>21</sup> Samantha Power, *PROBLEM FROM HELL: AMERICAN AND THE AGE OF GENOCIDE*, at 8 (2007).

<sup>22</sup> "Prosecutor of the International Criminal Court opens its first investigation," *ICC*, 23 June 2004, ICC Doc No. ICC-OTP-20040623-59, available at: [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/2004/Pages/the%20office%20of%20the%20prosecutor%20of%20the%20international%20criminal%20court%20opens%20its%20first%20investigation.aspx](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/2004/Pages/the%20office%20of%20the%20prosecutor%20of%20the%20international%20criminal%20court%20opens%20its%20first%20investigation.aspx).

work to protect their officials from prosecution. Critics point out that the ICC has not attempted to prosecute potential crimes committed by NATO countries or Israel. Instead, every case under investigation by the ICC is in Africa. The PRC's conduct in Tibet usually escapes the focus of this criticism; this may be because unlike NATO countries, the PRC has consistently relied on the principle of nonintervention to resist all efforts to introduce human rights monitoring or enforcement. The same political mechanisms that prevent the ICC from investigating potential crimes committed by NATO and Israel also prevent the ICC from investigating potential crimes committed in Tibet.

The criticism that the ICC is vulnerable to political influence is used to discount all of international criminal justice. Discounting international criminal justice due to the limitations placed on the ICC incorrectly assumes that the ICC is the sole arbitrator of international criminal justice. The ICC is the most famous arbitrator of international criminal justice but international criminal justice can be enforced by an almost infinite number of actors. States can launch domestic criminal prosecutions for international crimes. Governments at all levels and corporations can boycott and refuse to work with people responsible for international crimes. Individuals and NGOs can perform their own grassroots boycotts and advocate for action from governments and corporations.

Many of these tools are identical to the tools available to the international community in addressing human rights abuses that may not necessarily rise to the level of crimes against humanity, war crimes, or genocide. However, there are legal and rhetorical benefits to recognizing and labeling international crimes as such. Legally, States can initiate criminal prosecutions for only the most serious international

crimes. Recognizing the commission of crimes against humanity as such allows States to prosecute those responsible for their commission. Some States also have laws that prohibit cooperation with States and individuals responsible for mass crimes.<sup>23</sup> Rhetorically describing international crimes for what they are is more specific. Specificity makes the description more powerful. Human rights violations can cover a wide range of conduct. Crimes against humanity, war crimes, and genocide are “unimaginable atrocities that deeply shock the conscience of humanity”.<sup>24</sup> Describing international crimes as human rights abuses uses an unnecessarily weak term and hides the severity of the perpetrator’s conduct.

The PRC’s power and international influence make it impossible for the ICC to investigate the situation in Tibet. The ICC’s lack of jurisdiction does not change the nature of the crimes committed in Tibet. Recognizing that crimes against humanity have been and continue to be committed in Tibet provides Tibetan rights advocates with powerful advocacy tools. Before Tibetan rights advocates can utilize these tools, it is important to understand why the ICC cannot act, whether crimes against humanity have been committed in Tibet, and who is responsible. Accordingly, this report will discuss the jurisdictional hurdles faced by Tibetans at ICC and then the substantive law of crimes against humanity and attribution for those crimes in Tibet. This report will conclude by discussing different means of accountability for the crimes

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<sup>23</sup> See eg. Office of the Press Secretary, “Fact Sheet: A Comprehensive Strategy and New Tools to Prevent and Respond to Atrocities,” *The White House*, 23 April 2012, available at: <http://www.whitehouse.gov/the-press-office/2012/04/23/fact-sheet-comprehensive-strategy-and-new-tools-prevent-and-respond-atro> (United States).

<sup>24</sup> Rome Statute of the International Criminal Court, UN Doc. A/CONF. 183/9, adopted July 17, 1998, entered into force July 1, 2002Preamble [hereinafter Rome Statute].

committed in Tibet and issue policy recommendations to the PRC and the international community aimed at improving conditions in Tibet and ending impunity for those responsible for the commission of crimes against humanity.

## II. Jurisdiction

The power of any court is limited by its jurisdiction. No matter how important the issue presented to the court, without jurisdiction it is powerless. Decisions and rulings that are made outside of a court's jurisdiction are without legal affect and risk undermining the court's credibility. Thus, the first task for any court is to determine whether it has jurisdiction. For international courts, the lack of jurisdiction can be particularly frustrating. Many international courts are courts of last resort. If the court of last resort determines that it lacks jurisdiction, it effectively declares that a judicial remedy is impossible.

The ICC is designed to be a court of last resort. A condition of the ICC's jurisdiction is that domestic courts must be unable or unwilling to act. Only when domestic courts are unable or unwilling to act, can the ICC investigate the situation. This is only one of the many jurisdictional requirements placed on the ICC. There are still many cases where other jurisdictional restrictions prevent the ICC from acting, even though every other court in the world has not acted, as is the case in Tibet. Some would denounce either the ICC or international criminal justice because of the ICC's inaction. This denunciation would be misplaced. Even for

courts, there can be no obligation to do the impossible. Despite the ICC's goal of ending impunity, it still cannot act without jurisdiction. The ICC does not, and will not, have jurisdiction over the situation in Tibet.

The inability of the ICC to investigate the situation in Tibet does not mean there is no role for international criminal justice in Tibet. Recognizing that international crimes defined by the Rome Statute have been committed in Tibet gives international actors powerful legal and rhetorical tools outside of the ICC.

The remainder of this section will discuss the ICC's jurisdiction. It will examine the different limitations on the ICC's jurisdiction and how these limitations prevent the ICC from exercising jurisdiction over the situation in Tibet.

## A. Limits on Jurisdiction

The main jurisdictional limitation placed on the ICC is that it is first and foremost a criminal court with jurisdiction over persons. The ICC cannot make any ruling on the responsibility of States, international organizations, corporations or any other actor that is not a person.<sup>25</sup> For Tibet, this means that the ICC cannot adjudicate upon the conduct of the Chinese State or government or Chinese and multinational corporations. The ICC may only examine the criminal responsibility of individual people's conduct in Tibet. The ICC's jurisdiction is also limited by subject matter, state

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<sup>25</sup> Rome Statute Arts. 25(1), 25(2), 25(4).

consent or referral by the United Nations Security Council, and time.<sup>26</sup>

## 1. Subject Matter

The international community has struggled to define some of the worst atrocities. During World War II, the Holocaust was beyond not just definition but even the comprehension of some legal scholars.<sup>27</sup> Since then, international criminal justice has adapted to include other acts previously unconsidered by international criminal law, such as widespread and systematic disappearances, apartheid, forced marriages, the use of child soldiers, mutilation and ethnic cleansing.<sup>28</sup> At the same time, it is a fundamental principle of justice that nobody can be criminally responsible for conduct that was not criminal at the time. The combination of these two principles requires that the crimes within the jurisdiction of the ICC be both specific and broad enough to include unthinkable conduct.

The Rome Statute limits the ICC's jurisdiction to four crimes: 1) the crime of genocide; 2) crimes against humanity; 3) war crimes and 4) the crime of aggression.<sup>29</sup> Of these four crimes, both genocide and war crimes are codified in multilateral treaties. Crimes against humanity were first prosecuted at the

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<sup>26</sup> Rome Statute Arts. 5, 11.

<sup>27</sup> Samantha Power, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE*, at 34 (2007).

<sup>28</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 *Am. J. Int'l L.* at 87 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>29</sup> Rome Statute Art. 5.

Nuremberg Tribunal<sup>30</sup> and the definition reflects the work of every previous international criminal tribunal, the United Nations Security Council, and the International Law Commission and domestic prosecutions by States.<sup>31</sup> Defining the crime of aggression has been difficult for the international community. When the Rome Statute was adopted on 1 July 2002, the crime of aggression was undefined.<sup>32</sup> It was not until the Kampala Conference in 2010 that a definition for the crime of aggression was added to the Rome Statute.<sup>33</sup>

These are the only four crimes within the ICC's subject matter jurisdiction. All other conduct, no matter how heinous, is outside of the ICC's jurisdiction.

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<sup>30</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 9 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>31</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 36 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>32</sup> See Rome Statute Art. 5(2).

<sup>33</sup> "Delivering on the promise of a fair, effective and independent Court: The Crime of Aggression," *Coalition for the International Criminal Court*, accessed on 30 July 2013, available at: <http://www.iccnw.org/?mod=aggression>.

## 2. State Consent and Security Council Referral

The ICC can have jurisdiction over a situation only with a State's consent or through a referral by the UN Security Council. The ICC could gain jurisdiction over the situation in Tibet with the consent of either the PRC or Tibet, if Tibet became an independent State. It is extremely unlikely that the PRC will consent to the ICC's jurisdiction or will allow a referral by the Security Council. Without a dramatic change in international politics, it is equally unlikely that there will be an independent Tibetan State capable of consenting to the ICC's jurisdiction in the foreseeable future.

### a. Chinese Consent

The ICC can only exercise jurisdiction over crimes committed by a citizen or on the territory of a State that has consented to the ICC's jurisdiction. The only exception to this rule is if the Security Council refers a situation to the ICC. A State can consent to the ICC's jurisdiction by acceding to the Rome Statute or by notifying the Registrar of the ICC that it is accepting the ICC's jurisdiction.<sup>34</sup> The Security Council can refer a situation to the ICC by passing a resolution.<sup>35</sup> Security Council resolutions require nine affirmative votes and no negative votes from the permanent members (the PRC, France, Russia, the United Kingdom, and the United States) to pass.<sup>36</sup> A referral by the Security Council may be limited to a

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<sup>34</sup> Rome Statute Arts. 12(1), 12(3).

<sup>35</sup> Rome Statute Art. 13(B).

<sup>36</sup> UN Charter Art. 28.



specific situation and may, as discussed above, apply retroactively.

A situation does not need to apply to an entire State but can focus on a particular area. The first situation referred to the ICC was limited to the situation in northern Uganda, where the Lord's Resistance Army was active.<sup>37</sup> The first referral of a situation by the Security Council was similarly limited to the Darfur region in eastern Sudan.<sup>38</sup> Of the eight situations the ICC is currently investigating, five involved states that had acceded to the Rome Statute,<sup>39</sup> the Security Council referred two,<sup>40</sup> and one involved a State accepting the jurisdiction of the court without acceding to the Rome Statute.<sup>41</sup>

After the 2008 protests, the PRC went to extraordinary lengths to prevent information from coming out of Tibet, and those measures still exist today.<sup>42</sup> It is unlikely that the PRC will change this policy and consent to the ICC's jurisdiction over the situation in Tibet. The Security Council cannot refer the situation to the ICC over the PRC's objection because the PRC is a permanent member of the Security Council with veto power. So long as Tibet is dependent on the PRC consenting the ICC's jurisdiction, the situation in Tibet will remain outside the ICC's jurisdiction.

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<sup>37</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 51 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04 *citing* Letter from Luis Moreno Ocampo, Chief Prosecutor, to President Philippe Kirsch, dated June 17, 2004.

<sup>38</sup> Security Council Res. 1593 (2005), at ¶ 1 S/Res/1593 (2005).

<sup>39</sup> Uganda, The Democratic Republic of the Congo, the Central African Republic, Kenya, and Mali.

<sup>40</sup> Darfur and Libya.

<sup>41</sup> The Côte d'Ivoire .

<sup>42</sup> TCHRD 2012 Annual Report page 2, *available at*:

<http://www.scribd.com/doc/120758305/Annual-Report-TCHRD-2012>.

## b. Tibetan Self-determination

If Tibet were not dependent on the PRC's consent, the ICC could have jurisdiction over the situation. The Rome Statute is open for signature to all States.<sup>43</sup> If Tibet became an independent State, it could accede to the Rome Statute without the PRC's consent.<sup>44</sup> Tibet could become a State capable of acceding to the Rome Statute in two ways. First, Tibet could demonstrate that it had fulfilled the criteria for Statehood before the Chinese invasion in 1950. Second, Tibetans could claim that they have the right to secede from the PRC based on their right to self-determination. In either case, the Office of the Prosecutor (OTP) would require that the UN General Assembly recognize Tibet as a State before accepting their ascension to the Rome Statute. There are strong arguments supporting both Tibetan Statehood and Tibetan self-determination. However, the requirement that the General Assembly recognize Tibet as a State effectively prohibits Tibet from acceding to the Rome Statute and consenting the ICC's jurisdiction.

From 2009-2012, the Palestinian government attempted to gain recognition as a State and accede to the Rome Statute. This was Palestine's only means of granting the ICC jurisdiction. The Palestinians knew Israel would not consent to the ICC's jurisdiction and the United States would veto any Security Council resolution referring the situation to the ICC. On 22 January 2009, Palestine attempted to accede to the Rome Statute arguing that it had fulfilled the criteria for statehood and, like any other State, could accede to the

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<sup>43</sup> Rome Statute Art. 125.

<sup>44</sup> This approach would have ramifications concerning the Middle Way Approach and independence that are beyond the scope of this paper.

Rome Statute.<sup>45</sup> The decision by the ICC's OTP left the determination of statehood with the General Assembly.<sup>46</sup> The General Assembly recognized Palestinian statehood by granting it non-member observer status at the United Nations on 29 November 2012.<sup>47</sup> This removed the only barrier preventing Palestine from consenting to the ICC's jurisdiction, though Palestine has not yet made efforts to do so.

Tibet could pursue a similar strategy to consent to the ICC's jurisdiction over the situation in Tibet. If Tibet could gain recognition from the General Assembly as a State, it could consent to the ICC's jurisdiction and refer the situation in Tibet to the ICC. Tibet would first need to fulfill the four criteria for Statehood: 1) a permanent population; 2) a defined territory; 3) a government; and 4) the capacity to enter into relations with other States.<sup>48</sup> Demonstrating that Tibet has fulfilled the requirements for Statehood requires a historical analysis of Tibetan Statehood before the Chinese invasion in 1950.<sup>49</sup>

Even if Tibet was not a State before the Chinese invasion, the Tibetan people can exercise their right to self-determination

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<sup>45</sup> Office of the Prosecutor of the International Criminal Court, Situation in Palestine 3 April 2012, available at <http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>.

<sup>46</sup> Office of the Prosecutor of the International Criminal Court, Situation in Palestine 3 April 2012, available at <http://www.icc-cpi.int/NR/rdonlyres/C6162BBF-FEB9-4FAF-AFA9-836106D2694A/284387/SituationinPalestine030412ENG.pdf>.

<sup>47</sup> GA/Res/67/19 (2012) 29 Nov. 2012.

<sup>48</sup> Montevideo Convention on the Rights and Duties of States, 26 Dec. 1934, Art. 1. This treaty has been adopted as customary international law and is the authoritative statement on the criteria for statehood.

<sup>49</sup> See eg. "Case Concerning Tibet: Tibet's Sovereignty and the Tibetan People's Right to Self-Determination," *Tibet Justice Center*, 1 June 1998, updated 13 Feb. 2013, available at: [http://tibetjustice.org/reports/sovereignty/the\\_case\\_concerning\\_tibet-updated2013.pdf](http://tibetjustice.org/reports/sovereignty/the_case_concerning_tibet-updated2013.pdf).

and become an independent State. The UN Charter, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) all mention the right to self-determination.<sup>50</sup> The right to self-determination is binding on all States as customary international law and may be a rule of international law from which no derogation is permitted.<sup>51</sup> The right to self-determination is unique as a human right because it is a group right.<sup>52</sup>

The right to self-determination belongs to “peoples” and not individuals. There is some disagreement about the exact definition of a “peoples” under international law. It is generally accepted that “peoples” include ethnic, cultural, religious, and linguistic minorities living under an alien sovereignty.<sup>53</sup> Under this definition, Tibetans are a people entitled to self-determination.

Even though Tibetans have the right to self-determination, it does not necessarily mean that international law grants Tibetans the right to secession. Self-determination is divided into two parts: internal self-determination, which involves having a representative government and non-

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<sup>50</sup> U.N. Charter Art. 1(2); International Covenant on Civil and Political Rights, Dec. 16, 1966, U.N. GAOR 2200A (XXI), 999 U.N.T.S. 171 Art (1)(1); International Covenant on Economic, Social and Cultural Rights 1966, U.N. GAOR 2200A (XXI), 993 U.N.T.S. 3, Art. 1(1).

<sup>51</sup> Gerry J. Simpson, “The Diffusion of Sovereignty: Self-Determination in the Postcolonial Age,” 32 *Stanford Journal of International Law* 255 at 264 (1996).

<sup>52</sup> Jack Donnelly, *UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE* at 48 (2013).

<sup>53</sup> *See Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, I.C.J. Reports 2010, p. 403 at ¶179 [hereinafter *Kosovo Advisory Opinion*]; Antonio Cassese, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL*, at 122 (1995); Gerry J. Simpson, “The Diffusion of Sovereignty: Self-Determination in the Postcolonial Age,” 32 *Stanford Journal of International Law* 255 at 271 (1996).

discrimination,<sup>54</sup> and external self-determination, which involves a peoples' right to determine their own sovereignty.<sup>55</sup> Only if Tibetans use the right to external self-determination to secede from the PRC and form an independent Tibetan State will Tibet be able to consent to the ICC's jurisdiction.

Vladimir Lenin, whose philosophy became part of the PRC's founding ideology,<sup>56</sup> was the first forceful proponent of self-determination at the international level in 1916.<sup>57</sup> The international community did not adopt self-determination as a right until after World War II.<sup>58</sup> The international community has been careful to limit the right to external self-determination to exclude a general right to secession. The concern is that groups can divide themselves infinitely and such divisions usually cause civil wars and prolonged conflicts.<sup>59</sup> Due to these concerns, the right to external self-determination only existed in the most extreme cases.<sup>60</sup> All of the most extreme cases, especially in the 25 years following

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<sup>54</sup> Gerry J. Simpson, "The Diffusion of Sovereignty: Self-Determination in the Postcolonial Age," 32 *Stanford Journal of International Law* 255 at 270 (1996).

<sup>55</sup> Gerry J. Simpson, "The Diffusion of Sovereignty: Self-Determination in the Postcolonial Age," 32 *Stanford Journal of International Law* 255 at 278 (1996).

<sup>56</sup> Marina Svensson, *DEBATING HUMAN RIGHTS IN CHINA: A CONCEPTUAL AND POLITICAL HISTORY*, at 181 (2002); Randall Peerenboom, *CHINA'S LONG MARCH TOWARD RULE OF LAW*, at 77 (2002).

<sup>57</sup> Johan D. van der Vyver, *Self-Determination of the Peoples of Quebec Under International Law*, 10 *Journal of Transnational Law & Policy* 1 at 14 (2000) (citing Antonio Cassese, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL*, at 15 (1995)).

<sup>58</sup> Johan D. van der Vyver, *Self-Determination of the Peoples of Quebec Under International Law*, 10 *Journal of Transnational Law & Policy* 1 at 15 (2000)

<sup>59</sup> Paul Williams and Francesca Jannotti Pecci, "Earned Sovereignty: Bridging the Gap Between Sovereignty and Self-Determination," 40 *Stanford Journal of International Law* 347 at 347.

<sup>60</sup> *Reference by the Governor in Council concerning Certain Questions relating to the Secession of Quebec from Canada* ([1998] 2 *Supreme Court Reporter (SCR)* 217; 161 *Dominion Law Reports (DLR)* (4th) 385; 115 *International Law Reports (ILR)* 536 at ¶126 [hereinafter *Secession of Quebec*]).

the creation of the UN, involved decolonization. When the UN was created, almost 100 former colonies, representing about one third of the world's population, were recognized as Non-Self-Governing Territories (NSGT) and placed within the UN's Trusteeship System designed to grant them independence.<sup>61</sup> Throughout the 1950s and 1960s, self-determination was the legal and philosophical underpinning for the decolonization of the NSGTs.<sup>62</sup> Even though the General Assembly made reference to the Tibetans' right to self-determination in 1961,<sup>63</sup> in practice, this generally excluded the expansion of the PRC and the Soviet Union.<sup>64</sup> Self-determination was further limited by the principle that each colony could only exercise its right to self-determination once, within the pre-existing colonial boundaries.<sup>65</sup> In 1970, the UN General Assembly passed the Declaration on Friendly Relations, which recognized that the purpose of self-determination was to end colonization.<sup>66</sup>

In the forty years after the Declaration on Friendly Relations, there have been numerous attempts to broaden the scope of external self-determination. Various peoples have attempted to assert their right to self-determination outside of the context of colonialism. In 1998, the Canadian Supreme Court

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<sup>61</sup> See "Declaration on the Granting of Independence to Colonial Countries and Peoples," GA/Res/1514, 14 Dec. 1960; "History," *The United Nations and Decolonization*, available at: <http://www.un.org/en/decolonization/history.shtml> [accessed 16 Aug. 2013].

<sup>62</sup> Gerry J. Simpson, "The Diffusion of Sovereignty: Self-Determination in the Postcolonial Age," 32 *Stanford Journal of International Law* 255 at 272-273 (1996).

<sup>63</sup> GA/Res/1723(XVI), 2 Dec. 1961.

<sup>64</sup> Gerry J. Simpson, "The Diffusion of Sovereignty: Self-Determination in the Postcolonial Age," 32 *Stanford Journal of International Law* 255 at 273 (1996).

<sup>65</sup> Antonio Cassese, SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL, 72-73 (1995).

<sup>66</sup> "Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations," GA/Res/25/2625, 24 Oct. 1970.

examined whether Quebec had a right to secession under international law. The Supreme Court held that peoples could have the right to external self-determination when their internal right to self-determination has been denied.<sup>67</sup> Specifically, the court held that this applied only in cases of colonialism, a racist regime, and possibly where a group is denied meaningful access to government to pursue their own political, economic, social, or cultural development.<sup>68</sup> The third criterion has been referred to as “the right of remedial secession”.

Courts have been hesitant to definitively recognize or elaborate upon the right of remedial secession. The Canadian Supreme Court noted that the population in Quebec had not been denied access to government so whether the right existed was unnecessary for its decision.<sup>69</sup> In 2010, the International Court of Justice (ICJ) recognized that there was disagreement concerning the existence and scope of the content of the right of remedial secession.<sup>70</sup> However, the ICJ decided it did not need to settle these disputes to answer the question presented to it.<sup>71</sup> The ICJ reiterated that external self-determination applied to peoples who were subject to colonialism and alien subjugation, domination, and exploitation.<sup>72</sup>

Tibetans could claim that they have a right to external self-determination either because they are subject to alien domination, subjugation, and exploitation or because of the remedial right of secession, if it exists under international law.

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<sup>67</sup> *Secession of Quebec* at ¶138.

<sup>68</sup> *Secession of Quebec* at ¶¶138, 154.

<sup>69</sup> *Secession of Quebec* at ¶136.

<sup>70</sup> *Kosovo Advisory Opinion* at ¶82.

<sup>71</sup> *Kosovo Advisory Opinion* at ¶83.

<sup>72</sup> *Kosovo Advisory Opinion* at ¶79.

For sixty years, there has been a growing human rights crisis in Tibet. For years, as shall be discussed in more detail below, the Chinese government and governmental leaders have been committing crimes against humanity in Tibet, including torture, arbitrary detention, and murder.

Demonstrating that Tibet was a State in 1950 or that the Tibetans have a right to secession by virtue of their right to external self-determination alone will not allow Tibet to accede to the Rome State. The OTP determined that recognition as a State must come from the United Nations General Assembly, which is a political and not a legal organ. Even if Tibet fulfills all the criteria for Statehood or secession, the General Assembly is not obliged to recognize Tibet as a State. It would be difficult to get the General Assembly to recognize Tibet as a State. The PRC has demonstrated the lengths it will go to ensure Tibet remains part of the PRC and has issued threats to States with claims to what the PRC considers part of its sovereign territory.<sup>73</sup> The PRC will invest an estimated US\$200 billion in Africa in 2013.<sup>74</sup> The PRC's investments in Africa are spread between 50 countries and it represents a quarter of some countries' export volume.<sup>75</sup> The PRC will undoubtedly use its influence among the 193

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<sup>73</sup> Gopal Ratnam, "China Won't Barter Away Territorial Interest, Chang Says," *Bloomberg News*, 20 Aug. 2013, available at: [http://www.bloomberg.com/news/2013-08-19/china-won-t-barter-away-territorial-interest-chang-says.html?utm\\_source=The+Sinocism+China+Newsletter&utm\\_campaign=b3581b8c14-The\\_Sinocism\\_China\\_Newsletter\\_08\\_21\\_13&utm\\_medium=email&utm\\_term=0\\_171f237867-b3581b8c14-29611661](http://www.bloomberg.com/news/2013-08-19/china-won-t-barter-away-territorial-interest-chang-says.html?utm_source=The+Sinocism+China+Newsletter&utm_campaign=b3581b8c14-The_Sinocism_China_Newsletter_08_21_13&utm_medium=email&utm_term=0_171f237867-b3581b8c14-29611661).

<sup>74</sup> "China brings goods and roads, now Africa wants jobs," *Reuters*, 21 July 2013, available at: <http://www.reuters.com/article/2013/07/21/africa-china-idUSL6NOF13TE20130721>.

<sup>75</sup> He Shan, "China's African investment grows 30 fold," *China.org.cn*, 12 July 2013, available at: [http://www.china.org.cn/business/2013-07/12/content\\_29403154.htm](http://www.china.org.cn/business/2013-07/12/content_29403154.htm).



members of the General Assembly, which operates by popular vote, to prevent recognition of Tibet as an independent State.

Even without pressure from the PRC, the General Assembly has not discussed Tibet since 1965, six years before the PRC had a seat at the UN.<sup>76</sup> In the 1965 Resolution, the General Assembly only discussed the human rights situation in Tibet. In two previous resolutions,<sup>77</sup> the General Assembly discussed the situation in Tibet, but only once, in 1961, did it mention the right to self-determination.<sup>78</sup> The General Assembly has never raised the issue of Tibetan Statehood or independence.

Under the current political situation, it is inconceivable that the ICC could get jurisdiction over the situation in Tibet. The PRC will not consent to the ICC's jurisdiction over the situation in Tibet because the PRC will not accede to the Rome Statute and will veto a Security Council resolution referring the situation to the ICC. The General Assembly is unlikely to recognize Tibetan Statehood especially because the PRC is more powerful and influential than it was in 1965 when it did not even have a seat at the United Nations.

The requirement that States consent to the ICC's jurisdiction prevents the ICC from having jurisdiction over the situation in Tibet, even if all other jurisdictional requirements have been satisfied.

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<sup>76</sup> GA/Res/2079(XX), 18 Dec. 1965.

<sup>77</sup> GA/Res/1353(XIV), 21 Oct. 1959; GA/Res/1723(XVI), 2 Dec. 1961.

<sup>78</sup> GA/Res/1723(XVI), 2 Dec. 1961.

### 3. Time

Even if the PRC accedes to the Rome Statute, the ICC would still need temporal jurisdiction. The ICC is a forward-looking organization. The Rome Statute restricts the ICC's jurisdiction to crimes that were committed after the creation of the ICC. With the exception of the crime of aggression, all the crimes within the ICC's jurisdiction were already prohibited by international law prior to the Rome Statute, and thus there was no external legal doctrine that would have prevented the ICC from investigating international crimes that were committed after World War II. For example, the Extraordinary Chambers in the Courts of Cambodia (ECCC) was created in 1997 for crimes committed by the Khmer Rouge in the 1970s.<sup>79</sup> The Rome Statute rejected this approach and the ICC's jurisdiction is limited to crimes committed only after the creation of the ICC on 1 July 2002.<sup>80</sup> Similarly, the crime of aggression cannot be prosecuted until at least 2017.<sup>81</sup>

An additional limit on the ICC's temporal jurisdiction concerns when a State consents to the ICC's jurisdiction. Generally, the ICC will only have jurisdiction over conduct that occurs after a State accedes to the Rome Statute.<sup>82</sup> However, States are not prohibited from applying their consent retroactively to 1 July 2002. In practice when the Security Council has referred a

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<sup>79</sup> See Extraordinary Chambers in the Courts of Cambodia (ECCC), "Home," available at <http://www.eccc.gov.kh/en>.

<sup>80</sup> Rome Statute Art. 11.

<sup>81</sup> "Delivering on the promise of a fair, effective and independent Court: The Crime of Aggression," *Coalition for the International Criminal Court*, accessed on 30 July 2013, available at: <http://www.iccnw.org/?mod=aggression>.

<sup>82</sup> Rome Statute Art. 11.

situation to the ICC, the referral has applied retroactively. For example, on 31 March 2005, the Security Council passed a resolution referring the situation in Darfur, Sudan, since 1 July 2002 to the ICC.<sup>83</sup> It is unclear if a State can apply its consent retroactively. States that have consented to the ICC's jurisdiction have tried to apply their consent retroactively but the ICC has not ruled on whether this is permissible.<sup>84</sup>

The ICC's limited temporal jurisdiction means that crimes committed in Tibet prior to 1 July 2002 are outside of the court's jurisdiction. As the PRC has not acceded to the Rome Statute, the situation in Tibet remains outside of the ICC's jurisdiction. The PRC could consent to the ICC's jurisdiction and try to apply that consent retroactively or the Security Council could refer the situation in Tibet to the ICC and apply this referral retroactively. Both of these scenarios could give the ICC temporal jurisdiction over crimes committed in Tibet after 1 July 2002. Thus the crackdown on the protests in 1989 is outside the ICC's temporal jurisdiction but the crackdown on the 2008 protests is not. They also depend exclusively on the PRC consenting to the ICC's jurisdiction, which is unlikely.

## B. Admissibility

If the OTP investigates a situation and determines that crimes within the court's jurisdiction have been committed, it can request the Pre-Trial Chamber issue a warrant of arrest or

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<sup>83</sup> Security Council Res. 1593 (2005), at ¶ 1 S/Res/1593 (2005).

<sup>84</sup> See for example: Côte d'Ivoire [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/icc0211/Pages/situation%20index.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0211/Pages/situation%20index.aspx).

summons for the people accused of committing the crimes.<sup>85</sup> There are additional procedural hurdles to overcome before these people can be tried at the ICC. Every case at the ICC must be admissible. Similar to jurisdiction, a court is only allowed to hear admissible cases. The distinction between jurisdiction and admissibility in the Rome Statute is that jurisdiction applies to an entire situation whereas admissibility applies to individual cases.<sup>86</sup> Every case must be part of a situation within the ICC's jurisdiction and fulfill the criteria for admissibility. There are four criteria for admissibility: 1) the State that would normally have jurisdiction must be genuinely unable or unwilling to carry out the investigation or prosecution;<sup>87</sup> 2) the State that would normally have jurisdiction has not investigated the case and decided not to prosecute the person concerned;<sup>88</sup> 3) the person concerned was not previously tried for the same crime;<sup>89</sup> and 4) the case meets the court's gravity threshold.<sup>90</sup> The first three work together to ensure that the ICC is a court of last resort. The final criterion ensures that only the most serious cases reach the ICC.

## 1. Court of Last Resort

The first admissibility requirement establishes the principle of complementarity. Under this principle, the ICC will intervene only when a genuine and fair national prosecution is not

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<sup>85</sup> Rome Statute Arts. 58(1), 58(7).

<sup>86</sup> See Rome Statute Art. 17.

<sup>87</sup> Rome Statute Art. 17(1)(a).

<sup>88</sup> Rome Statute Art. 17(1)(b).

<sup>89</sup> Rome Statute Arts. 17(1)(c), Art. 20(3).

<sup>90</sup> Rome Statute Art. 17(1)(d).

possible. The ICC is not designed to supplement or be superior to a domestic prosecution, nor is it inferior or beholden to domestic prosecutions that may be the product of domestic politics or biases.

The Pre-Trial Chamber discussed complementarity most recently in the *Saif Al-Islam Gaddafi* case from Libya. During the Arab Spring, the Security Council referred the situation in Libya to the ICC.<sup>91</sup> After investigating the situation, an arrest warrant was issued for Saif Al-Islam Gaddafi, the acting Prime Minister of Libya and the son of Muammar Gaddafi, the leader of Libya.<sup>92</sup> Gaddafi was arrested in Libya in late 2011 and the Libyan government asserted that it was both able and willing to try him.<sup>93</sup> On 31 May 2013, the ICC Pre-Trial Chamber held that Libya was unable to try Gaddafi and he should be sent to the ICC in The Hague.<sup>94</sup> While recognizing the preference for domestic prosecutions,<sup>95</sup> the Pre-Trial Chamber held that the potential Libyan prosecution did not involve conduct that was substantially the same as the prosecution for international crimes.<sup>96</sup> It then examined whether Libya was unable or unwilling to genuinely carry out a prosecution or investigation.

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<sup>91</sup> S/Res/1970, 26 Feb. 2011, available at: <http://www.icc-cpi.int/NR/rdonlyres/081A9013-B03D-4859-9D61-5D0B0F2F5EFA/0/1970Eng.pdf>.

<sup>92</sup> ICC, "Situation in Libya" available at: [http://www.icc-cpi.int/EN\\_Menus/ICC/Situations%20and%20Cases/Situations/ICC0111/Pages/situation%20index.aspx](http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations/ICC0111/Pages/situation%20index.aspx).

<sup>93</sup> Philippe Sands, "Where should Saif Gaddafi be put on trial?" *The Guardian*, 20 Nov. 2011, available at: <http://www.guardian.co.uk/commentisfree/2011/nov/20/saif-gaddafi-trial-libya-the-hague>.

<sup>94</sup> Decision on the Admissibility of Gaddafi Case ¶¶ 206-09, 214 No. ICC-01/11-01/11, 31 May 2013.

<sup>95</sup> Decision on the Admissibility of Gaddafi Case ¶ 52 No. ICC-01/11-01/11 31 May 2013.

<sup>96</sup> Decision on the Admissibility of Gaddafi Case ¶ 76 No. ICC-01/11-01/11 31 May 2013.

A state is unwilling to carry out a prosecution if it takes measures to shield somebody from prosecution by the ICC; there has been a delay that is inconsistent with bringing somebody to justice; or the proceedings are not impartial or independent and are inconsistent with bringing somebody to justice.<sup>97</sup> After determining that Libya was willing to prosecute Gaddafi, the Pre-Trial Chamber examined whether Libya was unable to carry out an investigation or prosecution. The Pre-Trial Chamber focused on three facts that demonstrated Libya was unable to carry out investigation or prosecution: 1) Libya's inability to gain custody over Gaddafi from the local militia that arrested him;<sup>98</sup> 2) allegations of torture from the UN support mission in Libya demonstrated Libya's inability to carry out an investigation;<sup>99</sup> and 3) Libya's difficulty in appointing defense counsel demonstrated Libya's inability to conduct a prosecution.<sup>100</sup>

The first criterion of admissibility addresses the admissibility of a case that national courts have not addressed. The second and third conditions of admissibility address a different situation where domestic courts have acted but the conduct has not been consistent with the ICC's goal of ending impunity. The ICC will not prosecute somebody who has been investigated or prosecuted by a domestic judicial system and found innocent unless the domestic judicial system worked to shield the person from the ICC and the State was unable or unwilling to conduct a fair and impartial

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<sup>97</sup> Rome Statute Art. 17(2).

<sup>98</sup> Decision on the Admissibility of Gaddafi Case ¶¶ 206-208 No. ICC-01/11-01/11 31, May 2013.

<sup>99</sup> Decision on the Admissibility of Gaddafi Case para 209 No. ICC-01/11-01/11 31 May 2013.

<sup>100</sup> Decision on the Admissibility of Gaddafi Case para 214 No. ICC-01/11-01/11 31 May 2013.

investigation or trial.<sup>101</sup> However, if a domestic court has or will conduct a fair and impartial investigation and prosecution, the case is inadmissible at the ICC.

## 2. Gravity Threshold

The gravity threshold is the final criterion of admissibility at the ICC.<sup>102</sup> The Pre-Trial Chamber at the ICC has only had a few opportunities to analyze the meaning of the gravity threshold. In the case against Bosco Ntaganda and Thomas Lubanga Dyilo, the Pre-Trial Chamber determined that the gravity threshold applied both to the crimes committed and the role of the accused in the commission of the crimes.<sup>103</sup>

The gravity of the crimes committed is determined by a two-pronged test. First, the crime must be systematic or large-scale; mere isolated incidents of criminal activity will fail this test.<sup>104</sup> The second prong is the social alarm caused by the conduct in the international community.<sup>105</sup> For the second prong, the Pre-Trial Chamber looked at the nature of crime rather than the specific criminal offense. Ntaganda and Lubanga were charged with the enlistment, conscription, or use of child soldiers and the Pre-Trial Chamber held that in

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<sup>101</sup> See Rome Statute Arts. 17(1)(b), 17(1)(c), 20(3).

<sup>102</sup> Rome Statute Art. 17(1)(d).

<sup>103</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶¶ 47, 52-53.

<sup>104</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 47.

<sup>105</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 47.

the abstract, these crimes cause international concern.<sup>106</sup> This prong would still be satisfied even if the enlistment, conscription, or use of child soldiers in this specific instance in the Democratic Republic of the Congo did not raise much international alarm.

If the ICC finds that the crimes committed satisfy the gravity requirement, it will then examine whether the perpetrators fulfill the gravity test. The Pre-Trial Chamber in the Ntaganda and Lubanga case said that to demonstrate the people accused satisfy the gravity requirement, three factors should be examined: 1) the position held by the accused;<sup>107</sup> 2) the accused's role in the organization when the crimes were committed;<sup>108</sup> and 3) the role of the accused's organization in the commission of the crimes.<sup>109</sup> These three factors are designed to include not just the people who were directly involved in the commission of the crimes but also those who can most effectively stop the commission of crimes.<sup>110</sup>

The Pre-Trial Chamber narrowed the criteria for when the gravity threshold has been met to three questions. The first addresses the gravity of the conduct and asks whether the conduct is systematic or large-scale with due consideration given to the alarm caused to the international community by that type of conduct.<sup>111</sup> The second and third questions

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<sup>106</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 47.

<sup>107</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 52.

<sup>108</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 53.

<sup>109</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 53.

<sup>110</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 54.

<sup>111</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 64(i).



address whether the accused satisfies the gravity threshold. The second question is whether the accused is one of the most senior leaders of the accused's organization.<sup>112</sup> The third question concerns the accused's responsibility in their organization for the crimes and the role of the accused's organization in the overall commission of the crimes.<sup>113</sup>

The ICC's admissibility requirements function to limit the cases the ICC can hear when it has jurisdiction. They guarantee that the ICC will be a court of last resort reserved for only the people most responsible for numerous criminal offenses within the ICC's jurisdiction. It is impossible to know how the admissibility requirements will function until the ICC actual begins to exercise its jurisdiction and the OTP requests an arrest warrant. The jurisdictional requirement that the ICC has consent from either a State or the Security Council ensures that the situation in Tibet will never reach questions of admissibility. However, the inability of the ICC to act does not mean that there can be no accountability for crimes committed in Tibet.

Demonstrating that crimes within the ICC's jurisdiction, specifically crimes against humanity, have been committed in Tibet can encourage international actors to end impunity and ensure that the people responsible for their commission are held accountable. International criminal justice is not dependent solely on the ICC.

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<sup>112</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 64(ii)

<sup>113</sup> Decision on the Prosecutor's Application for Warrants of Arrest, Article 58 Annex II, No. ICC-01/04-01/07, 10 Feb 2006 at ¶ 64(iii).

### III. Substantive Law

As international criminal law gains acceptance and importance internationally, the language associated with it also gains force. International criminal law creates definite standards that, if met, place the perpetrators of international crimes among the most infamous international criminals. Even without a prosecution by the ICC or other international courts, the commission of international crimes does not go unnoticed and, in some cases, unpunished.<sup>114</sup>

Crimes against humanity are the broadest and the most efficient crimes within the ICC's jurisdiction. Scholars and international criminal tribunals have made genocide, with the requirement that the accused specifically intend to destroy a group based on their membership in a particular social group, difficult to prove.<sup>115</sup> Before war crimes can be proven, the existence and nature of an armed conflict must be proven.<sup>116</sup> This involves a technical analysis of international humanitarian law.<sup>117</sup> The definition of crimes against humanity is broader than genocide and less technical than war crimes.<sup>118</sup> For this

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<sup>114</sup> See eg. Lotte Leicht, "Blunder in Burma: Lifting EU Sanctions Sends Wrong Message," *Der Spiegel*, 7 May 2013, available at: <http://www.spiegel.de/international/world/lifting-eu-sanctions-against-burma-will-damage-the-reform-process-a-898603.html>. US IMMIGRATION CASE OF RWANDA CRIMINALS

<sup>115</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 13 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>116</sup> Rome Statute Art. 5.

<sup>117</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 8 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04. MOLLY & MEGAN ARTICLE?

<sup>118</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 8 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04. See Rome Statute Art. 7.

reason, crimes against humanity have played a significant role in every international criminal tribunal.<sup>119</sup>

The relative simplicity of discussing and proving crimes against humanity has made it an important prosecutorial tool at the international criminal tribunals.<sup>120</sup> To prove crimes against humanity, human rights abuses such as torture, arbitrary detention and murder must be committed as part of a widespread or systematic attack against a civilian population. Demonstrating that human rights abuses have occurred or attaching adjectives to describe the human rights fails to communicate the same level of legal and moral severity as crimes against humanity. Especially when discussing the situation in Tibet, describing the abuse as human rights abuse rather than crimes against humanity only tells half the story.

As an advocacy tool, focusing on crimes against humanity takes advantage of the new and powerful vocabulary provided for by international criminal justice while not getting caught up in the legal technicalities required to prove genocide and war crimes. Unlike arguing that there are human rights abuses in Tibet, proving crimes against humanity demonstrates that the abuse does not just affect a few individuals but is deliberately designed to affect 6 million Tibetans. This approach utilizes the developments in international law and international criminal law, in particular those that have occurred over the past 20 years, to describe with specificity the severity of the abuses in Tibet.

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<sup>119</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 16 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>120</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 16,47 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

This section will argue that crimes against humanity are being committed in Tibet and that the Party Secretaries in charge of Tibet Autonomous Region (TAR), Qinghai Province, Gansu Province, and Sichuan Province are responsible for the crimes against humanity.

## A. Crimes Against Humanity

The Nuremberg and Tokyo Tribunals were the first tribunals to hold people criminally responsible for crimes against humanity.<sup>121</sup> Since then crimes against humanity have been part of every international criminal tribunal. Every situation investigated by the ICC involves crimes against humanity. In Kenya, Libya, and Côte d'Ivoire, it is the only crime being investigated and prosecuted.<sup>122</sup> Because crimes against humanity are not defined in any multilateral treaty, the definition of crimes against humanity has evolved each time it has been defined and applied by international criminal tribunals and other international actors.<sup>123</sup>

The exact requirements to prove crimes against humanity are still debated today. When drafting the Rome Statute, it was decided that creating a comprehensive definition of crimes against humanity based on the existing international law was too complicated, and it was more prudent to let it be defined

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<sup>121</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 9 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>122</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 4 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>123</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 38-39 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

through the case law as they were at previous tribunals.<sup>124</sup> It is beyond the scope of this report to enter this discussion. For the purposes of this report, it is sufficient to note that there is disagreement regarding the nuances of crimes against humanity. In such cases, this report will adopt the narrowest interpretation of crimes against humanity. Adopting the narrowest interpretation will not change the analysis of whether crimes against humanity have been committed in Tibet and will provide the greatest degree of deference to State sovereignty permitted by modern international criminal law.

The defining characteristic of crimes against humanity is not the commission of the underlying offenses such as murder or torture, but the surrounding context in which the offenses are carried out. All the underlying criminal offenses for crimes against humanity were already prohibited by international law. They were either clearly understood to be underlying offenses or proscribed by other international instruments when the Rome Statute was drafted.<sup>125</sup> These already internationally wrongful acts become crimes against humanity only when they are committed *as part of a widespread or systematic attack against a civilian population with knowledge of the attack*.<sup>126</sup> The required elements to provide the context for crimes against humanity are referred to as the *chapeau* elements.

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<sup>124</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 46 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>125</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 38-39 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>126</sup> Rome Statute Art. 7(1).

This subsection will first address the *chapeau* elements and then the underlying criminal offenses to demonstrate that crimes against humanity have been committed in Tibet.

## 1. Chapeau Elements

The Rome Statute requires that crimes against humanity be committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”.<sup>127</sup> The attack on the civilian population is specifically defined as consisting of multiple commissions of the underlying offenses pursuant to or in furtherance of a State or organizational policy.<sup>128</sup> These two phrases contain the four *chapeau* elements that together provide the context for crimes against humanity. The four elements are: 1) a widespread or systematic attack; 2) against any civilian population; 3) multiple acts pursuant to or in furtherance of a State or organizational policy; and 4) knowledge of the attack. This subsection will address each requirement in turn.

### a. Widespread or systematic attack

In Tibet, the attack against the civilian population is both widespread and systematic. Like the International Criminal Tribunal for Rwanda (ICTR), the Special Court for Sierra Leone (SCSL), and the Extraordinary Chambers in the Courts of Cambodia (ECCC), there is no requirement that the attack be both widespread and systematic but only that the attack be

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<sup>127</sup> Rome Statute Art. 7(1).

<sup>128</sup> Rome Statute Art. (7)2()(a).

either widespread or systematic.<sup>129</sup> A widespread attack encompasses either a large geographic area or a large number of civilians.<sup>130</sup> An attack is systematic if it is well organized and unlikely to be a random occurrence.<sup>131</sup>

Perpetrators of crimes against humanity often attempt to conceal the scope and organization of the attack. The perpetrators in Tibet are no exception. Chinese officials have claimed that they are protecting human rights in Tibet and simultaneously denied access to the media, international observers, and human rights organizations to confirm their claims.<sup>132</sup> Despite efforts to prevent any information from leaving Tibet, evidence of the widespread and systematic attack on Tibetans has reached the outside world. In May 2013, the Tibetan Center for Human Rights and Democracy (TCHRD) received a copy of a secret manual for the People's Armed Police (PAP) in Sichuan Province.<sup>133</sup> The PAP manual describes the "stability maintenance" policy in Tibetan regions as a "political strategy" under the leadership of the Chinese Communist Party (CCP), Central Military Commission, and president Hu Jintao.<sup>134</sup> The manual connects the

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<sup>129</sup> Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 Am. J. Int'l L. at 39 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>130</sup> Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶ 395.

<sup>131</sup> Prosecutor v. Katanga, Decision on the evidence and information provided by the Prosecution for the issuance of a warrant of arrest for Germain Katanga, 5 November 2007, para 33.

<sup>132</sup> See "China: Attempts to Seal Off Tibet from Outside Information," *Human Rights Watch*, 13 July 2012, available at: <http://www.hrw.org/news/2012/07/13/china-attempts-seal-tibet-outside-information>.

<sup>133</sup> "Weakness of the Oppressor': Leaked document exposes psychological traumas faced by Chinese armed police in Tibet," *TCHRD*, 13 May 2013, available at: <http://www.tchrd.org/2013/05/weakness-of-the-oppressed-leaked-document-exposes-psychological-traumas-faced-by-chinese-armed-police-in-tibet/>.

<sup>134</sup> "Weakness of the Oppressor': Leaked document exposes psychological traumas faced by Chinese armed police in Tibet," *TCHRD*, 13 May 2013, available

“stability maintenance” policy in Sichuan with the broader policy in all the Tibetan regions. The Tibetan regions include about one quarter of the PRC’s territory and 6 million people,<sup>135</sup> half of whom live in TAR.<sup>136</sup> The manual is definitive evidence that the attack on the civilian population is well organized and not a random occurrence and also that it encompass both a large geographic area and a large number of people. Therefore, the attack in Tibet is both widespread and systematic.

## b. Against a civilian population

The Rome Statute does not define the term civilian and there have been minor disagreements about how broadly the term should be interpreted. The Pre-Trial Chamber in the *Katanga* case at the ICC relied on the *Tadic* case from the International Criminal Tribunal for Yugoslavia’s (ICTY) to define the term broadly.<sup>137</sup> The Trial Chamber at the ICTY held that civilians include the general population and people who may be actively involved in the conflict or resistance movements in certain circumstances.<sup>138</sup> The Pre-Trial Chamber in the *Bemba* case examined the *Kunarac* case from the ICTY, which took its definition of civilian from international humanitarian law and thus excluded members of resistance movements

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at: <http://www.tchrd.org/2013/05/weakness-of-the-oppressed-leaked-document-exposes-psychological-traumas-faced-by-chinese-armed-police-in-tibet/>.

<sup>135</sup> “Tibet Statistics,” *International Campaign for Tibet*, accessed on 21 Aug. 2013, available at: <https://www.savetibet.org/resources/all-about-tibet/tibet-statistics/>.

<sup>136</sup> “Tibet’s population tops 3 million; 90% are Tibetans,” *People’s Daily*, 4 May 2011, available at: <http://english.peopledaily.com.cn/90001/90776/90882/7369781.html>.

<sup>137</sup> See Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶ 399.

<sup>138</sup> ICTY, *The Prosecutor v. Tadić*, Case No. IT-94-1, Trial Judgment, 7 May 1997, para 643.



from the definition of civilian.<sup>139</sup> The exact scope of the definition of civilian has not been settled and neither the *Katanga* nor the *Bemba* courts addressed this difference in definition. This report will adopt the narrower definition of civilian from the *Bemba* and *Kanarac* cases and international humanitarian law.

Under international humanitarian law, a civilian is anyone who is not a member of the armed forces or an otherwise legitimate combatant.<sup>140</sup> When examining whether a population is civilian, it must be predominantly, but not exclusively, civilian in nature.<sup>141</sup> In cases of doubt, individuals and groups are treated as civilian.<sup>142</sup>

In Tibet, the victims of the widespread and systematic attack are monks, nuns, nomads, bystanders, children, and laypeople. Some have participated in protests, some were just present at the protests, and some were targeted indiscriminately. The PRC has labeled protesters and people who dissent from the PRC's Tibetan policy as "separatists".<sup>143</sup> The label of "separatist" cannot transform a civilian into a legitimate target. With a few rare exceptions, most of the protests in Tibet are non-violent and usually involve shouting slogans and distributing fliers. These protesters and Tibetan

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<sup>139</sup> Situation in the Central African Republic, Case No. ICC-01/05-01/08, *Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo*, ¶178, (15 June 2009).

<sup>140</sup> *Prosecutor v Kunarac et al*, Case No. IT-96-23 & IT-96-23/1-A, "Trial Judgment", 22 February 2001, ¶ 425.

<sup>141</sup> *Prosecutor v Kunarac et al*, Case No. IT-96-23 & IT-96-23/1-A, "Trial Judgment", 22 February 2001, ¶ 425.

<sup>142</sup> *Prosecutor v Kunarac et al*, Case No. IT-96-23 & IT-96-23/1-A, "Trial Judgment", 22 February 2001, ¶ 426.

<sup>143</sup> "Communist Party Leadership Outlines 2010-2020 "Tibet Work" Priorities at "Fifth Forum," *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

bystanders are shot, tortured, arbitrarily detained, and killed. Even under the narrower definition of civilian, non-violent protesters, their relatives and family members, and innocent bystanders cannot be considered to be anything but civilians. The targeting of these civilians in Tibet fulfills the second *chapeau* element.

### c. Multiple acts pursuant to or in furtherance of a State or organization policy

Torture, detention in violation of international law, and murder are all underlying criminal offenses for crimes against humanity. All three are committed in Tibet. In Sichuan, the PAP used tear gas and live ammunition on unarmed, non-violent protesters three times in January 2012 – killing ten people.<sup>144</sup> Also in Sichuan, the PAP surrounded and fired upon a group of monks, nuns, and laypeople that gathered for a prayer session celebrating the Dalai Lama's 78th birthday on 6 July 2013. Fourteen people were shot including a monk who was hit in the head.<sup>145</sup> The PAP detained another 18 people.<sup>146</sup> People were killed during spontaneous protests following self-immolations in Qinghai Province.<sup>147</sup> Following the 2008 protests, hundreds of monks

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<sup>144</sup> "Freedom in the World 2013 Country Report: Tibet" Freedom House, available at: <http://www.freedomhouse.org/report/freedom-world/2013/tibet>; Amnesty International, *Amnesty International Annual Report 2013 - China*, 23 May 2013, available at: <http://www.refworld.org/docid/519f51a96b.html> [accessed 8 July 2013].

<sup>145</sup> "More injured by gunshots than earlier reported in Tawu," *TCHRD*, 17 July 2013, available at: <http://www.tchrd.org/2013/07/more-injured-by-gunshots-than-earlier-reported-in-tawu-shootings/>.

<sup>146</sup> "More injured by gunshots than earlier reported in Tawu," *TCHRD*, 17 July 2013, available at: <http://www.tchrd.org/2013/07/more-injured-by-gunshots-than-earlier-reported-in-tawu-shootings/>.

<sup>147</sup> United States Commission on International Religious Freedom, 2013 Annual Report, at 33, available at: [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf).

and nuns were detained and at least 283 are still imprisoned.<sup>148</sup> People are detained for attending or planning non-violent demonstrations<sup>149</sup> or petitioning for the release of a Tibetan from prison.<sup>150</sup> Tibetans who have been released from prison are severely weakened and complain of torture and abuse.<sup>151</sup> These few examples of the murder of protesters, the illegal detention of people for exercising their human rights, and torture demonstrate that there are multiple commissions of underlying criminal offenses for crimes against humanity. All of these offenses were carried out in furtherance of the PRC's Tibet policy, which is established at the highest levels of the government.

The scope of the policy requirement under the Rome Statute is one of the more contentious issues regarding the interpretation of crimes against humanity.<sup>152</sup> The judges in the ICC Pre-Trial Chamber's authorization of the investigation into the situation in Kenya were split about how the policy

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<sup>148</sup> United States Commission on International Religious Freedom, 2013 Annual Report, at 33, *available at*: [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf).

<sup>149</sup> United States Commission on International Religious Freedom, 2013 Annual Report, at 33, *available at*: [http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20USCIRF%20Annual%20Report%20(2).pdf).

<sup>150</sup> "China releases four Tibetans detained for petitioning in Beijing," *TCHRD*, 6 Aug. 2013, *available at*: <http://www.tchrd.org/2013/08/china-releases-four-tibetans-detained-for-petitioning-in-beijing/>.

<sup>151</sup> US State Department, "Country Reports on Human Rights Practices for 2012: China," [http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_1oad\\_id=204195&year=2012#wrapper](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_1oad_id=204195&year=2012#wrapper), accessed on 26 May 2013.

<sup>152</sup> *See eg.* Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 *Am. J. Int'l L.* at 38-39 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04; Darryl Robinson, "A Plea to Judges – Don't Make the Policy Element Impossible," *Opinio Juris Blog*, 22 July 2013, *available at*: <http://opiniojuris.org/2013/07/22/ajil-symposium-a-plea-to-judges-dont-make-the-policy-element-impossible/>.

requirement should be interpreted. Put simply, the majority and the dissent disagreed about where the policy must originate. The majority held that the policy could come from an organ within the organization, whereas the dissent argued that the policy must be adopted at the highest levels of the organization. The majority and the dissent have been both criticized and praised.<sup>153</sup> This report will adopt the stricter standard from the dissent that to fulfill the policy element in the *chapeau* elements, the policy must be made at the highest level of the State or organization.

The PRC's 10-year policy for Tibet was set at the Fifth Tibet Work Forum in 2010.<sup>154</sup> The meeting was attended by 332 of the PRC's most senior Party, government, and military leaders, including President Hu Jintao and Premier Wen Jiabao.<sup>155</sup> One goal was to protect stability by striking at the separatist threats.<sup>156</sup> This language of protecting stability from "splittists" and "separatists" both in political statements and the PRC's criminal code applies to all domestic critics of the government.<sup>157</sup> It is the rationale for harsh policies and long

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<sup>153</sup> See Leila Sadat, "Crimes Against Humanity in the Modern Age," 107 *Am. J. Int'l L.* at 63-75 of 8/8/12 draft on SSN. Washington University School of Law Paper No. 11-11-04.

<sup>154</sup> "Top-Level Meeting in Beijing Sets Strategy on Tibet," *News Blaze*, 29 Jan 2010, available at: <http://newsblaze.com/story/20100129193127zzzz.nb/topstory.html>.

<sup>155</sup> "Top-Level Meeting in Beijing Sets Strategy on Tibet," *News Blaze*, 29 Jan 2010, available at: <http://newsblaze.com/story/20100129193127zzzz.nb/topstory.html>; "Communist Party Leadership Outlines 2010-2020 "Tibet Work" Priorities at "Fifth Forum," *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

<sup>156</sup> "Communist Party Leadership Outlines 2010-2020 "Tibet Work" Priorities at "Fifth Forum," *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

<sup>157</sup> "Whose Security? "State Security" in China's New Criminal Code," *Human Rights in China & Human Rights Watch/Asia*, April 1997, at 2, available at: <http://hrichina.org/sites/default/files/oldsite/PDFs/Reports/HRIC-Security.pdf>.

prison sentences.<sup>158</sup> The meeting also launched an initiative to coordinate the implementation of Party and government policies in TAR, and Tibetan areas in Qinghai Province, Gansu Province, Sichuan Province, and Yunnan Province.<sup>159</sup> The meeting did not provide any specifics on how the policies would be implemented or discuss improving the human rights situation in Tibet.<sup>160</sup>

Evidence that the Chinese policy in Tibet includes torture, arbitrary detention, and murder comes from secret government reports and insider accounts from both before and after the Fifth Tibet Work Forum. The PAP manual links the killing of protesters in 2008 with the “stability maintenance” policy in Tibetan regions.<sup>161</sup> In 2013, *Der Spiegel* interviewed a senior official in the CPC who said that the Chinese discipline Tibetans who oppose their rule with violence.<sup>162</sup> The Fifth Tibet Work Forum and evidence of how its policies were implemented from the PAP Manual and senior Party officials demonstrate that the attack on the

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<sup>158</sup> *Criminal Law of the People's Republic of China* Arts. 103-105, 1 October 1997, available at: <http://www.refworld.org/docid/3ae6b5cd2.html> [accessed 21 August 2013].

<sup>159</sup> “Communist Party Leadership Outlines 2010-2020 “Tibet Work” Priorities at “Fifth Forum,” *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

<sup>160</sup> “Communist Party Leadership Outlines 2010-2020 “Tibet Work” Priorities at “Fifth Forum,” *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

<sup>161</sup> “Weakness of the Oppressor’: Leaked document exposes psychological traumas faced by Chinese armed police in Tibet,” *TCHRD*, 13 May 2013, available at: <http://www.tchrd.org/2013/05/weakness-of-the-oppressed-leaked-document-exposes-psychological-traumas-faced-by-chinese-armed-police-in-tibet/>.

<sup>162</sup> Andreas Lorenz, “Tibetan Exposes China from the Inside,” *Der Spiegel*, 16 July 2013, available at: <http://www.spiegel.de/international/world/tibetan-official-to-expose-chinese-abuses-from-the-inside-in-book-a-911405-druck.html>.

civilian population is part of a policy established at the highest levels of the Chinese government. Therefore, the policy element is fulfilled.

#### d. Knowledge of the attack

The final *chapeau* element is unique because it is the only *chapeau* element that involves the accused's subjective knowledge.<sup>163</sup> Relying on the jurisprudence from the *ad hoc* UN tribunals, the Pre-Trial Chamber held that the knowledge requirement consisted of two sub-elements. First, the accused must have knowledge of the attack. Second, the accused must know that his or her conduct was part of the attack.<sup>164</sup> The Pre-Trial Chamber held that the accused's knowledge could be inferred from the accused's legal authority, the historical and political environment, and the role the accused played in the broader criminal campaign.<sup>165</sup>

Each of the Party Secretaries for TAR, Qinghai Province, Gansu Province, and Sichuan Province has the requisite knowledge. Their political office gives legal authority over the abuses committed in Tibet.<sup>166</sup> Their knowledge of the attack and conduct in furtherance of the attack can be inferred from their legal authority. The Party Secretaries have knowledge of the attack and their conduct is in furtherance of the attack. Therefore, the subjective element is fulfilled.

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<sup>163</sup> See Elements of the Crimes, Art. 7; see also Rome Statute Art. 7.

<sup>164</sup> Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶ 401.

<sup>165</sup> Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶ 402.

<sup>166</sup> See "Communist Party Leadership Outlines 2010-2020 "Tibet Work" Priorities at "Fifth Forum," *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

All the *chapeau* elements are satisfied for the Party Secretaries governing Tibet. This establishes the context necessary for crimes against humanity to exist. The next step is proving that the underlying criminal offenses have been committed in Tibet.

## 2. Underlying Criminal Offenses

The *chapeau* elements provide the necessary context for crimes against humanity. The Rome Statute lists ten specific acts that can become crimes against humanity when the *chapeau* elements have been fulfilled. These acts form the underlying offenses for crimes against humanity. This section will examine the commission of three underlying criminal offenses—torture, detention in violation of international law, and murder—in Tibetan regions and provinces in the PRC. The following section will prove the attribution of these crimes to individual Chinese officials.

### a. Torture

The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (Torture Convention) prohibits the use of torture in all circumstances. Under international law, the acceptance and scope of the prohibition on torture is comparable to the prohibition of genocide.<sup>167</sup> The Rome Statute lists torture as an underlying criminal offense for crimes against humanity.<sup>168</sup> In addition to the definition of the crimes in the Rome Statute, the State

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<sup>167</sup> Jean Bethke Elshtain, *Reflection on the Problem of "Dirty Hands,"* TORTURE: A COLLECTION (Eds. Sanford Levinson) 2004 at 77.

<sup>168</sup> Rome Statute Art. 7(1)(f).

Parties to the Rome Statute created Elements of the Crimes to assist the ICC in interpreting the underlying criminal offenses for crimes against humanity.<sup>169</sup>

The definition of torture as a crime against humanity is derived from the Torture Convention. The Rome Statute's definition of torture as an underlying offense differs from the definition of torture in the Torture Convention in two ways. The Rome Statute and the Elements of the Crimes require the victim to be under the custody or control of the perpetrator.<sup>170</sup> This is not an explicit requirement in the Torture Convention.<sup>171</sup> However, it is argued that this requirement is implicit in the definition of torture.<sup>172</sup> The other difference is that the Torture Convention requires a public official or somebody acting with a public official's instruction or acquiescence to commit torture.<sup>173</sup> There is no public official requirement in the Rome Statute.<sup>174</sup>

Otherwise the definition of torture as a crime against humanity in the Rome Statute reflects the customary definition of torture that States have applied internationally and domestically. Torture as an underlying offense for crime against humanity requires proving that 1) the perpetrator inflicted severe physical or mental pain or suffering upon one or more people 2) in the perpetrator's custody or control and 3) the pain or suffering was not inherent in or incidental to

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<sup>169</sup> Rome Statute Art. 9.

<sup>170</sup> Rome Statute Art. 7(2)(e); ICC, Elements of the Crimes, Art. 7(1)(f).

<sup>171</sup> Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Art. 1.

<sup>172</sup> See eg. Manfred Nowak, *Torture: Perspective from UN Special Rapporteur on Torture and other Cruel Inhuman or Degrading Treatment*, 7 National Taiwan University Law Review 467 at 471 (2012).

<sup>173</sup> Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Art. 1.

<sup>174</sup> See Rome Statute Arts. 7(1)(f), 7(2)(e).



lawful sanctions.<sup>175</sup> The perpetrator must intend to inflict severe pain or suffering.<sup>176</sup>

Of the three required elements, the definition of severe pain or suffering is the most contentious. This requirement is often related to what treatment is inherent to lawful sanctions. Courts faced with allegations of torture usually address the necessity of the techniques in the ordinary course of work, for example, restraining a suspect during an interrogation, and whether the suffering inflicted on the suspect is reasonable.<sup>177</sup> Placing a suspect in a low chair during an interrogation may be permissible but not if the chain and the restraints unnecessarily impinge on the suspect's bodily integrity, dignity, and basic rights.<sup>178</sup> It is unnecessary here to examine the exact meaning of "severe". By all accepted standards, the techniques practiced in Chinese prisons constitute torture.

The routine and widespread use of torture in the PRC is well documented.<sup>179</sup> Two of the most notorious and commonly reported torture techniques are positional torture and the use of electric batons to electrocute and beat the victim.<sup>180</sup>

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<sup>175</sup> ICC, Elements of the Crimes, Art. 7(1)(f).

<sup>176</sup> Rome Statute 7(2)(e).

<sup>177</sup> See Supreme Court of Israel, *Judgment Concerning the Legality of the General Security Service's Interrogation Methods*, ¶ 27 (6 Sept. 1999).

<sup>178</sup> Supreme Court of Israel, *Judgment Concerning the Legality of the General Security Service's Interrogation Methods*, ¶ 27 (6 Sept. 1999).

<sup>179</sup> "Consideration of Reports Submitted by State Parties under Article 19 of the Convention: Concluding Observations of the Committee Against Torture, China" *Committee Against Torture*, UN Doc. CAT/C/CHN/CO/4, 21 Nov. 2008 (Advance Unedited Version), available at:

<http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.CHN.CO.4.pdf>; United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report - China*, 15 April 2013, available at: <http://www.refworld.org/docid/516fb7cf9.html>.

<sup>180</sup> Report of the Special Rapporteur on Torture, "Question on the rights of all persons subjected to any form of detention or imprisonment, in particular: torture and other cruel, inhumane and degrading treatment or punishment," *Commission*

Positional torture involves forcing the victim into an uncomfortable position for prolonged periods of time. This includes methods such as the tiger bench and death bed where the victims are restrained and unable to move for days or weeks at a time.<sup>181</sup> It also includes suspending the victims from the ceiling so that their toes barely reach the floor.<sup>182</sup> Positional torture can make sleep impossible, cause joints to dislocate, bones to break, and muscles to wither.<sup>183</sup> In extreme cases, positional torture can cause kidney failure.<sup>184</sup> Descriptions by victims of the PRC's use of positional torture techniques date to the Korean War.<sup>185</sup> The suppliers of torture devices corroborate allegations of positional torture. Jiangsu Wuwei Police Equipment Co. Ltd., a direct supplier for Chinese law enforcement advertises a steel interrogation chair with manacles for ankles and wrists.<sup>186</sup> The interrogation chair is also known as "tiger bench" and restraint in the tiger bench can cause legs to turn black with bruises.<sup>187</sup> Detainees can be restrained in the tiger bench for up to a week at a

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on *Human Rights*, UN Doc. E/CN.4/1995/34, 12 Jan. 1995 at ¶191, available at: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/e44b1a47d4f42862802566e3003bfd57>.

<sup>181</sup> Andrew Jacobs, "Opposition to Labor Camp Widens in China," *The New York Times*, 14 Dec. 2012, available at:

<http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&r=1&pagewanted=print>.

<sup>182</sup> Darius Rejali, *TORTURE AND DEMOCRACY* at 84.

<sup>183</sup> Darius Rejali, *TORTURE AND DEMOCRACY* at 83, 85.

<sup>184</sup> Darius Rejali, *TORTURE AND DEMOCRACY* at 80.

<sup>185</sup> Darius Rejali, *TORTURE AND DEMOCRACY* at 84.

<sup>186</sup> Jiangsu Wuwei Police Equipment Co., Ltd, "Product Name: Interrogation Chair" available at: <http://www.cccme.org.cn/shop/cn1211363136/offerinfo-8078529.aspx>.

<sup>187</sup> Andrew Jacobs, "Opposition to Labor Camp Widens in China," *The New York Times*, 14 Dec. 2012, available at:

<http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&r=1&pagewanted=print>.

time.<sup>188</sup> The positional torture techniques are designed to inflict severe pain and suffering and go well beyond what is necessary for a police investigation. Therefore, the use of positional torture techniques on Tibetans in furtherance of the widespread attack on the civilian population constitutes torture as a crime against humanity.

Another notorious torture method commonly employed by the Chinese is the use of electric batons. Numerous Tibetan political prisoners describe being beaten and electrocuted with electric batons.<sup>189</sup> Victims report being electrocuted on their skin, in the mouths, on their genitals, and being sodomized with electric batons.<sup>190</sup> The use of electric batons and prods has been well documented.<sup>191</sup> The most dramatic evidence of the PRC's use of electric batons came when Palden Gaytso smuggled a satchel of torture devices out of Tibet in 1993.<sup>192</sup> Similar to positional torture, the electric batons are used because they cause severe pain and suffering and their use cannot be justified as necessary for normal police work. Therefore, the use of electric batons against political prisoners in Tibet in furtherance of the widespread attack on the civilian population constitutes torture as a crime against humanity.

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<sup>188</sup> Andrew Jacobs, "Opposition to Labor Camp Widens in China," *The New York Times*, 14 Dec. 2012, available at: <http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&r=1&&pagewanted=print>.

<sup>189</sup> See eg. TCHRD Interview with Ngawang Phuntsok (TCHRD # 08-1864) from Kham Province, Kandze Tibetan Autonomous Prefecture, Sichuan Province on 19 July 2013 conducted by Nyinje Tenzin, Dawa Tsering, and John Gaudette.

<sup>190</sup> See eg. Erling Söderström, "Ngawang Choedon - she survived!" available at: <http://www.korubo.com/TIBETDOC/nun.htm>.

<sup>191</sup> See eg. Amnesty International, *Political Imprisonment in the People's Republic of China* (London: Amnesty International, 1978), 119-130.

<sup>192</sup> Orange Magazine, "Human Rights in Film - Tears on the Roof of the World," available at: <http://www.orangemagazine.eu/tears-on-the-roof-of-the-world/>.

Torture victims in Tibet include political prisoners who are detained and tortured as part of the policy of violently suppressing dissent to Chinese rule. Political prisoners in TAR described being suspended from the ceiling in Chushur Prison near Lhasa.<sup>193</sup> Dawa, who participated in a 2008 protest near Lhasa, was tortured before his release from a prison in TAR. He died from his injuries in a hospital four days later.<sup>194</sup> In Qinghai Province, Tashi Dhondup was arrested and tortured for writing and distributing lyrics that call for Tibetan independence.<sup>195</sup>

In Sichuan Province, Karwang was beaten and tortured to death by prison authorities after he was arrested in relation to posters calling for freedom.<sup>196</sup> Ngawang Phuntsok described the use of both positional torture and electric batons on him and other Tibetan political prisoners in a county detention center in Sichuan Province.<sup>197</sup>

Jamyang Jinpa, a monk who participated in a 2008 protest in front of international media, was tortured in a prison in Gansu

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<sup>193</sup> Radio Free Asia, *Torture Rampant at Chusur*, 21 Dec. 2012, available at: <http://www.rfa.org/english/news/tibet/torture-12212012151636.html>.

<sup>194</sup> "Tibetan farmer dies of torture in Phenpo County," *TCHRD*, 2 May 2008, available at: <http://www.tchrd.org/2008/05/tibetan-farmer-dies-of-torture-in-phenpo-county/>.

<sup>195</sup> See International Campaign for Tibet, *A 'Raging Storm': The Crackdown on Tibetan writers and artists after Tibet's Spring 2008 Protests*, May 2010, at 24, available at: [http://www.savetibet.org/wp-content/uploads/2013/05/Raging\\_Storm\\_complete.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/Raging_Storm_complete.pdf).

<sup>196</sup> "Tibetan Monk Tortured, Dies in Custody," *TCHRD*, 19 June 2012, available at: <http://www.tchrd.org/2012/06/tibetan-monk-tortured-dies-in-custody/>; Radio Free Asia, *Tibetan Monk Dies in Jail*, 13 June 2012, available at: <http://www.rfa.org/english/news/tibet/jail-06132012151826.html/>.

<sup>197</sup> TCHRD Interview with Ngawang Phuntsok (TCHRD # 08-1864) from Kham Province, Kandze Tibetan Autonomous Prefecture, Sichuan Province on 19 July 2013 conducted by Tenzin Nyinjey, Dawa Tsering, and John Gaudette.

Province.<sup>198</sup> Like Dawa, he died shortly after his release from kidney damage combined with bleeding or hemorrhaging in his brain. These symptoms are consistent with severe beatings and torture.<sup>199</sup>

The treatment of Tashi Dhondup, Karwang, Ngawang Phuntsok, Dawa, Jamyang Jimpa, and the anonymous political prisoners in Chushur prison are not unique. Instead, they are illustrative of the treatment suffered by political prisoners throughout Tibet. They were imprisoned for calling for human rights or contradicting Chinese propaganda about the situation in Tibet. While imprisoned, they were tortured. In the cases of Karwang, Dawa, and Jamyang Jimpa, they were tortured to death and their bodies still bore the evidence of their treatment. The others that survived told the stories of their torture. The historical record, physical evidence, other prisoners, and advertisements from Chinese police's suppliers corroborate their stories. Their stories describe positional torture and beatings and electrocutions with electric batons. Their stories describe torture. The torture they suffered was part of the campaign to suppress all dissent to Chinese control of Tibet. Therefore, torture as a crime against humanity was committed in Tibet.

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<sup>198</sup> International Campaign for Tibet, "Torture blamed for death of Tibetan monk, second death following protest during foreign reports' visit to Labrang monastery," 4 April 2011, available at: <http://www.savetibet.org/torture-blamed-for-death-of-tibetan-monk-second-death-following-protest-during-foreign-reporters-visit-to-labrang-monastery/>.

<sup>199</sup> International Campaign for Tibet, "Torture blamed for death of Tibetan monk, second death following protest during foreign reports' visit to Labrang monastery," 4 April 2011, available at: <http://www.savetibet.org/torture-blamed-for-death-of-tibetan-monk-second-death-following-protest-during-foreign-reporters-visit-to-labrang-monastery/>.

## b. Detention in violation of international law

The Rome Statute lists “imprisonment or other severe deprivation of physical liberty in violation of international law” as an underlying criminal offense for crimes against humanity.<sup>200</sup> In addition to the *chapeau* elements, there are three elements that must be fulfilled with both knowledge and intent:<sup>201</sup> 1) the perpetrator imprisoned or otherwise severely deprived one or more persons of physical liberty; 2) the conduct violated fundamental rules of international law; and 3) the perpetrator was aware of the factual circumstances that made the conduct a violation of fundamental rules of international law.<sup>202</sup> In the authorization to investigate the situation in Côte d’Ivoire, the Pre-Trial Chamber held that allegations of arbitrary arrest and detention constituted a rational basis to believe that detention in violation of international law was committed.<sup>203</sup> An arrest or detention is arbitrary if it is not in strict accordance with the law or under the control of an independent, impartial authority.<sup>204</sup>

In 2001, the United Nations High Commissioner for Human Rights described the Chinese practice of Reeducation Through Labor (Ch: *laojiao*) as “inherently arbitrary”.<sup>205</sup> Three years later, in 2004, the United Nations Working Group on Arbitrary Detention’s report on its mission to the PRC said that

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<sup>200</sup> Rome Statute Art. 7(1)(e).

<sup>201</sup> Rome Statute Art. 30.

<sup>202</sup> ICC, Elements of the Crime, Art. 7(1)(e).

<sup>203</sup> Situation in Côte d’Ivoire, Case No. ICC-02/11, Decision Pursuant to Article 15 of the Rome Statute of the Authorization of an Investigation into the Situation in Côte d’Ivoire, ¶76 (3 Oct. 2011).

<sup>204</sup> See “Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,” GA Res. 43/173, UN Doc. No. A/Res/43/173, 9 Dec. 1988 at Principle 4.

<sup>205</sup> Erik Eckholm, “China Hones Old Tool: ‘Re-educating’ Unruly,” *The New York Times*, 27 Feb. 2001, available at:

<http://www.nytimes.com/2001/02/27/world/china-hones-old-tool-re-educating-unruly.html?pagewanted=all&src=pm>.

Reeducation Through Labor (RTL) violates international law.<sup>206</sup> Chinese practices of arbitrary detention, including RTL, remain unchanged and are heavily criticized as contrary to Chinese and international law.<sup>207</sup> RTL allows the Public Security Bureau to send people to labor camps for up to four years without a trial or judicial review.<sup>208</sup> There is no independent body to prevent the police from abusing RTL and imposing long sentences for any sort of offense.<sup>209</sup> Especially in times of crisis, RTL is used to circumvent the Chinese judicial system and human rights protections.<sup>210</sup>

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<sup>206</sup> “Report of the Working Group on Arbitrary Detention: Addendum Mission to China,” Commission on Human Rights, Doc. No. E/CN.4/2005/6/Add.4, December 29, 2004, ¶ 75.

<sup>207</sup> See e.g. Ira Belkin, Written Statement for Congressional-Executive Commission on China Roundtable on “The End of Reeducation Through Labor? Recent Developments and Prospects for Reform” 9 May 2013 at 5, *available at*: <http://www.cecc.gov/pages/roundtables/general/roundtable3/CECC%20Roundtable%20-%20RTL%20Roundtable%20-%20Ira%20Belkin%20Written%20Statement.pdf>; see also United Kingdom: Foreign and Commonwealth Office, *Human Rights and Democracy: The 2012 Foreign & Commonwealth Office Report - China*, 15 April 2013, *available at*: <http://www.refworld.org/docid/516fb7cf9.html>; Andrew Jacobs, “Opposition to Labor Camp Widens in China,” *The New York Times*, 14 Dec. 2012, *available at*: <http://www.nytimes.com/2012/12/15/world/asia/opposition-to-labor-camps-widens-in-china.html?pagewanted=all&r=1&pagewanted=print>.

<sup>208</sup> Elizabeth M. Lynch, “DC Event: The End of Re-education Through Labor – May 9,” *China Law & Policy*, 7 May 2013, *available at*: <http://chinalawandpolicy.com/2013/05/07/dc-event-the-end-of-re-education-through-labor-may-9/>.

<sup>209</sup> Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811 at 821 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*: <http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

<sup>210</sup> Margret K. Lewis, Written Statement for Congressional-Executive Commission on China Roundtable on “The End of Reeducation Through Labor? Recent Developments and Prospects for Reform” 9 May 2013 at 1, *available at*: <http://www.cecc.gov/pages/roundtables/general/roundtable3/CECC%20Roundtable%20-%20RTL%20Roundtable%20-%20Margaret%20Lewis%20Written%20Statement.pdf>; Fu Hualing, “Re-education Through Labor in Historical Perspective,” (2005) *China Quarterly* 811

During the 2008 protests, the Chinese security forces used RTL to crackdown on minor incidents of non-violent dissent. Ngawang Phuntsok was arrested after he walked up alone to a police station in Kardze Tibetan Autonomous Prefecture and shouted for independence, the return of the Dalai Lama and threw pamphlets in the air.<sup>211</sup> He was sentenced to RTL with 11 other Tibetans. He saw almost 100 other Tibetans in his RTL camp.<sup>212</sup> Neither Ngawang Phuntsok nor other Tibetans received an impartial hearing, legal representation, or a chance to appeal their sentence.<sup>213</sup> The scale and context of the RTL sentences demonstrate that RTL is part of a policy to suppress any dissent to the PRC's policies in Tibet.<sup>214</sup> The PRC has continued to use this tactic today.

In 2010, in Qinghai, Tashi Dhondup received a 15-month sentence to RTL for singing about the repressive system in Tibet.<sup>215</sup> Tenzin Sherab spent nine and a half months in RTL

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at 821 accessed through Social Science Research Network Legal Scholarship Network Legal Studies Research Paper Series, *available at*:

<http://www.ssrn.com/link/U-Hong-Kong-LEG.html>.

<sup>211</sup> TCHRD Interview with Ngawang Phuntsok (TCHRD # 08-1864) from Kham Province, Kardze Tibetan Autonomous Prefecture, Sichuan Province on 19 July 2013 conducted by Tenzin Nyinje, Dawa Tsering, and John Gaudette.

<sup>212</sup> TCHRD Interview with Ngawang Phuntsok (TCHRD # 08-1864) from Kham Province, Kardze Tibetan Autonomous Prefecture, Sichuan Province on 19 July 2013 conducted by Tenzin Nyinje, Dawa Tsering, and John Gaudette.

<sup>213</sup> TCHRD Interview with Ngawang Phuntsok (TCHRD # 08-1864) from Kham Province, Kardze Tibetan Autonomous Prefecture, Sichuan Province on 19 July 2013 conducted by Tenzin Nyinje, Dawa Tsering, and John Gaudette; Human Rights Watch, "China: End Crackdown on Tibetan Monasteries," 12 Oct. 2011, *available at*: <http://www.hrw.org/news/2011/10/12/china-end-crackdown-tibetan-monasteries>.

<sup>214</sup> Margret K. Lewis, Written Statement for Congressional-Executive Commission on China Roundtable on "The End of Reeducation Through Labor? Recent Developments and Prospects for Reform" 9 May 2013 at 1, *available at*: <http://www.cecc.gov/pages/roundtables/general/roundtable3/CECC%20Roundtable%20-%20RTL%20Roundtable%20-%20Margaret%20Lewis%20Written%20Statement.pdf>.

<sup>215</sup> "A Raging Storm: The Crackdown on Tibetan Writers and Artists after Tibet's Spring 2008 Protests," International Campaign for Tibet, at 24-29



for distributing a newspaper.<sup>216</sup> The authorities in Qinghai Province responded to a non-violent protest in 2012 by sending Lobsang Samten, Lobsang Nyima, and Sonam Gewa to an RTL for more than 17 months.<sup>217</sup> The use of RTL to detain people without due process as part of a continuing crackdown on dissent is in violation of international law and an underlying criminal offense for crimes against humanity.

### c. Murder

The first underlying criminal offense for crimes against humanity listed in the Rome Statute is murder.<sup>218</sup> The Elements of the Crimes define murder as the killing or causing the death of one or more persons.<sup>219</sup> Additionally, article 30 of the Rome Statute establishes that all crimes must be committed with both knowledge and intent.<sup>220</sup> Knowledge is defined as “the awareness that a circumstance or a consequence will occur in the ordinary course of events”.<sup>221</sup> Intent is divided into two aspects, intentional conduct and the intended consequences.<sup>222</sup> Intentional conduct requires that the person meant to engage in the conduct.<sup>223</sup> To intend the consequences, a person must mean to cause the consequence or be aware that it will occur

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available at: [http://www.savetibet.org/wp-content/uploads/2013/05/Raging\\_Storm\\_complete.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/Raging_Storm_complete.pdf).

<sup>216</sup> “Four Tibetan monks released from Chinese labour camp,” *TCHRD*, 13 Aug. 2013, available at: <http://www.tchrd.org/2013/08/four-tibetan-monks-released-from-chinese-labour-camps/>.

<sup>217</sup> “Four Tibetan monks released from Chinese labour camp,” *TCHRD*, 13 Aug. 2013, available at: <http://www.tchrd.org/2013/08/four-tibetan-monks-released-from-chinese-labour-camps/>.

<sup>218</sup> Rome Statute Art. 7(1)(a).

<sup>219</sup> International Criminal Court (ICC), *Elements of Crimes*, 2011, available at: <http://www.refworld.org/docid/4ff5dd7d2.html> [accessed 9 July 2013] 7(1)(a).

<sup>220</sup> Rome Statute Art. 30.

<sup>221</sup> Rome Statute Art. 30(3).

<sup>222</sup> Rome Statute Art. 30(2).

<sup>223</sup> Rome Statute Art. 30(2)(a).

in the ordinary course of events.<sup>224</sup> Thus, in addition to the *chapeau* elements, murder as a crime against humanity requires the intentional and knowing killing of one or more people. Murder as a crime against humanity can be committed by the use of excessive force and live ammunition.<sup>225</sup>

In Tibet, murder as a crime against humanity often occurs during protests and mass gatherings. During the 2008 protests, there were numerous accounts of security personnel using disproportionate use of force and killing protesters. In Lhasa, on 14 March 2008, Pema Lhakyi saw two men in their mid-twenties die after soldiers started firing tear gas and live ammunition at protesters.<sup>226</sup> Other witnesses reported that Chinese security forces shot and killed 12 people, including Lhakpa Tsering.<sup>227</sup> During a protest the next day, Jinpa died as a result of multiple bullet wounds.<sup>228</sup> Two days later, a similar incident occurred in Ngaba (Ch: Aba) Tibetan Autonomous Prefecture in Sichuan Province. The police fired into a crowd of protesters killing at least four, including Tashi, a 26-year-old former monk.<sup>229</sup> An estimated 100 to 218

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<sup>224</sup> Rome Statute Art. 30(2)(b).

<sup>225</sup> Situation in Côte d'Ivoire, Case No. ICC-02/11, Decision Pursuant to Article 15 of the Rome Statute of the Authorization of an Investigation into the Situation in Côte d'Ivoire, ¶¶65-67 (3 Oct. 2011).

<sup>226</sup> "I saw it with my own eyes: Abuses by Chinese security forces in Tibet 2008-2010" *Human Rights Watch*, July 2010, at 22.

<sup>227</sup> "I saw it with my own eyes: Abuses by Chinese security forces in Tibet 2008-2010" *Human Rights Watch*, July 2010, at 23.

<sup>228</sup> "Tibetan farmer dies of torture in Phenpo County," *TCHRD*, 2 May 2008, available at; <http://www.tchrd.org/2008/05/tibetan-farmer-dies-of-torture-in-phenpo-county/>.

<sup>229</sup> "I saw it with my own eyes: Abuses by Chinese security forces in Tibet 2008-2010" *Human Rights Watch*, July 2010, at 31-32.

Tibetans were killed throughout Tibet by security forces during the 2008 protests.<sup>230</sup>

After the 2008 protests, the killings continued. In 2009, the police in Sichuan Province beat Phuntsok to death for pasting anti-government fliers in solidarity with monks who had been imprisoned and tortured in 2008.<sup>231</sup> In 2012, Choeri was killed by the police during a raid in Qinghai province.<sup>232</sup> One year later, the police in Qinghai province beat Guldrak to death while he was in police custody. After initially claiming the death was a suicide, the police admitted Guldrak was beaten to death and offered compensation to his family.<sup>233</sup>

In December 2011 and January 2012, the police killed two Tibetans in Gansu Province. The police stopped Chonjor for driving his motorcycle in Labrang (Ch: Xiahe) County and beat him to death.<sup>234</sup> One month later, Gurgo Tsering was killed during a late-night raid in Gansu Province when the PAP fired through his window.<sup>235</sup> There was no evidence linking

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<sup>230</sup> "Freedom in the World 2013 Country Report: Tibet" Freedom House, available at: <http://www.freedomhouse.org/report/freedom-world/2013/tibet>.

<sup>231</sup> "A Tibetan monk beaten to death by Chinese Security Police," TCHRD, 30 March 2009, available at: <http://www.tchrd.org/2009/03/a-tibetan-monk-beaten-to-death-by-chinese-security-police/>.

<sup>232</sup> "Police kill Tibetan man, wound two in Qinghai protest against Chinese rule," *Taipei Times*, 11 Mar. 2012, available at: <http://www.taipeitimes.com/News/front/archives/2012/03/11/2003527493>; "Reports: Chinese police raid kills Tibetan," *Al Jazeera*, 10 Mar. 2012, available at: <http://www.aljazeera.com/news/asia-pacific/2012/03/2012310542928597.html/>.

<sup>233</sup> "Chinese police beat a Tibetan man to death in custody," *Phayul*, 13 Aug. 2013, available at: <http://www.phayul.com/news/article.aspx?id=33856&article=Chinese+police+beat+a+Tibetan+man+to+death+in+custody>.

<sup>234</sup> "Tibetan beaten to death in Labrang," *International Campaign for Tibet*, 15 Dec. 2011, available at: <https://www.savetibet.org/tibetan-beaten-to-death-by-police-in-labrang/>.

<sup>235</sup> "Tibetans protest killing of Tibetan by police in Gansu," *International Campaign for Tibet*, 12 Jan. 2012, available at:

Gurgo Tsering with allegations of theft that was the purpose of the raid.<sup>236</sup>

In 2012, in a series of protests in Drango (Ch: Luhuo) County in Sichuan Province, security forces killed Yonten,<sup>237</sup> Ugyen,<sup>238</sup> Tsering Gyaltzen,<sup>239</sup> and Popo.<sup>240</sup> Following the protests, Chinese media reported that the security forces in Sichuan Province cornered, shot and killed brothers Yeshe Rigsel and Yeshe Samdrup.<sup>241</sup>

These killings and the three Tibetans who were tortured to death are a few specific examples of murder committed in the Tibetan regions in the PRC both during and after the 2008 protests. Despite the differences in time and place, all the examples involve the use of deadly force against unarmed Tibetans.

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<https://www.savetibet.org/tibetans-protest-killing-of-tibetan-by-police-in-gansu/>.

<sup>236</sup> "Tibetans protest killing of Tibetan by police in Gansu," *International Campaign for Tibet*, 12 Jan. 2012, available at:

<https://www.savetibet.org/tibetans-protest-killing-of-tibetan-by-police-in-gansu/>.

<sup>237</sup> "One Tibetan shot dead in Drango protest in Kardze," *TCHRD*, 23 Jan 2012, available at <http://www.tchrd.org/2012/01/one-tibetan-shot-dead-in-drango-protest-in-kandze/>.

<sup>238</sup> "Tibetan shot dead in Ngaba prefecture," *Free Tibet*, 27 Jan. 2012, available at: <http://www.freetibet.org/news-media/pr/tibetan-shot-dead-ngaba-prefecture>.

<sup>239</sup> "Monk "disappears" from hospital after police beatings," *TCHRD*, 19 Sept. 2012, available at: <http://www.tchrd.org/2012/09/monk-disappears-from-hospital-after-police-beatings/>.

<sup>240</sup> "Second day of killing in Tibet: two more shot dead many more injured in second town," *Free Tibet*, 24 Jan. 2012, available at: <http://www.freetibet.org/news-media/pr/second-day-killing-tibettwo-more-shot-dead-many-more-injured-second-town>.

<sup>241</sup> "Chinese newspaper reports two shooting death in Drango," *TCHRD*, 13 Feb. 2012, available at: <http://www.tchrd.org/2012/02/chinese-newspaper-reports-two-shooting-death-in-drango/>.

For these killings to become examples of murder as a crime against humanity, they must have been committed intentionally and knowingly.<sup>242</sup> In the authorization of the investigation into the situation in the Côte d'Ivoire, the Pre-Trial Chamber held that excessive force and the use of live ammunition against civilians satisfy both the knowledge and intent requirements.<sup>243</sup> In the case of the shooting into crowds of protesters, the inevitable inference is that the intent was to shoot the protesters with the knowledge that in the ordinary course of events, shooting at people can kill them. During the night raid that killed Gurgo Tsering, the PAP fired live ammunition on a residential building. Firing into a residence when most people are likely to be asleep is likely to result in the ordinary course of events in somebody being shot. Unlike indiscriminately firing live ammunition into a populated area, Chonjor and Phuntsok were specifically targeted. The PAP stopped them for what would ordinarily be a minor offense and simply beat them to death.

In all of these examples, the shootings and beatings were deliberate acts with likely and foreseeable consequences that people will die. In all these cases, which only represent a fraction of the actual murders by government forces in Tibet, the Chinese security forces knowingly intended the death of their victims. Therefore, the people responsible for this conduct are responsible for murder as a crime against humanity.

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<sup>242</sup> Rome Statute Arts. 7(1)(a), 30.

<sup>243</sup> *Situation in Côte d'Ivoire*, Case No. ICC-02/11, Decision Pursuant to Article 15 of the Rome Statute of the Authorization of an Investigation into the Situation in Côte d'Ivoire, ¶¶65-67 (3 Oct. 2011).ß

## B. Attribution

Once it has been established that crimes against humanity were committed, the next step is determining who is criminally responsible. In practice, prosecutions at the international criminal tribunals have focused on the people most responsible for the commission of international crimes. This practice is based on the gravity threshold as a requirement for admissibility. When discussing the substantive law independent of jurisdiction and admissibility, the gravity threshold should not be completely ignored. The goal of demonstrating that crimes against humanity have been committed in Tibet is to influence people who are in a position to prevent their commission in the future. This creates an implicit gravity threshold that limits the discussion to people who are in a position to influence policy.

The Fifth Tibet Work Forum and other accounts, including the PAP manual demonstrate that the Tibet policy is shaped at the highest levels and that the leadership remains aware of the situation in Tibet. However, there is little utility in singling out individuals at or near the apex of their careers in the hopes of changing the PRC's Tibet policy or its implementation. They are less likely to be influenced by the tools available to human rights advocates. There are also lesser tools available and they are going to be blunted by pressure from the PRC. International pressure regarding Tibet cannot hope to force the resignation of Chinese officials. It can make it more difficult for Chinese officials to do their job and thereby harm their prospects for career advancement. This means that international pressure can have only a

minimal impact on high-level Chinese officials at the apex of their careers but can influence Chinese officials who are still hoping to advance their careers. Chinese officials still hoping to advance their career will also work with more international actors, each of which can exert its own influence. The PRC's reaction to boycotts or other efforts to influence these Chinese officials will be much less substantial than it would be if the same pressure were exerted on high-level officials.

The Party Secretary is the highest-ranking in his respective region or province.<sup>244</sup> As such Party Secretaries in Tibet are the senior most officials charged with marshaling their region or provinces' resources to implementing the PRC's Tibet policy.<sup>245</sup> For many, the role of Party Secretary is a stepping-stone to a higher position in the Chinese government. The Party Secretaries with control over the Tibetan areas are senior enough to be able to shape and control the PRC's policies in Tibet, including the commission of crimes against humanity. At the same time, they are not so senior that they are immune from international pressure and influence. The remainder of this section will address the legal standard for attribution in the Rome Statute and then use that standard to demonstrate the responsibility of the Party Secretaries who oversaw the crimes against humanity committed in Tibet.

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<sup>244</sup> Christopher Bodeen *Associated Press*, "China replaces Tibet's hard-line party boss with ex-Hebei Chief," *China Post*, 26 Aug. 2011, available at:

<http://www.chinapost.com.tw/china/local-news/tibet/2011/08/26/314661/China-replaces.htm/>; "Weakness of the Oppressor": Leaked document exposes psychological traumas faced by Chinese armed police in Tibet," *TCHRD*, 13 May 2013, available at: <http://www.tchrd.org/2013/05/weakness-of-the-oppressed-leaked-document-exposes-psychological-traumas-faced-by-chinese-armed-police-in-tibet/>.

<sup>245</sup> "Communist Party Leadership Outlines 2010-2020 "Tibet Work" Priorities at "Fifth Forum," *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

# 1. Legal Standard

One of the most difficult and contentious issues at the criminal tribunals is connecting the crimes to the accused. Especially at the *ad hoc* tribunals, like the ICTY and ICTR, the commission of international crimes was well documented but who was responsible and how responsibility was determined was much less clear. Accordingly, the accused often sought to place the responsibility for crimes on opposing groups or rouge elements outside of their control rather than deny that a crime was committed.

Since the Nuremberg and Tokyo Tribunals international courts have held that being physically close to the commission of the underlying criminal offenses is not necessary for responsibility. Instead, the ICC, international criminal tribunals, and domestic courts have focused on the accused's control over the organization.<sup>246</sup> As the accused takes on more responsibility in an organization the accused also become more detached from the actual perpetration of the crimes.<sup>247</sup> At the ICTR, three people were convicted of using their newspaper and radio to incite the commission of genocide.<sup>248</sup> At the SCSL, Charles Taylor was convicted of aiding and abetting the commission of war crimes and crimes

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<sup>246</sup> Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶¶ 504-05.

<sup>247</sup> Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶¶ 503.

<sup>248</sup> ICTR, *The Prosecutor v. Ferdinand Nahimana, Jean-Bosco Barayagwiza, Hassan Ngeze (Judgement and Sentence)*, ICTR-99-52-T, International Criminal Tribunal for Rwanda (ICTR), 3 December 2003, available at: <http://www.refworld.org/docid/404468bc2.html> [accessed 2 August 2013].



against humanity in Sierra Leone without ever entering the country.<sup>249</sup>

Under the Rome Statute, a person can be criminally responsible for a crime in five ways: 1) committing the crime individually, jointly, or through another person; 2) ordering, soliciting, or inducing the attempt or commission of the crime; 3) facilitating the commission of the crime by aiding, abetting or assisting their commission; 4) intentionally contributing to the commission of the crime by a group of people with a common purpose; or 5) by attempting the commission of the crime.<sup>250</sup> It is also possible though for somebody to be criminally responsible for doing nothing. Civilian and military commanders have the legal or actual authority to stop the commission of crimes and this creates a special responsibility whereby their inaction can result in criminal responsibility. This subsection will focus on the legal standards for the commission of an offense jointly or through another person and when a commander's inaction entails criminal responsibility.

### **a. Commission jointly or through others**

The Party Secretaries in charge of the Tibetan regions and provinces can be criminally responsible for the crimes against humanity even if they were not physically present. People can be responsible for crimes they commit jointly with others or through another person.<sup>251</sup> Especially for crimes against humanity, which can require the creation of a policy and the implementation of the policy, there will be multiple perpetrators. For example, at the 6 July 2013 shooting

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<sup>249</sup> SCSL, *Prosecutor v. Charles Ghankay Taylor (Judgment Summary)*, SCSL-03-1-T, Special Court for Sierra Leone (SCSL), 26 April 2012, available at: <http://www.scs-sl.org/LinkClick.aspx?fileticket=86r0nQUtK08=>.

<sup>250</sup> See Rome Statute Art. 25(3) (Art. 25(3)(e) applies only to the crime of genocide).

<sup>251</sup> Rome Statute 25(3)(a).

crimes were committed not only by the PAP officers who fired at the Tibetans but also Tsering Norbu who ordered PAP officers to fire at the Tibetans, even if he never picked up a gun himself. By this same principle, the person who ordered Tsering Norbu to suppress the demonstration or developed the policy that Tsering Norbu implemented is also responsible for the crimes. At the ICC, this mode of co-perpetration liability is called “perpetration by means”<sup>252</sup> or “control over the crime”.<sup>253</sup>

The concept of “perpetration by means” and other similar modes of liability at the Nuremberg and Tokyo Tribunals and ICTY have been criticized.<sup>254</sup> However, the Pre-Trial Chamber in the *Katanga* case at the ICC held that the Rome Statute explicitly allows for perpetration by means.<sup>255</sup> When the Trial Chamber convicted Thomas Lubanga, to date the only conviction by the ICC, perpetration by means was one of the modes of liability used.<sup>256</sup> Similar methods of co-perpetration criminal liability are used in domestic courts and reflect customary international law.<sup>257</sup> As such perpetration by means can be applied as a method of criminal responsibility even when the Rome Statute does not apply.

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<sup>252</sup> Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶ 495.

<sup>253</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 919.

<sup>254</sup> See Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶ 499 FN 660.

<sup>255</sup> Prosecutor v. Katanga, Decision on the confirmation of charges, 30 Sept. 2008 Pre-Trial Chamber I, ¶ 499.

<sup>256</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶1351.

<sup>257</sup> Robert Clarke, “Emerging Voices: Together Again? Customary Law and Perpetration by Means,” *Opinio Juris*, 6 Aug. 2013, available at: <http://opiniojuris.org/2013/08/06/emerging-voices-together-again-customary-law-and-perpetration-by-means/>.

In the *Lubanga* judgment, the court held that there are two objective elements required for perpetration by means. First, there must be an agreement or plan between two or more people.<sup>258</sup> This agreement does not have to be intrinsically criminal<sup>259</sup> or explicit.<sup>260</sup> Second, the accused must make an essential contribution.<sup>261</sup> An essential contribution does not need to be direct or physical<sup>262</sup> but can involve “assisting in formulating a relevant strategy or plan” or becoming involved in directing or controlling the participants.<sup>263</sup>

The court also held that for the accused to have committed crimes jointly with others, the knowledge requirement in the Rome Statute must be fulfilled.<sup>264</sup> To satisfy the mental element, the co-perpetrators must know when they agree upon the plan that in the ordinary course of events there is a risk the criminal conduct will happen.<sup>265</sup> The accused must also know that he provided an essential contribution to the commission of the crime and of the factual circumstances creating the *chapeau* elements.<sup>266</sup>

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<sup>258</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 981.

<sup>259</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 982.

<sup>260</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 988.

<sup>261</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 999.

<sup>262</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 1005.

<sup>263</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 1004.

<sup>264</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 1007; Rome Statute Art. 30.

<sup>265</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶ 1012.

<sup>266</sup> Prosecutor v. Thomas Lubanga Dyilo, Judgment, 14 Mar. 2012, Trial Chamber 1, ¶¶ 923, 1018.

Party Secretaries at the provincial or regional level are the highest-ranking government officials for their province or region.<sup>267</sup> The Party Secretaries supervise and control the provincial government by, among other tasks, controlling personnel and making key decisions.<sup>268</sup> In each region or province, local branches the CPC determine promotion and demotion of officials.<sup>269</sup> The Party Secretary for a Tibetan region or province controls the local branches and is responsible for implementing policy developed by the central government.

The Party Secretaries that were in office in 2010 were part of the Fifth Tibet Work Forum meeting that formulated the PRC's 10-year policy.<sup>270</sup> Previous Tibet Work Forums only focused on policies in TAR.<sup>271</sup> The Fifth Tibet Work Forum formulated a uniform policy for TAR and Tibetan areas in Qinghai Province, Gansu Province, Sichuan Province, and Yunnan Province.<sup>272</sup> The central authorities in the Tibetan areas were

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<sup>267</sup> Christopher Bodeen *Associated Press*, "China replaces Tibet's hard-line party boss with ex-Hebei Chief," *China Post*, 26 Aug. 2011, available at:

<http://www.chinapost.com.tw/china/local-news/tibet/2011/08/26/314661/China-replaces.htm/>.

<sup>268</sup> Qingshan Tan, "China's Provincial Party Secretaries: Roles, Powers and Constraints," *China Policy Institute*, May 2006, at 7-8, available at:

<http://www.nottingham.ac.uk/cpi/documents/discussion-papers/discussion-paper-7-provincial-party-secretaries.pdf>.

<sup>269</sup> "China Demotes 6 Tibetan Officials in TAR," *TCHRD*, 18 May 2012, available at:

<http://www.tchrd.org/2012/05/china-demotes-6-tibetan-officials-in-tar/>.

<sup>270</sup> "Communist Party Leadership Outlines 2010-2020 "Tibet Work" Priorities at "Fifth Forum," *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

<sup>271</sup> Communist Party Leadership Outlines 2010-2020 "Tibet Work" Priorities at "Fifth Forum," *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

<sup>272</sup> "Top-Level Meeting in Beijing Sets Strategy on Tibet," *News Blaze*, 29 Jan 2010, available at: <http://newsblaze.com/story/20100129193127zzzz.nb/topstory.html>.

called upon to coordinate their policies.<sup>273</sup> Since the 2010 Tibet Work Forum, the Party Secretaries have been the highest-ranking government officials charged with implementing the policies it adopted.<sup>274</sup>

The Party Secretaries for Tibetan regions and Provinces can be criminally liable for knowingly participating in a plan that resulted in crimes against humanity. The Party Secretaries helped formulate the plan at the Fifth Tibet Work Forum and have implemented the plan. They continued to implement of the plan without change even when it resulted in torture, arbitrary detention, or murder. In Sichuan Province the PAP manual encouraged the perpetrators to not be discouraged while implementing the plan.<sup>275</sup> The Party Committee in TAR passed regulations in 2011 imposing fines and other punishments for officials that were not strict enough in implementing the stability maintenance policy.<sup>276</sup> At least 19 officials were demoted or fired within months of the regulation going into effect.<sup>277</sup>

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<sup>273</sup> "Communist Party Leadership Outlines 2010-2020 "Tibet Work" Priorities at "Fifth Forum," *Congressional-Executive Commission on China*, 9 Mar. 2010, available at: <http://www.cecc.gov/publications/commission-analysis/communist-party-leadership-outlines-2010-2020-tibet-work-priorities>.

<sup>274</sup> See Christopher Bodeen *Associated Press*, "China replaces Tibet's hard-line party boss with ex-Hebei Chief," *China Post*, 26 Aug. 2011, available at: <http://www.chinapost.com.tw/china/local-news/tibet/2011/08/26/314661/China-replaces.htm/>.

<sup>275</sup> "Weakness of the Oppressor': Leaked document exposes psychological traumas faced by Chinese armed police in Tibet," *TCHRD*, 13 May 2013, available at: <http://www.tchrd.org/2013/05/weakness-of-the-oppressed-leaked-document-exposes-psychological-traumas-faced-by-chinese-armed-police-in-tibet/>.

<sup>276</sup> "China Demotes 6 Tibetan Officials in TAR," *TCHRD*, 18 May 2012, available at: <http://www.tchrd.org/2012/05/china-demotes-6-tibetan-officials-in-tar/>.

<sup>277</sup> "China Demotes 6 Tibetan Officials in TAR," *TCHRD*, 18 May 2012, available at: <http://www.tchrd.org/2012/05/china-demotes-6-tibetan-officials-in-tar/>.

The Party Secretaries working with the central government and their subordinates developed and implemented a plan that resulted in the commission of crimes against humanity throughout Tibet. Their agreement can be deduced from their participation at the Fifth Tibet Work Forum, their implementation of the policy, their encouragement of the policy, and the imposition of penalties for people who are not strict enough in implementing the policy. The legal and actual authority of the Party Secretaries in Tibetan regions and provinces made their participation instrumental to the commission of crimes against humanity. The crimes against humanity were committed with the knowledge and, in some cases, encouragement, of the Party Secretaries. Therefore, the Party Secretaries for TAR, Qinghai Province, Gansu Province, and Sichuan Province are criminally responsible for the commission of crimes against humanity jointly or through others.

## **b. Command responsibility**

In addition to being responsible for directly committing crimes against humanity jointly or through others, as the civilian leaders of the Tibetan regions and provinces the Party Secretaries are also responsible for not doing anything to prevent or punish the commission of crimes against humanity. The Rome Statute creates special obligations for military commanders and other superiors whereby they are responsible for their conduct and omissions. Both international criminal tribunals<sup>278</sup> and domestic courts

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<sup>278</sup> See David Akerson and Natalie Knowlton, *President Obama and the International Criminal Law of Successor Liability*, 37 Denver Journal of International Law & Policy 615 at 618 (2009) (citing *Prosecutor v. Hadžihasanović, Alagić & Kubura*, Case No. IT-01-47, Indictment, 18 (July 13, 2001)).

applying international criminal law have applied this standard of liability.<sup>279</sup>

Superiors have special responsibility under the Rome Statute because they have the authority to prevent, stop, or punish subordinates for the commission of crimes. Military commanders are responsible for the conduct of their subordinates if they fail to properly exercise control and the commander knew or should have known that crimes were being committed and did not take all necessary and reasonable measures to prevent or punish the commission of the crimes.<sup>280</sup> Civilian, or non-military, commanders are responsible for the conduct of their subordinates if they fail to properly exercise command and control and they knew or consciously disregarded information that clearly indicated that subordinates were committing crimes and did not take all necessary and reasonable measures to prevent or punish the commission of the crimes.<sup>281</sup>

The primary difference between the standards for military and civilian superiors is the level of knowledge that must be met before the obligation to prevent or punish the crimes exists. Military commanders are responsible for information they knew should have known, whereas civilian commanders are responsible for information they knew or consciously disregarded.

Within the obligation to prevent or punish the commission of crimes against humanity there are three elements: 1) a superior-subordinate relationship; 2) the civilian commander's knowledge or conscious disregard of the

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<sup>279</sup> See *eg In re Yamashita*, 327 U.S. 1 at 14-16 (1946) (United States Supreme Court applying command responsibility for war crimes in the Pacific).

<sup>280</sup> Rome Statute Art. 28(a).

<sup>281</sup> Rome Statute Art. 28(b).

subordinate's crimes; and 3) the commander's failure to prevent or punish the crimes.<sup>282</sup>

The obligation to prevent or punish the commission of crimes is not particularly onerous because it applies specifically to people who have the ability to prevent or punish the commission of the crimes. In non-Tibetan parts of the PRC, local government officials have punished illegal conduct by their subordinate. In Hunan Province, the killing of a street vendor by urban management officers and severe beating of another the next day sparked an outcry online.<sup>283</sup> Within three days, the government responded by removing the officers involved in the killing, suspending those involved in the beating pending an investigation, and initiating an investigation of the Party chief of the urban management administration and his deputy.<sup>284</sup> In another incident from Henan province, an off duty police officer threw a 7-month old baby to the ground. Local government officials eventually detained the police officer for 15 days and established a special team of local disciplinary and prosecuting authorities

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<sup>282</sup> Rome Statute Art. 28(b); David Akerson and Natalie Knowlton, *President Obama and the International Criminal Law of Successor Liability*, 37 *Denver Journal of International Law & Policy* 615 at 618 (2009).

<sup>283</sup> Adrian Wan, "Chengguan blamed for beating another vendor," *South China Morning Post*, 22 July 2013, available at: [http://www.scmp.com/news/china/article/1287945/chengguan-blamed-beating-another-vendor?utm\\_source=Sinocism+Newsletter&utm\\_campaign=6892fe328a-Sinocism07\\_22\\_13&utm\\_medium=email&utm\\_term=0\\_171f237867-6892fe328a-29611661](http://www.scmp.com/news/china/article/1287945/chengguan-blamed-beating-another-vendor?utm_source=Sinocism+Newsletter&utm_campaign=6892fe328a-Sinocism07_22_13&utm_medium=email&utm_term=0_171f237867-6892fe328a-29611661).

<sup>284</sup> "Two officials sacked after vendor's death in C. China," *Xinhua*, 20 July 2013, available at: [http://news.xinhuanet.com/english/china/2013-07/20/c\\_125039666.htm?utm\\_source=Sinocism+Newsletter&utm\\_campaign=6892fe328a-Sinocism07\\_22\\_13&utm\\_medium=email&utm\\_term=0\\_171f237867-6892fe328a-29611661](http://news.xinhuanet.com/english/china/2013-07/20/c_125039666.htm?utm_source=Sinocism+Newsletter&utm_campaign=6892fe328a-Sinocism07_22_13&utm_medium=email&utm_term=0_171f237867-6892fe328a-29611661).



to investigate the incident.<sup>285</sup> These incidents demonstrate that local governments in the PRC can respond swiftly to wrongdoing by subordinates and fulfill their obligations under the Rome Statute.

As a civilian commander, a Party Secretary is obliged to prevent and punish any crimes committed under his/her authority. The Party Secretary is the highest-ranking official in a region or province. As such they have a legal duty to prevent and punish the commission of any crimes. The Party Secretary controls personnel matters in his/her province and has the authority to interpret and initiate investigations into wrongdoing.<sup>286</sup> Failure to exercise this authority is a breach of their legal duty and entails responsibility for their commission. The Party Secretaries in charge of Tibetan areas have not prevented or punished the commission of crimes against humanity. In fact, in some cases they have done just the opposite and punished officials who are too lenient.<sup>287</sup> In other cases they have specifically endorsed their commission.<sup>288</sup> Therefore, under international criminal law, they are responsible for the commission of crimes against humanity.

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<sup>285</sup> Cao Yin, "Police officer investigated for throwing baby," *China Daily*, 19 Aug. 2013, available at: [http://usa.chinadaily.com.cn/china/2013-08/19/content\\_16903433.htm](http://usa.chinadaily.com.cn/china/2013-08/19/content_16903433.htm).

<sup>286</sup> Qingshan Tan, "China's Provincial Party Secretaries: Roles, Powers and Constraints," *China Policy Institute*, May 2006, at 2, 8, available at: <http://www.nottingham.ac.uk/cpi/documents/discussion-papers/discussion-paper-7-provincial-party-secretaries.pdf>.

<sup>287</sup> "China Demotes 6 Tibetan Officials in TAR," *TCHRD*, 18 May 2012, available at: <http://www.tchrd.org/2012/05/china-demotes-6-tibetan-officials-in-tar/>.

<sup>288</sup> See "Weakness of the Oppressor": Leaked document exposes psychological traumas faced by Chinese armed police in Tibet," *TCHRD*, 13 May 2013, available at: <http://www.tchrd.org/2013/05/weakness-of-the-oppressed-leaked-document-exposes-psychological-traumas-faced-by-chinese-armed-police-in-tibet/>.

The remainder of this section will apply the standards of perpetration of crimes against humanity jointly or through others and command responsibility to the Party Secretaries with control over TAR, Qinghai Province, Gansu Province, and Sichuan Province.

## 2. Tibet Autonomous Region

Chen Quanguo (陈全国) is the current Party Secretary in TAR.<sup>289</sup> Before his appointment in 2011 as the Party Secretary in TAR, Cheng Quanguo was the Deputy Party Secretary in Henan Province (2003-2009) and in Hebei Province (2009-2011).<sup>290</sup> He was preceded by Zhang Qingli (张庆黎) who was the Party Secretary in TAR from 2005 to 2010.<sup>291</sup> Zhang Qingli is now the Party Secretary in Hebei Province.<sup>292</sup> Throughout their respective tenures they oversaw torture and murder as crimes against humanity in TAR. As demonstrated above, this conduct was in furtherance of the “stability maintenance” policy that Chen Quanguo equated with warfare.<sup>293</sup>

During the 2008 protests, Zhang Qingli was the Party Secretary in charge of TAR. He oversaw the murder of unarmed protesters by security forces including Lhakpa

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<sup>289</sup> “Chen Quanguo,” *International Tibet Network*, available at: <http://chinese-leaders.org/cheng-quanguo/>.

<sup>290</sup> “Chen Quanguo,” *International Tibet Network*, available at: <http://chinese-leaders.org/cheng-quanguo/>.

<sup>291</sup> “Zhang Qingli” *International Tibet Network*, available at: <http://chinese-leaders.org/zhang-qingli/>.

<sup>292</sup> “Zhang Qingli” *International Tibet Network*, available at: <http://chinese-leaders.org/zhang-qingli/>.

<sup>293</sup> Yang Jingjie, “Tibet officials ‘prepare for war,’” *People’s Daily*, 10 Feb. 2012, available at: <http://english.people.com.cn/90882/7725297.html>.

Tsering and Jinpa. He was also responsible for the policies of harsh repression that resulted in the torture and death of Dawa. The murder of Lhakpa Tsering, Jinpa, and Dawa and the torture of Dawa were in furtherance of a policy of repression in Tibet and the particularly brutal response to the 2008 protests that resulted in the murder and torture of hundreds of people.<sup>294</sup>

These cases of murder and torture are attributable to Zhang Qingli if he knew of the plan and he knowingly made an essential contribution in furtherance of the plan or if as the commander he knew of the conduct of his subordinate and did not prevent or punish the commission of the crimes.

Zhang Qingli's knowledge can be deduced from his position as Party Secretary, the size of the protests and the government's overwhelming response to them, and the numerous accounts of the commission of crimes from news organizations and NGOs. Also because of his position as Party Secretary, he must have been aware of the PRC's policies in Tibet that he implemented. The implementation of this policy was essential to its fulfillment and the commission of crimes against humanity. There is no evidence to suggest that Zhang Qingli made any effort to prevent or punish the murder and torture that occurred during the protests. Therefore, Zhang Qingli is responsible for murder and torture as crimes against humanity.

While Chen Quanguo was Party Secretary for TAR, a political prisoner described rampant torture in Chushur prison near Lhasa.<sup>295</sup> International news outlets picked up his account. As

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<sup>294</sup> See "I saw it with my own eyes: Abuses by Chinese security forces in Tibet 2008-2010" *Human Rights Watch*, July 2010.

<sup>295</sup> Radio Free Asia, *Torture Rampant at Chusur*, 21 Dec. 2012, available at: <http://www.rfa.org/english/news/tibet/torture-12212012151636.html>.

the Party Secretary for TAR, it was Chen Quanguo's obligation to prevent or punish torture in TAR. Instead, Chen Quanguo oversaw the passage and implementation of regulations imposing penalties for officials who were too lenient when implementing the "stability maintenance" policy.<sup>296</sup> Chen Quanguo publicly equated the "stability maintenance" policy with warfare. His strong rhetoric and policies demonstrate not only that he has knowledge of the policy in Tibet and that it results in the commission of crimes against humanity but also that he plays an essential role in the policy. Because the account of rampant torture in Chushur Prison was widely disseminated, he could only claim ignorance if he consciously avoided the information. Yet, he did nothing to prevent or punish the commission of torture in TAR. Therefore, Chen Quanguo is responsible for torture as a crime against humanity.

### 3. Qinghai Province

Qiang Wei (强卫) was the Party Secretary in Qinghai Province from 2007 to 2013.<sup>297</sup> Before Qiang Wei became the Party Secretary in Qinghai Province, he was an alternate member of the 16<sup>th</sup> CPC Central Committee.<sup>298</sup> When he became the Party Secretary in Qinghai Province, he became a member of

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<sup>296</sup> "China Demotes 6 Tibetan Officials in TAR," *TCHRD*, 18 May 2012, available at: <http://www.tchrd.org/2012/05/china-demotes-6-tibetan-officials-in-tar/>.

<sup>297</sup> Appendix, "China Vitae: Biography of Qiang Wei," ChinaVitae.com, available at: [http://www.chinavitae.com/biography/Qiang\\_Wei/full](http://www.chinavitae.com/biography/Qiang_Wei/full).

<sup>298</sup> *Xinhua*, "Qiang Wei elected Qinghai Party chief," Gov.cn: Chinese Government's Official Web Portal, 22 May 2012, available at: [http://english.gov.cn/2012-05/22/content\\_2143058.htm](http://english.gov.cn/2012-05/22/content_2143058.htm);

"China Vitae: Biography of Qiang Wei," ChinaVitae.com, available at: [http://www.chinavitae.com/biography/Qiang\\_Wei/full](http://www.chinavitae.com/biography/Qiang_Wei/full).

the 17<sup>th</sup> CPC Central Committee.<sup>299</sup> Qiang Wei is currently a member of the 18<sup>th</sup> CPC Central Committee and in February 2013, he led a delegation to Mexico.<sup>300</sup> He is also rumored to be one of the leading contenders for the position of Party Secretary for Jiangxi Province.<sup>301</sup>

During his tenure, torture, arbitrary detention, and murder as crimes against humanity were committed in Qinghai Province since 2010. Tashi Dhondup was tortured and sent to a RTL camp for 15 months.<sup>302</sup> Tenzin Sherab, Lobsang Samten, Lobsang Nyima, and Sonam Gewa were also sent to RTL camps.<sup>303</sup> In 2012, Choeri was killed during a police raid.<sup>304</sup> In August 2013, the police beat Guldrak to death while he was in their custody and after news of the killing came out offered compensation to his family.<sup>305</sup>

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<sup>299</sup> "China Vitae: Biography of Qiang Wei," ChinaVitae.com, available at: [http://www.chinavitae.com/biography/Qiang\\_Wei/full](http://www.chinavitae.com/biography/Qiang_Wei/full).

<sup>300</sup> Xinhua, "China to develop closer relations with Mexico: senior CPC official," *People's Daily*, 21 Feb. 2013, available at: <http://english.people.com.cn/90883/8137865.html>.

<sup>301</sup> Keith Zhai and Choi Chi-yuk, "Qinghai party chief Qiang Wei is set to head Jiangxi Province, sources say," *South China Morning Post*, 19 March 2013, available at: <http://www.scmp.com/news/china/article/1194082/qinghai-party-chief-qiang-wei-set-head-jiangxi-province-sources-say>.

<sup>302</sup> "A Raging Storm: The Crackdown on Tibetan Writers and Artists after Tibet's Spring 2008 Protests," International Campaign for Tibet, at 24-29 available at: [http://www.savetibet.org/wp-content/uploads/2013/05/Raging\\_Storm\\_complete.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/Raging_Storm_complete.pdf).

<sup>303</sup> "Four Tibetan monks released from Chinese labour camp," *TCHRD*, 13 Aug. 2013, available at: <http://www.tchrd.org/2013/08/four-tibetan-monks-released-from-chinese-labour-camps/>.

<sup>304</sup> "Reports: Chinese police raid kills Tibetan," *Al Jazeera*, 10 Mar. 2012, available at: <http://www.aljazeera.com/news/asia-pacific/2012/03/2012310542928597.html/>.

<sup>305</sup> "Chinese police beat a Tibetan man to death in custody," *Phayul*, 13 Aug. 2013, available at: <http://www.phayul.com/news/article.aspx?id=33856&article=Chinese+police+beat+a+Tibetan+man+to+death+in+custody>.

Throughout all of this, Qiang Wei made no effort to prevent or punish the perpetrators. He has helped develop and implement the policy in Tibet that resulted in torture, arbitrary detention, and murder. As a Party Secretary for a province with a Tibetan region, Qiang Wei would have attended the Fifth Tibet Work Forum. Since then, his position has made him essential to the implementation of that policy. Qiang Wei's knowledge of both murders can be inferred from his position as Party Secretary, the media and NGO reports concerning the events, and official responses to the events.

Of the five cases of arbitrary detention, the cases of Tashi Dhondup and Tenzin Sherab involve the widespread dissemination of information that was contrary to the PRC's Tibet policy. Tashi Dhondup distributed lyrics calling for Tibetan Independence and Tenzin Sherab published a newspaper that had information about the self-immolation protests.<sup>306</sup> The other three were sent to RTL because of their involvement in a protest that involved 1,400 monks and lay Tibetans.<sup>307</sup> Because each of these events was widespread and ran directly contrary to the PRC's "stability maintenance" policy, they could not have escaped the knowledge of Qiang Wei.

Similarly, Choeri was killed during a police raid where police were looking for the leader of a protest that tore down the

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<sup>306</sup> "A Raging Storm: The Crackdown on Tibetan Writers and Artists after Tibet's Spring 2008 Protests," International Campaign for Tibet, at 24-29 available at: [http://www.savetibet.org/wp-content/uploads/2013/05/Raging\\_Storm\\_complete.pdf](http://www.savetibet.org/wp-content/uploads/2013/05/Raging_Storm_complete.pdf); "Four Tibetan monks released from Chinese labour camp," TCHRD, 13 Aug. 2013, available at: <http://www.tchrd.org/2013/08/four-tibetan-monks-released-from-chinese-labour-camps/>.

<sup>307</sup> "Four Tibetan monks released from Chinese labour camp," TCHRD, 13 Aug. 2013, available at: <http://www.tchrd.org/2013/08/four-tibetan-monks-released-from-chinese-labour-camps/>.

Chinese flag at a police station.<sup>308</sup> The police raid happened almost four months into the manhunt for the protest leader.<sup>309</sup> The amount of time and effort dedicated to carrying out an extended manhunt following a high-profile protest would have necessarily brought it to the attention of the Party Secretary. Five hundred people staged a sit-in demanding details about death before the police admitted he was killed in custody and agreed to pay approximately US\$90,000.<sup>310</sup> Offering to pay compensation does not satisfy the obligation to prevent or punish. The size of the protest and compensation could not have happened without any knowledge by Qiang Wei, unless he consciously avoided getting the information.

In all of these cases, Qiang Wei had knowledge of the commission of the underlying crimes and did nothing to prevent or punish their commission. Furthermore, these crimes were committed in furtherance of the “stability maintenance” policy that Qiang Wei was involved in shaping and implementing. Therefore, Qiang Wei is responsible for torture, arbitrary detention, and murder as crimes against humanity.

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<sup>308</sup> “Reports: Chinese police raid kills Tibetan,” *Al Jazeera*, 10 Mar. 2012, available at: <http://www.aljazeera.com/news/asia-pacific/2012/03/2012310542928597.html/>.

<sup>309</sup> “Reports: Chinese police raid kills Tibetan,” *Al Jazeera*, 10 Mar. 2012, available at: <http://www.aljazeera.com/news/asia-pacific/2012/03/2012310542928597.html/>.

<sup>310</sup> “Chinese police beat a Tibetan man to death in custody,” *Phayul*, 13 Aug. 2013, available at: <http://www.phayul.com/news/article.aspx?id=33856&article=Chinese+police+beat+a+Tibetan+man+to+death+in+custody>.

## 4. Gansu Province

Since 2011, Wang Sanyun (王三运) has been the Party Secretary for Gansu Province.<sup>311</sup> From 2007 to 2011, he was the Party Secretary for Anhui Province. Along with other Party Secretaries and governors, Wang Sanyun has met with governors from the United States to try and boost cooperation and trade.<sup>312</sup> He has also led delegations to Russia and Kyrgyzstan.<sup>313</sup>

Lu Hao (陆浩) was the Party Secretary for Gansu Province from 2006 to 2011.<sup>314</sup> Before he was Party Secretary, Lu Hao was the Governor of Gansu Province. As Governor, Lu Hao met with international delegations.<sup>315</sup> He continued to meet with international delegations as Party Secretary.<sup>316</sup> In 2011, Lu Hao became a deputy director on the Foreign Affairs Committee of the National People's Congress.<sup>317</sup>

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<sup>311</sup> "China Vitae: Biography of Wang Sanyun," ChinaVitae.com, available at: [http://www.chinavitae.com/biography/Wang\\_Sanyun/full](http://www.chinavitae.com/biography/Wang_Sanyun/full).

<sup>312</sup> See eg. "U.S. governor expects job opportunities from US-China Governors Forum," *People's Daily*, 15 July 2011, available at: <http://english.people.com.cn/90001/90776/90883/7442028.html>.

<sup>313</sup> "Wang Sanyun visits Russia and Kyrgyzstan," *Gansu News*, 4 July 2013, available at: [http://mhwz.gansu.gov.cn/en/News\\_Detail.asp?id=1032](http://mhwz.gansu.gov.cn/en/News_Detail.asp?id=1032).

<sup>314</sup> "China Vitae: Biography of Lu Hao," ChinaVitae.com, available at: [http://www.chinavitae.com/biography/Lu\\_Hao|269/full](http://www.chinavitae.com/biography/Lu_Hao|269/full).

<sup>315</sup> "Lu Hao meets Japanese guests," *Gansu News*, 22 Sept. 2005, available at: [http://mhwz.gansu.gov.cn/en/News\\_Detail.asp?id=217](http://mhwz.gansu.gov.cn/en/News_Detail.asp?id=217); "Lu Hao meets Cuban guests," *Gansu News*, 19 Dec. 2005, available at: [http://mhwz.gansu.gov.cn/en/News\\_Detail.asp?id=219](http://mhwz.gansu.gov.cn/en/News_Detail.asp?id=219).

<sup>316</sup> "Communist Party Secretary of Gansu Province Lu Hao," *Ministry of Foreign Affairs of the People's Republic of China*, 10 Nov. 2011, available at: <http://www.fmprc.gov.cn/eng/wjb/zwjg/zwbd/t875770.htm> (India).

<sup>317</sup> "China Vitae: Biography of Lu Hao," ChinaVitae.com, available at: [http://www.chinavitae.com/biography/Lu\\_Hao|269/full](http://www.chinavitae.com/biography/Lu_Hao|269/full).



One of the most famous events from the 2008 protests was when monks from the Labrang Monastery protested in front of the international media. Jamyang Jinpa was arrested for his participation in the protest and was released three years later after suffering from torture. He died shortly after his release. The high profile nature of his case and the severity of his treatment mean that his case and treatment could not have escaped the knowledge of Lu Hao, the Party Secretary during his arrest and death. Yet, Lu Hao made no effort to punish the people responsible. Like Qiang Wei, Lu Hao was present at the Fifth Tibet Work Forum and helped formulate and implement the “stability maintenance” policy that led to Jamyang Jinpa’s severe treatment and death. Therefore, Lu Hao is responsible for murder and torture as a crime against humanity.

Shortly after Wang Sanyun became the Party Secretary for Gansu Province, police killed two Tibetans. Chonjor was beaten to death for driving his motorcycle in Labrang County and one month later, Gurgo Tsering was killed during a police raid.<sup>318</sup> These protests and the importance of the “stability maintenance” policy in Tibetan areas must have brought the killings to Wang Sanyun’s attention. However, Wang Sanyun did not exercise his authority as Party Secretary to prevent or punish their commission.

While there is no immediate connection between these killings and the PRC’s political “stability maintenance” policy, they are the inevitable consequence of that policy. When the

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<sup>318</sup> “Tibetan beaten to death in Labrang,” *International Campaign for Tibet*, 15 Dec. 2011, available at: <https://www.savetibet.org/tibetan-beaten-to-death-by-police-in-labrang/>; “Tibetans protest killing of Tibetan by police in Gansu,” *International Campaign for Tibet*, 12 Jan. 2012, available at: <https://www.savetibet.org/tibetans-protest-killing-of-tibetan-by-police-in-gansu/>.

policy is described as a method of warfare and designed to be merciless, the excessive use of force by the police is the inevitable product. As Party Secretary charged with implementing the “stability maintenance” policy, Wang Sanyun is responsible for the foreseeable consequences of that policy. Therefore, Wang Sanyun is responsible for murder as a crime against humanity.

## 5. Sichuan Province

Liu Qibao (刘奇葆) became the Party Secretary for Sichuan Province in 2008 and held that position until 2012.<sup>319</sup> Before he was the Party Secretary, Liu Qibao was the Party Secretary for Guangxi Autonomous Region and an alternate member of the CPC Central Committee.<sup>320</sup> Since leaving his position as Party Secretary for Sichuan Province in 2012, Liu Qibao became the Director of the Propaganda Department and is a member of the CPC Central Committee, the Politburo, and the Secretariat. The Brookings Institute labeled Liu Qibao as “one of China’s top future leaders to watch”.<sup>321</sup>

The 2008 protests began shortly after Liu Qibao took office. Like the other Party Secretaries in charge of Tibetan regions and provinces, Liu Qibao responded to the protests with torture, arbitrary detention, and murder. He continued the policy of brutal repression until he left office. The police fired upon protests in 2008 in Sichuan Province. Four people,

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<sup>319</sup> Appendix; “Biography of Liu Qibao,” ChinaVitae.com, available at: [http://www.chinavitae.com/biography/Liu\\_Qibao/full](http://www.chinavitae.com/biography/Liu_Qibao/full).

<sup>320</sup> “Biography of Liu Qibao,” ChinaVitae.com, available at: [http://www.chinavitae.com/biography/Liu\\_Qibao/full](http://www.chinavitae.com/biography/Liu_Qibao/full).

<sup>321</sup> “Liu Qibao – China’s Top Future Leaders to Watch,” Brookings Institute,

including Tashi were killed.<sup>322</sup> A few months later, Ngawang Phuntsok was detained and tortured before he was sent to a RTL camp. One year after the 2008 protests, a monk named Phuntsok was found pasting anti-government fliers in support of the monks who had been imprisoned and tortured. The police beat him to death.<sup>323</sup>

In 2012, Karwang was arrested in relation to posters that called for freedom in Tibet. He was tortured to death in custody.<sup>324</sup> As they did during the crackdown on 2008 protests, the police used excessive force responding to protests in 2012. Yonten, Ugyen, Tsering Gyaltzen, and Popo, were among the protesters killed by the police in 2012.<sup>325</sup> Even after protests, the police killed people suspected of being involved, such as Yeshe Rigsel and Yeshe Samdrup who were cornered and shot by the police.<sup>326</sup>

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<sup>322</sup> "I saw it with my own eyes: Abuses by Chinese security forces in Tibet 2008-2010" *Human Rights Watch*, July 2010, at 31-32.

<sup>323</sup> "A Tibetan monk beaten to death by Chinese Security Police," *TCHRD*, 30 March 2009, available at: <http://www.tchrd.org/2009/03/a-tibetan-monk-beaten-to-death-by-chinese-security-police/>.

<sup>324</sup> "Tibetan Monk Tortured, Dies in Custody," *TCHRD*, 19 June 2012, available at: <http://www.tchrd.org/2012/06/tibetan-monk-tortured-dies-in-custody/>.

<sup>325</sup> "One Tibetan shot dead in Drango protest in Kardze," *TCHRD*, 23 Jan 2012 (Yoten), available at <http://www.tchrd.org/2012/01/one-tibetan-shot-dead-in-drango-protest-in-kardze/>; "Tibetan shot dead in Ngaba prefecture," *Free Tibet*, 27 Jan. 2012, (Urden) available at: <http://www.freetibet.org/news-media/pr/tibetan-shot-dead-ngaba-prefecture>; "Monk "disappears" from hospital after police beatings," *TCHRD*, 19 Sept. 2012, (Tsering Gyaltzen), available at: <http://www.tchrd.org/2012/09/monk-disappears-from-hospital-after-police-beatings/>; Second day of killing in Tibet: two more shot dead many more injured in second town," *Free Tibet*, 24 Jan. 2012, (Popo), available at: <http://www.freetibet.org/news-media/pr/second-day-killing-tibet-two-more-shot-dead-many-more-injured-second-town>.

<sup>326</sup> "Chinese newspaper reports two shooting death in Drango," *TCHRD*, 13 Feb. 2012, available at: <http://www.tchrd.org/2012/02/chinese-newspaper-reports-two-shooting-death-in-drango/>.

The conduct of the police in Sichuan Province was encouraged in the PAP manual which alluded to their “merciless” response.<sup>327</sup> In 2010, Liu Qibao attended the Fifth Tibet Work forum and helped formulate and implement the PRC’s “stability maintenance” policy. As Party Secretary for Sichuan Province, Liu Qibao was essential to the implementation of this policy in Sichuan Province. The new policy did nothing to change the “merciless” response to protests in Sichuan Province. Liu Qibao made no effort to change the brutal response to protests by preventing or punishing the commission of torture, arbitrary detention, and murder. Therefore, Liu Qibao is responsible for torture, arbitrary detention, and murder as crimes against humanity.

## IV. Accountability

Recognizing that individuals could be criminally responsible for the commission of crimes against humanity in Tibet may seem to be a hollow statement without any practical purpose. Chinese courts are not going to prosecute Chinese government officials for committing crimes against humanity while implementing Chinese policy in Tibet. The ICC was

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<sup>327</sup> “Weakness of the Oppressor’: Leaked document exposes psychological traumas faced by Chinese armed police in Tibet,” *TCHRD*, 13 May 2013, available at: <http://www.tchrd.org/2013/05/weakness-of-the-oppressed-leaked-document-exposes-psychological-traumas-faced-by-chinese-armed-police-in-tibet/>.

designed to step in when domestic courts would not or could not prosecute, but the limits on the ICC's jurisdiction make it impossible for it to hold people criminally responsible for crimes against humanity committed in Tibet. However, the ICC is not the sole arbitrator of international justice.

Domestic courts prosecute international criminals independent of the ICC. In some cases, States have decided to prosecute international officials out of legal obligation to do so. The International Court of Justice held that Senegal had an obligation to try the former Chadian president, Hissene Habre, or extradite him to Belgium, where he would be prosecuted.<sup>328</sup> In response, Senegal charged Habre with war crimes, crimes against humanity, and torture.<sup>329</sup> Italy convicted over 20 American officials, including the now-retired CIA station chief Robert Seldon Lady in absentia for the kidnapping and covertly repatriating Hassan Mustafa Osama Nasr to Egypt, where he was tortured.<sup>330</sup> Lady's criminal conviction meant that he could not visit Italy where he planned to retire and owns a home.<sup>331</sup> Lady was forced to reassess his international travel after he was arrested in Panama pursuant to an Interpol arrest warrant.<sup>332</sup> Even

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<sup>328</sup> Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment, 20 July 2012 at ¶¶122(5)-(6).

<sup>329</sup> Samuel Franklin, "Former Chad dictator charged with war crimes," *Jurist Paper Chase*, 3 July 2013, available at: <http://jurist.org/paperchase/2013/07/former-chad-dictator-charged-with-war-crimes.php>.

<sup>330</sup> Tim Johnson, "Panama arrests former CIA station chief sought by Italy in rendition case," *Christian Science Monitor*, 19 July 2013, available at: <http://www.csmonitor.com/World/Americas/2013/0719/Panama-arrests-former-CIA-station-chief-sought-by-Italy-in-rendition-case/>

<sup>331</sup> Tim Johnson, "Panama arrests former CIA station chief sought by Italy in rendition case," *Christian Science Monitor*, 19 July 2013, available at: <http://www.csmonitor.com/World/Americas/2013/0719/Panama-arrests-former-CIA-station-chief-sought-by-Italy-in-rendition-case/>

<sup>332</sup> "Ex-CIA Milan chief held in Panama over cleric abduction," *BBC*, 19 July 2013, available at: <http://www.bbc.co.uk/news/world-europe-23367401>.

though Lady returned to the United States, his arrest demonstrates the potential effect of international prosecutions.<sup>333</sup>

For people like Lady, who are retired, international arrest warrants can force a drastic change in lifestyle. For officials like Lu Hao and Wan Sanyun, the two most recent Party Secretaries from Gansu Province, an international arrest warrant can ruin their career. Both Lu Hao and Wan Sanyun have encouraged foreign investment in Gansu Province and the PRC in general. An international arrest warrant could severely restrict their ability to court foreign investors. The inability to bring foreign investment to the PRC could affect their career prospects and may encourage them, or their successors, to not commit crimes against humanity in Tibet.

Criminal prosecutions and international arrest warrants are not the only ways to encourage policy makers in Tibet to stop committing crimes against humanity. Governments can impose targeted sanctions and travel bans. Corporations can refuse to work with or support people who have committed crimes against humanity. Criminal prosecutions, travel bans, targeted sanctions, and corporate boycotts all serve the purpose of making it more difficult for the Chinese officials responsible for crimes against humanity in Tibet to function as part of the Chinese government. If their participation in a diplomatic or trade mission weakens the PRC's position, they are less likely to be included. If these officials cannot contribute to the PRC's international priorities, they are more likely to be replaced and their careers will suffer. The international community can use its influence to make the

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<sup>333</sup> Scott Shane, "Panama: Former Spy Returns to US," *The New York Times*, 19 July 2013, available at: [http://www.nytimes.com/2013/07/20/world/americas/panama-former-spy-returns-to-us.html?\\_r=0](http://www.nytimes.com/2013/07/20/world/americas/panama-former-spy-returns-to-us.html?_r=0).

commission of crimes against humanity detrimental to an official's career. Creating a direct link between committing crimes against humanity and reducing the prospects for career advancement functions to end impunity.

The United Nations can also play a role, though given the political limitations discussed above it is unlikely to. In August 2013, the UN Human Rights Council (UNHRC) created a commission to collect evidence of human rights abuse and investigate potential crimes against humanity.<sup>334</sup> The special commission has conducted interview in Seoul, South Korea about the human rights situation in North Korea. It is still unclear how effective the commission will be at ending impunity in North Korea for crimes against humanity. The UNHRC commission does create substantial international pressure and could be even more effective investigating the PRC, which is not as internationally isolated as North Korea. However, the PRC would be certain to use its influence to prevent such a hearing.

This report has argued that even though the ICC lacks jurisdiction to investigate the situation in Tibet, PRC officials have committed crimes against humanity in Tibet. The goal of international criminal justice in ending impunity is not dependent solely on action from the ICC. When the ICC cannot act, the international community can rise to the occasion. The international community can work to end impunity by initiating criminal prosecutions and imposing targeted sanctions.

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<sup>334</sup> Associated Press, "UN commission aims to pressure North Korea by investigating claims of abysmal human rights," *The Washington Post*, 23 Aug. 2013, available at: [http://www.washingtonpost.com/world/asia\\_pacific/un-commission-aims-to-pressure-north-korea-by-investigating-claims-of-abysmal-human-rights/2013/08/22/e9c41a3a-0b9e-11e3-89fe-abb4a5067014\\_story.html](http://www.washingtonpost.com/world/asia_pacific/un-commission-aims-to-pressure-north-korea-by-investigating-claims-of-abysmal-human-rights/2013/08/22/e9c41a3a-0b9e-11e3-89fe-abb4a5067014_story.html).

Focusing on mid-level government officials and individuals currently governing the Tibetan areas of the PRC is the most effective approach. Launching civil or criminal cases against retired Chinese high-ranking government officials is unlikely to bring about a change in Chinese policy. Current high-ranking government officials, like the Head of State and Head of Government, have immunity from criminal and civil prosecution in other States while they are in office.<sup>335</sup> This immunity only applies to the domestic jurisdiction of other States while the official is in office. It does not affect the ICC's ability to prosecute heads of state while they are in office.<sup>336</sup> There is some debate about whether this immunity extends to ministers of foreign affairs on official or private travel.<sup>337</sup> The International Court of Justice held that foreign ministers must have immunity from prosecution to be able to represent their State.<sup>338</sup> Foreign ministers lose their immunity for crimes not committed as part of their official duties as foreign minister once they leave their office as a foreign minister.<sup>339</sup>

Prosecution after officials lose their immunity can have dramatic impacts on officials. Officials, like the retired CIA station chief Lady, may be forced to change their lifestyle, especially if their retirement did not involve much international travel. High-ranking officials are also going to

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<sup>335</sup> *Arrest Warrant of 1 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, at ¶151.

<sup>336</sup> Rome Statute Art. 27.

<sup>337</sup> See Dapo Akande, "Should the International Law Commission Overrule the ICL in its Articles on Immunity of State Officials for Criminal Jurisdiction?" *EJIL: Talk!*, 5 Aug. 2013, available at: <http://www.ejiltalk.org/should-the-international-law-commission-overrule-the-icj-in-its-articles-on-immunity-of-state-officials-from-foreign-criminal-jurisdiction/>.

<sup>338</sup> *Arrest Warrant of 1 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, at ¶155.

<sup>339</sup> *Arrest Warrant of 1 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, I.C.J. Reports 2002, p. 3, at ¶161.



be defended by the Chinese government who will fight to protect officials from court action even after they lose their immunity.<sup>340</sup> If civil or criminal prosecutions are not possible, international actors can still exert pressure on government officials.

Mid-level government officials are much more susceptible to international pressure than high-level officials because their careers depend on international cooperation. Immunity from prosecution does not obligate a State to allow a foreign official into their territory, including airspace,<sup>341</sup> or any other international actor to work with the foreign official. Thus, States, corporations, and local governments are under no obligation to work with either Qiang Wei, who led a delegation to Mexico, or Lu Hao, who is now a deputy director for foreign affairs. Both rely on the cooperation of States and other international actors to perform their job. Loss of this cooperation could ruin their hopes for career advancement. For example, while Qiang Wei was leading a delegation in Mexico, he was also under consideration to be the Party Secretary for Jiangxi Province.<sup>342</sup> If his responsibility for crimes against humanity as Party Secretary for Qinghai Province meant that he could not effectively work abroad, it would damage his chances of becoming the Party Secretary for Jiangxi Province. Such consequences could strongly

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<sup>340</sup> See eg. Kate Saunders, "Spain hears Tibet lawsuit, uphold universal jurisdiction," *The Sunday Guardian*, 19 Mar. 2013, available at: <http://www.sunday-guardian.com/analysis/spain-hears-tibet-lawsuits-upholds-universal-jurisdiction>.

<sup>341</sup> "Sudan's al-Bashir barred from Saudi airspace en route to Iran president's inauguration," *The Washington Post*, 4 Aug. 2013, available at: [http://articles.washingtonpost.com/2013-08-04/world/41067675\\_1airspace-iran-president-saudi-plane](http://articles.washingtonpost.com/2013-08-04/world/41067675_1airspace-iran-president-saudi-plane).

<sup>342</sup> Keith Zhai and Choi Chi-yuk, "Qinghai party chief Qiang Wei is set to head Jiangxi Province, sources say," *South China Morning Post*, 19 March 2013, available at: <http://www.scmp.com/news/china/article/1194082/qinghai-party-chief-qiang-wei-set-head-jiangxi-province-sources-say>.

encourage Qiang Wei's successor Luo Huining (骆惠宁) to abandon the repressive policies against Tibetans, something that so far he has made no indication of doing.<sup>343</sup>

For many Party Secretaries, the position is necessary to further advance their career. All but one of the seven members of the CPC's supreme decision-making body was previously a Party Secretary at the provincial level.<sup>344</sup> Former Chinese President, Hu Jintao was the Party Secretary for TAR from 1988 to 1992.<sup>345</sup> Hu Jintao responded to the 1989 protests by declaring martial law to crackdown on the protests.<sup>346</sup> International criticism and sanctions specifically targeting Hu Jintao may have been sufficient to prevent him from becoming president and ensure that his successor respects human rights. The Chinese government is also less likely to put as much effort into defending local government officials as it would defend a former president. The PRC exerted substantial pressure on Spain to derail a potential prosecution of Hu Jintao after he left office but it is unlikely it would have responded the same way to a potential prosecution of Chen Quanguo or Zhang Qingli. The local officials are in best position to change important aspects of Chinese policy in

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<sup>343</sup> See eg, "Chinese police beat a Tibetan man to death in custody," *Phayul*, 13 Aug. 2013, available at:

<http://www.phayul.com/news/article.aspx?id=33856&article=Chinese+police+beat+a+Tibetan+man+to+death+in+custody>.

<sup>344</sup> "China Exclusive: Book offers glimpse of CPC top decision-making body," *Xinhua*, 2 Aug. 2013, available at: [http://news.xinhuanet.com/english/indepth/2013-08/02/c\\_132597462.htm?utm\\_source=Sinocism+Newsletter&utm\\_campaign=111655c764-Sinocism08\\_08\\_13&utm\\_medium=email&utm\\_term=0\\_171f237867-111655c764-29611661](http://news.xinhuanet.com/english/indepth/2013-08/02/c_132597462.htm?utm_source=Sinocism+Newsletter&utm_campaign=111655c764-Sinocism08_08_13&utm_medium=email&utm_term=0_171f237867-111655c764-29611661).

<sup>345</sup> "Biography of Hu Jintao," *China Vitae.com*, available at:

[http://www.chinavitae.com/biography/Hu\\_Jintao/full](http://www.chinavitae.com/biography/Hu_Jintao/full).

<sup>346</sup> Jonathan Watts, "Hundreds of monks protest in Tibet," 11 March 2008, available at: <http://www.theguardian.com/world/2008/mar/11/china/>.

Tibet by shaping policy and preventing or punishing the commission of crimes against humanity.

The growth and development of international criminal justice culminated in the creation of the ICC on 1 July 2002. The creation of the ICC did not stop the development of international criminal justice. Inaction by the ICC does not mean that impunity must exist unchecked. Other international actors can use international criminal justice to end impunity for crimes against humanity. As experience with Hu Jintao demonstrates, in Tibet impunity for government officials is the norm. International criminal justice has provided numerous methods for the international community to fight impunity in Tibet. All that is required is that international actors be willing to use those tools and hold the people responsible for crimes against humanity accountable.

## V. Policy Recommendations

### A. To China:

- Sign and ratify the Rome Statute
- End the widespread and systematic attack on the civilian population in Tibet by allowing Tibetans to exercise their human rights without fear of violent and merciless official reprisals;
- Hold the people responsible for commission of crimes against humanity accountable in public, transparent trials;
- Abolish the use of torture and allow international observers to verify progress has been made and provide assistance when necessary;
- Abolish Re-Education Through Labor and other methods of arbitrary detention.

### B. To the international community:

- Encourage the PRC to sign the Rome Statute and cooperate with the International Criminal Court;
- Encourage the PRC to prosecute individuals responsible for international crimes domestically;

- Initiate domestic prosecution of individuals responsible for international crimes that the PRC does not prosecute;
- Refuse, both individually and collectively, to invest in areas in the PRC where international crimes are being committed;
- Refuse, both individually and collectively, to meet or work with people responsible for the commission of international crimes;
- Impose targeted sanctions and travel ban on the individuals responsible for the commission of international crimes in Tibet.

## Summary of Crimes



Chen Quanguo

陈全国

Born in Henan Province in 1955.

Party Secretary for Tibet Autonomous Region 2011-present.

Member of the 18th Communist Party of China Central Committee.

### Crimes Against Humanity

- Torture in Chushur Prison.
- Arbitrary Detention of Lobsang Samten.

Photo from China-Leaders.org (<http://chinese-leaders.org/wp-content/uploads/2011/09/Chen-Quanguo-TAR1.jpg>)

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zhang Qingli

张庆黎

Born in Shandong Province in 1951.

Party Secretary for Tibet Autonomous Region 2005-2010.

Member of the 17th Communist Party of China Central Committee.

### Crimes Against Humanity

- Torture of Dawa.
- Murder of Dawa.
- Murder of Lhakpa Tsering and 11 others on 14 March 2008.
- Murder of Jinpa.

Photo from China-Leaders.org (<http://chinese-leaders.org/wp-content/uploads/2010/10/Zhang-Qingli.jpg> )



## Qiang Wei

强卫

Born in Jiangsu Province in 1953.

Party Secretary for Qinghai 2007-2013.

Member of the 17th and 18th  
Communist Party of China Central  
Committee.

### Crimes Against Humanity

- Torture of Tashi Dhondup.
- Arbitrary Detention of Tashi Dhondup.
- Murder of Choeri.
- Murder of Guldrak.
- Arbitrary Detention of Tenzin Sherab.
- Arbitrary Detention of Lobsang Samten.
- Arbitrary Detention of Lobsang Nyima.
- Arbitrary Detention of Sonam Gewa.

Photo from english.people.com.cn

(<http://english.people.com.cn/mediafile/201207/04/F201207041056302631615891.jpg>)

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## Wang Sanyun

王三运

Born in Shandong Province in 1952.  
Party Secretary for Gansu Province 2011-  
present.

Member of the 18th Communist Party of  
China Central Committee.

### Crimes Against Humanity

- Murder of Chonjor.
- Murder of Gurgo Tsering.

Photo from Chinese-Leaders.org (<http://chinese-leaders.org/wp-content/uploads/2013/01/Wang-Sanyun-e1359556417730.jpg>)



**Lu Hao**

陆浩

Born in Hebei Province in 1947

Party Secretary for Gansu Province  
2006-2011

Member of the 17th Communists Party  
of China Central Committee

Deputy Director of the Foreign Affairs Committee of the  
National People's Congress

Crimes Against Humanity

- Murder of Jamyang Jimpa in prison.
- Torture of Jamyang Jimpa.

Photo from Chinavitae.com

(<http://www.chinavitae.com/photos/lu.hao.269.jpg>)

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**Liu Qibao**

刘奇葆

Born in Anhui Province in 1953.

Party Secretary for Sichuan Province 2007-  
2012.

Member of the 17th and 18th Communist  
Party of China Central Committee.

Director of the Central Committee Propaganda Department  
2012-present.

Crimes Against Humanity

- Murder Ngawang Phuntsok.
- Arbitrary Detention of Ngawang Phuntsok.
- Murder of Karwang.
- Murder Tashi.
- Murder of Phuntsok.
- Murder of Yoten.
- Murder of Ugyen.
- Murder of Tsering Gyaltzen.
- Murder of Popo.
- Murder of Yeshe Rigsel.
- Murder of Yeshe Samdrup.

Photo from english.people.com.cn  
(<http://english.people.com.cn/mediafile/201207/04/F201207041055561965025905.jpg>)