2011

An Analysis of China's Human Rights Policies in Tibet: China's Compliance with the Mandates of International Law Regarding Civil and Political Rights

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Recommended Citation
18 ILSA J. Int'l & Comp. L. 115

AN ANALYSIS OF CHINA'S HUMAN RIGHTS POLICIES IN TIBET: CHINA'S COMPLIANCE WITH THE MANDATES OF INTERNATIONAL LAW REGARDING CIVIL AND POLITICAL RIGHTS

Richard Klein[*]

I. HISTORICAL BACKGROUND AND OVERVIEW

Tibet is commonly viewed in the West as having been a "Shangri-La"—a utopia unspoiled by industrialization, commercialization, or pollution.[1] Such a view was furthered by the fact that Tibet is geographically isolated—at "the roof of the world"[2]—and one visited infrequently by Westerners. A devoutly Buddhist area, the monasteries were centers of power which considered foreign influence or contact as possible threats to the continued hegemony of the monasteries.[3] Infrastructure was almost non-existent, and the nomadic or pastoral peoples lived as they had for centuries[4] . . . until China invaded in 1949 to 1951.[5]

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1. *See, e.g.*, Gary Vause, *Tibet to Tiananmen: Chinese Human Rights and United States Foreign Policy*, 42 VAND. L. REV. 1575, 1579 (1989).

2. *Id.* at 1575.

3. The important political role that the monastic system traditionally enjoyed in Tibet was highlighted in a report appended to the 1990 Hearings of the Senate Subcommittee on East Asian and Pacific Affairs:

> The monastic system had considerable political influence and was a conservative force, impeding foreign influence as well as domestic reform. The large monasteries aggressively opposed attempts to modernize Tibet and to allow influences from the foreign world in what proved to be a vain effort to preserve its unique civilization.

See INTERNATIONAL CAMPAIGN FOR TIBET, FORBIDDEN FREEDOMS: BEIJING'S CONTROL OF RELIGION IN TIBET, 521 (1990) [hereinafter FORBIDDEN FREEDOMS].

4. *See* REBECCA R. FRENCH, THE GOLDEN YOKE: THE LEGAL COSMOLOGY OF BUDDHIST TIBET 25 (1995).

Prior to the invasion of the Chinese, at least one boy from every family was expected to study and reside in a monastery and would be ordained.[6] Monks had traditionally devoted themselves to scholarly endeavors, spending twelve hours a day studying Buddhist philosophy and logic, reciting prayers, and debating scriptures.[7] The monasteries were political and social centers, as well as religious. Schools were contained within the buildings, and the typical indicia of government operations were located in the monasteries as well.[8] The community would gather at times to discuss issues of import, to be informed of secular matters, and to receive religious instruction.[9] The site of monasteries, typically set high on mountain plateaus, served to provide refuge for Tibetans from the frequent, and extreme, cold and high winds.[10]

Tibetan cultural isolation, although arguably no more or less than that of any other rural peasantry, may have been distinctive because of the conjunction of isolating circumstances developed over two thousand years:

> 1) The area's location on a high plateau not easily accessible to outsiders;

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5. Sources appear to differ as to the precise year of the Chinese invasion of Tibet. *Compare* Peter Hessler, *Tibet Through Chinese Eyes,* THE ATLANTIC, Feb. 1999, *available at* http://www.theatlantic.com/magazine/archive/1999/02/tibet-through-chinese-eyes/6395/ (last visited Feb. 7, 2012) (stating the western view that "before being forcibly annexed, in 1951, [Tibet] was an independent country"), *with* FRENCH, *supra* note 4, at 49 (describing the Chinese invasion of the Tibetan Plateau as occurring in the fall of 1950), and HUM. RTS. IN DEVELOPING COUNTRIES YEARBOOK 1994, 194 (Peter Baehr, Hilde Hey, Jacqueline Smith & Theresa Swinehart eds., 1994) (stating that the Chinese army invaded Tibet in 1949).

6. *See* Tsenzhab Serkong Rinpoche II, *Overview of the Gelug Monastic Education System,* BERZINARCHIVES.COM (Sept. 2003), http://www.berzinarchives.com/web/en/archives/study/history_buddhism/buddhism_tibet/gelug/overview_gelug_monastic_education.html (last visited Oct. 30, 2011); *see also* Tsechen Damchos Ling Buddhist Monastery, *Monastic (Religious) Activities*, http://www.tibetan-village.org.uk/routine.html (last visited Oct. 30, 2011); *Life of Tibetan Monks*, PRESSCLUBOFTIBET.ORG, http://www.presscluboftibet.org/china-tibet-51/life-of-tibetan-monks.htm., Amy Yee, *Tibetan Monks and Nuns Turn their Minds Toward Science*, N.Y. TIMES, June 30, 2009, at D3, *available at* http://www.nytimes.com/2009/06/30/science/30monks.html?pagewanted=all (last visited Oct. 30, 2011) (describing the study schedules and practices of Tibetan Monks).

7. Yee, *supra* note 6, at D3.

8. *See* Jeffery Hays, *Tibetan Monasteries and Pilgrims*, FACTSANDDETAILS.COM (Apr. 2010) http://factsanddetails.com/china.php?itemid=217&catid=6&subcatid=34 (last visited Jan. 3, 2012).

9. *Id.*

10. Despite their unusual location, the monasteries would occasionally house non-Tibetans as well. Prior to 1959, monks came to the monasteries from Indian border regions as well as other parts of Tibet, including Mongolia and Bhutan. In a few cases, some Europeans and Japanese monks studied at Sera, a major Tibetan monastery. José Ignacio Cabezón, *People at Sera, in* People at Sera (2004) *available at* http://www.thlib.org/places/monasteries/sera/essays/#!essay=/cabezon/sera/people/ (last visited Oct. 30, 2011).

> 2) A harsh climate;
> 3) A generally stable and static polity and economy;
> 4) A separate Tibetan language with dialects varying noticeably from region to region;
> 5) A strong Tibetan national consciousness punctuated by the existence of regional cultural differences; and
> 6) A particular, widespread emphasis on an institutionalized Tibetan form of Buddhism.[11]

Upon their arrival in 1950, the Chinese Communists tried to persuade the Tibetan government to begin negotiations for "peaceful liberation" of the country.[12] When Tibetan officials hesitated, Chinese forces attacked the Tibetan army in October 1950 and captured the city of Chamdo and the Tibetan troops defending it. Lhasa, the Tibetan capital, was, as a result, left virtually defenseless. The Chinese army did not, however, occupy Lhasa, since Mao Zedong wanted China's claim to Tibet legitimized by having the Dalai Lama voluntarily accept Chinese rule.[13] The Tibetan government, demoralized by the lack of support by other countries, most notably Britain and India, for Tibetan independence, sent negotiators to Beijing in the spring of 1951 to reach a settlement with the Chinese government.[14] In May 1951, the Tibetan delegates signed a "17-Point Agreement"—without the Dalai Lama's knowledge or authority[15]—formally recognizing Chinese sovereignty over Tibet.[16] To this day, the Chinese refer to the events from 1949 to 1951 as culminating in the "peaceful liberation" of Tibet.[17]

The West has perceived the Chinese presence in Tibet as that of an occupying force—subjugating the people, wiping out the traditional culture,[18] and forcing the Tibetan leader, the Dalai Lama, into exile.[19]

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11. However, throughout its history, Tibet has been influenced by cultural and economic contact with other societies bordering the Tibetan Plateau. FRENCH, *supra* note 4, at 26.

12. MELVYN C. GOLDSTEIN, THE SNOW LION AND THE DRAGON 44 (1997).

13. *Id.* at 45.

14. *Id.* at 46.

15. *Id.* at 48.

16. GOLDSTEIN, *supra* note 12, at 46. At least two authors state that the Dalai Lama and/or the Tibetan government first heard of the 17-Point Agreement over the radio when it was announced by Radio Beijing. A. TOM GRUNFELD, THE MAKING OF MODERN TIBET, 111–14 (1996). M. C. VAN WALT VAN PRAAG, THE STATUS OF TIBET: HISTORY, RIGHTS, AND PROSPECTS IN INTERNATIONAL LAW 148 (1987).

17. GOLDSTEIN, *supra* note 12, at 46.

18. *See* TIBET: HUM. RTS., INTERNATIONAL COMMISSIONER OF JURIST 7–10 (1997) (describing the findings of several reports published since 1959 by the International Commission of Jurists) [hereinafter TIBET: HUM. RTS.].

19. *See, e.g.*, Daniel J. Sobieski, *What About Human Rights in Tibet?* CHI. TRIB., July 29, 1999, at 20, *available at* http://articles.chicagotribune.com/1999-07-29/news/9907290364_1_tibetan-central-tibet-dalai-lama (last visited Oct. 30, 2011).

Tenzin Gyatso, the Fourteenth Dalai Lama, fled China, according to his supporters, to avoid imminent arrest by the Chinese in 1959.[20] The Dalai Lama settled in Dharamsala, India and instituted the Tibetan Government-in-Exile, which claimed to be the only legitimate ruling body of the Tibetan people.[21]

Hollywood could not have found a better man to cast in the role of the Fourteenth Dalai Lama than Gyatso—his humility, gentleness, good spirit, and overall likeability have contributed to the perception of the Tibetans as innocent, nonviolent victims of Chinese oppression.[22] In the statement made when granting the Dalai Lama the Nobel Peace Prize in 1989, the Nobel Committee declared that:

> [T]he Dalai Lama in his struggle for the liberation of Tibet consistently has opposed the use of violence. He has instead advocated peaceful solutions based upon tolerance and mutual respect in order to preserve the historical and cultural heritage of his people. The Dalai Lama has developed his philosophy of peace from a great reverence for all things living and upon the concept of universal responsibility embracing all mankind as well as nature.[23]

The Dalai Lama is, however, approaching seventy-seven years of age, and it might well be the policy of China to avoid serious talks about any possibility of the Lama's return to Tibet because of China's hope that old age might naturally lead to an elimination of the problem[24]—not that the

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20. FRENCH, *supra* note 4, at 50; TIBET: HUM. RTS., *supra* note 18, at 51.

21. *See* FRENCH, *supra* note 4, at 50; GOLDSTEIN, *supra* note 12, at 54; Vause, *supra* note 1, at 1589.

22. *See* Sir CHARLES ALFRED BELL, THE RELIGION OF TIBET 2, 134 (1998) ("As a recipient of the Nobel Peace Prize, and an advocate of peaceful resolution with the Chinese, the Dalai Lama is a prime example of a man living his religion."); 133 Cong. Rec., H5219 (daily ed. June 18, 1987) (stating the sense of the Congress that the United States "should urge the Government of the People's Republic of China to actively reciprocate the Dalai Lama's efforts to establish a constructive dialogue" and that "Tibetan culture and religion should be preserved and the Dalai Lama should be commended for his efforts in this regard"); LEGAL MATERIALS ON TIBET, INT'L COMM. OF LAWYERS FOR TIBET (2nd ed. 1997).

23. Press Release, Nobel Foundation, The Nobel Peace Prize for 1989 (Oct. 5, 1989), *available at* http://nobelprize.org/nobel_prizes/peace/laureates/1989/press.html (last visited Oct. 30, 2011).

24. *See* Richard Klein, *The World's Youngest Political Prisoner*, THE HUMANIST, Mar/Apr 1999, at 8, *available at* http://thehumanist.org/humanist/articles/klein.html (last visited Oct. 30, 2011). *See also* Isabel Hilton, *Flight of the Lama*, N.Y. TIMES, Mar. 12, 2000, at 7, *available at* http://www.nytimes.com/2000/03/12/magazine/flight-of-the-lama.html?pagewanted=all&src=pm (last visited Oct. 30, 2011).

Dalai Lama's birthdays were given significance in China. In July of 2010, when his seventy fifth birthday occurred, a foreign Ministry spokesman said China preferred to ignore the Dalai Lama's birthday and instead remember two dates in modern Tibetan history: those of Tibet's "peaceful liberation" and Serf Emancipation Day. "I can only remember two dates," the spokesman, Qin Gang said.[25] "[O]ne was March 28, 1951, when the Chinese Army took over central Tibet, and the other was May 23, 1959, after the Chinese Army suppressed a Tibetan uprising, a day the government recently designated Serf Emancipation Day."[26]

Moreover, the Chinese have taken into custody the Dalai Lama's designated eleventh Panchen Lama,[27] historically the second most important Lama in the Tibetan hierarchy, and have anointed their own eleventh Panchen Lama ready to take authority upon the Dalai Lama's death.[28] According to Hao Ping, a Communist Party official, the reincarnations of Tibetan spiritual leaders, including the Dalai Lama, must be approved by the Chinese central government.[29] According to Ping, the living [incarnated] Buddhas must now follow a process that was rooted in history and that culminated in approval of the reincarnations by the central government. The Chinese Communist Party, which is officially atheist, nevertheless insists that religious traditions be followed. There were two crucial steps in the process: "the name of the reincarnated lama must be chosen from several rods with names put into a ceremonial vessel, the Golden Urn, and the child selected from that must be approved by the central government."[30] In 2007, the Chinese government passed a law requiring that "all living Buddhas" need to be approved by Beijing.[31]

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25. *See* Edward Wong, *China: Dalai Lama's Birthday Ignored*, N.Y. TIMES, July 8, 2010, A6, *available at* http://www.nytimes.com/2010/07/08/world/asia/08briefs-China.html (last visited Oct. 30, 2011).

26. *Id.*

27. For a discussion of the controversy between the Dalai Lama and Beijing over the selection of the successor to the Tenth Panchen Lama, *see* TIBET INFO. NETWORK & HUM. RTS. WATCH (Asia), CUTTING OFF THE SERPENT'S HEAD: TIGHTENING CONTROL IN TIBET, 1994-1995, 4–5 (1996) [hereinafter CUTTING OFF THE SERPENT'S HEAD].

28. *See* Klein, *supra* 24, at 1. However, the successful escape into India of Ugyen Trimley Dorje, recognized by both the Dalai Lama and Beijing as the rightful seventeenth Karmapa Lama, may provide the Tibetan exile movement with a respected leader who could be well situated to be a spokesman for the Tibetans in the absence of the Dalai Lama. *See also* Hilton, *supra* 24, at 7.

29. Edward Wong, *China Asserts Role in Choosing Dalai Lama*, N.Y. TIMES, July 1, 2010, at A6, *available at* http://www.nytimes.com/2010/07/02/world/asia/02dalai.html (last visited Oct. 30, 2011).

30. *Id.*

31. *Id.*

II. DENIAL OF FREEDOM OF RELIGION

It has been recognized that "Tibetan Buddhism is the cornerstone of Tibet's unique cultural heritage."[32] Accordingly, for the Tibetan Buddhists, the denial of their right to practice their religion[33] has had ramifications of gargantuan proportions.[34] The attack on the Tibetans' religion focused on interference in the monasteries' affairs, and ultimately, the physical destruction of many of them.[35] Accounts differ as to the amount, the timing, and the nature of the destruction that actually occurred. According to the Physicians for Human Rights, in the years following the aborted 1959 Tibetan uprising, the Chinese decimated the monastic system by razing over 6000 monasteries and temples.[36] The International Commission of Jurists (ICJ) asserts that Chinese Communist "democratic reforms" in 1956 were accompanied by "cultural destruction, which began with the depopulation, looting, and destruction of monasteries."[37] After the intensification of the revolt in 1959, the process of attacking the monasteries, depopulation, and looting spread to central Tibet.[38] It may be

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32. *Sino-American Relations: One Year After the Massacre at Tiananmen Square:* Hearing before the Subcomm. on East Asia and Pacific Affairs of the Comm. on Foreign Relations, 101st Cong. 58 (1990) [hereinafter *Sino-American Relations*] (prepared statement of Michele Bohana, Director of the International Campaign for Tibet). *See* FRENCH, *supra* note 4, at 12 ("The Tibetans' religion is the foundation of all their culture, the source of their jurisprudence, the well-spring of their political history, the guiding principle in every Tibetan's life."). Interestingly, the Chinese government has also expressly recognized the importance of Tibetan Buddhism in Tibetan affairs: "Tibetan Buddhism was founded in a certain historical period in Tibet, and it has had a widespread and long-standing effect on the people. In our region's [Tibet's] Socialist cause we consider it as an important issue to fully understand and solve this problem." TIBET JUSTICE CTR., A GOLDEN BRIDE TO STRIDE INTO THE NEW CENTURY: THIRD FORUM ON WORK IN TIBET 36 (1994).

33. The Political Covenant guarantees the "right to freedom of thought, conscience religion." *See Political Covenant*, *supra* note 22 , art. 18 sec. 1, at 23.

34. *See* Dalai Lama, Statement of His Holiness the Dalai Lama on the Occasion of the 36th Anniversary of the Tibetan National Uprising (Mar. 10, 1995) (stating that "[w]ith the occupation of Tibet, Tibetan Buddhism has been robbed of its cradle and homeland, not only violating the Tibetan people's right to freedom of religion but also endangering the very survival of this rich spiritual and cultural tradition in Tibet and Central Asia.") [hereinafter Statement of His Holiness].

35. John Prados, in describing the growing unrest in Tibet during the late 1950s, notes that armed resistance against the invading Chinese caused a moral dilemma for traditionally nonviolent Buddhist Tibetans. However, the Chinese People's Liberation Army (PLA) "helped resolve these problems by bombing monasteries, beginning with Litang in 1956." *See* JOHN PRADOS, PRESIDENTS' SECRET WARS: CIA AND PENTAGON COVERT OPERATIONS SINCE WORLD WAR II 157 (1986).

36. John Ackerly & Blake Kerr, *The Suppression of a People: Accounts of Torture and Imprisonment in Tibet* 354 (1989) (A report by the Scientific Buddhist Association for the U.N. Commission on Human Rights asserts that 80% of monasteries and temples in Tibet were destroyed from 1960 to 1966, even before the Cultural Revolution).

37. TIBET: HUM. RTS., *supra* note 18, at 120.

38. *Id.* at 121.

the case that the greatest degree of physical destruction took place from 1966 to 1969, the time of the Great Proletarian Cultural Revolution, when "[a]ll but a handful of monasteries and temples (the figures range from 2000 to 6500) were destroyed, many taken down brick by brick until not a trace was left."[39]

Monasteries in Tibetan society were far more central to people's lives than churches and synagogues are to most Christians and Jews. They were *the* centers of education, culture, and community life.[40] Thus, when some Western journalists were permitted to visit Tibet in the late 1970s, and to see the destruction wrought upon Tibetan temples, monasteries, and Tibetan culture in general, they described Tibet as "the graveyard of a murdered civilization."[41] Monks and nuns—traditionally constituting approximately fifteen to twenty percent of the total population of Tibet[42]—were arrested and jailed[43] and, by many accounts, tortured[44] and, during the Cultural Revolution, even executed.[45] Ancient Buddhist texts have been destroyed, especially during the years of the Great Leap Forward and the Cultural Revolution in China.[46] Although there had been some loosening of the

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39. GRUNFELD, *supra* note 16, at 185; *See* DAWA NORBU, TIBET: THE ROAD AHEAD 275 (1997) (describing the Chinese Cultural Revolution, which covered the period from May, 1966 to January, 1969, as a time when "almost 90 percent of Tibet's monasteries, temples and historical monuments were razed to the ground"); *Sino-American Relations*, *supra* note 32, at 521, 528.

40. *See* TIBET: HUM. RTS., *supra* note 18, at 121 ("Tibetan monasteries contained the vast majority of Tibetan material as well as intellectual culture.").

41. NORBU, *supra* note 39, at 276.

42. *See* GRUNFELD, *supra* note 16, at 13–14, 31 (stating that in 1959 the Chinese government estimated the clergy as totaling fifteen percent of the Tibetan population). Grunfeld notes that:

> A tradition evolved of sending at least one son from each family into the clergy to ensure him some dignity and more than likely guarantee his livelihood. . . . The monastic orders also provided a safety valve when a family had too many sons and not enough property to divide reasonably.

FRENCH, *supra* note 4, at 30 (Monks and nuns "made up an estimated twenty percent of the population in the first half of the twentieth century.").

43. The Chinese government has stated that there are no religious prisoners in China, and that infringement of the law, not religion, constituted the grounds for every conviction. *See Visit by the Special Rapporteur to China* (1994), *in* LEGAL MATERIALS ON TIBET, *supra* note 22, at 69, 77.

44. *See Sino-American Relations*, *supra* note 32, at 55; ASIAN WATCH REP., MERCILESS REPRESSION 67 (1990) (Since monks and nuns are often arrested for pro-independence activities, they are arrested, imprisoned and tortured as are other political prisoners.) [hereinafter MERCILESS REPRESSION].

45. TIBET: HUM. RTS., *supra* note 18, at 74 (at least one source claims that executions of Tibetan Buddhist clergy took place even in the 1950s). *See* FORBIDDEN FREEDOMS, *supra* note 3, at 524, 525–26, 528 (stating that "[w]hile the government was proclaiming liberal policies . . . to protect religion . . . [a]ttacks on religion became more violent. Lamas were assaulted and humiliated; some were put to death" and there was "imprisonment, *execution* and expulsion" of monks) (emphasis added).

46. *See* TIBET: HUM. RTS., *supra* note 18, at 74.

restrictions on the right to religious freedom,[47] as well as restoration and reconstruction of some monasteries,[48] the Chinese government maintains a close vigil to ensure that no political activity is occurring within the monasteries.[49] Attempts by monks or nuns to engage in any form of political activity, other than that supportive of the Chinese Communist Party, have been violently suppressed.[50]

Tibetan Monks have traditionally engaged in small-scale protests in the month of March, the month in which the Dalai Lama fled to India from

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47. *See* MERCILESS REPRESSION, *supra* note 44, at 48. However, restrictions on freedom of worship remain: while temples and monasteries are open for prayer, the days on which they are open have been limited. Additionally, Tibetans have been warned not to "abandon production to go to worship Buddha." GRUNFELD, *supra* note 16, at 217.

48. *See* MERCILESS REPRESSION, *supra* note 44, at 69. Tibetans are forbidden, however, to "'arbitrarily revive' monasteries 'without permission.'" GRUNFELD, *supra* note 16, at 217. "Only a small percentage of monasteries and religious monuments and a few of the buildings of each monastery have been restored or rebuilt. Some completely new monasteries have been erected where none existed before 1949." TIBET: HUM. RTS., *supra* note 18, at 123.

49. *See* MERCILESS REPRESSION, *supra* note 44, at 70 (describing the manner by which the Chinese authorities control activities conducted within Tibetan monasteries as follows:

> Since [the fall of 1988], what are termed "democratic" administrative organizations are said to have been set up under the leadership of monks chosen by their respective monastic communities. The Chinese government, however, has charged these management units with responsibility for guarding "against the influence of a small number of separatists," and the implication is that the new "democratic" management system, like much else in the structure of "regional autonomy" in Tibet, allots to such units the task of enforcing and implementing policies and directives from the Central Government. In such a context, these new units are clearly destined to function as further extensions of state power, thus merely reinforcing the suppression of the basic rights of Tibetans to free expression.).
>
> The Chinese authorities have also sought to remove the Dalai Lama as a religious leader and a person to whom reverence is due from all aspects of Tibetan Buddhism. Yet, the measures for increased Chinese political control of Tibetan monasteries has caused some unrest in small, rural monastic communities, even though some larger monasteries with established histories of protest—what might be termed "criminal records" in the eyes of the Chinese authorities—appear to have accepted actions such as the placement of a police station within a monastery and the appointment of a carefully selected "Democratic Management Committee" without much objection, since they were used to such treatment.

See CUTTING OFF THE SERPENT'S HEAD, *supra* note 27, at 48, 66–69. This close supervision by the Chinese government has not, however, pacified the opposition towards Tibetan Buddhism as manifested by some Chinese hard-liners. *See* GRUNFELD, *supra* note 16, at 227.

50. *See* MERCILESS REPRESSION, *supra* note 44, at 71.

Tibet in 1959, to demonstrate his opposition to the Chinese occupation.[51] Tensions were especially heightened in March 2008 due to the scheduled start of the Beijing Olympics in August and the Chinese determination that the conditions in Tibet appear to be orderly.[52] What originated as small demonstrations developed into a large-scale uprising across most of Tibet by the end of March of 2008.[53] From March 10–12, monks from Tibetan monasteries led a series of small-scale protests in Tibet, resulting ultimately in a sudden breakdown of public order in Lhasa on March 14.[54] The protests were widely interpreted as a reaction to the harsh Chinese policies toward Tibetans in general, and to the Dalai Lama in particular.[55]

The March, 2008 riots were the most significant uprising the Chinese communist party had faced since the 1959 invasion of Tibet which had forced the Dalai Lama to flee the country.[56] No Chinese government had been confronted by such serious expressions of citizen discontent since the Chinese Communist Party had first established the People's Republic of China (PRC) in 1949.

There are two distinguishing factors relating to the March, 2008 uprising which exist when compared to previous Tibetan protests. First, the 2008 protests spanned an unprecedented area of Tibet and the Tibetan Autonomous Region (TAR), with riots occurring in twelve areas[57] and

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51. TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY, HUMAN RIGHTS SITUATION IN TIBET, ANN. REP. 2009, at 17 (2009) [hereinafter TCHRD ANN. REP. 2009].

52. The Chinese Government and Communist Party hardened the policies which had frustrated Tibetans prior to the wave of Tibetan protests that started in March, 2008. As a result of the Chinese Government and Party policies, as well as the campaigns to "educate" Tibetans about their obligations to adhere to policy and the law that many Tibetans believe diluted their cultural identity and heritage, the level of repression of Tibetans' freedoms of speech, religion, assembly, and association increased. ONE HUNDRED ELEVENTH CONG., CONG.-EXEC. COMM'N ON CHINA: ANN. REP. 2009, at 270 (2009), *available at* http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf (last visited Oct. 30, 2011) [hereinafter CECC ANN. REP. 2009].

53. *See* ONE HUNDRED TENTH CONG., CONG.-EXEC. COMM'N ON CHINA: ANN. REP. 2008, at 183 (2008), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_house_hearings&docid=f:45233.pdf (last visited Oct. 30, 2011) [hereinafter CECC ANN. REP. 2008].

54. HUM. RTS. WATCH, I SAW IT WITH MY OWN EYES: ABUSES BY CHINESE SECURITY FORCES IN TIBET, 2008–2010, at 16 (2010) *available at* http://www.hrw.org/sites/default/files/reports/tibet0710webwcover.pdf (last visited Oct. 30, 2011) [hereinafter I SAW IT WITH MY OWN EYES].

55. Chinese government and Communist Party policy toward Tibetan Buddhists' practice of their religion had constituted a primary role in creating the frustration and the protests which began on March 10, 2008. *See* CECC ANN. REP. 2008, *supra* note 53, at 182.

56. *Id.* at 183.

57. *Id.*

> The 12 county-level areas are: Lhasa city, Duilongdeqing (Toelung Dechen), Linzhou (Lhundrub), and Dazi (Tagtse) counties, located in Lhasa municipality in the TAR; Aba (Ngaba) and Ruo'ergai (Dzoege)

generally peaceful protests occurring in over forty additional areas.[58] Second, the demonstrations continued in spite of the very obvious presence of Chinese armed forces and police.[59] It was widely reported that these Chinese security forces opened fire on Tibetans who were peacefully demonstrating in many parts of the Tibetan inhabited regions of China.[60]

Although the specific sequence of events remains contested, there are a number of eyewitness accounts which maintain that Chinese security forces responded[61] with a disproportionate level of lethal force.[62] Authorities used the legal system to punish the protestors who were arrested.[63] What made this particular uprising unique, however, was that journalists and visitors were still in the region when the protests, as well as the responses, began because the Chinese authorities had not yet closed off the region. Thus, there have been some verified accounts as to what occurred.

One eyewitness reports that the riots were triggered by police brutality on March 10, 2008[64] when a group of monks from the Sera Monastery began a small-scale, peaceful protest.[65] It was reported that police arrested fifteen monks for "participating in 'a disturbance' in which the monks 'shouted reactionary slogans and brandished the [Tibetan] Snow Lion

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counties, located in Aba Tibetan and Qiang Autonomous Prefecture in Sichuan province; and Xiahe (Sangchu), Maqu (Machu), Luqu (Luchu), Zhuoni (Chone), and Diebu (Thewo) counties, and Hezuo (Tsoe) city, located in Gannan (Kanlho) TAP in Gansu province.

CECC ANN. REP. 2009, *supra* note 52, at 275.

58. CECC ANN. REP. 2008, *supra* note 53, at 183.

59. *Id.*

60. AMNESTY INT'L, PEOPLE'S REPUBLIC OF CHINA, TIBET AUTONOMOUS REGION: ACCESS DENIED 4 (2008).

61. "The uprising of 2008 by the Tibetans in Tibet was a thunderous call for reform and solution to the Tibetan issue, yet the government continues to callously dismiss the legitimate voice of the people." TCHRD ANN. REP. 2009, *supra* note 51, at 5. The Chinese authorities engaged in executing Tibetans during the spring 2008 protests, announced 'serf emancipation day,' and "struck hard on Tibetan intellectuals and wangled law to drive home the point that the Communist Party is above law." *Id.*

62. *Compare* I SAW IT WITH MY OWN EYES, *supra* note 54, at 16, *with* MINISTRY OF FOREIGN AFF. OF THE PEOPLE'S REPUBLIC OF CHINA, FOREIGN MINISTRY SPOKESPERSON QIN GANG'S REGULAR PRESS CONFERENCE ON MAY 18, 2008 (Mar. 19, 2008), http://www.fmprc.gov.cn/eng/xwfw/s2510/t416255.htm (last visited Jan. 2, 2012).

63. *See* I SAW IT WITH MY OWN EYES, *supra* note 54, at 16.

64. *See,* TCHRD ANN. REP. 2009, *supra* note 51, at 17 ("Security measures were intensified with sharp early warning in many Tibetan areas during a month long before and during sensitive anniversaries and observances in February of Tibetan New Year and March anniversary in 2009.").

65. "At around 5 p.m. a group of monks from the Sera Monastery began a low level protest in front of central Lhasa's Jokhang Temple. Police broke up the protest, hitting protesters with batons and arresting every member of the group." I SAW IT WITH MY OWN EYES, *supra* note 54, at 18.

flag.'"[66] Tightened security measures immediately resulted along with calls to "crush" any demonstrations of support for the Dalai Lama or in opposition to Chinese rule.[67] Historically, Chinese officials have sought to pressure Tibetans to participate in public events such as the celebration of the Tibetan New Year, in order to prevent Tibetans from joining political protests.[68]

Demonstrations continued throughout the region. Some individuals participated in small-scale civil disobedience movements. Others, including monks, brazenly displayed photographs of the Dalai Lama, the exiled leader who is revered as a god-king but whom China maligns as a "wolf in monk's robe."[69] Nearly all of the protestors complained of a lack of religious and political freedom.[70] Although Chinese authorities proclaimed that the monks were "later persuaded to leave in peace"[71] and that "no disturbance to social stability was caused,"[72] witnesses reported that individuals who had initially attempted to cross police boundaries were knocked to the ground, kicked, and taken away.[73]

The following day, March 11, several hundred monks from the Sera Monastery demonstrated and demanded the release of the monks who had been arrested the prior day. Reports indicated that as the monks began to leave the monastery compound and assemble in the street, security personnel stationed in the monastery attempted to prevent them from leaving.[74] The security personnel physically obstructed the monks, "kicking and punching them as they tried to pass through the doors."[75] Similar incidents occurred the following day in other monasteries as well.[76]

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66. *Id.*

67. TCHRD ANN. REP. 2009, *supra* note 51, at 17.

68. *Id.* at 18.

69. Christopher Bodeen, *China brands Dalai Lama 'Wolf in Monk's Robes' as Struggles Deepen*, SCOTMAN, Mar. 20 2008, *available at* http://news.scotsman.com/world/China—brands-Dalai-Lama.3896802.jp (last visited Oct. 30, 2011).

70. TCHRD ANN. REP. 2009, *supra* note 51, at 17.

71. *See Tibet Issues Arrest Warrants for 16 Suspects In Riot*, XINHUA (Apr. 5, 2008), http://news.xinhuanet.com/english/2008-04/05/content_7924421.htm (last visted Jan. 1, 2012).

72. *Llamas' Rally in Lhasa 'Properly Handled,'* XINHUA (Mar. 11, 2008), http://english.cri.cn/2946/2008/03/11/195@332636.htm (last visited Oct. 30, 2011).

73. I SAW IT WITH MY OWN EYES, *supra* note 54, at 19.

74. *Id.*

75. *Id.* at 18. The eyewitness further stated:

> There were four or five [policemen] in uniform and another 10 or 15 in regular clothing. They were grabbing monks, kicking and beating them. One monk was kicked in the stomach right in front of us and then beaten on the ground. The monks were not attacking the soldiers, there was no

The protests continued. On March 12, approximately 300 monks from the Drepung Monastery staged a peaceful demonstration with the goal of reaching the Potala Palace, the historic residence of the Dalai Lama.[77] However, the monks were intercepted by members of the People's Armed Police[78] who prevented them from reaching the Palace.[79] Rioting occurred in Lhasa on March 14[80] and on March 16.[81] Monks who were residing in monasteries attacked government offices, police stations, and shops in outlying areas during the period from March 14–19. Shortly thereafter, students from the Sera Monastery staged a brief political protest near the Jokhang Temple, the most sacred temple in Tibet.[82] At least fifteen of the protesters were detained by the police.[83] Thirteen of the students were subsequently charged with illegal assembly.[84]

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melee. They were heading out in a stream, it was a very clear path, and the police were attacking them at the sides.

Eyewitness: Monk 'Kicked to Floor,' BBC NEWS (Mar. 14, 2008), *available at* http://news.bbc.co.uk/2/hi/asia-pacific/7296134.stm (last visited Oct. 30, 2011).

76. Hundreds of monks and nuns from Ganden Monastery and Chubsang nunnery attempted to march to Lhasa to protest the security presence. Police surrounded them and forced them back to their monasteries and sealed off the area. I SAW IT WITH MY OWN EYES, *supra* note 54, at 20.

77. CECC ANN. REP. 2008, *supra* note 53, at 285.

78. *Id.*

79. TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY, TIBETAN RIGHTS BODY FEARS TORTURE AND INHUMANE TREATMENT ON THE ARRESTEES FROM BARKHOR PROTEST ON TIBETAN UPRISING DAY 1 (2008) [hereinafter TIBETAN UPRISING DAY].

80. Lou Chen & Yi Ling, *Dalai's Separatist Activities Condemned*, XINHUA (Mar. 20, 2008), http://news.xinhuanet.com/english/2008-03/15/content_7792827.htm (last visited Oct. 30, 2011); *China Clamps Down on Tibetan Protests As Many Deaths, Injuries Reported*, RADIO FREE ASIA (Mar. 15, 2008), http://www.rfa.org/english/news/politics/tibet_protest-20080314.html (last visited Oct. 30, 2011); Jim Yardley, *Chinese Police Clash With Tibet Protesters*, N.Y. TIMES, Mar. 15, 2008, at A1, *available at* http://www.nytimes.com/2008/03/15/world/asia/15tibet.html?pagewanted=all (last visited Oct. 30, 2011).

81. *Police, Officials Hurt in Sichuan Riots,'* XINHUA (Mar. 20, 2008), http://www.china.org.cn/government/news/2008-03/20/content_13101713.htm (last visited Oct. 30, 2011); *Violence, Protests Spread From Tibet to Western China*, RADIO FREE ASIA (Mar. 16, 2008), http://www.rfa.org/english/news/tibet-protest-20080316.html (last visited Oct. 30, 2011); Benjamin Kang Lim & Chris Buckley, *Tibetan Riots Spread, Security Lockdown in Lhasa*, REUTERS (Mar. 16, 2008, 5:54 AM), http://ca.reuters.com/article/topNews/idCASP10739920080316 (last visited Oct. 30, 2011).

82. TIBETAN UPRISING DAY, *supra* note 79, at 1.

83. *See* Chris Buckley & Lindsay Beck, *Tibet deaths, arrests and protests shadow Olympics*, REUTERS (Mar. 26, 2008), http://in.reuters.com/article/2008/03/26/idINIndia-32679920080326 (last visited Jan. 2, 2012).

84. *Id.*

The primary focus of the protests were calls for the autonomy of Tibet, the Dalai Lama's return to Tibet,[85] the release of the Panchen Lama,[86] and freedom of religion generally.[87] Hundreds of the demonstrators carried photographs of both the Dalai Lama and the Panchen Lama.[88] Many, though not all, of the protests originated at Tibetan Buddhist monasteries and nunneries.[89] At one demonstration, for example, monks from the Drepung Monastery were reported to have "joined the peaceful

85. Jim Yardley, *Tibetans Clash with Chinese Police in Second City*, N.Y. TIMES, Mar. 16, 2008, at AA3, *available at* http://www.nytimes.com/2008/03/16/world/asia/16tibet.html?pagewanted=allt (last visited Oct. 30, 2011) (stated that thousands of protesters on March 16 shouted slogans including, "[t]he Dalai Lama must return to Tibet"); *see also* TIBETAN CTR FOR HUM. RTS. AND DEMOCRACY, SCORES OF TIBETANS ARRESTED FOR PEACEFUL PROTEST IN LHASA 4 (2008) (a few hundred protesters shouted slogans calling for the Dalai Lama to return to Tibet). Approximately 100 Tibetan middle school students demonstrated from within the school compound, likewise calling for the return of the Dalai Lama to Tibet. TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY, AROUND 40 MIDDLE SCHOOL STUDENTS ARRESTED IN MARTHANG 4 (2008).

86. Press Release, Tibetan Center for Human Rights and Democracy, Protest Erupts After Prayer for Deceased in Drango County (Mar. 25, 2008), www.tchrd.org/press/2008/pr20080326.html (last visited Feb. 22, 2012). The position of the Chinese government is illustrated by the explanation of a Chinese judicial official that a photograph of Gedun Choekyi Nyima is illegal because the Chinese Government had already approved a legal Panchen Lama (Gyaltsen Norbu). According to the official, disseminating photos of an illegal Panchen Lama can endanger the sovereignty and unity of the country, and aims to split the country. *Id.*

87. *11 years on! The 11th Panchen Lama, Gendun Choekyi Nyima, still remain disappeared*, PHAYUL.COM (Apr. 24, 2006) http://server3.tibethosting.com/news/article.aspx?id=12436&article=11+years+on!+The+11th+Panchen+Lama%2C+Gendun+Choekyi+Nyima%2C+still+remain+disappeared&t=1&c=2 (last visited Jan. 2, 2012); Press Release, Tibetan Center for Human Rights and Democracy, China Detains Drakar and Gaden Choeling Nuns in Kardze (May 18, 2008), www.tchrd.org/press/2008/pr20080517a.html; CHINA DETAINS DRAKAR AND GARDEN CHOELING NUNS IN KARDZE, (2008) (last visited Feb. 22, 2012). A group of Jokhang Temple monks shouted that there was no religious freedom when a group of international journalists on a government-guided tour visited the temple. Charles Hutzler, *Tibet Monks Disrupt Tour by Journalists*, ASSOC. PRESS, Mar 27, 2008, Sec. Int'l News, *available at* http://www.phayul.com/news/article.aspx?id=20109&t=0 (last visited Oct. 30, 2011).

88. Press Release, Tibetan Center for Human Rights and Democracy, Hundreds of Tibetans Protested in Chentsa, Malho "TAP", Qinghai Province (Mar. 23, 2008), http://www.tchrd.org/press/2008/pr20080323a.html (last visited Sept. 26, 2011); *Latest Updates on Tibet Demonstrations*, RADIO FREE ASIA (Mar. 25, 2008), http://www.rfa.org/english/tibet/latest_update_tibet-20080325.html?searchterm=None (last visited Sept. 26, 2011) (noting that more than 1,000 monks and other Tibetans shouted slogans on March 18, "[r]elease the Panchen Lama").

89. *Climate of Fear as Olympic Torch Arrives in Lhasa: Tibet Government Emphasizes Political Education to Ensure 'Stability'*, SAVETIBET, June 20, 2008, http://www.savetibet.org/media-center/ict-news-reports/climate-fear-olympic-torch-arrives-lhasa-tibet-government-emphasizes-political-education-e (last visited Sep. 26, 2011) (according to ICT, of 125 "separate incidents of dissent" that the organization documented, "47 have been carried out by monks, 44 by laypeople, and 28 by both monks and laypeople.").

demonstration, demanding the freedom for religious belief."[90] In another instance, several hundred citizens joined monks from the major monastic center of Labrang Tashikhyil and shouted slogans such as, "return us to religious freedom."[91]

Few details are available about the thousands of Tibetans who were "detained, beat, fired on, or otherwise harmed as armed forces suppressed protests or riots and maintained security lockdowns."[92] Conversely, the Chinese government produced videos[93] and provided accounts of personal injury and property damage[94] that Tibetan rioters caused throughout March in locations such as Lhasa,[95] omitting details about the thousands of Tibetans detained.[96] There has been little specific information about the detention of thousands of Tibetans.[97] There is no doubt that hundreds of Tibetan civilians had in fact attacked shops owned by ethnic Han Chinese and that street fights between Tibetans and the Chinese were widespread.[98]

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90. Press Release, Tibetan Center for Human Rights and Democracy, China Detains Drakar and Gaden Choeling Nuns in Kardze (May 17, 2008), http://www.tchrd.org/press/2008/pr20080517a.html (last visited Sept. 26, 2011).

91. *Id.*

92. CECC ANN. REP. 2008, *supra* note 53, at 194; *Police: Four Rioters Wounded Sunday in Aba of SW China*, XINHUA (Mar. 20, 2008), http://news.xinhuanet.com/english/2008-03/20/content_7829872.htm (last visited Oct. 18, 2011) (noting that in an effort to end the rioting in Aba (Ngaba) county, Aba Tibetan and Qiang Autonomous Prefecture, Sichuan province security forces shot and wounded four Tibetans); Press Release, Tibetan Center for Human Rights and Democracy, Scores of Tibetans Arrested for Peaceful Protest in Lhasa (Mar. 11, 2008), http://www.tchrd.org/press/2008/pr20080311.html (last visited Oct. 18, 2011) (TCHRD reports that security forces shot and killed at least 18 Tibetans in this incident).

93. The author of this article was in China teaching International Human Rights in Southern China in May and June of 2008 and witnessed the endless repetition of telecasts of Tibetans in Lhasa destroying shops belonging to the ethnic Chinese residents.

94. *Media Tour in Gansu Interrupted, Resumes Soon*, XINHUA (Apr. 10, 2008), http://www.china.org.cn/china/Lhasa_Unrest/2008-04/10/content_14732093_2.htm (last visited Oct. 21, 2011) (noting that "[A]ssaults, vandalism, looting and arson occurred in the Xiahe, Maqu, Luqu, Jone, Hezuo and Diebu areas of Gannan.").

95. *See, e.g.*, Jill Drew, *Tibet Protests Turn Violent, Shops Burn in Lhasa*, WASH. POST, Mar. 14, 2008.

96. CECC ANN. REP. 2008, *supra* note 53, at 194.

97. Press Release, Tibetan Center for Human Rights and Democracy, Tensions are High as the Olympic Torch Arrives in Lhasa (June 20, 2008), http://www.tchrd.org/press/2008/pr20080620.html (last visited Oct. 21, 2011) (reporting that it "has recorded the arrests or arbitrary detention of more than 6,500 Tibetans"). There was no information provided as to whether this figure includes more than 4000 Tibetans who official Chinese news media had reported surrendered or were detained by police in connection to alleged rioting.

98. Jill Drew, *10 Dead as Protesters, Police Clash in Tibetan Capital*, WASH. POST, Mar. 15, 2008, at A1. *See also* INT'L CAMPAIGN FOR TIBET, TIBET AT A TURNING POINT: THE SPRING UPRISING AND CHINA'S NEW CRACKDOWN, Aug. 6, 2008, *available at* http://www.savetibet.org/files/documents/Tibet_at_a_Turning_Point.pdf (last visited Oct. 21, 2011) (relaying an eyewitness

At least 218 Tibetans were thought to have died by June, either as the result of Chinese security forces shooting at the protesters or from beatings and torture.[99] The Tibetan Government-in-Exile also claims that Chinese authorities cremated more than eighty bodies of Tibetans who were killed in connection with the demonstrations.[100] The March 14 protests and rioting in Lhasa reportedly resulted in the highest number of Tibetan fatalities for any single incident.[101] The Chinese-appointed Chairman of the TAR government, however, denied that security forces carried or used "any destructive weapons" to deal with the March 14 riot.[102]

Additional incidents of the firing of lethal weapons against Tibetan protesters occurred on at least six occasions outside the TAR, according to non-government organizations and media reports.[103] The TAR and adjacent

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description of activity on March 14 near Ramoche Temple in Lhasa. "Then they poured into Tromsikhang [the market at the corner of Barkhor Street] from Ramoche Temple. On the way, many shops owned by Chinese and Chinese Muslims (Hui) were destroyed.").

99. *Latest Casualty Figures in Tibet*, CENT. TIBETAN ADMIN. (Aug. 21, 2008), http://www.tibet.net/en/index.php (last visited Oct. 21, 2011); *Update on Death Toll from Tibet Demonstrations*, CENT. TIBETAN ADMIN. (Mar. 26, 2008), http://www.tibet.net/en/flash/2008/0308/26A0308.html (last visited Oct. 21, 2011) (listing the first forty names published by the TGIE of Tibetans allegedly killed by Chinese security forces). *See also* CECC ANN. REP. 2008, *supra* note 53, at 194.

100. *Update on Tibet*, CENT. TIBETAN ADMIN. (May 1, 2008), http://www.tibet.net/en/index.php?id=562&articletype=flash&rmenuid=morenews&tab=1#TabbedPanels1 (last visited Oct. 21, 2011) (the report alleges that on March 28, Chinese security forces cremated "around 83 corpses" in a crematorium in Duilongdeqing county near Lhasa in an attempt to destroy "evidence related to the recent protests." The report described the corpses as "dead bodies of people who have been killed since the March 14 protest in Tibet," but did not disclose how the location, time, or cause of any of the deaths was established reliably).

101. *See* CECC ANN. REP. 2008, *supra* note 53, at 194.

102. Yi Ling & Lou Chen, *Governor Denies Use of Lethal Force in Lhasa Riot, Indignant Over Dalai's Lies*, XINHUA (Mar. 17, 2008), http://news.xinhuanet.com/english/2008-03/17/content_7809010.htm (last visited Oct. 22, 2011) (noting that Jampa Phuntsog told reporters in Beijing, "[t]hroughout the process, [security forces] did not carry or use any destructive weapons, but tear gas and water cannons were employed.").

103. *Complete One-Week Update on Tibet Protests*, CENT. TIBETAN ADMIN. (Mar. 18, 2008), http://www.tibet.net/en/flash/2008/0308/18A0308.html (last visited Oct. 22, 2011) (The TGIE reports three Tibetans shot and killed and ten others shot and injured). *See also* Press Release, Tibetan Center for Human Rights and Democracy, Middle School Student Shot Dead in Ngaba County (Mar. 19, 2008), http://www.tchrd.org/press/2008/pr20080320a.html (last visited Oct. 22, 2011) ("At least 23 people including as young as 16 years old student, Lhundup Tso, were confirmed dead following Chinese Armed police shot many rounds of live ammunitions into the protesters."); *Monks, Nomads Protest as Demonstrations Spread Across Entire Tibetan Plateau*, SAVETIBET (Mar. 19, 2008), http://www.savetibet.org/media-center/ict-news-reports/monks-nomads-protest-demonstrations-spread-across-entire-tibetan-plateau (last visited Oct. 22, 2011) (noting that on March 16 protesters stoned government offices and burned a police station and vehicles before 11 truckloads of security personnel "suppressed the protests." Although the precise number of casualties was unclear, as many as 19 deaths

Tibetan autonomous areas continued to be closely monitored and "saturated with troops long after the eruption of the protests commenced in the region in March 2008."[104]

Within one month after the beginning of the protests, Chinese officials reported that more than 2500 Tibetans had surrendered to the government.[105] An additional 1393 were detained by the Chinese.[106] Amnesty International has concluded that possibly thousands more had been imprisoned without any acknowledgment of their whereabouts or the lodging of formal charges against them.[107] Upon release, some of the prisoners described widespread torture, including the breaking of arms and legs.[108]

March, 2009 was the fiftieth anniversary of the Dalai Lama's departure from Tibet to India. In preparation for possible demonstrations, the Chinese authorities increased police presence and established procedures in Lhasa, focusing on "identifying and detaining people suspected of hindering the government's anti-separatism campaign or planning to join protests in the run-up to the fiftieth anniversary."[109] The suspected people included those who were former political prisoners and their families, minor offenders, and even temporary visitors.[110]

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were approximated). See *Questions, Answers About Casualties, Damages of Recent Riots*, XINHUA (Mar. 25, 2008), http://news.xinhuanet.com/english/2008-03/25/content_7857168.htm (last visited Jan. 2, 2012); Press Release, Tibetan Center for Human Rights and Democracy, At Least Three Tibetans Shot Dead in Kardze Protest (Mar. 18, 2008), http://www.tchrd.org/press/2008/pr20080318f.html (last visited Oct. 22, 2011) (security forces fired indiscriminately, shooting and killing three Tibetans and injuring 15 more); ("Hundreds of Tibetans gathered in the town market and shouted slogans calling for independence and the Dalai Lama's long life."); Press Release, Tibetan Center for Human Rights and Democracy, One Shot Dead and Another in Critical Condition in Drango Protest (Mar. 24, 2008), http://www.tchrd.org/press/2008/pr20080324a.html (last visited Oct. 22, 2011) (noting that security officials killed one person and critically wounded another when they fired indiscriminately on about 200 protesters shouting slogans calling for independence and the Dalai Lama's long life as they marched toward township offices).

104. HUM. RTS. WATCH, WORLD REPORT 292 (2010), *available at* http://www.hrw.org/sites/default/files/reports/wr2010.pdf (last visited Oct. 22, 2011) [hereinafter HUM. RTS. WATCH 2010].

105. AMNESTY INT'L, PEOPLE'S REPUBLIC OF CHINA: TIBET AUTONOMOUS REGION: ACCESS DENIED 7 (2008), *available at* http://www.amnesty.org/en/library/asset/ASA17/085/2008/en/815aa2e7-3d33-11dd-a518-c52d73496467/asa170852008eng.pdf (last visited Oct. 22, 2011).

106. *Id.*

107. *Id.*

108. Press Release, Tibetan Center for Human Rights and Democracy, Testimony by a Tibetan Youth in Lhasa (May 19, 2008), http://www.tchrd.org/press/2008/pr20080519.html (last visited Oct. 22, 2011).

109. *See* HUM. RTS. WATCH 2010, *supra* note 104, at 293.

110. *Id.*

In an example of one reported conflict, a monk from the Nekhor Monastery engaged in a solo protest which led to the police beating and detention of the monk.[111] Political unrest resulted in the following days,[112] as protesters chanted slogans calling for "Tibetan independence, the Dalai Lama's long life and return to Tibet."[113] Arrests followed, and some protesters were injured.[114] When monks from Lutsang marched to the local government headquarters, they demanded that the central Chinese government "recognize the will of the Tibetan people," but were surrounded by police and forced to leave.[115]

The Democratic Management Committee was established in 1962 as a mechanism for the Chinese to exercise control of the monasteries throughout the Tibetan occupied lands.[116] All religious publications are reviewed, as are applications to study at the seminaries.[117] Although Article 11 of the Regional National Autonomy Law of the PRC provides that freedom of religious belief applies to all citizens of the "various nationalities," another provision declares that "no one may make use of religion to engage in activities that disrupt public order. . . ."[118] In 2007, the State Administration for Religious Affairs issued Order Number 5 which requires state approval for any claim that a particular individual is a reincarnated lama.[119] Occasionally, the Chinese will install an individual as a lama who was selected in a manner at variance with traditional Tibetan procedures.[120] Such policies are designed to enable the Chinese to attempt to insure that the future religious leaders of the Tibetans are loyal to the communist state. The Communist Party itself sponsored a meeting in 2010

111. *China Arrests a Solo Protester in Lithang*, 2 HUM. RTS. UPDATE 6, 1 (2009), *available at* http://www.tchrd.org/publications/hr_updates/2009/hr200902.pdf (last visited Oct. 22, 2011) [hereinafter HUM. RTS. UPDATE].

112. Press Release, Tibetan Center for Human Rights and Democracy, More Cases of Detention and Disappearance Emerges After Lithang Protest (Feb. 17, 2009), http://www.tchrd.org/press/2009/pr20090217.html (last visited Oct. 22, 2011).

113. *Id.*

114. *See generally* HUM. RTS. UPDATE, *supra* note 111.

115. *Authorities Surround Monastery: Issue 48 Hour Ultimatum for Organizers to "Surrender" After Latest Protest in Tibet*, SAVETIBET (Feb. 27, 2009), http://www.savetibet.org/media-center/ict-news-reports/authorities-surround-monastery-issue-48-hour-ultimatum-organizers-surrender-after-latest-p (last visited Oct. 22, 2011).

116. TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY, HUMAN RIGHTS SITUATION IN TIBET, ANN. REP. 2010, at 66–67 (2010), *available at* http://www.tchrd.org/publications/annual_reports/2010/ar_2010.pdf (last visited Oct. 22, 2011) [hereinafter HUM. RTS. SITUATION IN TIBET 2010].

117. TCHRD ANN. REP. 2009, *supra* note 51, at 135.

118. HUM. RTS. SITUATION IN TIBET 2010, *supra* note 116, at 61.

119. *Id.* at 67.

120. *Id.* at 62.

for the heads of Tibetan monasteries, the theme was the obligation of the monks and nuns to promote the unity of China and to oppose any "splittist" inclinations.[121]

A report by Amnesty International concluded that the majority of the political prisoners who were incarcerated in Tibet were monks or nuns.[122] The Chinese government routinely attempts to "re-educate" many Tibetan monks during periods of imprisonment. An example would be that of Norgye, a Tibetan Monk who was subsequently arrested and incarcerated in March, 2008 after suddenly bursting in during a tour of journalists hosted by the Chinese government and exclaiming "Tibet is not free. The [Chinese] government is telling lies; it's all lies," and, "[t]hey killed many people."[123] Two years later, upon his release, Norgye stated during a press conference that "[he] wasn't beaten or tortured. [They] had to learn more about the law. Through education about the law, [he] realized what [they] had done in the past was wrong and was against the law."[124] Norgye said that the monks had originally protested merely because security forces had kept them locked inside the Jokhang Monastery when they wanted to go outside.[125] As part of his sentence, Norgye was ordered to undergo "patriotic re-education"—hours of classes on the law and communist thought, during which monks are told to denounce the Dalai Lama. One journalist present at the press conference wrote that, "When asked by reporters whether Tibetans have religious freedom, Norgye said, 'Yes,' with a quiet voice and bowed head."[126]

The Patriotic Re-education Campaign dates back to April of 1996, and the Chinese have promoted it as "Love your Religion, Love Your Country."[127] An integral part of the re-education consists of denouncing the Dalai Lama; monks who have refused to participate in the attacks on the Dalai Lama have been expelled from the monasteries and, at times, detained.[128] The re-education focuses on the benefits of life under Chinese Communism, as well as the concept that His Holiness has the intention of

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121. *Id.* at 62, 66–67.

122. AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 1995, 69 (1995), *available at* http://www.amnesty.org/en/library/asset/POL10/001/1995/en/37044a8f-eb4d-11dd-8c1f-275b8445d07d/pol100011995en.pdf (last visited Oct. 22, 2011) [hereinafter AMNESTY INT'L REP. 1995].

123. Edward Wong, *After Chinese Re-education, Monk Regrets Action*, N.Y. TIMES, June 29, 2010, at A6, *available at* http://www.nytimes.com/2010/06/30/world/asia/30tibet.html (last visited Oct. 23, 2011).

124. *Id.*

125. *Id.*

126. *Id.*

127. HUM. RTS. SITUATION IN TIBET 2010, *supra* note 116, at 65.

128. *Id.* at 66.

dividing the nation.[129] After the March 2008 protests, the emphasis on the need for patriotic education increased and it was, at times, required that written denunciations be signed.[130]

The United Nations Special Rapporteur on Human Rights in China, Manfred Nowak, undertook a mission to China at the invitation of the Chinese government from November 20, 2005 to December 2, 2005 to report on possible torture and other cruel, inhuman, or degrading punishment.[131] Nowak interviewed political prisoners in Qushui Prison, a facility in the TAR that opened in 2005. Nowak was informed that "Tibetan monks held in this prison are not allowed to pray,"[132] and that all Tibetans who are serving political crimes are not allowed to practice Buddhism.[133]

China, in 2005, enacted new regulations on religious affairs, which were intended to illustrate a commitment to safeguard religious freedom through the rule of law.[134] Brad Adams, the Director of Human Rights

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129. *Id.* at 65.

130. AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 2009, at 4 (2004), *available at* http://www.amnesty.org/en/library/asset/POL10/001/1995/en/37044a8f-eb4d-11dd-8c1f-275b8445d07d/pol100011995en.pdf (last visited Oct. 22, 2011) [hereinafter AMNESTY INT'L REP. 2009].

131. U.N. Comm'n on Hum. Rts. [UNCHR], *Civil and Political Rights Including the Question of Torture and Detention: Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, at 2, U.N. Doc. E/CN.4/2006/6/Add.6 (Mar. 10, 2006) (*prepared by* Manfred Nowak), *available at* http://www.freetibet.org/files/Nowak%20report.pdf (last visited Oct. 22, 2011) [hereinafter UNCHR *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*].

132. *Id.* at 46.

133. Letter from Doma Kyab, to The U.N. Hum. Rts. Comm'n (Nov. 30, 2005), *available at* http://www.tchrd.org/publications/hr_updates/2006/hr200608.html#writer (last visited Oct. 23, 2011) (A letter by Tibetan writer serving ten year prison term, noting that the Chinese government acted to hide information from Nowak). An individual named Dolma Kyab sent a letter to the U.N. Human Rights Council while imprisoned for a ten year term in Lhasa for writing but not publishing a book on the topics of democracy, self determination, and other Tibetan issues. Kyab states that when Manfred Nowak "arrived in Lhasa, [the Chinese authorities] transferred and hid [her] in another place fearing that he might get to know the real situation." The letter, which was translated into English from a Tibetan text, stated that, "[a]ccording to the Chinese Criminal Procedure Law, although [Kyab is] not supposed to be charged for 'separatism' on the basis of the book . . . [the Chinese authorities] alleged [her] of 'espionage.'" *Tibet: China Denies Jailing Tibetan Teacher for Book*, UNREPRESENTED NATIONS AND PEOPLES ORG. (Aug. 18, 2006), http://www.unpo.org/article/5184 (last visited Oct. 23, 2011) (noting that a spokeswoman for the Information Office under China's State Council said that "there was no young man named Dolma Kyab sentenced in Tibet." She also maintained that no such book entitled The Restless Himalayas, which is a reference to the unpublished book by Kyab, exists).

134. *China: A Year After New Regulations, Religious Rights Still Restricted*, HUM. RTS. WATCH (Mar. 1, 2006), http://www.hrw.org/news/2006/02/28/china-year-after-new-regulations-

Watch Asia, has concluded that "the intentional vagueness of the regulations allows for continued repression of disfavored individuals or groups . . . there is nothing accidental about the vagueness—it gives officials the room they need to legitimize closing mosques, raiding religious meetings, reeducating religious leaders, and censoring publications."[135] Human Rights Watch determined that the "most significant problem with the regulations is that arbitrariness is implanted in the text. The regulations state that 'normal' religious activities are allowed, but then fail to define what the term 'normal' means, leaving practitioners unclear about what is allowed and what is banned."[136] Examples of undefined key terms include the following: "religious extremism," "disturbing public order," and "undermining social stability."[137]

In 2010, there was a new attempt to weaken the bond between the Tibetans who live within Tibet with those who are religious leaders currently in exile, mostly in India.[138] The State Administration for Religious Affairs issued the regulation, "Management Measure for Tibetan Buddhist Monasteries and Temples."[139] The intent of the regulation is to block the transmission as well as the overall influence of spiritual teachings of the Tibetan leaders living outside of Tibet.[140] Although the regulations may have been targeted at the Dalai Lama, the clear effect is to enable the Chinese to influence greater control over the religious teachings that occur in the monasteries.

The Chinese government's response to claims that basic religious freedoms are denied can be illustrated by the comments of Qin Gang, a spokesman for the Foreign Ministry. Gang commented that such accusations "violated basic norms guiding international relations and interfered with China's internal affairs . . . [and] it is an undisputable fact that the Chinese government protects the citizens' freedom of religious belief in accordance with laws, and Chinese people of all ethnic groups enjoy full freedom of religious belief according to laws."[141]

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religious-rights-still-restricted (last visited Oct. 23, 2011) [hereinafter *China: A Year After New Regulations*].

135. *Id.*

136. *Id.*; HUM. RTS. SITUATION IN TIBET 2010, *supra* note 116, at 65 (informing that the 2005 White Paper on Regional Autonomy for Ethnic Minorities states that, "Organs of self-government in autonomous areas . . . respect and guarantee the freedom of religious belief of the ethnic minorities and safeguard all legal and *normal* religious activities of people of ethnic minorities.").

137. *China: A Year After New Regulations*, *supra* at note 134.

138. HUM. RTS. SITUATION IN TIBET 2010, *supra* note 116, at 67.

139. *Id.*

140. *Id.*

141. *China Blasts U.S. Accusation on Religious Freedom*, CHINA'S HUM. RTS. (Sept. 18, 2006), http://www.humanrights-china.org/zt/situation/20040200692590556.htm (last visited Oct. 23, 2011).

Beijing retains control over the composition of the Tibetan Buddhist clergy[142] and the finances of the monasteries which are given authorization to function.[143] Thus, the real impact of China's claim regarding liberalization of Chinese controls over the Tibetans' freedom of religion is limited.[144] After the March 2008 demonstrations, it was reported that the rooms of monks residing in monasteries were searched in order to find any evidence of a link with the Dalai Lama.[145] At the site of the Drepung Monastery, the location of a protest by monks on March 10, it was reported that if CDs of the Dalai Lama or Tibetan flags were found, the monks would be arrested.[146] In one Tibetan region, the Communist local government administration implemented its "Measures for Dealing Strictly with Rebellious Monasteries in Ganzi."[147] Were there to be significant demonstrations by the monks in any of the 500 monasteries in the region, Buddhist practices would be suspended.[148]

III. DENIAL OF FREEDOM OF SPEECH AND ASSEMBLY

Denial of freedom of religion in Tibet can rarely be separated from denial of freedom of speech. The monks and nuns who play such a central role in Tibetan religious and cultural life[149] also have a most significant

142. *See* MERCILESS REPRESSION, *supra* note 44, at 65 (speaking of the imposition of state-imposed limits on monastic ordination: "More recent measures have included the introduction of a more conspicuous government role in the actual training of monks, via the establishment of government-led religious training institutions and the establishment of various state-controlled supervisory bodies.").

143. *See id.* at 65.

144. *See* Statement of His Holiness, *supra* note 34 (stating that "Monasteries have been raided by the People's Armed Police and the chain of political arrests has now been extended to rural areas. The rebuilding and construction of new monasteries has been prohibited and the admission of new monks and nuns stopped."); FORBIDDEN FREEDOMS, *supra* note 3, at 531–33 (asserting that despite the provision in China's 1982 constitution which prohibits the state "from forcing anyone 'to believe or not believe in religion,'" this constitutional guarantee is not being enforced); AMNESTY INT'L, AMNESTY INTERNATIONAL REPORT 1998, 130 (1998) [hereinafter AMNESTY INT'L REPORT – 1998] ("Official propaganda teams continued to carry out 'patriotic education' in Tibetan monasteries and nunneries."); HUM. RTS. WATCH, WORLD REPORT 2000, 182 (2000), http://www.hrw.org/legacy/wr2k/Asia-03.htm#TopOfPage (last visited Oct. 23, 2011) [hereinafter HUM. RTS. WATCH 2000] ("[a]t the beginning of [1999], authorities announced a three-year campaign designed to free rural Tibetans from the 'negative influence of religion.'").

145. *See, e.g.*, I SAW IT WITH MY OWN EYES, *supra* note 54, at 40.

146. *Id.*

147. *Id.* at 43.

148. *Id.*

149. *See* FRENCH, *supra* note 4, at 12–14, and accompanying text.

political presence.[150] There is not only the suppression of the right of the members of the clergy to express their views, but the freedom of speech[151] of ordinary Tibetans has also been undeniably restricted as well.[152] There can be no public calls for the Dalai Lama to return[153] or for the independence of Tibet.[154] There can be no public display of the Tibetan flag[155] or of photographs of the Dalai Lama.[156] There is, by many accounts, surveillance of suspected dissidents.[157] In connection with general restrictions on speech, there exists a denial of freedom of assembly and association and the rights to demonstrate and protest have been severely

150. *See, e.g.*, MERCILESS REPRESSION, *supra* note 44, at 65. *See also* AMNESTY INT'L REPORT – 1998, *supra* note 61, at 130 ("Protests by monks and nuns who refused to denounce the Dalai Lama led to expulsions and arrests."); HUM. RTS. WATCH 2000, *supra* note 144 (asserting that the Chinese authorities seek to "work against the Dalai Lama's 'splittist struggle'" and on the fortieth anniversary of the 1959 Tibetan uprising, two Tibetan monks were arrested and convicted for demonstrating in a square in Lhasa).

151. The Political Covenant likewise secures for everyone the right to freedom of expression, *see* International Covenant on Civil and Political Rights, G.A. Res. 2200A, U.N. GAOR, 21st Sess., pt. 1, Annex 1, Supp. No. 16, U.N. Doc. A/6316, at 168 (1967), and provides that "[t]he right of peaceful assembly shall be recognized." *Id.* art. 21.

152. *See, e.g.*, MERCILESS REPRESSION, *supra* note 44, at 20 (stating that during the regime of martial law imposed in March, 1989, after a wave of allegedly violent anti-Chinese demonstrations in Tibet, assemblies and demonstrations were banned).

153. *Cf., e.g.*, AMNESTY INT'L REPORT – 1997, *supra* note 65, at 119 ("enforcement of a ban on photographs of the Dalai Lama led to clashes between government officials and monks at the Gamden Monastery"); HUM. RTS. WATCH 2000, *supra* note 144 (stating that "[s]everal monks, arrested for putting photos of the Dalai Lama on the main altar in Kirti Monastery in Sichuan Province, were sentenced in July and August 1999.").

154. *See, e.g.*, MERCILESS REPRESSION, *supra* note 44, at 5 (asserting that [s]peeches, writings and other activities in support of Tibetan independence have occasioned retaliatory measures as cruel as summary execution in the streets."); *Martial Law*, *supra* note 190, at 278 (relating that several nuns "'were sentenced without trial to three years' 're-education through labor' on charges of having 'shouted pro-independence slogans'"); AMNESTY INT'L REPORT – 1997, *supra* note 61, at 120 ("Lay Tibetans suspected of supporting Tibetan independence were . . . arrested, although few cases were publicly reported.").

155. *See, e.g.*, *One Year Under Martial Law*, *supra* note 190, at 278 (mentioning the conviction and sentencing of a monk arrested for having taken part in a demonstration and "holding the Tibetan national banner with snow-capped mountains and snow lions"); *Id.* at 280 (stating that two monks were sentenced, one to four years' imprisonment, and the other to three years in jail for having hung a Tibetan nationalist banner in their monastery).

156. *See*, TIBET: HUM. RTS., *supra* note 18, at 19.

157. *See, e.g.*, MERCILESS REPRESSION, *supra* note 44, at 27 (noting that after the imposition of martial law in Tibet in 1989, Chinese authorities have maintained "an air of suspicion and surveillance," and have created "an atmosphere of fear of being informed against (perhaps even by one's own family members)").

curtailed.[158] If any demonstration involves demands related to Tibetan autonomy or independence, it is broken up immediately.[159]

The National People's Congress amended China's Constitution in 2004. A provision, "[t]he State respects and safeguards human rights," was added in order to indicate that there was constitutional protection of human rights.[160] Article 4 of the Constitution states that "[t]he People of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs." Article 35 of the Constitution states that the "[c]itizens of the PRC enjoy freedom of speech, of press, of assembly, of association, of procession and of demonstration." The Constitution's provisions provide for the citizens of the PRC to be able to enjoy the freedoms to worship and express their political and social views without facing criminal penalties. However, it appears to be clear that the Tibetan people's freedom of expression is severely restricted.

The country's criminal codes are often used as pretexts to prohibit free exercise of basic liberties, such as raising the Tibetan national flag in public. The Tibetan Centre for Human Rights and Democracy (TCHRD) reported, for example, that monks were detained in February of 2004 and subsequently sentenced to eleven years in prison for raising a banned Tibetan national flag.[161] After Choeden Rinzen was arrested for possessing

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158. *See, e.g., Sino-American Relations, supra* note 32, at 49 (prepared statement of Holly Burkhalter, Washington Director of HUMAN RIGHTS WATCH) (stating that "groups of Tibetan monks and nuns have been arrested . . . for attempting to demonstrate peaceably in favor of Tibetan independence"). *See also* Amnesty International, *China: Detention Without Trial, Ill-Treatment of Prisoners and Police Shootings of Civilians in Tibet* [hereinafter *Detention Without Trial*], *in Sino-American Relations* (describing the arrest of 30 monks and 100 lay people demonstrating for Tibetan independence); U.S. STATES DEPT. OF STATE, COUNTRY REPORTS ON HUMAN RIGHTS, PRACTICES FOR 1998: CHINA (section on Tibet) (1999), http://www.state.gov/www/global/human_rights/1998_hrp_report/china.html (last visited Oct. 23, 2011) [hereinafter 1998 REPORTS: CHINA (TIBET)] (describing the suppression of demonstrations in Tibetan prisons, some of which allegedly occurred in conjunction with planned prison visits by international delegations). *See* TIBET: HUM. RTS., *supra* note 18, at 262, 301 (stating that the "[d]issent expressed during and in the wake of demonstrations that started in 1987 in Lhasa has met with suppression" and that "[p]eaceful Tibetan demonstrations of 1987-89 and since have been met by the Chinese authorities with violent force, including beatings and torture of those arrested.").

159. *See* GRUNFELD, *supra* note 16, at 242 (during 1995, "Beijing has apparently redoubled its efforts to . . . crack down ever harder on the public display of Tibetan nationalism"). *See generally* CECC: Criminal Law of China *infra* note 169.

160. UNCHR *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, supra* note 131, at 7.

161. *See generally* U.S. DEP'T OF STATE, CHINA COUNTRY REPORT ON HUMAN RIGHTS 2006 (Released on March 6, 2007), http://www.state.gov/g/drl/rls/hrrpt/2006/78771.htm#tibet (last visited Oct. 23, 2011) [hereinafter CHINA COUNTRY REPORTS 2006].

pictures of the Dalai Lama and the Tibetan national flag,[162] the International Campaign for Tibet reported that Chinese police officers called a meeting of about 500 monks at Gaden to tell them that Rinzen had been arrested for "possessing anti-government materials . . . [and the officers] informed the congregation of monks that [Rinzen] was involved in criminal activities and warned that if any other members of the monastery possessed a photo of the Dalai Lama, they would face the same consequences."[163] TCHRD reported that in July 2006, Tashi Gyatso was observed carrying a Tibetan national flag and was "arrested and subjected to [a] severe beating. He was given [a] four year sentence in the name of 'Endangering State Security.'"[164] It has been maintained that the prison conditions which await monks and nuns are particularly abusive.[165]

According to the U.S. Department of State Report on Tibet released in 2007, trials for crimes such as "endangering state security" and "splitting the country" were both "cursory" and "closed to the public."[166] Human Rights Watch has concluded that terms such as "undermining social stability" and "disturbing public order" are intentionally vague so as to allow for arbitrary enforcement.[167] Certainly an example of this is the language of the court when imposing a sentence of seven years imprisonment on a nun in 2008: "The Ganzi Tibetan Autonomous Prefecture (TAP) Intermediate People's Court found that defendant Dorji Khandro wrote pro-independence leaflets, and scattered them along major thoroughfares in Ganzi County. This was a flagrant act of inciting

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162. *Id.*

163. *Monk Arrested for Dalai Lama Picture and Tibetan Flag*, RADIO FREE ASIA (Mar. 31, 2004) http://www.rfa.org/english/news/politics/132140-20040331.html (last visited Oct. 23, 2011).

164. *Tibetan Sentenced to Four Years for Carrying Small Tibetan Flag*, TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY (July 2006), http://www.tchrd.org/publications/hr_updates/2006/hr200607.html#four (last visited Oct. 23, 2011).

165. UNCHR *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *supra* note 131, at 46 (monks may be prohibited from praying and permitted to leave their cells for only 20 minutes a day); TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY, KUXING: TORTURE IN TIBET: A SPECIAL REPORT, 52 (2005), *available at* http://www.tchrd.org/publications/topical_reports/torture/torture.pdf (last visited Oct. 23, 2011) (monks may be forced to carry human excrement on their backs over a religious scroll).

166. CHINA COUNTRY REPORTS 2006, *supra* note 161, at 39.

167. *China: A Year After New Regulation*, *supra* note 134; *China Jails Tibet Activist for Five Years*, BBC NEWS (July 3, 2010), http://www.bbc.co.uk/news/10498734 (last visited Oct. 23, 2011) (In 2010, for example, an environmental activist was sentenced to five years in jail for inciting to split the nation because he had posted a pro-Dalai Lama article on his website). *See also Tibetan Environmentalist Jailed for 5 Years*, REUTERS (July 3, 2010) http://www.reuters.com/article/2010/07/03/us-china-tibet-environmentalist-idUSTRE6620EZ20100703 (last visited Oct. 23, 2011).

separatism and undermining national unity, and it constitutes the crime of inciting separatism."[168]

It is not only Article 103 of the PRC's Criminal Code—"splitting the State of undermining unity of the country"—that has led to the arrest of so many Tibetans, but also Article 111, "unlawfully [supplying] State secrets or intelligence for an organ, organization or individual outside the territory."[169] As reported by the Congressional-Executive Commission on China (CECC) in 2010, the charge of "splittism" was invoked to arrest those who even peacefully may criticize the policies of the PRC, and the charge of leaking state secrets was utilized to prosecute those who may have attempted to tell others of the instances of repression and punishment by the government.[170] Chinese authorities have not only detained monks, nuns, and those who may have been involved in actual protests, but have also targeted Tibetan singers, comedians, artists, and other cultural figures who have not been directly involved in demonstrations.[171] Many writers have been detained and sentenced or have simply disappeared.[172] Intellectuals, artists, and Internet bloggers have been persecuted by the Chinese government for expressing their opinions and accused of "leaking state secrets."[173] Other reported instances include the sentencing of Kunga Tsangyang, a Tibetan citizen, to five years of incarceration for writing essays as well as photographing environmental degradation in Tibet;[174] the sentencing of Kunchok Tsephel Gopeytsang to a term of fifteen years for promoting "Chonmei," a website;[175] and Kang Kunchok, the former editor of *Gangsai Meiduo*, was sentenced to a term of two years of

168. *See* I SAW IT WITH MY OWN EYES, *supra* note 54, at 59.

169. Criminal Law of the People's Republic of China, art. 103, 111 (adopted at the 2d Sess. of the Fifth National People's Congress on July 1, 1979, revised at the 5th Sess. of the Eighth National People's Congress on Mar. 14, 1997, effective Oct. 1, 1997), *available at* http://cecc.gov/pages/newLaws/criminalLawENG.php (last visited Oct. 23, 2011).

170. ONE HUNDRED ELEVENTH CONG., CONG.-EXEC. COMM'N ON CHINA: ANNUAL REPORT 2010, 2nd Sess., at 225, *available at* http://www.purdue.edu/crcs/itemResources/CECC/CECCannRpt2010.pdf (last visited Oct. 23, 2011) [hereinafter CECC ANN. REP. 2010].

171. Barbara Demick, *China Silences a Tibetan Folk Singer*, L.A. TIMES, June 8, 2008, at A14, *available at* http://articles.latimes.com/2008/jun/08/world/fg-singer8 (last visited Nov. 2, 2011).

172. TCHRD ANN. REP. 2009, *supra* note 51, at 45.

173. *Id.*; *See also Four Tibetan Writers Jailed for Criticizing Chinese Government*, REPORTERS WITHOUT BORDERS (Aug. 4, 2009), http://en.rsf.org/asia-four-tibetan-writers-jailed-for-04-08-2009,34071.html (last visited Nov. 2, 2011) [hereinafter *Four Tibetan Writers Jailed*].

174. TCHRD ANN. REP. 2009, *supra* note 51, at 7. *See also Four Tibetan Writers Jailed*, *supra* note 173.

175. TCHRD ANN. REP. 2009, *supra* note 51, at 7. *See also* Press Release, Tibetan Center for Human Rights and Democracy, *A Website Proprietor Arrested in Gansu Province* (Mar. 7, 2009), http://www.tchrd.org/press/2009/pr20090307b.html (last visited Nov. 2, 2011).

incarceration.[176] Tashi Rabten, the editor of a banned literary magazine and author of "Written in Blood," has been missing since July 2009,[177] and Tashi Dondrup, a singer who has released an album "Torture Without Trace," was arrested in December 2009.[178] In another instance of a prosecution for "splittism," a Chinese court reportedly sentenced Dondrub Wangchen to imprisonment for the use of film media to "disseminate Tibetan views on topics such as Tibetan freedom and the Dalai Lama."[179] Prosecutors also reportedly invoked the crime of "leaking secrets" to obtain the conviction of two Tibetans for the utilization of their websites to share information with other Tibetans who were residing both in and outside of China about their "experiences of detention, imprisonment, and religious and cultural repression."[180]

In May of 2010, Chinese authorities announced that twenty-seven popular Tibetan-language songs, including "The Hope of the Son of the Snow-City," and "The Five-Colored Prayer Flags"[181] would be banned in audio, video, digital media, or ringtone format.[182] Authorities warned that there would be serious repercussions for anyone caught in possession of

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176. TCHRD ANN. REP. 2009, *supra* note 51, at 7. *See also Four Tibetan Writers Jailed*, *supra* note 173.

177. *Id.*

178. TCHRD ANN. REP. 2009, *supra* note 51, at 7 (citing Jane Macartney, *Tibetan Singer Tashi Dondrup Arrested Over 'Subversive' CD*, TIMES ONLINE (U.K.) (Dec. 4, 2009), *available at* http://www.timesonline.co.uk/tol/news/world/asia/article6943997.ece (last visited Nov. 2, 2011)).

179. CECC ANN. REP. 2010, *supra* note 170, at 225. *See also* Luisetta Mudie, *China Jails Tibetan Filmmaker*, RADIO FREE ASIA (Jan. 6, 2010) (Karma Dorjee tran., Sarah Jackson-Han ed.), http://www.rfa.org/english/news/tibet/filmmaker-01062010111100.html?searchterm=None (last visited Nov. 2, 2011) (according to RFA, Tibetans discussed on camera "their views on Tibet's exiled leader the Dalai Lama, the Beijing Olympics, and Chinese laws.").

180. CECC ANN. REP. 2010, *supra* note 170, at 225. *See also Founder of Tibetan Cultural Website Sentenced to 15 Years in Closed-Door Trial in Freedom of Expression Case*, INT'L CAMPAIGN FOR TIBET (Nov. 16, 2009), http://www.savetibet.org/media-center/ict-news-reports/founder-tibetan-cultural-website-sentenced-15-years-closed-door-trial-freedom-expression-c (last visited Nov. 2, 2011); Press Release, Tibetan Center for Human Rights and Democracy, A Tibetan Writer-Photographer Sentenced (Nov. 19, 2009), http://www.tchrd.org/press/2009/pr20091119.html (last visited Nov. 2, 2011); *Chinese Courts Use "Secrets" Law to Sentence Tibetan Online Authors to Imprisonment*, CONG.-EXEC. COMM'N ON CHINA (Jan. 21, 2011), http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=133098 (last visited Nov. 2, 2011).

181. Luisetta Mudie, *Crackdown on Tibetan Ringtones*, RADIO FREE ASIA (May 5, 2010) (Luisetta Mudie tran., Sarah Jackson-Han ed.), http://www.rfa.org/english/news/tibet/ringtones-05212010110758.html (last visited Nov. 2, 2011).

182. TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY, HUMAN RIGHTS SITUATION IN TIBET, ANN. REP. 2010, 26 (2010), *available at* http://www.tchrd.org/publications/annual_reports/2010/ar_2010.pdf (last visited Nov. 2, 2011) [hereinafter TCHRD ANN. REP. 2010]. *See generally* Bhuchung Sonam, *Where Tibetans Write*, TIBETANWRITES.ORG, http://www.tibetwrites.org/?_Bhuchung-D-Sonam (last visited Nov. 12, 2011).

them. The crackdown on "reactionary ringtones" has impacted Tibetan students as well. TCHRD reports that Chinese police are conducting "routine searches of students' personal belongings in government-run schools in Tibetan areas as part of its broader patriotic re-education campaign."[183]

IV. DENIAL OF DUE PROCESS

The Political Covenant[184] clearly guarantees the right to the due process of the law, whether at the time of the arrest, during the pretrial stages, at the trial itself, or after judgment is rendered. Article 9 states that:

> [N]o one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. . . . Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is now lawful.[185]

In Tibet, the due process rights of those arrested are often violated because of the absence of any independent judiciary to assess the validity of the charges.[186] Human rights organizations report that individuals are

183. *Id.*; *see also China Bans Religious Practice in Tibetan Schools in TAR*, TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY (JUNE 2009), http://www.tchrd.org/publications/hr_updates/2010/hr201006.html#bans (last visited Nov. 2, 2011).

184. ICCPR, *supra* note 33.

185. *Id.* art. 9. The Covenant also mandates that "[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall promptly be informed of any charges against him." *Id.* art. 9, § 2. Also, that "[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." *Id.* art. 10, § 1. And that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law," *Id.* art. 14, § 1. Furthermore, the covenant states that everyone shall be entitled "[t]o have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing." ICCPR, *supra* note 33, at art. 14, § 3(b). Finally, it mandates that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment," and that "[n]o one shall be arbitrarily deprived of his life." *Id.* art. 7, 6, § 1.

186. TIBET: HUM. RTS., *supra* note 18, at 252.

arbitrarily arrested.[187] The TCHRD concluded that the Chinese government "feels free to impose arbitrary punishment on anyone who exercises basic human rights. . . . Under the current law and practice, Tibetans are

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187. *Sino-American Relations*, *supra* note 32, at 57 (mentioning the deprivation of human rights by Chinese officials in Tibet, including the denial of freedom from arbitrary arrest); TIBET: HUM. RTS., *supra* note 18, at 239 states that:

> The UN experts have found that . . . Tibetan prisoners held pursuant [sic] to "re-education through labor" were arbitrarily detained. . . . In 1994 the UN Working Group on Arbitrary Detention found that 32 Tibetan prisoners whose cases it examined were "arbitrarily detained in contravention of Articles 19 and 20 of the Universal Declaration of Human Rights. . . .

Id.

The Tibetan Centre for Human Rights and Democracy (TCHRD) reports that "five of more than 160 people detained in August 2005 have yet to be officially charged and have not been allowed to meet with lawyers, doctors, or family members." TIBETAN CTR. FOR HUM. RTS. AND DEMOCRACY, HUMAN RIGHTS SITUATION IN TIBET, ANN. REP. 2006, at 17 (2006), *available at* http://www.tchrd.org/publications/annual_reports/2006/ar_2006.pdf (last visited Nov. 2, 2011) [hereinafter TCHR ANN. REP. 2006]. The TCHRD claims that "China's continued practice of detaining prisoners for extended lengths of time without charge or trial violates Article 9 of the ICCPR." *Id. See* UNCHR *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *supra* note 131, at 42. Nowak interviewed individual prisoners from various prisons around China, including Xu Wei, an inmate at Beijing Prison No. 2. According to Nowak, Wei was held in secret detention for over two years without trial. After being tortured for about two years, Wei gave a confession in 2003 that landed him a ten-year prison sentence. Wei indicated that he was "not allowed to see a lawyer until after his trial." *Id.* Also, Nowak interviewed Yang Jianli, a U.S. permanent resident, who was arrested in 2002 when he re-entered China illegally after being barred from the country 13 years earlier. Yang's family was not informed of his arrest, and he was held in a Beijing public security facility for over seven months. In 2004, Chinese authorities sentenced Yang to five years in prison. According to Nowak, the Working Group on Arbitrary Detention concluded that:

> Dr. Yang's arrest and detention and arbitrary, and infringed on his right to a fair trial. This decision was based on evidence that the Chinese authorities has detained Dr. Yang for more than two months without an arrest warrant or charge. They also failed to formally acknowledge Dr. Yang's arrest or give him access to a lawyer throughout this time.

Id. at 43.

Amnesty International [A.I.] has reported that A.I. "continues to receive regular reports of individuals being assigned to 'Re-education through Labor' and other forms of administrative detention imposed without charge, trial or judicial review." Press Release, Amnesty International, *China: Olympics Countdown —Important Reforms Marred by Increasing Repression* (Apr. 30, 2007), *available at* http://www.amnesty.org/en/library/info/ASA17/019/2007/en (last visited Nov. 2, 2011). A.I. reports that Chen Guangcheng, a Chinese human rights defender, was put under house arrest in 2005, but in 2006 was sentenced to over four years in prison for "damaging public property and gathering people to block traffic." *See* Letter from Amnesty Int'l, China: Torture/Medical Concern/Prisoner of Conscience, Chen Guangcheng, (June 22, 2007), *available at* http://www.amnesty.org/en/library/info/asa17/022/2007/en (last visited Nov. 11, 2011). Guencheng sought to file an appeal, but according to A.I., "the prison authorities have refused to permit either his lawyer or his wife to visit him for longer than 30 minutes per month, making it impossible for Chen Guangcheng to prepare an appeal." *Id.*

imprisoned either through summary judicial process or an administrative detention," which can have a duration of up to four years.[188] Individuals are often held without any charges[189] and may have no counsel provided to them to challenge their detention.[190]

Article 14(3)(d) of the Political Covenant provides for the right to legal assistance.[191] However, under Chinese law, the right is not absolute. Article 34 of the Criminal Procedure Law provides for the assignment by the court of an attorney if the defendant does not have a lawyer *and* is blind, deaf, mute, a minor, or facing the possibility of a death sentence.[192] In fact, one survey showed that the actual rate of legal representation in criminal cases in the year 2010 was less than 10%.[193] And the right to have one's own counsel in Tibet is often ignored by the court.[194] In one example, the

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188. Press Release, Tibetan Center for Human Rights and Democracy, TCHRD Releases New Prisoner Report (Mar. 23, 2007), http://www.tchrd.org/press/2007/pr20070323.html (last visited Nov. 2, 2011).

189. *See* TIBET: HUM. RTS, *supra* note 18, at 235 (stating that "[d]uring and after the demonstrations of 1987–89, and up to the present . . . Tibetans have been detained for long periods without charge. . . .").

190. *See* MERCILESS REPRESSION, *supra* note 44, at 44–45 (stating that "Tibetans have told us [Asia Watch] that they are afforded no independent legal counsel when brought to trial, nor can they mount anything that might reasonably be recognized as being a proper legal defense."). Former Tibetan prisoners interviewed in India by the ICJ and other human rights organizations frequently inform that they had never been brought before a judge or a court, nor had they been able to consult with a defense lawyer, despite Chinese constitutional and legal guarantees to the contrary. TIBET: HUM. RTS., *supra* note 18, at 202. Another report states that Tibetan prisoners are at times held incommunicado, without access to their family or lawyers. *See also* AMNESTY INTERNATIONAL, CHINA: DETENTION WITHOUT TRIAL, ILL-TREATMENT OF PRISONERS AND POLICE SHOOTINGS OF CIVILIANS IN TIBET [hereinafter DETENTION WITHOUT TRIAL].

Still another account mentions that "[i]n China's legal system there is no presumption of innocence, and suspects are often not told of the formal charges against them nor given access to a lawyer until very shortly before their trial." *See* AMNESTY INT'L, PEOPLE'S REPUBLIC OF CHINA – TIBET AUTONOMOUS REGION: ONE YEAR UNDER MARTIAL LAW: AN UPDATE ON THE HUMAN RIGHTS SITUATION [hereinafter ONE YEAR UNDER MARTIAL LAW] in SINO-AMERICAN RELATIONS, at 279.

Moreover, political defendants in China generally have frequently found it difficult to find an attorney, since authorities have retaliated in the past against lawyers representing such defendants. TIBET: HUM. RTS., *supra* note 18, at 202. Thus, Tibetan dissidents have stated that, at trial, "[w]e did not have any advocate as common-law prisoners do." *Id.* at 203. Nonetheless, the Chinese authorities have sometimes permitted family members of those arrested to argue in the defense of the detainee. *See* MERCILESS REPRESSION, *supra* note 44, at 44–45.

191. ICCPR, *supra* note 33, art. 14(3)(d).

192. CRIMINAL PROCEDURE LAW (adopted by the Second Session of the Fifth National People's Congress, July 1, 1979, effective Jan. 1, 1980) (China); CECC ANN. REP. 2010, *supra* note 170, at 90. *See also* LAW ON LAWYERS (promulgated by the Nineteenth meeting of the Eight National People's Congress Standing Committee, May 15, 1996, effective Jan. 1, 1997) (China).

193. CECC ANN. REP. 2010, *supra* note 170, at 90.

194. *Id.* at 18.

request by Chinese human rights lawyers to represent Tibetans who had been arrested after the March 2008 demonstrations was denied.[195]

Lawyers who volunteer to represent clients on sensitive, political matters may often pay a price. The lawyers mentioned above who had volunteered in an open letter to provide legal assistance to Tibetans arrested in connection with the demonstrations were threatened with disbarment.[196] The request had stated that "[a]s professional lawyers, we hope that the relevant authorities will handle Tibetan detainees strictly in accordance with the constitution, the laws, and due process for criminal defendants."[197] It was added that, "[w]e hope that they will prevent coerced confessions, respect judicial independence and show respect for the law."[198]

Similarly, lawyers who had volunteered to provide free legal assistance to some Tibetans who had been arbitrarily detained, received warnings from the Chinese that they should not take on such sensitive cases.[199] In March of 2010, the President of the All China Lawyers Association stated that the practice of criminal defense representation may well be declining because lawyers "hope to avoid the risks associated with criminal law."[200] Lawyers who are engaged in criminal defense work cite three major obstacles which they confront: obtaining the case files of the prosecutor for review,[201] the ability to collect evidence, and obtaining

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195. *China: Rights Lawyers Face Disbarment Threats: Intimidation Overshadows Reforms to Law on Lawyers*, INT'L CAMPAIGN FOR TIBET (May 30, 2008), http://www.savetibet.org/media-center/tibet-news/china-rights-lawyers-face-disbarment-threats-intimidation-overshadows-reforms-law-lawyers (last visited Nov. 2, 2011).

196. *Id.*

197. *Id.*

198. *Id.*

199. *Chinese Authorities Target Lawyers Offering Legal Assistance to Tibetans*, HUM. RTS. IN CHINA (Apr. 9, 2008), http://www.hrichina.org/content/85 (last visited Nov. 2, 2011); *see also* U.S. DEP'T OF STATE, 2009 HUMAN RIGHTS REPORT: CHINA (INCLUDES TIBET, HONG KONG AND MACAU) (2009), *available at* http://www.state.gov/g/drl/rls/hrrpt/2009/eap/135989.htm (last visited Jan. 2, 2012).

200. CECC ANN. REP. 2010, *supra* note 170, at 90.

201. ONE HUNDRED TENTH CONG., CONG.-EXEC. COMM'N ON CHINA, ANN. RPT. 2007, at 47 (2007), *available at* http://www.cecc.gov/pages/annualRpt/annualRpt07/CECCannRpt2007.pdf (last visited Nov. 2, 2011) [hereinafter CECC ANN. REP. 2007]. *See also* Terence C. Halliday & Sida Liu, *Birth of a Liberal Movement? Looking Through a One-Way Mirror at Lawyers' Defence of Criminal Defendants in China*, *in* FIGHTING FOR POLITICAL FREEDOM: COMPARATIVE STUDIES OF THE LEGAL COMPLEX AND POLITICAL LIBERALISM 65, 72 (2007), *available at* http://www.lexglobal.org/files/024_halliday_liu_b_irth_of_a_liberal_moment.pdf (last visited Nov. 2, 2011). HUM. RTS. WATCH, "WALKING ON THIN ICE" CONTROL, INTIMIDATION AND HARASSMENT OF LAWYERS IN CHINA 66 (2008), *available at* http://www.hrw.org/reports/2008/china0408/ (last visited Nov. 2, 2011) [hereinafter WALKING ON THIN ICE]; CECC ANN. REP. 2008, *supra* note 92, at 38.

access to clients who are being detained.[202]

Criminal defense lawyers are also vulnerable under Article 306 of the Criminal Code, Lawyer Perjury, which states that a lawyer may be charged with suborning perjury if a defendant withdraws an earlier statement. Defendants often face significant delay before appearing in front of a judge.[203] The government may itself harass lawyers who choose to aggressively pursue the human rights of their clients.[204] Individuals who had been imprisoned, and subsequently were able to flee Chinese-controlled Tibet, have reported being subjected to various forms of torture,[205] including beatings and electric shocks, in the jails of Tibet.[206] The report of

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202. WALKING ON THIN ICE CONTROL, *supra* note 201, at 66; Press Release, Tibetan Center for Human Rights and Democracy, Revised 'Lawyers Law' Fails to Protect Lawyers (June 19, 2008), http://www.hrichina.org/content/159 (last visited Nov. 2, 2011); CECC ANN. REP. 2008, *supra* note 53, at 39.

203. AMNESTY INT'L, ADMINISTRATION DETENTION: AN OPPORTUNITY TO BRING THE LAW INTO LINE WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 8, 16 (2006), *available at* http://www.amnesty.org/en/library/info/ASA17/016/2006 (last visited Nov. 2, 2011) (reporting that it may be months, or even years, before a detainee may appear before a judge).

204. CECC ANN. REP. 2009, *supra* note 52, at 3.

205. The rules of evidence in China are considered to favor the prosecution on issues relating to torture because the burden of proof is on the defendant to show that any evidence was obtained through the use of torture. AMNESTY INT'L, JUDGES AND TORTURE 5 (2003), *available at* http://www.amnesty.org/en/library/info/ASA17/007/2003/en (last visited Nov. 2, 2011) ("[w]hen hearing cases in which defendants claim that they were tortured during investigation, some judges refuse to consider the defendant's allegations of torture and, instead, ask the defence lawyers to 'prove' that their clients have been tortured."). *See also Use of Torture Still Endemic in Chinese Occupied Tibet: TCHRD*, PHAYUL (June 26, 2007), http://www.phayul.com/news/article.aspx?id=16977&t=1 (last visited Nov. 2, 2011).

206. *See Sino-American Relations*, *supra* note 32, at 267, 269, 271–75; MERCILESS REPRESSION, *supra* note 44, at 50, 53; TIBET: HUM. RTS., *supra* note 18, at 246–48. Other forms of torture reportedly used against Tibetan prisoners have included infliction of cigarette burns, scalding with boiling water and attacks by trained dogs, as well as overwork, starvation, exposure to cold, suspension by ropes, long periods of solitary confinement, denial of medical treatment, and sexual abuse of female prisoners. *See* MERCILESS REPRESSION, *supra* note 44, at 53. *See also Sino-American Relations*, *supra* note 32, at 274; TIBET: HUM. RTS., *supra* note 18, at 246–51. Human rights reports and various media outlets suggest that torture is still a prevalent system used by Chinese and Tibetan officials within detention centers and prisons to force confessions and information from Tibetan political prisoners. The Tibetan Centre for Human Rights and Democracy ["TCHRD"] has discovered that a prison outside Lhasa built in the 1960s has become operational once again. The new prison is in Chushul, and "it has been described as 'very tough and hard for prisoners, even compared to Drapchi prison.'" TCHRD 2006, *supra* note 183, at 27; *New Prison in Lhasa: Increased Surveillance for Political Prisoners, 'oppressive' Cell-Blocks*, INT'L CAMPAIGN FOR TIBET (Jan. 30, 2006), http://www.savetibet.org/media-center/ict-news-reports/new-prison-lhasa-increased-surveillance-political-prisoners-oppressive-cell-blocks (last visited Nov. 2, 2011) (stating that "A political prisoner who is familiar with the new prison told ICT: "On the outside the prison looks very modern and many of the facilities are new. But inside it is very tough and hard for prisoners, even compared to Drapchi prison."). The ICT "has received confirmation that a number of political prisoners have been transferred

the U.N. Special Rapporteur on Torture, Manfred Nowak, revealed that the methods of alleged torture used in the prisons and detention centers throughout China include hooding or blindfolding, submersion in pits of water or sewage, deprivation of food, sleep, or water, and being suspended from overhead fixtures.[207] In one widely reported incident in 2009, there

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from Drapchi (Tibet Autonomous Region Prison) to the new facility." *Id.* Sonam Dorjee, a Tibetan now in exile, served 11 years in prison following a protest in 1992 where he and four others displayed a Tibetan national flag and shouted Tibetan independence slogans during a township meeting. Dorjee was transferred from the Drapchi to Chushur prison, and "[h]e described [Chushur] as being far worse than the notorious Tibet Autonomous Region Prison, Drapchi, saying that surveillance is more stringent and conditions more oppressive." *Display of Tibetan Flag Leads to Death of Detainee: An Account of Imprisonment After Rare 1990s Rural Protest*, INT'L CAMPAIGN FOR TIBET (June 27, 2007), http://www.savetibet.org/media-center/ict-news-reports/display-tibetan-flag-leads-death-detainee-an-account-imprisonment-afte (last visited Nov. 2, 2011). ICT reported on Dorjee's chilling torturous experiences, which occurred shortly after his initial arrest by armed police guards. The following is one example:

> Prison guards asked me to stand on the chair placed in the middle of the room, and tied my thumbs to the thin nylon thread that was hanging from the ceiling. Once the chair on which I was standing on was kicked away, I was hanging from the ceiling and was beaten again. The pain experienced from the beating was relatively minor compared to the burning sensation I experienced from the pull on my thumbs. After hanging for three minutes from the thin thread, my entire body from the tips of my toes to the ears started burning and hurting and I began to hear a ringing noise. I fell unconscious.

Id.

Dorjee continued to describe one interrogation session where he was beaten severely by a young woman who was half-Tibetan and half-Chinese. He said:

> [S]ince we are struggling against the Chinese, it does not hurt my heart when they torture us. On the other hand, when Tibetans torture us, it hurts from within. . . . Tibetans would scold us saying that we should be more grateful to the Chinese as general conditions have improved much since the Chinese overthrew the old Tibetan government.

Id.

Tibetan police guards may not always be as aggressive towards political prisoners as are the Chinese, but at times it may be required that Tibetan guards act with malice towards the political prisoners. Dorjee added:

> There are a few Tibetans who would only scold us and not beat us. The head of the department [of police guards at a detention center] was Chinese and there were always one or two Chinese together with the Tibetan [guards], so the Tibetan guards had to beat [the political prisoners] or risk demotion or worse, [political] condemnation.

Id.

207. UNCHR *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *supra* note 131, at 47.

> Jigme Tenzin . . . a lama . . . told the Special Rapporteur that . . . [h]e was . . . handcuffed with one hand behind his shoulder and the other

was a death which allegedly resulted from a beating by the police of a Tibetan youth.[208] In another instance, after a monk had been subjected to "harsh beatings, inhumane torture and long interrogation," he escaped and reportedly committed suicide.[209] Chinese officials and analysts had characterized the torture problem to Nowak as one which was widespread, deeply entrenched, and similar to a malignant tumor that is difficult to stop in practice. Reports dealt "with forced confessions characterized as 'common in many places in China because the police [were] often under great pressure . . . to solve criminal cases.'"[210] Forced confessions continue to occur despite the Supreme People's Court in China holding that "[c]riminal suspects' confessions, victims' statements, and witness testimonies collected through torture to extract a confession, or threats, enticement, cheating and other illegal methods cannot become the basis for a criminal charge."[211] However, there is no prohibition on the *use* of such confessions in judicial proceedings.[212]

China's Criminal Code has been revised to present the appearance of conformance to a greater degree with international norms, yet it still enables the prosecution of Tibetan activists. "Hooliganism" and engaging in "counterrevolution" have been replaced with crimes such as "endangering

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> around his waist, and empty bottles were put in the spaces between his arms. His legs were fettered, he was hooded and made to kneel on a law stool for 1.5 hours. . . . Regular interrogations continued over . . . three months. Most of the time he was wearing handcuffs and shackles, even when eating or sleeping.

Id.

208. Joshua Lipes, *Tibetan Youth Dies in Custody*, RADIO FREE ASIA (Jan. 30, 2009) (Karma Dorjee tran.), http://www.rfa.org/english/news/tibet/tibetandeathincustody-01302009131007.html (last visited Nov. 2, 2011) (reporting police detained Pema Tsepag and two other men on January 20, 2009). A Tibetan living in India told RFA, "[Pema Tsepag] was so severely beaten that his kidneys and intestines were badly damaged. He was initially taken to Dzogang [county] hospital, but they could not treat him, and they took him to Chamdo hospital instead." *China Beats Tibetan Youth to Death*, PHAYUL (Jan. 27, 2009), http://www.phayul.com/news/article.aspx?id=23683 (last visited Nov. 2, 2011); CONG.-EXEC. COMM'N ON CHINA, SPECIAL TOPIC PAPER: TIBET 2008–2009, 141 (2009), *available at* http://www.cecc.gov/pages/virtualAcad/tibet/tibet_2008-2009.pdf (last visited Nov. 2, 2011) [hereinafter SPECIAL TOPIC PAPER].

209. Press Release, Tibetan Center for Human Rights and Democracy, Ragya Monastery Encircled, Reeling Under Severe Restriction (Mar. 23, 2009), http://www.tchrd.org/press/2009/pr20090323b.html (last visited Nov. 11, 2011); SPECIAL TOPIC PAPER, *supra* note 204, at 141 (stating "a monk 'suspected of breaking the law and under investigation at the Ragya police station' climbed over the wall while on a toilet break. 'Someone reported to the local police' that [this] monk jumped into the Yellow River . . . and attempted to swim to the opposite bank").

210. UNCHR *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *supra* note 131, at 14.

211. *Id.* at 12.

212. *Id.*

national security,"[213] "splitting the State or undermining the unity of the country,"[214] or "subverting the state power or undermining the unity of the country."[215]

The precise number of actual political prisoners who are Tibetan is, of course, difficult to ascertain. As the International Campaign for Tibet reported in 2007, Chinese authorities have increased "their efforts to prevent information about political prisoners reaching the outside world, which means that it can sometimes take years to confirm details about prisoners serving long sentences for acts of peaceful protests."[216]

On occasion, the use of torture has led to the death of prisoners while in custody.[217] It has also been reported that some individuals have simply disappeared after having been arrested.[218] There have been documented

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213. *Id.* at 11.

214. *Id.*

215. UNCHR *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *supra* note 131, at 11.

216. *Display of Tibetan Flag Leads to Death of Detainee*, INT'L CAMPAIGN FOR TIBET (June 27, 2007), http://www.savetibet.org/media-center/ict-news-reports/display-tibetan-flag-leads-death-detainee-an-account-imprisonment-afte (last visited Nov. 2, 2011). The TCHRD reports, as of March 2007, that there are currently 116 Tibetan political prisoners "out of which 51 are serving a sentence of ten years or more. Monks and nuns number . . . 69% of the total number of political prisoners in Tibet." Press Release, Tibetan Center for Human Rights and Democracy, TCHRD Releases Prisoner Report (Mar. 23, 2007), http://www.tchrd.org/press/2007/pr20070323.html (last visited Nov. 2, 2011).

217. *See* MERCILESS REPRESSION, *supra* note 44, at 54; *Sino-American Relations*, *supra* note 28, at 270; HUM. RTS. WATCH, WORLD REPORT 1999, 286 (1999), http://www.hrw.org/legacy/worldreport99/asia/china.html (last visited Nov. 2, 2011) [hereinafter HUM. RTS. WATCH 1999]; TIBET: HUM. RTS., *supra* note 18, at 249, 257–58.

218. *See* TIBET: HUM. RTS., *supra* note 18, at 263. One source describes the authorities' use of a relatively new security technique called "recurrent disappearance" as follows:

> This is the simple device of detaining suspects repeatedly for short periods, often about two days each week. They are in long enough to be effectively interrogated but are often sufficiently intimidated when they come out that they refrain from informing anyone about their detention, in case they are punished further. This technique is typically used for people who are otherwise likely to be able to communicate news to the outside world, usually lay people who are seen as possible organizers or conduits for information, and again it is a technique which interrogators use either to intimidate or to persuade people to become informers. It is associated inevitably with the use of more sophisticated torture techniques: the use of recurrent disappearance means that torture should leave no visible traces. It is thus not surprising that there is an increase in use of such methods as exposure to extremes of temperature, making people stand in cold water, or making them sit in awkward positions for long periods.

CUTTING OFF THE SERPENT'S HEAD, *supra* note 27, at 72–73.

executions of Tibetan dissidents.[219] It was estimated that in one recent year, China had executed four times as many individuals as the rest of the world combined.[220]

V. DENIAL OF FREEDOM OF INFORMATION

The Universal Declaration provides that the right to freedom of opinion and expression "includes freedom to seek, receive and impart information and ideas through any media and regardless of frontiers."[221] The Political Covenant contains almost identical language in order to highlight the import of the right of access to information.[222] The Chinese,

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219. *See* TIBET: HUM. RTS., *supra* note 18, at 259 (citing one known judicial execution of two Tibetans, officially for attempted escape from prison:

> [B]ut court documents establish that they were accused of planning pro-independence activities after their escape. The TAR High Court sentenced the two men to death and denial of political rights for life. Meetings were held in the . . . prison to announce their death sentences and [they] were executed that same day..

Id.

One report mentions the shooting of a Tibetan monk while in police custody after he was arrested during a peaceful demonstration. *See Sino-American Relations*, *supra* note 28, at 268. Official numbers of those who are executed by China each year are not released to the public, but in the middle of 2007, the Death Penalty Information Center estimated that over 10,000 individuals have been executed annually. *Executions Declining in China*, DEATHPENALTYINFO.ORG (June 8, 2007), http://www.deathpenaltyinfo.org/node/2117 (last visited Nov. 2, 2011) [hereinafter *Executions Declining in China*]. The Chief of the People's Supreme Court, Justice Xiao Yang, urged that there be "extreme caution" in handing down death sentences because "capital punishment should be given only to an 'extremely small' number of serious offenders." *Court Hails Death Penalty Review a Success*, CHINA.ORG.CN (June 10, 2007), http://www.china.org.cn/english/news/213454.htm (last visited Nov. 2, 2011). Xiao Yang added that any "case involving a human life is a matter of vital importance." *Executions Declining in China*, *supra* note 219. China has developed a new method for cheaper administration of lethal injection. What appears to be a standard vehicle used for law enforcement purposes is actually a "Death Van." Proponents of the death vans claim that the vehicles and injections are a civilized alternative to the firing squad, causing death of a condemned more quickly and safely. The switch from gunshots to injections was represented to be a "sign that China 'promotes human rights now,' says Kang Zhongwen," the designer of the Jinguan Automobile death van. *China Makes Ultimate Punishment Mobile*, USATODAY.COM, June 15, 2006, at A8, *available at* http://www.usatoday.com/news/world/2006-06-14-death-van_x.htm (last visited Nov. 2, 2011) [hereinafter *China Makes Ultimate Punishment Mobile*]. Makers of death vans say they "save money for poor localities that would otherwise have to pay to construct execution facilities in prisons or court buildings. The vans ensure that prisoners' sentences to death can be executed locally, closer to communities where they broke the law." *Id.* However, another theory maintains that the forty death vans have an alternative purpose, aiding in organ extraction and trafficking. *Id.*

220. *China Makes Ultimate Punishment Mobile*, *supra* note 219.

221. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, art. 19, U.N. Doc. A/180 (Dec. 10, 1948).

222. ICCPR, *supra* note 33, art. 19, § 2.

however, tightly control information reaching Tibet, as well as the flow of information out of Tibet.[223] Chinese officials have restricted communication reaching Tibet which relates to the Dalai Lama[224] and to the activities of Tibetan refugees in their struggle to win support for autonomy or meaningful negotiations with the Chinese.[225] To add to their general restrictions on the flow of information in and out of Tibet, Chinese officials maintain tight surveillance of foreign tourists and journalists in Tibet, limiting their contacts with ordinary Tibetans.[226] There have been widespread reports that foreigners leaving Tibet after incidents of unrest have been strip-searched, and photographs, films, tapes, letters, diaries, and other documents confiscated.[227] Likewise, Tibetans have been arrested for initiating contact with foreigners.[228]

As a result of China hosting the Olympics in 2008, the Chinese government implemented a licensing requirement for journalists.[229] The Chinese government had claimed that the governmental licensing and supervision of journalists was needed to prevent corruption and to protect journalists.[230] Journalists became subject, however, to political demands which were not related to either corruption or the protection of journalists.[231] In March 2010, a high-level official at the General Administration of Press and Publication, the Chinese government's primary agency in charge of oversight of the press, stated that "journalists in China

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223. *See* TIBET: HUM. RTS., *supra* note 18, at 19.

224. *See* CUTTING OFF THE SERPENT'S HEAD, *supra* note 27, at 49 (mentioning increased efforts by Chinese border patrols to catch Tibetans carrying illegal documents into Tibet, notably speeches by the Dalai Lama).

225. *See* GRUNFELD, *supra* note 16, at 242. States that:

> Part of [the Chinese policy as of late 1995] is to . . . crank up the propaganda attacks on the Dalai Lama and continue to argue . . . that *all* difficulties are caused by outsiders, now dubbed "the Dalai Clique." . . . According to the local [Tibetan Communist] party secretary, "hostile forces abroad and the Dalai clique have never ceased their heavy interference in Tibet."

Id.; *Cf.* U. S. DEP'T OF STATE, COUNTRY REP. ON HUM. RTS. PRAC. FOR 1998: CHINA 837, 852 (Feb. 26, 1999) [hereinafter 1998 REPORTS: CHINA (TIBET)] (stating that "[t]he authorities continued to jam . . . Tibetan-language broadcasts of Voice of America and Radio Free Asia . . . with varying degrees of success.").

226. *See* TIBET: HUM. RTS., *supra* note 18, at 264–67.

227. *See id.* at 266.

228. *See id.* at 266–67.

229. CECC ANN. REP. 2010, *supra* note 170, at 69.

230. *Id.* at 57; *see* Isabella Bennett, *Media Censorship in China*, COUNCIL ON FOREIGN REL., Mar. 7 2011, available at http://www.cfr.org/china/media-censorship-china/p11515 (last visited Jan. 2, 2012).

231. CECC ANN. REP. 2010, *supra* note 170, at 68.

would be required to pass a new qualification exam that will test them on their knowledge of 'Chinese Communist Party journalism' and Marxist views of news."[232] The Chinese government had previously, in February of 2009, issued a new "Code of Conduct" which threatened Chinese news assistants who were working with foreign correspondents with job dismissal and loss of accreditation if they engaged in independent reporting.[233]

Journalists from foreign news organizations in China continue to be subjected to fewer restrictions than is true of their domestic counterparts.[234] Since China hosted the Olympics in 2008, foreign journalists who have been allowed into China are able to issue reports without additional government permission, but special authorization is still needed in order to enter restricted locations, such as the TAR.[235]

The level of access by foreign journalists and tourists to Tibetan areas varied during the critical March 2008 period.[236] The Chinese government denied both foreign tourists and journalists any access to the TAR.[237] The Ministry of Foreign Affairs spokesman, Qin Gang, blamed the closure on the supporters of the Dalai Lama and stated that the TAR would remain temporarily closed to foreign journalists.[238] International media organizations reported that the Chinese took measures to close Tibetan areas to foreign travelers,[239] including international journalists, in advance of the problematic dates of 2009.[240] Foreign journalists have continued to

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232. *Id.*

233. HUM. RTS. WATCH 2010, *supra* note 104, at 286.

234. CECC ANN. REP. 2010, *supra* note 170, at 69.

235. *Id.*

236. CECC ANN. REP. 2008, *supra* note 53, at 200.

237. *Tibet to Reopen for Tourists on May 1*, XINHUA (Apr. 3, 2008), http://news.xinhuanet.com/english/2008-04/03/content_7912583.htm (last visited Nov. 2, 2011).

238. MINISTRY OF FOREIGN AFF. OF THE PEOPLE'S REPUBLIC OF CHINA, FOREIGN MINISTRY SPOKESPERSON QIN GANG'S REGULAR PRESS CONFERENCE ON JUNE 12, 2008 (June 15, 2008), http://www.fmprc.gov.cn/eng/xwfw/s2510/2511/t465468.htm (last visited Nov. 2, 2011). After MFA Spokesman Qin Gang stated that the Chinese government is "not to blame" for the closure of Tibetan areas to journalists following the "severe violent incident [that] happened on March 14," a journalist asked, "Who's responsible for this?" Qin replied, "Is it really not clear to you? Of course it's the Dalai Clique." *Id.*

239. TCHRD ANN. REP. 2009, *supra* note 168, at 45.

240. Malcolm Moore, *China Closes Tibet to Foreigners*, TELEGRAPH (Feb. 18, 2009), http://www.telegraph.co.uk/news/worldnews/asia/tibet/4688657/China-closes-Tibet-to-foreigners.html (last visited Nov. 2, 2011); *China Official: Tibetan Areas Closed to Foreigners*, INT'L CAMPAIGN FOR TIBET (Feb. 12, 2009), http://www.savetibet.org/media-center/tibet-news/china-official-tibetan-areas-closed-foreigners (last visited Nov. 2, 2011); TCHR ANN. REP. 2009, *supra* note 51, at 45.

confront other forms of harassment as well.[241]

In early February 2009, several foreign journalists reported that they had actually been required to leave Tibetan areas of China.[242] In early March, police officials detained a New York Times reporter at a mountainous checkpoint[243] where public security officials reportedly interrogated him before placing him on a plane to Beijing.[244] Later in March 2009, an investigative journalist was reportedly "beaten out" of a village.[245] After a protest broke out in March 2009 near a major Tibetan monastery, the Chinese, fearful of new unrest, sealed off many Tibetan areas to foreign journalists.[246] In August 2009, two security guards, who were employed by the Chinese, reportedly "attacked Guangzhou Daily

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241. CECC ANN. REP. 2009, *supra* note 204, at 9. The Chinese authorities continued to suppress the Tibetan people's basic rights to freedom of speech, expression, and opinion. Internet users, bloggers, and journalists were at risk of harassment and imprisonment for addressing politically sensitive issues. TCHRD ANN. REP. 2009, *supra* note 51, at 44.

242. *China Official: Tibetan Areas Closed to Foreigners*, INT'L CAMPAIGN FOR TIBET (Feb. 12, 2009), http://www.savetibet.org/media-center/tibet-news/china-official-tibetan-areas-closed-foreigners (last visited Nov. 2, 2011) (stating that "[s]everal foreign journalists have reported being expelled from Tibetan populated areas in China in the past week."). In the aftermath of the series of protests in Tibet, international media organizations reported that Chinese authorities took measures to close Tibetan areas to foreign travelers including foreign journalists in advance of the sensitive date of March, 2009. There were several reports of foreign reporters having been kicked out of Tibet from unspecified Tibetan areas during the first week of February. TCHRD ANN. REP. 2009, *supra* note 51, at 45. "Similar stringent security measures of closing Tibetan areas to foreign tourists were taken by the Chinese authorities prior to the 60th Anniversary of the People's Republic of China." *Id.*

243. Edward Wong, *The Heights Traveled to Subdue Tibet*, N.Y. TIMES, Mar. 14, 2009, at WK1, *available at* http://www.nytimes.com/2009/03/15/weekinreview/15WONG.html (last visited Nov. 2, 2011) [hereinafter Wong] (according to the report, "[t]he paramilitary officer took our passports. It was close to midnight, and he and a half-dozen peers at the checkpoint stood around our car on the snowy mountain road. After five days, our travels in the Tibetan regions of western China had come to an abrupt end."). *See also* CECC ANN. REP. 2009, *supra* note 204, at 288.

244. Wong, *supra* note 243, at WK1.

245. CECC ANN. REP. 2009, *supra* note 52, at 157 reported that:

> Investigative journalist Wang Keqin and three companions were "beaten out of [Yuan Weijing's] village" when they attempted to bring food and toys to Yuan and her two young children. When Wang telephoned Yuan to inform her that he could not visit, she responded: "[T]hese people have been around our home for more than a year. . . . There are always 11 people around our home, 24 hours a day. . . . When we go shopping or work in the fields, someone is watching us. At night, they even stoop outside the window to eavesdrop on us." In April 2009, Yuan tried to visit her grieving sister after her brother-in-law's death in a car accident, but nine men forcibly escorted her home where she was "punched and kicked by the men while being dragged back to her house."

Id.

246. TCHRD ANN. REP. 2009, *supra* note 51, at 23.

reporter Liu Manyuan when he attempted to take photos at a crime scene. The guards beat him, prompting his temporary hospitalization."[247]

In a May 2008 interview, the Dalai Lama revealed that the most significant gesture he would appreciate seeing from the Chinese would be to permit foreign reporters entry to the TAR so that they can examine and investigate until "the picture becomes clear."[248] The Dalai Lama emphasized that such censorship "is a major barrier and the actual source of the problems between Tibetans and Chinese,"[249] because the Communist Party's control of the information received by its citizens allows it to portray him as a terrorist.[250]

The situation has not changed much since 2010. Chinese President Hu Jintao informed that journalists should "promote the development and causes of the Party and the state," and that their "first priority" is to "correctly guide public opinion."[251] Foreign journalists are still prohibited from entering certain areas, and the government has tightly controlled the flow of information. Additionally, the availability of the Internet is still "under special regime with all information filtered."[252] Human Rights Watch, in its 2010 report, determined that China's journalists, bloggers, and its estimated 340 million Internet users continued to be victims of the "arbitrary dictates of state censors."[253]

The Chinese government's use of law to restrict freedom of speech has continued into 2011, and may have even increased due to the availability of

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247. HUM. RTS. WATCH 2010, *supra* note 104, at 286.

248. *Full Transcript of Interview with the Dalai Lama*, FIN. TIMES (May 25, 2008), *available at* http://www.ft.com/cms/s/0/8bdc479c-2a5f-11dd-b40b-000077b07658.html#axzz1aQ3y1pNm (last visited Nov. 2, 2011) (quoting the Dalai Lama saying, "[t]hen stop, inside Tibet, arresting and torture. This must stop. And then they should bring proper medical facilities. And most important, international media should be allowed there, should go there, and look, investigate, so the picture becomes clear."). The CECC, in its 2009 Report's recommendations, stated they would "urge the Chinese government allow international observers to visit Gedun Choekyi Nyima, the Panchen Lama whom the Dalai Lama recognized, and his parents." CECC ANN. REP. 2009, *supra* note 204, at 38 (recommending that the Chinese government "support funding for Radio Free Asia and Voice of America news reporting and multi-dialect broadcasting to the Tibetan areas of China so that Tibetans have access to uncensored information about events in China and worldwide.").

249. TCHRD ANN. REP. 2010, *supra* note 182, at 21.

250. *Dalai Lama: Chinese 'Censorship' at Root of Tibet Problem*, RADIO FREE EUR. (Feb. 21, 2010), http://www.rferl.org/content/Dalai_Lama_Chinese_Censorship_At_Root_Of_Tibet_Problem/1964030.html (last visited Nov. 2, 2011); TCHRD ANN. REP. 2010, *supra* note 182, at 21.

251. TCHRD ANN. REP. 2010, *supra* note 182, at 21.

252. *Id.* at 28.

253. HUM. RTS. WATCH 2010, *supra* note 104, at 285.

new technology and the Internet.[254] Back in 2008, the CECC had reported that the "Chinese authorities' use of law as an instrument of politics continued unabated and intensified."[255] The crime of "inciting subversion of state power," under Article 105, Paragraph 2 of the Chinese Criminal Law, has continued to be a primary tool used against individuals who demand human rights or criticize the government when using the Internet.[256] The Chinese government has instituted Internet Regulations, which prohibit content designated "harmful to the honor or interests of the nation,"[257] and that which is "disrupting the solidarity of peoples."[258] According to the CECC, such disruptive content supplied "legal justification for the censorship of [I]nternet content deemed politically sensitive."[259]

In the name of preventing the dissemination of pornographic and defamatory content, Internet companies have also censored political and religious communication. Information "harming the honor or interests of the nation," "disrupting the solidarity of peoples," "disrupting national policies on religion," and "spreading rumors" is prohibited.[260] Chinese law does not provide well-defined meanings for these terms, thereby allowing for much arbitrary enforcement.[261] The Chinese government monitors content by the use of public security officials and agencies[262] and by "overseeing the [I]nternet and placing burdens on [I]nternet and cell phone

254. The report states that the government continued to restrict the rights and freedoms of journalists, bloggers and an estimated 384 million Internet users, in violation of domestic legal guarantees of freedom of press and expression. HUM. RTS. WATCH, WORLD REPORT 2011, at 303, *available at* http://www.hrw.org/sites/default/files/reports/wr2011.pdf (last visited Oct. 22, 2011) [hereinafter HUM. RTS. WATCH 2011].

255. CECC ANN. REP. 2008, *supra* note 53, at 4.

256. *Id.*

257. *Id.*

258. *Id. See also* TCHRD ANN. REP. 2010, *supra* note 186, at 22.

259. CECC ANN. REP. 2008, *supra* note 53, at 4. *See also* TCHRD ANN. REP. 2010, *supra* note 186, at 22.

260. CECC ANN. REP. 2008, *supra* note 53, at 60; *Measures for the Administration of Internet Information Services*, MINISTRY OF INFO. INDUS. (China), art. 15 (promulgated by the St. Council, on, and effective Sept. 25, 2000), *available at* http://tradeinservices.mofcom.gov.cn/en/b/2000-09-25/18565.shtml (last visited Nov. 2, 2011).

261. *Measures for the Administration of Internet Information Services*, *supra* note 260, art. 15.

262. David Bandurski, *China's Guerilla War for the Web*, 171 FAR E. ECON. REV. 41, 41–44 (Aug. 2008), *available at* http://farectification.wordpress.com/2008/09/15/china%E2%80%99s-guerrilla-war-for-the-web/ (last visited Nov. 2, 2011); *Beijing To Recruit Tens of Thousands of "Internet Supervision Volunteers"*, XINHUA (June 19, 2009), http://news.xinhuanet.com/english/2009-06/19/content_11568565.htm (last visited Nov. 2, 2011).

providers to filter and remove content."[263] Mobile phones have not only been monitored, but service has been limited,[264] interrupted,[265] and the phones confiscated as well.[266] According to a report by Radio Free Asia, Chinese authorities had torn down satellite towers to eliminate radio service.[267]

The Chinese government has also imposed various punishments on Tibetans for relaying information to destinations outside of Tibet.[268] During 2009, Chinese judicial officials imprisoned Tibetans for distributing information concerning Tibetan protests to individuals or groups outside of China.[269] Authorities also took measures in various locations to prevent

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263. CECC ANN. REP. 2009, *supra* note 52, at 60. *See e.g., Measures for the Administration of Internet Information Services, supra* note 260, art. 15.

264. In at least seventeen counties of the Sichuan province, cell phone messaging and Internet service were cut off in mid-February and that "phone calls from foreign countries to Tibetan areas cannot get through." Maureen Fan, *China Tightens Grip as Tibet Revolt Hits 50-Year Mark*, WASH. POST, Mar. 16, 2009, at A11, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501924.html (last visited Nov. 2, 2011).

265. Audra Aung, *China's Show of Force Keeps Tibet Quiet*, ASSOC. PRESS, Mar. 10, 2009, *available at* http://azdailysun.com/news/world/article_a58ab470-244e-5dea-a51d-203e7b00db4c.html (last visited Nov. 2, 2011) (stating "Lhasa residents received notice on their cell phones Tuesday from carrier China Mobile that voice and text messaging services may face disruptions from March 10 to May 1 for 'network improvements.'").

266. CONG.-EXEC. COMM'N ON CHINA, SPECIAL TOPIC PAPER: TIBET 2008–2009 at 126 (2009) (stating that a middle-aged monk at Sera Monastery said he had been "without communications since police confiscated all their mobile phones and other equipment last April [2008].").

267. According to the report, a Tibetan resident of Xiahe (Sangchu) county, Gannan (Kanlho) TAP, told RFA, "[b]eginning in April of this year, the local broadcasting department in Kanlho prefecture dispatched staff to the counties to install cable lines and to pull down the satellite dishes used by local Tibetans to listen to foreign broadcasts like RFA and VOA Tibetan programs." Richard Finney, *Tibetan TV Dishes Pulled*, RADIO FREE ASIA (June 21, 2009) (Karma Dorjee tran., Sarah Jackson-Han ed.), http://www.rfa.org/english/news/tibet/Tibetandishes-06202009092817.html (last visited Nov. 2, 2011).

268. The Lhasa Intermediate People's Court in late 2008 sentenced seven Tibetans to terms of imprisonment ranging from eight years to life imprisonment on charges of "espionage" or unlawfully "providing intelligence" to an organization or individual outside of China. "The Tibetans allegedly provided information ('intelligence') to Tibetan organizations based in India that are part of what the Chinese government and Party refer to collectively as 'the Dalai Clique.'" *Lhasa Court Sentences Tibetans for Sharing Information With 'The Dalai Clique,'* CHINA HUM. RTS. & RULE L. UPDATE (CONG.-EXEC. COMM'N ON CHINA, WASHINGTON, D.C.), Feb. 3, 2009, at 3, *available at* http://www.cecc.gov/pages/general/newsletters/CECCnewsletter20090130.pdf (last visited Nov. 13, 2011).

269. *See* Fan, *supra* note 264, at A11. Andrew Jacobs, *Tibet Atrocities Dot Official China History*, N.Y. TIMES, Mar. 3, 2009, at A8, *available at* http://www.nytimes.com/2009/03/13/world/asia/13exhibit.html (last visited Nov. 2, 2011) (describing the TAR as "mysteriously, troubled by patchy phone and Internet service").

Tibetans from receiving information originating outside of China via the Internet.

In addition to keeping information from crossing Tibetan borders, Chinese security officials have also imposed measures which isolate Tibetan communities from each other.[270] There have been reports that Chinese "authorities confiscated cell phones and computers, turned off cellular transmission facilities, and interfered with Internet access," with the goal of separating communities.[271] Internet companies that operate in China, even though based in other countries, are required to "monitor and record the activities of its customers or users" and to filter information deemed politically sensitive.[272] The companies are also required to report suspicious activity to authorities.[273] The dilemma presented by the breadth and vagueness of the laws, as well as the consequences for permitting too much of an information flow, leads many companies to "err on the side of censoring more information."[274] The lack of clarity has led to inconsistencies amongst the companies,[275] and the amount of censorship from company to company "varies drastically."[276]

In its 2007 Annual Report, the CECC noted that "Chinese officials provided only limited government transparency, practiced pervasive censorship of the [I]nternet and other electronic media. . . ."[277] In subsequent years, there has been little to no improvement in these matters.[278] Censorship and manipulation of the Internet was aggravated due to major events, including the March 2008 protests in Tibet and the Chinese hosting the 2008 Olympics.[279] It has been reported that the Chinese

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270. CECC ANN. REP. 2008, *supra* note 53, at 199. *See also* CECC ANN. REP. 2009, *supra* note 52, at 58.

271. CECC ANN. REP. 2008, *supra* note 53 at 199. "[C]ell phones were known to have been confiscated to curb the report of the incident from leaking to the outside world. . . ." *12 Monks of Dingri Shelkar Choedhe Monastery Arrested for Opposing the "Patriotic Re-Education" Campaign*, CHINA HUM. RTS. & RULE L. UPDATE (CONG.-EXEC. COMM'N ON CHINA, WASHINGTON, D.C.), May 31, 2008, at 3.

272. CECC ANN. REP. 2009, *supra* note 52, at 60.

273. *Id.*

274. *See Officials Increase Censorship of Foreign and Domestic Web Sites*, CHINA HUM. RTS. & RULE L. UPDATE (CONG.-EXEC. COMM'N ON CHINA, WASHINGTON, D.C.), Feb. 1, 2009, at 2.

275. *Id.*

276. Rebecca MacKinnon, *China's Censorship 2.0: How Companies Censor Bloggers*, 14 FIRST MONDAY 2 (Feb. 2, 2009), http://firstmonday.org/htbin/cgiwrap/bin/ojs/index.php/fm/article/view/2378/2089 (last visited Nov. 2, 2011).

277. CECC ANN. REP. 2008, *supra* note 53, at 57.

278. *See generally id.*; CECC ANN. REP. 2009, *supra* note 52; CECC ANN. REP. 2010, *supra* note 170; HUM. RTS. WATCH 2011, *supra* note 254; HUM. RTS. WATCH 2010, *supra* note 104.

279. CECC ANN. REP. 2007, *supra* note 201, at 73–73. In the midst of the 2008 Olympics, Chinese authorities placed Zeng Jinyan, a blogger and spouse of imprisoned human rights activist Hu

the 2008 Olympics.[279] It has been reported that the Chinese government even employed paid agents to issue pro-government comments online.[280]

Such restrictions led the International Olympic Committee in April 2008, to express its concern about the Internet censorship which followed the Tibetan protests.[281] Jiang Yu, the spokesperson for the Chinese Ministry of Foreign Affairs, responded that "[t]he Chinese government's regulation of the Internet is 'in line with general international practice' and 'the main reason for inaccessibility of foreign websites in China is that they spread information prohibited by Chinese law.'"[282] In June 2008, President Hu, remarked that the Internet "had become a significant source of information that needed to be managed better."[283] According to official statistics, there were 420 million Internet users in China by the end of June 2010, constituting an increase of eighty-two million over the previous year.[284]

But there has been no demonstration of a willingness by the Chinese to loosen the state's political control, despite the ever-increasing usage of the Internet. In an April 2010 speech before the National People's Congress Standing Committee, Wang Chen, Director of the State Council Information Office (SCIO), stated "the government is using the [I]nternet to promote 'positive propaganda'; 'guide public opinion' (citing guidance of the Internet following unrest in Tibetan and Uyghur areas of China in 2008 and 2009); enhance China's 'soft power'; and 'balance the hegemony of the Western media.'"[285] Chen added that officials would "strengthen the blocking of harmful information from outside [China's] borders."[286] In April 2010, the New York Times reported that the SCIO had opened a new

279. CECC ANN. REP. 2007, *supra* note 201, at 73–73. In the midst of the 2008 Olympics, Chinese authorities placed Zeng Jinyan, a blogger and spouse of imprisoned human rights activist Hu Jia, who had been detained since December, 2007, under house arrest. The authorities subsequently forced Zeng and her infant daughter to leave Beijing, and confined them to a hotel for sixteen days with limited communications with family. CECC ANN. REP. 2008, *supra* note 53, at 57.

280. Michael Wines, Sharon LaFraniere & Jonathan Ansfield, *China's Censors Tackle and Trip Over the Internet*, N.Y. TIMES, Apr. 7, 2010, at A1, *available at* http://www.nytimes.com/2010/04/08/world/asia/08censor.html?pagewanted=all (last visited Nov. 2, 2011).

281. Jiang Yu, Spokesperson, Foreign Ministry, Foreign Ministry Spokesperson Jiang Yu's Regular Press Conference on April 1, 2008 (Apr. 1, 2008), *available at* http://www.mfa.gov.cn/eng/xwfw/s2510/2511/t420464.htm (last visited Nov. 2, 2011).

282. *Id.*

283. CECC ANN. REP. 2009, *supra* note 52, at 56.

284. CECC ANN. REP. 2010, *supra* note 170, at 61. *See also* CHINA INTERNET NETWORK INFO. CTR., STATISTICAL REPORT ON INTERNET DEVELOPMENT IN CHINA 4 (2010).

285. CECC ANN. REP. 2010, *supra* note 170, at 62.

286. *Id.*

bureau to monitor the social networking sites which have rapidly grown in popularity in China.[287]

In 2009, the Chinese government had proposed, but then backed away from,[288] a requirement that all computers in China be sold with "pre-installed censorship software found to filter political and religious content and monitor individual computer behavior."[289] Officials did begin to require that news sites mandate that new users provide their real identities in order to be able to post comments.[290] It can certainly be expected that such a requirement may well have a chilling effect on free expression. Attempts to aggressively remove content have continued[291] and have extended beyond the removal of content such as pornography and spam to include limiting political and religious material that the government deems to be politically sensitive.[292] In July 2009, the CECC reported that Chinese

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287. Jonathan Ansfield, *China Starts New Bureau To Curb Web*, N.Y. TIMES, Apr. 16, 2010, at A4, *available at* http://www.nytimes.com/2010/04/17/world/asia/17chinaweb.html (last visited Nov. 2, 2011); Jonathan Ansfield, *China Tests New Controls on Twitter-Style Services*, N.Y. TIMES, July 16, 2010, at A7, *available at* http://www.nytimes.com/2010/07/17/world/asia/17beijing.html (last visited Nov. 2, 2011); Cara Anna, *Dozens of Outspoken, Popular Blogs Shut in China*, ASSOC. PRESS, (July 15, 2010), https://www.washingtontimes.com/news/2010/jul/15/dozens-of-outspoken-popular-blogs-shut-in-china/?page=all (last visited Nov. 2, 2011).

288. In its 2010 report, Human Rights Watch described the occurrence as a rare victory for proponents of freedom of expression. On, June 30, 2009, the Chinese government indefinitely delayed a plan to compel computer manufacturers to pre-install the Internet filtering software Green Dam Youth Escort on all personal computers sold in China. Human Rights Watch reports that the "decision followed weeks of scathing criticism from some of China's more than 300 million netizens, unprecedented opposition by foreign computer manufacturers and international business associations, and a threat from both the United States trade representative and secretary of commerce that Green Dam might prompt a World Trade Organization challenge." HUM. RTS. WATCH 2010, *supra* note 104, at 285.

289. CECC ANN. REP. 2009, *supra* note 52, at 9.

290. *Id.* According to the New York Times article, officials have been promoting real name registration systems since 2003. Jonathan Ansfield, *China Web Sites Seeking Users' Names*, N.Y. TIMES, Sept. 5, 2009, at A4, *available at* http://www.nytimes.com/2009/09/06/world/asia/06chinanet.html?pagewanted=all (last visited Nov. 2, 2011). As reported in CECC 2007, officials had sought to implement a policy requiring all bloggers to register under their real names, but decided against making the policy mandatory following industry resistance. CECC ANN. REP. 2007, *supra* note 201, at 83.

291. CECC ANN. REP. 2009, *supra* note 52, at 61; Michael Wines, *China: Censors Bar Mythical Creature*, N.Y. TIMES, Mar. 20, 2009, at A8, *available at* http://www.nytimes.com/2009/03/20/world/asia/20briefs-CENSORSBARMY_BRF.html (last visited Nov. 2, 2011).

292. In responding to a question about China's blocking of the YouTube Web site, Qin Gang, a spokesperson for the Chinese foreign ministry, said the Chinese government "had drawn upon the experience of other countries." The spokesperson specifically cited U.S. regulations, including "the Child Protection Act, Digital Millennium Copyright Act, acts protecting consumers and minors, and intellectual property rights, as well as the Patriot Act." But, according to the CECC ANN. REP. 2009, "[t]he official failed to note, however, that these acts have been challenged and litigated before U.S. courts, and in some cases provisions have been struck down as being overbroad." The CECC ANN. REP.

government "issued a secret directive that strengthens monitoring of comments posted by [I]nternet users on Chinese news Web sites."[293] The Chinese authorities shut down thousands of Internet cafes, and it was only subsequent to the installation of filtering software to block web sites considered "politically sensitive" or "reactionary," that they were permitted to reopen.[294]

While companies operating in China may claim to respect and adhere to the general concepts of human rights, many find it necessary to adopt positions of the government which interfere with the exercise of such rights. The Chinese government urges corporations, at times, to assist in censoring freedom of expression.[295] A September 2000 prerogative issued by the Administration of Internet Information Services required that "[a]ll commercial websites must obtain a government license,"[296] and all non-commercial website operators must register with the state.[297] The government has discretion to reject an application based on content, and therefore, "it is qualitatively different from registration which all website operators must undertake with a domain registrar, and constitutes a de facto licensing scheme."[298]

Although the Internet has, on occasion, served as an important outlet for individual expression, the Chinese government's continuing regulation of the Internet and other electronic communications violates international standards of free expression. Officials continue to restrict access to both

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2009 continued to state that "[n]o practical equivalent exists in China for citizens to challenge the constitutionality of such provisions even though events this past year indicated widespread discontent with official campaigns nominally aimed at censoring 'vulgar' material but which also swept up content deemed politically sensitive." The spokesperson also cited "the sizable number of Internet users, Web sites, and blogs in China" as "convincing evidence of the fully open [I]nternet in China." CECC ANN. REP. 2009, *supra* note 52, at 316 (quoting Liu Jianchao, Foreign Ministry Spokesperson, Ministry of Foreign Aff., Foreign Ministry Spokesperson Liu Jianchao's Regular Press Conference on Dec. 16, 2008 (Dec. 17, 2008), *available at* http://au.chineseembassy.org/eng/fyrth/t553628.htm (last visited Nov. 10, 2011)).

293. CECC ANN. REP. 2009, *supra* note 52, at 60. According to the CECC, officials have been pushing real name registration systems since 2003. Ansfield, *supra* note 290, at A4. As reported in CECC ANN. REP. 2007, officials had sought to implement a policy requiring all bloggers to register under their real names, but decided against making the policy mandatory following industry resistance. CECC ANN. REP. 2007, *supra* note 201, at 83. But, even without the real name system, officials can trace comments back to an Internet protocol (IP) address. CECC ANN. REP. 2007, *supra* note 201, at 234, n.109.

294. *See generally* CECC ANN. REP. 2010, *supra* note 170.

295. CECC ANN. REP. 2009, *supra* note 52, at 318, § II, n.214.

296. *Id.*

297. *Id.*

298. *Id.*

domestic and foreign websites based on political content,[299] and the companies offering internet service in China continue to monitor, filter, and eliminate certain political and religious content.[300]

The Chinese government has specifically required Internet search companies, such as Google and Yahoo!, to abide by restrictive rules. A "Public Pledge on Self-Discipline" was introduced in August 2002, mandating that Internet companies agree to prohibit the posting of "pernicious" information that may "jeopardize state security, disrupt social stability, contravene laws and spread superstition and obscenity."[301] China accused Google of permitting the distribution of obscene content over the Internet after U.S. officials urged that China abandon its proposal of installing the porn-filtering software, Green Dam, on new computers.[302] If the Internet companies did not comply with the government directives, punishments were to be imposed.[303]

The China-based search engines of Yahoo!, MSN, and Google have, in fact, filtered politically sensitive information.[304] In October 2008, these companies announced the formation of the Global Network Initiative, "a coalition of companies, human rights groups, and [I]nternet experts, whose purpose is to encourage companies to comply with principles of freedom of expression and to submit to monitoring by independent experts."[305] After some Chinese individuals posted "Charter 08," a major and highly controversial document that called for political reform and greater

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299. *Id.* at 9. All Internet users within the PRC face a number of restrictions while trying to browse websites. Companies are required by the government to conduct self-censorship of unwanted materials. These include, for example, politically sensitive information and morally undesirable pages. The major barrier between all the traffic within PRC and outside has been referred to as a "Great Chinese firewall." This system filters the vulgar web pages and institutes a connection reset in the event of undesirable content. TCHRD ANN. REP. 2010, *supra* note 189, at 22. *See also* Owen Fletcher & Dan Nystedt, *Google Says Mobile Services Now Mostly Accessible in China*, PCWORLD.COM, (Apr. 8, 2010), http://www.pcworld.com/businesscenter/article/193773/google_says_mobile_services_now_mostly_accessible_in_china.html (last visited Nov. 2, 2011).

300. CECC ANN. REP. 2009, *supra* note 52, at 9.

301. CECC ANN. REP. 2010, supra note 170, at 303; http://foreign.senate.gov/testimony/2003/KumarTestimony030911.pdf.

302. Cui Jia & Ding Qingfen, *Govt Steps Up Heat on Google*, CHINA DAILY, June 26, 2009, *available at* http://www.chinadaily.com.cn/china/2009-06/26/content_8324498.htm (last visited Nov. 2, 2011).

303. Qin Gang, a spokesman for the Chinese Foreign Ministry, told reporters that the "punishment measures" taken against Google were lawful. *Id.*

304. *Bottom: Corporate Complicity in Chinese Internet Censorship*, HUM. RTS. WATCH, Aug. 9, 2006, *available at* http://www.unhcr.org/refworld/docid/45cb138f2.html (last visited Jan. 2, 2012).

305. CECC ANN. REP. 2009, *supra* note 52, at 60–61.

protection of human rights, online references to the Charter appeared to have been removed from the Baidu, Sina, and Google.cn search engines.[306]

The government requires that state-owned media, as well as Internet search firms, censor references to issues ranging from the June 1989 Tiananmen demonstrations to the details of the 2010 Nobel Peace Prize which was awarded to Liu Xiaobo, a leading Chinese dissident.[307] Reporters Without Borders issued a report in 2010 confirming the continued censorship of Internet searches in China relating to the 1989 Tiananmen protests.[308] In August 2009, China Daily reported that both Google.cn and Baidu had blocked searches for Xu Zhiyong, the law professor and civil rights activist who had been detained on charges of tax evasion.[309]

In 2010, a dispute arose between Google and the Chinese government which drew worldwide attention to the levels of Internet restrictions in China. After having been given access to the PRC in 2006, Google had been engaging in self-censorship to comply with the local rules. Google incurred widespread international criticism, and in January 2010, Google announced that it would no longer engage in such censorship[310] and declared that it would attempt to reach an agreement with the Chinese government to terminate the firm's self-censorship activities.[311] In March of 2010, Google stopped its censorship searches on its website and redirected search results to its uncensored Hong Kong-based site.[312]

It was also announced by Google that its system had "been under sophisticated cyber attack originating in PRC," which was "aimed at the Gmail accounts of various human rights activists."[313] At least another two

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306. *Officials Harass Charter 08 Signers; Liu Xiaobo Under Residential Surveillance*, CHINA HUM. RTS. & RULE L. UPDATE (CONG.-EXEC. COMM'N ON CHINA, WASHINGTON, D.C.), Feb. 1, 2009, at 3.

307. HUM. RTS. WATCH 2011, *supra* note 254, at 303.

308. *See generally All References to Tiananmen Square Massacre Closely Censored for 20 Years*, REPORTERS WITHOUT BORDERS (June 2, 2009), http://en.rsf.org/china-all-references-to-tiananmen-square-02-06-2009,33198 (last visited Nov. 3, 2011). *See also* CECC ANN. REP. 2010, *supra* note 170.

309. *Human Rights Lawyer Arrested on Tax Evasion Charges*, CHINA DAILY, Aug. 19, 2009, *available at* http://www.chinadaily.com.cn/business/2009-08/19/content_8588748.htm (last visited Nov. 3, 2011).

310. *See* Malcolm Moore, *Dell and Go Daddy Threaten to Follow Google out of China*, TELEGRAPH (Mar. 25, 2010), http://www.telegraph.co.uk/technology/google/7517291/Dell-and-Go-Daddy-threatento-follow-Google-out-of-China.html (last visited Nov. 3, 2011).

311. HUM. RTS. WATCH 2011, *supra* note 254, at 304.

312. *Id.*

313. *Google Stops Censoring Search Results in China*, BBC.CO.UK (Mar. 23, 2010), http://news.bbc.co.uk/2/hi/business/8581393.stm (last visited Nov. 3, 2011).

international Internet companies—Dell and Go Daddy—also announced that they might consider withdrawing from the Chinese market due to the regulations regarding Internet use.[314] In early 2011, Google had indicated its willingness to reactivate its China website,[315] but the terms for any such return are still in dispute.[316]

The Chinese tightly control information via the Internet from reaching Tibet and the flow of information out of the area as well. A new plan for Internet surveillance was begun in Lhasa in 2003 which required residents to obtain and use individual registration numbers and passwords in order to access Internet Explorer.[317] Such a system is unusual in that it applies to the individual user as opposed to being imbedded in the computer system itself.[318] The identification registration card expands the surveillance abilities of the Chinese authorities, because "[t]he new system of registration for Internet use in Lhasa is a step beyond filters as it allows authorities to easily track anything that is viewed on the computer screen and place an individual's name with a visited website."[319]

Tibetans in Lhasa have informed the International Campaign for Tibet that "[Public Security Bureau] and Internet security officers in Lhasa sometimes detain individuals for lengthy interrogations regarding

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314. *See* Moore, *supra* note 310.

315. *See generally Google CFO Hints at Return to China*, FOXBUSINESS.COM (Jan. 3, 2011), http://www.foxbusiness.com/markets/2011/01/03/google-cfo-hints-return-china/# (last visited Nov. 3, 2011); *Google CFO Hints at Return to China*, HUFFINGTONPOST.COM (Jan. 5, 2011), http://www.huffingtonpost.com/2011/01/05/google-cfo-china-return_n_804555.html (last visited Nov. 3, 2011).

316. It was reported that:

> Google attempts to strike a balance between the requirements of the Chinese government and the company's stated policy of not censoring results on Google.cn, said this person, who requested anonymity. Thus, visitors to Google.cn are greeted with a search page that lets them type general web queries in the search box, but when they hit the "search" button, they are taken to the Hong Kong site, where the query is resolved. There is also a prominent link to go directly to the Hong Kong site without having to enter anything into the search box.

Juan Carlos Perez, *Google China Search Returns, But Site is Limited in Features: Google.cn Only Allows Product and Music Searches, as well as Translations*, TECHWORLD.COM (July 12, 2010), http://news.techworld.com/networking/3230184/google-china-search-returns-but-site-is-limited-in-features/# (last visited Nov. 3, 2011) (stating that it was Google's decision to provide the limited services it does on the China site, because those are the only ones it can currently offer without having to censor search results).

317. *Chinese Authorities Institute Internet ID Card System in Tibet for Online Surveillance*, INT'L CAMPAIGN FOR TIBET (Apr. 30, 2004), http://www.savetibet.org/media-center/ict-news-reports/chinese-authorities-institute-internet-id-card-system-tibet-online-sur (last visited Nov. 3, 2011).

318. *Id.*

319. *Id.*

suspicions of visiting banned websites or reading emails from India."[320] There have been many repeated reports of beatings and imprisonments of citizens who have attempted, or actually posted, certain information on the Internet.[321] Official censorship, as well as manipulation of the press and Internet for political purposes, intensified due to the Tibetan protests that began in March 2008 as well as the 2008 Olympics.[322] In 2010, officials and companies continued to filter political and religious content which criticized the Chinese government and its policies toward the Tibetan areas of China.[323]

After the posting of a graphic video on the Internet showing the Chinese police violently beating some Tibetan citizens including some monks,[324] the Chinese government restricted the use of YouTube and Google in Tibet. Three days after the initial release of the videos on the Internet, any uploading on YouTube[325] was totally blocked.[326] Furthermore, in March 2009, Internet and cellphone text messaging services were reportedly disrupted in the Tibetan areas of western China in advance of the Fiftieth Anniversary of the Dalai Lama's departure from China.[327] It was reported that cellphone messaging, as well as Internet service, had been disabled and that phone calls from foreign countries could not be received in the Tibetan areas.[328]

As a consequence of the March 2009 demonstrations, the use of YouTube was completely blocked in China. Other video-sharing websites were not totally restricted, but any Tibet-related content was blocked.[329]

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320. *Id.*

321. Jia & Qingfen, *supra* note 302.

322. CECC ANN. REP. 2008, *supra* note 53, at 10.

323. CECC ANN. REP. 2010, *supra* note 170, at 62.

324. Tohkondanzi, *Chinas Brutality in Tibet Exposed*, YouTube (June 28, 2009), http://www.youtube.com/watch?v=23tq18y3zTA\ (last visited Jan. 2, 2012).

325. Miguel Helft, *YouTube Being Blocked In China, Google Says*, N.Y. TIMES, Mar. 24, 2009, at A14, *available at* http://www.nytimes.com/2009/03/25/technology/internet/25youtube.html (last visited Nov. 3, 2011).

326. *Id. See also YouTube Blocked In China*, CNN.COM (Mar. 26, 2009), http://articles.cnn.com/2009-03-25/tech/youtube.china_1_video-sharing-youtube-tibet-and-taiwan?_s=PM:TECH (last visited Nov. 3, 2011).

327. *Restrictions on Information Access in Tibetan Areas Increase*, Mar. 12, 2009, *in* CHINA HUM. RTS. & RULE L. UPDATE 2 (CONG.-EXEC. COMM'N ON CHINA, WASHINGTON, D.C.) (citing Ben Blanchard, *Heavy Security as Tibetans Prepare for New Year*, REUTERS, (Feb. 22, 2009), http://ca.reuters.com/article/topNews/idCATRE51M1D920090223?pageNumber=2&virtualBrandChannel=0 (last visited Nov. 3, 2011)).

328. The owner of one Internet café reported that Internet service was just cut off with no notice in his entire district. Fan, *supra* note 264, at A11.

329. *China Blocks YouTube after videos of Tibet Protest are Posted*, ASSOC. PRESS, Mar. 17, 2010, *available at* http://www.heraldtribune.com/article/ 20080317/ZNYT05/803170750 (last visited Jan. 2, 2012).

These restrictions were confirmed by Scott Rubin, a spokesperson for Google.[330] There was an initial decline in the use of its video website, YouTube, which was followed by no use at all.[331] The restricted Internet access included the blocking of certain blogs, including that of well-known Tibetan poet and blogger, Tsering Woeser.[332] Footage of the protests in Tibet, as well as searches for news, was inaccessible as well.[333] But such blockage was not the first time such interference has occurred. According to TCHRD, China has routinely filtered Internet content and blocked material which was considered to be critical of its policies.[334]

VI. CONCLUSION

The takeover of Tibet by the PRC in 1950 has had severe repercussions for the Tibetan people. Over sixty years have passed, and the human rights of the Tibetans remain a matter of great concern. The Tibetan people, with a unique language, religion, dance and music, medicine and culture, have minimal power of self-determination. The Chinese control the organs of government and make decisions relating to educational issues and most other areas of significance.

These intensely religious Buddhists have seen their monasteries destroyed and their religious freedoms limited. The Dalai Lama, the leader of the Tibetan Buddhists, fled in 1950 and has not been able to return. His followers in Tibet cannot even publicly display photographs of him, and the monasteries are not permitted to discuss his teachings. It has been the monks and nuns who, at times, have demonstrated most visibly against the Chinese control of Tibet, especially in March of 2008 and 2009. The result has been the arbitrary arrest, unaccounted for absences, forced confessions, long periods of incarceration and torture of the monks and nuns as well as other suspected individuals who protest against the continued rule by the Chinese.

The major human rights treaties emphasize the need for people to have the freedom to receive and communicate one's thoughts. Access to information is paramount. Yet the Chinese tightly control the flow of information reaching Tibet, as well as that which emanates from Tibet. Special authorization from China is required for journalists to enter Tibetan areas. There is pervasive censorship of the Internet, prohibiting information or communication about any sensitive political or religious matter.

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330. Helft, *supra* note 325.

331. *Id.*

332. U.S. DEPT. OF STATE, 2008 HUMAN RIGHTS REPORT: CHINA (2009), *available at* http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119037.htm (last visited Nov. 3, 2011).

333. *Id.*

334. TCHRD ANN. REP. 2009, *supra* note 51, at 53.

The freedom of speech of the Tibetans has been severely curtailed. Tibetans are denied the freedom of assembly to demand self-governance and to criticize China's policies, call for the Dalai Lama's return to China, or display the Tibetan flag. If an individual is arrested, there is scarcely any due process of law. If there is counsel at all, such counsel may well be beholden to the Chinese Communist Party, and the judiciary is rarely independent of the Chinese government. The months leading up to the Beijing Olympics in 2008 were particularly traumatic for the Tibetans; China was determined, by use of its police and army, to block any protests in order to avoid any negative publicity at a time when the whole world was watching.

The violations of the Tibetan people's rights to self-determination, freedom of religion, freedom of speech and assembly, freedom to obtain and send information, and the protections of the due process of the law continue into 2012. Such violations continue in clear contravention of numerous provisions of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Chinese certainly seem determined to hold onto Tibet, and discussions with the Dalai Lama for his return to Tibet remain at an impasse. China's ever-increasing economic might means, in the practical, pragmatic, political world we live in, that its domination of the Tibetans will likely continue unless those concerned with human rights spotlight the abuses and unite in an unparalleled demand for true autonomy for the Tibetan people.