

Introduction

On 2 December 2003, Kardze Intermediate People's Court in the Kardze "Tibet Autonomous Prefecture" ("TAP") of Sichuan Province sentenced Trulku Tenzin Delek (a.k.a A ngag Tashi) to death with a suspension of two years for "causing explosions" and "inciting separatism". Lobsang Dhondup, 28, a follower and distant relative of Trulku Tenzin Delek, received an immediate death penalty and life-long deprivation of political rights for "inciting separatism", "causing explosions" and "illegal possession of guns and ammunition". Lobsang Dhondup was executed on 26 January 2003. Trulku Tenzin Delek is currently in detention. The trial was unfair and held without due process behind closed doors.

It is widely believed Trulku Tenzin Delek is framed with false allegations of involvement in bombing incidents. He has been under close scrutiny by Chinese authorities for his strong support of Tibetan culture and religion, his rising popularity in the local Tibetan community, his staunch support for Tibet's leader in exile, the Dalai Lama and his teachings, and his social welfare activities in Lithang County including setting up schools and old people's home, constructing monasteries and resolving community disputes.

The authorities of the People's Republic of China (PRC) fear the link between influence of the Dalai Lama and non-violent pro-independence activism in Tibet. In the wake of such official concerns, several of Tibet's leading lamas have faced insurmountable obstacles and persecution from the authorities over their alleged links to "splittist" activities and their loyalty to the Dalai Lama.

Following the September 11 tragedy, the Chinese Government's

zealous fight against what it now terms “terrorism” has been further enshrined in law. China is determined to brand religious and political activities as acts of terrorism. The amended Chinese Criminal Code adopted in December 2001, imposes severe punishments for those who “organise or lead a terrorist organisation”. Sentences have been increased from three to 10 years’ imprisonment, and between ten years to life (article 120 of the Criminal Law). The term “terrorist organisation” is not defined, thereby allowing for broad and ambiguous range of legal interpretation including the criminalisation of non-violent political protests.

In November 2002, former President Jiang Zemin declared that the ruling Communist Party wants to “fight terrorism in all its forms” and urged international cooperation in the effort.¹ China News Weekly quoted Wang Xinjian, a Professor of Public Order at the China’s People’s Public Security University, as saying terrorist attacks by Uighur and Tibetan “separatists” pose a serious challenge to security and law and order in border regions.² In March of the same year, the Ministry of Public Security reportedly set up an anti-terrorism bureau, led by He Ting, formerly deputy chief of criminal investigation.³ On 2 December 2002, a Chinese Court sentenced two Tibetans to death for alleged involvement in “bomb incidents”. Their trial was held in camera: the accused were not defended.

That PRC links peaceful Tibetan dissent with acts of terrorism is evident from statements made by Xiaowen Ye, the Director of State Administration of Religious Affairs, during a press conference at Chinese Embassy in Washington D.C. Ye compared Trulku Tenzin Delek to Osama Bin Laden. Indicating strongly the government’s intention to establish the notion of Tibetan terror-

ism, the Chinese military on 17 November 2003 staged a daylong anti-terror exercise, “Himalaya 03” in Lhasa, Tibet’s capital.⁴

Beijing attacks the Dalai Lama for both his political and religious roles. The high percentage of arrests and detention of Tibetans in Tibet occurs because of their express allegiance to the Dalai Lama. Simple acts such as possession and display of the Dalai Lama’s photograph, conducting prayer ceremonies for his long life, and refusing to denounce him during political education classes lead to crackdowns.

Beijing leadership fears that Tibetan Buddhism breeds nationalist sentiments amongst the monastic populace. This official fear has been the catalyst in many of Beijing’s religious policies in Tibet including targeting the popular religious leaders. This pattern of perceiving religious leaders as threat has resulted in a series of arrests of revered lamas including Geshe Sonam Phuntsok, Khenpo Jigme Phuntsok (who recently died in a Chinese hospital) and Trulku Tenzin Delek.

Trulku Tenzin Delek: a social activist

Trulku Tenzin Delek or Trulku Tenzin Delek Thupten Choekyi Nyima was born in 1950 to Tsepak Dorjee and Dolma Choezom in Lithang County, Kardze “TAP”, Sichuan Province. At the age of seven, Trulku joined the Lithang Monastery and sought monk ordination from Khensur Shakpa.

In 1978, Trulku Tenzin Delek met with the late 10th Panchen Lama at Labrang Tashikyil Monastery to expressed concerns over Chinese inflicting torture on local Tibetans. He sought the Panchen Lama’s intervention in securing acquittal for those charged with “black hats”, and stressed the need to restore and renovate most of the destroyed monasteries in Tibet, particularly in Lithang. When the first fact-finding delegation of the Tibetan Government-in-exile visited Tibet in 1979, Trulku briefed one of the delegates in detail about the destruction of monasteries perpetrated by Chinese authorities in Tibet.

In early 1982, Trulku Tenzin Delek sought an audience with the Dalai Lama in Dharamsala, India, and thereafter stayed in Drepung Tashi Gomang Monastery, South India, for six years. In 1983, the Dalai Lama recognised him as the reincarnation of Geshe Adham Phuntsok and named him as Tenzin Delek.

Following his return to Tibet in 1987, Trulku was constantly scrutinized for alleged political activities and connections with the Dalai Lama. Until his arrest on 7 April 2002, Trulku was active in social welfare activities in Lithang County.⁵

In 1987, Trulku Tenzin Delek left for Othok Thang Karmar, located few kilometers from Nyagchuka County (Ch: Yajiang Xian), Kardze “TAP” to carry on with his plans to construct monasteries. Local officials, however, tried to halt his construction activities.

Hence, he went to Beijing and secured official permission from the late Panchen Lama who named the new monastery Kham Nalanda Thekchen Jhangchub Choling.

Between 1991 and 1995, Trulku Tenzin Delek built seven monasteries and an old people's home in Nyagchuka County. The seven monasteries are Jamyang Chokor Ling, Delek Choling Nunnery, Golog Thegchen Namgyal Ling, Tsochu Gaden Choeling, Golok Tashi Kyil, Detsa Monastery and Tsegon Shedup Dhargyal Ling. Later in 1997, a school was built in Geshe Lungpa Village in Nyagchuka County, which provided assistance to more than 160 orphans and children of poor nomads and farmers. Trulku fully financed the school with such supplies as food, clothing, salary etc. The local authorities termed the school "illegal" and forcefully conducted "patriotic education" sessions in the school, eventually leading to its closure in 2000. All wards of the school had to return to their respective homes.⁶

Trulku often spoke strongly against deforestation, lumbering, and hunting. He advised the ltrultocal inhabitants against smoking, drinking and gambling. During his teachings, he advocated the need to follow teachings of the Dalai Lama as he believes it would "lead to unity amongst different nationalities, result in stability of the nation and bring peace in the world."⁷

Trulku maintained an independent religious stand on the controversial issue of the 10th Panchen Lama's reincarnation⁸, which could have provoked another official concern. Trulku had said, "I only recognize the reincarnation of the 10th Panchen recognized by His Holiness the Dalai Lama and no one else." Once in the presence of county officials, Trulku said, "You people issue orders calling for ban on the display of portraits of His Holiness the Dalai Lama in monasteries. For me, it does not make

any difference. Displaying the banned pictures does not deepen my devotion to His Holiness nor the official ban on the portraits lessen my faith. His Holiness the Dalai Lama is my very soul.” Such open display of support for the Dalai Lama becomes cause of concern for the Beijing authorities.

Since 1994, Beijing has initiated and intensified the anti-Dalai Lama campaign in Tibet. Beijing considers any activities that indicate allegiance and support to the Dalai Lama as “endangering state security”. Anti-Dalai Lama campaign forms an integral part of China’s “patriotic re-education” campaign which China launched in Tibet’s monasteries and nunneries to minimise devotion to the Dalai Lama. In the context of such official fear, Trulku’s statement of support and adherence to the Dalai Lama teachings becomes cause for concern thereby resulting in greater scrutiny and surveillance.

Furthermore, it appears that a significant portion of local residents trusted Tenzin Delek, rather than district cadres, to solve communal problems fairly and efficaciously, in part because of his willingness to approach provincial and central government officials when local efforts failed. The major turning point in Tenzin Delek’s relationships with local officials came in 1993, when he worked successfully to help roll back an attempt to extend clear-cutting to forest land that residents saw as “belonging” to them. According to community members, those officials never forgave Tenzin Delek for their loss of face over the issue.⁹

Arrest attempt fails

In 1997, the local authorities first attempted to detain Trulku Tenzin Delek and accuse him of six different charges in a special meeting held by Kardze authorities. In a document titled “A ngag Tashi”,

Trulku Tenzin Delek was accused of “endangering state security” and illegal construction of monasteries under the banner of religion. The document was distributed in 18 different counties leading to imminent dangers of Trulku’s arrest. Therefore, Trulku took retreat for five months in a nearby hill. In the meantime, local Tibetans collected approximately 30,000 signatures and sent an appeal letter to the provincial authorities to call off the arrest warrant. The authorities relented on the condition that Trulku Tenzin Delek would henceforth not indulge in so-called political activities.

Lochoe Drime¹⁰, a senior disciple of Trulku Tenzin Delek recounted, “Our teacher Tenzin Delek Rinpoche was a champion of people’s cause. He was a great social activist. For his social services he often clashed with local Chinese authorities who view him as a challenge to their authority. Trulku has often been a target of their resentment. Trulku went into hiding in the mountains twice because of imminent arrest on account of his social services.”

In 2000, Trulku mediated a dispute over grassland ownership between regions of Lithang and Mola in Kardze region, which had reportedly led to two deaths. The local authorities accused Trulku of interference in the matter and were about to arrest him when Trulku went into retreat for a period of seven months. Trulku Tenzin Delek left a letter stating that he “never committed any political crimes”.

Lochoe Drime reported incidents of mass support for Trulku Tenzin Delek when authorities nearly arrested him the second time:

Around August 2001, I along with Thupten Khenrab wrote a petition appealing for Trulku’s innocence. The petition voiced people’s concern and absolute support for Trulku’s social work. It also requested the government authorities not to

intervene in Trulku's humanitarian works, which is highly beneficial for the poor and downtrodden. The people of Lithang County, Dartsedo County and Nyakchuka County through 40,000 signatures and thump prints supported the petition. It became a spontaneous mass movement and a symbol of unanimous support for Rinpoche's safety.

A group of seven people (names withheld) went to Beijing and successfully submitted the petition to several authorities including the United Work Front Department and Religious Affairs Bureau. However, none of the authorities showed any positive response. Another group of five people (names withheld) went to submit the petition to provincial authorities of Sichuan but met with the same response.¹¹

Another report states that when the petition was submitted, the central authorities banned Trulku from conducting any religious activities, and restricted his freedom of movement. He was only permitted to live a life of an ordinary monk.¹²

Bomb blast in Chengdu

In 2001, a series of bomb blasts occurred in Kardze "TAP". On 3 April 2002, a bomb went off in city's main square (Tianfu) in Chengdu, the provincial capital of Sichuan resulting in 12 injuries and one death. Shortly afterwards, Chinese police arrested Lobsang Dhondup (Ch: Lorang Toinzhub) though there are conflicting media reports about the exact timing of his arrest. The Chinese police alleged that Lobsang Dhondup was involved with the explosions.¹³ His room was ransacked and police discovered a photo of Trulku Tenzin Delek. Lobsang was interrogated about his relation with Trulku, his alleged involvement and motive behind

the blast.¹⁴

The conflicting views in the official newspapers of the bomb blast incidents clearly indicate the contrived nature of the allegations made by Chinese authorities on the case. Human Rights Watch had also remarked on the inconsistent and unclear reports on the incident in their recent report “Trial of a monk: The case of Trulku Tenzin Delek”. The report states, “Other accounts vary as to the identity of the Tianfu Square bomber, how and when he was apprehended, and the nature of his alleged confession. They also include contradictory information regarding the presence or absence of pro-independence leaflets at the blast sites. Without access to official court documents, particularly the procuratorate indictments and the court verdicts, the discrepancies cannot be resolved... Details about the other explosions are sketchy and vary as to the sites where the bombings took place and the extent of injuries and property damage.”

According to *Huo xin duoshi pao* (*Huo xin* newspaper in Sichuan) of 5 April 2002, the suspects were arrested following 10 hours of heavy investigation. *Ren min wang* (People’s internet) of Xinhua (official Chinese newspaper) of 4 April 2002 reported that within ten minutes with the help of eyewitnesses, a suspect was arrested within 200 meters at the site. The same paper stated that following investigation at the site of explosion, police found debris of batteries, newspapers and tattered clothes. It was also stated that three people were injured in the incident: a young girl, an elderly lady and a boy. There was no mention of any Tibetan political leaflets being discovered at the explosion site.

According to a radio interview with Radio Free Asia on 6 December 2002, Mr Zhao, Director of the Kardze Judiciary said that, “twelve persons were injured”. Zhao cited numerous bomb

blast incidents between 1998 and 2002: two at the home of Lithang Kyabgon Rinpoche, the chief abbot of Lithang Monastery, three in the city of Dartsedo (Ch: Kangding), one in front of a major government building, and one outside a police station. In the last explosion, “an old man was killed”. “All these bombs were works of [Lobsang Dhondup] and all expenses paid by Tenzin Delek, he said. “Another explosion took place this year at Tianfu Market Square in Chengdu... 12 persons were wounded. Lobsang Dhondup was arrested at the place of explosion,” Zhou said.¹⁵

Director Zhao of Kardze Judiciary further commented, “It could be the view of some sections of the public that Tenzin Delek is a great generous Rinpoche, but he accepted his responsibility in five of the six explosions. Their names were linked to all these explosions, and there were no other suspects. He claims himself as a reincarnate lama recognised by the Dalai Lama but he had no letter to prove his claim. He had also sent many letter advocating the independence of Tibet. He drafted them, Lobsang Dhondup copied them, and the originals were burnt.”

This is crucial in the light that Lobsang Dhondup and Trulku Tenzin Delek were linked to the entire incident with the sole evidence of so-called political leaflets being thrown and found at the site. According to Xinhua of 5 December 2002, the court verdict stated that the PSB discovered political leaflets at the site. Both Trulku and Lobsang Dhondup had declared their innocence and the authorities could not produce any substantial evidence to support their allegations, conviction and sentencing.

Arrest of Trulku Tenzin Delek

Five days later, on the night of 7 April 2002, a team of Sichuan Public Security Bureau (PSB) officers and People's Armed Police (PAP) barged into Trulku's room at Kham Nalanda Thekchen Jangchub Choeling in Nyagchuka. The officers rummaged through his items in the room and asked for Trulku Tenzin Delek. When Trulku showed up, the officers immediately arrested him and four of his attendants — Tsultrim Dhargyal, Asher Dhargyal, Tamdin Tsering and Dhondup (lay). Sichuan PSB officers accused them of being involved in the bomb blast incident at Chengdu.

Lochoe Drime testifies on the case of Trulku Tenzin Delek after his escape into exile:

It is totally false to say that Trulku Tenzin Delek was behind the bomb blast that occurred in April 2002. It is a fabricated accusation against Trulku and other four arrestees. For his continuous efforts to preserve Tibetan culture and identity through every means, Trulku has achieved tremendous respect within a short period. Such baseless and cruel allegation against him and subsequent sentencing is a direct assault on the Tibetan people. He carried out his social work through generous offerings and donations from his followers, devotees and supporters. All of that he gets from the people is returned by building schools, old people's home, orphan-ages, and clinic (which offers free medication). Trulku Tenzin Delek and Lobsang Dhondup are not guilty by any means of law. The Chinese do not wish to see the flourishing of Tibetan culture. They thought Trulku was challenging their authority. That's why they were targeted. Otherwise there is no other

reason for the authorities to arrest him.

Two elderly devotees of Trulku Tenzin Delek, Urther, 77, and Urgue were so heart broken on learning about Trulku's arrest that they became mentally unstable and lost. Likewise, the local Tibetans are grief-stricken. Any show of solidarity with Trulku results in harsh treatment by the Chinese authorities. The authorities said Tenzin Delek Rinpoche and Dalai Lama are the two greatest enemies of China.

At Kham Nalenda Monastery, the monks under patronage of local civilians organized a huge long-life prayer ceremony for Trulku's safety after a week of his arrest. Nevertheless, local PSB officers interrupted the ceremony. Similarly, the PSB officials disrupted another community prayer ceremony at Thankarma Jorkhang where approximately 400 people had gathered to pray for Trulku Tenzin Delek.

Prof. Samdhong Rinpoche, the Chief Cabinet of the Tibetan Government-in-exile has explicitly said, "Given the background of Trulku Tenzin Delek Rinpoche, the authorities seem to be using uncorroborated charges to clamp down on people who work for Tibetan religion, culture and society."

Trulku is a popular religious figure amongst his community, and his arrest shocked many people. Local inhabitants voiced their opinions that Trulku was a peaceful religious leader, and the Chinese authorities implicated him on false charges. According to prominent Chinese writer, Wang Lixiong, Chinese police threatened that anyone voicing support for Trulku Tenzin Delek and Lobsang would be arrested for complicity in the bombings.

Arrest of associates

An unconfirmed report has described the arbitrary arrest and detention of 80 Tibetans for varying periods in connection with Trulku Tenzin Delek's case. Amongst them, TCHRD received confirmed information on eight Tibetans who were all arrested for raising funds to pay for Trulku Tenzin Delek's legal defence or who were otherwise seen as being closely linked to him or those suspected of giving information to the outside world.

Luzi Tashi Phuntsok, 42, disciplinarian of Jamyang Choekhorling Monastery, was arrested on 17 April 2002. In the end of November 2002, Kardze Intermediate People's Court sentenced him to seven years' prison term on alleged charges of "colluding with Trulku Tenzin Delek". Tsering Dhondup, the head of Othok Village, was sentenced to five years' prison term but he was released on 11 July 2003. Both men had developed critical health condition.¹⁶ Luzi Tashi Phuntsok, who was earlier reportedly released on 28 July 2003, is in Chinese custody again because he was unable to pay the bail amount.¹⁷

The Chinese Government has acknowledged that "Asher Dhargye, aged 39 and Tsultrim Dhargye, aged 36 (both now released) were ordered to serve one year's labour through re-education by the Ganzi Prefecture labour rehabilitation committee in May 2002 for colluding with Trulku Tenzin Delek Rinpoche in separatist activities. Tamdin Tsering and others were detained for questioning and received penalties strictly for violating law."¹⁸

Lobsang Tenphen, a close relative of Trulku Tenzin Delek, was arrested on 12 February 2003 on suspicion of raising funds to arrange for the release of Trulku Tenzin Delek. He was held for

almost seven months without his family being informed. He was later tried and sentenced to five years' prison term.¹⁹

Local police arrested Dhedhe, 42, businessman from Lithang Derge Township, on the night of 14 February 2003, at Nyagchuka County. Dhedhe was one of the two relatives present at the initial closed court hearing of Trulku and Lobsang when they were convicted.²⁰

The whereabouts of two juvenile orphans (names unknown) who were in the close care and aide of Trulku remains unknown. They have been missing since May/June 2002 and no one has seen them since then.²²

Visitation rights denied

During the subsequent months, reports described the coercive interrogation, beatings and torture of both Trulku Tenzin Delek and Lobsang Dhondup. There was hardly any information on their whereabouts for almost seven months following their arrests. The jail refused to allow access to attorneys or to private visitors, thereby confirming allegations of torture and denying their right to assistance of a privately hired attorney.

According to the Tibetan Information Network, Chinese authorities held Trulku Tenzin Delek incommunicado until trial²³. The Chinese legal system has contributed to the conditions in which disappearances are able to occur in Tibet by allowing for prolonged detention and administrative detention without trial. His disciples came to know about Trulku's whereabouts on 29 November 2002 when both Trulku and Lobsang Dhondup were brought to Kardze Intermediate People's Court for trial.²⁴ However, another report revealed that Trulku's family learned his whereabouts after two months of arrest but no one had seen him in person until the court

trial.²⁵ With the exception of some ambiguous reports of him being detained in Dartsedo PSB Detention Centre, it is confirmed that no one has seen him in person until the first court trial.

Trulku's case contravenes Rule No. 37 of the United Nations 'Standard Minimum Rules for the Treatment of Prisoners (45)' whereby it was guaranteed, "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits". It also contravenes Article 64 of the Basic Law and requires the Public Security Organs of the PRC to inform the family or the work unit of the detained person about the detention within 24 hours.²⁶ The denial of the rights of those detained to be informed, of relatives or friends and for detainees to receive proper legal defense is also a violation of rights to equality before the law as recognised in Article 10 of the Universal Declaration of Human Rights (UDHR) and Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

Trulku's detention became officially confirmed when Dartsedo County PSB officials told the local inhabitants that Trulku had submitted a written petition to hold court trial. The officials demanded an astronomical sum of 1 million RMB (US \$ 1,18000) to be deposited for any court trial to proceed. It is obvious that the said amount was demanded to deny Trulku the opportunity of litigation and thereby deny him justice. Such a demand clearly shows the corruption and bribery prevalent in the Chinese legal system.²⁷

A local resident commented on the futility and fairness of Chinese court trial when he said, "Even if we manage to gather the amount, I don't believe it is going to change the fate of Trulku. It will be double loss." However, few faithful Tibetans initiated a fund

raising drive in Lithang County and other adjoining counties to gather the amount to begin court trial. When they had collected half the sum, the PSB officials intervened and arrested three Tibetans; Tsering Dhondup, Tsultrim Dhargyal and Dimey Gyatso who were in the fundraising team.

Court trial and sentencing

On 2 December 2002, a closed trial was held in Kardze People's Intermediate People's Court against Trulku Tenzin Delek and Lobsang Dhondup, resulting in a conviction and sentencing. According to Voice of America, Tibetan language Radio Service, China denied an American request to have a representative present at the trial. Only Longa and Dhedhe, both relatives of Trulku, were allowed to attend the court proceedings.

The Court sentenced Trulku Tenzin Delek to death with two years reprieve and deprivation of political rights for life for "committing crimes concerning explosions". Additionally he was sentenced to 14 years' imprisonment and deprivation of political right for three years for "inciting the split of the country". Lobsang Dhondup was sentenced to immediate death penalty and deprived him of political rights for life for "committing crimes concerning explosions". He was also given 12 years' imprisonment and deprived of political rights for two years for "inciting the split of the country" as well as an additional three years of imprisonment for "illegally possessing firearms and ammunition".²⁸

The Special Rapporteur of the United Nations Commission of Human Rights on freedom of religion and belief had communicated with the Chinese Government in May 2002 concerning circumstances relating to Trulku Tenzin Delek and others. The

Chinese Government has submitted a response stating that “On 20 August, the procuratorial authorities instituted criminal proceedings against the defendant Tenzin Delek Rinpoche with the Intermediate People’s Court of the Ganzi Tibetan Autonomous Prefecture, for the crimes of fomenting separatism and causing an explosion and against defendant Phondup (Lobsang Dhondup) for fomenting separatism, causing an explosion and the unlawful possession of firearms and ammunition.”

Trulku Tenzin Delek maintains that he did not confess to any of the charges against him.²⁹ Contradicting the statements of the Chinese official reports, reports received by TCHRD confirm that Trulku Tenzin Delek opposed the verdict and declared his innocence in the court. He further shouted, “Long Live His Holiness the Dalai Lama”. Lobsang Dhondup also reportedly declared in the court, “Neither Trulku nor I am involved in any way with the bomb explosions. The trial was unfair.”

After two officials from the Central Government visited Rinpoche on 6 January 2003, Trulku began a hunger strike, saying that Chinese authorities had denied him a fair trial. Trulku is reported to have told the two officials that he did not wish to respond to their queries, as they were not interested in finding out the truth.³⁰

It is learned from the course of the trial and from a recorded cassette that Trulku had denied any involvement in “splittist” activities and had demanded a fair trial. In a secretly recorded message, smuggled out of Tibet, Trulku said:³¹

Whatever [the authorities] do and say, I am completely innocent...Around that time, one of my friends called me and asked if [Lobsang Dhondup] was my relative. Then I became suspicious that something serious was going on.

When I heard about the explosions and arrest of Lobsang Dhondup, I suspected that I might be wrongly accused and arrested — that I might become a scapegoat.

I was wrongly accused because I have always been sincere and devoted to the interests and well-being of Tibetans. The Chinese did not like what I did and what I said. That is the only reason why I was arrested...I have always said we should raise our hands at others. It is sinful...I have neither distributed letters or pamphlets nor planned bombs secretly. I have never even thought of such things and I have no intention to hurt others.³²

The Chinese police and prosecutors imprisoned and tried Trulku Tenzin Delek solely on the alleged confession of Lobsang Dhondup. The officials also claimed that Trulku Tenzin Delek confessed his involvement during the investigation. However, according to unofficial reports, including eyewitness accounts and Trulku's testimony, there are solid reasons to believe that Lobsang Dhondup's so-called confession was the result of coercion. The reports have indicated the use of torture and beating on Lobsang Dhondup while he was under detention.³³

Chinese authorities have not provided any information about the evidence underlying the convictions, the manner in which such evidence was obtained, what if any evidentiary links exist between the explosions and Lobsang Dhondup or Trulku Tenzin Delek, or what evidence would support the existence of any conspiracy between the two men.³⁴

PRC authorities have not provided any evidence of Trulku's engagement in activities that violates PRC laws. Although Trulku does have a well-established history of renovating monasteries

and supporting the Dalai Lama's religious views, he has no record of encouraging political protest and has denied any involvement in leafleting, both considered as "splittist" activities by China. In their monitoring of political protest and imprisonment since 1988, TIN has not received any report of a "political incident or detention at any facility associated with Trulku Tenzin Delek."³⁵ TCHRD's research over the years also supports this view.

Retrial and appeal

Chinese Criminal Law grants defendants a right to appeal within ten days of sentence. However, success of such appeals are almost non-existent. Following the conviction, both Trulku Tenzin Delek and Lobsang Dhondup appealed to Sichuan Higher People's Court to revoke the death sentence³⁶. Many western governments, Tibetan Government-in-exile, NGOs, human rights organisation and individuals appealed for reversal of death sentence and appealed for fair re-trial.

On 14 December 2003, Wang Lixiong, a prominent Chinese writer, submitted a letter of appeal to National People's Congress, Supreme People's Court, and Sichuan Higher People's Court for reversal of death sentences on Trulku Tenzin Delek and Lobsang Dhondup. Twenty-four Chinese intellectuals and experts joined in the appeal, which was widely distributed within China and abroad.³⁷

On 17 December 2002, Mr. Lorne Craner (U.S. Assistant Secretary of State for Democracy, Human Rights and Labor), Assistant Attorney-General Ralph Boyd and Ambassador-at-Large for International Religious John Hanford, met in China with their Chinese counterparts. Chinese officials from the Supreme

People's Court, the Supreme People's Procuratorate, and the Ministry of Justice assured Mr. Craner that if the Higher People's Court affirmed the conviction, the Supreme People's Court would hold a lengthy appeal of the cases, as is required by Chinese law. Similar promises were made to other countries, including the European Union.

On 17 December 2002, Tsering Lolo, brother of Trulku Tenzin Delek, hired two prominent attorneys Zhang Sizhi and Li Huigeng from Beijing, to represent Tenzin on appeal and to defend the case at Sichuan Higher People's Court.³⁸ Wang Lixiong was instrumental in securing their legal assistance to defend the case.

On 18 December 2002, Trulku Tenzin Delek sent a letter through Tsering Lolo to Zhang Sizhi and Li Huigeng, appealing for their representation on his case. Zhang and Li had famously represented other dissidents in 1991 and in 1995.

On 25 December 2002, Li telephoned Judge Wang Jinghong of the Sichuan Provincial Court to arrange for their representation and for an interpreter. Judge Wang suggested that they hire a local translator and made travel arrangements. Judge Wang did not mention any problems with their representation. Over inquiries from Li Huigeng over whether re-trial would take place in open, Judge Wang Jinghong had replied, "Nothing is certain".

On 26 December 2002, Judge Wang Jinghong called attorney Li Huigeng and made several inquiries over relations between Trulku Tenzin Delek and Lobsang Dhondup, and other unclear details of the case. Wang told them that he had to go to another region for official purpose and that date of the court trial could be confirmed as per the convenience and schedule of the two attorneys. Li wanted to study the conviction documents at Sichuan Intermedi-

ate People's Court on 6 January 2003. The next day, Wang Lixiong went to offices of Zhang Sizhi and Li Huigeng and paid their remuneration to handle the case.

On 27 December, attorney Li called Judge Wang and sought permission to meet and talk with Trulku Tenzin Delek. Judge Wang clearly mentioned that Trulku Tenzin Delek was detained in Dartsedo Detention Centre, and even gave him road directions from Chengdu to Dartsedo. The same day, Lithang County PSB officers arrested Tsering Lolo on charges of hiring lawyers for Trulku.³⁹

On 28 December, Zhang Sizhi and Li Huigeng met with Wang Lixiong, to discuss the representation. Mr. Lixiong felt that only lawyers from outside of the Sichuan would work beyond governmental control and be strong advocates.

On 29 December, Judge Wang called the attorneys and refused to allow them to represent Tenzin on appeal. He told them that two court-appointed lawyers from Kardze Region were already representing Trulku Tenzin Delek on appeal and that no further appellate paperwork could be filed. Wang Lixiong believes that the abrupt development may be a result of pressure on Judge Wang from Sichuan provincial authorities to stop the two Beijing lawyers from acting on behalf of Trulku Tenzin Delek.

It is uncertain whether Trulku Tenzin Delek had ever been consulted about being refused his choice of lawyers. No official clarification is given on why the judge took such a step. However, the court's decision to prevent Trulku Tenzin Delek from receiving fair and proper legal representation could be interpreted as "politically motivated". Trulku was denied the right to his attorney when the higher court rejected lawyers to represent him. The ICCPR gives the defendant the right to choose an attorney of

one's choice. China is a signatory to the covenant though it is yet to ratify it.

The trial and sentences received international rebuke. Sergio Vieira de Mello, the late UN High Commissioner for Human Rights, wrote to Chinese authorities expressing his concern that the trial “does not appear to have met minimum standards”.

Lobsang Dhondup executed

The cases of both Trulku Tenzin Delek and Lobsang Dhondup were appealed at Sichuan Provincial Higher People's Court. However, in complete disregard to international appeals, the Court upheld the earlier verdict and executed Lobsang Dhondup on 26 January 2003. The Court upheld the original death sentence of Trulku Tenzin Delek. No appeal was ever allowed to the Supreme Court, despite Chinese law⁴⁰ that requires all cases involving the death sentence to be appealed to the three judge Supreme Court.

According to *Radio Free Asia*, the jail returned only the ashes of Lobsang's body, supporting claims that Lobsang had been tortured.

The event has left little doubt over China's attempt to use the global campaign against 'terrorism' to suppress the Tibetans' peaceful political and religious expressions. It has also exposed China's true intention despite the show of bonhomie with western governments when dealing with the issues of human rights.

Lobsang Dhondup: a legal scapegoat

Lobsang Dhondup, 28, was born in Nyakchu County, Kardze Region, Sichuan Province. Lobsang helped his family in farming works when he was small. In 1998 or 1999, when Lobsang Dhondup was twenty-four years old and newly separated from his wife, he expressed a desire to become a monk. Tenzin Delek agreed to a trial period. After little more than a year, during which Lobsang Dhondup helped with minor chores at one of Tenzin Delek's monasteries, it became obvious that other pressures prevented him from committing himself fully or devoting the time necessary to advance his studies. His mother and son needed his financial help. According to one account, in 2000, Tenzin Delek, aware that the plan was not working out, advised Lobsang Dhondup to pursue his interest in small business ventures.⁴¹ Lochoe Drime described Lobsang Dhondup "gentle and kind hearted".

While Lobsang Dhondup's execution revealed China's new strategy to internationalise the non-violent struggle of six million Tibetans as an "act of terrorism", the court's decision has also highlighted shortcomings in the Chinese judicial system. Furthermore, this judicial decision led to increased fear over China blurring the distinction between the global campaign against terrorism and domestic freedom struggles.⁴²

The fact that Lobsang Dhondup and Trulku Tenzin Delek are related became good enough reason for the authorities to indict the Tibetan lama. PRC authorities' earlier attempt to arrest Trulku had resulted in failure. This is evident from the execution of Lobsang Dhondup whose testimony upon retrial could have exonerated Trulku Tenzin Delek. Lobsang Dhondup's death has impaired Trulku's chances of receiving fair re-trial. According to US Congressional Executive Commission on China, the rush to

execute Lobsang Dhondup hours after Sichuan Higher People's Court approved his death sentence may have profound impact on Trulku Tenzin Delek's ability to receive a fair retrial.

Amanda Blatt, a spokeswoman for the U.S. Department of State told BBC News "We join the international community in raising concern over the reported execution of Lobsang Dhondup, and the suspended sentence of Tenzin Delek Rinpoche.⁴³" Additionally, the U.S. Embassy "repeatedly registered deep concerns over the lack of transparency and apparent lack of due process in these cases."⁴⁴

The European Union condemned the execution "as a breach of the trust built up by the EU-China dialogue"⁴⁵ and in February 2002 issued the following critique⁴⁶:

The European Union expresses deep regret and disappointment at the execution of Lobsang Dhondup immediately after the Sichuan High People's Court upheld his death sentence, despite international concerns voiced at the lack of transparency of the process concerning his case and that of Tenzin Delek Rinpoche.

The European Union reiterates its concerns on the conditions under which the trial was conducted and the lack of certainty as to whether due process and other safeguards for a fair trial were respected, and considers this a serious violation of the rights of the two defendants.

It also reiterates its policy on the death penalty, including its insistence that in case the death penalty is maintained, the internationally accepted minimum standards should be

respected. This includes all possible safeguards to ensure a fair trial and adequate fair representation as well as the need for clear and convincing evidence.

The European Union has voiced these concerns to the Chinese authorities, urged them to review the case against Tenzin Delek Rinpoche and expressed as well its expectation that his death sentence will not be upheld.

The Acceding Countries (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia), the Associated Countries (Bulgaria, Romania and Turkey), the EFTA countries (Iceland, Liechtenstein and Norway), and members of the European Economic Area align themselves with this declaration.

In response to Western criticism of the execution, the official Chinese Xinhua newspaper on January 26, 2003 reported that the trial was “closed” because the alleged crimes of both men were linked to “state secrets.” CNN quoted Chinese Foreign Ministry Spokeswoman Zhang Qiyue on 28 January as saying, “On the matter of carrying out a death sentence, this is done in accordance with an entire set of regulations and a rigorous investigation process. China is a country rules by law. China’s judicial departments would handle any case according to the relevant laws. Therefore, our judicial department would deal with terrorists using bombs or any other person posing a security risk in the same manner as any other country.”

Legal provisions in death penalty

China’s Criminal Procedure Law requires death sentences to be reviewed and sanctioned by the Supreme People’s Court. Article

48 of the PRC Criminal Law provides that “Except for judgements made by the Supreme People’s Court according to law, all sentences of death shall be submitted to the Supreme People’s Court for approval. Sentences of death with a suspension of execution may be decided or approved by a high people’s court.”

Articles 199 of PRC Criminal Procedure Law guarantees that “Death sentences are to be approved by the Supreme People’s Court”, and its article 202 provides for “the review of death sentence cases by the Supreme People’s Court and the review of death sentence cases with suspension of execution by a higher people’s court shall be conducted by a collegial panel composed of three judges”.

In February 1980, the Standing Committee of the National People’s Congress of China decided to use *xiafang* (send down) system which requires the Supreme People’s Court to shift authority to Higher People’s Court to review and approve death penalty sentences in cases of murder, robbery, rape, arson and other crimes which severely jeopardized public security.⁴⁷ In 1981, the Committee further decided to implement the order from “1981 through 1983”. Now, the *xiafang* system is implemented in PRC based upon three document: the Organic Law of the People’s Courts (the Organic Law), and the Supreme People’s Court’s *Notice Regarding Entrusting to the Higher People’s Courts the Authority to Review and Approve Certain Death Penalty Cases* (the 1983 Notice) and *Notice Regarding Authorising Higher People’s Courts and People’s Liberation Army Military Affairs Court to Review and Approve Certain death Penalty Cases* (the 1997 Notice)⁴⁸

The Supreme People’s Court issued a new directive in 1997 to coincide with the revisions of the Criminal Law and the Criminal

Procedure Law. The 1997 Notice reaffirmed the *xiafang* principles established in the Organic Law and the 1983 Notice, but expanded the range of offences which were required to be reported to the Supreme People's Court for review and approval to include corruption, bribery and other crimes that "disturb the order of the socialist market economy".⁴⁹

Legal experts in China have complained that a conflict exists between the Criminal Procedure Law's requirement that the Supreme People's Court review and approve all death penalty sentences, and the Organic Law's and 1997 Notice's delegation of this review authority to the Higher People's Courts.⁵⁰

One Chinese newspaper has quoted a Professor from Beijing University, "The Criminal Law and the Criminal Procedure Law stipulate that only the Supreme People's Court may exercise death penalty review and approval authority. Therefore, the stipulation under the Organic Law of the Supreme People's Court that the death penalty review and approval may be delegated to Higher Courts at the Provincial directly contradicts the Criminal Law and Criminal Procedure Law. Actually, these laws are of completely different force. On the one hand, the Criminal Law and Criminal Procedure Law were passed by the National People's Congress, and are the basic laws of the nation. On the other hand, the Organic Law of the Supreme People's Court was only passed by the Standing Committee of the National People's Congress, and is just an ordinary law of the nation. The force of the latter law is clearly less than the former two. It is without a doubt unconstitutional behaviour for an ordinary law to contravene a basic law".⁵¹

Under the 1997 Notice, the Supreme People's Court requires that all death penalty sentences involving state security be provided

to it for review. The court trial of both Trulku Tenzin Delek and Lobsang Dhondup were closed because it “involved state secrets”. According to the US Congressional Executive Commission on China, “If the state secrets are related to the blasts, the offence which brought the death sentences, and if explosions are therefore an offense against state security, then Lobsang Dhondup’s case should have been reviewed by Supreme People’s Court.” Furthermore, no charge is specified that can be associated with state secrets.

The haste with which Lobsang Dhondup was executed is only indicative of the seriousness of the authorities to implicate Trulku Tenzin Delek and to deny him any chances of fair retrial. The authorities have also taken advantage of the conflicting legal provisions of China’s death penalty. However, the most concerning factor is the lack of evidence for conviction and execution of Lobsang Dhondup, who becomes Trulku’s most crucial defense in his future trial.

Recent development on Trulku’s case

According to International Campaign for Tibet, the Chinese Foreign Ministry had responded to an official EU demarche over Trulku Tenzin Delek’s case. The German Foreign Ministry was informed that Trulku Tenzin Delek is “being held in Chuandong prison in Dazu district in eastern Sichuan province and is in good health”. In their response, the Chinese Foreign Ministry had indicated that his suspended death sentence would be “calculated from the date the judgement became final and could be commuted to a lesser sentence”.

The response also referred to Article 50 of the Chinese Criminal

Law, which says that a death sentence can be commuted to life in prison if “no intentional crime during the period of suspension” is undertaken by the prisoner and that if “major meritorious service is truly performed, punishment shall be commuted to fixed-term imprisonment of not less than 15 years but not more than 20 years.”

Article 50 also provides that “if it is verified that [he] has committed an intentional crime, the death penalty shall be executed upon verification and approval of the Supreme People’s Court.”

International legal standards

The trials of Trulku and Lobsang have prompted an international outcry regarding China’s fair trial standards. China first became subject to international human rights standards when in 1971 it joined the United Nations. By becoming a member, it was required to respect the principles in the Universal Declaration of Human Rights (UDHR), to become a party to the terms described in it⁵² and (as stated in its preamble) to “secure their universal and effective recognition and observance ... among the peoples of Member States themselves.”

Article 55c and 56 of the U.N. Charter⁵³ read in pertinent part as follows:

Article 55 states, “With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote...

c. universal respect for, and observance of, human rights

and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55.

China has correctly recognized its obligations under the UDHR. In 1988, at the U.N. General Assembly, the Chinese Foreign Minister described the UDHR as “the first international instrument which systematically sets forth the specific contents regarding respect for and protection of fundamental human rights.”⁵⁴ In 1994 at the Cairo International Conference on Population and Development:

China, together with other participating countries, affirmed that all people are entitled to all the rights and freedoms set forth in the UDHR, stressing that ‘human beings are at the center of concerns for sustainable development.... People are the most important and valuable resource of any nation ... and the lack of development may not be invoked to justify the abridgement of internationally recognized human rights’.⁵⁵

In November 2000, “China’s Vice Foreign Minister Wang Guangya and U.N. High Commissioner for Human Rights Mary Robinson signed a memorandum of understanding on technical cooperation. A central goal of this agreement is to assist China in bringing its laws in line with these treaties⁵⁶.”

The UDHR standards relating to a fair trial have been elaborated in the International Covenant on Civil and Political Rights (ICCPR), a multinational treaty ratified by 148 nations. China signed the

treaty in 1998 but has not yet ratified it. According to international law,⁵⁷ China's signature prohibits Chinese acts inconsistent with the goals and purposes of the ICCPR. When China signed the ICCPR, it recognized the importance of the principles expressed by the ICCPR⁵⁸.

China has signed the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 27 October 1997 and ratified it on 27 March 2001. China has also signed and ratified the Convention Against Torture (CAT) in 1986 and 1988, becoming a full party to its provisions.

Fair trial standards have additionally become established internationally through the formation of customary international law. For hundreds of years, the world has recognized that binding international law can be formed either through treaties (such as the ICCPR) or through custom. Customary international law has been analogised to the wearing down of a path by continual widespread usage.⁵⁹ The following are the four necessary conditions for the creation of customary international law:

- 1) Duration;
- 2) Uniformity and consistency of practice;
- 3) Generality of practice; and
- 4) *Opinio juris et necessitates* (nations must engage in the identified uniform and general practice out of a sense of legal obligation rather than, for example, courtesy).⁶⁰

Once customary law is established, it becomes applicable to all nations—even to those nations that have not ratified treaties memorializing the custom.⁶¹ Many commentators feel that the international laws on the presumption of innocence, freedom from torture, right to a public trial, and access to an attorney of one's own choice have

obtained the level of customary international law⁶².

Specific Laws

1. Presumption of innocence

The Chinese court trial was required by international law to presume Tenzin Delek and Lobsang Dhondup innocent until the procurator⁶³ presented evidence to convince it beyond a reasonable doubt on each element of the crime. While this presumption of innocence is fundamental to a fair criminal trial, the presumption is new in Chinese law and not yet fully developed. Without this presumption of innocence, a trial cannot be fair. Without the guarantee of the presumption of innocence, Trulku and Lobsang Dhondup's trial was a mere formality.

The presumption of innocence involves three protections.⁶⁴ First, the burden of proving the crime is on the procurator. Second, there must be a high standard of evidence in order to convict the defendant. Third, the Judge should not act in a way that prejudices the outcome of the trial.

During the last 200 years, the presumption of innocence became accepted throughout the world as an integral basis for the fair criminal trial. The presumption of innocence was first introduced in China about 100 years ago in the final decade of the Qing or Manchu dynasty⁶⁵. However, because of the revolution under Chinese Communism, it never became firmly established in Chinese law. By 1949, there was instead a presumption of guilt for criminal prosecutions. After the Communists seized power, they abolished the prior Criminal Procedure law and prohibited its practice by lawyers⁶⁶. Only recently has the Chinese Criminal

Procedure approached the presumption of innocence.

a. International standards

The universal right to be presumed innocent is fundamental in all standards for a fair trial. It is seen as a primary principle to all systems of criminal procedure.⁶⁷

Article 11 of the UDHR⁶⁸ provides “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.” This same language is echoed in Principle 36 of the *U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*,⁶⁹ a principle endorsed by the U.N. General Assembly in 1984⁷⁰.

The United Nations General Assembly declared⁷¹ that the presumption of innocence in a death penalty case requires “Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.” This is the same standard as proof beyond a reasonable doubt. If there is room for an alternative explanation of the facts, there is sufficient evidence for a reasonable doubt. As members of the United Nations, China is part of this system defining these basic rights.

Article 14(2) of the ICCPR creates the presumption of innocence. Its placement in art. 14 of ICCPR suggests that it is a fundamental principle in the right to a fair trial.⁷² In its general comment, the Human Rights Committee has explained that this presumption of innocence is fundamental.⁷³ The language of the ICCPR does not describe the amount of evidence that must be proved before a

conviction. However, the Human Rights Committee (which is the official body of the ICCPR) decided that inherent in the presumption of innocence is that proof of the evidence must *be beyond a reasonable doubt*.⁷⁴

Article 5 of the U.N. *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*⁷⁵ requires that capital punishment may be carried out only when ICCPR Art. 14 has been satisfied.

International criminal courts have also adopted the presumption of innocence, applying the requirement of proof beyond a reasonable doubt⁷⁶. Also, a broad range of Regional Treaties⁷⁷ provide for the presumption of innocence. These various regional instruments show that the presumption of innocence has been universally applied around the world. There are no cultural exceptions to this central tenet of a fair trial.

The trials of Trulku Tenzin Delek and Lobsang Dhondup were governed directly by the U.N. provisions and by the ICCPR. China must respect the UDHR standard and not act inconsistently with the ICCPR requirements of proof beyond a reasonable doubt.

b. Chinese Law

The presumption of innocence has only been considered within the Chinese legal system for the last 100 years. But, it has never fully granted the criminal defendant the full rights associated with the principle, often ignoring the issue.⁷⁸

Under the 1970 Criminal Procedure, there was no presumption of innocence. Rather, there was a presumption of guilt for everyone charged with a crime.⁷⁹ Under the 1979 law, the Judge would review the procurator's case before trial to determine

whether there was sufficient evidence to convict. “This practice of reviewing, examining, and discussing all the necessary evidence of a case with the prosecution often predisposed the judges to prejudice, resulting in the common practice of ‘verdict first, trial second’ (*xianding houshen*) and no clear differentiation between prosecution and adjudication.”⁸⁰

The current (1996) Chinese law contains no explicit presumption of innocence.⁸¹ The 1996 version of the Chinese Criminal Procedure law⁸² (CPL) does state that the People’s Court may only give a guilty verdict “when the facts of the case are clear, with verified and sufficient evidence . . . [and] according to law.” However, while the law states that the burden of presenting evidence is on the procurator and that the facts must be clear, it does not describe the amount of evidence that is *sufficient* to convict. In other words, must the evidence be 25% percent likelihood, 50% likelihood, or proof beyond a reasonable doubt?

Under international standards, the proof must be similar to proof beyond a reasonable doubt.⁸³ As seen in the U.N. General Assembly declaration, this is especially important when the defendants are facing the death penalty. This standard, which is so essential to a fair trial, has never been incorporated into Chinese Law.

The presumption of innocence is especially important in Chinese courts, where the defense can rarely present a case. One expert⁸⁴ reported that less than five percent of criminal trials involve witnesses. The evidence in most trials merely consists of the procurator reading statements of witnesses whom neither the defendant nor his lawyer ever had an opportunity to question. The defendant and his attorney do not have the ability to force witnesses to testify on the defendant’s behalf. In some politically

sensitive cases, neither the defendant nor his lawyer is even allowed to speak.⁸⁵ Another expert found that defense lawyers presented a defense in less than 30% of the criminal cases.⁸⁶

There are still greater obstacles for the defendant, who is very limited in what evidence he can obtain. The procurator is only obligated to provide those documents to the defendant that he files with the court—which are those that only support a conviction. He is not obligated to provide those that prove innocence.⁸⁷ Defense lawyers are also limited in what they can obtain through their own investigation, independent of the procurator. Under Article 37 of the Criminal Procedure Law, the defense lawyer must obtain the permission of either the procurator or the court before he gathers evidence from witnesses. In cases “involving state secrets” this limitation to evidence can become an impossible burden.

The trials and sentencing of Trulku Tenzin Delek lasted only three days. There was no presumption of innocence. Because the police interfered with raising money for Trulku’s lawyer, and did not allow Trulku Tenzin Delek to use his own attorney to help him confront the evidence obtained through torture and coercion.

2. Protection against torture

The conditions surrounding the cases of Trulku Tenzin Delek and Lobsang Dhondup suggest that they were tortured. Both men were arrested and held incommunicado, a condition ripe for torture. Lobsang Dhondup was immediately executed the day he lost his appeal to the intermediate appellate court. Rather than returning his body to the relatives so that it might be examined for signs of torture, the police returned a bag of ashes.

The Convention Against Torture (CAT) requires China to prevent, prohibit and criminalize all acts of torture.⁸⁸ “Torture” is defined under the CAT⁸⁹ as:

[A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The prohibitions against torture are widely considered to be *ius cogens*, a universal standard that allows no deviation.⁹⁰ Unfortunately, Chinese Law does not prohibit under its criminal law all acts of torture as defined and required by the CAT.⁹¹

Under Article 15 of the Convention Against Torture, evidence obtained through torture must not be used against the defendant at trial:

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Chinese law does not exclude statements gained through torture. Judges are free to consider the evidence and to admonish the police. While the 1996 Chinese law prohibits torture⁹², it is completely silent on whether the illegally obtained evidence can be used at trial. It is true that a 1994 Chinese Supreme People's Court decision prohibited use of illegally obtained confession. It did not, however, prohibit the use of physical evidence obtained through torture⁹³. This 1994 decision has not been put into practice. The 1996 Criminal Procedure Law failed to include the prohibition and rendered the 1994 decision meaningless.

Torture is still a problem inherent in the Chinese criminal justice system. It is also recognized as a problem within China. In 2000 the respected Chinese magazine *Outlook Weekly* reported that torture is still routinely used. In the Fall of 2000, the Chinese National People's Congress carried out their own study of six provinces (that did not include Tibetan provinces, where torture is more endemic) and found that between 1997 and 1999 there were 221 reported cases of confessions obtained through torture—confessions which resulted in the deaths of 21 suspects. “Commenting on the study group's findings in December 2000, Hou Zongbin, Chairman of the NPC's Judicial Affairs Committee, stated that while the 1997 Criminal Procedure Law had brought reforms to the criminal justice system, torture remained a systemic problem.”⁹⁴

Despite ratification of the Convention Against Torture in October 1988, the Chinese authorities have used torture against Tibetans as a means of extracting information and confession. To date TCHRD has recorded 81 deaths of Tibetans both while in custody and after release due to torture. The failure of the Chinese authorities to acknowledge, investigate and punish officials accused of committing torture suggests official endorsement of these illegal

practices. Torture continues in Tibet due to lack of legal protection for prisoners, impunity extended to prison officials, inadequate legislation and the subservience of the judiciary to the Chinese Communist Party fostering an environment where officials are encouraged to employ practices that violate the Convention.

In 2001, a program was attempted in Liaoning Province to establish the right to remain silent as a means of combating torture. However, the program was quickly discontinued.⁹⁵

Even with this continuing pattern of torture, there is still no mechanism for excluding from evidence confessions obtained through torture. Despite the repeated tortures, the confessions have still been used as evidence. There has not been a single reported case since the 1996 law that has reported exclusion of any evidence obtained through torture.⁹⁶

Within the Chinese Criminal Procedure, there are other systematic incentives for torture. Chinese law does not allow for a right to remain silent. Additionally, the defendant in a state secrets case has no right to talk with an attorney during the investigative stage.⁹⁷ The procurator is empowered to delay the investigative stage and gather more evidence while the defendant remains in jail without access to an attorney.

This failure to exclude evidence, joined with China's lack of the right to remain silent, creates a systematic incentive for torture,⁹⁸ an incentive that certainly led to the torture of Trulku and Lobsang Dhondup. After the trial, appeal and execution, China was universally criticized. The Chinese government responded in the official Chinese newspaper *Xinhua* that both Trulku Tenzin Delek and Lobsang were convicted based upon their confessions⁹⁹. Were these confessions the result of torture? Because the trial was closed,

it is difficult to say. However, a BBC interview¹⁰⁰ with United States Congressman Frank Wolf on January 26, 2003 is revealing:

BBC: Do you think there is doubt about the guilt of these men because the Chinese say they have a confession and that the two men were responsible for a string of Tibetan pro-independence bombings in which at least one person was killed?

Congressman Wolf: I have been to Tibet, and the Tibetan people are very, very mild and very, very peaceful. Most of the Tibetan monks that I've met are peaceful people; they're just looking for the opportunity to worship as they see appropriate. I have been in some of the Chinese prisons, and [I am] knowledgeable of some of the torture that takes place, so just because there happens to be a confession doesn't really mean very much. I think that the fact that the trial wasn't open to the public is very disturbing because I think that's an opportunity for people to see what happens. Also the fact that so many people asked that there be the right to appeal and that, generally, in the past there has been the right to appeal, I think, are two very disturbing things - particularly since this was one of the cases that was raised by the State Department.

3. Closed trial

Public trials are considered fundamental to a fair trial. For instance, the right to a public trial is recognised in Article 10 of the UDHR, which prohibits closed trials. Chinese law generally provides for public trials, but closes trials for cases involving “state secrets.”

The broadly defined “state secrets” include all cases against Tibetans that involve claims for Tibetan independence.¹⁰¹ The Chinese law violates international rules for a public trial. Moreover, no specific charges have been made about “state secrets” against Trulku and Lobsang Dhondup.

a. International standards for a public trial

Article 10 of the UDHR states:

Everyone is entitled in full equality to a fair, and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 14(1) of the ICCPR reads as follows:

All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

The ICCPR does not permit China to close its courtroom doors for a Tibetan trial such as Trulku Tenzin Delek.

Under ICCPR Art. 14, “public order” may refer to the disciplinary proceedings of prisoners that for security reasons are held inside the jail.¹⁰² The “national security in a democratic society” exception refers to those instances where public disclosure of facts would weaken national defense (for example important military facts).¹⁰³ The “interests of the private lives of the parties” is designed to protect the very young who may be a party to the case.¹⁰⁴ It weakens neither national security nor public order to discuss Tibetan pro-independence leaflets.

An open trial is vitally important for a number of reasons, including the monitoring of human rights compliance. “The right to a public hearing, unlike other procedural due process rights, involves more than the interests of the defendant. There are additional components such as the public’s right to know and the integrity of the judicial process. Thus, a careful balancing of these sometimes competing interests requires specific guidelines for court proceedings which cannot be found in constitutions.”¹⁰⁵

China has recognized the need for open trials to curb governmental corruption and to prevent the torture of defendants. In its 2000 report¹⁰⁶ to the Committee Against Torture, China stated in Paragraph 10(d):

The courts of China have always regarded open trials as an important link in the realization of judicial justice and the prevention of corruption. The Supreme People’s Court issued Provisions for Strict Implementation of the Open Trial System on 8 March 1999, which explicitly call for all

cases to be handled through open trials except those involving State secrets or personal privacy and those concerning minors. The practice of open trials helps to prevent torture and other cruel, inhuman or degrading treatment towards defendants, and make public acts of torture or extortion of confessions by torture by judicial personnel during criminal proceedings, since they can be exposed by defendants in the courts, thus forcing the judicial organs to make thorough investigations of the incidents and avoid the occurrence of similar incidents.

“The right to a public hearing is designed to protect the accused from secret trials, as well as to foster public trust in the administration of justice by opening the courts and legal proceedings to public scrutiny.”¹⁰⁷

Public access to the trial discourages perjury, misconduct by attorneys, and decisions that are based upon bias or impartiality. Public trials serve many purposes beyond assuring a fair trial for the accused. After a serious or appalling crime occurs, the community needs to become involved in the trial to voice their concern and condemnation. The community should become involved in the trial and sentencing to provide an outlet for community concern and the appearance of justice. It promotes public confidence in the system that justice has worked.¹⁰⁸

Public trials also help with accurate reporting and description to the public. The more direct the access to the information, the less likely it is to contain errors are inherent in descriptions of evidence indirectly related through secondhand reporting. Also, intentionally wrong descriptions are deterred when the public has seen the trial and can comment on the truth.

Open trials additionally help promote the conduct of the judge and lawyers. When observed by the public, they are more likely to behave politely, more attentively and more impartially. They are less likely to take the shortcuts that make for poor court hearings.

Public trials provide transparency for the public to see that justice has been done and that human rights standards have been achieved. Article 9(3)(b) of the U.N. *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*¹⁰⁹ provides everyone the right to attend “trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments.” China has recognized the importance of public trials and has generally opened the courtroom doors to the public. However, the doors remain firmly closed on Tibetan cases.

China has a duty as a member of the U.N. to respect the principles of the UDHR and a duty as a party to the CAT to ensure that the results of torture are not admitted. Monitoring agencies such as The Congressional-Executive Commission on China and the U.N. produce more accurate reports when they can examine the evidence presented at trial. They report facts with greater certainty. When China satisfies international human rights standards, these monitoring agencies will accurately report that such standards have been achieved. By closed trials, China presumptively violates such standards and creates an assumption that other rights have also been violated.

b. Chinese Criminal Procedure

Article 105 of the Chinese Criminal Procedure allows for closed trials for crimes threatening state security, which includes “incitement to subvert the political power of the state and overthrow the socialist system by means of spreading rumors, slander or other means.” Chinese Law does not further define the term “other means.” A criminal law should give precise notice to defendants about when rights may be denied. However, by providing such an overly inclusive definition, this vague provision provides a closed trial for Tibetans whose crime is having faith in and supporting the Dalai Lama.

The U.N. Commission on Human Rights has studied how the broadly vague definition of state secrets leads to potential abuses. Its Working Group on Arbitrary Detention issued the following report:¹¹⁰

46. Under Article 105, even communication of thoughts and ideas or, for that matter, opinions, without intent to commit any violent or criminal act, may be regarded as subversion. Ordinarily, an act of subversion requires more than mere communication of thoughts and ideas.

47. It may be relevant to mention that article 105 of the revised Criminal Law incorporates key elements of articles 92, 98 and 102 of the 1979 Law. Article 92 related to the subversion of the Government, article 98 referred to organizing and/or participating in a “counter-revolutionary group” and article 102 referred to counter-revolutionary propaganda and incitement.

The revised Criminal Law, in the context of the offences

endangering national security, makes no attempt to establish standards to determine the quality of acts that might or could harm national security. That the Law establish such a standard is crucial, as that alone would make the Law reasonable, fair and just. Clearly, the national security law may be misused and, as long as it is part of the statute, it provides a rationale for restricting fundamental human rights and basic freedoms.

When China so broadly defines “state secret,” any Tibetan who mentions Tibetan independence will be deprived of a public trial. As one noted legal scholar¹¹¹ stated:

The question is whether China’s definition of “national security reasons” causes the provision to be violated. China places heavy emphasis on national security, as evidenced by its 1988 Law on State Secrets which “affords a ready basis for denying a public trial.” Also, the CCP’s “Strike-Hard” anti-crime campaign has specifically focused efforts on preventing “national separatist elements . . . [from] seriously endangering the public’s lives and properties, as well as social stability and . . . modernization efforts . . .”

Various cases and provisions within the PRC Criminal Law reveal that it contravenes international law. In 1997 the United Nations Working Group on Arbitrary Detention (WGAD) expressed concern about those articles relating to “endangering state security”. The Working Group said:

The Revised Criminal Law, in the context of the offences endangering national security, makes no attempt to establish standards to determine the quality of acts that might or could harm

national security. That the Law establish such a standard is crucial, as that alone could make the Law reasonable, fair and just. Clearly, the national security law may be misused and, as long as it is part of the statute, it provides a rationale for restricting fundamental human rights and basic freedoms.¹¹²

The WGAD raised several points in their deliberation with the Chinese Government following their visit to China in 1997.¹¹³

- Failure in the revisions to define precisely the concept of “endangering national security”, and application of the imprecise definition to a broad range of offences;
- The fact that acts of individuals in exercise of freedom of opinion and expression may be regarded as acts “endangering state security”.
- The fact that institutions, organisations and individuals outside China, working with domestic organisations, may be charged with, and convicted of “endangering state security”.
- The lack of precision in the definition of the offence of attempting to subvert political power and overthrow the socialist system, or incitement to such an offence by “spreading rumours, slander or [through] other means (Article 105)
- And the fact that under Article 105, even communication of thoughts, ideas or opinions, without intent to commit any violent or criminal act, may be regarded as subversion.

China’s response to serious allegations by WGAD was to change

the charge “counter-revolutionary” to “endangering state security” in an attempt at clarification. “Conspiring” was deleted from the original provision of “colluding with foreign powers and conspiring” to “endanger national security, territorial integrity and security”. However, changing the legal language does not reverse the fact that anyone who expresses dissent against Chinese rule continues to be liable to severe punishment under this law.

In the wake of this legal exercise, Beijing announced that 21 articles of the PRC’s Criminal Law had been compressed into 12, thus reducing the number of punishable activities as compared to the previous version of the code. None of these changes significantly alter the broad change of abuse that is taking place under the revision. The term “endangering state security”, in its present ambiguous form, is utilised to suppress multiple legitimised rights, including the right to freedom of speech and expression.

For Trulku Tenzin Delek and Lobsang Dhondup, there was no evidence that their trials contained any facts that would threaten national security. Rather, the only thing that would warrant a closed trial is that Trulku Tenzin Delek is a staunch supporter of the Dalai Lama and his teachings. Their trials should not have been closed to the public, either under Chinese law or under international law. The trials were closed not to protect state secrets, but to hide the dirty violations of international law.

4. Right to a privately hired attorney

When a person is charged with a crime, he has the right to hire an attorney, with whom he can have full contact. This right is universal¹¹⁴ and is expressed in such agreements as the ICCPR¹¹⁵,

and the Fundamental Freedoms¹¹⁶.

The United Nations has established the standard of full access to the defendant's attorney of choice, requiring that "communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days."¹¹⁷

Under the ICCPR, the Chinese Court cannot deny the defendant his privately retained counsel.¹¹⁸ The right to counsel also includes the right to have one's own attorney on appeal.¹¹⁹ provided with adequate opportunities, time and facilities" The Human Rights Committee, established to interpret the ICCPR, has stated "all persons who are arrested must immediately have access to counsel."¹²⁰

Of course, this right helps the defendant ensure that he receives a fair trial. But, it also aids the legal system as a whole. "Such a choice presumably allows an effective defense by the accused, increases fairness in the proceedings, and promotes the public's confidence in the criminal justice system."¹²¹

When Chinese officials interfered with Tenzin's right to an attorney, they followed a common Chinese practice. Especially in "state secrets" cases, the defendant's right to talk with an attorney is often violated. On at least one occasion, Chinese officials admitted that some public security departments were denying all requests from lawyers for meetings with their clients on a "state secrets" basis. Another report said that, during the first five months of the Criminal Procedure Law's implementation, lawyers in one city were denied meetings with their clients in sixty percent of all criminal cases. In some cities, the percentage of such cases in which access was denied under the state secrets clause was close to ninety percent of all criminal cases.

“In practice criminal defendants only were assigned an attorney once a case was brought to court; some observers noted that at this point, it was too late for an attorney to assist a client in a meaningful way, since the verdict often had already been decided.”¹²²

Conclusion

The trial of Trulku Tenzin Delek and Lobsang Dhondup violated these four fundamental principles. Because the trial was closed, one cannot say with certainty what was the evidence that convicted Tenzin and Lobsang. We can only rely upon China’s reaction to worldwide criticism when it stated that both of the defendants had confessed.

We do know for certain that China refused Trulku his right to an attorney to represent him in a public trial. Had Trulku not been deprived of these rights, we would know the amount of evidence presented to the judge and whether torture and coercion had produced it. By denying the right to a public trial and the right to an attorney, China denied Trulku the right to a fair trial.

Wang Lixiong has written, “Trulku Tenzin Delek is a lama who is respected by all the people. By putting the label of a terrorist on him and putting him on trial and clamping the death sentence on him the Chinese police might think they have accomplished something great.” Wang Lixiong wrote about Tenzin on a Chinese language website. Wang Lixiong wrote that he does not believe that Trulku Tenzin Delek is involved in the bombings: “By this act the Chinese police have used one arrow to kill two deer. The Chinese police have cut Trulku Tenzin Delek down to size and have claimed success in solving the mystery of the April bomb

blasts.”

In light of all the evidences that TCHRD received, it strongly believes that Trulku Tenzin Delek has been falsely implicated in the “bomb explosion” incidents. Trulku is known for his wide range of social activities like building schools, old peoples home, initiating environmental drives and settling community disputes. He is a very popular leader in Lithang County and loved by the local residents. Earlier attempts to indict Trulku had proved futile.

Although the Chinese constitution provides for fundamental human rights, these protections are more than often ignored in practice. The most common form of human rights abuses includes arbitrary arrest and detention, lengthy incommunicado detention, and denial of due process. In most political cases, the judicial system denies the defendants basic legal rights and due process because authorities attach higher priority to maintaining public order and suppressing political opposition than enforcing legal norms. With such perverse rules of legal process in operation, a high incidence of wrongful conviction becomes a virtual certainty.

TCHRD urges the Beijing leadership to free Trulku Tenzin Delek unconditionally, to improve the legal system and to provide fair trial to him. Above all, TCHRD strongly believes that Trulku Tenzin Delek is innocent of the charges labelled against him and he should be free.

RECOMMENDED ACTION:

Please send immediate telegrams/ telexes/ faxes/ express/e-mails or airmails in English, Tibetan, Chinese or in your own language:

(A An Zha Xi is the Chinese name of Trulku Tenzin Delek. Please use the Chinese name in letters to the authorities).

- Expressing shock and dismay at the execution of Lobsang Dhondup and the reaffirmation of Trulku Tenzin Delek's sentence.
- Requesting Chinese Government to guarantee the safety of Trulku Tenzin Delek.
- Urging United Nation's Secretary General and UN High Commissioner for Human Rights to intervene in the matter
- Requesting for a fair review on the court decision.
- Requesting representatives either from independent human rights monitoring organisations or United Nations to visit Trulku Tenzin Delek.
- Urging Chinese authorities to stop using "terrorism" as an excuse to persecute peaceful Tibetan nationalists.

Please write to:

President Hu Jintao of the People's Republic of China

Central Committee Zhongnanhai Xi Cheng Qu

Beijingshi

People's Republic of China

Salutation: Your Excellency

Premier Wen Jiabao of the People's Republic of China

Guowuyuan 9 Xihuangchenggenbeijie

Beijingshi 100032

People's Republic of China

Salutation: Your Excellency

**Acting Governor of the Sichuan Provincial People's
Government**

ZHANG Zhongwei Daishengzhang

Sichuansheng Renmin Zhengfu

Duyuanjie, Chengdushi

Sichuansheng

People's Republic of China

E-mail: sichuan@mail.sc.gov.cn

Fax: +86 28 435 6784 / 435 6789 (c/o Foreign Affairs office
of Sichuan Provincial People's Government)

Salutation: Dear Governor

Director of the Sichuan Provincial Department of Justice

ZENG Xianzhang Tingzhang

Sifating

24 Shangxianglu

Chengdushi 610015, Sichuansheng

People's Republic of China

Fax: +86 28 435 6784 / 435 6789 (c/o Foreign affairs office of
Sichuan Provincial People's Government)

Telegram: Director, Sichuan Justice Department, Chengdu,
China

Salutation: Dear Director

Minister of Justice

Zhang Fusen

Sifaju (Ministry of Justice)

10 Chaoyangmen Nandajie

Chaoyangqu

Beijingshi 100020

People's Republic of China

Telegram: Justice Minister, Beijing, China

Fax: +86 10 65 292345

Salutation: Dear Minister

Madam Louise Arbour

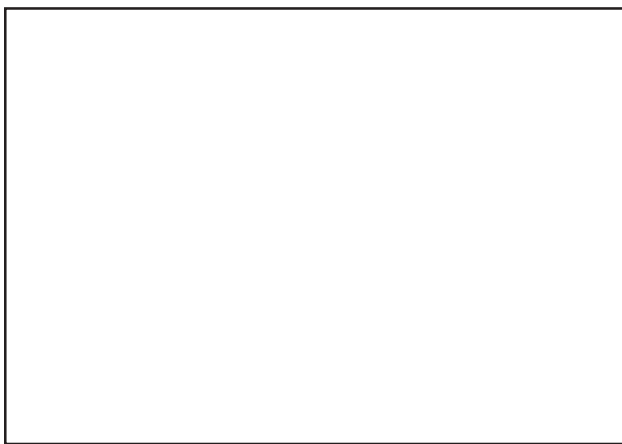
UN High Commissioner for Human Rights

Palais des Nations

1211 Geneva 10 Switzerland

Salutation: Dear Commissioner

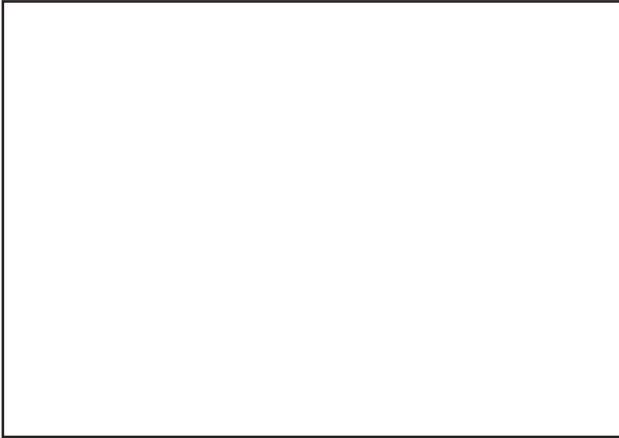
Also, send copies of your letter/e-mail/fax immediately to ambassador office of PRC accredited to your country.



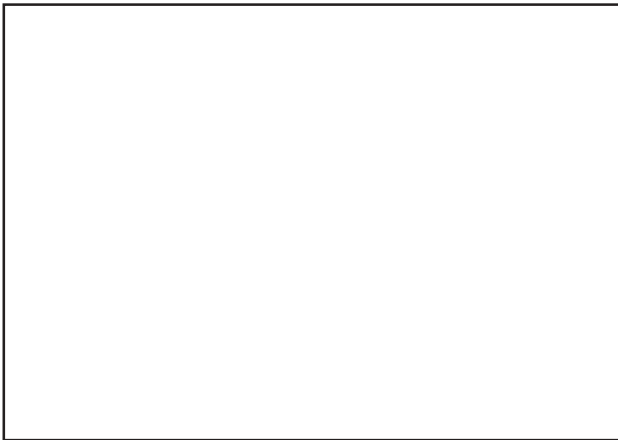
Trulku Tenzin Delek with his orphanage children



Trulku Tenzin Delek helping a nomad family



Trulku Tenzin Delek's birthday celebration in the monastery



Local Tibetans welcoming Trulku Tenzin Delek



Trulku giving teachings to the local populace



Monks of Kham Nalanda Monastery

END NOTES

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Procedure Law,” 35 Vand. J. Transnat’l. L. 827, 833 (2002) [citing Liu Jinxing, Lushi Weihe Buyuan Zuo Xingshi Bianhu? [*Why are Lawyers Unwilling to Defend Criminal Cases?*], Jiancha Ribao (Procuratorate Daily), Apr. 7, 1999, at 4.]

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⁸⁸ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Art. 4, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987. Available at <http://www1.umn.edu/humanrts/instree/h2catoc.htm>. (Last visited on December 1, 2003). (Hereafter referred to as CAT).

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¹⁰⁴ According to the Travaux Préparatoires of the ICCPR. Safferling, Toward an International Criminal Procedure 230 (2001).

¹⁰⁵ Bassiouni, "Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections In National Constitutions," 3 Duke J. Comp. & Int'l L. 235, 276 (1993).

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¹⁰⁹ *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, G.A. res.53/144, annex, 53 U.N. GAOR Supp., U.N. Doc. U.N. Doc. A/RES/53/144 (1999). Available at http://www1.umn.edu/humanrts/instreet/Res_53_144.html.

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¹¹¹ Huang, "The Right to a Fair Trial in China," 7 Pacific Rim Law and Policy Journal 171, 182 (1998).

¹¹² UN Doc.E/CN.4/1998/44/Add.2, "Report submitted by the Working Group on Arbitrary Detention, Addendum to the PRC", 27 December 1997

¹¹³ The Working Group on Arbitrary Detention, represented by its Chairman and Vice Chairman, Mr. Kabil Sibal (India) and Mr. Louis Joinet (France), visited the PRC at the invitation of the government from 6 to 16 October 1997

¹¹⁴ Safferling, Toward an International Criminal Procedure 109 (2001).

¹¹⁵ ICCPR Article 14(3)(d) provides the defendant the right "to defend himself in person or through legal assistance of his own choosing;"

¹¹⁶ *Convention for the Protection of Human Rights and Fundamental Freedoms* Article 6(3), 213 U.N.T.S. 222, entered into force Sept. 3, 1953, as amended by

Protocols Nos. 3, 5, 8, and 11 which entered into force on 21 September 1970, 20 December 1971, 1 January 1990, and 1 November 1998 respectively.

Available at <http://www1.umn.edu/humanrts/instree/z17euroco.html>.

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