

China's 2nd cycle Universal Periodic Review: Recommendations for the Government of Canada

INTRODUCTION

China's second cycle Universal Periodic Review (UPR) will take place in Geneva on October 22, 2013. The review will assess progress towards commitments made in 2009, and it will consider new information about the enjoyment of human rights in China since 2009.¹

This paper provides recommendations for the Government of Canada's consideration. The recommendations supplement those already made in a formal submission by the Canada Tibet Committee to the UPR secretariat in March 2013 as part of an international coalition of non-governmental organizations working on human rights in Tibet.²

REVIEW OF CHINA'S 2009 COMMITMENTS

In 2009, China stood before the members of the UN Human Rights Council and responded to questions raised by both governments and civil society organizations. Recommendations were compiled by the UPR Secretariat and presented to the Government of China for its consideration.

Regrettably, China rejected recommendations related to the enjoyment of civil and political rights (the recommendations "did not enjoy the support" of China). The rejected recommendations included several made by Canada: accelerate judicial reforms to facilitate early ratification of the International Covenant on Civil and Political Rights (ICCPR); provide legal safeguards to individuals held on state-security charges; take steps to end torture; allow UN special procedures including the Special Rapporteur on Freedom of Religion and Belief to visit China. In addition, China rejected three Tibet-specific recommendations made by other Western governments: allow UN access to Tibet (United Kingdom); resume dialogue with representatives of the Dalai Lama (New Zealand); and respect religious freedom in Tibet (Switzerland).³

Despite the overwhelming number of rejections, China accepted some recommendations in 2009 that provide openings for Tibet-specific follow-up questions in 2013. In particular:

- China accepted a recommendation from Saudi Arabia to invite special rapporteurs with responsibility for economic, social and cultural rights to visit China. Accordingly, the UN Special Rapporteur on the Right to Adequate Food was able to carry out a country

¹ The final outcome report of China's 2009 UPR is found at

http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_11_25_CHN_E.pdf

² Joint Submission by Member Groups of the International Tibet Network to Session 17 of Universal Periodic Review:

http://www.tibet.ca/en/newsroom/news_releases/325

³ Canada raised the arbitrary detention of Tibetans in its preamble statement but not in its formal recommendations.

mission to China. His final report, which was submitted to the Council in February 2012, contains a number of important references to the human rights of Tibetan nomadic herders that should now be pursued within the UPR process.⁴

- China accepted a recommendation from Sri Lanka to make information “widely available” about the implementation of regional ethnic autonomy. Yet much of Tibet remains inaccessible to foreign observers and journalists (notwithstanding the June 2013 visit by US Ambassador Locke⁵ and the August 2013 visit by Australian Ambassador Adamson⁶). The 2013 UPR will offer opportunities to reiterate the numerous requests from UN bodies and governments, including Canada, to visit Tibet.
- China accepted a recommendation made by Canada that it “facilitate an early visit” by the UN High Commissioner for Human Rights. Four years later, that visit has not taken place and the High Commissioner’s strong public statement on Tibet has been cited by observers as the primary reason (although that statement was made at the end of 2012).⁷
- Finally, China accepted a Tibet-specific recommendation made by the Russian Federation as follows: “Continue to invest financial and material resources, in conditions of the financial crisis, with the view to support the economic and social development in the country as a whole and the Tibet Autonomous Region in particular.” Although the Russian recommendation does not include a human rights reference, it nevertheless offers some opportunity for follow-up questions related to the right to an adequate standard of living in relation to sustained economic and social marginalisation of the Tibetan people.

REVIEW OF THE HUMAN RIGHTS SITUATION IN TIBET SINCE 2009

Since 2009, there have been 121 self-immolation protests documented in Tibet.⁸ The majority (83) occurred during 2012. Protester demands have been consistent and clear: freedom for Tibet and the return of the Dalai Lama. China’s response has been equally clear: criminalize the self-immolators and blame the crisis on the Dalai Lama. The self-immolations are evidence that the human rights situation in Tibet has not improved since China’s first cycle UPR in 2009. At the same time they have provided a convenient rationale for Chinese authorities to increase

⁴ *Report of the Special Rapporteur on the Right to Food, Olivier DeSchutter, Mission to China*, Human Rights Council A/HRC/19/59/ADD.1, January 2012. http://www.srfood.org/images/stories/pdf/officialreports/20120306_china_en.pdf

⁵ *U.S. Ambassador to China, Gary Locke makes rare visit to Tibet, urges Beijing to open region up*, CBS News, June 27, 2013, http://www.cbsnews.com/8301-202_162-57591268/u.s-ambassador-to-china-gary-locke-makes-rare-visit-to-tibet-urges-beijing-to-open-region-up/

⁶ *Diplomat granted rare visit to Tibet*, The Australian, August 27, 2013 <http://www.theaustralian.com.au/news/world/diplomat-granted-rare-visit-to-tibet/story-e6frg6so-1226704526709>

⁷ *China must urgently address deep-rooted frustrations with human rights in Tibetan areas*, Navi Pillay, UN High Commissioner for Human Rights, November 2, 2012, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12729&LangID=E>

⁸ The cases are documented at <http://www.savetibet.org/resource-center/maps-data-fact-sheets/self-immolation-fact-sheet>

authoritarian control with associated human rights violations across Tibetan areas. A brief overview of those violations follows:⁹

- **Freedom of Expression and Opinion**

Violations of the right to freedom of expression and opinion are related directly to the ability of Tibetans to hold political views particularly for greater regional autonomy and in support of the Dalai Lama as a religious leader. Peaceful expression of such views has resulted in detention, long prison sentences, and loss of social rights. Restrictions on the publication of literature and music, including photocopying, have also increased even as state propaganda via new TV channels and village education sessions has proliferated in the wake of the self-immolations.¹⁰

Sending news abroad about the self-immolations has resulted in the arrest of several Tibetans, at least one of whom received a death sentence.¹¹ At the same time, new restrictions on the tools of communication have been imposed, including the destruction of satellite dishes and receivers.¹² Recent media reports indicate that China has completed, or nearly completed, implementation of a policy to curtail “rumours” by requiring all Tibetans to register with their real names for telephone and Internet services.¹³

- **Arbitrary detention and lack of judicial process**

The number of political detentions in Tibet has continued to rise with the total number of known political prisoners currently reported to be 988, of which 269 were recorded in 2012. An overwhelming number are held incommunicado. Sentences are often severe reflecting the serious nature of charges including ‘leaking state secrets’ and ‘endangering state security’.¹⁴

Arbitrary detention commonly targets Tibetan Buddhists. Tibet’s second highest religious leader, Panchen Lama Gendhun Choekyi Nyima, has been held without charge for the past eighteen

⁹ A comprehensive summary of human rights violations in Tibet since 2009 is provided in the formal submission made by the Canada Tibet Committee as part of an international coalition submission to the UPR secretariat. See http://www.tibet.ca/en/newsroom/news_releases/325. The full range of ESCR concerns is well-documented in a recent written submission made by the Tibet Justice Center to the UN Committee on Economic, Social and Cultural Rights’ periodic review of China in May 2013 at http://www.tibetjustice.org/reports/un/Tibet_Parallel_Report_CESCR_2014.pdf. The CTC sent background on the destruction of cultural heritage sites in Lhasa to Parks Canada in advance of the 37th session of UNESCO’s World Heritage Committee in Cambodia, June 2013 (copy available upon request). A video report by Human Rights Watch providing aerial photos of relocated villages can be viewed at <http://youtu.be/pTApyN1vaBo>

¹⁰ *Disappearance of two Tibetan songwriters and singers, OMCT fears for their safety*. World Organization Against Torture, June 21, 2013, <http://www.omct.org/urgent-campaigns/urgent-interventions/china/2013/06/d22285/>

¹¹ *China – Stop sentencing Tibetans for “inciting” immolations*, Human Rights Watch, February 1, 2013.

<http://www.hrw.org/news/2013/02/01/china-stop-sentencing-tibetans-inciting-immolations>

¹² *Satellite clampdown in Malho*, January 9, 2013, <http://www.rfa.org/english/news/tibet/satellite-dishes-01092013180134.html>

¹³ *China to monitor phones, Internet in Tibet*. Indian Express, June 19, 2013. <http://www.indianexpress.com/news/china-to-monitor-phones-and-internet-in-tibet/1131113/>

¹⁴ *Human Rights Situation in Tibet, Annual Report 2012*, Tibetan Center for Human Rights & Democracy, <http://www.scribd.com/doc/120758305/Annual-Report-TCHRD-2012>, pg. 54

years.¹⁵ In February 2012, Tibetans who had travelled to India for a religious teaching by the Dalai Lama were detained and forced to undergo re-education upon their return to Tibet.¹⁶

Other forms of arbitrary detention include house arrest and residential surveillance which imposes restrictions on movement and limits on contact with others. Individuals detained under the house arrest practice are not able to access legal procedures, nor are they actually charged with a crime. In June 2013, well-known Beijing-based Tibetan blogger Woesser and her husband were placed under house arrest, reportedly to keep them from interacting with Western journalists who might be writing about Tibet around the visit of US Ambassador Locke.¹⁷

- **Religious freedom**

In response to the self-immolations, work teams, including armed police, soldiers and Chinese officials, have been stationed inside monasteries to monitor and “re-educate” monks and nuns. In April 2011, Kirti Monastery (Ngaba) became a major focus of the campaign with armed police, soldiers and Chinese officials stationed inside the building to carry out a mandatory re-education campaign. Subsequently more than 300 monks were taken away in ten military trucks. The UN Working Group on Enforced or Involuntary Disappearances issued a statement of concern, calling upon China to provide information about the whereabouts of the monks.¹⁸

In 2012, nine of the ten Tibetan autonomous regions in China issued edicts to subordinate internal Tibetan Buddhist affairs to central government regulation, including by giving the government the power to arbitrarily remove monks and nuns from their places of worship, to limit the number of monks and nuns within each monastery and to demand political allegiance to Beijing.

In April 2013, a 24 year old monk in Chamdo Prefecture was discovered with recordings of Dalai Lama teachings and was subsequently beaten to death by Chinese police.¹⁹ In June 2013, two monks were sentenced to three years in prison for having offered prayers in remembrance of self-immolator Wangchen Norbu.²⁰

- **The Right to an Adequate Standard of Living**

¹⁵ *Canada Tibet Committee appeals for government action to secure release of Tibet's Panchen Lama*, April 25, 2013 http://www.tibet.ca/en/newsroom/news_releases/329

¹⁶ *Human Rights Situation in Tibet, Annual Report 2012*, Tibetan Center for Human Rights & Democracy, <http://www.scribd.com/doc/120758305/Annual-Report-TCHRD-2012>, pg. 47

¹⁷ *Tibetan writter Woesser again placed under house arrest*. Radio Free Asia, June 20, 2013, <http://www.rfa.org/english/news/tibet/arrest-06202013171541.html>

¹⁸ *UN expert body seriously concerned about Tibetan monks reportedly subjected to enforced disappearance*, The United Nations Working Group on Enforced or Involuntary Disappearances, June 8 2011,

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11122&LangID=E>

¹⁹ *Chinese police beat monk to death over banned cassettes*, RFA, May 14, 2013 <http://www.rfa.org/english/news/tibet/cassettes-05142013132742.html>

²⁰ *China sentences two monks for offering prayers for Tibetan self-immolator*, Phayul, June 4, 2013,

<http://www.phayul.com/news/article.aspx?article=China+sentences+two+monks+for+offering+prayers+for+Tibetan+self-immolator&id=33539>

In 2010 China invited the UN Special Rapporteur on the Right to Food to undertake a country mission. In his concluding report, published in 2012, the Rapporteur urged the Government of China: to suspend the non-voluntary resettlement of nomadic herders from their traditional lands as well as the non-voluntary relocation of other rural residents; to examine options for sustainable pasture management; and to improve education and health services in resettlement villages.²¹ China has not implemented these recommendations. Impact of the resettlement program is illustrated by China's 2010 census figures which reveal that the proportion of workers in the Tibet Autonomous Region employed in farming and herding dropped from 76 percent in 1999 to 56 percent by 2008.²²

Anecdotal reports indicate that promised employment opportunities in the newly constructed resettlement townships have not materialized, or they favour migrant workers from outside Tibetan areas who often benefit from incentives and other preferences. Social assistance allowances do not compensate resettled Tibetans for the higher cost of living in the townships which are commonly located near urban centers. The effect is to increase social marginalisation of Tibetans by removing their economic independence along with their cultural identity.

China continues to impose resettlement policies that deprive Tibetan nomadic herders and other rural residents of their land and thereby their means of subsistence which is a violation of the right to an adequate standard of living. A recent report by Human Rights Watch reveals that Tibetans have little or no say in the determination of relocation policies and compensation is inadequate.²³ These policies conflict with principles outlined in the *UN Basic Principles and Guidelines on Development-based Evictions and Displacement*.²⁴

- **Cultural Rights**

Reports from Tibet in May 2013 revealed rampant destruction of ancient sections of Lhasa, known as the Barkor, as part of an urban modernization plan. In 2004, China made formal commitments at UNESCO's World Heritage Committee to respect and protect Tibet's architectural heritage in the context of modernization, including the Barkor which is home to the Jokhang Temple, one of Tibet's pre-eminent places of worship.

In 2011, the WHC reiterated an earlier request that China submit its conservation plan for these areas for review by an advisory board. To our knowledge, no such plan has yet been submitted and yet rampant demolition is underway amid reports that the shopping mall and underground parking lot are already under construction.

²¹ *Report of the Special Rapporteur on the Right to Food, Olivier DeSchutter, Mission to China*, Human Rights Council A/HRC/19/59/ADD.1, January 2012

²² *Provincial Migration in China: Preliminary Insights from the 2010 Population Census*, Andrew Fischer, Institute of Social Studies, Erasmus University, Netherlands, 2012

²³ *End involuntary rehousing, relocation of Tibetans*, Human Rights Watch, June 26, 2013

<http://www.youtube.com/watch?v=pTApyN1vaBo&feature=youtu.be>

²⁴ A/HRC/4/18, UN Human Rights Council, http://www.ohchr.org/Documents/Issues/Housing/Guidelines_en.pdf

The destruction of centuries-old buildings in Lhasa deprives Tibetans of an important “living connection” with their cultural history and identity, while the forced displacement of residents to make way for the new shopping mall will significantly diminish Tibetan presence around the revered Jokhang Temple.²⁵ In July 2013, more than 100,000 individuals from around the world signed a petition that was submitted to UNESCO urging it to take action.²⁶ Nevertheless, the 13th session of the WHC failed to discuss the issue and no protective measures have been introduced.

CHINA’S EXTRATERRITORIAL OBLIGATIONS

A 2009 University of Toronto study entitled *Tracking GhostNet*, revealed that electronic surveillance originating from China had infiltrated the communications systems of several western governments (including Canada) as well as the exiled Tibetan government which is based in India. The GhostNet report linked the subsequent detention of a Tibetan rights activist at the Nepal-Tibet border directly to the intrusion.²⁷

Since 2009, there have been other reports documenting electronic surveillance of Tibetan diaspora groups by unidentified actors based in China including two by the Kaspersky Lab, one by ESET, and one by McAfee.²⁸ Most recently, in August 2013, Kaspersky researchers identified a “water-hole” style attack on the website of the Dalai Lama. The attack sought to identify Chinese readers of the site. According to a Kaspersky spokesperson, “The likely actors behind the sustained campaign against Tibetan sites are Chinese speaking, as in many cases we have seen log files written in Chinese.”²⁹

A number of other reports, including the well-known Mandiant report, have traced cyber-espionage in various countries directly to the Chinese military.³⁰ These reports point to the Tibetan diaspora and its support community as a primary target of China’s vast network of electronic surveillance.

In April 2013, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression issued a report warning that the growth of online surveillance of electronic communications including e-mail, and remote monitoring of individuals’ movements and communications using mobile devices, poses a grave threat to the right to free

²⁵ *Canada Tibet Committee urges Canadian Commission for UNESCO - Stop the destruction of Lhasa’s Barkhor*, May 30, 2013, http://www.tibet.ca/en/newsroom/news_releases/331. Full issue brief available upon request.

²⁶ *Help stop the destruction of Lhasa*. <http://www.change.org/en-GB/petitions/help-stop-the-destruction-of-my-home-lhasa-tibet>

²⁷ *Tracking GhostNet: Investigating a cyber-espionage network*, University of Toronto (Citizen Lab), 2009: <http://www.inforwar-monitor.net/2009/09/tracking-ghostnet-investigating-a-cyber-espionage-network/>

²⁸ *Net Traveler*, Kaspersky Lab, June 2013 <http://www.securelist.com/en/downloads/vlpdfs/kaspersky-the-net-traveler-part1-final.pdf>; *Researchers find unusual malware targeting Tibetans*: ESET, May 27, 2013;

<http://www.pcworld.com/article/2039747/researchers-find-unusual-malware-targeting-tibetan-users-in-cyberespionage-operation.html>; *Android Trojan Found in Targeted Attack*, Kaspersky Lab, 2013,

http://www.kaspersky.com/about/news/virus/2013/Kaspersky_Lab_identifies_targeted_attack_utilizing_malware_for_Android_devices; *Operation Shady Rat*, McAfee 2010, <http://noramintel.com/wp-content/uploads/2011/08/McAfee-wp-operation-shady-rat.pdf>

²⁹ Dalai Lama’s website hacked and infected, BBC, August, 13, 2013 <http://www.bbc.co.uk/news/technology-23680686>

³⁰ *Cyber Incidents Attributed to China*, Laura Saporito and James A. Lewis, Center for Strategic and International Studies http://csis.org/files/publication/130311_Chinese_hacking.pdf

expression and the right to privacy. The Rapporteur also cautioned that the situation “raises serious concern with regard to the extra-territorial commission of human rights violations and the inability of individuals to know that they might be subject to foreign surveillance, challenge decisions with respect to foreign surveillance, or seek remedies.”³¹

The overwhelming amount of examples pointing to electronic surveillance carried out by the Government of China on Tibetan human rights defenders living outside its jurisdiction should be raised within the UPR process as a breach of China’s extraterritorial human rights obligations.

RECOMMENDATIONS

Given the deteriorating human rights situation in Tibet since China’s first UPR, characterized so starkly by 121 self-immolations, the Canada Tibet Committee requests that the Government of Canada give prominence to the situation in Tibet as a matter of urgency when it intervenes at China’s second UPR in October 2013.

1. Canada should cite the relocation of Tibetan nomadic communities and the associated economic marginalisation of those communities as evidence that the Russian Federation’s recommendation regarding sufficient investment in development has not been implemented.
 - Refer to recommendations made by the UN Special Rapporteur on the Right to Food following his country mission to China, particularly: suspension of the non-voluntary resettlement of nomadic herders from their traditional lands; improvement of education and health services in the resettlement villages.
 - Note that non-voluntary resettlement violates the principles of consultation, participation, legal recourse and protection against violence or intimidation as articulated in the UN’s *Human Rights Guidelines on Development-Based Evictions and Displacement*.
2. Canada should question China about steps taken to implement Sri Lanka’s recommendation to share information on regional autonomy.
 - Seek clarification about laws and policies related to the autonomous management of religious affairs and suggest that the UN Special Rapporteur on Freedom of Religion and Belief, Prof. Heiner Bielefeldt, be permitted to carry out a country mission to China. The mission should specifically include Tibetan areas and the Rapporteur should be permitted to meet with the Panchen Lama Gendhun Choekyi Nyima during his visit.
 - Seek clarification regarding regional autonomy laws that protect access to traditional land in autonomous regions of China. Ask specifically about relocation policies as they relate to fair or market value compensation for land given up by farmers and nomadic herders as part of the settlement scheme in Tibet.

³¹ Report of the Special Rapporteur on promotion and protection of the right to freedom of opinion and expression, HRC, April 2013, A.HRC.23.40, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.40_EN.pdf

3. Based on Saudi Arabia's recommendation that China welcome Special Rapporteurs working on economic, social and cultural rights, Canada should suggest that China extend an invitation to the Special Rapporteur on Cultural Rights, Ms. Farida Shaheed and that Ms. Shaheed be invited to visit Tibet.
4. Canada should request information about why China has not yet welcomed a visit by the High Commissioner for Human Rights, pursuant to the recommendation made by Canada and accepted by China during the 2009 review.
5. Canada should consider raising the issue of extraterritorial obligations in light of credible evidence that the Government of China has violated or been complicit in the violation of the rights to free expression and to privacy of Tibetans and their support community outside of China, including in Canada.
6. Canada should suggest that China cooperate with the Office of the High Commissioner for Human Rights to implement best practice procedures related to the UPR including by developing a national UPR implementation plan, convening an inter-ministerial implementation committee, and by submitting regular progress reports to the Human Rights Council.

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