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International Campaign for Tibet suggested List of Issues Country Report Task Force on Nepal, Human Rights Committee.

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I. Reporting Organization: International Campaign for Tibet

International Campaign for Tibet (ICT) is a human rights monitoring and advocacy organization. It was founded in 1988 in Washington, DC and now has offices in Amsterdam, Berlin, Brussels, and London.

II. Issue Summary:

a. Subjecting Tibetans to cruel, inhuman or degrading treatment, (article 7); suppression of the right to liberty and security of person (article 9); suppression of freedom of association (article 22) and not extending equal protection of the law (article 26).

On June 21, 2011 hundreds of Tibetans in Kathmandu held a peaceful vigil chanting prayers and carrying Tibetan and Nepali national flags to express solidarity with those Tibetans living under the security crackdown in Tibet. After the vigil 12 Tibetans were detained under the Public Offences Act.¹

They were held in poor conditions in a basement cell in the Boudha area. Among them was a 39-year old Tibetan man (whose name is known to ICT) who was beaten with a bamboo baton and accused of being the main organizer of “anti-China” activities in Kathmandu. In addition to physical abuse, he was coerced into signing a confession and then locked overnight without drinking water in a bathroom at the Boudhanath police station. He told ICT that the Deputy Superintendent of Police (DSP) of the Boudhanath police station called him to his office, where there were another six or seven police officers, and accused him of organizing the candlelight vigil that evening. The Tibetan told him that he took part in the vigil, but that he was not the organizer. The DSP then got angry and slapped him in the face several times, dragged him by the hair onto the office floor, and accused him of being the main “Free Tibet” activist in Kathmandu. Other police officers recorded the questioning and beating on video. He told ICT: “Even though I was not an organizer of the vigil, he [the DSP] told me: ‘If you don’t confess, I will kill you tonight.’ Then he beat me with a bamboo stick. He hit me all over my body, but mostly on my legs. [Interviewee showed the scars on his legs. Even though it had been three weeks, the scars were still visible]. Then the DSP hit my knees and my stomach a few times while pulling my hair. I thought he was going to kill me, and then I confessed and said I was the organizer. Then he punched my mouth and locked me in the toilet with no drinking water or anything until 8:00 a.m. the next day.”²

Earlier on March 10, 2011 Nepali riot police used force to prevent Tibetans from commemorating the 52nd anniversary of Tibetan National Uprising Day. Nepal police can be seen kicking and beating unarmed Tibetan demonstrators who took to the streets in video posted on the website of the UK’s Telegraph newspaper.³ The Telegraph cited local media reports that at least 15 people were

¹ ‘12 Free Tibet activists in police net,’ The Himalayan Times, June 24, 2011, <http://www.thehimalayantimes.com/rssReference.php?headline=12+Free+Tibet+activists+in+police+net&NewsID=292941>. Accessed April 25, 2013.

² ‘Nepal Supreme Court order release of 12 Tibetans,’ International Campaign for Tibet, July 13, 2011, <http://www.savetibet.org/media-center/ict-news-reports/nepal-supreme-court-orders-release-12-tibetans>. Accessed April 25, 2013.

³ ‘Police clash with pro-Tibet protesters in Nepal,’ March 10, 2011, <http://www.telegraph.co.uk/news/worldnews/asia/tibet/8373152/Police-clash-with-pro-Tibet-protesters-in-Nepal.html>. Accessed April 25, 2013.

detained and 20 injured in the day's altercations. A Tibetan residing in Kathmandu told ICT that the environment was "tense," adding that "people were incredibly nervous; it was terrifying." In an additional incident, several Tibetans, including a monk, were witnessed being beaten severely by Nepali people, not police, near the Boudha stupa.

On August 15, Nepali security officials invoked the Public Offenses Act to justify the detention of eight Tibetans prior to the August 16 arrival of the highest level official Chinese delegation to visit Nepal in several years, lead by Politburo member Zhou Yongkang. The targeting of the eight Tibetans, six of whom were detained from Boudha during the evening of August 15, while the other two were detained from the Jawalakhel Tibetan refugee settlement in Kathmandu in the morning of August 16, provoked a number of senior Tibetans in the community to go into hiding. Fear spread throughout the Tibetan community as reports emerged that police in Kathmandu were attempting to track down Tibetans known to have taken part in peaceful protests in 2008.⁴

Senior members of the Tibetan community received phone calls from authorities the day before Zhou Yongkang's visit, warning that they risked arrest if they did not cooperate with the police.⁵

On November 1, 2011, Nepal police detained 58 people after the Tibetan community in Bhanimandal gathered for a prayer service to commemorate the Tibetans who had self-immolated in Tibet.⁶ A spokesperson for the Metropolitan Police Commissioner's Office later attempted to justify the detentions by saying that the prayer gathering was a ruse for holding an "anti-China" protest, and violated Nepal's 'one-China' policy. The detentions coincided with a November 1-6 visit to Nepal by Deputy Chairman of the Tibet Autonomous Region, Wu Yingjie.⁷

The possibility of police intervention and the looming threat of detention that exists during every Tibetan community gathering (public or private) looms large. According to U.S. State Department findings, overall in 2011 the Nepal "government limited freedom of assembly for the Tibetan community," and that "the assembly of Tibetans often led to strict restrictions that limited cultural freedoms."⁸

As the UN is well aware, Article 7 is an absolute right. The Human Rights Committee affirmed this right saying, "that even in situations of public emergency such as are envisaged by Article 4 (1) this provision is non-derogable under Article 4 (2). Its purpose is to protect the integrity and dignity of the individual."⁹

⁴ 'China's heavy hand in Kathmandu: Tibetans detained in advance of Zhou Yongkang visit,' International Campaign for Tibet, August 17, 2011, <http://www.savetibet.org/media-center/ict-news-reports/chinas-heavy-hand-kathmandu-tibetans-detained-advance-zho-yongkang-visit>. Accessed April 25, 2013.

⁵ Ibid.

⁶ 'Police foil Tibetan prayer bid, 58 held,' The Himalayan Times, November 1, 2011, <http://thehimalayantimes.com/fullTodays.php?headline=Police+foil+Tibetan+prayer+bid%26sbquo%3B+58+held&NewsID=307671>. Accessed April 25, 2013.

⁷ Ibid.

⁸ Country reports on Human Rights Practices for 2011 – Nepal, U.S. Department of State, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186471. Accessed April 25, 2013.

⁹ General Comment No. 07: Torture or cruel, inhuman or degrading treatment or punishment (Art. 7) : . 05/30/1982. Para 1.

In terms of beatings the UN Human Rights Committee affirms that “Article 9 recognizes and protects both liberty of person and security of person. Liberty of person concerns freedom from confinement of the body. Security of person concerns freedom from injury to the body, or bodily integrity.”¹⁰ Draft General Comment 3 goes on to say “Officials of States parties violate the right to personal security when they unjustifiably inflict bodily injury. . . and they should also protect their populations against excessive use of force in law enforcement . . .”¹¹

In terms of Arbitrary Detention the Draft General Comment (GC) 35 says, “[T]he notion of “arbitrariness” is not to be equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law. Remand in custody must be reasonable and necessary in all the circumstances.”¹² Draft GC 35 also explains “Arrest or detention as punishment for exercising certain rights protected by the Covenant may also be arbitrary, including . . . freedom of assembly (Article 21) . . .”¹³

Therefore it is not enough that the detentions happen under the Public Offences Act. The detentions need to have been necessary and proportionate to the aim and needed to be predictable. Also, it is clear that Tibetans were targeted during visits by Chinese delegations and were held for their prayer services, which is also against Article 26 of equal protection under the law.

The Public Offences Act permits detention without charge for as long as 25 days with extensions. This act covers crimes such as disturbing the peace, vandalism, rioting, and fighting. The Annual US Human Rights Report says “Human rights monitors expressed concern that the act vests too much discretionary power in the CDO [Chief District Officer].”¹⁴

b. Suppression of practice of religious rites Article 18 (freedom of religion); and Article 2 (legal obligations under the covenant).

On July 6, 2011, hundreds of Nepal police in riot gear were stationed in various areas of Kathmandu to prevent Tibetans from celebrating the Dalai Lama’s birthday, a day of great significance in the Tibetan Buddhist religion. Nepali officials had refused to give permission for Tibetans to gather publicly for the birthday celebrations, instead ordering that the birthday should be observed only in

¹⁰ Draft General comment No. 35 Article 9: Liberty and security of person. Human Rights Committee 107th session Geneva, 11 – 28 March 2013 Item 5 of the provisional agenda Organizational and other matters, including the adoption of the report of the pre-sessional working group on individual communications. Para. 3.

¹¹ Ibid. Para. 8

¹² Ibid. Para 13.

¹³ Ibid. Para 17

¹⁴ Country reports on Human Rights Practices for 2011 – Nepal, U.S. Department of State, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186471 Accessed: April 24, 2013.

people's homes. Nepal police confiscated pictures of the Dalai Lama and a "Happy Birthday" banner hanging inside a walled courtyard at Samten Ling monastery in the Boudha area of Kathmandu.¹⁵

Nearly 300 police in riot gear prevented access to Namgyal Middle School where the community celebration was to be held. Three Tibetans were detained by police for burning incense and throwing barley flour (tsampa) into the air, both ritual acts of celebration and offering. Several people were injured when some 50 Tibetans attempted to climb over a two-meter wall with barbed wire in order to avoid the blocked entranceways. An ICT monitor in Kathmandu said: "The atmosphere was tense, with many elderly Tibetans crying because they could not get into the celebration, and arguing with the police."¹⁶ Virtually all of the several hundred Tibetans and Himalayan peoples who had gathered for the birthday event were forced to return home by police. Three Tibetan minors were injured when the police hit out at the crowd with bamboo sticks. Earlier the day before, several hundred Nepali police had been deployed in Boudhanath where many Tibetans live by the main stupa. In 2010, police set up checkpoints at different locations stopping Tibetans heading for the birthday celebrations. In 2011, however, restrictions were meted out verbally to Nepali human rights monitors as well as to Tibetan community leaders who had submitted a written request for permission to hold the birthday event. Local authorities said that no mass gathering and no pictures of the Dalai Lama would be allowed.

In a separate incident in 2013, Drupchen Tsering (also known as Druptse), a Tibetan monk who fled Tibet and reached Nepal in January, self immolated in protest on February 13, near the Boudha stupa in Kathmandu. The 25-year old Tibetan monk was taken to Tribhuvan University Teaching Hospital, where he died later that day.

According to Nepali officials, Nepali law states that the body of the deceased can only be released to a family member and must be done so within 35 days. As a Tibetan monk fleeing political and religious persecution in Tibet and who was afforded asylee protection under the auspices of the Office of the United Nations High Commissioner for Refugees, Drupchen had recently arrived in Nepal and did not have any family in country. Subsequently, the Nepali government refused to release Drupchen's body to the Tibetan community, including members of the Tibetan Buddhist monastic community, upon their request. However, while members of the Tibetan community living in Nepal requested that they be allowed to conduct prayers over the body in the hospital or anywhere the Nepali authorities would not allow it, Drupchen Tsering was denied funeral rites. This action was taken despite public acknowledgement by Nepali authorities that Drupchen was a practicing Tibetan Buddhist monk.¹⁷ Nepali authorities did not provide a reason for this decision, though the decision was made "at the highest levels." Nepali officials opted to have Drupchen's body taken to a cremation ground by several Nepali youths and police at around midnight on Monday (March 25), where it was unceremoniously cremated.

¹⁵ 'Nepal stops Dalai Lama birthday celebrations in Kathmandu,' International Campaign for Tibet, July 7, 2011, <http://www.savetibet.org/media-center/ict-press-releases/nepal-stops-dalai-lama-birthday-celebrations-kathmandu>. Accessed April 25, 2013.

¹⁶ Ibid.

¹⁷ An unnamed police official quoted: "But, we did not hand over the body to them after their authenticity and kinship with the monk could not be established." See: 'Monk's hush-hush cremation slammed,' The Himalayan Times, April 1, 2013, <http://www.thehimalayantimes.com/fullNews.php?headline=Monk%27s+hush-hush+cremation+slammed&NewsID=371254>. Accessed April 25, 2013.

The denial of the practice of religious rites violates Nepal's obligations under Article 18.1 of the International Covenant of Civil and Political Rights (ICCPR) the freedom of religion and either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching General Comment 22 explains that "The freedom to manifest religion . . . encompasses a broad range of acts. The concept of worship extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including . . . the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest."¹⁸ In Tibetan Buddhism funeral rites are an integral part of religious practice. General Comment 22 says that the "observance and practice of religion . . . may include . . . participation in rituals associated with certain stages of life."¹⁹

While the manifestation of one's religion is not an absolute right but can be restricted, the Human Rights Committee elaborates that the restrictions must be imposed by law and must be applied in a manner which does not vitiate from the rights guaranteed in Article 18. The Committee also says "State parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in Articles 2, 3 and 26."²⁰

Under Article 2.1 Nepal has legal obligation to protect all rights in the Covenant "to all individuals within its territory" and "without distinction of any kind."²¹ The Human Rights Committee elaborates that the State must demonstrate necessity and only take measures that are proportionate to the pursuance of legitimate aims of the covenant when it is imposing any restrictions.²²

III. Other UN Body Recommendations

- Universal Periodic Review of Nepal:
Nepal accepted recommendations to "make further efforts to overcome the difficult issue of discrimination on the grounds of religions . . . ; continue its efforts to overcome discrimination and social discrimination on the grounds of religion."²³
- The UN declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981:
Reiterates Article 18 of the ICCPR²⁴ and further states that "all states shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the

¹⁸ General Comment 22: The right of freedom of thought, conscience and religion (Art.18). 07/30/1993. CCPR/C/21/Rev.1/Add.4. para 4.

¹⁹ Ibid

²⁰ Ibid. Para 8

²¹ Article 2.1

²² General Comment No. 31 Nature of the General Legal Obligation Imposed on States Parties to the Covenant 05/26/2004 CCPR/C/21/Rev.1/Add.13.

²³ Para 106.22. Report of the Working Group on the Universal Periodic Review Nepal March 8 2011

²⁴ Article 1 UN declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief G.A. res. 36/55, 36 U.N. GAOR Supp. (No 51) at 171, U.N Doc. A/36/684 (1981).

recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.”²⁵

IV. Recommended Questions

- What are the effective measures that the Nepali government has taken to investigate and redress any complaints of ill treatment by the Nepali police?
- What are the effective remedies within the Nepali legal system available for alleged Tibetan victims?
- What are the measures that the Nepali government has taken to ensure that the Tibetan community is able to conduct their cultural and religious practices free from fear of detention or harassment?
- What alternative measures (other than detention) have the Nepali government put in place to ensure that the Tibetan community can have the freedom of association and the freedom to practice their religion while at the same time maintaining public order?
- What measures were taken to consult with representatives of the Tibetan Buddhist community and ensure that ICCPR Article 18 rights were complied with in order to carry out the last rites of the monk Drupchen Tsering?
- Does Nepal have any plans to take action to create favorable conditions for person belonging to the Tibetan Buddhist Religion either settled in Nepal or awaiting resettlement elsewhere to preserve and further develop their religious community life and identity?

IV. Suggested Recommendations

- Introduce legislation to provide criminal penalties for acts of torture and other ill treatment.
- Remove all restrictions placed on the Tibetan community’s right to peaceful protest.
- To ensure that no person is arrested for peacefully demonstrating their right to freedom of association, religion, assembly and expression, and that all arrests are carried out in the accordance with International Human Rights Standards.
- The Special Rapporteur on Religious Freedom request to visit Nepal.

²⁵ Ibid. Article 4.1