



Congressional-Executive Commission on China

The Execution of Lobsang Dondrub and the Case Against Tenzin Deleg The Law, the Courts, and the Debate on Legality

Death sentences are to be approved by the Supreme People's Court.

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.

PRC Criminal Procedure Law, Articles 199 and 202

1. INTRODUCTION

On January 26, 2003 the official *Xinhua New Agency* website reported that PRC authorities had executed Tibetan Lobsang Dondrub (Chinese: Luorang Dengzhu) that day.¹ Although executions are commonplace in the PRC, three issues make Lobsang Dondrub's case particularly disturbing:

- The execution of Lobsang Dondrub was carried out in haste and may have profound implications for any retrial of Tenzin Deleg Rinpoche² (Chinese: A'an Zhaxi), a Tibetan religious leader currently under sentence of death for the same crimes attributed to Lobsang Dondrub;
- Lobsang Dondrub's case was carried out in a manner which may have violated the laws of the People's Republic of China;
- PRC authorities had assured a U.S. government delegation headed by Lorne Craner, Assistant Secretary of State for Democracy, Human Rights and Labor, and

¹ The execution is believed to have taken place in Dartsedo (Chinese: Kangding), the capital of Kardze Tibetan Autonomous Prefecture (Chinese: Ganzi TAP), where Lobsang Dondrub's initial trial and sentencing took place a few weeks earlier.

² "Rinpoche" is an honorific term accorded a highly respected teacher of Tibetan Buddhism. The term often, but not always, implies that the teacher is a reincarnate lama.

including Assistant Attorney-General Ralph Boyd³ and Ambassador-at-Large for International Religious Freedom John Hanford, that the Supreme People's Court would undertake a "lengthy" judicial review of Lobsang Dondrub's death sentence. They failed to fulfill this commitment. Instead PRC authorities executed Lobsang Dondrub a few hours after his death sentence was approved by a Sunday session of the Sichuan Province Higher People's Court.⁴

2. BASIC BACKGROUND ON THE EXECUTION OF LOBSANG DONDRUB AND THE CASE AGAINST TENZIN DELEG

2.1. The Background Acknowledged By Official Chinese Sources

On April 3, 2002 an explosion occurred in central Chengdu, the capital of Sichuan Province, causing at least 12 injuries. Lobsang Dondrub was detained "promptly" while "fleeing the scene."⁵ The detention of Tenzin Deleg took place later.⁶ The Chengdu blast was the last in a series of explosions which began in January 2001 and resulted in one death.⁷

PRC authorities claim that both men confessed to the charges.⁸ According to the Director of the Ganzi TAP judiciary Tenzin Deleg "accepted his responsibility in five of the six explosions."⁹ *Xinhua* reported that Tenzin Deleg hired two lawyers to represent him in the trial, while the court appointed two lawyers to represent Lobsang Dondrub after he "did not entrust a counsel for his defense."¹⁰ The Ganzi People's Intermediate Court held a closed trial on November 29, 2002, and on December 2, 2002 sentenced Lobsang Dondrub to death, and Tenzin Deleg to death with a two year reprieve, for their role in the bombings.¹¹ That court also found Lobsang Dondrub guilty of "inciting the split of the country" and illegally possessing firearms and ammunition, and Tenzin Deleg guilty of incitement to separatism.¹²

On December 16-17, 2002, PRC authorities assured a U.S. government delegation that the Supreme People's Court would review Lobsang Dondrub's and Tenzin Deleg's death sentences if and when an appeals hearing reaffirmed the original verdicts and sentences. Lobsang

³ Assistant Attorney General Boyd heads the Civil Rights Division of the Department of Justice.

⁴ Reuters, "U.S. Concerned About Execution of Tibetan," January 28, 2003. "A court official in Sichuan told Reuters the execution took place Sunday after the top court in the western province rejected Tenzin Deleg Rinpoche's appeal and also approved the death sentence on [Lobsang Dondrub]."

⁵ *Zhongxin Sichuan Wang*, December 5, 2002.

⁶ *Zhongguo Xinwen Wang* reporting *Sichuan Ribao*: no date is provided for Tenzin Deleg's detention, but it followed a "thorough investigation" which "discovered that [Lobsang Dondrub] had conspired with [Tenzin Deleg] . . . to cause a series of explosions"

⁷ *Xinhua*, "Two Tibetans sentenced to Death in Southwest China," January 26, 2003.

⁸ *Xinhua*, "Two Tibetans sentenced to Death in Southwest China," January 26, 2003.

⁹ Radio Free Asia, "Tibetans Were Denied Lawyers in Bomb Trial - Chinese Judge Says Men Confessed to Bombings," December 5, 2002.

¹⁰ *Xinhua*, "Two Tibetans sentenced to Death in Southwest China," January 26, 2003.

¹¹ *Xinhua*, "Two Tibetans sentenced to Death in Southwest China," January 26, 2003.

¹² *Xinhua*, "Two Tibetans sentenced to Death in Southwest China," January 26, 2003.

Dondrub's sentence was approved by the Sichuan Province Higher People's Court on Sunday, January 26. He was executed that same day, without the PRC government having met its commitment to the U.S. delegation.

2.2. Additional Background According to Unofficial Sources

Tenzin Deleg and at least four other monks were taken into detention on April 7, 2002, four days after Lobsang Dondrub's detention. Shortly before his detention, Tenzin Deleg learned that police were trying to link him to Lobsang Dondrub, a development he considered as ominous.¹³

Published and confidential reports allege that PRC authorities denied both men access to visitors and legal counsel,¹⁴ and subjected them to coercive methods of interrogation including beating and torture during the "investigation" phase of detention at the Kangding Police Detention Center. Tenzin Deleg maintains that he did not confess to any of the charges against him;¹⁵ unofficial sources have maintained that Lobsang Dondrub refused to confess, but no independent confirmation is available to verify this. During Tenzin Deleg's sentencing, which was attended by two of his family members, he reportedly declared the trial unfair, rejected all charges against him, and proclaimed his innocence before being removed from the court.¹⁶ Tenzin Deleg appealed his conviction; Lobsang Dondrub is not known to have done so.¹⁷

During the ensuing weeks police apprehended Tibetan residents of Nyagchu County who were raising funds to pay for Tenzin Deleg's legal defense or who were otherwise seen as being closely linked to Tenzin Deleg. In addition to Lobsang Dondrub, Tenzin Deleg and the four monks detained with them, at least six other Tibetans have been reported detained, bringing the total to at least twelve.¹⁸

The Tibetan separatist movement has been overwhelmingly non-violent, and this is the first case in the post-Mao era in which Tibetans have been convicted of separatism as well as bombing. Based on conversations with provincial officials, it is clear that the PRC government is trying to equate separatism and terrorism.

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

¹³ Radio Free Asia, "Tibetan Monk Protests Innocence in Smuggled Audiotape," January 21, 2003.

¹⁴ Radio Free Asia, "Tibetans Were Denied Lawyers in Bomb Trial - Chinese Judge Says Men Confessed to Bombings," December 5, 2002.

¹⁵ Radio Free Asia, "Tibetan Monk Protests Innocence in Smuggled Audiotape," January 21, 2003.

¹⁶ Radio Free Asia, "Tibetans Were Denied Lawyers in Bomb Trial - Chinese Judge Says Men Confessed to Bombings," December 5, 2002.

¹⁷ No reports mention an appeal by Lobsang Dondrub, except for one by the International Campaign for Tibet (ICT) on January 21, 2003, which said "both men are appealing".

¹⁸ Tibetan Centre for Human Rights and Democracy (TCHRD): "April Human Rights Update"; "News Brief," August 2, 2002. ICT reported on January 21, 2002 that at least six people, including Tenzin Deleg, are still in detention.

between the explosions and Lobsang Dondrub or Tenzin Deleg, or what evidence would support the existence of any conspiracy between the two men.

3. WILL LOBSANG DONDRUB'S EXECUTION FRUSTRATE TENZIN DELEG'S ABILITY TO RECEIVE A FAIR RETRIAL?

According to Tenzin Deleg, two Beijing officials visited him on January 7-8 and assured him that his case would be retried in the Sichuan Higher People's Court.¹⁹ Several important issues are relevant to this retrial, for example the link between Lobsang Dondrub and Tenzin Deleg, any evidence which characterizes that link, and the manner in which that evidence was obtained. All these are matters which Lobsang Dondrub could have illuminated, had PRC authorities not executed him mere hours after they rejected his appeal.

Unofficial reports contend that the real complaint PRC authorities have against Tenzin Deleg may be his years of religious and social activism, and his stubborn devotion to the Dalai Lama. One piece of evidence that supports this contention is that, even though Lobsang Dondrub was accused of copying pro-independence leaflets and scattering them at each blast site, Tenzin Deleg's sentence for "incitement to split the country" was the longer of the two, 14 years as compared to 12.²⁰

PRC authorities have not provided any evidence that Tenzin Deleg has engaged in any activities that violate PRC law. Although Tenzin Deleg 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 (or bombing). Tibet Information Network (TIN) has monitored Tibetan political protest and imprisonment since 1988 and has not received any report of a political incident or detention at any facility associated with Tenzin Deleg.

Given the lack of hard evidence to support claims that Tenzin Deleg engaged in illegal conduct, PRC authorities may have relied upon other sources of information. It is here that Lobsang Dondrub enters the picture. Although we know little about Lobsang Dondrub, we do know that he was related to Tenzin Deleg, and that he had tried to live as a monk in Tenzin Deleg's monastery. We also know that Tenzin Deleg himself expelled Lobsang Dondrub from the monastery. A confidential and unconfirmed report explains (with notable vagueness) that Lobsang Dondrub was banished for misconduct including engaging in unacceptable business activities.²¹ The same confidential and unconfirmed report says that Lobsang Dondrub departed amicably. Nevertheless, expulsions from monasteries are uncommon and Tibetans, particularly those in rural areas where residents generally maintain a more traditional lifestyle, view them as a serious matter.

¹⁹ Radio Free Asia, "Tibetan Monk Protests Innocence in Smuggled Audiotape," January 21, 2003.

²⁰ *Xinhua*, "Two Tibetans sentenced to Death in Southwest China," January 26, 2003.

²¹ The date of the expulsion is unavailable, though it could have been as long as several years ago.

The expulsion may attain special significance when considered in the context of missing information; for example: whether the “business” involved financial transactions conducted on behalf of the monastery or Tenzin Deleg; whether Lobsang Dondrub’s business or financial activity attracted the interest of interrogators as they sought to link the men; whether, perhaps under painful duress, Lobsang Dondrub may have implicated the man who expelled him; whether the two men maintained any relationship after the expulsion; or how they viewed one another.

In addition to the expulsion and all the unanswered questions, there are two pieces of evidence which indicate that PRC authorities may have relied upon Lobsang Dondrub to build their case against Tenzin Deleg. First was a statement by the Director of the Ganzi TAP judiciary, in which he implied that PRC authorities believe there was a conspiracy between Lobsang Dondrub and Tenzin Deleg. Director Zhao told Radio Free Asia, “All these bombs were works of [Lobsang Dondrub] and all the expenses were paid by [Tenzin Deleg].”²² The second is an extraordinary tape recording Tenzin Deleg made in his jail cell on January 18:

Around that time, one of my friends called me and asked if [Lobsang Dondrub] was my relative. Then I became suspicious that something serious was going on. When I heard about the explosions and [Lobsang Dondrub], I suspected that I might be wrongly accused and arrested—that I might become a scapegoat.²³

Another recent and disturbing development is that the January 26 *Xinhua* report stated that the Higher People’s Court hearing in Chengdu was closed “because some of the defendants’ criminal acts were related to state secrets.” This fact was not reported in the Chinese versions of the *Xinhua* report, only in the English version, and no previous PRC news reports had mentioned that the cases involved state secrets. Now that PRC authorities have invoked laws concerning state secrets, they may keep the curtain drawn on Tenzin Deleg’s case.

All of this, as well as additional information provided in the chronology attached as Appendix 1 to this memorandum, suggests that the rush to execute Lobsang Dondrub hours after the Sichuan Higher People’s Court approved his death sentence, may have a profound impact on Tenzin Deleg’s ability to receive a fair retrial. Tenzin Deleg now faces the prospect of a closed retrial in front of the same Higher People’s Court which ordered the execution of his most crucial defense witness on the same day it denied Tenzin Deleg’s original appeal.

4. THE DEBATE OVER WHETHER LOBSANG DONDRUB’S EXECUTION VIOLATED PRC LAW

4.1. PRC Law and the “Xiafang” System

PRC law unequivocally requires that all death sentences (other than those which are commuted for two years) must be approved by the Supreme People’s Court:

²² Radio Free Asia, “Tibetans Were Denied Lawyers in Bomb Trial - Chinese Judge Says Men Confessed to Bombings,” December 5, 2002.

²³ Radio Free Asia, “Tibetan Monk Protests Innocence in Smuggled Audiotape,” January 21, 2003

Except for judgments 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 suspension of execution may be decided or approved by a high people's court.²⁴

PRC Criminal Law, Article 48

Death sentences are to be approved by the Supreme People's Court.

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.²⁵

PRC Criminal Procedure Law, Articles 199 and 202

Currently, however, the Supreme People's Court employs a mechanism known as *xiafang* ("send down") to shift authority for approving certain death sentences to a lower level.²⁶ The history of the *xiafang* system goes back to February 1980, when the Standing Committee of the National People's Congress issued a decision requiring the Supreme People's Court to assign to the Higher People's Courts its authority to review and approve death penalty sentences in cases of murder, robbery, rape, arson and other crimes which severely jeopardized public security.²⁷ In 1981, the Standing Committee of the National People's Congress issued its *Decision Regarding Certain Issues with Death Penalty Case Review*, which stated that from 1981 through 1983, it would not be necessary to report death penalty sentences to the Supreme People's Court for review for crimes of murder, robbery, rape, bombing, arson, poisoning, interfering with the water supply or damaging communication, power or other facilities.

The foregoing decisions expired in 1983, and the *xiafang* system as currently implemented is based upon three documents: 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 Authorizing Higher People's Courts and People's Liberation Army Military Affairs Courts to Review and Approve Certain Death Penalty Cases* (the "1997 Notice").

As originally enacted in 1979, the Organic Law required that the Supreme People's Court review and approve all death sentences (other than those imposed by that Court). But in 1983 it was amended to provide the following caveat:

The Supreme People's Court may, when it deems it necessary, authorize higher people's courts of provinces, autonomous regions, and municipalities directly under the Central Government to exercise the authority to approve cases involving the imposition of death

²⁴ Translation: Charles D. Paglee, Chinalaw Web, <http://www.qis.net/chinalaw/prclaw60.htm>.

²⁵ Translation: Foreign Broadcast Information Service.

²⁶ Specifically, the provincial, autonomous region and independent municipality Higher People's Courts and People's Liberation Army Military Affairs Courts.

²⁷ *Southern Weekend*, "Who will Exercise the Power of Death Penalty Review?", Guo Guangdong, , July 18, 2002.

sentences for homicide, rape, robbery, causing explosions and others gravely endangering public security and disrupting social order.²⁸

In that year, the Supreme People's Court also issued the 1983 Notice, which entrusted to the provincial, autonomous region and independent municipality Higher People's Courts and People's Liberation Army Military Affairs Courts the right to exercise the authority to review and approve death penalty sentences for murder and other crimes that seriously jeopardize public security and social order.

The timing of these two directives was not accidental: the stated purpose for initiating the *xiafang* system was to facilitate accelerated rates of execution during China's first, and most brutal, "Strike Hard" campaign (*yanda*).²⁹ An Amnesty International report refers to the many thousands of executions during the 1983 campaign as "a byword in Chinese legal circles for the worst abuses of the legal system."

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 (a complete translation of which is attached as Appendix 2) reaffirmed the *xiafang* principles established in the Organic Law and the 1983 Notice, but expanded the range of offenses 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."

4.2. The Debate Within China on the Legality of the "Xiafang" System

During the past year many legal practitioners and scholars in China have questioned the legitimacy of the *xiafang* system. To quote a Higher People's Court judge: "[r]eview procedures were prescribed in the legislative process, but the Supreme People's Court's entrusting the provincial level Higher People's Courts does not, from a structural perspective, comport with these procedures."³⁰

This debate began in July of last year when a lawyer was able to avert his client's death by persuading a Supreme People's Court judge to call the official supervising the execution on his cell phone just four minutes before the execution was to take place.³¹ The incident sparked nationwide media coverage and debate about the review and approval process for death penalty cases. One article featured analysis by five legal experts from three Chinese universities: Beijing University Law School, People's University Law School, and China University of

²⁸ Article 13. Translation: http://www.novexc.com/organic_law.html.

²⁹ See 1983 Notice: "In an effort to severely punish in a timely manner those villainous and wicked criminal elements who jeopardized public security and social order"

³⁰ "Understanding China's Death Penalty Review System by Looking at the 'Hold the Execution!' Case," Zhuang Shan, August 5, 2002; from the Supreme People's Court website: http://www.rmfb.com/public/detail.php?id=8062&k_title

³¹ *Zhong Guo Jiaoyu Bao*, "The 'Hold the Execution!' Affair: Cause for Joy, Cause for Worry," Yang Yiyou, July 26, 2002.

Political Science and Law. They were “unanimous in their belief that the biggest problem exposed by this case is the fact that the death penalty review system, as currently implemented, exists in name only.”³²

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. They have also pointed out five reasons why this conflict should be resolved in favor of the more centralized and unified review called for under the Criminal Procedure Law.

First, these experts argue that the current death penalty review system is unconstitutional. Citing remarks attributed to a Beijing University Law School professor, one Chinese newspaper has pointed out that:

[T]he 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 authority may be delegated to Higher Courts at the Provincial Level directly contradicts the Criminal Law and the Criminal Procedure Law. Actually these laws are of completely different force. On the one hand, the Criminal Law and the 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 behavior for an ordinary law to contravene a basic law.³³

The second complaint which members of the Chinese legal community have made is that ignoring the clear requirement of the Criminal Procedure Law not only violates the legal structure specified in the PRC Constitution, but also fails to comport with the democratic principles espoused in that same document:

[T]he Criminal Law was enacted by the National People’s Congress, and was passed by over 2,000 elected representatives, whereas the Organic Law of the Courts was only enacted by the Standing Committee of the National People’s Congress, and was passed by only 100 appointees, and the status of a law correlates directly with the body that

³² *Southern Weekend*, “Who will Exercise the Power of Death Penalty Review?”, Guo Guangdong, July 18, 2002.

³³ *Southern Weekend*, “Who will Exercise the Power of Death Penalty Review?”, Guo Guangdong, July 18, 2002. See also PRC Constitution, Articles 62 and 67, and Article 7 of the *Law on Legislation* (2000), which establishes specific hierarchies of legislative authority in the People’s Republic of China:

The National People’s Congress and Standing Committee thereof shall exercise state legislative power. The National People’s Congress enacts and amends criminal, civil, and state organic laws and other basic laws. The Standing Committee of National People’s Congress enacts and amends laws other than those to be enacted by the National People’s Congress; while the National People’s Congress is not in session, the Standing Committee thereof partially amends and supplements national law enacted by the National People’s Congress, **provided that any amendment or supplement may not contravene the basic principles of such national law.**

(Translation: http://www.novexc.com/legislat_law_00.html) [Emphasis added]

enacted it, so one would have to believe that the Criminal Law trumps the Organic Law of the Courts.³⁴

The third basis on which law professors in China have objected to the *xiafang* system is that the provisions which originally authorized the system, found in the 1983 Organic Law, have been superseded by subsequent legislation which is clearly contrary to those provisions:

[A]ccording to the principal of “the new law surpasses the old law,” any conflicts between the 1997 Criminal Law and the 1983 Organic Law of the Courts regarding review and approval of the death penalty should of course be resolved by implementing the later-enacted Criminal Law, because as time progresses, the newer law more accurately reflects the will of the people.³⁵

The Supreme People’s Court was no doubt aware of this problem when it issued the 1997 Notice to coincide with the revisions of the Criminal Procedure Law in 1996 and the Criminal Law in 1997. But as noted above, under the PRC Constitution, a Supreme People’s Court notice cannot trump those basic laws which were enacted by the highest legislative authority in the country.

The fourth issue legal scholars in China have pointed to is that by putting the authority to review and approve death sentences in the hands of the same courts which will hear that person’s appeal of the underlying verdict, the Supreme People’s Court has undermined the very reason for which it was initially entrusted with death penalty review in the first place:

If Higher People’s Courts enjoy the authority to review and approve certain death penalty cases, in those cases the review and approval of the penalty and the determination of the appeal necessarily will be merged into one [decision], as it is impossible for a single adjudication committee to reach different outcomes [on the review and on the appeal]. The goal of preventing wrongful executions will therefore be difficult to achieve.³⁶

Finally, at least one law professor in China has pointed out that “pursuant to relevant international human rights provisions, those countries which retain the death penalty shall have death penalty sentences issued by the nation’s highest judicial authority.”³⁷

In light of all these criticisms, why does the Supreme People’s Court continue to employ the *xiafang* system? It would be untrue for PRC authorities to argue that the original reasons for implementing the system – the 1983 “Strike Hard” campaign – still exists. It would also be politically dangerous for them to claim that the original purpose of the 1983 campaign – to kill as many undesirables as quickly as possible³⁸ – outweighs the primacy of the nation’s Constitution.

³⁴ *Southern Daily*, “Why Shouldn’t the Supreme People’s Court be Thanked for Holding the Execution?”, Zou Yunxiang, July 15, 2002.

³⁵ *Southern Daily*, “Why Shouldn’t the Supreme People’s Court be Thanked for Holding the Execution?”, Zou Yunxiang, July 15, 2002.

³⁶ *Southern Weekend*, “Legal Experts Question the Renouncing of the Power to Review the Death Penalty,” posted on the Hai Xia City Paper website on July 19, 2002.

³⁷ *Southern Weekend*, “Who will Exercise the Power of Death Penalty Review?”, Guo Guangdong, July 18, 2002.

³⁸ See 1997 Notice: “In an effort to severely punish in a timely manner those villainous and wicked criminal

In fact, the only explanation PRC authorities have offered is equally disturbing: the PRC government executes so many people that the Supreme People's Court simply does not have the resources to review all of the cases. As one Supreme People's Court senior judge observed:

The Supreme People's Court does not have the ability to take charge of the review of all these cases. The personnel and material resources are seriously inadequate to do all of this. There are only 600 people in the entire high court, and 60 percent of those are carrying out the work of sentencing. Just looking at the criminal court alone, there are only four court rooms suitable for collegiate panels, and one of these is dedicated to investigation enquiries, and the remaining three courtrooms have to be used by four or five people each. The dossier for one large case can be enormous, and each person must look at it, make notes and return it to the presiding judge. The rules state that in order for their to be a quorum for the examination and approval committee there must be at least 7 of the 11 primary presiding judges present, so figure it will take a week to handle each case - how are you going to be able to administer all of the many cases in the country? You couldn't finish it if everyone at the court worked around the clock.³⁹

Nevertheless, legal scholars in China have pointed out that the decision to retain Article 48 of the Criminal Law through the 1996 revision was considered and deliberate.⁴⁰ Considering this fact, and the five arguments cited above, it is disturbing that the execution of Lobsang Dondrub may be the result of a lack of administrative capacity which has given rise to a system that operates in violation of the laws and principles of the government responsible for protecting his rights.

5. PRC AUTHORITIES FAILED TO FULFILL THEIR COMMITMENT TO THE U.S. TO ENSURE A THOROUGH REVIEW OF LOBSANG DONDRUB'S CASE

Under current law, the events leading up to Lobsang Dondrub's execution probably could not have followed any course other than the one they did. As noted above, *Xinhua's* January 26 report on the case states that some of the acts for which Lobsang Dondrub and Tenzin Deleg were convicted involved state secrets. 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 charges that apply to both men are causing explosions and inciting separatism, but the report did not specify which charge was associated with state secrets.

If the state secrets are related to the blasts, the offence which brought the death sentences, and if the explosions were therefore an offense against state security, then Lobsang Dondrub's case should have been reviewed by the Supreme People's Court. But the Higher People's Court has given no indication that this is the case. Although an official Chinese spokesperson has referred to the bombs as a "terrorist"⁴¹ attack, the law treats them as a crime against public—not

elements who jeopardized public security and social order, on September 7, 1983 this court issued a notice"

³⁹ "Understanding China's Death Penalty Review System by Looking at the 'Hold the Execution!' Case," Zhuang Shan, August 5, 2002; from the Supreme People's Court website:
http://www.rmfb.com/public/detail.php?id=8062&k_title.

⁴⁰ *Southern Weekend*, "Who will Exercise the Power of Death Penalty Review?," Guo Guangdong, July 18, 2002.

⁴¹ CNN, "China Defends Tibetan Execution," January 28, 2003. Foreign Ministry spokesperson Zhang Qiyue told reporters that "[O]ur judicial department would deal with terrorists using bombs or any other person posing a

state—security. In contrast, a slip of paper expressing independence aspirations, but posing no physical threat of any kind to anyone or anything, is treated as a grave danger to state security.⁴² If the charge that gave rise to the death sentence in Lobsang Dondrub’s case did not involve state secrets and state security, then the Higher People’s Court was not legally required (at least, not under the current *xiafang* system, the questionable legality of which is discussed above) to send it to the Supreme People’s Court.

In spite of this, news of Lobsang Dondrub’s execution came as a grim surprise to many, including U.S. government officials, because in December 2002 Lorne Craner, Assistant Secretary of State for Democracy, Human Rights and Labor, met with counterparts in Beijing for a session of bilateral human rights dialogue. He raised the cases of Lobsang Dondrub and Tenzin Deleg. In that meeting, which included officials from the Supreme People’s Court, the Supreme People’s Procuratorate, and the Ministry of Justice, Craner and his delegation were repeatedly assured that the Supreme People’s Court would review the death sentences if and when the appeals hearing reaffirmed the original verdict and sentence, and that the process would be “lengthy.” PRC authorities provided similar assurances to other governments, including the European Union.

Either the Supreme People’s Court did not ensure that the Sichuan Higher People’s Court submitted Lobsang Dondrub’s death sentence for review, or the Supreme People’s Court informed the Sichuan Higher People’s Court of its intent to review the case, and the notice went unheeded. In either case, PRC authorities failed to fulfill their commitment to the U.S. government.

6. CONCLUSION

The Chinese government’s human rights practices fall far short of internationally accepted standards, and this situation continues to be an obstacle to a healthy bilateral relationship between China and the United States. The case and laws reviewed in this memorandum illustrate the malfunction of the PRC legal system in its application of the ultimate punishment—the death penalty.

The execution of Lobsang Dondrub, one of two Tibetans charged with causing explosions and inciting separatism in Sichuan Province, took place a few weeks after the Supreme People’s Court assured a senior U.S. official that the national court would undertake a “lengthy” review of the case. The case did not make it to Beijing, despite the Supreme People’s Court’s commitment, and a provincial Higher People’s Court approved the execution. The second defendant, Buddhist lama Tenzin Deleg, may face retrial by the same court which sent Lobsang

security risk in the same manner as any other country.”

⁴² Thierry Dodin, the Director of the Tibet Information Network, told the CECC, “The Tibetan leaflets that I have seen myself express only the desire for freedom or independence, but not the means through which those desires should be achieved.” Because PRC authorities have refused to make any evidence in this case available, this memorandum has assumed that the leaflets scattered at the blast were no different.

Dondrub to the executioner. The case illustrates failures in the criminal law, and in the legal process, encountered by individuals charged with a criminal offense. Now that the Sichuan Higher People's Court has rejected Tenzin Deleg's appeal, his best chance for a full, fair, and just hearing is before the Supreme People's Court.

The case also highlights nationwide problems. The Supreme People's Court sidesteps the Criminal Procedure Law's requirement that review and approval of death sentences "shall be conducted by a collegial panel composed of three judges." The most recent reaffirmation of the shortcut was issued by the Supreme People's Court itself in 1997, when the court reiterated a 1983 law expediting approval of executions by handing most decisions back to the provinces. The 1997 action aimed to "severely punish in a timely manner" defendants described as "villainous and wicked." The priority is speed, not care.

Chinese legal experts are engaged in a pivotal debate on these issues. Many have expressed their conviction in prominent PRC print and Internet media that shortcuts to execution are not compatible with justice. Only the National People's Congress and Supreme People's Court can meet this life-or-death challenge, and they should do so without delay.

APPENDIX 1

Chronology: The Case of Tenzin Deleg and Lobsang Dondrub	
1978-1979	Not long after the 10th Panchen Lama is released from prison, Tenzin Deleg meets him and discusses the destructive effects of the previous 20 years. The first fact-finding delegation representing the Dalai Lama arrives from India in 1979 and is headed by one of the Dalai Lama's brothers. When they pass through eastern Tibet, Tenzin Deleg meets with them.
1982-1989	Tenzin Deleg had been forced to abandon his monk's vows during the turbulent 1960s and 1970s. As soon as it is permitted in the early 1980s, he resumes monastic life. He travels from Nyagchu (Chinese: Yajiang), his home in Tibet, to south India where he spends six years at Drepung Monastery from 1982-1987. The Dalai Lama recognizes him as a reincarnate lama and he acquires the honorific title "Rinpoche." After his return to Nyagchu, local authorities resist his plans to build a small monastery, Jamyang Choekhorling. At the beginning of 1989 he travels to Beijing where he seeks and receives approval from the 10th Panchen Lama for setting up the monastery. The Panchen Lama dies soon afterward during a visit to central Tibet.
1990-2000	Throughout the 1990s, Tenzin Deleg undertakes projects in the Nyagchu area, renovating and reconstructing monasteries, setting up a boarding school for orphans and nomads' children, establishing a home for the elderly poor, and promoting forest conservation. His popularity rises, earning resentment from some local Tibetans and officials. Pressure from local authorities sends him into hiding twice, once in 1998 and again in 2000, but no charges or detention result. In the background, a widely dispersed religious dispute has erupted about the worship of a deity known as Dorje Shugden. The worship is popular in some monasteries, but the Dalai Lama advises against it. Tenzin Deleg urges local Tibetans to follow the Dalai Lama's advice. Lobsang Dondrub, a relative of Tenzin Deleg, becomes a monk at Tenzin Deleg's monastery. At some point, possibly in the late 1990s, Tenzin Deleg reportedly expels Lobsang Dondrub from the monastery for misconduct related to unspecified business activities.
2001 January	A series of bomb blasts using dynamite occurs in Dartsedo and Lithang Counties (Chinese: Kangding, Litang) in Kardze Tibetan Autonomous Prefecture (Chinese: Ganzi TAP). Official Chinese reports have been inconsistent on the number of explosions, referring to both four and six, and allege that leaflets calling for Tibetan independence were scattered at each site. Unofficial sources suggest that the religious dispute over worship of Shugden may have motivated some of the bombings.
2001 October 3	An explosion in Kangding near the gate of the Traffic Police headquarters office kills an elderly man.
2002 April 3	A mid-day explosion takes place in Tianfu Square in central Chengdu, the capital of Sichuan. Dynamite was allegedly hidden on a statue of Mao Zedong and detonated, causing at least 12 injuries. According to an official report by <i>Zhongxin Sichuan Wang</i> on December 5, Lobsang Dondrub was detained "promptly" while "fleeing the scene."

Chronology: The Case of Tenzin Deleg and Lobsang Dondrub	
2002 April 7	Tenzin Deleg is taken into detention late at night, along with at least four other monks, at Jamyang Choekhorling Monastery, his main place of residence. One monk was reportedly beaten badly by arriving police, possibly after he mistook them for robbers or assailants.
2002 ensuing weeks	The Tibetan Center for Human Rights and Democracy (TCHRD) will report at least six additional detentions take place in Nyagchu during subsequent weeks. All are Tibetans who police consider to be closely linked to Tenzin Deleg. Some are linked through the monastery, others are assisting in an effort to collect funds for Tenzin Deleg’s legal defense. Based on Tibetan sources, Tibet Information Network (TIN) reports in early May that police suspect Tenzin Deleg of conspiracy, not direct participation in the bombings.
2002 ensuing months	Unconfirmed reports emerge that both detainees are being subjected to coercive methods of interrogation, including beating and torture, at the Kangding Police Detention Center. A few of those detained after Tenzin Deleg are released but at least five remain jailed. None of the detainees are allowed visitors and none are known to have been allowed legal counsel.
2002 December 2	<p>On December 5, a flurry of official and unofficial reports say that on December 2 the Ganzi People’s Intermediate Court sentenced Lobsang Dondrub to death, and Tenzin Deleg to death with a two year reprieve.</p> <p>Radio Free Asia (RFA) reports that the Director of the Ganzi judiciary, Mr. Zhao, says the bombs “were works of [Lobsang Dondrub] and all the expenses were paid by [Tenzin Deleg].” Zhao claims that Tenzin Deleg has “accepted his responsibility in five of the six explosions”. He asserts that “Their names were linked to all these explosions, and there were no other suspects.”</p> <p>RFA reports that both men were denied access to lawyers during the proceedings, and that two of Tenzin Deleg’s family members were permitted to attend the sentencing. There are no reports of Lobsang Dondrub’s family members attending. Tenzin Deleg reportedly began shouting that he is innocent of all charges and was removed from the courtroom.</p> <p>On January 26, 2003, <i>Xinhua</i> will report that the trial itself (“hearings on their criminal wrongdoings”) took place on November 29, three days before the sentencing, and that the trial was “closed” because the alleged crimes of both men are linked to “state secrets.” The report explains that Tenzin Deleg hired two lawyers (Chen Shichang and Yu Jianbo) and that two others (Kuai Qinghua and Liu Shijian) were assigned to Lobsang Dondrub when he “did not entrust a counsel for his defense.”</p> <p>The <i>Xinhua</i> report also reveals that in addition to the death penalty for charges related to the explosions, Lobsang Dondrub was sentenced to 12 years imprisonment for “inciting the split of the country” and three years for illegally possessing firearms and ammunition. In addition to death with two years reprieve, Tenzin Deleg was sentenced to 14 years for incitement to separatism.</p> <p>The charges make this the first case in the post-Mao era in which Tibetans have been convicted of separatism as well as bombing. Although official sources have disclosed accusations, none of the evidence has been revealed.</p>

Chronology: The Case of Tenzin Deleg and Lobsang Dondrub	
2002 December 16-17	<p>Lorne Craner, the Assistant Secretary of State for Democracy, Human Rights and Labor, meets with counterparts in Beijing for the bilateral human rights dialogue. He raises the cases of Lobsang Dondrub and Tenzin Deleg and officials from the Supreme People’s Court tell him that the SPC will conduct a review of their sentences, and that it would be a “lengthy” process.</p>
2003 January 7-18	<p>On January 10, RFA reports that a “retrial” will take place that same day in the Kangding People’s Intermediate Court, but there is no indication of what might have precipitated a “retrial.” At the same time, the International Campaign for Tibet (ICT) reports that a “hearing” on Tenzin Deleg’s appeal would take place on January 10. A hearing on the appeal, however, would take place in the People’s Higher Court in Chengdu, not in Kangding. ICT also reports that two prominent Chinese lawyers, Zhang Sizhi and Li Huigeng, had been denied permission to represent Tenzin Deleg.</p> <p>Based on unconfirmed information, ICT discloses that Tenzin Deleg began a hunger strike on January 6 to protest deprivation of a fair and just legal process, and that two officials from the “Central Government” traveled to Kangding to discuss the case with him.</p> <p>On January 21, RFA will report that an audio-taped message from Tenzin Deleg, recorded on January 18 in his cell, has been smuggled out of jail. He vigorously asserts his complete innocence of bombing and leafleting, and explains that he ceased his hunger strike after the two Beijing officials, who visited on January 7-8, assured him that his case would be retried in the Sichuan People’s Higher Court. Other remarks underscore his concern that police are trying to make him a “scapegoat” by attempting to tie him to Lobsang Dondrub and the blasts.</p>
2003 January 24	<p>On Friday, January 24, the U.S. Embassy in Beijing releases a statement expressing disappointment that Chinese officials failed to disclose that ten additional detentions linked to Tenzin Deleg and Lobsang Dondrub had taken place during the months preceding the session of bilateral human rights dialogue the previous month. At that time the Chinese had assured Assistant Secretary Craner that he would be kept informed about the case.</p>
2003 January 26	<p>Multiple press releases on Monday, January 27, report the execution of Lobsang Dondrub on Sunday, January 26. A Reuters report on January 28 confirms that his death sentence was approved on Sunday by the Sichuan Higher People’s Court. His execution followed promptly.</p> <p>An unusually detailed English language release from <i>Xinhua</i> on Sunday, January 26, states that the Sichuan Higher People’s Court rejected Tenzin Deleg’s appeal at the same Sunday session. Chen Shichang and Yu Jianbo, the lawyers who had unsuccessfully represented him in the initial trial in Kangding, also provided his defense in Chengdu. The report claims that Lobsang Dondrub had not appealed his conviction.</p> <p><i>Xinhua</i> discloses an important detail, referring to the initial trial in December: “The court did not hold an open hearing because some of the defendants’ criminal acts were related to state secrets.” No official sources disclose which charges involve “state secrets.”</p> <p>The Chinese version of the <i>Xinhua</i> story, released the same day, did not mention that only one defendant had appealed, or that the hearing had been closed, or that “state secrets” were involved in the case.</p>

Chronology: The Case of Tenzin Deleg and Lobsang Dondrub	
2003 ensuing days	<p>Several governments, including the U.S., U.K., EU Troika, Germany, Norway, Switzerland, Poland, Canada, Australia, and New Zealand swiftly decry the executions. Demarches occur.</p> <p>The U.S. Department of State reacts with dismay, citing the broken pledge by Chinese officials that the case would receive “lengthy” review by the Supreme People’s Court.</p> <p>The UNHCR, as well as a host of human rights and advocacy groups, condemn the execution based on the failure of Chinese police, prosecutors, and courts to provide any of the fundamental elements of due process.</p> <p>On January 28, CNN reports that PRC Foreign Ministry spokesperson Zhang Qiyue has defended the execution saying, “China is a country ruled by law. China’s judicial departments would handle any case according to the relevant laws.” She asserts that China’s judiciary had dealt with the matter “in the same manner as any other country.”</p>
2003 end of January	<p>As of the end of January, unconfirmed reports indicate that, in addition to Tenzin Deleg, at least four and perhaps more remain jailed, including four of the monks detained along with Tenzin Deleg. They are Tsultrim Dargyal, Tamdrin Tsering, Ashar Dargyal, and Tashi Phuntsog. The Nyagchu County court reportedly sentenced to five years an elderly man, Tserang Dondrub, who helped raise funds for Tenzin Deleg’s legal defense. Sources add that he has been severely beaten. PRC authorities have not made public the charges against him.</p>

APPENDIX 2

**Supreme People's Court Notice Regarding Authorizing Higher People's Courts and
People's Liberation Army Military Affairs Courts to
Review and Approve Certain Death Penalty Cases**

September 26, 1997. Law Issue (1997) No. 24

[Translated by: William A. Farris, Congressional Executive Commission on China]

All provincial, autonomous region and independent municipality Higher People's Courts and People's Liberation Army Military Affairs Courts:

In an effort to severely punish in a timely manner those villainous and wicked criminal elements who jeopardized public security and social order, on September 7, 1983 this Court issued a notice, in accordance with Article 13 of the amended Organic Law of the People's Court of the People's Republic of China, authorizing all provincial, autonomous region and independent municipality Higher People's Courts and People's Liberation Army Military Affairs Courts to review and approve death penalty cases involving murder, rape, armed robbery, bombing and others crimes which jeopardized public security and social order. Now the fifth meeting of the Eighth National Party Congress has amended the Criminal Law of the People's Republic of China, and the amended Criminal Law still contains the following provision: "Except for those adjudicated by the Supreme People's Court in accordance with the law, all death sentences shall be reported to the Supreme People's Court for review and approval." Considering the current state of public security and the need to timely strike hard at criminals, there is a need to continue to have a portion of the authority to review and approve death penalty cases be exercised by Higher People's Courts and People's Liberation Army Military Affairs Courts, and to further clarify the scope of death penalty case review and approval by provincial, autonomous region and independent municipality Higher People's Courts and People's Liberation Army Military Affairs Courts from this day forward. You are hereby notified as follows:

Beginning when the amended Criminal Law officially becomes effective on October 1, 1997, all appellate and review affirmations of cases with the death sentence by any Higher People's Courts and People's Liberation Army Military Affairs Courts for Criminal Law Chapter 1 jeopardizing national security crimes, Chapter 3 disturbing the order of the socialist market economy crimes, and Chapter 8 corruption and bribery crimes shall continue to be reported to this Court for review and approval. This Court, in accordance with Article 13 of the Organic Law of the People's Court of the People's Republic of China, continues to authorize the provincial, autonomous region and independent municipality Higher People's Courts and People's Liberation Army Military Affairs Courts to exercise the authority to review and approve cases with the death sentence (other than those adjudicated by this Court or involving foreign affairs) for Criminal Law Chapter 2, 4, 5, 6 (other than drug crimes), 7 and 10 crimes. However, all death penalty cases involving Hong Kong, Macao and Taiwan must continue to be reported to this Court for internal review and approval prior to the initial adjudication. Except for those Higher People's Courts which already have authorization to exercise the authority to approve of certain death penalty cases, all other Higher People's Courts and People's Liberation Army Military Affairs Courts shall, following affirmation on appeal or review, report death penalty cases for drug crimes to this Court for review.