

DIGITAL OPPRESSION IN CUBA AND CHINA: A COMPARATIVE STUDY OF ICCPR VIOLATIONS

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| | | |
|------|--|-----|
| I. | INTRODUCTION | 162 |
| II. | A BRIEF HISTORY OF THE ICCPR AND WHAT IT MEANS TO CUBA & CHINA | 166 |
| III. | NEW MEDIA: WHY IS IT MORE DIFFICULT TO CONTROL THAN TRADITIONAL MEDIA? | 168 |
| IV. | THE CUBAN GOVERNMENT’S RESTRICTIONS ON THE INTERNET AND CUBAN RESISTANCE | 173 |
| | A. <i>Cuba’s Limited Access and Restrictive Laws Lead to ICCPR Violations</i> | 173 |
| | 1. Cuba’s Internet Restrictions: An Island Miles Away from Technology | 173 |
| | 2. Preventative Measures: Cuba’s Restrictive Laws and Policies | 176 |
| | 3. Cuba’s Restrictions Violate the ICCPR..... | 178 |
| | B. <i>Creative Resistance and Government Backlash: Another Excuse to Violate the ICCPR</i> | 181 |
| | 1. Cuban Resistance to Internet Restrictions: A Blogger’s Revolution | 181 |
| | 2. Castro’s Response to Resistance: More ICCPR Violations..... | 185 |
| V. | CHINA’S INTERNET RESTRICTIONS AND RESISTANCE..... | 189 |
| | A. <i>Why China Handles the Internet Differently from Cuba</i> | 190 |
| | B. <i>The Great Firewall of China: A Wall Built on ICCPR Violations</i> | 192 |
| | 1. China’s Internet Restrictions: Big Brother is Watching..... | 192 |
| | 2. China’s Internet Restrictions and Surveillance Violate the ICCPR | 195 |
| | C. <i>Chinese Resistance: Breaking Down the Wall in the Face of ICCPR Violations</i> | 197 |

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| | |
|---|-----|
| 1. Resisting China's Internet Restrictions: Outsmarting Government Tactics | 197 |
| 2. China's Response to Those Who Bypass Censorship: More ICCPR Violations..... | 200 |
| VI. CONCLUSION..... | 202 |

I. INTRODUCTION

"A true revolution.com takes place parallel and contrary to the rationing they want to impose on the virtual world. . . . Its commanders carry strange names like Gmail, Wordpress, Skype and Facebook: they do not create divisions but rather unite people."
- Yoani Sánchez¹

On August 16, 2010, Cuban police burst into Luis Felipe Rojas' house and detained him for thirteen hours.² His crime: writing a blog.³ Earlier that week, in his blog *Cruzar Las Alambradas* (*Crossing the Barbed Wire*), Rojas posted a report criticizing human rights violations.⁴ A few days after his detention, on August 23, Rojas awoke to a familiar banging on his door.⁵ This time, the police told Rojas that they knew about the reports denouncing human rights violations on his blog.⁶ He was reminded that writers like him have spent "much time in prison since 2003," and told about "the Gag Law" that could result in him spending "about 25 years behind bars."⁷ At the end of his blog entry describing his detention experience, Rojas asks "[W]hat will the regime consider my next prank to be . . . What will be my next punishment?"⁸

There are two ways to look at the emergence of digital media in regards to human rights. One is an idealistic approach, where cyberspace is a platform for communication and information with endless possibilities for freedom of expression.⁹ The other, more negative approach is the view that digital media arms corrupt governments with an additional tool of surveillance and

1. Yoani Sánchez, *Revolution.com*, GENERACION Y (Feb. 13, 2009), <http://generacionyen.wordpress.com/2009/02/page/2/>.

2. Luis Felipe Rojas, *Thirteen Hours of Punishment*, CROSSING THE BARBED WIRE (Aug. 29, 2010), <http://cruzarlasalambradaseng.wordpress.com/2010/08/29/thirteen-hours-of-punishment/>.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. Rojas, *supra* note 2.

9. JOHAN LAGERKVIST, *AFTER THE INTERNET, BEFORE DEMOCRACY: COMPETING NORMS IN CHINESE MEDIA AND SOCIETY* 17 (2010).

oppression.¹⁰ The merit in the negative approach is evident, as old regimes are finding new ways to suppress human rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR).¹¹ The ICCPR's protections include the right to privacy,¹² freedom of expression,¹³ access to information,¹⁴ and freedom from arbitrary detention.¹⁵ Despite the suppression of these rights, the idealistic approach to digital media shines through as citizens of oppressed countries use the Internet to voice their resistance.

Cuba and China provide an especially noteworthy comparison of human rights violations in the digital realm, as they are both one-party communist states that are notorious for restricting the Internet,¹⁶ and they are both signatories of the ICCPR.¹⁷ Neither country has ratified the ICCPR,¹⁸ meaning that they are not legally bound to the treaty.¹⁹ However, by signing the ICCPR, the countries are obligated to abstain from actions that would "defeat the object and purpose" of the treaty.²⁰ Cuba and China both have a history of disregarding this obligation in regards to traditional, non-electronic media by arbitrarily detaining journalists and human rights activists.²¹ Although the Internet has introduced a more difficult means of controlling freedom of expression,²² Cuba and China continue to violate human rights by suppressing expression via the Internet.²³

10. *Id.*

11. See International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

12. *Id.* at 177.

13. *Id.* at 178.

14. *Id.*

15. *Id.* at 175–76.

16. See Alissa Del Riego & Adrianna C. Rodriguez, *Ladies in White: The Peaceful March Against Repression in Cuba and Online*, 24 HARV. INT'L L.J. 221, 222 (2011); Bruce Einhorn, *China Tries Even Harder to Censor the Internet*, BLOOMBERG BUSINESSWEEK (Sept. 12, 2013), <http://www.businessweek.com/articles/2013-09-12/china-tries-even-harder-to-censor-the-internet>.

17. *International Covenant on Civil and Political Rights*, U.N.T.S. DATABASE, http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-4&chapter=4&lang=en%23EndDec (last visited Mar. 31, 2015).

18. *Id.*

19. Jeff Howard, *Article 19: Freedom of Expression Anchored in International Law*, FREE SPEECH DEBATE (Feb. 10, 2012), <http://freespeechdebate.com/en/discuss/article-19-freedom-of-expression-anchored-in-international-law/>.

20. Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331 [hereinafter Vienna Convention].

21. Nik Steinberg, *In Cuba, Suspicion is Enough*, WASH. POST, Feb. 27, 2010, <http://www.hrw.org/news/2010/02/27/imprisoned-dangerousness-cuba>; *Activists Held over Games Protest*, BBC NEWS (Aug. 13, 2008), <http://news.bbc.co.uk/2/hi/asia-pacific/7557771.stm>.

22. Daniel Wilkinson, *The New Challenge to Repressive Cuba*, N.Y. BOOK REV. (Aug. 19, 2010), <http://www.nybooks.com/articles/archives/2010/aug/19/new-challenge-repressive-cuba/>. Wilkinson explains the difficulties of controlling web content:

The two communist states differ, however, in how they handle the threat of the Information Highway.²⁴ The Cuban government controls Internet use by only allowing extremely limited access.²⁵ Indeed, the Cuban people are living in a time capsule where the Internet is slow, costly, and accessible only to Cuban officials or approved journalists.²⁶ Those who illegally use the Internet for political dissent, like Rojas, are harassed or detained.²⁷

China, on the other hand, is home to the largest population of Internet users in the world.²⁸ Internet use is encouraged to promote economic prosperity, but the Chinese government is weary of the freedoms the Internet can introduce to its citizens.²⁹ The government controls digital media by using the latest technology to blacklist search terms and censor the Internet.³⁰ China has an advanced multilayered system for Internet monitoring and censorship that has allowed it to delete an estimated 13% of blog posts, many within twenty-four hours of a blacklisted term being used.³¹ As in Cuba, Chinese political dissenters face criminal liability.³²

This Article explores how one-party totalitarian states deal with the information and modes of communication that the Internet offers by analyzing the methods used in Cuba and China. Specifically, by using the ICCPR as a rubric for human rights

Policing the Internet, however, is not so easy. The Cuban government controls the island's Internet servers, just as it controls the printing presses and broadcasting transmitters. But the inherent porousness of the Web means that anyone with an Internet connection can disseminate new material without prior approval. The government can block the sites it does not like (it blocks Generation Y in Cuba, for instance), but it cannot stop other sites from springing up to replace them.

Id.

23. See Del Riego & Rodriguez, *supra* note 16, at 222; Bruce Einhorn, *supra* note 16.

24. See generally FREEDOM HOUSE, FREEDOM ON THE NET 2013, at 181–228 (Sanja Kelly et al. eds., 2013), available at http://freedomhouse.org/sites/default/files/resources/FOTN%202013_Full%20Report_0.pdf [hereinafter FREEDOM ON THE NET 2013].

25. *Id.* at 216.

26. *Id.*

27. *Id.*

28. LAGERKVIST, *supra* note 9, at 12.

29. *Id.* at 14.

30. Kentaro Toyama, *How Internet Censorship Actually Works in China*, ATLANTIC (Oct. 2, 2013), <http://www.theatlantic.com/china/archive/2013/10/how-internet-censorship-actually-works-in-china/280188/>. Two studies led by political scientist Gary King indicated that the Chinese government employs about 50,000 people to censor the Internet, who in turn work with an additional group of 300,000 Communist Party members. In addition, employees are hired at private firms to monitor their own web content. *The Atlantic* quotes King as saying that China's Internet censorship is the "most extensive effort to selectively censor human expression ever implemented." *Id.*

31. FREEDOM HOUSE, FREEDOM ON THE NET 2012, at 126 (2012), available at https://www.freedomhouse.org/sites/default/files/resources/FOTN%202012%20-%20Full%20Report_0.pdf [hereinafter FREEDOM ON THE NET 2012].

32. Toyama, *supra* note 30.

norms,³³ this Article shows that greater access to the Internet and technology does not necessarily lead to a freer society. As the resistance to the Cuban and Chinese Internet restrictions show, the people of these countries are not merely seeking Internet access—they are seeking the freedom to use that access on their own terms, without government surveillance or intervention. The core problem is the governments' lack of respect for human rights. After exposing the ICCPR violations of these two signatory countries, this Article reveals a blatant hypocrisy on the parts of Cuba and China, along with an in-depth look at how real people deal with this hypocrisy on a daily basis.

Part II of this Article provides a brief history of the ICCPR and explains the obligations that Cuba and China have as signatories of the treaty. In Part III, this Article looks into both Cuba's and China's history of violating ICCPR guarantees in the traditional media setting. This provides a better understanding of why the Internet poses a greater threat to these Big Brother governments than traditional media. Part IV delves into the Cuban government's methods of controlling the Internet, and explores the ingenuity that is produced from a people who have no choice but to utilize outdated equipment and old technology to raise their voices in a new digital world. This has led to the Cuban government's crackdown on expression and violations of the ICCPR. Part V details the restrictions imposed on Chinese Internet users, along with the people's resistance. The Chinese violations of the ICCPR confirm that access to advanced technology and the Internet does not automatically lead to greater social justice. While China certainly handles Internet access differently than Cuba, its response to resistance is the same: violation of the ICCPR's prohibition of arbitrary detention, guarantee of freedom of expression, right to access to information, and right to privacy.

In conclusion, this Article determines that despite their dissimilar situations in the global sphere and their different methods of restriction, Cuba and China achieve the same human rights violations under the ICCPR. This leads, in turn, to the further conclusion that greater access to the Internet is not a sure formula for a free society.

33. See *infra* Part II for an explanation as to how the ICCPR became a rubric for human rights norms.

II. A BRIEF HISTORY OF THE ICCPR AND WHAT IT MEANS TO CUBA & CHINA

Following the atrocities of World War II, the international community came together under the United Nations to ensure individual human rights on a global scale.³⁴ Shortly thereafter, the Commission of Human Rights drafted the Universal Declaration of Human Rights (UDHR), which outlined the rights norms owed to the world's population.³⁵ The UDHR was later translated into a binding, hard-law treaty in the ICCPR and the International Covenant on Economic, Social and Cultural Rights.³⁶ Because the ICCPR focuses on civil liberties that are affected by Internet restriction (such as freedom of expression and speech, access to information, the right to privacy, and freedom from arbitrary detention), this Article will only focus on the ICCPR.³⁷

The ICCPR demands commitment from state parties to uphold the principles outlined in the treaty. Specifically, Article 2, Section 2 requires that states that have not already done so adopt legislation or do whatever it takes to ensure the rights guaranteed in the ICCPR.³⁸ Article 5 states that nothing in the ICCPR should be interpreted in a way that would allow violation or destruction of any of the freedoms in the Covenant.³⁹ Moreover, the ICCPR is clear in its purpose to promote freedom from oppressive governments, as Article 1, Section 1 ensures the people's right to self-determination, meaning that they "freely determine their political status and freely pursue their economic, social and cultural development."⁴⁰ The ICCPR does allow countries to derogate from their obligations in the treaty, but only in instances of "public emergency which threatens the life of the nation and the existence of which is officially proclaimed."⁴¹ Furthermore,

34. CHRISTIAN TOMUSCHAT, INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1 (2008), http://legal.un.org/avl/pdf/ha/icepr/iccpr_e.pdf.

35. *Id.*; DAVID J. BEDERMAN, INTERNATIONAL LAW FRAMEWORKS 99 (3d ed. 2010).

36. TOMUSCHAT, *supra* note 34, at 1–2.

37. ICCPR, *supra* note 11, at 175–76, 178–79. As mentioned, the civil and political rights outlined in the ICCPR differ from the socio-economic rights in the International Covenant on Economic, Social and Cultural Rights. In his book, *International Law Frameworks*, Professor David J. Bederman describes civil and political rights as "those freedoms necessary for individuals to operate within a polity" such as freedom of expression and freedom from arbitrary arrest, whereas social and economic rights require the government to "provide certain benefits and services to the public (such as education, work, social security, or culture)." BEDERMAN, *supra* note 35, at 99–101.

38. ICCPR, *supra* note 11, at 173–74.

39. *Id.* at 175.

40. *Id.* at 173.

41. *Id.* at 174. There are exceptions to the derogation provision:

No derogation from articles 6 [a human's inherent right to life and prohibition of

derogation is only permitted to the extent that it is strictly required by the specific circumstances of the emergency, and the measures taken cannot be contrary to the countries' "other obligations under international law" or involve any "discrimination solely on the ground of race, colour, sex, language, religion or social origin."⁴²

Both Cuba and China have signed the ICCPR, but have yet to ratify it. However, the two countries have acceded to the Vienna Convention on the Law of Treaties (VCLT).⁴³ Accession has the same legal effect as ratification—the only difference is that accession skips the step of signing the treaty by instead "depositing an instrument of accession."⁴⁴ Therefore, as acceding countries, Cuba and China are bound to the VCLT.⁴⁵ According to the VCLT, by signing the ICCPR, Cuba and China have agreed to refrain from doing anything that could "defeat the object and purpose" of the ICCPR.⁴⁶

The responsibilities of signatories are not necessarily a far cry from those of countries that have ratified the treaty. The Human Rights Committee is the body that oversees the compliance of the ICCPR.⁴⁷ While the treaty is considered binding on those who ratify it, the Committee's conclusions regarding countries' human rights situations are not binding.⁴⁸ Instead, states are expected to follow the treaty in good faith.⁴⁹ Considering this, even if Cuba and China did ratify the ICCPR, the only difference from their current situation is that the countries would then be subject to the Committee's scrutiny.⁵⁰ Whether signed or ratified, the countries are expected to uphold the values of the Covenant in good faith.⁵¹

genocide], 7 [prohibition of torture and inhuman treatment], 8 (paragraphs 1 and 2) [prohibition of slavery], 11 [no imprisonment based on mere contractual obligation], 15 [cannot apply criminal law retroactively], 16 [right to recognition before the law] and 18 [freedom of thought and religion] may be made under this provision.

Id.

42. *Id.*

43. Vienna Convention, *supra* note 20.

44. *Human Rights Treaty Bodies*, OFFICE OF THE U.N. COMM'N FOR HUMAN RIGHTS, <http://www2.ohchr.org/english/bodies/treaty/glossary.htm> (last visited Jan. 23, 2014) (internal quotations omitted).

45. *See id.*

46. Vienna Convention, *supra* note 20, at 336.

47. TOMUSCHAT, *supra* note 34, at 3.

48. *Id.*

49. *Id.*

50. *See id.*; Vienna Convention, *supra* note 20, at 336.

51. *See* Vienna Convention, *supra* note 20, at 336.

III. NEW MEDIA: WHY IS IT MORE DIFFICULT TO CONTROL THAN TRADITIONAL MEDIA?

Both Cuba and China have a record of violating ICCPR provisions outside of the Internet setting. An independent human rights group called The Cuban Commission for Human Rights and National Reconciliation received the following reports of arbitrary detentions in Cuba: 2074 arbitrary detentions in 2010, 4123 arbitrary detentions in 2011, and 5105 arbitrary detentions from January to September 2012.⁵² Moreover, the Cuban people are subject to a criminal charge not only if they express dissent against the communist government, but also if they *look* as if they might express dissent.⁵³ The Cuban Penal Code provides that people may be arrested under the crime of “dangerousness,”⁵⁴ which allows people to be detained for crimes they may commit in the future—no evidence required.⁵⁵ Article 72 of the Cuban Penal Code defines dangerousness as “the special inclination which an individual has to commit crimes depicted by his behavior in manifest contradiction to the rules of socialist morality.”⁵⁶ One especially vague indicator of dangerousness is “antisocial behavior.”⁵⁷ As this Article will show in Part IV, many journalists and human rights activists have been detained for dangerousness.

The most notable influx of arrests in Cuba since the revolution occurred from March 18–21, 2003, a period known as *La Primavera Negra* or The Black Spring.⁵⁸ In the mid-1990s, after decades of state-controlled news, it appeared that the Cuban government was finally edging toward political tolerance with the emergence of independent news agencies Cuba Press and Havana Press.⁵⁹ In addition, the first privately owned magazines since 1959, *De Cuba* and *Vitral*, hit the newsstands.⁶⁰ The Cuban government’s response to these developments was the Black Spring.⁶¹ Seventy-five journalists, librarians, democracy activists, and human rights activists were arrested.⁶² The following month,

52. *World Report 2013: Cuba*, HUMAN RIGHTS WATCH, <http://www.hrw.org/world-report/2013/country-chapters/cuba> (last visited Mar. 31, 2015).

53. *Cuba: Release Five Prisoners of Conscience Immediately*, AMNESTY INT’L (Aug. 5, 2013), <http://www.amnesty.org/en/news/cuba-pocs-2013-08-02>.

54. CÓDIGO PENAL [Penal Code] tit. XI (Cuba).

55. Steinberg, *supra* note 21.

56. CÓDIGO PENAL [Penal Code] art. 72 (Cuba) (author translation).

57. *Id.* art. 73(c).

58. YOANI SÁNCHEZ, *HAVANA REAL* 29 n.4 (M.J. Porter trans., 2011).

59. Clive McGoun, *From Cuba with Blogs*, in *THE END OF JOURNALISM: NEWS IN THE TWENTY-FIRST CENTURY* 103, 113 (Alec Charles & Gavin Stewart eds., 2011).

60. *Id.*

61. *Id.*

62. SÁNCHEZ, *supra* note 58, at 29 n.4.

the victims were given “summary pseudo trials” which were closed to the public and lasted one day.⁶³ The defendants had no opportunity to present a defense or have a fair jury selection,⁶⁴ and they were sentenced to periods ranging from six to twenty-eight years in prison.⁶⁵ Twenty-nine journalists were given fourteen to twenty-seven-year prison sentences for acting as United States “mercenaries.”⁶⁶

Prison conditions in Cuba are poor and inhumane; in addition to being kept miles away from their families, released prisoners have revealed that the drinking water is contaminated with feces and the food contains worms.⁶⁷ Many prisoners have suffered ailments such as “malnutrition, chronic pneumonia, emphysema, severe allergies, digestive problems, and circulatory diseases.”⁶⁸ Thanks to a deal struck between the Cuban government and the Catholic Church, the Black Spring prisoners were released by 2010.⁶⁹ In any case, with this “crackdown” on independent journalism, the message to the Cuban people was clear: political dissent will not be condoned, especially not in print.⁷⁰

Like political dissenters in Cuba, Chinese citizens are subject to harassment and detainment if they advocate political change.⁷¹ A 2014 Freedom House World Report declared China as “not free.”⁷² Chinese Human Rights Defenders, a human rights group,

63. Del Riego & Rodriguez, *supra* note 16, at 223.

64. *Id.*

65. *Id.* at 223–24; SÁNCHEZ, *supra* note 58, at 29 n.4.

66. McGoun, *supra* note 59, at 113. The crime the journalists were charged with dealt with Law 80/88 of the Cuban Constitution, which provides that it is a crime to work with foreign media with the intent to destabilize and destroy Cuba’s socialist government, to provide direct or indirect information to the United States “in order to facilitate the objectives of the Helms-Burton Act,” or to distribute information considered United States propaganda. *Id.*

67. Del Riego & Rodriguez, *supra* note 16, at 224–25.

68. *Id.* at 225.

69. SÁNCHEZ, *supra* note 58, at 29 n.4.

70. See McGoun, *supra* note 59, at 113.

71. See FREEDOM ON THE NET 2013, *supra* note 24, at 181, 206–08.

72. *Freedom in the World 2014: China*, FREEDOM HOUSE (2014), <http://www.freedomhouse.org/report/freedom-world/2014/china-0#.UuVfJmQo7jA>. This annual Freedom House report determines the freedom statuses of countries by looking to the Universal Declaration of Human Rights as a guide. Freedom House provides a summary of the methodology used by its analysts on its website:

The analysts, who prepare the draft reports and scores, use a broad range of sources, including news articles, academic analyses, reports from nongovernmental organizations, and individual professional contacts. The analysts score countries based on the conditions and events within their borders during the coverage period. The analysts’ proposed scores are discussed and defended at annual review meetings, organized by region and attended by Freedom House staff and a panel of the expert advisers. The final scores represent the consensus of the analysts, advisers, and staff, and are intended to be comparable from year to year and across countries and regions. The advisers also provide a detailed review of and commentary on a number of key country and territory reports.

reported 3833 cases of arbitrary detention of human rights defenders during 2011.⁷³ Eighty-six percent of these detentions had no basis in Chinese law.⁷⁴ Liu Xiaobo, winner of the Nobel Peace Prize for his human rights advocacy in China, has been detained since 2009.⁷⁵ He is serving an eleven-year sentence.⁷⁶ Xiaobo's wife, Liu Xia, was under house arrest throughout 2012.⁷⁷ In 2008, John Ray, a British journalist covering a "Free Tibet" protest, was arrested and briefly detained.⁷⁸ He was "roughed up" by the authorities and was not permitted to show his identification documents.⁷⁹ In 2012, the UN News Center reported that a seventeen-year-old girl was beaten and sentenced to three years in prison after passing out flyers that called for Tibet's freedom and the return of the Dalai Lama.⁸⁰ Given the treatment of these dissenters, it is apparent that the Chinese government has a low tolerance for anyone who dares to speak up in traditional media.

However, with the emergence of new media, Cuba and China can no longer restrict freedom of expression with such ease.⁸¹ "New media" means any form of communication that is based in digital technology, including content accessed through the Internet and mobile telephony.⁸² This new mode of communication has opened the door for free speech by allowing content to cross national borders within seconds.⁸³ While both Cuba and China still harness significant control over the Internet, the control can only ever be partial at best,⁸⁴ as the Internet has facilitated a different form of journalism—citizen journalism—whereby average citizens expose the injustices that surround them.⁸⁵ This provides a new alternative to state-controlled media.

Freedom in the World 2014 Methodology, FREEDOM HOUSE 1–2 (2014), <http://www.freedomhouse.org/sites/default/files/Methodology%20FIW%202014.pdf>.

73. *Freedom in the World 2013: China*, FREEDOM HOUSE (2013), <http://www.freedomhouse.org/report/freedom-world/2013/china>.

74. *Id.*

75. *Id.*; *The Nobel Peace Prize for 2010*, NOBELPRIZE.ORG (Oct. 8, 2010), http://www.nobelprize.org/nobel_prizes/peace/laureates/2010/press.html.

76. *Freedom in the World 2013: China*, *supra* note 73.

77. *Id.*

78. *Activists Held over Games Protest*, *supra* note 21.

79. *Id.*

80. *China Must Urgently Address Rights Violations in Tibet—UN Senior Official*, UN NEWS CENTRE (Nov. 2, 2012), <http://www.un.org/apps/news/story.asp?NewsID=43399&Cr=China&Cr1=#.UjtXRmSSzQm>.

81. Del Riego & Rodriguez, *supra* note 16, at 239; Wilkinson, *supra* note 22; LAGERKVIST, *supra* note 9, at 59.

82. Thomas Gibbons, *Introduction to FREE SPEECH IN THE NEW MEDIA* xi, xi (Thomas Gibbons ed., 2009).

83. Jack M. Balkin, *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, in *FREE SPEECH IN THE NEW MEDIA* 173, 179 (Thomas Gibbons ed., 2009).

84. Del Riego & Rodriguez, *supra* note 16, at 239; *see* LAGERKVIST, *supra* note 9, at 59.

85. *See* LAGERKVIST, *supra* note 9, at 59.

The Ladies in White's response to the Black Spring illustrates the Internet's potential to make free speech unstoppable in even the most totalitarian setting. The Ladies in White, or *Las Damas de Blanco*, is a human rights group of Cuban women formed to protest the detention of Black Spring political prisoners.⁸⁶ In 2010, during the anniversary of the Black Spring, the women participated in a peaceful march only to be violently forced off Havana streets.⁸⁷ Cuban Government officials pulled their hair, beat them, and forced them into buses.⁸⁸ Many of these women were taken to the hospital to be treated for their injuries.⁸⁹ Within hours of the protest, a video depicting these events was posted online and went viral.⁹⁰ The next day, the Ladies in White decided to resume their march.⁹¹ Armed with the global support of the Internet community, they were not met with violence this time.⁹²

New media has paved the way for free speech in China as well. Public opinion has at least been less constrained after the arrival of the Internet in 1994.⁹³ Whereas traditional media requires government screening before and after publishing,⁹⁴ Internet tools like blogging provide the Chinese people with the invaluable ability to instantly express themselves.⁹⁵ Even as technology advances,

no government solution could stop this phenomenon in the same way it could stop traditional media.⁹⁶ Chinese journalist Zhou Shuguang, known online as "Zola," has said that if the state-run media fails to give the public honest news, social media will provide the service instead.⁹⁷

Aware of the possibilities that the Internet has brought to citizens that are eager to express themselves, these governments are scared. A video leaked in 2011 revealed the Cuban government's concern with the challenges that the Internet is posing to the regime's information monopoly.⁹⁸ In the video,

86. Del Riego & Rodriguez, *supra* note 16, at 223.

87. *Id.*

88. *Id.*

89. *Id.* at 226.

90. *Id.* at 222.

91. *Id.* at 228.

92. Del Riego & Rodriguez, *supra* note 16, at 227–28.

93. LAGERKVIST, *supra* note 9, at 99.

94. *Id.*

95. *Id.* at 69.

96. *See id.* at 59, 69, 84.

97. *Id.* at 84.

98. Juan O. Tamayo, *Leaked Cuban Video Shows Government's Fears*, MCCLATCHYDC (Feb. 7, 2011), <http://www.mcclatchydc.com/2011/02/07/108217/leaked-cuban-video-shows-governments.html>.

Facebook is specifically mentioned as a dangerous social networking site.⁹⁹ Furthermore, the speaker considers that Iran's "Green Revolution" and the Ukraine's "Orange Revolution" were sparked by people who organized protests via social media.¹⁰⁰ This fear is evident in China as well, as the government continues to regulate the Internet by adding additional categories of illegal information (e.g., information that incites illegal demonstrations and protests).¹⁰¹

The governments' anxiety is not unfounded—the Cuban and Chinese people are past being controlled by fear. Cuban blogger Luis Felipe Rojas has admitted to being afraid of the consequences of his dissident writing, but he has also said, "[F]ear does not stop me. . . . I do not think a tweet from me is going to save anybody from prison but it does save them from impunity."¹⁰²

Likewise, in China, fearless web users like sixteen-year-old Yang Zhong continue to challenge the government despite ramifications: "You don't want the world to know what happened? . . . What are you afraid of? I am not afraid of you. . . . [A]rrest me. I dare you."¹⁰³ It turned out that Yang was arrested for what he posted.¹⁰⁴ After he was released, the teen posted a photo online of himself flashing a victory sign and sporting a shirt that proclaimed, "Make the Change."¹⁰⁵

99. *Id.*

100. *Id.*; see Abbas Milani, *The Green Movement*, U.S. INST. OF PEACE 1–2, <http://iranprimer.usip.org/sites/iranprimer.usip.org/files/The%20Green%20Movement.pdf> (last visited Mar. 31, 2014). The Green Revolution, also known as the Green Movement, was a peaceful movement for democracy in Iran. The movement reached its peak in 2009 when Iranian President Mahmoud Ahmadinejad was re-elected in spite of the apparent widespread support of opposing candidate Mir Hossein Mousavi. Iranians networked through social media in support of Mousavi. After the election results were announced, three million Iranians peacefully assembled to protest election corruption. Milani, *supra*.

The Orange Revolution took place in Ukraine. Through massive demonstrations, President Viktor Yushchenko was brought to power. See Oleg Karpyak, *Ukraine's Two Different Revolutions*, BBC NEWS (Dec. 3, 2013), <http://www.bbc.co.uk/news/world-europe-25210230>.

101. See GOUBIN YANG, *THE POWER OF THE INTERNET IN CHINA* 44 (2009).

102. Cuba: "The Authorities Attack Us Because We Talk About the Issues People Face", AMNESTY INT'L (May 2, 2012), <http://www.amnestyusa.org/news/news-item/cuba-the-authorities-attack-us-because-we-talk-about-the-issues-people-face>.

103. Andrew Jacobs, *China's Crackdown Prompts Outrage over Boy's Arrest*, N.Y. TIMES (Sept. 23, 2013), at A10.

104. *See id.*

105. *Id.*

IV. THE CUBAN GOVERNMENT'S RESTRICTIONS ON THE INTERNET AND CUBAN RESISTANCE

The Cuban people are isolated—and the reason goes beyond living on an island. Section A explains that the government ensures the people's isolation from foreign ideas by limiting technological resources and imposing tyrannical laws. Section B looks to the creative methods that tech-savvy Cubans apply to dodge government restrictions. In both sections, an application of ICCPR human rights norms indicates gross violations. With these violations in mind, it becomes clearer that the government is unwilling to compromise its oppressive control over the Cuban people. But the people are not willing to compromise. Digital dissenters are taking great risks to access the Internet without government censorship.

A. Cuba's Limited Access and Restrictive Laws Lead to ICCPR Violations

Cuban citizens face multiple obstacles in getting connected to life beyond the island. Subsection 1 details the Cuban people's lack of Internet and computer access. This is just the first barrier. Subsection 2 introduces the next obstacle: Cuba's restrictive laws and lack of constitutional protection. Subsection 3 reveals that Cuba's practices are contrary to the country's ICCPR obligations.

1. Cuba's Internet Restrictions: An Island Miles Away from Technology

After the Soviet Union collapsed in 1991, Cuba went through what is known as "The Special Period," during which Soviet subsidies that had kept the island afloat for 30 years were no longer in reach.¹⁰⁶ Industry was paralyzed and hunger ensued throughout the island.¹⁰⁷ While there was no doubt that the Castro regime could utilize technology to improve the country's conditions, the government was more concerned with the risk of giving citizens too much freedom.¹⁰⁸ At the very least, in terms of technology, the Cuban people were promised gradual Internet access.¹⁰⁹

106. SÁNCHEZ, *supra* note 58, at 9 n.1.

107. *Id.*

108. See CRISTINA VENEGAS, DIGITAL DILEMMAS: THE STATE, THE INDIVIDUAL, AND DIGITAL MEDIA IN CUBA 51 (2010).

109. *Id.*

The Ministry of Informatics and Communications oversees Cuban Internet regulations.¹¹⁰ In 2008, the Cuban government lifted a nearly ten-year ban on personal computers and allowed legal connection to an Internet Service Provider (ISP) with a government permit.¹¹¹ Cuba has two ISPs, CENIAI Internet and ETECSA, both of which are owned by the government.¹¹² There is one mobile phone carrier, Cubacel, which is a subsidiary of ETECSA.¹¹³ Despite the lift on the ban, Cuba's government is still one of the most restrictive in the world in regards to Internet access.¹¹⁴ Only certain citizens, like Cuban officials or "trusted" journalists, are granted a government permit to use an ISP.¹¹⁵ Additionally, the government controls the sale and distribution of Internet equipment.¹¹⁶ If someone is able to obtain a permit, the access provided by the government essentially includes a national e-mail system and websites that do not oppose the Cuban government.¹¹⁷

The percentage of Internet users in Cuba is slim. In 2012, only 25.64% of the Cuban population had access to the Internet.¹¹⁸ The Cuban government claims to provide ample Internet access for educational purposes, but in actuality only provides limited, supervised access to students.¹¹⁹ For instance, students at the Latin American School of Medicine in Havana are only allowed forty minutes of Internet access per week—an unreasonable amount of time considering the hours that academic research requires.¹²⁰

Of course, there are sources that will indicate that Cuba is progressing; the National Statistics Office recorded a 46% raise in Internet usage in 2011.¹²¹ But the majority of these users can only connect to a government intranet, rather than the global Internet.¹²² Moreover, in reality, there was only an 8% increase in networked computers, meaning the majority of Cuban Internet users were using shared computers.¹²³ About 5% of these users

110. FREEDOM ON THE NET 2013, *supra* note 24, at 217.

111. *Id.* at 219; Michael Voss, *Cuba Lifts Ban on Home Computers*, BBC NEWS (May 3, 2008), <http://news.bbc.co.uk/2/hi/7381646.stm>.

112. FREEDOM ON THE NET 2013, *supra* note 24, at 219.

113. *Id.*

114. *See id.* at 215.

115. *Id.* at 219.; VENEGAS, *supra* note 108, at 59; *see* Wilkinson, *supra* note 22.

116. FREEDOM ON THE NET 2013, *supra* note 24, at 219.

117. *Id.* at 217.

118. *Id.*

119. *Id.* at 219.

120. *Id.* at 219–20.

121. *Id.* at 217.

122. FREEDOM ON THE NET 2013, *supra* note 24, at 217.

123. FREEDOM ON THE NET 2012, *supra* note 31, at 153.

have periodic access to the web through black market sales of minutes.¹²⁴ The average individual user is not the only one being affected—the mere 3% increase in domain names registered indicates that few organizations are making new websites.¹²⁵

Another deterrent that Cubans experience with regard to Internet access is cost.¹²⁶ In theory, the Internet should lower the cost of distributing and receiving information.¹²⁷ However, the average monthly salary for a Cuban cannot keep up with the tariffs on government-run ISPs.¹²⁸ The average cost for a computer and monitor is 722 convertible pesos (US\$722).¹²⁹ Alternatively, a computer can be purchased on the black market for 550 convertible pesos (US\$550).¹³⁰ In comparison, the average monthly salary in Cuba is only 16 convertible pesos (US\$16).¹³¹

People on the island may send a fax or connect to the Internet in the offices of Cuban telecommunications company ETESCA—but only if they can prove they are not Cuban citizens.¹³² Otherwise, Cubans may access the Internet at government-run cyber cafes and hotels for the equivalent of US\$5 an hour, which is about one-third of the average Cuban monthly salary.¹³³

If one is fortunate enough to gain Internet access, the next obstacle is dealing with Cuba's extremely slow Internet connection. Things were looking brighter for Cubans when a thousand-mile fiber optic cable was installed between Cuba, Venezuela, and Jamaica in 2010 to improve the connection.¹³⁴ Two years after the installation and at least five months after the cable was activated, Havana finally confirmed that the cable was functioning.¹³⁵ While the new cable is said to provide high-speed Internet access, the government cautioned that residents should not expect greater availability of access any time soon.¹³⁶

124. FREEDOM ON THE NET 2013, *supra* note 24, at 217.

125. *Id.*

126. *See Cuba: "The Authorities Attack Us Because We Talk About the Issues People Face," supra* note 102.

127. *See* Balkin, *supra* note 83, at 173, 180.

128. VENEGAS, *supra* note 108, at 59.

129. FREEDOM ON THE NET 2013, *supra* note 24, at 218.

130. *Id.*

131. *Id.*

132. SÁNCHEZ, *supra* note 58, at 96.

133. Wilkinson, *supra* note 22; Caitlin Dewey, *In Cuba, Connecting to the Internet Costs Four Times the Average Annual Salary*, WASH. POST (Oct. 8, 2013), <http://www.washingtonpost.com/blogs/worldviews/wp/2013/10/08/in-cuba-connecting-to-the-internet-costs-four-times-the-average-annual-salary/>.

134. FREEDOM ON THE NET 2013, *supra* note 24, at 218; *see Submarine Cable Map*, TELEGEOGRAPHY, <http://www.submarinecablemap.com/#/country/cuba> (last updated Mar. 29, 2015) (showing the cable route between Cuba, Venezuela, and Jamaica).

135. *See Cuba First High-Speed Internet Connection Activated*, BBC NEWS (Jan. 24, 2013), <http://www.bbc.co.uk/news/world-latin-america-21190066>.

136. *Id.*

In addition to providing a sluggish Internet connection, the Cuban government reigns over the web by controlling the content its citizens can access and monitoring usage.¹³⁷ For instance, Cubans are blocked from dissident websites such as Martí Noticias, Cubaencuentro, and libertaddigital.com.¹³⁸ If a Cuban tries to gain Internet access at her workplace, she cannot use email or chat services that are not local because it may interfere with the software that records all employee correspondence.¹³⁹ It is also not unusual for emails to be delayed or to arrive without attachments.¹⁴⁰ Furthermore, the state routes connections through proxy servers and can access usernames and passwords via a special monitoring software called Avila Link.¹⁴¹

Considering the restrictions that Cubans face in terms of surveillance, censorship, and lack of resources, it is no wonder that the blogging community is crusading for reform.¹⁴² As the next subsection will show, Cuba's laws and policies impede the Cuban people's already limited web access even further.

2. Preventative Measures: Cuba's Restrictive Laws and Policies

The Internet restrictions placed on Cuban citizens are justified through a number of laws. Decree-Law 209 prohibits the Internet from being used in a way that is contrary to Cuba's moral principles or laws, and provides that email messages cannot threaten national security.¹⁴³ Likewise, Resolution 127 prohibits the dissemination of anything deemed as anti-state or bad behavior, and further requires ISPs to enable detection controls at installation.¹⁴⁴ In 2008, Resolution 179 was enacted to require ISPs to censor what Freedom House reported as "a range of vaguely defined materials."¹⁴⁵ Specifically, it allows ETECSA to take the steps necessary to block access to sites with content deemed as conflicting with social interests and morals, as well as to prevent the use of applications that could affect the state's integrity or national security.¹⁴⁶ In addition, Resolution 56/1999

137. See Nico Cervantes, *Tight Controls over Cuban Web Access*, INST. FOR WAR & PEACE REPORTING (Aug. 16, 2013), <http://iwpr.net/report-news/tight-controls-over-cuban-web-access>.

138. *Id.*

139. SÁNCHEZ, *supra* note 58, at 129.

140. FREEDOM ON THE NET 2012, *supra* note 31, at 163.

141. FREEDOM ON THE NET 2013, *supra* note 24, at 226.

142. Cuba, REPORTERS WITHOUT BORDERS (Mar. 12, 2012), <http://en.rsf.org/cuba-cuba-12-03-2012,42058.html>.

143. FREEDOM ON THE NET 2013, *supra* note 24, at 226.

144. *Id.*

145. FREEDOM ON THE NET 2012, *supra* note 31, at 8.

146. *Id.*

requires that all information intended to be published or disseminated must be approved by the National Registry of Serial Publications.¹⁴⁷ Resolution 92/2003 proscribes email providers from providing services to users that have not been government-approved, and only allows the use of domestic chat services.¹⁴⁸ Finally, Resolution 17/2008 provides that ISPs must register the addresses of all Internet traffic for at least a year.¹⁴⁹

The Cuban government also implements a community spy organization to monitor nonconforming activity. Cuban dissidents live under surveillance even in their daily lives thanks to the Committee for Defense of the Revolution, known as the “CDR.”¹⁵⁰ Shortly after the 1959 Revolution, Fidel Castro launched the CDR “to implement . . . a Revolutionary system of collective surveillance where everybody will know who lives on their block and what relations they have with the tyranny; and what they devote themselves to; who they meet with; what activities they are involved in.”¹⁵¹ Over fifty years later, the CDR is targeting online dissidents.¹⁵² Blogger Yoani Sánchez has said that the government has warned her of a file kept on all of her wrongdoings.¹⁵³ She goes on to say, “The neighbors hint that I should disguise myself with sunglasses, disconnect the phone, [and] be wary when I talk about something private.”¹⁵⁴

Cuban citizens do not find protection from these laws in their constitution. Article 53 of the Cuban Constitution recognizes freedom of speech and of the press only insofar as it is “in conformity with the objectives of the socialist society.”¹⁵⁵ The restriction to socialist objectives is justified by the reasoning that the press and all means of mass communications are state property and therefore should serve the interests of the socialist cause.¹⁵⁶ Similarly, Article 57 states that correspondence and telephone communications are inviolable, *except* by law.¹⁵⁷

Without constitutional protection against the government’s restrictive Internet laws, the Cuban people are left with the options of either putting up with being disconnected and unable

147. FREEDOM ON THE NET 2013, *supra* note 24, at 226.

148. *Id.*

149. *Id.*

150. Yoani Sánchez, *Fidel’s “Revolutionary Collective Surveillance” Neighborhood Spies Create Social Violence and Hatred*, WORLD POST (Sept. 28, 2012, 2:55 AM), http://www.huffingtonpost.com/yoani-sanchez/fidels-revolutionary-coll_b_1921751.html.

151. *Id.*

152. SÁNCHEZ, *supra* note 58, at 49.

153. *Id.*

154. *Id.*

155. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [CONSTITUTION] art. 53 (1992).

156. *Id.*

157. *Id.* art. 57.

to voice their opinions, or risking government harassment¹⁵⁸ and detention.¹⁵⁹

3. Cuba's Restrictions Violate the ICCPR

Cuba's strict constraints over its people's Internet access are in conflict with its obligations under the ICCPR. The communist government's hypocrisy in signing the Covenant is evident in its violation of the people's ICCPR right to privacy in Article 17¹⁶⁰ and right to access information in Article 19.¹⁶¹

Article 17 of the ICCPR protects people from having their privacy violated, including privacy of correspondence.¹⁶² Compliance with Article 17 includes that "[c]orrespondence should be delivered to the addressee without interception and without being opened or otherwise read. Surveillance, whether electronic or otherwise . . . should be prohibited."¹⁶³ Unlike other ICCPR guarantees like the freedom of expression, the right to privacy has no limitations.¹⁶⁴ Yet, the Cuban government utilizes monitoring software to spy on its own citizens, albeit with a pop-up warning that warns: "When you send information to the Internet, other people may see what you are sending. Do you wish to continue?"¹⁶⁵ In addition, the Cuban government's implementation of the Committee for Defense of the Revolution—the organization mentioned above that places spies in Cuban neighborhoods and has stalked blogger Yoani Sánchez—is a clear infringement on the private lives of Cubans.¹⁶⁶ Given the state's actions in monitoring its inhabitants, it follows that the Cuban government is in violation of Article 17's guarantee of privacy.¹⁶⁷

The constraints that the Cuban government has placed on the Internet also violate Article 19 of the ICCPR, which

158. SÁNCHEZ, *supra* note 58, at 210.

159. Ángel Santiesteban, *UNEAC Writers Remain Silent to Preserve Their Little Privileges #YoTambienEscriboInclinado*, THE CHILDREN NOBODY WANTED (Jan. 31, 2013), <http://hijosnadieeng.wordpress.com/2013/01/>.

160. ICCPR, *supra* note 11, at 177.

161. *Id.* at 178.

162. *See id.* at 177.

163. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY 363 (Sarah Joseph et al. eds., 2000).

164. CHERYL ANN BISHOP, ACCESS TO INFORMATION AS A HUMAN RIGHT 111 (Melvin I. Urofsky ed., 2012).

165. FREEDOM ON THE NET 2013, *supra* note 24, at 226; *Miami Herald Cites IRI's Cuba Poll*, INT'L REPUBLICAN INST. (June 7, 2014), <http://www.iri.org/resource/miami-herald-cites-iris-cuba-poll>.

166. SÁNCHEZ, *supra* note 58, at 129.

167. *See* ICCPR, *supra* note 11, at 177.

guarantees the right to access information.¹⁶⁸ This right includes both seeking and receiving information.¹⁶⁹ In the Human Rights Committee's decision, *Gauthier v. Canada*, the Committee found that there was a breach of Article 19 when a newspaper publisher was denied equal membership to an association that granted press access to precincts of Canadian parliament.¹⁷⁰ While this case dealt with the rights of a member of the press to gain equal access to government information,¹⁷¹ the Committee's reasoning is useful in understanding how the Cuban government violates this provision in its Internet censorship. In *Gauthier*, the Committee noted the importance of an uncensored press in informing public opinion.¹⁷² Similarly, websites that are politically opposed to the Cuban government inform the Cuban people of otherwise-invisible world events and community happenings.¹⁷³ Like the journalist in *Gauthier* who was blocked from government access for his reporting in Canada, blocking politically dissident websites from Cuban computers interferes with Cubans' right to access and receive information under Article 19 of the ICCPR.¹⁷⁴

The Committee's decision in *Laptsevich v. Belarus* is likewise helpful in determining that Cuba's Internet restrictions violate Article 19. In the *Laptsevich* case, Mr. Laptsevich was sanctioned for failing to comply with a domestic law that provided a lengthy list of requirements for all printed periodicals.¹⁷⁵ However, the required information could only be obtained through government approval, which was unattainable to Mr. Laptsevich because of the nature of the content he intended to publish.¹⁷⁶ The state argued in its defense that Mr. Laptsevich distributed leaflets that misrepresented Belarus and called for independence.¹⁷⁷ The

168. *See id.* at 178; THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY, *supra* note 163, at 386.

169. ICCPR, *supra* note 11, at 178; THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY, *supra* note 163, at 387.

170. *Gauthier v. Canada*, Case No. CCPR/C/65/D/633/1995, ¶¶ 2.1–2.4 (H.R.C. May 5, 1999).

171. *Id.*

172. *Id.* ¶ 13.4

173. *See* SÁNCHEZ, *supra* note 58, at 37–38.

174. *See* BISHOP, *supra* note 164, at 46–47.

175. *Laptsevich v. Belarus*, U.N. Doc. CCPR/C/68/D/780/1997, ¶ 3.1 (H.R.C. Apr. 14, 2000). The requirements for all published materials under Belarus' Act on the Press and Other Mass Media Act included:

1) Name of publication; 2) Founder (co-founders); 3) Full name of the (editor-in-chief) or his deputy; 4) serial number of the edition and date of issue, and also, for newspapers, date when sent to press; price per issue (copy) . . . 6) print run; 7) index number . . . 8) publisher's and printer's full addresses; 9) registration number.

Id.

176. *See id.* ¶ 3.3.

177. *Id.* ¶¶ 5.2, 6.1.

Committee held that the government's requirement of information that could only be obtained through the government itself was an obstacle that violated Mr. Laptsevich's right to impart information under Article 19.¹⁷⁸

Cubans are also bombarded with obstacles to distributing information. When using the Internet at one of Cuba's 118 access points, users are required to sign terms and conditions cautioning them that "they may be banned for 'actions that ETECSA or the administrative and judicial might consider harmful or damaging to . . . independence and national sovereignty.'"¹⁷⁹ Those who would like to open a permanent account must present identification and divulge personal details on a required form.¹⁸⁰ Independent journalist Alina Robeldo stated that there have been several instances where she has been treated with more scrutiny than others while trying to access the Internet at Cuban hotels.¹⁸¹ Similar to the situation in *Laptsevich*, the Cuban people are flooded with obstacles that require them to obtain government approval. This prevents Cuban web users from imparting politically dissident information, thus violating Article 19 of the ICCPR.¹⁸²

A general comment to Article 19 notes that the emergence of "modern mass media" has made it necessary to implement measures to prevent the kind of control that would impede a facet of the right to freedom of expression that is not explicitly mentioned in Article 19.¹⁸³ One such example is that government monopolies over the media are irreconcilable with Article 19.¹⁸⁴ In observing Italy, the Committee noted that it was "concerned about the excessive concentration of the mass media in a small group of people. Furthermore, . . . such concentration may affect the enjoyment of the right to freedom of expression and information under Article 19 of the Covenant."¹⁸⁵ In the same way, the Cuban government's monopoly over the media affects the Cuban people's ability to express themselves freely.¹⁸⁶ The press is regulated by the Communist Party of Cuba and filtered through

178. *Id.* ¶ 9.

179. Cervantes, *supra* note 137.

180. *Id.*

181. *Id.*

182. *See id.*; THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY, *supra* note 163, at 386.

183. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY, *supra* note 163, at 389.

184. *Id.* at 390.

185. *Id.* at 391.

186. *World Report 2014: Cuba*, HUMAN RIGHTS WATCH, <http://www.hrw.org/world-report/2014/country-chapters/cuba?page=2> (last visited Mar. 31, 2015).

the Ideological Department of the Central Committee.¹⁸⁷ The Cuban government pushes its media control even further by controlling what the foreign press can report on the island.¹⁸⁸ The Castro regime punishes counterrevolutionary media outlets by withholding press credentials and visas—both of which are required for foreign journalists to report from the island.¹⁸⁹ The Committee's concern with overbearing government control over the press therefore indicates that Cuba is in violation of Article 19.¹⁹⁰

Considering the violations mentioned above, there is no doubt that the Cuban government is ignoring the ICCPR's guarantee of privacy and freedom of expression. But this is not stopping the Cuban people from speaking up. Despite the threat that the government imposes on their lives and reputations, Cuban dissidents are constantly finding new ways to evade these restrictions.¹⁹¹ Armed with creativity and desperation to be heard, the Cuban people are bypassing the censors and getting their message online.¹⁹²

*B. Creative Resistance and Government Backlash:
Another Excuse to Violate the ICCPR*

Once a Cuban citizen has made the decision to rebel against the government's restrictions, the next obstacle is evading government backlash. Subsection 1 displays the technological creativity of the oppressed Cuban people. In the face of potential harassment and imprisonment, Cubans find a means to get connected and speak out against the government. Subsection 2 explains why the Cuban government's methods of penalizing these online dissidents violate the ICCPR. The digital dissenters' refusal to give up their fight to freely access information and express themselves in light of these violations emphasizes the value that the Cuban people place on their own human rights.

1. Cuban Resistance to Internet Restrictions: A Blogger's Revolution

In her book, *Havana Real*, Yoani Sánchez mocks the Cuban government's methods of silencing her digital voice:

187. McGoun, *supra* note 59, at 103, 113.

188. See HUMAN RIGHTS WATCH, *supra* note 186.

189. *Id.*

190. See THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY, *supra* note 163, at 390.

191. Cuba: "The Authorities Attack Us Because We Talk About the Issues People Face", *supra* note 102.

192. See Wilkinson, *supra* note 22.

[T]he anonymous censors of our impoverished cyberspace want to send me to my room, turn off the lights, and not allow my friends to visit. Which means, in terms of the Web: blocking my site, filtering my page, and finally “puncturing” my blog so my compatriots can’t read it . . . *The reprimand, however, is so futile that it’s pitiful, and it’s so easy to get around that it becomes an incentive.*¹⁹³

For a small group of web-savvy Cubans like Sánchez, posting new content and bypassing government attempts to block content has become a cat-and-mouse game.¹⁹⁴ Without Internet freedom, sharing content online is reserved to the few who are able stay one step ahead of the government’s constant efforts to block them.¹⁹⁵ The ability of these Cubans to constantly adapt to the government’s blockades reveals a resolute determination to obtain more than just mere access—their rebellion demands the freedom to access information, express their opinions, and surf the web without Big Brother looking over their shoulders.

The burden that government censorship has placed on the people has given Cubans the opportunity to showcase their technological ingenuity.¹⁹⁶ Computer-savvy Cubans are taking the outdated lemons given to them by the government and making digital *limonada* out of them. A case in point is radio host and cofounder of Radio Habana Cuba, Arnaldo Coro.¹⁹⁷ Coro’s radio talk show is geared toward giving Cubans low-cost solutions to communicate in a society where the only technology available is ages behind progress.¹⁹⁸ The low-tech guru used old speakers to pipe digital signals from “who-knows-what-country,” and parts that he officially requested for old soundboards were instead used to make computer housings.¹⁹⁹ As an alternative for him to use when the telephone lines and slow connection acted up, he uses several email accounts from his work sites.²⁰⁰ Coro refers to his working the government’s system as Cuban-style “magic.”²⁰¹ Like Coro, Yoani Sánchez built her computer out of spare parts.²⁰² Since then, Sánchez has been listed as one of *Time Magazine*’s 100

193. SÁNCHEZ, *supra* note 58, at 41 (emphasis added).

194. *See id.*

195. *See* FREEDOM ON THE NET 2013, *supra* note 24, at 216–17.

196. *See* VENEGAS, *supra* note 108, at 35.

197. *Id.*

198. *Id.* at 35–36.

199. *Id.* at 36.

200. *Id.* at 35.

201. *Id.*

202. M.J. Porter, *Introduction* to HAVANA REAL, *supra* note 58, at x.

most influential people for her blog *Generación Y*, which describes her daily life as a Cuban political dissident.²⁰³ She also received one of Spain's top journalist awards, and to date is the only blogger to interview President Barack Obama.²⁰⁴ Considering where Sánchez started, calling it "magic" may not be such a stretch.

There are ways to obtain more current technology, but it involves either purchasing from the black market or receiving it from a foreign friend.²⁰⁵ When Raul Castro finally allowed the sale of computer parts in 2008, Cubans were shocked with the US\$900 and US\$2000 price tags on equipment.²⁰⁶ With an average monthly salary of less than US\$20, Cubans had no choice but to take their money to these "informal" markets.²⁰⁷ Apple products are especially popular in these illegal markets with Cubans under twenty-five.²⁰⁸ These gadgets are helpful in accessing information without Internet access, as they can be jail-broken (allowing certain limitations to be removed from the device) and updated with useful applications at a mobile repair shop for US\$5–10.²⁰⁹ For example, many Cubans download the Spanish-language version of Wikipedia onto their smartphones.²¹⁰ One can even download a pirated application containing ETESCA's database, which reveals the identity of an incoming caller, the person's address, and their identity card number.²¹¹ In a country where the cost of the little technology allowed is beyond the means of the general population, the black market is an invaluable resource.²¹²

Even when dissident bloggers cannot publish counter-revolutionary content onto the Internet themselves, their content reaches others via flash drives. Cuban bloggers save their content to these flash drives, which are passed around and "dropped into friendly hands on buses and along street corners" to share information.²¹³ Cubans also maneuver around the lack of Internet access by converting their articles into digital images and text messaging them to a foreign contact outside the island, who

203. *Id.* at xi–xii.

204. *Id.*

205. Yoani Sánchez, *Cubans Love Apple*, WORLD POST (Oct. 20, 2012), http://www.huffingtonpost.com/yoani-sanchez/cubans-love-apple_b_1992219.html.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. Sánchez, *supra* note 205.

212. SÁNCHEZ, *supra* note 58, at 32; *see* Sánchez, *supra* note 205.

213. Curt Devine, *Cuba Dissidents Harness Blogs, Social Media to Spread Cause Globally*, PBS MEDIASHIFT (July 22, 2013), <http://www.pbs.org/mediashift/2013/07/cuban-dissidents-harness-the-internet/>; Tim Johnson, *Cubans Evade Censorship by Exchanging Computer Memory Sticks, Blogger Says*, MCCLATCHYDC (Mar. 9, 2013), <http://www.mcclatchydc.com/2013/03/09/185347/cubans-evade-censorship-by-exchanging.html>.

then posts the article online.²¹⁴ Dissident bloggers also utilize text messaging to have foreign contacts post messages onto microblogging websites like Twitter.²¹⁵ The caveat to this method is that because the bloggers themselves do not have Internet access, they cannot see the comments and replies to their online writings.²¹⁶

Cubans also rely on foreign friends to establish web domains.²¹⁷ Cuban citizens cannot simply buy web domains, whether it be for private or commercial use.²¹⁸ Only state institutions are allowed web domains.²¹⁹ With that, Cubans who are eager to be heard online can either wait for their communist leader to legalize non-state domains (which may never happen), or have a foreign contact illegally establish a domain from another country.²²⁰

Of course, there are ways for Cubans to illegally access the Internet themselves, albeit risky ones. One way to get online is through the black market.²²¹ Cubans can buy or rent passwords and codes that are meant to be used by the few individuals or companies that have officially been granted Internet access.²²² Another way to obtain access is by pretending not to be Cuban.²²³ For instance, Yoani Sánchez slipped into hotel Internet cafés unnoticed during a time when Cubans were banned from tourist hotels.²²⁴ The blogger accomplished this by dressing as a tourist and speaking to hotel staff in German.²²⁵ Sánchez teaches techniques like this at her Blogger Academy, which she has been running out of her living room since 2010.²²⁶ She travels to areas of Cuba that have the most limited Internet access to train others to use free publishing software, to sneak into hotels and cybercafés, and how to maintain an audience in an area that is disconnected.²²⁷

Evading government constraints is a victory for Cuban technofiles. Nevertheless, it is only the first step on the road to

214. Cuba: "The Authorities Attack Us Because We Talk About the Issues People Face", *supra* note 102.

215. SÁNCHEZ, *supra* note 58, at 206; Cuba: "The Authorities Attack Us Because We Talk About the Issues People Face", *supra* note 102.

216. *Id.*

217. See SÁNCHEZ, *supra* note 58, at 65–66.

218. *Id.*

219. *Id.*

220. *Id.*

221. *Internet Enemies*, REPORTERS WITHOUT BORDERS, <http://en.rsf.org/internet-enemie-cuba,39756.html> (last visited Mar. 31, 2015).

222. *Id.*

223. Porter, *supra* note 202, at ix–x.

224. *Id.*

225. *Id.*

226. *Id.* at xii.

227. SÁNCHEZ, *supra* note 58, at 123.

becoming informed and speaking out against the regime. The next step is overcoming the abuse one endures along the way.

2. Castro's Response to Resistance: More ICCPR Violations

A confident cyber-revolutionary like Sánchez may scoff at the government's attempts to stop dissidents,²²⁸ but the reality is that these creative methods of resistance are met with harsh consequences. The Castro regime responds to dissident bloggers with defamation campaigns, arbitrary arrests and detainment, and sometimes prison sentences.²²⁹ Cuban blogger Angel Santiesteban has experienced all of these tactics.²³⁰ On December 8, 2012, Santiesteban was sentenced to five years in prison.²³¹ Santiesteban was charged with domestic rape and injury, but says that his real crime was criticizing the government on his blog, *Los Hijos Que Nadie Quiso (The Children Nobody Wanted)*.²³² Witnesses affirmed Santiesteban's innocence and most of the charges were dropped; nonetheless, he received a five-year prison sentence.²³³ Santiesteban was beaten and harassed by Cuban officials as he awaited his sentence.²³⁴ Despite his pending punishment, Santiesteban continued to blog and even posted photos of his bloody shirt as evidence of his beating, along with photos of the actual beating.²³⁵ Santiesteban wrote that only "Castro justice" exists in Cuba now.²³⁶ After beginning a hunger strike, Santiesteban was sent to prison, making it more difficult for him to regularly contribute to his blog.²³⁷ Yet, he continues to post on his blog via telephone when possible, and reveals the injustices and poor conditions he experiences in prison.²³⁸

Santiesteban is one of many Cubans who have been arrested after posting counterrevolutionary information online.²³⁹ During

228. *Id.* at 41.

229. REPORTERS WITHOUT BORDERS, *supra* note 221.

230. See generally Ángel Santiesteban, *Let Me Be Clear: If "Something" Happens to Me There Is No Way It Will Be an "Accident,"* THE CHILDREN NOBODY WANTED (Jan. 18, 2013), <http://hijosnadieeng.wordpress.com/2013/01/>.

231. *Freedom House Condemns Prison Sentence of Cuban Dissident Santiesteban*, FREEDOM HOUSE (Dec. 19, 2012), <http://www.freedomhouse.org/article/freedom-house-condemns-prison-sentence-cuban-dissident-santiesteban>.

232. Santiesteban, *supra* note 230.

233. FREEDOM HOUSE, *supra* note 231.

234. Santiesteban, *supra* note 230.

235. *Id.*

236. *Id.*

237. Ángel Santiesteban, *Prison Diary XXII: Maximum Security and Minimum Decency*, THE CHILDREN NOBODY WANTED (May 30, 2013), <http://hijosnadieeng.wordpress.com/2013/05/>.

238. *Id.*

239. FREEDOM ON THE NET 2013, *supra* note 24, at 228.

the Pope's visit to Cuba in 2012, dozens of bloggers were under house arrest or detained.²⁴⁰ Yoani Sánchez has been arrested, beaten, and harassed for her anti-government advocacy.²⁴¹ As described in the Introduction, Luis Felipe Rojas was taken from his home and detained after releasing a report that condemned human rights offenders.²⁴² Calixto Martínez, an online journalist for the news website *Hablemos Press*, was arrested for "disrespecting" the Castro regime.²⁴³ Martínez was never formally charged.²⁴⁴ Before his release, he endured solitary confinement as punishment for going on a hunger strike.²⁴⁵

Arrests like those of Santiesteban, Sánchez, and Rojas are justified under Cuban law, which allows officials to arrest and detain dissidents without proof of a crime.²⁴⁶ Specifically, one may be arrested for "social dangerousness" under Title XI of the Cuban Penal Code,²⁴⁷ which provides that people may be detained for crimes they may commit in the future.²⁴⁸ Title XI also provides for "pre criminal security measures," which states that those declared "dangerous" may have "pre criminal security" imposed on them.²⁴⁹ These security precautions include "a) therapeutic measures; b) reeducational measures; [and] c) measures of surveillance by the agencies of the Revolutionary National Police."²⁵⁰ Prisoners are frequently denied parole after refusing to participate in "reeducation classes."²⁵¹

Cuba's laws allowing detention without due process conflict with provisions of its own constitution.²⁵² Article 59 of the Cuban Constitution states that a person must be tried by "the competent tribunal" and has a "right to a defense."²⁵³ Those responsible for violations are to be punished by law.²⁵⁴ Article 63 provides that every citizen has the right to submit complaints and petitions to the authorities and to promptly receive appropriate attention and

240. *Id.*

241. Lizette Alvarez, *New Breed of Cuban Dissident Finds Changed Miami*, N.Y. TIMES, Apr. 1, 2013, http://www.nytimes.com/2013/04/01/us/yoani-sanchez-cuban-dissident-welcomed-in-miami.html?_r=1&.

242. Rojas, *supra* note 2.

243. FREEDOM ON THE NET 2013, *supra* note 24, at 227.

244. *Id.*

245. *Id.*

246. Steinberg, *supra* note 21.

247. CÓDIGO PENAL [Penal Code] art. 72 (Cuba).

248. *Id.*; Steinberg, *supra* note 21.

249. CÓDIGO PENAL [Penal Code] art. 78 (Cuba).

250. *Id.*

251. *World Report 2013: Cuba*, *supra* note 52.

252. See CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [CONSTITUTION] arts. 59, 63 (1992).

253. *Id.* art. 59.

254. *Id.*

response to the matter.²⁵⁵ However, as seen in the above cases of Santiesteban and his fellow dissident bloggers, Cubans are not afforded these rights of due process.

In addition to violating its own constitution, the Cuban government is also violating the freedom to hold opinion without interference and the prohibition of arbitrary detention set forth in the ICCPR.²⁵⁶ Specifically, the prohibition of arbitrary detention in Article 9 of the Covenant requires that a person be informed of her crime, that she be brought promptly before a judge or proper authority, that she have a trial within a reasonable time, and that she have a right to challenge the violation in court.²⁵⁷ This provision further provides that victims of arbitrary detention are entitled to compensation.²⁵⁸ As illustrated in the case of online journalist Calixto Martínez, Cuban authorities arrest people without charging them for a crime—a direct violation of Article 9.²⁵⁹

One may argue that Cuba is justified in detaining people under “dangerousness” and “security measures” because arrest and detention are authorized under the ICCPR when specifically prescribed by law.²⁶⁰ However, as the Commentaries to the ICCPR make clear, the law itself cannot be arbitrary: “the prohibition of ‘arbitrary’ deprivations of liberty goes further than the prohibition of ‘unlawful’ deprivations, as ‘arbitrariness’ is a principle *above* rather than *within* the law.”²⁶¹ With this considered, it follows that Cuba’s arrests under the dangerousness laws and security measures are examples of arbitrary laws.²⁶² The Human Rights Committee dealt with this issue when it expressed its concern over arbitrary laws in Concluding Observations on Trinidad and Tobago, where the country’s Police Act allowed policemen to arrest people without a warrant in a wide array of circumstances.²⁶³ The Committee reasoned that “[s]uch a vague formulation of the circumstances in the Act gives too generous an opportunity to the police to exercise this power,” and concluded that the state must conform its legislation to Article 9.²⁶⁴ Similarly, Cuba’s “dangerousness” and “security

255. *Id.* art. 63.

256. ICCPR, *supra* note 11, at 175, 178.

257. *Id.* at 175–76.

258. *Id.* at 176.

259. See FREEDOM ON THE NET 2013, *supra* note 24, at 227.

260. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY, *supra* note 163, at 308.

261. *Id.* at 308–09.

262. *Id.*

263. H.R.C., 70th Sess., Concluding Observations on Trinidad and Tobago, U.N. Doc. CCPR/CO/70/TTO, at 16 (Nov. 10, 2000).

264. *Id.*

measures” laws are too vague to comply with Article 9.²⁶⁵ Regarding these Cuban laws, special advisor of Amnesty International Javier Zúñiga stated that “[t]he use of this particular legislation, which allows the government to jail its citizens on the slightest evidence because it believes they may commit a crime in the future, is a flagrant violation of international standards and must be immediately repealed.”²⁶⁶

Cuba’s treatment of online dissidents also violates Article 19 of the ICCPR, which ensures the right “to hold opinion without interference” and “freedom of expression.”²⁶⁷ The pre-criminal laws of “dangerousness” and “security measures” in Cuba that are used against political dissidents can be compared to the issue confronted in the Committee’s decision of *Kim v. Republic of Korea*.²⁶⁸ In *Kim*, Mr. Kim was convicted for expressing opinions that were sympathetic to an anti-state organization, the Democratic People’s Republic of Korea.²⁶⁹ The Committee disagreed with the domestic court’s reasoning that “mere knowledge that the activity could be of benefit to North Korea was sufficient to establish guilt.”²⁷⁰ Furthermore, the Committee noted that the state never specified the threat posed by Mr. Kim’s actions and did not provide specific justifications regarding why he was prosecuted.²⁷¹ The Court held that the restriction of freedom of expression imposed by the Korean government violated Article 19 of the ICCPR.²⁷² Like the victim in *Kim*, online political dissidents in Cuba are detained for their potential to become a danger to society.²⁷³ Therefore Cuba, like South Korea in the *Kim* case, is violating Article 19 of the ICCPR every time it arrests a person for expressing an anti-communist opinion online.²⁷⁴

As seen above, Cuba’s violations of the rights outlined in the ICCPR are substantial. The government does everything it can to keep its people disconnected from the web, and slams down with an iron fist when its citizens find a way to gain access. Looking at Cuba, it seems that if the people were just given more access to technology, they could band together and incite their own revolution. However, as an analysis of Internet restrictions in

265. See *Cuba: Release Five Prisoners of Conscience Immediately*, *supra* note 53.

266. *Id.*

267. ICCPR, *supra* note 11, art. 19, ¶¶ 1–2.

268. See generally *Kim v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/574/1994 (H.R.C. Nov. 20, 1998).

269. *Id.* ¶¶ 2.1–2.2.

270. *Id.* ¶¶ 12.4–12.5.

271. *Id.*

272. *Id.* ¶ 12.5.

273. See Steinberg, *supra* note 21.

274. See generally *Kim*, U.N. Doc. CCPR/C/64/D/574/1994.

China will show, more technology is not necessarily the key to freedom.

V. CHINA'S INTERNET RESTRICTIONS AND RESISTANCE

Since the 1980s, digital media has been widely viewed as the road to democracy.²⁷⁵ The ability to communicate and access information via the Internet posed new possibilities for existing democracies to be strengthened and for new democracies to emerge.²⁷⁶ But with the capital and resources that Cuba lacks, the Chinese government has done something remarkable—it has twisted the Internet into a tool of suppression. China is said to have a “two hand strategy” in regards to Internet regulation: on the one hand, it promotes Internet access for economic advancement, and on the other, it censors any content that threatens the communist government.²⁷⁷ Carrying out this double-handed strategy is no easy feat; the Chinese government's ability to exercise control over the online practices of 564 million Internet users and 986 million mobile phone users is impressive, to say the least.²⁷⁸ In 2012, China spent more on its domestic security than it did on defense for the second year in a row, revealing that the government's primary concern is silencing its own dissidents.²⁷⁹

In Section A, context is provided to show that China's promotion of Internet access does not come from a desire to promote human rights. This leads to the explanation of why two totalitarian states that are so concerned with control have vastly different approaches to Internet regulation. Section B explains that the Chinese government dictates the content available to its citizens by utilizing a combination of surveillance software, filtering, and human monitoring.²⁸⁰ These methods of censorship ultimately lead to violations of the rights China agreed to uphold in the ICCPR. Section C looks to the Chinese people's resistance to the government's Orwellian practices, and the consequences that these digital revolutionaries face. By comparing the human rights violations of China with those outlined above in Cuba, the bigger picture of Internet as a means of both freedom and oppression becomes clearer. The lesson that China teaches is that wealth,

275. LAGERKVIST, *supra* note 9, at 17.

276. *Id.*

277. *Id.* at 14.

278. FREEDOM ON THE NET 2013, *supra* note 24, at 182.

279. *Id.* at 185; Chris Buckley, *China Internal Security Spending Jumps Past Army Budget*, REUTERS, Mar. 5, 2011, available at <http://www.reuters.com/article/2011/03/05/us-china-unrest-idUSTRE7222RA20110305>.

280. FREEDOM ON THE NET 2013, *supra* note 2471, at 194–96.

technology, and Internet access do not necessarily produce a free society—whether or not a society is free comes down to the government’s respect for human rights norms.

*A. Why China Handles the Internet
Differently from Cuba*

As two longstanding totalitarian governments that violate the same provisions of the ICCPR, it may come as a surprise that Cuba and China have completely different methods of controlling the web. Their similarities are evident in that both their constitutions pledge to the same ideals of a socialized communist state,²⁸¹ and both regimes arrest, detain, and silence those who speak out against the government.²⁸² Yet, Cuba and China have vastly dissimilar approaches to Internet access: Cuba has chosen to strictly limit Internet access²⁸³ while China has made a conscious effort to encourage access.²⁸⁴ Why the difference in strategy?

The root of the difference between Cuba’s and China’s responses to the Internet lies in the countries’ places in the world economy. Cuba is far from a major player in the global market. The small island has blamed the United States for its poor economy since President Kennedy placed an embargo against Cuba in 1962.²⁸⁵ However, the Castro regime has consistently been hesitant to implement economic reforms that could improve the Cuban economy.²⁸⁶ Economic reforms seemed to be on the horizon when Raul Castro succeeded his brother Fidel as president. With his induction into the presidency in 2008, Cubans were given the opportunity to buy modern cars and own small businesses.²⁸⁷ The problem has been that Cubans cannot afford these modern cars, and their “self-employ[ment]” is often terminated by the constant influx of government regulations.²⁸⁸ Dozens of Cuban artists and merchants expressed their frustration with these regulations on January 21, 2014 when they marched in the city of Holguín, Cuba

281. CONSTITUCIÓN DE LA REPÚBLICA DE CUBA [CONSTITUTION] art. 5 (1992); XIANFA art. 1 (1982) (China).

282. *See supra* Part IV; *infra* Part V.

283. *See supra* Part IV.A.

284. *See infra* text accompanying notes 294–96.

285. Portia Siegelbaum, *Cuba: U.S. Embargo Causes \$1 Trillion in Losses*, CBS NEWS (Sept. 14, 2011, 1:50 PM), <http://www.cbsnews.com/news/cuba-us-embargo-causes-1-trillion-in-losses/>.

286. *See* John Paul Rathbone, *Raul Castro’s Unhurried Reforms of Cuba Economy Falter*, FIN. TIMES, Jan. 17, 2014, <http://www.ft.com/intl/cms/s/0/27ee4c6a-7dee-11e3-b409-00144feabdc0.html#axzz2t8bk6rdP>.

287. *Id.*

288. *Id.*

in demonstration of their desire to work without government harassment.²⁸⁹ These slow reforms run true with Raul Castro's mantra throughout his implementation of economic policies: "without hurry, but without pause."²⁹⁰

Given that Castro is in no hurry to boost the Cuban economy,²⁹¹ it is not surprising that he is in no hurry to increase Internet access. Studies have shown that Internet access and high broadband speed drives business transformation and contributes to GDP growth.²⁹² Based on these studies, it follows that if the Cuban government increased Internet access, businesses would have a greater chance of flourishing and the economy could improve. From a cost-benefit perspective, however, if the Cuban government is not interested in jump-starting its economy, there is no reason to risk the free speech platform that the Internet would provide to its inhabitants.²⁹³

In contrast to Cuba, the Chinese government chose to popularize the Internet and now houses the world's largest population of Internet users.²⁹⁴ As an economic superpower, China understands that in order to maintain its position in the global economy, it must promote Internet use.²⁹⁵ With that in mind, the Chinese government encourages Internet use for economic purposes, while implementing strict restrictions and censorship practices on the web.²⁹⁶

China's encouraging approach toward Internet use shows that merely getting connected to the web does not ensure the freedoms set forth in the ICCPR. A country like China will provide access to put itself ahead in the global financial sphere—but like Cuba, China is not willing to let its people be exposed to or express anything that threatens the totalitarian regime. In the next section, studying China's impressive system of Internet restrictions and its response to resistance will clarify how China accomplishes its dual goals of being an Internet savvy business

289. Damien Cave, *Cuban Vendors, in a Rare Move, Stage a Protest*, N.Y. TIMES, Jan. 24, 2014, http://www.nytimes.com/2014/01/24/world/americas/cuban-vendors-in-rare-move-stage-a-protest.html?_r=0.

290. Rathbone, *supra* note 286.

291. *Id.*

292. JAMES MANYIKA & CHARLES ROXBURGH, MCKINSEY GLOBAL INST., *THE GREAT TRANSFORMER: THE IMPACT OF THE INTERNET ON ECONOMIC GROWTH AND PROSPERITY* 1–3 (2011), available at http://www.mckinsey.com/insights/high_tech_telecoms_internet/the_great_transformer; *New Study Quantifies the Impact of Broadband Speed on GDP*, ERICSSON (Sept. 27, 2011), <http://www.ericsson.com/news/1550083>.

293. For more on the Internet as a free speech platform, see *supra* Part IV.A.

294. LAGERKVIST, *supra* note 9, at 12, 41.

295. *Id.* at 17.

296. *Id.* at 16.

superpower while suppressing its people's expression and access to information.

*B. The Great Firewall of China:
A Wall Built on ICCPR Violations*

Because China allows a broader access to Internet than Cuba for the sake of economic development, it must implement a more complicated oversight of the Internet in order to control available information. Subsection 1 details China's system of Internet controls and policies. This ultimately leads to violations of the ICCPR, which are explained in subsection 2.

1. China's Internet Restrictions: Big Brother is Watching

China's system of Internet restriction operates on a sophisticated multilayered system, the first layer known as "The Great Firewall of China."²⁹⁷ Internet restrictions are overseen by the Ministry of Information Industry.²⁹⁸ Unlike Cuba, where the only choice is a government intranet, China allows its citizens the choice of using private ISPs.²⁹⁹ But these providers must be licensed by the state.³⁰⁰ In December 1997, "Computer Information Network and Internet Security, Protection and Management Regulations" were released to establish the responsibilities of Chinese ISPs and listed nine types of information to be prohibited online, including circulating rumors and information that could harm the credibility of the government.³⁰¹ In 2005, the nine prohibitions were increased to eleven, the two additional categories being "information inciting illegal assemblies, association, demonstration, protests, and gathering that disturb social order" and "information concerning activities of illegal civic associations."³⁰² Like Cuba's dangerousness and security measures laws, these vague prohibitions allow the government to control political dissidence and prevent the mobilization of protests.³⁰³

China's access to advanced technology allows the government to be adept in its censorship, rendering it invisible to the user.³⁰⁴ Through "deep-packet inspection technologies," authorities

297. *How Censorship Works in China: A Brief Overview*, HUMAN RIGHTS WATCH, <http://www.hrw.org/reports/2006/china0806/3.htm> (last visited Feb. 19, 2014).

298. *Id.*

299. FREEDOM ON THE NET 2013, *supra* note 2471, at 188.

300. *How Censorship Works in China*, *supra* note 297.

301. YANG, *supra* note 101, at 48.

302. *Id.*

303. *See id.*

304. FREEDOM ON THE NET 2013, *supra* note 24, at 194.

monitor online user traffic, which in turn serves to develop a blacklist of search terms.³⁰⁵ When a blacklisted term is detected, the connection is temporarily severed as if there was merely a hiccup in the server connection.³⁰⁶ With this kind of filtering, specific pages on a website (rather than the website as a whole) can be blocked, making it more difficult for users to discern whether they are seeing all of the information available.³⁰⁷ Similar methods are used in the mobile phone arena, as China Mobile, China Telecom, and China Unicom implement automatic filtering to monitor text messages and censor illegal content.³⁰⁸

In addition to automated filtering, volunteers are recruited by local propaganda offices to identify and report prohibited content that appears on social networks.³⁰⁹ These human censors actively delete any content deemed undesirable on blogs, microblogs, bulletin board systems, and comment sections on news sites.³¹⁰

However, there are times when the government is less concerned with the appearance of censorship. This is evident in blackouts that have occurred in response to specific events.³¹¹ The most extreme of these blackouts occurred in response to a violent riot between Muslim Uighurs and Han Chinese in the autonomous region of Xinjiang, which was believed to be orchestrated via digital media.³¹² The government lashed back with ten months of either complete blockage or limited use of the Internet for the people of Xinjiang.³¹³ Since then, shorter blackouts have occurred. In 2012 alone, the Internet was shut down following a string of suicides in protest of the Chinese government and reports of a soldier opening fire on civilians, and later shut down again for two days surrounding the Dalai Lama's birthday.³¹⁴

In addition, authorities regularly block social media websites like Facebook, Twitter, Google+, and Foursquare.³¹⁵ China has homegrown alternatives to these websites, including Tudou, Fanfou, and Youku, all of which must agree to act as a tool for

305. *Id.*

306. *Id.*

307. *Id.*

308. *Id.* at 195.

309. *Id.* at 196.

310. FREEDOM ON THE NET 2013, *supra* note 24, at 196.

311. *Id.* at 190.

312. Chris Hogg, *China Restores Xinjiang Internet*, BBC NEWS (May 14, 2010), <http://news.bbc.co.uk/2/hi/8682145.stm>.

313. *Id.*

314. FREEDOM ON THE NET 2013, *supra* note 71, at 190.

315. *Id.* at 195.

spreading communist propaganda and state patriotism in order to stay in business.³¹⁶

While the Chinese have greater access to the Internet than Cubans, Chinese Internet users experience similarly frustrating obstacles.³¹⁷ The cost of accessing high speed Internet from home is too high for the average Chinese cyber-user, creating a shift into increased smartphone usage.³¹⁸ Alternatively, web users may access the Internet at one of many cybercafés, but these access points, even when privately owned, are thoroughly monitored by the state.³¹⁹ Currently there is a government movement to absorb private cybercafés by 2015.³²⁰ Moreover, the influx of heavy censorship has led to slow Internet speeds in China.³²¹ Even sites that remain unblocked function so slowly that they cannot be accessed.³²² Overall, the Chinese people do not always benefit from the advanced technology harnessed by their government.

Unlike the Cuban people, however, the Chinese actually have legal access to smartphones. In 2013 alone, China had 53.58 million Internet users, and 73.3% of those users accessed the Internet via smartphones.³²³ *Business Insider* reported that China is expected to “ship in more than 450 million [mobile] devices in 2014, at least a quarter more than [2013]”³²⁴ The government’s issuance of 4G licenses and the anticipation that China Mobile Ltd. will carry Apple iPhones by 2014 has fueled the increase in smartphone purchases.³²⁵ With the new 4G licensing, *Business Insider* wrote that China will likely ship “120 million 4G-enabled smartphones to meet consumer demand for Internet connectivity.”³²⁶ This rate of access to modern technology is a stark

316. LAGERKVIST, *supra* note 9, at 139.

317. See Christina Larson, *Chinese Censors Slow the Net—and U.S. Businesses*, BUS. WK. (Apr. 1, 2013), <http://www.businessweek.com/articles/2013-04-01/chinese-censors-slow-the-net-and-with-it-u-dot-s-dot-businesses>.

318. Huang Jingjing, *Broadband Slow and Expensive: Report*, PEOPLE’S DAILY ONLINE (Dec. 26, 2011), <http://english.peopledaily.com.cn/90882/7687550.html>; FREEDOM ON THE NET 2013, *supra* note 24, at 198.

319. FREEDOM ON THE NET 2013, *supra* note 24, at 191.

320. *Id.*

321. Larson, *supra* note 317.

322. *Id.*

323. Johnlee Varghese, *Smartphone Use Keeps World’s Largest Online Population in China Growing Through 2013*, INT’L BUS. TIMES (Jan. 16, 2014), <http://www.ibtimes.co.in/articles/534710/20140116/world-largest-china-online-netizen-population-2013.htm>.

324. Lee Chyen Lee, *China Is on Its Way to a 450 Million Smartphone Market in 2014*, BUS. INSIDER (Sept. 24, 2013), <http://www.businessinsider.com/china-is-on-its-way-to-a-450-million-smartphone-market-in-2014-2013-9>.

325. *Id.*

326. *Id.*

contrast from that in Cuba, where iPhones are black market commodities and cannot connect to the Internet.³²⁷

Not surprising for a totalitarian state, the Chinese Constitution in combination with its regulations does not serve to protect Chinese citizens from these gross violations of privacy. Article 40 of the Constitution secures citizens the right to privacy of correspondence, unless violation is required to meet the needs of state security or criminal investigation.³²⁸ Given China's 11 Internet prohibitions, there is no difficulty for authorities to come up with a security or criminal issue requiring investigation. As the next subsection will show, however, China's obligations to its people go beyond its own Constitution.

2. China's Internet Restrictions and Surveillance Violate the ICCPR

Regardless of what rights the Chinese legal system fails to ensure, the Chinese government agreed to respect the privacy of its citizens and their right to information when it signed the ICCPR.³²⁹ While the Chinese government's methods differ from that of fellow one-party communist state Cuba, the result is the same: shameless violations of ICCPR provisions.

China's method of filtering and monitoring Internet user traffic violates Article 17's guarantee of a right to privacy³³⁰ and Article 19's protection of the right to freedom of expression.³³¹ Unlike the ICCPR's guarantee of freedom of expression, the right to privacy has no limitations.³³² To date, the Human Rights Committee has yet to impose restrictions on the right to privacy, making it uncomplicated to determine when the right has been violated.³³³ Although done more subtly than Cuba, China violates its web user's privacy in order to determine what content should be censored. By monitoring and reporting what search terms are being used, the authorities update a blacklist of information to keep away from its people.³³⁴ The result is a cycle of violation of privacy for the sake of withholding information. In other words, China has established a system of control that consists of violating the right to privacy guaranteed in Article 17 of the ICCPR in order

327. *See supra* Part IV.B.1.

328. XIANFA art. 40 (1982) (China).

329. ICCPR, *supra* note 11, at 173–74, 176–77.

330. *See id.* at 177.

331. *See id.* at 178.

332. BISHOP, *supra* note 164, at 46–47, 111.

333. *See id.*

334. FREEDOM ON THE NET 2013, *supra* note 24, at 194.

to violate the right to access information in Article 19.³³⁵ As stated in the above discussion of Cuba, Article 19 of the ICCPR not only guarantees the right of freedom of expression, but also the right to access and impart information.³³⁶ The Chinese government infringes on this right by deleting unwanted online postings, blocking certain webpages, and censoring results from blacklisted search terms.³³⁷

In addition, Article 17 encompasses a person's right to know what private information of hers is being held by the government.³³⁸ In interpreting the right to privacy in Article 17, the Committee has reasoned that "[i]n order to have the most effective protection of his private life, every individual should have the right to ascertain, in an intelligible form, whether, and if so, what personal data is stored in automatic data files and for what purposes."³³⁹ However, the Chinese authorities not only fail to reveal what information is being held to keep track of its citizens, but also practice censorship in such a way that keeps people unaware of their invasion of privacy.³⁴⁰ Because the Chinese authorities have failed to take the corrective measures required by the Committee, they are in violation of Article 17.

Keeping the above violations in mind, it is evident that China does not take the provisions in the ICCPR seriously. The government's practices in Internet surveillance infringe on the rights that country promised to uphold. Yet, even with China's elaborate system of censorship, the Chinese people still find ways to outsmart the government's obstacles.

335. See ICCPR, *supra* note 11, at 177–78.

336. *Id.* at 178.

337. See FREEDOM ON THE NET 2013, *supra* note 24, at 194–96.

338. BISHOP, *supra* note 164, at 97–98.

339. U.N. H.R.C. General Comment No. 16, UN Doc. A/43/40 (1988) 181, para. 10 (1988).

340. See FREEDOM ON THE NET 2013, *supra* note 24, at 194. China does have a nonbinding guideline that protects user's privacy, titled Guideline for Personal Information Protection within Information System for Public and Commercial Services. Scott Livingston, *China Releases National Standard for Personal Information Collected Over Information Systems; Industry Self-Regulatory Organization Established*, INSIDEPRIVACY (Jan. 25, 2013), <http://www.insideprivacy.com/international/china/china-releases-national-standard-for-personal-information-collected-over-information-systems-industr/>. However, as attorneys at global firm Sidley Austin, LLP, explain, it is far from hard law:

This document is a "technical guideline," which is at the third, and lowest, level of national standards and does not have binding legal force. The Guideline sets the requirements on collecting, handling, transferring and deleting personal information in information systems[.] . . . China's data protection law is at a rudimentary stage, and companies operating in China can find very limited guidance on how to collect, process and transfer data.

Privacy, Data Security and Information Update: New Chinese Rules Significantly Heighten Data Requirements, SIDLEY AUSTIN LLP 1–2 (Feb. 27, 2013), <http://www.sidley.com/files/News/bde000e4-c67f-4203-9ba2-926efd71f010/Presentation/NewsAttachment/baf537e7-fd5f-4859-a898-92d029a0e857/2.27.2013%20Privacy%20update.pdf>.

*C. Chinese Resistance: Breaking Down the Wall
in the Face of ICCPR Violations*

The government's surveillance and censorship tactics only bring out the cleverness of the Chinese people. Average people are breaking down China's sophisticated technological barriers—all for the sake of being heard and informed. In subsection 1, this Article will detail the Chinese people's methods of circumventing the government's technological barricades, along with the government's response to those who are caught. Subsection 2 will explain why the government's response to online political dissidence is in violation of the ICCPR. This will show that although China's political dissidents have more access to the Internet and technology, they are facing the same risk of abuse that the Cuban people face.

1. Resisting China's Internet Restrictions: Outsmarting Government Tactics

Despite the government's overbearing surveillance, the Internet remains the most effective way to exercise free expression in China.³⁴¹ While China is home to many with great talent for technological ingenuity, all of those talents are not necessarily being used on the government's side. With the use of digital hidden transcripts and citizen journalism, the Chinese people are fighting fire with fire to get their message heard across the totalitarian state.³⁴²

In his book, *The Power of Internet in China*, Goubin Yang describes four types of digital "hidden transcripts" that the Chinese use to circumvent government-imposed censorship.³⁴³ The first kind of these hidden transcripts is done in a technical form.³⁴⁴ Netizens utilize proxy servers, which allow a user to surf the web without having their personal computer or device detected.³⁴⁵ To get past blocked pages, web users also employ anti-blocking software.³⁴⁶ For the dissident with above-average technological skills, another option is to rewrite computer programs to disable

341. Ai Weiwei, *China's Censorship Can Never Defeat the Internet*, GUARDIAN (Apr. 15, 2012), <http://www.theguardian.com/commentisfree/libertycentral/2012/apr/16/china-censorship-internet-freedom>.

342. See YANG, *supra* note 101, at 59, 69–84; LAGERKVIST, *supra* note 9, at 17.

343. YANG, *supra* note 101, at 60–61.

344. *Id.* at 60.

345. *Id.*; see also *What is a Proxy Server?* WHAT IS MY IP ADDRESS, <http://whatismyipaddress.com/proxy-server> (last visited Apr. 1, 2015).

346. YANG, *supra* note 101, at 60.

filtering.³⁴⁷ Chinese Internet users who are interested in learning how to implement these methods can do so by reading through online discussion forums, which are full of instructions about dodging the Great Firewall.³⁴⁸

The second form involves what Yang describes as “online guerilla warfare.”³⁴⁹ When the government shuts a website down, someone opens a new website to replace it.³⁵⁰ One blogger perfected this method after exposing a corrupt mayor in the province of Shandong.³⁵¹ Like the bloggers in Cuba, this Chinese dissident eventually had to host his website on an overseas server. Ultimately, his guerilla tactics wore out his opponents: “I created about 80 blogs. . . . More than thirty of them were ‘killed’ one after another. But I still have about fifty of them running. They have realized that there is no use trying to close my blogs.”³⁵²

The third form of hidden transcripts involves the use of human linguistics.³⁵³ Government filters block blacklisted terms, but these programmed lists are no match for human creativity.³⁵⁴ For example, users will insert punctuation marks or numbers within a term to avoid detection.³⁵⁵ So, instead of typing “freedom,” one might type “fr33!d0m.” This form of resistance has crossed over into images as well. On June 4, 2013, the anniversary of the Tiananmen Square Massacre, the Chinese government banned numerous search terms to prevent citizens from reading anything related to the event.³⁵⁶ Censored words included “today,” “tomorrow,” “that year,” and “special day.”³⁵⁷ Citizens responded by posting symbolic photos, such as a Lego-toy version of the famous Tiananmen Square photo of the man standing in front of the tanks, as well as a version where a man is standing in front of giant ducks instead of tanks.³⁵⁸ The government soon censored these images, and even banned the search term “big yellow duck.”³⁵⁹

347. *Id.*

348. *Id.*

349. *Id.*

350. *Id.*

351. YANG, *supra* note 101, at 61.

352. *Id.*

353. *Id.*

354. *Id.*

355. *Id.*

356. Jonathan Kaiman, *Tiananmen Square Online Searches Censored by Chinese Authorities*, GUARDIAN (June 4, 2013), <http://www.theguardian.com/world/2013/jun/04/tiananmen-square-online-search-censored>.

357. *Id.*

358. *Id.*

359. *Id.*

The fourth hidden transcript is a form of online activism via secret online meetings.³⁶⁰ Online dissidents like Liu Di, better known as Stainless Steel Mouse, arrange secret online gatherings with inconspicuous names like “Good friends come and play” to discuss Chinese progression.³⁶¹ Di was arrested for this practice in 2002 and was not released until December 2003.³⁶²

Like the Cuban blogger community, the Chinese have taken journalism into their own hands with citizen journalism.³⁶³ Microblogger Wu Dong, who blogged under the pen name Boss Hua, became famous for posting photos of government officials and pointing out their luxury watches.³⁶⁴ Many believe Dong contributed to the imprisonment of former Chinese official Yang Dacai.³⁶⁵ Based on Dong’s photos, online appraisers estimated the official’s watch collection to be worth as much as US\$60,000.00, which stretches “far beyond the typical salary for officials at his level.”³⁶⁶ Thousands of “tweets” expressing suspicion of the corrupt official flooded the micoblogging website Twitter, including one that read, “How else could he afford these watches if not through corruption?”³⁶⁷ After this exposure, Officer Yang was investigated and pled guilty to accepting bribes.³⁶⁸ On September 5, 2013, he was sentenced to fourteen years in prison and had to surrender US\$802,000 in assets.³⁶⁹ A few days later, Dong was interrogated by police without being charged with a crime.³⁷⁰

Another microblogger, Zhou Shuguang, went from vegetable seller to citizen journalist when he started his blog, *Zhou Shuguang’s Golden Age*.³⁷¹ Through his blog, Shuguang exposed the conditions of the peasants in China’s countryside—China’s losers in the booming economic system.³⁷² Shuguang’s loyal fans often warn him when the Chinese authorities are preparing to arrest him.³⁷³

360. YANG, *supra* note 101, at 61.

361. *Id.* at 61–62.

362. *Id.*

363. LAGERKVIST, *supra* note 9, at 98.

364. Josh Chin, *Chinese Internet Riled Up Over Detention of Corruption-Busting Microblogger*, WALL ST. J. (Sept. 17, 2013, 9:40 PM), <http://blogs.wsj.com/chinarealtime/2013/09/17/chinese-corruption-busting-microblogger-detained/>.

365. *Id.*

366. William Wan, *In China, Officials’ Watches Get Watched*, WASH. POST, Sept. 14, 2012, http://www.washingtonpost.com/world/asia_pacific/in-china-officials-watches-get-watched/2012/09/13/4e9937f2-f8e4-11e1-8398-0327ab83ab91_story.html.

367. *Id.*

368. Chin, *supra* note 364.

369. *Id.*

370. *Id.*

371. LAGERKVIST, *supra* note 9, at 120.

372. *Id.*

373. George Heymont, *City Mouse, Country Mouse*, HUFFINGTON POST (May 15, 2013), http://www.huffingtonpost.com/george-heyumont/city-mouse-country-mouse_b_3276864.html.

Ironically, the Chinese constitution appears to be particularly concerned with a person's right to expression and freedom from arbitrary arrest. Article 35 guarantees the freedoms of speech, expression, assembly, demonstration, association, and the press.³⁷⁴ Additionally, Article 41 ensures citizens the right to "criticize and make suggestions regarding any State organ or functionary."³⁷⁵ Citizens may complain to the relevant state organs about law violations, but libel and false incrimination are prohibited.³⁷⁶ Article 37 states that a citizen's freedom of person is inviolable, and one may only be arrested with approval of a people's "procuratorate" or a court decision. Unlawful searches of citizens are also prohibited.³⁷⁷ Yet, Article 28 provides a caveat to these seemingly pro-human-rights provisions: the state has right to maintain public order and penalize criminal activities that put public security in danger and "disrupt the socialist economy as well as other criminal activities."³⁷⁸ With this kind of leeway, the state detains political dissidents that upset the social order of communist China—in 2013, Reporters Without Borders reported that China imprisoned seventy netizens.³⁷⁹ In any case, regardless of this constitutional loophole, China is obligated to uphold ICCPR freedoms.

2. China's Response to Those Who Bypass Censorship: More ICCPR Violations

China's laws do not give it the license to violate ICCPR provisions. Again, by signing the ICCPR, it agreed to refrain from enacting any legislation that would violate the rights in the Covenant.³⁸⁰ By censoring and detaining those who post anti-communist content online, the Chinese government is violating the freedom of expression and freedom from arbitrary detention guaranteed in the ICCPR.

The Human Rights Committee decided a case that is helpful in understanding how China is violating Article 19 with its censorship. In *Mukong v. Cameroon*, Mr. Mukong was a journalist

374. XIANFA art. 35 (1982) (China).

375. *Id.* art. 41.

376. *Id.*

377. *Id.* art. 37.

378. *Id.* art. 28.

379. See *Remember Liu Xiaobo – The Only Nobel Peace Prize Winner in Prison*, REPORTERS WITHOUT BORDERS (Oct. 10, 2013), <http://en.rsf.org/chine-remember-liu-xiaobo-the-only-nobel-10-10-2013,45311.html>.

380. Vienna Convention, *supra* note 20, at 336.

who opposed the one-party system in Cameroon.³⁸¹ Mr. Mukong's books were banned, and he was arrested.³⁸² Cameroon argued that freedom of expression "must take into account the political context and situation prevailing in a country at any point in time."³⁸³ The Committee was not persuaded by the state's argument and found that Mr. Mukong had the right to freedom of expression under Article 19 of the ICCPR.³⁸⁴ What was true for Mr. Mukong's books should hold true for digital writings—the Chinese government cannot delete a blog post or web page simply because it opposes the country's one-party state system.³⁸⁵

The Chinese government is also violating the ICCPR's Article 9 prohibition against arbitrary detention when it jails dissident web users. The Committee considers cases where people are detained because of their political views to be in violation of Article 9.³⁸⁶ This is evident in *Tshiongo a Minanga v. Zaire*, where Mr. Kanana had been detained for half a day because he opposed the government.³⁸⁷ The Committee concluded that Zaire had violated Article 9 of the Covenant.³⁸⁸ The Committee also condemned preventative detention laws that allowed authorities to detain people for up to fifteen days.³⁸⁹ Likewise, it is a violation of the ICCPR for the Chinese authorities to detain online political dissidents because of their political views and in order to prevent future civil upheaval.

The above violations indicate that China is not practicing its responsibility to refrain from actions that interfere with the purpose of the ICCPR. Rather than using the technology at its disposal for the good of its own people, the Chinese government harnesses it against its own citizens. With that, China's actions show that greater access to the Internet and technology cannot overcome a government's unwillingness to conform to the human rights standards in the ICCPR.

381. *Mukong v. Cameroon*, U.N. Doc. CCPR/C/51/D/458/1991, ¶ 2.1 (H.R.C. Aug. 10, 1994).

382. *Id.*

383. *Id.* ¶ 6.7.

384. *Id.* ¶ 9.7.

385. *See id.*

386. *See generally Tshiongo a Minanga v. Zaire*, U.N. Doc. CCPR/C/49/D/366/1989 (H.R.C. Nov. 8, 1993).

387. *Id.* ¶ 2.1.

388. *Id.* ¶ 6.

389. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY, *supra* note 163, at 213–14.

VI. CONCLUSION

Notwithstanding the differences between the global statuses of Cuba and China, the effects on its inhabitants in regards to Internet restrictions are surprisingly the same. True, both countries are known for their one-party communist governments, but their situations in the global economy set them worlds apart. Cuba is an island known for its isolation and embargo status with the United States.³⁹⁰ With its 1950s cars and the longstanding leadership of the Castro regime, the small country conjures up images of the past.³⁹¹ China, in contrast, is a major player in the global market, with the United States infamously owing it a whopping \$1.3 trillion to date.³⁹² China implemented privatization in its digital development by allowing private ISPs, whereas Cuba has maintained a government-only intranet. China is home to the largest population of Internet users on the planet, while Cubans publish online by passing flash drives along to foreigners with Internet access. Yet, both countries manage to violate the same provisions of the treaty they signed.

At the beginning of this Article, two views of digital media emergence were introduced: digital media as a means of oppressive surveillance, and digital media as the key to freedom of expression.³⁹³ After analyzing the disparate situations and methods of Cuba and China, it is evident that these two opposing views of digital media cannot be separated. On the one hand, both China and Cuba utilize the Internet to monitor its inhabitants. In doing so, both countries have blatantly contradicted the values they promised to uphold by signing the ICCPR. At the same time, even in Cuba and China, the Internet still remains the best way to express counter-political ideas.³⁹⁴

A deep look into Cuba's oppressive Internet restrictions may lead a person to think that if the Castro regime would just provide more access, everything would get better for the Cuban people. Unfortunately, this is not the case. As this Article's discussion of China has shown, a healthy economy and a booming Internet

390. See *Should the United States Maintain Its Embargo Against Cuba?*, PROCON.ORG (Oct. 29, 2013), <http://cuba-embargo.procon.org/>.

391. See Tom Miller, *Old Cars in Cuba: Nurtured but Not Loved*, N.Y. TIMES, Oct. 27, 2004, <http://www.nytimes.com/2004/10/27/automobiles/27MILL.html>; *Cuban President Raul Castro to Retire in 2018*, BBC NEWS (Feb. 24, 2013), <http://www.bbc.co.uk/news/world-latin-america-21568158>.

392. Quotrung Bui, *Everyone the U.S. Government Owes Money to, in One Graph*, NPR (Oct. 10, 2013, 7:14 AM), <http://www.npr.org/blogs/money/2013/10/10/230944425/everyone-the-u-s-government-owes-money-to-in-one-graph>.

393. See *supra* Introduction.

394. See Wilkinson, *supra* note 22; Weiwei, *supra* note 342.

population do not ensure a free society. Even with the latest technology at their fingertips, the Chinese people face many of the same human rights abuses that Cubans endure.

The core of the problem is the governments' refusal to conform to the human rights obligations they agreed to when they signed the ICCPR. Without a respect for international human rights norms, these governments continue to oppress their people regardless of the countries' respective resources. The Cuban government promised Internet access for private homes by 2014.³⁹⁵ While this seems like a step in the right direction, the Cuban government has made no promise to end its tactics of surveillance, censorship, and harassment of political dissidents. Even with greater access—like the Chinese—Cubans on the island will only see the government-tailored version of what the Internet has to offer. Ultimately, there is only one solution to end the abuses that the Cuban and Chinese people currently face: Cuba and China must stop violating the human rights norms in the ICCPR.

395. Cervantes, *supra* note 137.