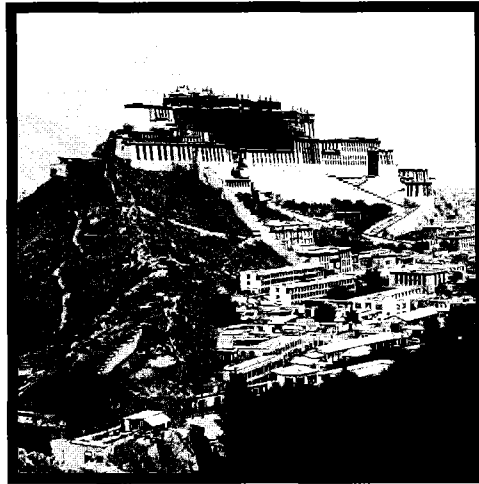




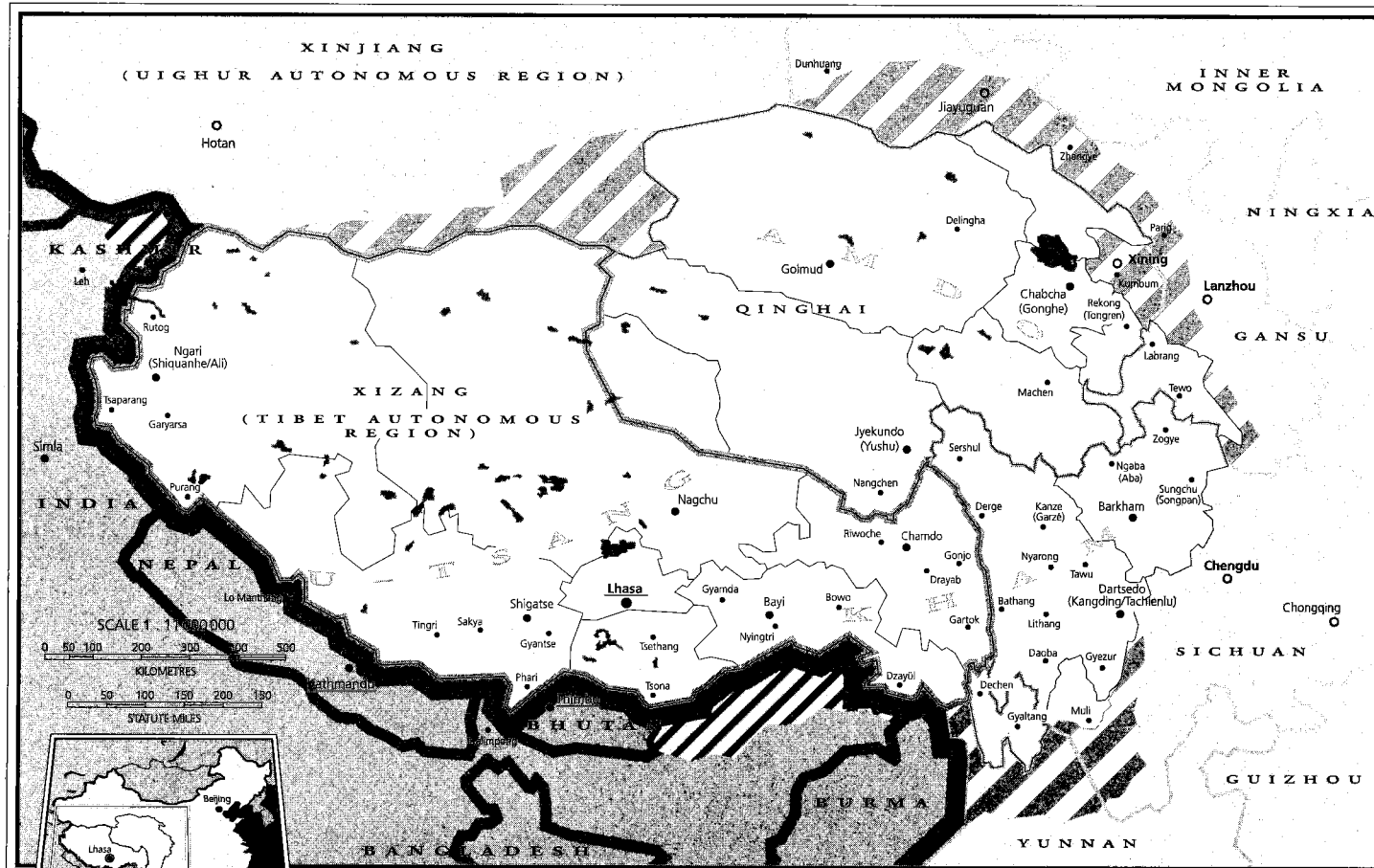
Tibet:

Human Rights
and the Rule of Law



International Commission of Jurists

December 1997



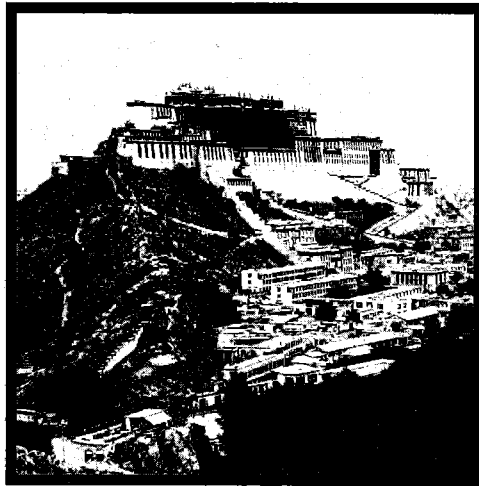
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- Disputed territories between India and China
- Tibet Autonomous Region (TAR) or Western Tibet
- Areas with Tibetan autonomous status under Qinghai, Gansu, Sichuan and Yunnan provinces
- Territory claimed by the Tibetan Government in exile



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Abbreviations

CCP	Chinese Communist Party
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
CPPCC	Chinese People's Political Consultative Conference
CRC	Convention on the Rights of the Child
FBIS	Foreign Broadcast Information Service
ICCPR	International Covenant on Civil and Political Rights
NPC	National People's Congress
PAP	People's Armed Police
PLA	People's Liberation Army
PRC	People's Republic of China
PSB	Public Security Bureau
SWB	BBC Summary of World Broadcasts
TAR	Tibet Autonomous Region
TAPs	Tibet Autonomous Prefectures
UDHR	Universal Declaration of Human Rights

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Preface

The International Commission of Jurists (ICJ) has been concerned by developments in Tibet for almost four decades.

In 1959 the ICJ published *"The Question of Tibet and the Rule of Law,"* which examined Chinese policy in Tibet, violations of human rights in Tibet and the position of Tibet in international law. The report found that "almost all the rights which together allow the full and legitimate expression of human personality appear to be denied to the Tibetans at the present time and, in most cases, for some time past. On the basis of the available evidence it would seem difficult to recall a case in which ruthless suppression of man's essential dignity has been more systematically and efficiently carried out." In view of the apparent gravity of the violations of human rights alleged, including evidence relating to the question of genocide, the ICJ decided to create a special committee of inquiry.

The following year, the ICJ published *"Tibet and the Chinese People's Republic: A Report to the International Commission of Jurists by its Legal Inquiry Committee on Tibet,"* whose findings, in the words of the ICJ Secretary-General, "constitute a detailed condemnation of Chinese rule in Tibet." The report examined the evidence relating to genocide, finding that "acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group." It also found widespread violations of numerous civil and political as well as economic and social rights. Finally, looking at the status of Tibet, it concluded that Tibet was "at the very least a *de facto* independent State" prior to its "17-Point Agreement" with China, and that China's violations of its undertakings pursuant to that pact entitled Tibet to repudiate it.

These findings were presented to the United Nations General Assembly, which called on China in 1959 to ensure "respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life" and in 1961 to cease "practices which deprive the Tibetan people of their fundamental human rights and freedoms including their right to self-determination."

In December 1964 based on statements from Tibetan refugees arriving in India, the ICJ reported that "the domination and persecution of the Tibetan people at the hands of the Chinese People's Republic

and its army of occupation in Tibet is continuing unabated." In particular, the evidence disclosed "a continuance of ill-treatment of many monks, lamas, and other religious figures, resulting in death through excessive torture, beatings, starvation and forced labour." The ICJ concluded that the General Assembly resolutions "have had no effect on Chinese policies or action in Tibet." In 1965 the General Assembly repeated its appeal.

The next years saw the situation in Tibet grow more desperate. The creation of the Tibet Autonomous Region in central Tibet in September 1965 established a permanent system of Chinese control and accelerated the policy of collectivization. Every aspect of Tibetan culture came under attack during the Cultural Revolution which began in 1966. By 1976, Tibet's cultural and religious heritage, including almost all its monasteries, lay in ruins. Tens if not hundreds of thousands of Tibetans were killed. A post-Mao liberalisation allowed a revival of Tibetan religion and culture, but was abruptly replaced with more hard-line policies, including increased colonisation. In 1991 the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights expressed concern "at the continuing reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people."

In response to these trends, the ICJ decided to conduct a new in-depth study into the situation of the rule of law and human rights in Tibet. In keeping with its normal practice, the ICJ approached the government of China on at least five separate occasions seeking permission to send a fact-finding delegation to Tibet. On 25 March 1993, the Chargé d'affaires and Deputy Permanent Representative of China to the United Nations Office in Geneva, Mr. Jiang Changqin, told the ICJ that its request had been transmitted for consideration to the "relevant department" of his government. In response to the ICJ follow-up letter, Mr. Hou Zhitong, Chargé d'affaires, Ambassador and Deputy Permanent Representative of the China to the United Nations Office in Geneva informed the ICJ that "the relevant department of my government is unable to accommodate your request owing to busy schedule." Follow-up letters by the ICJ in November 1993, January 1994 and August 1995 elicited no response. Finally, in response to an ICJ letter of 8 December 1995, Mr. Wu Jianmin, Ambassador and Permanent Representative of China to the United Nations Office at Geneva stated by letter dated 10 January 1996: "I would

like to inform you that we deem such a visit not opportune at the present stage."

Reluctantly, the ICJ concluded that it had no choice but to base its report - as it had based its previous reports - on interviews with exiles, a review of available documentation, and, in particular, a thorough study of Chinese official statements. Even as work on this study was underway, the ICJ again approached the Chinese Mission, without success, to arrange a visit.

The report documents a new escalation of repression in Tibet, characterised by a "re-education" campaign in the monasteries, arrests of leading religious figures and a ban on the public display of photos of the Dalai Lama. It also examines the increasing threats to aspects of Tibetan identity and culture through the transfer of Chinese population into Tibet, the erosion of the Tibetan language and the degradation of Tibet's environment. Tibetans, the report finds, are powerless to halt these threats because the "autonomy" which they supposedly enjoy is more fictitious than real. The report concludes that Tibetans are a "people under alien subjugation," entitled to but denied the right of self-determination.

The report also credits China with significant improvements in the fields of education and health care in Tibet, particularly when compared with the situation in "old" Tibet, but rejects China's assertions that these advances legitimise its coercive behaviour. The ICJ 1964 response to this argument remains valid today:

The Chinese authorities attempt to justify their actions in Tibet on the ground that economic and political reforms were necessary in Tibet. Whilst this may have been partly true, Chinese methods of bringing them about cannot possibly be justified, and are quite contrary to the means recognised by the Rule of Law and promoted by the International Commission of Jurists with the objective of improving economic and social conditions. The essential prerequisite of such reforms is the free will of the people concerned.

In publishing this report, the ICJ calls on the United Nations and on nations everywhere to pay heed to the plight of Tibet and to come to the defence of the fundamental principles of international law which have been trampled upon. In particular, the ICJ calls for a referendum to be held in Tibet under United Nations supervision to ascertain the wishes of the Tibetan people. We make these calls with few illusions, but inspired

by the words of Ireland's Foreign Minister Frank Aiken who, in appealing to the UN General Assembly during its debate on Tibet in 1959, said:

Looking around this Assembly, and looking at my own delegation, I think how many benches would be empty here in this hall if it had always been agreed that when a small nation or a small people fell into the grip of a major power, no one could ever raise their case here; that once they were a subject nation, they must always remain a subject nation.

This report is dedicated to all Tibetan political prisoners. Among them, the Venerable Palden Gyatso, a Buddhist monk whose statement to the ICJ regarding his cruel torture during three decades in Chinese prisons and labour camps, is quoted in this report. Since his release and escape from China, he has campaigned around the world to call attention to the situation in his homeland. His life is testimony to the resilience of the human spirit.

Copies of this report were forwarded for comment, prior to publication, to the Government of the People's Republic of China and the Tibetan government-in-exile.

Adama Dieng
Secretary-General

Acknowledgements

The ICJ wishes to express its gratitude to all those who contributed to this report. Former ICJ Executive Secretary Reed Brody coordinated several phases of preparation: ICJ researcher Lobsang Sangye interviewed scores of Tibetan exiles in India. ICJ member Manfred Nowak, Reed Brody, and Christa Meindersma of the Netherlands section of the ICJ visited Dharamsala, India, in November-December 1996 to conduct research, interview Tibetan exiles and meet with officials of the Tibetan government-in-exile including His Holiness the Dalai Lama and the *Kashag* (Council of Ministers). Warren W. Smith and Christa Meindersma drafted most chapters of the report, with Gabriel Lafitte contributing sections on environment and development and Manfred Nowak setting forth the legal points on self-determination and reviewing other chapters. Reed Brody revised and edited the report.

We are especially grateful for the generous assistance of the Tibet Information Network (TIN) which made available its vast repository of documents, interviews and records of Chinese statements. TIN documents are referred to in the report by their TIN reference number. Because the ICJ was not allowed to visit Tibet, this report places particular emphasis on stated Chinese policy.

We also thank the many people and institutions which assisted the ICJ in gathering information, in particular the Tibetan government-in-exile and its Department of Information and International Relations. Catriona Bass generously gave us access to research on education in Tibet, unpublished at the time of writing. Marina Illich transcribed the ICJ interview with the Dalai Lama. John Ackerly and the International Campaign for Tibet provided useful information and suggestions. Human Rights in China shared its information with us. In Dharamsala, the ICJ was also assisted by the Tibetan Centre for Human Rights and Democracy, the Department of Security, the Tibetan Youth Congress, the Tibetan Women's Association, and the Dolmaling Nunnery. Several people provided useful comments on draft chapters including ICJ Honorary Member Christian Tomuschat, Sofia Gruskin, Donna Sullivan, Anders Hojmark Anderson, Susette Cooke and Steven Marshall. Others who helped include Reed Boland, Tenzing Damdul Gathoktsang, Chemey Dolkar, Michael Sheehy, Maura Moynihan, Glen Kelley, Youden Aukatsang, Debra Ladner, Kesang Yangden Shakchang, Kesang Dorjee

Aukatsang. Many Tibetans interviewed by the ICJ must remain nameless for the security of their relatives in Tibet. We are grateful to Christophe Besuchet and the Amnye Machen Institute for the map which appears in the report. We are also grateful to the Tibet Bureau in Geneva for providing its assistance to the ICJ international secretariat.

At the ICJ international secretariat, Executive Secretary Sigrid Higgins supervised preparation of the study whilst Press and Publications Officer Nicolas M. L. Bovay was responsible for its production.

While acknowledging its indebtedness to these and many others, the ICJ wishes to make clear that it alone is responsible for the final text.

Executive Summary

This report examines the situation of the rule of law and human rights in Tibet,¹ including self-determination and other collective rights; economic, social and cultural rights; and civil and political rights. Although the report discusses the entire period since China's invasion of central Tibet in 1950, its focus is on events of recent years.

The report finds that repression in Tibet has increased steadily since the 1994 Third National Forum on Work in Tibet, a key conclave at which senior officials identified the influence of the exiled Dalai Lama, the leading figure in Tibetan Buddhism, as the root of Tibet's instability, and mapped out a new strategy for the region. The Forum endorsed rapid economic development, including the transfer of more Chinese into the Tibet Autonomous Region (TAR), and a campaign to curtail the influence of the Dalai Lama and crack down on dissent. The results of the Forum included: heightened control on religious activity and a denunciation campaign against the Dalai Lama unprecedented since the Cultural Revolution; an increase in political arrests; stepped up surveillance of potential dissidents; and increased repression of even non-political protest.

Since the beginning of 1996, there has been further escalation of repression in Tibet, marked by an intensive re-education drive in the monasteries at which monks were told that they would be required to sign loyalty pledges or face expulsion, a clampdown on information coming from Tibet, the sentencing of a senior religious leader, and a ban on photographs of the Dalai Lama in public places. The eight year old boy designated by the Dalai Lama as the reincarnation of the Panchen Lama, the second-most important figure in Tibet's Buddhist hierarchy, remains in detention. At the same time, Chinese leaders have begun a campaign against certain aspects of traditional Tibetan culture identified as both obstacles to development and links to Tibetan nationalism, and in 1997 labelled Buddhism as a "foreign culture."

1 "Tibet," as used in this report, refers to "ethnographic" Tibet and encompasses the entire Tibetan plateau, including what is now the Tibet Autonomous Region (TAR) as well as Tibetan-inhabited portions of the neighbouring Chinese provinces of Qinghai, Sichuan, Gansu and Yunnan. In Chinese usage, "Tibet" refers only to that part of ethnographic Tibet now within the TAR.

These abuses of human rights and assaults on Tibetan culture flow from the denial of the Tibetan people's most fundamental right - to exercise self-determination. It is to maintain its alien and unpopular rule that China has sought to suppress Tibetan nationalist dissent and neutralise Tibetan culture. It is to colonise unwilling subjects that China has encouraged and facilitated the movement of Chinese into Tibet, where they dominate politics, security and the economy.

Autonomy

The nominal autonomy accorded to the TAR and other Tibetan autonomous areas by the PRC Constitution and laws is limited, as most local powers are subject to central approval. The actual extent to which Tibetans control their own affairs is even more circumscribed, however, due to the centralized dominance of the Communist Party (CCP), and the exclusion of Tibetans from meaningful participation in regional and local administration. When Tibetans are in positions of nominal authority, they are often shadowed by more powerful Chinese officials. Every local organ is shadowed by a CCP committee or "leading group," which does not function in keeping with concepts of autonomy. The army and the police are dominated by Chinese. While Tibet historically has often been divided, Tibetan self-rule is also undermined by the current partition of Tibetan territory which places most Tibetans outside the TAR and into four Chinese provinces in which Tibetans constitute small minorities.

Threats to Tibetan Identity and Culture

In 1959 the United Nations General Assembly called "for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life." In 1961 and 1965 the Assembly again lamented "the suppression of the distinctive cultural and religious life" of the Tibetan people. In 1991 the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights was still "[c]oncerned at the continuing reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people."

Today certain Chinese policies continue to erode or threaten to erode the distinctive elements of the Tibetan identity and culture. These policies include:

Population Transfer

Since 1950 there has been a large influx of Chinese into Tibet, resulting from several factors: government policy and programmes to transfer Chinese, particularly cadres and professionals, to the TAR and other Tibetan regions; government encouragement of voluntary migration; work units bringing ordinary labourers to Tibet for construction projects; and the market-driven migration of ordinary Chinese. New Chinese towns have been created. Tibetan urban centres have been sinicised. In eastern Tibet, Tibetan lands have also been appropriated for agriculture. Where Chinese have settled, they dominate commerce and are at the centre of development strategies. The 1994 Third Work Forum endorsed and accelerated the movement of Chinese to the TAR. Estimates suggest that Chinese now account for one-third of the total population of all areas with Tibetan autonomous status (compared to 6 to 10% in 1949) and for 12 to 14% of the population of the TAR (compared to 0.1%).

Tibet's Cultural Heritage

A key component of Tibet's unique culture was undermined in the early years of Chinese rule by the destruction of the monastic system. The Cultural Revolution continued that process with the physical destruction of Tibet's unique religious buildings and monuments and an assault on the cultural identity of individual Tibetans. By its end, Tibet's physical and material culture was visibly decimated; few of Tibet's thousands of monasteries survived. Since 1979 the Chinese government has allowed some cultural freedom in Tibet and many monasteries have been partially restored, but permitted cultural activities are restricted and purged of any nationalist content. Chinese modernisation since 1979 has destroyed much of the surviving traditional Tibetan secular architecture in urban areas. In Lhasa, many Tibetan houses have been demolished and entire neighbourhoods razed.

Language

The predominance of the Chinese language in education, commerce, and administration, combined with global modernization, compels Tibetans to master Chinese and is marginalizing the Tibetan language. Virtually all classes in secondary and higher education in the TAR, including such subjects as Tibetan art, are taught in Chinese.

Recent measures - apparently following a Communist Party decision linking use of Tibetan language to pro-independence sentiments - include the shutting of experimental middle school classes in Tibetan in the TAR and a further downgrading of the use of Tibetan in education generally.

Development

The pattern of development of Tibet, while materially beneficial in its transfer to Tibet of modern technologies such as health care, transport and communications, has marginalized Tibetans, and excluded them from effective participation, which is an intrinsic aspect of development. The livelihood of most Tibetans, who live in small rural communities, has been neglected, receiving little of the Chinese investment. The relative poverty of Tibetans, the exploitation of Tibetan resources for China's development, and the settlement of considerable numbers of Chinese in new urban centres impact negatively on Tibetan communities.

Environment

In forty years, most Tibetan wildlife has been destroyed and much of the forest has been cut, watersheds and hill slopes eroded and downstream flooding heightened. The most extensive environmental impact of Chinese practice is the widespread degradation of the rangelands, resulting in desertification of large areas until recently capable of sustaining both wild and domestic herds. The extent of grassland deterioration has reached a point where, unless measures are taken soon, the long term viability of nomadic Tibetan civilization could be brought into question.

Individual Rights

The Role of the Judiciary

A primary stated goal of the justice system in the TAR is the repression of Tibetan opposition to Chinese rule. A judiciary subservient to Communist Party dictates results in abuses of human rights in all of China, but in Tibet the problem is particularly severe due to China's campaign against Tibetan nationalism. The recent "Strike Hard" anti-

crime campaign has enlisted the judiciary further in the campaign against "splittism." Many Tibetans, particularly political detainees, are deprived of even elementary safeguards of due process.

Right to Education

The Chinese government has made great strides in providing compulsory primary education to Tibetan children. The education system in Tibet, however, puts Tibetan children at a structural disadvantage compared to Chinese children. The exclusive use of the Chinese language as the medium of instruction in middle and secondary schools in the TAR, the low enrolment and high drop-out rate among Tibetans, the low quality of education facilities and teachers for Tibetans, the difficulties in educational access for Tibetans, as well as a TAR illiteracy rate triple the national average, are indicative of a discriminatory structure. Rather than instilling in Tibetan children respect for their own cultural identity, language and values, education in Tibet serves to convey a sense of inferiority in comparison to the dominant Chinese culture and values.

Right to Housing

The destruction of Tibetan neighbourhoods, the forced evictions of Tibetans and demolition of their homes, as well as preferences shown to Chinese in new housing reveal marked discrimination against Tibetans in the housing sphere.

Right to Health

The general availability of primary health care and the use of preventive medicine have resulted in important improvements in overall health levels in the TAR. Life expectancy of Tibetans has risen significantly, though it is the lowest of all groups in the PRC. The infant mortality rate of Tibetans, however, is three times the PRC national average and a serious problem of child malnutrition exists. The cost and poor quality of primary care and the shortage of trained village-level health professionals contribute to preventing Tibetans from achieving the highest attainable standards of health.

Arbitrary Detention

Tibetans continue to be detained for long periods without charge or sentenced to prison for peacefully advocating Tibetan independence or maintaining links with the Dalai Lama. The number of political prisoners in Tibet appears to have risen in recent years, to over 600. The United Nations Working Group on Arbitrary Detention has criticised China's use of broadly-worded "counterrevolutionary" crimes and called without result for the release of dozens of Tibetans detained in violation of international norms guaranteeing freedom of expression and freedom of religion. Most Tibetan political prisoners were arrested for peacefully demonstrating, writing or distributing leaflets, communicating with foreigners or the Tibetan government-in-exile, or possessing pro-independence material. Nuns account for between one-quarter and one-third of known political prisoners. In 1997 China replaced the "counterrevolutionary" concept with the equally elastic notion of "crimes against state security," adding an article specifically targeting acts "to split the nation."

Torture

Torture and ill-treatment in detention is widespread in Tibet. The use of electric cattle-prods on political detainees appears to be general practice. Torture and other forms of ill-treatment occur in police stations upon arrest, during transport to detention facilities, in detention centres and in prisons. The documented methods of torture against Tibetans include beatings with chains, sticks with protruding nails, and iron bars, shocks applied with electric cattle-prods to sensitive parts of the body, including the genitals and mouth, hanging by the arms twisted behind the back, and exposure to cold water or cold temperatures. Women, particularly nuns, appear to be subjected to some of the harshest, and gender-specific, torture, including rape using electric cattle-prods and ill-treatment of the breasts.

Extrajudicial and Arbitrary Executions

There have been no confirmed reports of shooting of peaceful demonstrators since the demonstrations and disturbances of 1987-89 when scores of Tibetans, including many peaceful demonstrators, were shot and killed. A number of unclarified deaths of political prisoners, including young nuns, have occurred in Tibetan prisons in recent years,

allegedly as a result of torture or negligence. The imposition of the death penalty in Tibet - which was reportedly used 34 times in the TAR in 1996 - is devoid of the guarantees of due process and fair trial.

Freedom of Expression

Tibetans' freedom of expression is severely restricted. Expression of political nationalism is not tolerated. Neighbourhood committees identify dissenters and instil "correct thought." Tibetans are arrested and imprisoned, or sentenced to reeducation through labour, for the peaceful expression of their political views. Information reaching Tibet from the outside as well as the flow of information out of Tibet is tightly controlled. Restrictions have intensified in recent years through the "Strike Hard" anti-crime campaign, the ban on public display of photographs of the Dalai Lama and the monastic re-education campaign.

Freedom of Religion

The Buddhist religion is a significant part of the lives of the Tibetan people. There is, however, pervasive interference with religious freedom and activity in Tibet. Monasteries are under the purview of local government and Party bodies, Party work teams and police branches. Each is governed by a Democratic Management Committee (DMC).

Since the 1994 Forum, when the Party identified the influence of the Dalai Lama and the "Dalai clique" as the root of Tibet's instability, Tibetan Buddhism has been subject to intense scrutiny and control. Party dominance over the DMCs has been strengthened; a ban on religious construction without official permission and limits on the number of monks and nuns per monastery have been more strictly enforced; the screening for admission of monks and nuns has been tightened; and monks and nuns have been asked to denounce the Dalai Lama.

The Chinese government used the search for the reincarnation of the Panchen Lama to intensify its campaign to eradicate the Dalai Lama's religious as well as political influence. The senior monk involved in the selection process was detained and later sentenced, the Panchen Lama's monastery was purged and Tibetan cadres' and religious leaders' loyalty was tested by requiring them to denounce the Dalai Lama's interference in the Panchen Lama's recognition, and to accept the Chinese choice for Panchen Lama. A ban on the public display of photographs of the Dalai

Lama was later followed by a sporadic ban on private possession of his photo.

In 1996 a "patriotic education campaign" in the monasteries was initiated which continues to the present. Strengthened work teams were sent to major monasteries to conduct intensive re-education sessions among the monks, during which the monks were called on to denounce the Dalai Lama. Hundreds of monks were forced to leave their monasteries, while at least 90 others were arrested for disturbing the re-education process. Chinese troops shelled one monastery, killing one and injuring three.

Freedom of Assembly

Peaceful political demonstrations in Tibet are typically broken up in minutes, and their participants arrested and often beaten, as part of a deliberate policy to suppress any manifestation of pro-independence sentiment. In recent years even some economic protests have been violently suppressed.

Population Control

Although the Tibetan population is small and Tibetan territory sparsely inhabited, China limits the number of children which Tibetan women may have, though these limits are not as severe as they are for Chinese women. The limits, which vary from area to area, are enforced through mandatory fines, abortions and sterilizations, in violation of numerous legal rights and sometimes with adverse health consequences for women. "Unauthorised" children commonly suffer discrimination in access to schooling and other benefits and rights.

Tibet's Legal Status

Central Tibet - that part of Tibet ruled from Lhasa - demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In 1950 there was a people, a territory, and a government which functioned in that territory, conducting its own domestic affairs free from any outside authority. From 1913-1950 the foreign relations of central Tibet were conducted exclusively by the Government of Tibet. Central Tibet was thus at the very least a *de facto*

independent State when in the face of a Chinese invasion it signed the "17 Point Agreement" in 1951 surrendering its independence to China. Under that Agreement, China gave a number of undertakings, including: promises to maintain the existing political system of Tibet, to maintain the status and functions of the Dalai Lama, to protect freedom of religion and the monasteries and to refrain from compulsory "reforms." These and other undertakings were violated by China. The Government of Tibet was entitled to repudiate the Agreement as it did in 1959.²

Self-Determination

Tibetans are a "people under alien subjugation," entitled under international law to the right of self-determination, by which they freely determine their political status. The Tibetan people have not yet exercised this right, which requires a free and genuine expression of their will.

2 This summary is taken from the two previous ICJ reports, *The Question of Tibet and the Rule of Law*, (Geneva: International Commission of Jurists, 1959), and *Tibet and the Chinese People's Republic, A Report to the International Commission of Jurists by its Legal Inquiry Committee on Tibet* (Geneva: International Commission of Jurists, 1960). The current report does not repeat the analysis in these earlier reports, which the ICJ endorses.

Recommendations

The principal recommendation of this report is for a referendum to be held in Tibet under United Nations supervision to ascertain the wishes of the Tibetan people. Those eligible to vote in such a referendum would be Tibetans and other persons resident in Tibet before 1950 and their descendants, as well as Tibetan refugees and their descendants. The referendum would take place in the contiguous territories in which ethnic Tibetans historically constituted a majority and among the exile community. This exercise of the right to self-determination could result in the establishment of an independent state, a form of genuine internal self-government, continuation of Tibet's current status within China, or any other status freely determined by the Tibetan people.

Most of the other specific recommendations of this report flow from China's violations, spelled out in the report, of its binding obligations under international human rights law, and do not need to be enumerated exhaustively here. Some of the over-arching recommendations, however, include:

Recommendations to the People's Republic of China

- Enter into discussions with the Dalai Lama and the Tibetan government-in-exile on a solution to the question of Tibet based on the will of the Tibetan people;
- Ensure respect for the fundamental human rights of the Tibetan people by ending the violations described in this report;
- End those practices which threaten to erode the distinct cultural, religious and national identity of the Tibetan people. In particular, cease policies which result in the movement of Chinese to Tibetan territory;
- Cooperate with United Nations mechanisms for the protection of human rights. In particular, facilitate meaningful and unrestricted visits to Tibet of the UN mechanisms on torture, summary, arbitrary and extrajudicial executions, violence against women, disappearances, arbitrary detention, and independence of the judiciary. Release those

prisoners whose detention has been ruled arbitrary by the Working Group on Arbitrary Detentions, and prisoners held for similar reasons. Implement the recommendations of the Special Rapporteur on Religious Intolerance and allow him to conduct a meaningful follow-up visit with unrestricted access to the Tibetan people;

- Ratify without reservations the International Covenant on Civil and Political Rights and its optional protocols and the International Covenant on Economic Social and Cultural Rights;
- Allow unrestricted access to Tibet by independent human rights monitors.

To the United Nations General Assembly

- Resume its debate on the question of Tibet based on its resolutions of 1959, 1961 and 1965.

To the United Nations Commission on Human Rights

- Appoint a Special Rapporteur to investigate the situation of human rights in Tibet.

To the United Nations Secretary-General

- Using his good offices, appoint a Special Envoy to promote a peaceful settlement of the question of Tibet and a United Nations-supervised referendum to ascertain the wishes of the Tibetan people.

To the international community

- States and other international actors should refrain from taking a position on the legal status of Tibet until after a referendum is held in accordance with the recommendation made in this report;
- Development assistance to Tibet should benefit the Tibetan people. To this end, it should ensure the participation of Tibetans in all stages of project design and implementation, respect Tibetan choices regarding the environment and development and not encourage the movement of Chinese to Tibetan territory.

To the Tibetan government-in-exile

- Enter into discussions with the Government of China on a solution to the question of Tibet based on the will of the Tibetan people;
- Cooperate in the organization of a United Nations-supervised referendum in Tibet and in the exile community to ascertain the wishes of the Tibetan people.

I - The Land and the People

Popularly called the "roof of the world," the Tibetan plateau forms a distinct geographic and ecological region. The plateau, with an average altitude of 4,000 metres, is bounded on the south by the Himalayas, with peaks of 6,000-8,000 metres, on the west by the Karakoram, with peaks of a similar height, and on the north by the Kun Lun, Altyn and Qilian ranges, with crest line altitudes of 5,000-6,000 metres, 3,600-4,000 metres and 4,000-5,000 metres, respectively. The plateau is separated from China on the southeast by the gorges of the Salween, Mekong and Yangtze. Only in the northeast in the Kokonor area is the plateau relatively easily accessible.

The plateau slopes from its highest point in the west, the virtually uninhabited Chang Thang, "northern plain," to the forests and gorges of Yunnan in the southeast. All of the major rivers of Asia have their sources in Tibet. The Indus, Ganges, Sutlej and Brahmaputra all arise in the southwestern corner of upper Tibet at the Tibetan sacred mountain, Kang Rinpoche, "precious snow mountain," (Meru or Kailash of Indian mythology). The Salween, Mekong, Yangtze and Yellow rivers all arise in the central and eastern Chang Thang.

The Tibetan plateau is 2,500 kilometres from east to west and 1,200 kilometres from north to south; its area of 2.5 million square kilometres is one-fourth the current total area of the People's Republic of China (PRC), approximately equal in area to Western Europe or the Rocky Mountain states of the United States. Ecological zones of the plateau vary with increasing altitude, from southeast to northwest, from alpine meadow to alpine steppe and alpine desert. Relief varies from the deeply incised valleys of the southeast to barren high altitude plains punctuated by rounded peaks of the northwestern Chang Thang. The average altitude of the plateau is 4000 metres. Internal ranges, the Kailash-Nyanchenthangla and Amne Machin, reach altitudes of 6,000 metres. In its rise from the sea the Tibetan plateau has become increasingly arid but the plateau is still dotted with several hundred lakes, some of great extent, now mostly salty.

The plateau may be divided into three primary geographical and ecological regions: the sparsely inhabited high altitude desert region of the northwestern Chang Thang, the grassland area stretching from the

Kokonor lake in the east to the Kailash area in the west, and the lower valley areas of the central and southeastern plateau. The first area is estimated at approximately three sevenths of the area of the plateau and the second and third areas at two sevenths each.

The grasslands are the nomadic pastoralist area of Tibet. In general, the fertile eastern grasslands support horses and yak, whereas the more sparse western areas support greater proportions of sheep and goats. The lower valley area of south-central and southeastern Tibet are agricultural and combined agricultural-pastoral in economy. This area increases in relief, rainfall and forest from west to east. Besides the pastoralist/agriculturalist division of the plateau, Tibetans are divided by their mountain valleys into territorially isolated units typical of mountain cultures. As a Tibetan proverb puts it: "Each valley its own language; each lama his own teaching."

Though the Tibetan climate is harsh in the extreme, exhibiting vast daily and seasonal variations in temperature, the Tibetans consider themselves possessed of an advantageous environment. In relation to neighbouring countries, summers in Tibet are pleasantly cool, and the cold of the Tibetan winters is tempered by the warmth of the sun's rays at high altitude, unimpeded by atmosphere or cloud. The severity of the environment and the nature of the ecological adaptation which is required to survive in that environment have led to sparse settlement, reliance upon isolated family units, and an attitude of individualism unique among the usually densely populated societies of Asia.

The awesome scale of the Tibetan environment has been of primary significance in the evolution of the ethnic, cultural and national identity of Tibet. The high Tibetan plateau physically delimits Tibet as a culture and as a nation. Like the plateau itself, Tibet is defined by altitude. Common ecological adaptation to the conditions of high altitude, whether as pastoralists or agriculturalists, has been one of the most fundamental cohesive factors of Tibetan national identity.

Tibetan ethnic origins are not completely certain. According to the traditional Chinese notion, the predominant ethnic group was probably composed of the semi-nomadic tribes of northeastern plateau origins known as Qiang (Ch'iang), who migrated to all parts of the plateau to escape Chinese expansionism during the first and second centuries. Indo-European ethnic influences on the Qiang from Inner Asia are also possible. Under this theory, the Qiang in their migration to the plateau

absorbed peoples known as the Mon, who were probably the earliest plateau inhabitants. The Tibetan language is distinct from Chinese, although some early connections are possible. The Tibetan written language is alphabetic, acquired from the Indian Devangari script in the seventh century, in comparison to the ideographic Chinese.

Tibetan society was tribal in the nomadic areas and loosely organised around a system of small semi-independent states and estates in agricultural/pastoral areas. As Hugh Richardson, British representative at Lhasa for nine years during the late 1930s and 1940s, described the Tibetan system:

In theory all land in Tibet belonged to the state from which the noble landowners and great monasteries held large estates. In return the nobles paid revenues to the state, largely in produce of various kinds and also by service—it being their duty to act as officials of the government. ... The monasteries, which owned even larger estates than the nobility, made their return by prayers and rites for the welfare of the state. On these great estates the peasants, who held a stretch of land free of rent, had to cultivate the rest of the landlord's farmland and also provide various services ... In addition to the peasants on the big estates there were many smallholders who held land directly from the government.¹

Estate lords had a wide latitude in their treatment of tenants; however, all peasants had the right to appeal to higher authorities, up to and including the Dalai Lama. Landlords' treatment of their tenants was usually tempered by the Buddhist religion and the value of the tenant's labour. A tenant could easily run away and the landlord was powerless to bring him back. As Richardson wrote "Conditions of work were by all appearances easy. The Tibetan, although certainly not an idler, did not give the impression of being overburdened with work or with care." Richardson testified to the Tibetans' character, based upon his experience and that of other travellers to traditional Tibet:

All agree in describing the Tibetans as kind, gentle, honest, open, and cheerful. They are humorous, able to enjoy leisure, intelligent, and self-reliant; and they accord a high position to

1 Hugh Richardson, *Tibet and Its History* (Boston: Shambhala, 1984), 15.

women. They have inborn good manners: servants and peasants behave with a deference and politeness which does not exclude the expression of an independent opinion; among the nobles and gentry one finds an easy courtesy from which the panache and flattery of some other Asian countries are absent. The good treatment by the Tibetans of their domestic animals has impressed many travellers. These pleasant and engaging qualities do not exclude a streak of hardness which shows in the severe punishment of offenders but which is not allied to cruelty or to pleasure in inflicting pain; it reflects, rather, the simplicity and lack of luxury in their existence and the austerity of their surroundings.²

Tibetan material culture was almost exclusively devoted to religion, in which the arts of building, painting and image casting were highly developed. Tibetan scholarship flourished within Buddhist monasteries while Tibetan literacy was at a high level for a pre-modern society due not only to the large numbers of literate monks and nuns but to the fact that many ordinary people had a rudimentary ability to read Buddhist texts.

The population of all Tibet in 1953, according to Chinese statistics based partly on unreliable Tibetan estimates, was said to be 2.77 million, of whom 1.27 million were within what later became the Tibet Autonomous Region (TAR). The Tibetan population within China in 1982, the first time reasonably reliable population figures were produced, was 3.87 million, of whom 1.78 million were within the TAR and 2.1 million were in eastern Tibetan areas now part of Chinese provinces.³

2 Ibid., 10.

3 Zhang Tianlu, "Tibet's Population Develops," *Beijing Review*, 17 August 1987, 20. The traditional and unreliable figure of six million Tibetans is based upon estimates of all Tibetans both within what is now the PRC and those in bordering countries, including Sikkim, India and Nepal.

II - Historical Background

Tibet first entered the historical record during the Tibetan Empire period (ca. 630-842), during which the previously small Tibetan states united in a confederation encompassing the entire Tibetan plateau. The Tibetan empire fought the Chinese empire of the Tang dynasty to a standstill and, in 822, gained a treaty ending Sino-Tibetan conflict in which China recognised Tibet as an independent country with a territory encompassing the entire Tibetan plateau.

The characteristics which define Tibet as a nation—shared ethnicity, territory, culture, language and religion—were all consolidated by the shared historical experiences of the empire period. A national cultural and political identity corresponding to the territorial extent of the Tibetan plateau was created during the empire and survived the empire's collapse. The Tibetan association with China during the empire period was not as important in cultural influence, later Chinese claims to the contrary notwithstanding, as in the influence that military and political competition with China had upon the development of a Tibetan sense of national identity and statehood. Tibet also competed with or had cultural or political contacts with the Turks, Arabs, Indians and Nepalese.

Upon the fall of the Tibetan empire, the clans, tribes and regions of the plateau reverted to their former fractious independence. For the next four hundred years, Tibet knew no central authority. This political vacuum was gradually filled by monastic Buddhism. Buddhism reached Tibet from India during the early empire period and was revived in the 11th century by an Indian teacher. Tibetan religious orders grew up around lineages of teachers and disciples. As Buddhist orders founded monasteries throughout the country, their temporal as well as spiritual power increased. At the beginning of the 13th century, Buddhist schools had become the dominant economic, political and spiritual authorities in Tibet, but Tibet remained disunited because no school was powerful enough to dominate the others. This situation was transformed with the rise of the Mongol empire, under whose patronage one school achieved predominance and Tibet achieved political unity.

By 1234 the Mongols had conquered all of northern China. In 1247 Sakya Pandita, head of the Sakya school, submitted to Godan Khan in

order to avoid a Mongol conquest. Sakya Pandita was appointed as the representative of Mongol authority in Tibet. In 1254 Sakya Pandita's nephew, Phagspa, made a similar arrangement with Khubilai Khan. Phagspa became Khubilai's teacher in Buddhism while Khubilai became overlord of Tibet. This *Cho-Yon* relationship between Mongol patron and Tibetan lama became the pattern for Tibetan relations with the Mongol Yuan dynasty (1271-1368).

Phagspa became administrator of Buddhist affairs in the Yuan empire and, briefly, Khubilai's representative in Tibet. The Mongol administration of Tibet was unique among territories of the Mongol empire. Tibet was treated as a special case due to the nature of Mongol khans' personal relations with Tibetan lamas. Tibet was allowed, at least under Khubilai, a great degree of autonomy due to the influence of Phagspa at the Mongol court. Later during the Yuan dynasty, Tibet was integrated into the administration of the Mongol empire, and treated not as part of China, but as a separate subjugated country. The Tibetan relationship with the Mongols established the Buddhist ecclesiastic system, with its inherent dependence upon foreign patronage, as the dominant political authority in Tibet.

The Mongol Yuan dynasty fell in 1368 and was succeeded by the Ming (1368-1644), the first native Chinese dynasty to control all of China since the Tang (618-907). Lacking the will or the need to impose the type of dependent relationship upon Tibet that had existed under the Yuan, the Ming emperors never claimed authority in Tibet and contented themselves with the superficial aspects of that relationship. The Ming continued to confirm Tibetan officials' titles that had existed under the Yuan as if the Ming had inherited the Yuan relationship with Tibet and continued the patronage of Tibetan lamas and the award of honours and titles to them. However, the Ming had no real interest in Tibet beyond Tibet's role in Ming relations with the Mongols.

During the Ming dynasty Tibet maintained its relations with the Mongols. In 1577 Altan Khan, intending to "follow the example of Phagspa and Khubilai," invited a Tibetan lama, Sonam Gyatso, to his camp. Altan awarded Sonam Gyatso the name "Dalai," a Mongol translation of his name, Gyatso, both with the meaning "oceanic." Sonam Gyatso thereafter became known as the Dalai Lama. In 1642 Gushri Khan of the Kokonor Mongols unified Tibet on behalf of the Fifth Dalai Lama, signalling the first time that a Dalai Lama had attained both temporal and spiritual rule. Regional and sectarian conflicts were therefore eliminated

and Tibet was politically unified, but once again this was accomplished only by means of Mongol political patronage and reliance upon Mongol military force.

The Fifth Dalai Lama established relations with the Manchu emperor in 1639, several years before the Manchu conquest of China. In 1652 the Fifth Dalai Lama visited the new Manchu emperor in Peking to re-establish the patron-lama relationship that had existed with the Mongol Yuan. This visit was later cited by the Chinese as the nominal submission of the Dalai Lama to the Manchu emperor. Accounts of the Dalai Lama's visit however tend to show the respect in which the Dalai Lama was held by the Emperor.

Tibet's importance in Inner Asian politics at the beginning of the Manchu Qing dynasty was almost entirely due to the Fifth Dalai Lama's influence with the remaining independent Mongols. In 1682 the Fifth Dalai Lama died. At the same time the Qing, finally freed of domestic rebellions, was able to turn its attention to Inner Asian affairs. In 1689 the Manchu reached an agreement with the Russians, the Treaty of Nerchinsk, which marked the beginning of the end of the era of the great steppe empires. The Inner Asian nomads were now squeezed between the expanding empires of Russia and China. The introduction of firearms during the same era spelled the end to the nomads' former military dominance. Tibetan influence in Inner Asia also decreased along with the strength of the Mongols.

In 1720 a Qing army entered Tibet to expel a group of independent Mongols from Dzungaria who had gained control over Lhasa. This event marks the beginning of actual Qing control over Tibet. In 1725 the Qing reorganised the administration of Tibet under the Tibetan secular nobility and administratively separated the eastern Tibetan provinces of Kham and Amdo from that of central Tibet. Kham east of the watershed between the Jinsa Jiang (Yangtze) and the Mekong was to be administered by native chiefs under the supervision of the governor of Sichuan. The Tibetans and Mongols of Amdo (Kokonor) were, like Lhasa, supervised by a resident Qing official known as the Amban.

In 1750, after the murder of the Lhasa Amban, the Qing again reorganised the Tibetan administration under the overall authority of the Amban. In 1792 the Qing again sent an army to Tibet to repel an invasion by the Gurkhas of Nepal, after which the Tibetan administration was again reorganised. The Amban took control

of Tibetan frontier defence and foreign affairs. The Tibetan currency, which had been the source of trouble with Nepal, was also taken under Qing supervision. The Qing also required that the incarnations of the Panchen and Dalai Lamas and other high lamas be chosen under the supervision of the Amban.⁴ The Qing instituted a system of "choosing of lots from the golden urn," whereby the names of the final candidates for any incarnation, usually three in number, were rolled into dough balls, placed in the golden urn and one was picked out by the Amban. The Qing thereby attempted to establish their authority over political succession in the Tibetan system of combined spiritual and temporal rule. This measure was also intended to prevent any high incarnations from being found among the aristocracy, separating the aristocracy from the Buddhist religion and preventing any of the aristocracy from gaining both secular and religious power.

The measures undertaken in 1792 represent the height of Qing influence in Tibet. From this time the Qing dynasty began to decline and, with it, Qing control in Tibet. Most of the Qing reforms of 1792 were never fully implemented or quickly fell into disuse. The right to approve reincarnations, the most significant reform in terms of implications for Tibet's sovereignty, became essentially symbolic or was ignored by the Tibetans altogether. During the nineteenth century, the Qing were preoccupied with foreign imperialism and were unable to pay much attention to Inner Asia. The voluntary abandonment of financial and military powers to the Tibetan Government by the Amban in 1847 represents the effective end of direct Qing administration in Tibet. By the late nineteenth century Tibetans had created autonomous governmental institutions that combined secular and ecclesiastical interests but avoided the foreign dependence that had characterised the Tibetan ecclesiastical system in the past. By the end of the century, the Amban in central Tibet had little more than his power of extortion and abuse left as symbols of

4 The Panchen Lama lineage derives from the Fifth Dalai Lama's tutor, who was given the Tashilhunpo monastery in Shigatse as a token of the Dalai Lama's respect. Panchen means "Great Pandit," and refers to the original Panchen's role as tutor of the Fifth Dalai Lama. The Panchen was also declared to be an incarnation of Amitabha, in the Buddhist pantheon the teacher and superior of Avalokiteshvara, of whom the Dalai Lama is considered to be the incarnation. Despite the relationship between the original Panchen and the Fifth Dalai Lama, and the fact that they were both of the Gelugpa sect, the Panchen's feudal authority in Tsang gradually came to be regarded as a temporal realm semi-independent of Lhasa.

Tibet's subservience to the Qing empire. Nevertheless, the Qing continued to claim authority over Tibet and that claim was generally recognised by Tibetans.

The nature of the Qing relationship with Tibet remained one between states, or an empire and a semi-independent peripheral state, not a relationship between a central government and an outlying part of that same state. The Qing dynasty, like the previous conquest dynasty, the Yuan, distinguished Inner Asia from China in both political status and administrative divisions. China, the "interior empire" for the Qing, was regarded as a subjugated state; Inner Asian tribes and states, or the "exterior empire," were treated as dependent allies during the early Qing. Tibet's inaccessibility and the difficulties involved in imposing direct administration contributed to the Qing preference to maintain Tibet's semi-autonomous status within the empire.

The Manchu were eventually thoroughly assimilated, losing their ethnic identity and language. Tibet was eventually regarded by China not as a territory of the Manchu Qing empire but as Chinese territory. In addition, Qing administrative divisions of Tibet separated Kham and Amdo politically and conceptually from what the Chinese thought of as "Tibet." Although Tibet was placed, in the Chinese mind, in the category of "Chinese territory," Tibetan cultural, ethnic and national identity was essentially unaffected by Tibetan relations with China during the Qing. Despite later Chinese claims, Tibet did not become an "integral part of China" during the Qing dynasty. Although Tibet was a dependent state of the Qing empire, and the Qing empire was transformed into a Chinese ruling dynasty, Tibet did not thereby become a part of China.

A. Tibet in the Twentieth Century⁵

The decline of the Qing dynasty was contemporaneous with the end of the feudal age and the beginning of the age of modern nationalism in

5 For greater detail on the recent history of Tibet, as it relates to Tibet's legal status, see the two previous ICJ reports, *The Question of Tibet and the Rule of Law*, (Geneva, International Commission of Jurists, 1959), for the period before 1911, and *Tibet and the Chinese People's Republic, A Report to the International Commission of Jurists by its Legal Inquiry Committee on Tibet* (Geneva, International Commission of Jurists, 1960) for the period 1911-1950.

China, Inner Asia and Tibet. Competition between the British and Russian empires over influence in Inner Asia, known to its British participants as the "Great Game," transformed Tibet from a remote dependency of the Qing into an object of international interest. In response to the British threat to China's role in Tibet, the late Qing attempted to impose its control over Tibet more directly. Tibet, under the Thirteenth Dalai Lama, aware of the threat that the formerly suzerain authority of the Qing over Tibet might be transformed into Chinese sovereignty, attempted to achieve independence.

The Thirteenth Dalai Lama was born in 1876 and confirmed as the reincarnation in 1879 by traditional Tibetan methods without the use of the Qing system of choosing up lots from a golden urn under the supervision of the Amban. He assumed temporal authority in 1895, becoming the first Dalai Lama to actually rule Tibet since the Great Fifth over two centuries earlier.⁶

At the turn of the century the British Government of India (GOI), suspicious of Russian influence in Tibet, sought trade privileges there, but the Tibetan government declined even to discuss such matters with them. The GOI turned to Beijing, from whom it obtained a variety of concessions regarding Tibet. However, the Chinese, despite their claim to authority over Tibet, proved powerless to make the Tibetans respect these agreements as the 13th Dalai Lama again refused even to hold direct talks with the GOI.

In 1904 the British sent an expedition to Tibet to force negotiations. Before the British expedition reached Lhasa, the Dalai Lama fled to the north, finally reaching Outer Mongolia. Defeating Tibetan forces and entering Lhasa, the British head of expedition concluded a treaty with Tibet that granted Britain trade privileges in Tibet, allowed the stationing of a British resident at Gyantse and required the Tibetans to pay the expenses of the British invasion, until which time the British would occupy a portion of southern Tibet adjacent to India.

The 1904 British expedition to Tibet ended Tibet's international isolation and exposed the myth of China's claimed authority in Tibet. However, it also provoked the flight of the Dalai Lama and an inevitable

6 Others, notably the Seventh and Eighth Dalai Lamas, had reached maturity and had assumed temporal power, but none since the Great Fifth had effectively exercised that power. Melvyn Goldstein, *A History of Modern Tibet, 1913-1951* (Berkeley: University of California Press, 1989), 41.

Chinese attempt to recover its position at Lhasa, aided by a Foreign Office in London that had not authorised the conquest and was prepared, out of consideration for its relations with Russia and China to repudiate some of the political advantages gained. China was willing to recognise some, if not all, of the provisions of the Lhasa Convention, but was intent that Tibet's right to independently conclude international agreements should be denied. China's right to participation in any treaty regarding Tibet could not be denied, at least by the British, since Britain continued to recognise Chinese "suzerainty" over Tibet.⁷

London therefore entered into negotiations with China to obtain its acceptance of the 1904 treaty. In the 1906 Adhesion Treaty between Britain and China, China assumed the indemnity obligations of the Lhasa Convention and converted what had been an agreement between Britain and Tibet into one between Britain and China. China agreed to accept the Lhasa Convention of 1904, pay the indemnity and allow Britain commercial rights; Britain agreed not to interfere in China's administration of Tibet if China would exclude all other foreign powers. China was considered not to be a "foreign power" in relation to Tibet, an implicit recognition of Chinese suzerainty over Tibet.⁸ The 1906 Adhesion Treaty relegated Tibetan affairs once again to a concern of China, with whom all foreign parties, including Britain, had to deal in regard to Tibet. China considered the Adhesion Treaty of 1906 not as a recognition of the Lhasa Convention of 1904, but as a repudiation of it and a recognition of China's "traditional authority" in Tibet.⁹

7 Hugh Richardson, British representative at Lhasa, in a 1945 report to the GOI defined suzerainty as "nominal sovereignty over a semi-independent or internally autonomous state." However, he added that, in practice, the term had "never been defined and, indeed, appears incapable of definition." Richardson, *Tibetan Precis* (Calcutta: Government of India, 1945), 97. Richardson revealed that the Tibetans had inquired of the GOI in 1943 about the legal definition of suzerainty, to which the British had only the reply that "suzerainty is a term used to describe the relations, frequently ill-defined and vague, existing between one state and a second which, to a greater or less degree is dependent on the first, or better `owes some degree of allegiance to the first.'" *Ibid.*, 102.

8 Premen Addy, *Tibet on the Imperial Chessboard* (New Delhi: Academic Publishers, 1984), 172. Text of "Convention between Great Britain and China," 1906, in C.V. Aitchison, *A Collection of Treaties, Engagements and Sanads Relating to India and Neighboring Countries*, vol. XIV (Calcutta: Government of India, 1929), 27.

9 Addy, *Tibet on the Imperial Chessboard*, 172.

During the Dalai Lama's absence from Lhasa, China - awoken by the British invasion - had increased its influence there and had sent an expeditionary force into eastern Tibet (Kham) in an attempt to convert that part of Tibet into a Chinese province, to be known as "Xikang." The exiled Dalai Lama was forced to mend his relations with Peking. Visiting Peking, he accepted a reduction in his status in Lhasa in favour of the Amban and was allowed to return to his seat in 1909. Mistrustful of him, however, the Chinese sent in troops which reached Lhasa in 1910 and the Dalai Lama once again fled, this time to India. By 1911 the Qing had restored their authority in Tibet to an extent that, had the Qing dynasty not soon fallen, Tibet might have ceased to exist as a separate political entity and been converted into a province of China. Instead, Tibet was granted a temporary reprieve.

The Qing dynasty was overthrown in 1911. In 1912 the Chinese were expelled from Tibet and the Dalai Lama returned to Lhasa, refusing the titles offered by the Chinese Republic and repudiating China's claim to authority over Tibet, acts that Tibetans consider equivalent to a declaration of Tibet's independence.¹⁰ Mongolia also proclaimed its

10 See the Tibetan text of the Dalai Lama's declaration in *Zhwa-sga-pa Dbang-phyug bde-ldan* [W.D. Shakabpa], *Bod-kyi srid-don rgyal-rabs* [Political History of Tibet] (Kalimpong, 1976), vol. II, 222. The Dalai Lama refers to Tibet as being a free country (*rgyal-khab rang-dbang dang ldan-pa zhig yin*). Given the newness of certain terminology in Tibetan at the time, this truly is equivalent to proclaiming Tibet an independent country, contrary to Rubin's argument based on western ideas of international law that the 1912 message did not specifically declare Tibetan independence. See Alfred P. Rubin, "The Position of Tibet in International Law," *The China Quarterly* (July-September 1968) and "Tibet's Declaration of Independence?" 60 *Amer. J. Int'l. Law* 812 (1966).

independence of China in 1912 and in 1913 Mongolia and Tibet concluded a treaty of mutual recognition of their independence.¹¹

The ICJ found that "Tibet's position on the expulsion of the Chinese in 1912 can fairly be described as one of de facto independence and there are...strong legal grounds for thinking that any form of legal subservience to China had vanished. It is therefore submitted that the events of 1911-12 mark the re-emergence of Tibet as a fully sovereign state, independent in fact and law of Chinese control."¹²

In 1913-1914 Britain, looking to maintain a buffer area in Tibet, attempted to secure Chinese recognition of Tibetan autonomy in tripartite negotiations at Simla in India. China claimed sovereignty over all Tibet and direct administration of eastern Tibet based on historical rights of conquest, but was willing to allow "Outer Tibet" some autonomous status. Tibet claimed self-determination for all areas of Tibetan inhabitation. Britain was not anxious, however, to see Tibet become independent. The final text of the Simla Convention declared that "Outer Tibet" would be autonomous from China, while recognising that it was under Chinese suzerainty. Tibetans would administrate Tibet without Chinese interference, and China would not station troops in

11 W.D. Shakabpa, *Tibet: A Political History* (New York: Potala Publications, 1984), 246. Rubin also disputes this treaty, pointing out that the Dalai Lama and other Tibetan officials were ambivalent about the treaty in conversations with British officials. However, Mongolia was a protectorate of Russia in 1912 and of the Soviet Union thereafter; Tibetan officials were therefore reluctant to reveal their ties with Mongolia and, by extension, with Russia, to the British. The treaty with Mongolia was negotiated and signed on behalf of the Dalai Lama by Agvan Dorjiev, a Buryat Mongol and Russian subject. Dorjiev was suspected by the British to be a Russian spy and his treaty with Mongolia to be a means by which Russia might gain influence, via Mongolia, in Tibet. However, recent information from Russian archives reveals that Dorjiev was an authorized representative of the Dalai Lama and that the Tibet-Mongolia treaty of mutual recognition was a legitimate treaty. Dorjiev was a proponent of an alliance between Tibet and Mongolia. Snelling believes that "the Dalai Lama invested Dorzhiev with plenipotentiary powers to negotiate and finalize a rapprochement between Mongolia and Tibet as sovereign states." John Snelling, *Buddhism in Russia: The Story of Agvan Dorzhiev, Lhasa's Emissary to the Tsar* (Rockport, Massachusetts: Element, 1993), 150.

12 ICJ, *The Question of Tibet and the Rule of Law*, 85.

Tibet but China could maintain an amban and his escort of 300 men there.¹³ After much British mediation, agreement was also finally reached over the border between "Inner Tibet" under Chinese control and autonomous "Outer Tibet" at the Mekong-Yangtze divide. Although the Chinese representative initialled the final Simla Convention, the Chinese government repudiated it because it could not accept the border provisions. Britain and Tibet then agreed bilaterally to be bound by its provisions¹⁴ and made a bilateral agreement on the border between British India and Tibet.¹⁵

Tibet in the following years was restrained in claiming full independence, even when independence existed in fact, out of fear of losing the British guarantee for Tibetan autonomy and the British commitment to secure China's ratification of the Simla Convention. Britain was similarly restrained in recognition of Tibet's *de facto* independence since it continued to recognise Chinese suzerainty *de jure*. In the meantime British influence in Tibet increased, including military assistance to Tibet that enabled the Tibetans to push the Chinese out of major portions of eastern Tibet (Kham).¹⁶

The Thirteenth Dalai Lama centralised the Tibetan administration. Under British tutelage and with British assistance, he attempted to strengthen Tibetan ability to defend itself by raising taxes for the support of the army. New troops were levied and officers were sent to India for training. However, these measures created resistance from the large estate holders, particularly monastic estates that had not previously been

13 The text of the Simla Convention is reproduced in both ICJ reports. For a discussion of the Convention, see ICJ, *Tibet and the Chinese People's Republic*, 139-142.

14 The text of the bilateral agreement is reproduced in ICJ, *Tibet and the Chinese People's Republic*, 140. The ICJ, in its 1960 report found that: "The Chinese refusal to sign the Convention meant quite simply that Great Britain and Tibet agreed to withhold the recognition of suzerainty, and with it the understanding that Tibet was part of Chinese territory." *Tibet and the CPR*, 140.

15 See *The Boundary Question between China and Tibet: A Valuable Record of the Tripartite Conference between China, Britain and Tibet, Held in India, 1913-1914* (Peking: 1940) and Alastair Lamb, *The McMahon Line: A Study in the Relations between India, China and Tibet, 1904 to 1914*, 2 vols. (London: Routledge and Kegan Paul, 1966).

16 See Lamb, *McMahon Line* and Eric Teichman, *Travels of a Consular Officer in Eastern Tibet* (Cambridge: Cambridge University Press, 1922).

required to pay taxes, and from the Panchen Lama's estate in Shigatse. The religious leadership labelled modernization as a threat to the dominance of Buddhism, forcing the Dalai Lama to demote pro-modernization officials.¹⁷ Relations between Lhasa and the Panchen deteriorated until in 1924 the Panchen fled to China, disrupting the Dalai Lama's attempt to create Tibetan unity and providing China with a means to create divisions within Tibet. In order to keep Chinese influence out of Tibet, the Panchen was not allowed to return to Tibet during his lifetime. He died in 1937.¹⁸

In 1933 the Thirteenth Dalai Lama died. During his lifetime Tibet's status had evolved from a dependency of the Qing Empire to a *de facto* independent state. The Dalai Lama attempted to achieve political unity and independence for Tibet by modernising and centralising a medieval internal administration; he attempted to transcend Tibet's feudal relationship with China by acquiring a new political patron in Britain capable of protecting Tibet against the ambition of China to transform its suzerain authority over Tibet into full sovereignty. Central Tibet under the Thirteenth Dalai Lama achieved an unprecedented degree of national unity.

China maintained its claim to sovereignty over Tibet, however. Although Chinese administration in central Tibet and in Kham was virtually non-existent, its claim that it administered Tibet was generally accepted by the outside world. Despite the lack of any Chinese authority in Kham, the Chinese Government in 1939 declared Xikang a Chinese province. Even Britain, which knew that Tibet was *de facto* independent, continued to recognise Chinese suzerainty over Tibet. Britain's role as mediator of Tibet's status and excluder of other foreign influence from Tibet was dependent upon Tibetan "autonomy" under Chinese

17 According to Goldstein, "in one of the pivotal policy decisions of modern Tibetan history, the 13th Dalai Lama gutted the heart of the reform program by acts such as demoting the entire group of pro-modernization officers and closing the English school. Overnight, Tibet lost its best chance to create a modern polity capable of coordinating international support for its independent status and defending its territory." Melvyn C. Goldstein, "Tibet, China, and the United States: Reflections on the Tibet Question," The Atlantic Council of the United States, April 1995.

18 See Parshotam Mehra, *Tibetan Polity, 1904-37: The Conflict Between the 13th Dalai Lama and the 9th Panchen* (Wiesbaden: Otto Harrassowitz, 1976) and Goldstein, *A History of Modern Tibet*.

"suzerainty." British support for Tibetan autonomy was helpful to the Tibetans in maintaining that autonomy, but Britain's continuing recognition of China's "suzerainty" over Tibet allowed China to maintain its claims. British patronage for Tibet also allowed China to characterise Tibetan desires for independence as machinations of the British. The Tibetan Government, retaining hope for an international or bilateral settlement of its status, maintained an equivocal position on whether it demanded independence or would accept some form of autonomy, which only served to confuse international opinion further.

In 1937 the reincarnation of the Dalai Lama was discovered in Amdo and in 1939 brought to Lhasa and installed as the Fourteenth Dalai Lama. The Chinese Government was invited to send a representative to observe the ceremonies of installation, as were the governments of India, Nepal, Sikkim and Bhutan. However, the Chinese Government construed the participation of its representative as the official recognition and installation of the reincarnation, a version of events denied by Tibetans and other participants.¹⁹

During the troubled and corrupt regency period prior to the new Dalai Lama's attainment of majority, two Tibetan governmental institutions, the *Kashag*, or council of ministers, and *Tsongdu*, or National Assembly, took responsibility for Tibetan affairs. In particular, the two institutions handled negotiations with a Chinese representative sent to offer condolences on the Thirteenth Dalai Lama's death. China proposed that Tibet should accept Chinese sovereignty in exchange for autonomy in everything except foreign affairs and defence; however, the *Kashag* and *Tsongdu* maintained that Tibet was an independent country and demanded the return to Tibetan administration of Chinese-controlled areas of eastern Tibet.

This Tibetan stance was maintained throughout the 1930s and 1940s. Tibet maintained its neutrality during the Second World War even though China was a combatant. This position occasioned the first Tibetan diplomatic contacts with the United States when Tibet refused permission to transport war supplies across Tibet from India to China. An American mission to Tibet in 1943 was informed of the Tibetan claim

19 The Fourteenth Dalai Lama was chosen, confirmed and installed by traditional Tibetan methods without reference to the Chinese Government. See Richardson, *Tibetan Precis* (Calcutta: Government of India, 1945), and Goldstein, *History of Modern Tibet*, 310-311, 314-324, 325-330.

to independence, in response to which they suggested that Tibet might attempt to achieve recognition of its independence in a post-war peace conference. After the end of the war in 1945, Tibet attempted to do so by sending a "Victory Congratulations Mission" to India, China, the United States and the United Kingdom. The Tibetans were encouraged by a post-war statement by Chiang Kai-shek in which he had promised Tibet the right of self-determination.²⁰ The Tibetans had also been led to believe that a 1945 Chinese constitutional convention would confirm that position. However, the Tibetans found their attendance as observers at that convention construed by China as Tibet's participation as a part of China. China also protested the travel of the Tibetan mission to other countries, after which the US and UK agreed to receive the mission only at their New Delhi embassies.

The Tibetans were more successful with a trade mission in 1948 intended to purchase gold to back up the Tibetan currency. The Tibetan trade mission was received in India, China, the United States and the United Kingdom. However, in response to Chinese protests, the US and UK were careful to explain that their receiving of the Tibetan mission was not to be interpreted as diplomatic recognition. In 1947 Tibet participated in a semi-official Asian Relations Conference in India despite Chinese protests.

In sum, prior to the 1950 Chinese invasion, Tibet had achieved *de facto* independence and all of the requirements of *de jure* independence except formal international recognition. In its 1960 report the ICJ found that:

Tibet demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In 1950 there was a people and a territory, and a government which functioned in that territory, conducting its own domestic affairs free from any outside authority. From 1913-1950 foreign relations of Tibet were conducted exclusively by the Government of Tibet and countries with whom Tibet had foreign relations are shown by official documents to have treated Tibet in practice as an independent State.²¹

20 Chiang Kai-shek, "National Independence and Racial Equality," *The Collected Wartime Messages of Generalissimo Chiang Kai-shek: 1937-1945*, comp. Chinese Ministry of Information (New York: John Day Company, 1946), 854.

21 ICJ, *Tibet and the Chinese People's Republic*, 5.

B. The Invasion and Occupation of Tibet

On 1 October 1949, after the defeat of Chiang Kai-shek, the People's Republic of China (PRC) was formally proclaimed in Peking. On 24 November Radio Peking announced that the Panchen Lama (twelve years old at the time) had appealed to Mao to "liberate" Tibet.²² On 1 January 1950 the new Chinese government promised to liberate Taiwan and Tibet. The Tibetan Government sent messages to India, Nepal, the United States and the United Kingdom requesting their support against China's threats and sought to send missions to these countries.²³ The mission delegated to the United States was also to approach the United Nations. However, India, the US and UK advised the Tibetan Government to avoid provoking the Chinese by either openly declaring their independence or appealing to the United Nations. They expressed the belief that it was politically and logistically impossible for the UN to come to Tibet's assistance, but that the Chinese, if unprovoked, might be content to maintain Tibet's traditional autonomy. Tibet, therefore, refrained from sending its planned missions.²⁴

In the meantime, China's People's Liberation Army (PLA) had moved troops into position in Qinghai, "Xikang" (Kham), Yunnan and Xinjiang in preparation for the invasion of Tibet. On 7 October 1950 PLA troops advanced across the Yangtze from Kham, south from Qinghai and north from Yunnan. The PLA advance was quickly overwhelmed the poorly led and organised Tibetan troops. The PLA halted its advance 100 kilometres to the east of Lhasa, at what China defined as the boundary of Xikang, the PRC claimed that it had not actually invaded "Tibet." The

22 The reincarnation of the Ninth Panchen Lama, who had died in exile in 1937, had been discovered by the Panchen's entourage in exile in Sining (Xining), but had not been confirmed by Lhasa, which had another candidate. The Tibetan historian W.D. Shakabpa claims that the Panchen's followers surrendered to the Chinese Communists, sending congratulations to Mao and requesting that Tibet be liberated, in exchange for the recognition by the Chinese of their candidate as the actual incarnation. "Memorandum submitted to the International Commission of Jurists by Mr. T. Shakabpa," in ICJ, *Tibet and the Chinese People's Republic*, 316.

23 Goldstein, *A History of Modern Tibet*, 627.

24 *Ibid.*, 625-637; Warren W. Smith, *Tibetan Nation: A History of Tibetan Nationalism and Sino-Tibetan Relations* (Boulder: Westview Press, 1996), 267.

Tibetan Government was again called on to send delegates to Peking to negotiate Tibet's "peaceful liberation."²⁵

Shortly after the invasion, on 11 November 1950, the Tibetan Government appealed to the United Nations. The Tibetan appeal compared international opposition to the contemporaneous aggression in Korea with the lack of international attention to similar events in Tibet:

The armed invasion of Tibet for the incorporation of Tibet within the fold of Chinese Communism through sheer physical force is a clear case of aggression. As long as the people of Tibet are compelled by force to become a part of China against the will and consent of her people, the present invasion of Tibet will be the grossest instance of the violation of the weak by the strong. We therefore appeal through you to the Nations of the world to intercede on our behalf and restrain Chinese aggression. The problem is simple. The Chinese claim Tibet as a part of China. Tibetans feel that racially, culturally and geographically, they are far apart from the Chinese. If the Chinese find the reactions of the Tibetans to their unnatural claim not acceptable, there are other civilised methods by which they could ascertain the views of the people of Tibet, or, should the issue be purely juridical, they are open to seek redress in an international Court of Law.²⁶

On 14 November, El Salvador requested the inclusion of an item "Invasion of Tibet by foreign forces" in the Agenda of the General Assembly of the UN.²⁷ India, however, interpreted the PLA's halt and the

25 Ibid., 281.

26 "Cablegram" from the Kashag (the Tibetan Cabinet) and the National Assembly of Tibet, (Lhasa, Kalimpong), 11 Nov. 1950, UN Doc. A/1549, 24 Nov. 1950.

27 "Request for the inclusion of an additional item in the agenda of the Fifth Regular Session: Letter date 17 November 1950 addressed to the President of the General Assembly by the Chairman of the Delegation of El Salvador," UN Doc. A/1534, 18 Nov. 1950. The supporting memorandum reiterated the status of Tibet as an independent country. A draft resolution attached condemned "the act of unprovoked aggression against Tibet."

call for negotiations as a sign that China was willing to settle the issue by peaceful means.²⁸ As the Indian UN delegate explained:

In the latest note received by his Government, the Peking Government had declared that it had not abandoned its intention to settle those difficulties by peaceful means. ... The Indian Government was certain that the Tibetan question could still be settled by peaceful means, and that such a settlement could safeguard the autonomy which Tibet had enjoyed for several decades while maintaining its historical association with China. His delegation considered that the best way of obtaining that objective was to abandon, for the time being, the idea of including that question in the agenda of the General Assembly."²⁹

Other parties, including Britain and the US, deferred to India's position, as the party most concerned, that a "peaceful" solution was still possible.³⁰ On 24 November the General Assembly's General Committee voted unanimously to postpone consideration of the Tibet issue. China's tactic of halting the advance of the PLA and calling on the Tibetans to negotiate was thus successful in defusing international criticism of China's actions.

The Tibetan Government, which had removed itself and the Dalai Lama to the border of India in anticipation of a Chinese advance to Lhasa, was forced to send delegates to Beijing under the threat of a continued advance of the PLA to Lhasa. In Beijing the delegates were presented with demands that they agree to Tibet's "peaceful liberation"

28 As an Indian Foreign Ministry official told the American ambassador: "Their advance has not been beyond boundaries [between] China and Tibet, as CCP understands them ... this situation will most effectively be negotiated on bilateral [China-Tibet] basis outside UN." Ambassador in India to the Secretary of State, 20 November 1950, *Foreign Relations of the United States, 1950, vol. VI, 578*.

29 United Nations General Assembly Fifth Session, General Committee 73rd Meeting, 24 Nov. 1950, cited in GA, Fourteenth Session, 812th meeting, UN Doc. A/PV.812, 20 Sept. 1959, para. 124.

30 Britain, the US and India each expressed hope that some semblance of Tibet's past autonomy could still be preserved and China's imposition of control over Tibet could remain "peaceful" if negotiations were to take place. *Ibid.*, 14.

and threatened with forcible conquest of Tibet if they refused. Faced with little choice they agreed, on 23 May 1951, to the "Agreement of the Central People's Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet."³¹

The 17-Point Agreement (see Annex 2) was a contradictory document, guaranteeing on the one hand no alteration of Tibetan political and religious systems, while on the other hand providing for Tibet to be governed by the system of "national regional autonomy." The system of national regional autonomy, while promising much in generalities, was vague as to specifics, and was to become entirely dependent upon Chinese interpretation and implementation. The same may be said for all the guarantees that Tibet was allowed in the agreement. Among its key provisions were the following:

1. The Tibetan people shall unite and drive out imperialist aggressive forces from Tibet: the Tibet people shall return to the big family of the Motherland—the People's Republic of China.
2. The local government of Tibet shall actively assist the People's Liberation Army to enter Tibet and consolidate the national defence.
4. The Central Authorities will not alter the existing political system in Tibet. The Central Authorities also will not alter the established status, functions, and powers of the Dalai Lama. Officials of various ranks will hold office as usual.
5. The established status, functions, and powers of the Dalai Lama and of the Panchen Ngoerhtehni shall be maintained.
9. The spoken and written language and school education of the Tibetan nationality shall be developed step by step in accordance with the actual conditions in Tibet.
11. In matters related to various reforms in Tibet, there will be no compulsion on the part of the central authorities. The local government of Tibet should carry out reforms of its own accord, and when the people raise demands for reform, they shall be settled by means of consultation with the leading personnel of Tibet.

31 Goldstein, *History of Modern Tibet*, 763-772.

Despite the wording of article 17 ("This agreement shall come into force immediately after signature and seals are affixed to it."), ratification still depended upon the Tibetan Government if, as the Dalai Lama states, the negotiators lacked authority to sign.³² The agreement might have been held to be void *ab initio*, considering this lack of authority and the duress involved.³³ As the ICJ recognised, "Tibet signed at pistol-point."³⁴ However, China had achieved the appearance of having negotiated a peaceful solution to Tibet's status, an appearance that deflected international criticism.

After learning with dismay of the terms of the 17-Point Agreement in Peking at the end of May, the Dalai Lama and his advisers began a debate at the Tibetan town of Yatung near the Indian border about whether or not to accept the agreement. The debate revolved around whether Tibet could preserve more of its cultural and political identity by accepting China's demands or by refusing them. The latter option implied that the Dalai Lama would ultimately seek asylum outside Tibet in the face of a Chinese advance; the main objections to this option were the lack of demonstrated foreign support and the fact that, unlike the Dalai Lama, the Tibetan nation and its institutions could not escape into exile or be preserved there. To many Tibetans, cooperation with China seemed to offer at least some chance to preserve Tibetan institutions and Tibet's political and cultural identity. Chinese promises to leave Tibetan

32 The Tibetan delegates are invariably referred to as "delegates with full powers," implying that they had the power to conclude an agreement without the approval of their government, which, according to the Dalai Lama, they did not have. Dalai Lama, *My Land and My People: Memoirs of the Dalai Lama of Tibet* (New York: Potala, 1977), 87. Goldstein also asserts that the Tibetan negotiators "were clearly not authorized to make major decisions on their own" and were instructed to establish a wireless link for discussion of important issues. *History of Modern Tibet*, 759. The head of the Tibetan team, Ngabo Ngawang Jigme, reportedly told his colleagues that if "the Dalai Lama and the government found this agreement unacceptable, they could later repudiate it on the grounds that the delegation did not have complete authority." *Ibid.*, 760. On the other hand, Ngabo repeatedly told the Chinese that he had such authority. *Ibid.* 769-770.

33 In its previous reports, the ICJ examined the contradictory opinions on whether duress against a state is a ground for invalidating a treaty. ICJ, *The Question of Tibet and the Rule of Law*, 95-96. See also ICJ, *Tibet and the Chinese People's Republic*, 163-165.

34 ICJ, *The Question of Tibet and the Rule of Law*, 95.

institutions unchanged convinced many that acceptance of China's terms was Tibet's best option. The argument that China could and probably would renege on all its promises once it gained complete control of Tibet was countered by the opinion that the only Tibetan institution capable of holding the China to its promises was the Dalai Lama; if the Dalai Lama repudiated the agreement and went into exile, Tibet would have no protection against whatever the Chinese chose to do.³⁵

At the end of July 1951 the Dalai Lama left Yatung to return to Lhasa. On 28 September 1951 the Tibetan Kashag (Cabinet) and Tsongdu (Assembly) formally accepted the 17-Point Agreement. On 25 October the Dalai Lama sent a letter to Mao accepting the 17-Point Agreement. Tibet's formal acceptance of the agreement and hence of China's sovereignty essentially extinguished its claim to independent statehood.

C. Tibet Under Chinese Communist Rule

After Tibetan acceptance of the 17-Point Agreement, the PLA occupied Lhasa and central Tibet. However, Chinese physical control over Tibet remained exceedingly tenuous. Until control could be firmly established, the Chinese Communist Party (CCP) was cautious in its policy in Tibet, substantially adhering to the provisions of the 17-Point Agreement (or the Chinese interpretation of that agreement) and CCP nationalities policies. In general, before 1954, China confined itself to activities that might be characterised as within the realm of foreign aid rather than foreign conquest, aimed at impressing Tibetans with the assistance China could provide without affecting Tibetan autonomy or altering Tibetan society.

At the same time, the CCP created territorial divisions of Tibet that contradicted its own "national regional autonomy" system and contributed to the later Tibetan revolt. In accordance with the Chinese belief that only central Tibet was "Tibet," while eastern Tibetan areas were no longer so, the CCP planned that only central Tibet should form the future "Tibet Autonomous Region," while eastern Tibet would be parceled out within Qinghai, Gansu, Yunnan and Sichuan provinces. The

35 Goldstein, *History of Modern Tibet*, 798 - 800.

provisions of the 17-Point Agreement would apply only to that part of Tibet that would become the TAR.³⁶

By the end of 1954 China's strategic hold over Tibet had tightened. In April 1954 China concluded the "Panchshila," or "five principles of peaceful coexistence" agreement with India in which India formally recognised China's sovereignty over Tibet.³⁷ At the end of 1954 two motorable roads in to Tibet, one from Sichuan via Kham and another from Gansu and Qinghai via northern Tibet, were completed. These two achievements marked a shift in Chinese policy in Tibet. In 1955 the PRC moved to institute a "Preparatory Committee for the Tibet Autonomous Region" that effectively transferred political authority from the Tibetan Government to the Chinese-controlled Preparatory Committee. This, from the Tibetan point of view, was a clear violation of the promise in the 17-Point Agreement that the Tibetan political system and the powers and functions of the Dalai Lama would remain unchanged.³⁸

In 1955 Mao, apparently believing that Chinese control was now secure in almost all minority nationality areas, decided that minorities should therefore be included in the "High Tide of Socialist Transformation" planned for 1956. Only Tibetans within the TAR were to remain exempt. Tibetan areas of Kham and Amdo which, in the Chinese

36 In addition, even central Tibet was temporarily divided. Western Kham, Chamdo, the western part of the illusory Xikang, was constituted as a separate region, ostensibly under the "Chamdo Liberation Committee," but actually under the direct rule of the PLA. The Panchen Lama's domains at Shigatse were also construed as a traditionally separate local government. In addition, western Tibet was under the authority of the PLA Xinjiang Military Region. Smith, *Tibetan Nation*, 360-365. Michael van Walt van Praag, *The Status of Tibet: Rights and Prospects in International Law* (London: Wisdom Publications, 1987), 158. CCP nationalities doctrine prescribed that autonomous territorial units (autonomous regions, districts or counties) should correspond to areas where nationalities were in compact and contiguous occupation. Tibetans therefore deserved a single autonomous territory. See Chapter IV on Autonomy, *infra*.

37 "Agreement between the Republic of India and the People's Republic of China on Trade and Intercourse between Tibet Region of China and India," *People's Daily* (Peking), 29 April 1954, in *Tibet 1950-67* (Hong Kong: Union Research Institute, 1967), 66.

38 "Manifesto by Tibetan Leaders," in ICJ, *The Question of Tibet and the Rule of Law*, 147.

conception, were not part of "Tibet," were included in the socialist transition process. When the Chinese introduced "democratic reforms" in Kham and Amdo, including the public denunciation and *thamzing* or "struggle" of respected leaders and revered lamas, both areas erupted in revolt. The revolt in eastern Tibet soon assumed major proportions, with the Tibetans achieving initial successes against the PLA until the Chinese introduced overwhelming numbers of troops.

In early 1957, in order to prevent the spread of the revolt to central Tibet and to secure the return of the Dalai Lama from a visit to India where he had threatened to seek exile, Mao promised "no reforms" for Tibetans within the TAR for the next one or two five-year plans if the Tibetans themselves did not want reforms.³⁹ However, this promise, like the provisions of the 17-Point Agreement, did not apply to eastern Tibet. Once the Dalai Lama had returned, "democratic reforms" were renewed in eastern Tibet. Despite the revolt in eastern Tibet, and actually as a means of quelling the revolt, eastern Tibetans were collectivised during the Great Leap Forward of 1958. However, the continuation and intensification of "reforms" in eastern Tibet forced eastern Tibetans to flee to central Tibet and spread the revolt to central Tibet.

In March 1959 rumours that the Chinese were planning to kidnap the Dalai Lama brought large numbers of Tibetans to his summer residence, the Norbulingka palace in Lhasa, seeking to protect their leader. Days of fighting ensued between Tibetans and Chinese troops during which the Norbulingka was shelled and thousands were killed. The "Tibetan uprising" was put down. Martial law was declared.⁴⁰

The Dalai Lama fled to India, followed by some 80,000 Tibetans. While still within Tibetan territory the Dalai Lama and his government formally repudiated the 17-Point Agreement.⁴¹ The PLA rapidly quelled the revolt in Lhasa and central Tibet and the Chinese government dissolved the "Tibet local government." "Democratic reforms" were immediately implemented in the TAR, again at least in part because such measures enabled the Chinese to identify and repress Tibetan resisters.

39 MacFarquhar, Cheek and Wu, eds., *The Secret Speeches of Chairman Mao* (Cambridge: Harvard University Press, 1989), 185.

40 See John F. Avedon, *In Exile From the Land of Snows*, (New York: Harper Collins, 1994), 50-61, 221-222.

41 Dalai Lama, *Freedom in Exile* (New York: Harper Collins, 1990), 141.

Tibetans were subjected to class divisions and class conflict, and those who had participated in or supported the revolt, were arrested and imprisoned. Tibetans were divided into "study groups" and subjected to propaganda on the superiority of Chinese socialism compared to Tibet's former social system. Tibetans were required to express agreement with positions intended to test their loyalty, such as that Tibet had always been part of China or that the Dalai Lama had personally engaged in exploitative or licentious activities. Any reluctance to agree with these allegations branded Tibetans as insufficiently loyal to the new order and possibly subject them to struggle and arrest. By "democratic reforms," the Chinese eliminated the Tibetan leadership and any who opposed Chinese rule, and imposed strict conformity on all the rest.⁴²

Monasteries were also subjected to "democratic reforms." Many monks had fled to India after the 1959 revolt. Most of the remaining monks of the large Lhasa monasteries were forcibly removed and high lamas were subjected to struggle and arrest. As smaller rural monasteries revealed their opposition to Chinese rule, they were also depopulated. The clerical population of the TAR, estimated in a Chinese census of 1958 at 114,100, had dropped to 18,104 in 1960. The number of "functioning monasteries and temples" in the TAR dropped from 2,711 in 1958 to 370 in 1960.⁴³ Depopulated monasteries were then systematically looted. Valuable artworks and artefacts were removed and trucked to the

42 "Democratic reforms" were implemented in two stages. The first was dubbed the "Three Antis and the Two reductions" meaning anti-rebellion, anti-unpaid labour and anti-slavery and the reduction of rent and interest. These reforms rested on the division of Tibetans into classes and the dividing up of wealth. The cornerstone of the second stage was radical land reform. See Avedon, *In Exile From the Land of Snows*, 224-229.

43 Zhang Tianlu, *Population Change in Tibet* (Beijing: Tibetan Studies Publishing House of China, 1989), 28, as cited in Jing Jun, "Socioeconomic Changes and Riots in Lhasa," 1990, unpublished paper. According to the late Panchen Lama in his "70,000 Character Petition," out of 2,500 monasteries in the TAR, 70 were left in 1962 and 93% of the clerical population had been forced out of the monasteries. According to the Panchen, the situation was even worse in eastern Tibet, with 98-99% of the monasteries being closed. See "Secret Report by the Panchen Lama Criticises China," *TIN News Update*, 5 Oct. 1996.

Chinese interior. By 1966, at the beginning of the Cultural Revolution, most Tibetan monasteries were already empty shells.⁴⁴

In 1984 the Tibetan government-in-exile, based in India, estimated that, as a direct result of the Chinese invasion and occupation of Tibet, 1,207,387 Tibetans had lost their lives.⁴⁵ The ICJ is not in a position to confirm or to evaluate these figures.

D. First International Commission of Jurists Report

On 25 July 1959 the International Commission of Jurists published *The Question of Tibet and the Rule of Law*. The "preliminary" report examined the PRC's violations of the 17-Point Agreement, violations of human rights, the question of genocide and Tibet's legal status. It concluded that "the evidence points to a prima facie case of a systematic intention ... to destroy in whole or in part the Tibetans as a separate nation and the Buddhist religion in Tibet."⁴⁶

44 *Tibet Under Chinese Communist Rule: A Compilation of Refugee Statements: 1958-1975* (Dharamsala: Information Office of His Holiness the Dalai Lama, 1976), 58, 62, 80, 87, 94, 105; Dawa Norbu, *Red Star Over Tibet* (New York: Envoy Press, 1987), 199. This process had already been going on in Amdo and Kham since 1956. "Statements made by Tibetan refugees," in ICJ, *Tibet and the Chinese People's Republic*, 240, 242.

45 According to the exile administration, 173,221 Tibetans were estimated to have died in prisons and labour camps, 156,758 by execution, 342,970 by starvation, 432,705 in battles and uprisings, 92,731 by torture and 9,002 by suicide. A committee created by the exile authorities arrived at this figure by visiting Tibetan settlements in India, Nepal and Bhutan to meet with refugees, studying refugee statements from 1959 to 1984, reviewing the reports of all the fact-finding delegations sent to Tibet by the Dalai Lama from 1979 to 1984 and the thousands of letters they brought from Tibet, studying Chinese publications and documents and making discreet contacts in Tibet. Letter from Tempa Tsering, Secretary, Department of Information and International Relations, Central Tibet Administration, to Reed Brody, ICJ, 7 April 1997.

46 ICJ, *The Question of Tibet and the Rule of Law*, 71.

In regard to Chinese violations of the 17-Point Agreement and the Tibetan autonomous rights guaranteed therein, the ICJ concluded:

- (a) The authority of the Dalai Lama was deliberately undermined in temporal matters, a matter of the utmost gravity in a theocratic society.
- (b) The constitutional structure of Tibet was formally changed by the establishment of new organs of state by the Chinese.
- (c) Tibetan institutions and new institutions with Tibetan representation had no effective power in the government of the country.
- (d) These and other methods were used with the design of establishing Chinese government in Tibet as part of a larger plan to assimilate the Tibetans to the Chinese Communist way of life.⁴⁷

In regard to the promise contained in the 17-Point Agreement to protect religious institutions in Tibet and to allow freedom of religion, the ICJ concluded:

- (a) Anti-religious propaganda was carried out in newspapers, through personal discussion and by subjecting monks to tests demanding outward and visible demonstrations of supernatural powers.
- (b) The monasteries were taxed and deprived of food reserves in order to break up the monastic community.
- (c) Subjecting the monks to forced labour, deportation to China and to forced marriages.
- (d) Destruction of monasteries and sacred objects and desecration of holy places.
- (e) Torture and killing of monks and lamas.

The general conclusion is irresistible that the Chinese were determined to use all methods at their disposal to eliminate religious belief and to substitute Communist doctrines.⁴⁸

⁴⁷ Ibid., 23.

⁴⁸ Ibid., 36.

Examining Articles 4 and 11 of the 17-Point Agreement, which stipulated that any reforms of Tibetan society were to be undertaken by the Tibetan Government and that there would be no compulsion in introducing reforms, the report concluded:

- (a) that initiative and approval of reforms is treated by the Chinese as their sphere of responsibility;
- (b) that such progress as was made in Tibet in the way of material changes is in part at least dictated by the military needs of the Chinese and by the policy of assimilating Tibet to Communist China;
- (c) that the introduction of socialisation is opposed by the people of Tibet but that the Chinese authorities are now socialising the country irrespective of the wishes of the Tibetan people;
- (d) that the economy of Tibet is being weakened solely to meet the requirements of the Chinese in Tibet;
- (e) that the Tibetan way of life is being deliberately replaced by some of these methods, in particular by socialization and propaganda.⁴⁹

The report concluded that "a summary of the rights denied to the Tibetans points to a denial of almost everything that contributes to the dignity of man. Specifically,

- (a) Life, liberty and security have been violated.
- (b) Forced labour has been inflicted on the Tibetans.
- (c) Torture and cruel and degrading treatment have been inflicted.
- (d) Rights of home and privacy have been violated.
- (e) Freedom of movement within a state, and the right to leave and return to Tibet have been denied.
- (f) Marriages have been forced upon unwilling parties.
- (g) Property rights have been arbitrarily violated.
- (h) Freedom of religion and worship have been systematically denied.

⁴⁹ Ibid., 49.

- (i) Freedom of expression and communication of ideas is totally lacking.
- (j) Freedom of association is denied.
- (k) The right to representative government is denied.
- (l) There is a wanton disregard for the economic rights of man in relation to his country's resources.
- (m) The right to a free choice of employment is denied.
- (n) Conditions of labour do not conform to minimum standards in respect of rest and limitations of hours.
- (o) The right to an adequate standard of living is denied.
- (p) The right to a liberal and efficient, non-discriminatory educational system is denied.
- (q) The right to participate in the cultural life of the community is denied.
- (r) The limitations imposed on the rights of the Tibetans far exceed any which are reasonably referable to the requirements of public morality, public order and the welfare of society.

In short, almost all the rights which together allow the full and legitimate expression of human personality appear to be denied to the Tibetans at the present time and, in most cases, for some time past. On the basis of the available evidence it would seem difficult to recall a case in which ruthless suppression of man's essential dignity has been more systematically and efficiently carried out.⁵⁰

In regard to genocide, the report concluded:

It is the considered view of the International Commission of Jurists that the evidence points to:

- (a) a *prima facie* case of acts contrary to Article 2(a) and (e) of the Genocide Convention of 1948;

⁵⁰ Ibid., 58.

- (b) a *prima facie* case of a systematic intention by such acts and other acts to destroy in whole or in part the Tibetans as a separate nation and the Buddhist religion in Tibet.⁵¹

The ICJ concluded that Tibet's legal status in international law "was not easy to appraise" and that it "cannot be fitted into a logical category." Nevertheless, "Tibet has been to all intents and purposes an independent country and has enjoyed a large degree of sovereignty."⁵² Therefore, "the matter cannot be dismissed out of hand as falling exclusively within the jurisdiction of the People's Republic of China."⁵³

The Secretary-General of the ICJ stated that the report made it clear that:

The events in Tibet constitute *prima facie* a threat to and a breach of the fundamental legal principles which the International Commission of Jurists stands for and endeavours to promote and protect. From the present report there emerges also, it is submitted, a *prima facie* case of the worst type of imperialism and colonialism, coming precisely from the very people who claim to fight against it.⁵⁴

The preliminary ICJ report concluded by deciding to report its findings to the United Nations and to constitute a Legal Inquiry Committee on Tibet to follow up on the preliminary study and prepare a final report. The ICJ specifically directed the Legal Inquiry Committee "to determine whether the crime of Genocide—of which there is *prima facie* evidence—is established."⁵⁵

51 *Ibid.*, 71. Article 2 of the Genocide Convention reads: "In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such: (a) Killing members of the group, and (e) Forcibly transferring children of the group to another group."

52 *Ibid.*, IV.

53 *Ibid.*, 99.

54 *Ibid.*

55 *Ibid.*, III.

E. Tibet at the United Nations

On 9 September 1959, from exile in India, the Dalai Lama appealed Tibet's case to the United Nations. The Dalai Lama referred to Tibet's 1950 appeal, which had been shelved contingent upon the possibility of a peaceful resolution of Sino-Tibetan differences. The Dalai Lama informed the UN that no peaceful resolution had been achieved; instead, he said, Chinese aggression had continued. In his appeal the Dalai Lama reiterated Tibet's status as a sovereign state, based upon the Thirteenth Dalai Lama's declaration of independence in 1912, the 1914 Simla Convention, Tibet's World War II neutrality, and the recognition of Tibetan passports used by the 1946 Tibetan Trade Delegation. The Dalai Lama's appeal was based upon a violation of Tibetan independence, with a secondary appeal on humanitarian grounds, including dispossession of Tibetans' property, forced labour, mass murder and persecution of religion.⁵⁶

Although the Dalai Lama accused the Chinese of a violation of Tibet's independence, consideration of Tibet's case at the UN was confined to human rights violations, including the right to self-determination. Only El Salvador, the sponsor of Tibet's initial 1950 appeal proposed that a United Nations commission be appointed to ascertain the wishes of the Tibetans in regard to their political allegiance.⁵⁷

56 "Message from His Holiness the Dalai Lama to the Secretary-General Dag Hammarskjöld dated 9th September 1959," in *Tibet in the United Nations*, (New Delhi: Bureau of His Holiness the Dalai Lama), 17.

57 El Salvador introduced a draft resolution establishing a committee to study appropriate measures that could be taken by the Assembly and proposed that the committee should, if possible, should visit the country, "establish contact with the various groups not only among the people of Tibet but among the occupying authorities and the Chinese people transferred to Tibet, and in due course give the necessary impartial information to the General Assembly on the result of its inquiry and researches." 833rd plenary meeting of the Gen.A ss.(14th session, 1959, 21 Oct. 1959), UN Doc. A/PV.833, 21 Oct. 1959, para.20.

On 28 September Ireland and the Federation of Malaya proposed to include the "Question of Tibet" on the General Assembly's agenda,⁵⁸ sparking a debate over the relationship between violations of fundamental human rights and article 2, paragraph 7, of the United Nations Charter, which prohibits intervention in matters which are essentially within the domestic jurisdiction of states.⁵⁹ Some states demurred on the Tibet issue for fear of interfering in China's internal affairs, since Tibet's status seemed to be something less than full independence. Others believed that consideration by the United Nations was legally possible without violation of Article 2(7) because Tibet's status was sufficiently established as "enjoying some characteristics of a separate international personality" in an autonomous relationship with China.⁶⁰ Some states took the now-prevailing view that human rights were a legitimate international issue.⁶¹ Some states believed that considering the situation in Tibet was inappropriate because the Peoples

58 "Request for the Inclusion of an Additional Item in the Agenda of the Fourteenth Regular Session: Item Proposed by the Federation of Malaya and Ireland. The Question of Tibet. Letter dated 28th September 1959 from the Permanent Representatives of the Federation of Malaya and Ireland to the United Nations, addressed to the Secretary General," UN Doc. A/4234, 29 Sept. 1959. The explanatory memorandum stated that "the conclusion is inescapable that there exists *prima facie* evidence of an attempt to destroy the traditional way of life of the Tibetan people and the religious and cultural autonomy long recognized to belong to the, as well as a systematic disregard for the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights." The General Committee decided, by 11 votes to 5, with 4 abstentions, to include the item. UN Doc. A/4237, 9 Oct. 1959.

59 This debate has now largely been settled in favour of the principle that human rights are a matter of universal, not domestic, concern. The 1993 World Conference on Human Rights in Vienna declared that "the promotion and protection of all human rights is a legitimate concern of the international community." Vienna Declaration and Programme of Action, Part I, para. 4. According to Reisman, "No serious scholar still supports the contention that internal human rights are 'essentially within the domestic jurisdiction of any state' and hence insulated from international law." Reisman, "Sovereignty and Human Rights in Contemporary International Law," 84 *Am. J. Int. Law* 866 (1990).

60 GAOR, Fourteenth Session, 826th meeting, UN Doc. A/PV.826, para. 36 (New Zealand).

61 *Ibid.*, paras. 32 (New Zealand); 66-69 (El Salvador); 91-94 (Thailand).

Republic of China was not represented in the UN.⁶² The Soviet Union and Romania vehemently opposed any inclusion on the UN agenda of the "so-called Tibet question," claiming that Tibet was an integral part of China and therefore beyond UN jurisdiction.⁶³ In the end, a majority of states voted to include the Tibet question as an item for General Assembly debate.⁶⁴

In the General Assembly debate itself, Malaya maintained that "any problem which involves a violation of the principles enshrined in the Charter of the United Nations and the Universal Declaration of Human Rights and which might have far reaching effects of increasing international tension cannot be regarded as exclusively an internal problem."⁶⁵ Emphasising Tibet's status as a separate entity, Ireland held that article 2 paragraph 7 did not debar the General Assembly from discussing "wholesale violations of human rights wherever they arise," Tibet being a case in point.⁶⁶

Several countries, including New Zealand, believed that Tibet's national identity or traditional autonomy was sufficiently well established to transcend the UN prohibition on interference in a state's internal affairs⁶⁷ while others held that the UN was not competent to examine whether autonomy was being observed.⁶⁸ El Salvador held that even a less than totally independent state, under some form of suzerainty or protection by another state, was still a state under international law.⁶⁹

62 Ibid., para. 44 (Indonesia). The Republic of China (Taiwan) held the Chinese seat at the UN until 1971.

63 Ibid., paras. 75-90; 95-118.

64 Ibid., paras. 29 et seq. The vote to include the item in the General Assembly debate was 43 votes to 11 with 25 abstentions. General Assembly Fourteenth Session, 12 October 1959, UN Doc. A/4237. Those opposed were the communist states and Indonesia.

65 UN Doc. A/PV.831, 20 Oct. 1959, para.7.

66 Ibid., para. 31. In the same vein, Cuba, paras. 114-130; Pakistan, UN Doc. A/PV. 832, para.2; Ecuador, The Netherlands and Venezuela, UN Doc. A/PV.833, 21 Oct. 1959, paras. 23-64; UN Doc. A/PV.834, paras. 98-108, paras. 142-151.

67 UN Doc. A/PV. 832, 20 Oct. 1959, paras. 117-118.

68 UN Doc. A/PV. 833, 21 Oct. 1959, para. 152 (Ethiopia).

69 UN Doc. A/PV. 833, para. 9.

The Soviet bloc countries argued that Tibet was an integral part of China, that a discussion of the question in the UN constituted a "blatant attempt at intervention in the domestic affairs" of the PRC and would bring back cold war tensions.⁷⁰

To Malaya, "the official statements of Dalai Lama and the reports of the International Commission of Jurists are sufficient to establish *prima facie* evidence of an attempt to destroy the distinctive religious and cultural heritage and autonomy of the Tibetan people and of a systematic violation of the human rights and fundamental freedoms as set out in the Universal Declaration of Human Rights."⁷¹ The Soviet Union and its allies, while objecting to the debate, lauded China's progress in Tibet.

After not participating in the vote to include the Tibet question for debate, India entered the debate itself. India questioned the purpose of debating the situation in Tibet in the United Nations since "nobody is going to send an army to Tibet or China," and any expression of opinion would probably produce "reactions on the Chinese Government which are more adverse to Tibet and the Tibetan people than even now."⁷² India maintained that the "path of reconciliation was the constructive path."⁷³

On 21 October by a vote of 46 in favour, 9 against and 26 abstaining,⁷⁴ the General Assembly adopted the Resolution on the Question of Tibet (see Annex 3 for full text).

70 UN Doc. A/PV.831, 20 Oct. 1959, paras. 67-113; UN Doc. A/PV.832, 20 Oct. 1959, paras.50-76; 126-158; UN Doc. A/PV.833, 21 Oct. 1959, paras. 104-108, 109-147; UN Doc. A/PV.834, 21 Oct. 1959, paras. 1-17; 37-61, 109-141.

71 UN Doc. A/PV.831, 20 Oct. 1959, para. 13. Several other countries, including El Salvador, New Zealand, the United States and Venezuela, cited the ICJ report. The USSR, on the other hand, attacked the "so-called International Commission of Jurists" as a group "brought into being to serve the aims of the cold war" whose activity "has consisted solely in the fabrication and dissemination of lies about the socialist countries." *Ibid.*, para. 92. The Ukraine SSR asserted that the ICJ had "descended to the lowest levels of absurdity." "They have stated ... that the Chinese Government is forcibly compelling the Tibetan monks to marry. And these lawyers, these innocent and virginal bachelors, seize on wild statements of this type in the hope of foisting them on world public opinion...." UN Doc. A/PV.834, 21 Oct. 1959, para. 55.

72 UN Doc. A/PV.834, 21 Oct. 1959, para. 89.

73 *Ibid.*, para. 92.

74 UN Doc. A/PV.834, 21 Oct. 1959, para. 166.

The General Assembly....Considering that the fundamental human rights and freedoms to which the Tibetan people, like all others, are entitled include the right to civil and religious liberty for all without distinction,

Mindful also of the distinctive cultural and religious heritage of the people of Tibet and of the autonomy which they have traditionally enjoyed,

Gravely concerned at reports, including the official statements of His Holiness the Dalai Lama, to the effect that the fundamental human rights and freedoms of the people of Tibet have been forcibly denied them

2. Calls for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life.⁷⁵

F. Second ICJ Report

In August 1960 the ICJ published the findings of its Legal Inquiry Committee in the report *Tibet and the Chinese People's Republic*. The Committee examined the question of genocide, Tibet's legal status and Tibetans' human rights. The Committee published further documentation, including interviews with the Dalai Lama and statements of 55 Tibetan refugees in India (out of more than 700 statements received).

The Committee concluded that there was sufficient evidence to accuse China of an attempt to destroy Tibetans as a religious group, an action falling within the definition of genocide prohibited by the Genocide Convention as well as by customary international law:

The Committee found that acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group, and that such acts are acts of genocide

75 GA Res. 1353 (XIV).

independently of any conventional obligation.⁷⁶ The Committee did not find that there was sufficient proof of the destruction of Tibetans as a race, nation or ethnic group as such by methods that can be regarded as genocide in international law. The evidence established four principal facts in relation to genocide:

- (a) that the Chinese will not permit adherence to and practice of Buddhism in Tibet;
- (b) that they have systematically set out to eradicate this religious belief in Tibet;
- (c) that in pursuit of this design they have killed religious figures because their religious belief and practice was an encouragement and example to others;
- (d) that they have forcibly transferred large numbers of Tibetan children to a Chinese materialist environment in order to prevent them from having a religious upbringing.⁷⁷

In regard to the question of Tibet's legal status, the Committee concluded that:

Tibet was at the very least a *de facto* independent State when the Agreement on Peaceful Measures in Tibet was signed in 1951, and the repudiation of this agreement by the Tibetan Government in 1959 was found to be fully justified.... Tibet surrendered her independence by signing in 1951 the Agreement on Peaceful Measures for the Liberation of Tibet. Under that Agreement the Central People's Government of the Chinese People's Republic gave a number of undertakings, among them: promises to maintain the existing political

⁷⁶ The meaning of this phrase was later expanded by quoting the opinion of the International Court of Justice that "the principles underlying the [Genocide] Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligations." "Advisory Opinion on Reservations to the Convention on Genocide, *International Court of Justice Reports*, (1951), 15, in ICJ, *Tibet and the Chinese People's Republic*, 12.

⁷⁷ *Ibid.*, 3.

system of Tibet, to maintain the status and functions of the Dalai Lama and the Panchen Lama, to protect freedom of religion and the monasteries and to refrain from compulsion in the matter of reforms in Tibet. The Committee found that these and other undertakings had been violated by the Chinese People's Republic and that the Government of Tibet was entitled to repudiate the Agreement as it did on March 11, 1959.⁷⁸

The Committee found from the evidence it examined that Tibetan human rights had been violated in respect to the following Articles of the Universal Declaration of Human Rights:

Article 3: The right to life, liberty and security of person was violated by acts of murder, rape and arbitrary imprisonment.

Article 5: Torture and cruel, inhuman and degrading treatment were inflicted on the Tibetans on a large scale.

Article 9: Arbitrary arrests and detention were carried out.

Article 12: Rights of privacy, of home and family life were persistently violated by the forcible transfer of members of the family and by indoctrination turning children against their parents. Children from infancy upwards were removed contrary to the wishes of their parents.

Article 13: Freedom of movement within, to and from Tibet was denied by large-scale deportations.

Article 16: The voluntary nature of marriage was denied by forcing monks and lamas to marry.

Article 17: The right not to be arbitrarily deprived of private property was violated by the confiscation and compulsory acquisition of private property otherwise than on payment of

⁷⁸ Ibid., 6. The ICJ's purpose was not "to attempt a definitive analysis in terms of modern international law of the exact juridical status of Tibet," but to determine whether the question of Tibet was entirely within the domestic jurisdiction of China or was of legitimate concern to the United Nations. The Committee determined that "Tibet's status was such as to make the Tibetan question one for the legitimate concern of the United Nations even on the restrictive interpretation of matters 'essentially within the domestic jurisdiction' of a State." Ibid.

just compensation and in accordance with the freely expressed wish of the Tibetan people.

Article 18: Freedom of thought, conscience and religion were denied by acts of genocide against Buddhists in Tibet and by other systematic acts designed to eradicate religious belief in Tibet.

Article 19: Freedom of expression and opinion was denied by the destruction of scriptures, the imprisonment of members of the Mimang [People's Assembly] group and the cruel punishments inflicted on critics of the regime.

Article 20: The right of free assembly and association was violated by the suppression of the Mimang movement and the prohibition of meetings other than those called by the Chinese.

Article 21: The right to democratic government was denied by the imposition from outside of rule by and under the Chinese Communist Party.

Article 22: The economic, social and cultural rights indispensable for the dignity and free development of the personality of man were denied. The economic resources of Tibet were used to meet the needs of the Chinese. Social changes were adverse to the interests of the majority of the Tibetan people. The old culture of Tibet, including its religion, was attacked in an attempt to eradicate it.

Article 24: the right to reasonable working conditions was violated by the exaction of labour under harsh and ill-paid conditions.

Article 25: A reasonable standard of living was denied by the use of the Tibetan economy to meet the needs of the Chinese settling in Tibet.

Article 26: The right to liberal education primarily in accordance with the choice of parents was denied by compulsory indoctrination, sometimes after deportation, in communist philosophy.

Article 27: The Tibetans were not allowed to participate in the cultural life of their own community, a culture which the Chinese have set out to destroy.

Chinese allegations that the Tibetans enjoyed no human rights before the entry of the Chinese were found to be based on distorted and exaggerated accounts of life in Tibet. Accusations against the Tibetan "rebels" of rape, plunder and torture were found in cases of plunder to have been deliberately fabricated and in other cases unworthy of belief for this and other reasons.⁷⁹

G. Second United Nations Resolution

On 19 August 1960, shortly after the publication of the second ICJ report, Malaya and Thailand requested that "The Question of Tibet" once again be considered by the United Nations General Assembly in its 15th (1960) Session, considering that:

The fundamental human rights of the Tibetan people continue to be systematically disregarded. The report to the International Commission of Jurists by its Legal Inquiry Committee on Tibet, published on 8 August 1960, gives clear confirmation of a continuing attempt to destroy the traditional and distinctive way of life of the Tibetan people and her religious and cultural autonomy."⁸⁰

The request was accompanied by another letter from the Dalai Lama reiterating Tibet's claim to independence based upon the Thirteenth Dalai Lama's declaration, the 1913 treaty of mutual recognition with Mongolia, the Simla Convention, and Tibet's *de facto* independence between 1912 and 1950. As with the previous appeal, the Dalai Lama requested UN assistance in the restoration of Tibetan independence as well as in halting human rights abuses. The draft resolution submitted by Malaya and Thailand spoke of violations of Tibetans' human rights and of their religious and cultural autonomy and, for the first time, referred to the "principle of self-determination of peoples and nations."⁸¹

⁷⁹ *Ibid.*, 4-5.

⁸⁰ UN Doc. A/4444, 19 August 1960. Other countries which cited the ICJ report in the 1960-1961 debates were New Zealand (Tibet in the United Nations, 242), the USA (*Ibid.*, 272-274, 308), Taiwan (*Ibid.*, 280-281), Thailand (*Ibid.*, 297) and the UK (*Ibid.*, 306). Czechoslovakia attacked the ICJ as "enemies of socialism" (*Ibid.*, 293).

⁸¹ *Tibet in the United Nations*, 232.

El Salvador held that "[t]he question of Tibet has not finally been settled simply because Communist China has succeeded in achieving domination over the small country of Tibet."⁸² Ireland rejected the contention that Tibet was entirely an internal affair of China, maintaining that this was,

A line of argument that all of us who have lived under foreign rule have rejected in relation to ourselves; a line of argument that would have kept half the nations in this Assembly in servitude forever and prevented the world from ever discussing our condition. Looking around this Assembly, and looking at my own delegation, I think how many benches would be empty here in this hall if it had always been agreed that when a small nation or a small people fell into the grip of a major Power, no one could ever raise their case here; that once they were a subject nation, they must always remain a subject nation.

Tibet has fallen into the hands of the Chinese People's Republic for the last few years. For thousands of years, or for a couple of thousand of years at any rate, it was as free and as fully in control of its own affairs as any nation in this Assembly, and a thousand times more free to look after its own affairs than many of the nations here.⁸³

The vote on the inclusion of the item, "The Question of Tibet," was 49 in favour, 13 opposed and 35 abstaining. The Tibet issue was not discussed in the General Assembly 15th Session (1960), however, due to time constraints.⁸⁴ At the General Assembly's 16th Session (1961) on 18 August 1961, Malaya and Thailand again brought up the Tibet issue and were joined by Ireland and El Salvador in submitting a draft resolution on Tibet.⁸⁵ The item was brought up for discussion on 26 September 1961. The "Question of Tibet" was placed on the agenda of the General Assembly by a vote of 48 in favour, 14 opposed and 35 abstaining.⁸⁶

82 *Ibid.*, 247.

83 *Ibid.*, 251.

84 *Tibet in the United Nations*, 252.

85 UN Doc. A/4848.

86 Vote of the GA confirming the inclusion of Tibet in its agenda, UN Doc A/PV.1014, 25 Sept. 1961.

The Tibet issue came up for discussion on the General Assembly's agenda on 19 December 1961. In the debate on the resolution, Tibet was discussed by a number of states in the context of a subjugated people entitled to its right to self-determination.⁸⁷ Some eastern European states and the Soviet Union again opposed a debate on the "non-existent question of Tibet" as a violation of the Charter, reiterating that Tibet was part of China.⁸⁸

The resolution was adopted by a vote of 56 in favour, 11 opposed and 29 abstaining.⁸⁹ (See Annex 4).

Gravely concerned at the continuation of events in Tibet including the violation of fundamental human rights of the Tibetan people, suppression of their distinctive cultural and religious life which they have traditionally enjoyed,

Noting with deep anxiety the severe hardships which these events have inflicted on the Tibetan people as evidenced by the large-scale exodus of Tibetan refugees to the neighbouring countries,

Considering that these events violate fundamental human rights and freedoms set out in the Charter of the United Nations and the Universal Declaration of Human Rights, including the principle of self-determination of the peoples and nations,...

2. Solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms including their right to self-determination;⁹⁰

87 UN Doc. A/PV.1084, 19 Dec. 1961, para. 114 et seq. For more detail chapter VII of this report.

88 UN Doc. A/PV.085, 20 Dec. 1961, paras. 24, 71, 88, 110.

89 *Ibid.*, para. 108.

90 GA res. 1723 (XVI).

H. Tibet's Final Appeal to the United Nations

In 1962, the Panchen Lama, the most important religious leader remaining in Tibet as well as the head of the then Tibetan government, presented China's Premier, Zhou Enlai, with a 120-page report, known as "the 70,000 Character Petition," which detailed the tragedy Tibet was suffering. The secret report, which came to light only recently, attributed mass starvation among Tibetans at to government directives, and expressed fears that Chinese policies were aimed at the eradication of religion and could lead to the elimination of Tibetans as a distinct people.⁹¹ The Panchen's primary concern was widespead hunger, lamenting that "in many parts of Tibet people have starved to death. . . . In some places, whole families have perished and the death rate is very high. This is very abnormal, horrible and grave. In the past Tibet lived in a dark barbaric feudalism but there was never such a shortage of food, especially after Buddhism had spread." He blamed these deaths on official policies. "In Tibet from 1959-1961, for two years almost all animal husbandry and farming stopped. The nomads have no grain to eat and the farmers have no meat, butter or salt. It is prohibited to transport any food or material, people are even stopped from going around and their personal *tsampa* [roasted barley] bags are confiscated and many people are struggled against in public."⁹²

In December 1964 the International Commission of Jurists reported on "Continued Violations of Human Rights in Tibet" based on statements from Tibetan refugees arriving in India.⁹³ These statements, said the ICJ, revealed that "the domination and persecution of the Tibetan people at

91 The report was released by the Tibet Information Network in 1996. "Secret Report by the Panchen Lama Criticises China," *TIN News Update*, 5 October 1996. In August 1962, the Panchen Lama was ordered to undertake a self criticism, and a year later was subjected to a 50-day struggle session in Lhasa before being sent to Beijing to spend 14 of the following 15 years in detention or under virtual house arrest. He was fully rehabilitated only in 1988, the year before he died. *Ibid.* See also *The Panchen Lama Speaks: Text of the Panchen Lama's Address to the TAR Standing Committee Meeting of the National People's Congress held in Peking on 28 March 1987* (Dharamsala: Department of Information and International Relations, 1991).

92 *Ibid.*

93 *Bulletin of the International Commission of Jurists*, no. 21, Dec. 1964, 42. The ICJ did not directly examine the refugees, but received their statements from third parties.

the hands of the Chinese People's Republic and its army of occupation in Tibet is continuing unabated."⁹⁴ In particular, the evidence disclosed "a continuance of ill-treatment of many monks, lamas, and other religious figures, resulting in death through excessive torture, beatings, starvation and forced labour..."⁹⁵

In response to the ICJ report and another appeal from the Dalai Lama,⁹⁶ the issue of Tibet was reintroduced at the United Nations. El Salvador, Ireland, Malaysia, Malta, Nicaragua, Philippines and Thailand introduced a draft resolution in August 1965, essentially repeating the language of the previous (1959 and 1961) resolutions on Tibet.⁹⁷

The Philippines representative cited recent testimony from refugees collected by the ICJ as evidence that "the Chinese Communist plan to destroy the distinctive character of the Tibetan nation is nearing completion," and maintained that "unless the political problem is solved, the human situation will be extremely difficult to alleviate. ... If the people of Tibet are entitled as members of the human family to the protection of the Charter and the Universal Declaration of Human Rights, then they are doubly entitled to such protection by reason of their status as an independent nation."⁹⁸ Various delegations reiterated the Tibetans' right to self-determination in unequivocal terms and expressed grave concern about the worsening human rights violations and suppression in Tibet⁹⁹ while other states reiterated that discussing Tibet constituted an interference in internal affairs.¹⁰⁰

94 Ibid, 42.

95 Ibid., 44.

96 UN Doc. A/6081, 23 Sept. 1965.

97 UN Doc. A/5931, ...1965.

98 UN Doc. A/PV.1394, paras. 5, 21, 23.

99 For instance, Thailand, Ireland, UN Doc. A/PV.1394, 14 Dec. 1965, paras. 43-58, 59-77; UN Doc. A/PV.1401, paras. 1-8 (New Zealand), 40-63 (El Salvador), 64-82 (Malta), 97-106 (Guatemala), 107-124 (USA), 136-145 (Nicaragua), 174-183 (Australia); UN Doc. A/PV.1402, paras. 59-65 (Costa Rica).

100 UN Doc. A/PV. 1401, paras. 9-39 (Albania), 83-96 (Romania), 125-135 (USSR), 151-155 (Algeria), 156-164 (Poland), 165-173 (Czechoslovakia), 184-193 (Congo), 194-201 (Cuba).

India for the first time spoke in favour of a UN resolution on Tibet, a shift in position due to the 1962 border war with China. India explained that its former opposition to discussion of Tibet at the UN in 1950 was due to assurances received by China that it would "settle the problem by peaceful means," and in 1959 due to its "hope against hope that wiser counsel would prevail among the Chinese. ... However, the passage of time has completely belied our hopes. As the days pass, the situation becomes worse and cries out for the attention of all mankind. As we know, ever since Tibet came under the strangle-hold of China, the Tibetans have been subjected to a continuous and increasing ruthlessness which has few parallels in the annals of the world. In the name of introducing 'democratic reforms' and of 'fighting counter-revolution,' the Chinese have indulged in the worst kind of genocide and the suppression of a minority race."¹⁰¹ India subsequently listed in detail the human rights violations in Tibet and concluded that "[t]he naked truth ... is that the Chinese Government is determined to obliterate the Tibetan people."¹⁰² India now supported "fully and wholeheartedly, the cause of the people of Tibet."¹⁰³

The final vote on the resolution, of which the first four paragraphs followed in substance the pattern of previous resolutions and the fifth appeals to all states to "use their best endeavours to achieve the purposes of the present resolution," was approved by a vote of 43 in favour, 26 opposed, and 22 abstaining.¹⁰⁴ (See Annex 5.)

Secure and uncontested control in Tibet allowed the Chinese to establish the Tibet Autonomous Region and institute "national regional autonomy." A process of local single-candidate elections established a TAR People's Congress, which convened on 1 September 1965 to formally establish the Tibet Autonomous Region. Although the establishment of the TAR was accompanied by much fanfare and propaganda on the achievement of Tibetan self-rule, all political authority remained firmly in the hands of the CCP Tibet Regional Committee and the PLA Tibet Military Region Command, virtually all of whose members were Han Chinese.¹⁰⁵

101 UN Doc. A/PV.1394, 14 Dec. 1965, paras. 29-30.

102 *Ibid.*, para. 38.

103 *Ibid.*, para. 40.

104 UN Doc. A/PV.1403, para. 100.

105 Smith, *Tibetan Nation*, 532.

The creation of the TAR marked not only the establishment of the permanent system of Chinese control in Tibet, but also an acceleration in the pace of collectivisation. In September 1964 the first Agricultural Producer's Cooperative (APC) in the TAR was organised. In July 1965 the first experimental communes were established; these retained private property at least in theory, but the transition to fully collectivised property was intended to take place within the commune framework.¹⁰⁶ The first experimental collectives were actually models, supplied with livestock, seed and agricultural implements, and intended to convince Tibetans to "demand" the benefits to be found within collectives. A propaganda campaign to convince Tibetans to join collectives followed. An increased wave of collectivisation ensued at the end of 1965 and early 1966, during which some 130 "people's communes" were established.¹⁰⁷

Between 1959 and 1965 some 50-70,000 Tibetans escaped into exile in India, Nepal or Bhutan.¹⁰⁸ Unknown thousands were arrested or killed attempting to escape and tens of thousands were arrested for having participated in or supported the revolt.¹⁰⁹ Many did not survive their imprisonment in the next three years, which coincided with famine in the PRC following Mao's disastrous Great Leap Forward.¹¹⁰

I. Tibet During the Cultural Revolution

The Cultural Revolution began in June 1966 when Mao unleashed the Red Guards to destroy the "four olds," (old ideas, old culture, old tradition, old customs). Since the cultures and traditions of minorities epitomised the "four olds," they were a particular target. Every aspect of Tibetan culture came under attack during the Cultural Revolution. The

106 Israel Epstein, *Tibet Transformed* (Beijing: New World Press, 1983), 76, 80.

107 "Upsurge in Socialist Transformation of Agriculture and Livestock Breeding on Tibetan Plateau," *Peking Review*, 31 July 1970.

108 On 17 October 1959 India announced that 15,000 Tibetan refugees had reached India. *Tibet 1950-67*, (Hong Kong: Union Research Institute, 1967), 797. In December 1960 Nepal reported 20,000 Tibetan refugees in Nepal. *Ibid.*, 801. In April 1967 India reported 50,000 Tibetan refugees in India. *Ibid.*, 823.

109 Smith, *Tibetan Nation*, 480.

110 See Jasper Becker, *Hungry Ghosts* (New York: Free Press 1996).

Cultural Revolution was officially launched in Tibet on 25 August 1966. Lhasa's Jokhang, the centre of Tibetan Buddhist civilisation, was the first target. Acting on the suggestion of Chinese Red Guard leaders, "revolutionary masses of various nationalities" invaded the Jokhang. Tibetan Red Guards were encouraged by the Chinese to deface murals and defile religious texts. Lhasa's great monasteries and temples, the Jokhang, Potala, Drepung and Sera, and other monuments were defiled but not physically destroyed. Lesser monasteries and monuments suffered more complete destruction.¹¹¹

The destruction soon spread to the countryside. Tibetan villagers were forced by Chinese and Tibetan Red Guards to destroy local monasteries and religious monuments after the Chinese had removed all portable valuables. Irremovable religious artefacts such as frescoes were defaced and clay statues smashed. Buddhist scriptures were burned or used by the Chinese as inner soles of their shoes or for toilet paper; wood printing blocks were turned into floorboards or furniture or other objects degrading to religious sentiments. Other religious monuments, such as small roadside shrines, *chortens* and *mani* stones (stones on which the Buddhist mantra *Om Mani Padme Hum* were carved) were all destroyed. *Mani* stones were often employed in walkways or flooring so that Tibetans would have to desecrate their religion by walking upon them, or used to construct public toilets. Private religious shrines were also desecrated and Tibetans were required to surrender all personal objects of value to the Chinese authorities.¹¹²

Virtually all physical evidence of Tibet's previously pervasive Buddhist culture was eradicated within a few months at the end of 1966 by the Red Guards' rampage, although the seemingly chaotic destruction was obviously planned and systematically pursued. After the first orgy of destruction, Tibetans were required to dismantle temples and monasteries for their timber and stone, which was then used to construct Chinese offices, housing or PLA barracks. By the end of the Cultural Revolution, virtually all of the monasteries in Tibet had been destroyed.

111 Kunsang Paljor, *Tibet: The Undying Flame* (Dharamsala: Information and Publicity Office of His Holiness the Dalai Lama, 1977), 50.

112 Smith, *Tibetan Nation*, 543.

The Chinese attempted to replace all "reactionary" Tibetan customs and traditions by "progressive, socialist" Chinese styles. Tibetans were required to dress like Chinese, cut their long hair short in the Chinese style, sing songs in praise of Mao in Chinese, and replace traditional Tibetan "feudal" religious holidays and secular festivals with Chinese revolutionary holidays and ceremonies. Tibetan songs were altered with "revolutionary words and phrases; Tibetan dance and opera was replaced with Madam Mao's revolutionary operas. The Chinese attempted a radical amalgamation of the Tibetan language with Chinese by adding Chinese vocabulary, intended to produce a "Sino-Tibetan Friendship Language."

Class struggle was fueled by *thamzing*, or struggle sessions, in which workers were set against employers, peasants against landlords, monks against abbots, students against teachers. These public trials sought to whip the audiences into a frenzy while extracting "confessions" from the accused.¹¹³ The monk Palden Gyatso told the ICJ how *thamzing* was carried out in Drapchi prison:

Every once in a while we political prisoners were called before meetings for *thamzing* [struggle sessions]. At these meetings we were told to speak against old Tibetan society and to condemn the Dalai Lama. We were ordered to trample on pictures of the Dalai Lama and to denounce him. We were also ordered to confess our guilt for involvement in reactionary activities. Some of us were made to sign confessions of guilt. There were cases where prisoners who refused to sign such "confessions" had a pen forced into their hands by the Chinese who then guided it across the paper. Some people willingly signed; once, a person named Pema Thonden came forward and said, "it is better to live a shorter life suffering, so I would like to die and thank you for executing me." Upon saying that he signed the confession paper. Executions were normally done in groups of 18 to 20 people.

The communisation campaign, disrupted by the chaos of the early Cultural Revolution, was revived in 1968. Communes were forcibly established by the PLA. Since only a few communes had been established before the Cultural Revolution, in most cases this meant moving directly

113 Avedon, *In Exile From the Land of Snows*, 228-232.

from mutual aid teams to communes.¹¹⁴ By the end of July 1970, 666 communes were established; 34 percent of the counties of the TAR were undergoing communisation with 13 counties fully communised.¹¹⁵ Communisation, along with compulsory grain requisitions for the PLA, resulted in food shortages. This, along with fighting among rival Red Guard factions, led to revolt in rural areas. The revolt had to be suppressed by PLA units from the Xinjiang Military Region because the PLA in Tibet was also involved in factional fighting. The revolt ended with the public execution of its leaders.¹¹⁶

By the summer of 1974, communes were reportedly established in 90 percent of Tibet's counties, meaning that 90 percent of counties were communised since whole counties were established as communes. By September 1975 the CCP was able to announce that 99 percent of the townships in the TAR had set up communes and that "the socialist transformation of agriculture and animal husbandry has been basically completed." From 1968 to 1973 Tibetans for the second time since Chinese rule suffered famine conditions due to communisation and confiscation of grain for Chinese consumption and storage for war supplies. Food shortages reportedly persisted in Tibet during the entire period of the 1970s due to communisation, restrictions on subsidiary crops and the disastrous results of an attempt to substitute the cultivation of wheat for Tibetan barley.¹¹⁷

Communisation increased Chinese control over all aspects of Tibetan life. While full communisation was not reached until 1975, the post-Maoist liberalisation did not occur in Tibet until 1979; thus the 1970s were for most Tibetans the high point of collectivist regimentation. Political repression continued during the campaigns of the early 1970s to criticise Mao's opponents or former opponents within the CCP. Public campaigns denigrated Tibet before the Chinese liberation in comparison to the "new, socialist Tibet."¹¹⁸

114 "Tibet's Big Leap: Great Changes," *Peking Review*, 11 July 1975.

115 "Upsurge in Socialist Transformation of Agriculture and Livestock Breeding on Tibetan Plateau," *Peking Review*, 31 July 1970.

116 Smith, *Tibetan Nation*, 548.

117 *Ibid.*, 551.

118 *Ibid.*, 555.

J. Post-Maoist Chinese Policies in Tibet

In 1979, as part of the general liberalisation initiated by Deng Xiaoping, the CCP decided to implement more liberal cultural and economic policies in Tibet. Tibetans imprisoned since 1959 were released. The Panchen Lama, imprisoned for eight years in Peking (1964-1972) and kept under house arrest thereafter, was rehabilitated. Exiled Tibetans, including the Dalai Lama, were invited to return to China to "participate in socialist construction." Deng contacted the Tibetan exiles with an offer to hold discussions on the return of the Dalai Lama, with the caveat that Tibet's political status was not open to discussion. Deng agreed to permit Tibetan exile representatives to visit Tibet to see for themselves how conditions had improved.¹¹⁹

Delegations from the Tibetan government-in-exile visited Tibet in 1979 and 1980. The delegations received an ecstatic welcome everywhere they went, much to the surprise of Chinese cadres, who imagined that Tibetans would express their animosity against representatives of the "clique of serf-owners." The second delegation's visit to Lhasa in 1980 had to be terminated after the reception threatened to become uncontrollable.¹²⁰

CCP leaders, realising that conditions in Tibet were not as they had been led to believe by Chinese cadres in Tibet, convened the first Tibet Work Meeting in the spring of 1980 amid growing consternation: "If we do not seize the moment and immediately improve the relationship between the nationalities [Han and Tibetan] we will make a serious mistake. All the members of the Party must recognize the seriousness and we must reach a consensus."¹²¹ The Meeting recognised that decided to send a delegation to Tibet under CCP General Secretary Hu Yaobang to

119 Dawa Norbu, "China's Dialogue with the Dalai Lama 1978-90: Prenegotiation Stage or Dead End?" *Pacific Affairs*, vol. 64, no. 3 (Fall 1991), 352.

120 Avedon, *In Exile From the Land of the Snows*, 350.

121 "Report of the National United Front Work Conference," 23 Jan. 1982, *Selected Documents of Nationality Policy*. (Urumqi: Xinjiang; 1985) 10, as cited in T.W. Sharlho, "China's Reforms in Tibet: Issues and Dilemmas." *Journal of Contemporary China* 1 (1): 38, (1992).

ascertain the actual situation. Hu was shocked by what he observed in Tibet, particularly the poverty of Tibetans.¹²²

Upon his return to Beijing, Hu proposed a radical reform program for the TAR that included relief from taxation, uncompensated labour requirements and compulsory state purchase quotas for a period of three years; decollectivization of agricultural and pastoral production and further privatisation of land and property; autonomy in application of policies in Tibet in recognition of Tibet's special circumstances; and a nativisation of administration in Tibet. Han cadres in the TAR, with the exception of the PLA, were to be reduced by 85 percent. In addition, there would be a general liberalisation of economic policies in Tibet aimed at a diversification of the Tibetan economy; Chinese subsidies to Tibet would be increased; Tibetan culture, including religion, would be revived, with the state financing the reconstruction of some religious monuments and monasteries.¹²³

In the new atmosphere, representatives of the Tibetan government-in-exile visited Beijing in 1982 and 1984 for talks but found the Chinese willing to discuss only the Dalai Lama's unconditional "return to the Motherland." Tibetan proposals for an enhanced degree of autonomy for Tibet and for an amalgamation of all Tibetan ethnic areas into a greater Tibetan autonomous region were rejected. The Tibetans proposed a status for Tibet at least similar to that which the PRC was then offering to Taiwan; however, the Tibetans were informed that the difference was that Tibet had already "returned to the Motherland" while Taiwan had not.¹²⁴ Chinese leaders, for their part, were frustrated by what they perceived as the insincerity of the Tibetans in refusing to enter negotiations on the Dalai Lama's return.

The loosening of social restrictions led to a revival of Tibetan civil and cultural life and with it a resurgence of religious activity. Tibetans flocked to newly re-opened temples which became the locus of a Tibetan political revival. Interchange with Tibetans in exile and even with tourists exposed Tibetans to new realities.

122 Jigme Ngapo, "Behind the Unrest in Tibet," *China Spring*, vol. 12, no. 1 (Jan. - Feb. 1988), 26.

123 *Ibid.*; "New Changes on the Plateau," *Beijing Review*, 25 May 1981, 21.

124 Smith, *Tibetan Nation*, 573. See, generally, Tsering Wangyal, "Sino-Tibetan Negotiations Since 1959," in , Barnett and Akiner (eds.), *Resistance and Reform in Tibet*, (London: Hurst & Co., 1994), 197.

The 1984 second Tibet Work Meeting criticised Hu Yaobang's policies for encouraging a resurgence of nationalism rather than alleviating discontent. His allowance of some semblance of Tibetan self-government by reducing the number of Chinese in Tibet was also criticised. The 1984 Meeting adopted a new strategy of economic development for Tibet that required the introduction of large numbers of Chinese cadres and "experts" into Tibet and permitted the entry of thousands of petty entrepreneurs. The abrogation of the promise to reduce the number of Chinese in Tibet was defended as a temporary necessity for Tibet's economic development. Tensions rose in Tibet due to the influx of Chinese and renewed political repression accompanying a leftward shift in Chinese policies in 1987, during which Hu Yaobang was purged from his position as CCP General Secretary.¹²⁵

Responding to the failure of the dialogue, and in the face of Beijing's increasingly aggressive policies in Tibet, the Dalai Lama opted to "internationalize" the question of Tibet and seek support in the west. In a visit to Washington in September 1987, he unveiled his "Five-Point Peace Plan" for Tibet.¹²⁶ The speech sparked demonstrations of support in Lhasa in October which escalated into riots. After China publicly criticised the Dalai Lama's initiative, further riots occurred in February and December 1988 and March 1989. These were the most violent confrontations in decades and left scores dead and hundreds detained.¹²⁷ China declared martial law in the TAR in March 1989, lasting more than a year.

In a June 1988 address to the European Parliament at Strasbourg, France, the Dalai Lama spelled out his conditions, proposing to accept the reality of Chinese sovereignty over Tibet in exchange for genuine and well-defined autonomous rights. The "Strasbourg Proposal" elaborated

125 Ibid., 586.

126 This peace plan called for: 1. The transformation of the whole of Tibet into a zone of peace; 2. The abandonment of China's policy of population transfer; 3. Respect for Tibetan's fundamental human rights and democratic freedoms; 4. Restoration and protection of Tibet's natural environment and halting of the use of Tibet for the production of nuclear weapons and the dumping of nuclear waste; and 5. The commencement of negotiations on the future status of Tibet and of relations between the Tibetan and Chinese peoples. Five Point Peace Plan for Tibet, in Government Resolutions and International Documents on Tibet (Dharamsala: Office of Information and International Relations, 1989).

some of the conditions first proposed by Tibetan negotiating teams in 1982 and 1984. The Tibetan proposals were based upon the autonomy promised to Tibet in the 17-Point Agreement and the "one country two systems" formula the PRC had offered to Taiwan and Hong Kong. The Dalai Lama proposed a special status for Tibet of political "association" with China. Tibetan political autonomy would include all affairs concerning Tibetans except defence and foreign political relations; the Tibetan political system would be democratic:

The whole of Tibet known as Cholka-Sum (U-Tsang, Kham and Amdo) should become a self-governing democratic political entity founded on law by agreement of the people for the common good and the protection of themselves and their environment, in association with the People's Republic of China.

The Government of the People's Republic of China could be responsible for Tibet's foreign policy. The Government of Tibet should, however, develop and maintain relations, through its own Foreign Affairs Bureau, in the fields of religion, commerce, education, culture, tourism, science, sports and other non-political activities. Tibet should join international organisations concerned with such activities.

The Government of Tibet should be founded on a constitution of basic law. The basic law should provide for a democratic system of government entrusted with the task of ensuring economic equality, social justice and protection of the environment. This means that the Government of Tibet will have the right to decide on all affairs relating to Tibet and the Tibetans.¹²⁸

127 Asia Watch, *Human Rights in Tibet*, (Washington: 1988); Asia Watch, *Evading Scrutiny*, (Washington: 1988). According to Amnesty International, "[a]t least 200 civilians were killed by security forces in successive incidents, including violent riots, between 1987 and 1990, when police and army units fired on demonstrators calling for Tibetan independence..." *People's Republic of China: Repression in Tibet 1987 - 1992*, May 1992.

128 Address to Members of the European Parliament by His Holiness the Dalai Lama, 15 June 1988, in *Government Resolutions and International Documents on Tibet* (Dharamsala: Office of Information and International Relations, 1989), 11. The Dalai Lama's desire for a "basic law" governing Tibet was modeled on the Basic Law that was to govern Hong Kong after 1997.

In the Strasbourg formula, Tibetan autonomy was to be subject to a nation-wide referendum of the Tibetan people, thereby leaving open the final resolution of Tibet's political status.¹²⁹ The Dalai Lama reiterated this position to the ICJ.¹³⁰ The PRC rejected the Dalai Lama's proposal as "independence in disguise" and as perpetuating the "idea of Tibet as a country separate from China."¹³¹

The Chinese Government set unacceptable conditions to the resumption of the dialogue with the Dalai Lama, who came under increasingly virulent criticism. The Tibetan riots of March 1989 were followed by the Tiananmen Square massacre of 4 June 1989. China's immunity from international sanctions and its economic development also allowed the government to pursue a policy of development and modernization in Tibet, accompanied by ever increasing numbers of Chinese settlers and continued repression of every aspect of Tibetan protest. In 1989 the TAR government adopted "Strategic Ideas for the Economic and Social Development of Tibet," that "implemented the policy of opening up to the rest part of China and the outside world."¹³²

K. The 1994 Third Tibet Work Forum

The economic development and colonisation strategy was confirmed by the 1994 Third National Forum on Work in Tibet. Senior officials identified the influence of the Dalai Lama as the root of Tibet's instability and mapped out a new strategy for the region. The Forum endorsed a campaign to curtail the influence of the Dalai Lama and crack down on dissent. The results of the Forum included: heightened control on religious activity and a denunciation campaign against the Dalai Lama unprecedented since the Cultural revolution; an increase in political arrests; stepped up surveillance of potential dissidents; and increased repression of even non-political protest.¹³³ The policy of transferring

129 Ibid., 14.

130 See Annex 1, ICJ Interview with the Dalai Lama.

131 "Dalai's Threat Seen as Senseless," *Beijing Review*, 26 February 1990, 11.

132 "Tibet—Its Ownership and Human Rights Situation," (Beijing: Information Office of the State Council of the People's Republic of China, 1992) 55.

133 See generally Tibet Information Network - Human Rights Watch/Asia, *Cutting Off the Serpent's Head*, March 1996.

Chinese to Tibet was, for the first time, publicly endorsed. The effects of the Forum's decisions are discussed in the Chapters on Population Transfer and Freedom of Religion below.

Chinese policy since 1979 had been to oppose any political influence of the Dalai Lama but to tolerate his religious authority and influence. However, the campaign of denigration of the Dalai Lama as a spiritual leader signalled a new confrontational policy and indicated that the era of liberalisation in Tibet policy and negotiations to secure the Dalai Lama's return to China was over. This was confirmed in the affair of the Panchen Lama's reincarnation in 1995-96.¹³⁴ The right to approve reincarnations was one of the primary aspects of China's claim to political authority over Tibet. The Dalai Lama announced his recognition of the Panchen's reincarnation in May 1995, setting off furious denunciations from China, which claimed that the Dalai Lama was violating historical precedent. In fact, it was apparent that China had, with the Panchen Lama's reincarnation, set the pattern for choosing its own Fifteenth Dalai Lama upon the demise of the Fourteenth.

Since the beginning of 1996, there has been another escalation of repression, marked by an intensive re-education drive in the monasteries after which monks were required to sign loyalty pledges or face expulsion, a clampdown on information coming from Tibet, the sentencing of a senior religious leader and a visiting exile ethnomusicologist, and a ban on the public display of photos of the Dalai Lama. At the same time, Chinese leaders have apparently identified traditional Tibetan culture - including Tibetan Buddhism, the Tibetan language and Tibetan customs - as both obstacles to development and links to Tibetan nationalism, and have undertaken a "socialist spiritual civilization" campaign which targets Tibetan identity *per se* and seeks to erode Tibetan religion, language and culture. In July 1997, the TAR Party Secretary declared Buddhism a "foreign culture."

134 See Chapter V, C, 5 on Freedom of Religion, *infra*.

III. Tibet in China: Autonomy?

Do Tibetans truly enjoy autonomy? No explicit norms of international law regulate the conduct of a state towards its autonomous areas. However, for autonomy to exist in any meaningful sense, an autonomous region must enjoy some form of effective control over matters which are primarily of local concern. A "fully autonomous" territory should include most of the following:

- a locally elected legislative body with some independent authority over local concerns, including control or influence over primary and secondary education, language and land use and planning;
- a locally elected chief executive;
- an independent local judiciary with full responsibility for interpreting local laws;
- joint authority over matters of common concern, such as ports, police, and exploitation of natural resources.¹

Where a traditional form of government was already in place, real autonomy would favour the maintenance of such governmental structures.²

This chapter employs these criteria to analyse the legal structure for Tibetan autonomy in the PRC and the *de facto* autonomy enjoyed by the Tibetans.

The legal framework for Tibetan autonomy within the PRC was contained in the specific guarantees of the 1951 17-Point Agreement as well as in the general provisions for national regional autonomy in the

1 Hurst Hannum, *Autonomy, Sovereignty and Self-determination: The Accommodation of Conflicting Rights* (Philadelphia: Univ. of Pennsylvania Press, 1996).

2 *Ibid.*, 467-468.

PRC's Constitution and laws.³ The 17-Point Agreement guaranteed, *inter alia*, that "the Tibetan people have the right of exercising national regional autonomy under the unified leadership of the Central People's Government." In particular, it was agreed that the "Central Authorities will not alter the existing political system in Tibet. The Central Authorities also will not alter the established status, functions, and powers of the Dalai Lama." The treaty also provided that the "policy of freedom of religious belief" would be protected, and that in "matters related to various reforms in Tibet, there will be no compulsion on the part of the Central Authorities."⁴

In addition, the Tibetan people were granted certain autonomous rights within the PRC's system of national regional autonomy as defined in the 1949 Common Program of the Chinese People's Political Consultative Conference (CPPCC), referred to in article 3 of the 17-Point Agreement.⁵ The CPPCC's Common Program, which served as a provisional constitution, contained the following provisions regarding nationalities:

Article 9. All nationalities within the boundaries of the People's Republic of China shall have equal rights and duties.
... 50. All nationalities within the boundaries of the People's Republic of China are equal.... Acts involving discrimination, oppression, and disrupting the unity of the various nationalities shall be prohibited.... 51. Regional autonomy shall

3 The system of national regional autonomy as formulated in 1949 has evolved from Chinese Communist policy towards national minorities from its founding in 1921. Minority policy evolved from early ideas of self-determination, including independence, for minorities, to autonomous status and rights within a unified state. See Dawa Norbu, "China's Policy Towards its Minority Nationalities in the Nineties," *China Report*, vol. 27, issue 3 (1991), 219 *et seq.*

4 Annex 2, the 17-Point Agreement, paras. 2,3,7,11.

5 The CPPCC was composed of representatives of the CCP, China's non-communist political parties and the minority nationalities, with the CCP dominating in representation and actual decision making power. Representatives of national minorities constituted 2.2 percent of the membership of the CPPCC. Lee Fu-Hsiang, *The Turkic-Moslem Problem in Xinjiang: A Case Study of the Chinese Communists' Nationality Policy*. (Ph.D. diss. Rutgers University, 1973), 103.

be exercised in areas where national minorities are concentrated, and various kinds of autonomous organizations for the different nationalities shall be set up according to the size of the respective peoples and regions... 53. All national minorities shall have freedom to develop their spoken and written languages, to preserve or reform their traditions, customs, and religious beliefs.⁶

The 1952 General Program for the Implementation of Regional Autonomy for Minorities specified that "each autonomous area is an integral part of the territory of the People's Republic of China. The autonomous organ of each autonomous area is a local government led by the government of the next higher level, under the unified leadership of the central government." Nationality autonomy was not to include economic control, which was "subject to the unified financial control of the state." Autonomous areas were to undergo "reforms," led by "local leaders who are associated with the people" and cadres who "have a highly developed sense of patriotism." The people of autonomous areas were guaranteed the rights of "freedom of thought, speech, publication, assembly, association, correspondence, person, domicile, change of domicile, religious belief, and the freedom to hold processions and demonstrations." The final article allocated the interpretation or amendment of these rights and all other provisions of the General Program exclusively to the central government.⁷

Similar provisions were repeated in the 1954 Constitution:

The People's Republic of China is a single multi-national state. All the nationalities are equal. Discrimination against or oppression of, any nationality, and acts which undermines the unity of the nationalities, are prohibited. All the nationalities have freedom to use and foster the growth of their spoken and

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- 6 Common Program of the Chinese People's Political Consultative Conference, 29 Sept. 1949, in Theodore H.E. Chen, ed., *The Chinese Communist Regime: Documents and Commentary* (New York: Praeger, 1967), 34.
 - 7 General Program of the People's Republic of China for the Implementation of Regional Autonomy for Minorities, 9 August 1952, in *Policy Towards Nationalities of the People's Republic of China* (Peking: Foreign Languages Press, 1953), 1.

written languages, and to preserve or reform their own customs or ways. Regional autonomy applies in areas where people of national minorities live in compact communities. National autonomous areas are inalienable parts of the People's Republic of China.⁸

The 1954 Constitution specified that national minority autonomous areas might be established at the *ch'u* (region, equivalent to a province), *chou* (prefecture, within an autonomous region or a province) or *xian* (county, within another nationality district or a Han district) levels.⁹ According to the CCP, national regional autonomy allows for the exercise of autonomy by scattered nationality populations wherever they are found, rather than only in a single region (as would be the case under a federal system) or as individual members of a minority nationality (as would be the case in a system of national autonomy).¹⁰ As Zhou Enlai described the system:

This national regional autonomy is a correct combination of national autonomy and regional autonomy, a correct combination of economic and political factors; this not only makes it possible for a nationality living in a compact community to enjoy the right to autonomy, but also enables nationalities which live together to enjoy the right of autonomy. Thus, practically all nationalities—those with large

8 Art. 3 *The Constitution of the People's Republic of China*, adopted 20 Sept. 1954, in Liu Shao-Chi *Report on the Draft Constitution of the People's Republic of China and Constitution of the People's Republic of China* (Peking: Foreign Language Press, 1954). Liu explained that only by allowing the nationalities to "take an active part in the political life of the entire country, while granting them, in accordance with the principle of national regional autonomy, the right to be their own masters, so that they may administer their own internal affairs," can ties of mutual trust and unity be strengthened. Speech delivered at the First Session of the First National People's Congress of the PRC, 15 Sept. 1954, in *ibid.*, 44.

9 Art. 53 1954 Constitution.

10 National autonomy, or "extraterritorial national cultural autonomy," was a system proposed by Austrian Social Democrats in the early twentieth century. Under this system, members of minorities would exercise individual autonomous rights independent of their territorial location within the state.

populations as well as those with small ones, those which live in big compact communities as well as those which live in small ones—have founded autonomous units commensurate with their size, fully enjoying the right of national autonomy. Such a system is a creation hitherto unknown in history.¹¹

Although organs of government within autonomous regions were theoretically to be constituted "in accordance with the wishes of the majority of the people of the nationality or nationalities enjoying regional autonomy in a given area,"¹² in fact, nationality areas were organised in political units having the same function and same relation to the central government as local governmental organisation in Chinese areas. The only right specifically granted to minorities was the right to use their own languages; all other special regulations regarding nationalities were subject to central government approval.¹³ Heads of local governmental organs were to be of the local nationality. As the system actually operated, however, nationality cadres in positions of symbolic authority were always seconded by a Chinese vice-chairman.¹⁴

Ethnic Tibetan territory was divided among one autonomous region, the TAR which comprises less than half of Tibetan territory and less than

11 Zhou Enlai (Chou En-lai), "Some Questions on Policy Towards Nationalities," *Beijing Review*, 3 March 1980, 22. Zhou's speech was originally delivered at a meeting on nationalities policy at Tsingtao in 1957 but was not published at the time because it was considered too "liberal" for the rapidly leftist-shifting policy of the time.

12 Art. 67, 1954 Constitution.

13 "The Constitution of China on National Autonomous Areas," in Wang Ke, "Regional Autonomy for National Minorities," *Peking Review*, 6 May 1958, 9. Only the right to use their own languages was specified; all other autonomous rights remained unspecified and limited by laws regarding local organs of state (article 69), state law (article 70), the military system of the state (article 70) and the Standing Committee of the National People's Congress (article 70).

14 Indeed, the Standing Committee of the National People's Congress in 1955 deliberately decreed that vice-chairmen of people's councils in minority nationality regions did not have to be of the local nationality. Donald H. McMillen, *Chinese Communist Power and Policy in Xinjiang, 1949-1977* (Boulder: Westview Press, 1979), 224.

half of the Tibetan population,¹⁵ and autonomous areas within the provinces of Qinghai, Gansu, Sichuan and Yunnan.¹⁶ Tibetans were thus not allowed an autonomous region encompassing all contiguous areas of Tibetan majority population.¹⁷ The PRC's territorial divisions of Tibet thus precluded a unified Tibetan nationality self-rule even in the theoretical sense.¹⁸

Moreover, even though more than half of Tibetans live outside of the TAR, they account for small minorities in the four Chinese provinces in which they do live. Adjusted Chinese statistics reveal that in 1994, Tibetans only made up 20.5% of the population in Qinghai province, 1.6% in Gansu, 1% in Sichuan (where the largest number of Tibetans - over 1 million - live outside the TAR) and 0.3% in Yunnan.¹⁹ Today, Tibetans are estimated - by Chinese statistics - to be a minority even within five of the ten Tibetan Autonomous Prefectures.

15 According to 1953 Chinese statistics, partly based on Tibetan estimates, 1.27 million Tibetans were within what became the TAR while 1.5 million were in eastern Tibetan areas outside the TAR. "Tibet's Population Develops," *Beijing Review*, 17 August 1987, 20.

16 Today, there are ten Tibetan (or Tibetan and other minority) Autonomous Prefectures and Two Tibetan Autonomous Counties within other minority prefectures.

17 This would appear contrary to the CCP's own guidelines which suggest that a minority nationality autonomous territorial unit should correspond to an area of compact and contiguous occupation by the nationality in question. See the Preamble to the 17-Point Agreement "national regional autonomy shall be exercised in areas where national minorities are concentrated." Article 4 of the 1982 Constitution provides for the establishment of organs of self-government in "areas where people of minority nationalities live in compact communities; in these areas organs of self-government are established for the exercise of the right to autonomy." See also Smith, *Tibetan Nation*, 361-365.

18 See also Art. 68, 1954 Constitution, specifying that in autonomous areas where a number of nationalities live together, "each nationality is entitled to appropriate representation on the organs of self-government."

19 Statistics taken from Chinese 1990 census and adjusted to reflect average growth. These statistics underestimate the number of Chinese, see Chapter IV, A, on Population Transfer, *infra*.

Although Tibet was not unified before 1950,²⁰ the divisions of Tibetan nationality territory allowed China to argue that Tibetans were a minority, like other minorities, "mixed with Han and other nationalities," and scattered among several provinces, rather than living in a single homogeneous area. China could claim that this situation was due not to Chinese territorial divisions of Tibet but to Tibetan migration to Chinese provinces: "As a result of long historical changes, ethnic Tibetans have settled not only in Tibet, but also in areas in Sichuan, Qinghai, Gansu and Yunnan provinces."²¹ The specific promises in regard to Tibetan autonomy of the 17-Point Agreement were intended to apply only to that part of Tibet to be constituted as the Tibet Autonomous Region.

In fact, political authority in central Tibet had already shifted due to the Chinese military presence in Tibet and the requirement of the 17-Point Agreement that the Tibetan government cooperate with Chinese authorities. In addition, the Chinese Communists intended to pursue the socialist transformation of Tibet, at a slower rate perhaps, along with the rest of the PRC. The means for the abrogation of article 4 was article 11, which provided that the Tibetan government might carry out reforms "of its own accord, and when the people raise demands for reform," language that reflected China's belief that the Tibetans could be convinced by CCP nationalities policies to abandon their archaic and unequal political system for the equality and progress promised by Chinese socialism.

By 1954 Chinese control of central Tibet was thought sufficiently secure that the "no changes in the Tibetan political system" provision of article 4 could be gradually superseded by the "reforms" provision of article 11. In addition, the 17-Point Agreement itself would be superseded by changes in the political administration of Tibet made by mutual agreement with the Dalai Lama and the existing Tibetan government. In

20 All of the divisions were established at the time of the 17-Point Agreement without any document being published. The borders of the TAR date from the campaigns of Chao Erh-feng in 1905-10. There was some question as to whether the Chamdo area would be part of the TAR or not but it was included in 1955, during the establishment of the Preparatory Committee for the Tibet Autonomous Region.

21 "Tibet—Its Ownership and Human Rights Situation," *Beijing Review*, 28 Sept. 1992, 39.

1954 China attempted to supersede the 17-Point Agreement by means of the Dalai Lama's and Panchen Lamas' participation in the Chinese Constitutional Convention of that year and by the subsequent decision to set up a "Preparatory Committee for the Tibet Autonomous Region" (PCTAR) that would prepare for the transition to national regional autonomy.

In late 1954 the Dalai Lama was persuaded to travel overland to Peking for the meeting of the National People's Congress at which a new PRC constitution was to be adopted.²² The new constitution did not specifically address Tibet's status; instead, the constitution's provisions governed only the system of national regional autonomy for all minority nationalities. Tibetan participation in the adoption of the new constitution was considered by China to constitute "consent" to reforms of the Tibetan social and political systems within the meaning of the 17-Point Agreement, thus allowing for elimination of some of Tibet's special status and placing Tibetan affairs within the same context as all other minority nationalities in the PRC.

In January 1955 the Chinese government announced the creation of the Preparatory Committee for the Tibet Autonomous Region, effectively transferring political authority from the Tibetan government to the Preparatory Committee.²³ Only 10 members of the PCTAR were appointed by the Tibetan government, the remainder of its 51 members

22 According to Tibetans at the time, the Dalai Lama was convinced to attend, against the wishes of the Tibetan populace, by promises that Tibet's status would be renegotiated, giving Tibet autonomy equivalent to local independence. "Memorandum by Tibetan Leaders," in ICJ, *Question of Tibet and the Rule of Law*, 153. Tibet was represented not only by the Dalai Lama and Tibetan Government officials but by the Panchen Lama and his officials and by representatives of the "Chamdo Liberation Committee." Tibetan autonomous districts of Qinghai, Gansu, Sichuan and Yunnan were also represented.

23 *Brief Regulations on the Creation of a Preparatory Committee for the Formation of a Tibetan Autonomous Region*, adopted at the 47th meeting of the Standing Committee of the PRC's National People's Congress, 26 Sept. 1956. Article 2 stated that the Committee would function as an organ of State authority and carry out its activities under the guidance of the State Council of the PRC. The Committee was to guide the work of the Local Government of Tibet, the council of Khenpos and the Chamdo Liberation Committee, *Communist China and Tibet: The First Dozen Years*, 83-84.

were from the Chinese-dominated Panchen Lama's "government," the Chamdo Liberation Committee and other institutions created by China, along with 5 Chinese members. The Preparatory Committee had to secure approval for all its actions from the State Council. All appointments to the Committee and to any subsidiary bodies that the Committee created were to be referred to the State Council for approval.²⁴

China presented the PCTAR as voluntarily created and accepted by Tibetan authorities and therefore in accord with the 17-Point Agreement, and employed its control of the Preparatory Committee to institute modest reforms. In addition, numerous "United Front" youth and women's organizations were created that gradually began to acquire social, educational and political functions at the expense of traditional Tibetan institutions.

The inauguration of the PCTAR was delayed by Tibetan opposition until 22 April 1956. Tibetan leaders regarded the inauguration of the PCTAR as a violation of the promise of the 17-Point Agreement to allow Tibetan autonomy and to make no changes in Tibet's political system. As the Dalai Lama said after he reached exile in India in 1959, "After the occupation of Tibet by Chinese armies, the Tibetan Government did not enjoy any measure of autonomy, even in internal matters; the Chinese Government exercised full powers in Tibetan affairs."²⁵ Chinese changes to the Tibetan political system aroused opposition in the TAR but not open revolt. However, revolt began almost simultaneously in the spring of 1956 in eastern Tibetan areas of Kham and Amdo when the Chinese instituted "democratic reforms."

After the revolt of March 1959, the flight of the Dalai Lama to India and the subsequent dissolution of the "Tibetan local government" by the PRC State Council, China accused the Tibetan government of having violated the 17-Point Agreement and considered itself thereafter no longer bound to adhere to its provisions. Democratic reforms and the preliminary stages of socialist transformation were implemented

24 "Decision of the State Council Concerning the Setting Up of a Preparatory Committee for the Tibetan Autonomous Region," *NCNA*, 12 March 1955.

25 "The Dalai Lama Issues Statement in Tezpur, India," 18 April 1959, in ICJ, *The Question of Tibet and the Rule of Law*, 192.

immediately after the revolt. Tibetan resistance to Chinese control and reforms, during which tens of thousands of Tibetans fled into exile and other tens of thousands were killed or imprisoned, is ample evidence of the lack of Tibetan autonomy or self-government during this period.

In 1965, after single-candidate elections of Tibetan representatives, China inaugurated the Tibet Autonomous Region and instituted national regional autonomy in the TAR. Although this was presented as genuine Tibetan self-rule, Chinese control over all Tibetan affairs was now complete, even the previously cooperative Panchen Lama having finally been purged and imprisoned for his opposition to Chinese policies in Tibet. During the subsequent Cultural Revolution, which lasted a full ten years in Tibet, from 1966 to 1976, Tibet was subjected to cultural destruction on a vast and comprehensive scale and Tibetan autonomy was virtually nonexistent.

The 1975 Constitution and the 1978 Constitution repeated the language of the 1954 Constitution regarding nationalities, adding that "any acts that undermine the unity of nationalities or instigate their secession are prohibited."²⁶

These early laws have been superseded by the 1982 Constitution²⁷ and the 1984 Law on Regional Autonomy. Under the 1982 Constitution, the organs of self-government of national autonomous areas are the people's congresses and people's governments of autonomous regions, autonomous prefectures and autonomous counties. Local people's governments are subordinate to the State Council²⁸ and accountable to the local people's congress while the latter is subordinate to the National People's Congress, the PRC's supreme legislative body.²⁹ The organs of self-government of an autonomous region "exercise the power of

26 Art. 4, 1975 Constitution states that "The People's Republic of China is a unitary multi-national state. The areas where regional national autonomy is exercised are all inalienable parts of the People's Republic of China." *The Constitution of the People's Republic of China* (Peking: Foreign Language Press, 1975). See Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy* (Princeton: Princeton University Press, 1984), 88.

27 Adopted 4 Dec. 1982, text in *The Constitution of the People's Republic of China* (Beijing: Foreign Language Press, 1982).

28 Art. 110, 1982 Constitution.

29 Ibid.

autonomy within the limits of their authority as prescribed by the Constitution and the law of regional national minority and other laws, and implement the laws and policies of the State in the light of the existing local situation."³⁰ The people's congress of an autonomous area has the power to "enact autonomy regulations and specific regulations in the light of the political, economic and cultural characteristics of the nationality or nationalities in the areas concerned."³¹ Such regulations must be submitted for approval to the Standing Committee of the National People's Congress.³² The Constitution further specifies that the organs of self-government control the finances of their area, "independently arrange for and administer local economic development under the guidance of State plans," "independently administer educational, scientific, cultural, public health and physical culture affairs," "cull through the cultural heritage of the nationalities" and "with the approval of the State Council, organise local security forces for the maintenance of public order."³³ The Constitution also instructs these autonomous organs to "employ the spoken and written language or languages in common use in the locality."³⁴

In 1984 the CCP adopted the Law on National Regional Autonomy.³⁵ The law gives autonomous people's congresses the power to "enact regulations on the exercise of autonomy and separate regulations in the light of economic and cultural characteristics." However, these regulations have to be submitted to the Standing Committee of the National People's Congress for approval,³⁶ as do amendments or non-implementation of decisions or instructions of state organs at a higher level on the ground that these laws and regulations "do not suit the conditions of an autonomous area."³⁷ In the economic field, the autonomous organs have the power to "adopt special policies and

30 Art. 115, 1982 Constitution.

31 Art. 116, 1982 Constitution.

32 Ibid.

33 Arts. 117-120, 1982 Constitution.

34 Art. 121, 1982 Constitution.

35 Law of the People's Republic of China on Regional Autonomy, 1984, text in *China Law Computer Assisted Legal Research Center*, Beijing University, entered into effect 1 Oct. 1984.

36 Art. 19, 1984 Autonomy Law.

37 Art. 20, 1984 Autonomy Law.

flexible measures in the light of local economic conditions,"³⁸ to "[i]n accordance with State provisions, pursue foreign economic and trade activities and, with the approval of the State Council, open foreign trade ports," to "under the guidance of state plans, administer local economic development" and "work out the guidelines, policies and plans for economic development in the light of local characteristics and needs."³⁹ Autonomous areas are also given authority over natural resource management and protection in their own areas, but this is again limited "in accordance with ... the unified state plan."⁴⁰

In the cultural and linguistic field, citizens of minority nationalities are allowed freedom of religious belief, but the central government retains the power to restrict religious activities in the interest of public order, health, and education. Religious groups are prohibited from being "subject to any foreign domination."⁴¹ Nationalities have the right to "use and develop their own spoken and written languages and freedom to preserve their own customs," and each nationality can set up its own education system and curricula and decide on the language of instruction. Elementary education is to be conducted in the nationality language, but, "[c]lasses for the teaching of Chinese shall be opened for senior grades of primary schools to popularize Putonghua, the common speech based on Beijing pronunciation."⁴² Autonomous organs are also given responsibility to, "in accordance with legal stipulations," work out measures for control of the transient population and for family planning.⁴³

According to a 1992 State Council White Paper on Tibet, the TAR has exercised political autonomy since 1965 by formulating more than "60 local rules and regulations, decrees, decisions and resolutions, involving political, economic, cultural and educational aspects," including "Measures for the Management of Mining by Collective Mining Enterprises and Individuals" in the TAR, "Resolutions on Study, Use and Development of the Tibetan Language" in the TAR, Tar regulations on

38 Art. 6, 1984 *Autonomy Law*.

39 Arts. 25, 26, 1984 *Autonomy Law*.

40 Art. 33, 1986 *Mineral Law*.

41 Art. 11, 1984 *Autonomy Law*.

42 Arts. 10, 36, 37, 1984 *Autonomy Law*.

43 Arts. 43, 44, 1984 *Autonomy Law*.

the "Protection and Management of Cultural Relics," and "Accommodation Rules for the Implementation of the Marriage Laws of the People's Republic of China."⁴⁴

In a 1992 submission to the United Nations, China listed autonomous rights of the TAR as including, "The right to ensure the Tibetan people to freely use and develop their own spoken and written languages....The right to manage and independently arrange local economic projects.The right to independently arrange local education, culture, public health and develop local culture. The right to independently protect, exploit and use local natural resources according to the law. The autonomous right to carry out foreign economic relations and trade." According to China, "Major responsible posts at all levels of region's governmental and judicial departments are held by Tibetans. At present there are more than 37,000 Tibetan cadres in Tibet, taking up 66.6 per cent of the total number of cadres in the region. At the levels of autonomous region and of county, the percentage of Tibetan cadres is 72 per cent and 61.2 per cent respectively. Most posts at different levels of people's congresses, governments, courts and procurators offices are also held by Tibetans."⁴⁵

The restrictions on the autonomous powers are considerable. Certain powers are subject to the approval of the Central People's Government, the State Council, or the National People's Congress while others are limited in accordance with "legal stipulations"⁴⁶ or must be implemented "under the guidance of state plans."⁴⁷ Furthermore, the general principles emphasise that the interest of the state as a whole shall be paramount.⁴⁸ In fact, the government structure and powers of autonomous areas, provided for under the autonomy law in conjunction

44 "Tibet—Its Ownership and Human Rights Situation,"(Beijing: Information Office of the State Council of the People's Republic of China, 1992).

45 "Human Rights Protection in Tibet," Annex to the reply of the Permanent Representative of China to the United Nations in Geneva, in *Situation in Tibet*, Note by the Secretary-General submitted pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/10, UN Doc. E/CN.4/1992/37, para. 6.

46 See, for instance, arts. 27, 28, 1984 Autonomy Law, addressing production and reform and protection of natural resources.

47 See, for instance, arts. 25, 26, 29, 1984 Autonomy Law, covering the administration of the local economic development and large construction projects.

48 Art. 7, 1984 Autonomy Law.

with the Constitution, are not that different from the government structure and powers at the regional levels of government.⁴⁹

The practical significance of even this limited autonomy is further undermined by a number of factors. In the PRC, actual power is vested in the Communist Party, whose structure runs parallel to the governmental structure. The Communist Party exerts substantial formal and informal influence over the governmental organs at each level⁵⁰ and plays a central role in ensuring that lower government levels, including autonomous government organs, adhere to central party guidelines.⁵¹ "Leading groups" are established under Party control for most key issues. The CCP is not subject to the requirements and guarantees of the Autonomy Laws. For instance, even though the 1984 Autonomy Law requires that Tibetans occupy positions of authority within the autonomous government structure, including the post of chairman of the autonomous region, no similar requirement applies to positions within the Communist Party. The position of TAR CCP Secretary, considered to be the most powerful post in the TAR, has *never* been held by a Tibetan since its establishment.⁵² The majority of the other top positions in the CCP in Tibet are also filled by non-Tibetans.⁵³

49 Ngawang Ngapo Jigme, "Explaining Regional Autonomy Law," *Beijing Review*, 25 June 1984, 17 states that the autonomous organs of government are "both ordinary local state organizations and organizations of self-government."

50 A. Doak Barnett, *Cadres, Bureaucracy, and Political Power in Communist China*, 18, cited in *The Myth of Tibetan Autonomy: A Legal Analysis of the Status of Tibet* (Washington: International Human Rights Law Group/International Campaign for Tibet, April 1994), 29.

51 Barnett, *ibid.*

52 A Tibetan briefly held the post of Acting Party Secretary in 1991. See *TIN News Briefing*, 17 Sept. 1992. In practice, the head of the CCP in nationality regions has almost invariably been a Chinese; The CCP justified this policy, and the fact that no Tibetan had ever been the head of the CCP in the TAR, with the theory that Party organization was not nationality specific. Any Party member could rise to high levels without regard to nationality; therefore, "there is no direct link between whoever takes the post of first secretary of the regional Party committee and regional national autonomy." "A Dialogue on Tibet (III): Regional Autonomy and Special Policies," *Beijing Review*, 23 Nov. 1987, 25.

53 *Defying the Dragon: China and Human Rights in Tibet* (London: Lawasia/TIN, March 1991), 87.

Communist Party members dominate key government posts in the TAR government. On paper, there are no bars for Tibetans to become Party members. In reality, however, the requirement that Party members be atheists effectively precludes many Tibetans from joining the Party.⁵⁴ Recently, this position was reiterated and more strict measures to "screen and purify our cadre contingent" announced.⁵⁵

The heavy presence of Chinese-dominated security forces in the TAR also limits Tibetan autonomy. The PLA, closely linked to the Communist Party, was used to invade Tibet and is now a key element of Chinese control. Some 80,000 - 100,000 Chinese troops are believed to be currently stationed in the TAR.⁵⁶ Partly because of the PLA's stance against religious believers, few officers are Tibetan. Of the 31 officers in the Tibet Military District, only one is Tibetan.⁵⁷ The PAP is also dominated by Chinese officials, as is the Public Security Bureau (PSB) which administers criminal justice. According to 1987 statistics, 80 % of the officers of the TAR PSB were Tibetans but "most supervisors and high ranking officials are Han."⁵⁸

54 Angelo S. Lazzarotto, "The Chinese Communist Party and Religion," *Missiology: An International Review*, vol. XI, no. 3, July 1983, 272.

55 In the fifth Document of the Seventh Plenary of the Sixth Standing Committee Session [of CCP of TAR], Ragdi pointed out that "[w]hile striking at economic criminals we should focus on purifying the cadre contingent and on observing political discipline. All Party members, especially leading members, are forbidden to put up religious symbols, Dalai photos or altars in their house and should not have prayer rooms. ... Those cadres who do not correct the above mistakes immediately after this meeting should never be promoted. Those who are leaders and who are in important positions should be transferred to other places without hesitation. Those who have gone abroad to visit their relatives and have not returned in time should be dealt with as if they have tendered their resignation," translated in TIN Doc. 25(WK).

56 Testimony of Robbie Barnett, Bundestag Hearing on Tibet, 19 June 1995.

57 *Directory of PRC Military Personalities July 1990 - June 1991*, at 58-59, cited in Law Group/ICT, *The Myth of Tibetan Autonomy*, 36. The Tibet Military District does not cover the western TAR which belongs to both a different district and a different one of China's seven military regions. Ibid.

58 Zhu Entao, Deputy Director, International Department of the Ministry of Public Security, Beijing, cited in Lawasia/TIN, *Defying the Dragon*, 87.

Although Chinese authorities assert that Tibetans make up 72.1% of the cadres (government employees) in the TAR,⁵⁹ Chinese hold many of the key positions, as illustrated by the PSB. Where a Tibetan does occupy the highest position, such as chairman of the TAR or Tibetan prefectures in the PRC, vice-positions will almost surely be filled by a Chinese exercising *de facto* power.⁶⁰

The limited autonomy guaranteed in laws and the Constitution is thus even more circumscribed in actual practice. This will emerge more clearly in subsequent chapters of this report, particularly those examining Tibetan's powerlessness to prevent population transfer and stop the erosion of their language, culture, religion and environment. It suffices here to say that the actual extent to which Tibetans control their own affairs is extremely limited. This is due to the early administrative partition of the Tibetan territory, the dominance of the Communist Party and policy dictates from the central level, and the exclusion of Tibetans from meaningful participation in regional and local administration.

59 *People's Daily* (9 May 1995), translated in *TIN News Review* No. 24. In 1991, the number was announced as 66.6% by Li Tieying, head of the central delegation in an address to the rally marking Tibet's "Liberation" Anniversary. *Xinhua*, 22 May 1991, in SWB FE/1080 B2/2, 25 May 1991.

60 The TAR People's Government is currently headed by a Tibetan, Gyaltzen Norbu while the vice- chairman, Mao-Rubai, is Chinese; the same applies to the Public Security Bureau.

IV. Threats to Tibetan Identity and Culture

In 1959 the United Nations General Assembly called "for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life."¹ In 1961 it spoke of the "suppression of the distinctive cultural and religious life which [the Tibetan people] have traditionally enjoyed."² This concern was reiterated in 1965 when the Assembly declared that "the violation of human rights and fundamental freedoms in Tibet and the suppression of the distinctive cultural and religious life of its people increase international tension and embitter relations between peoples."³ Nevertheless, decades later, in 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights was still "[c]oncerned at the continuing reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people."⁴

Despite diversity among Tibetans, some basic elements can be identified as composing a Tibetan identity. Shared ethnic characteristics, the Tibetan written language and literature, the Tibetan Buddhist faith, and a shared history constitute central components of this identity.⁵ More peripheral elements include common customs, the traditional Tibetan medical system, lifestyle and food habits, the Tibetan attitude towards the environment, as well as Tibetan architecture.

1 GA res. 1353 (XIV) (1959), para. 2.

2 GA res. 1723 (XVI)(1961), preambular para. 2.

3 GA res. 2079 (XX) (1965), para. 3.

4 UN Doc. E/CN.4/Sub.2/1991/10.

5 Tibetans refer to themselves as *Nangpa* (literally "insider"; generally translated as Buddhist) referring to Buddhism as the unifying force among Tibetans. However, this does not diminish the importance of other elements. As one Tibetan writer put it: "If Buddhism provided the atom of Tibetanness, then *tsampa* (the staple diet, consisting of roasted barley flour) provided the sub-particles of Tibetanness." Tsering Shakya, "Whither the Tsampa Eaters?," in *Himal*, vol. 6, no. 5, Sept/Oct. 1993, 9.

Facets of this Tibetan identity, such as language and religion, are increasingly threatened by Chinese policies. The nationwide "socialist spiritual civilization" campaign, announced in November 1996, may carry even more serious ramifications. As planned for the TAR, it targets traditional customs, religion, language and other components of Tibetan culture which are seen as a barrier to the development of a market economy and to productivity.⁶ While stressing the need to "change prevailing habits and eliminate outmoded conventions and bad customs," the TAR CCP described the goals for Tibet's spiritual civilization campaign as, *inter alia*:

Changing the customs of doing things in a big way in marriage, funeral and celebration activities, refrain from competing with each other in extravagance and waste, and resolutely oppose feudal and superstitious activities such as praying to the gods and seeking to ascertain by divination. We should change the feudal, religious and superstitious customs of asking wizards or lamas to pray for rain or to prevent hailstorms, of letting monasteries determine the time for sowing and harvesting in agricultural and livestock production, and of avoiding the butchering and sale of livestock. In agricultural and pastoral areas, we should oppose the backward customs of having more than one spouse and advocate planned parenthood and proper childbearing. We should carry out reforms of funeral practices. We should change desirable habits and customs and, in the mean time, advocate scientific, healthy and civilized way of living.⁷

- 6 "Resolution on Certain Important Questions on the Promotion of Spiritual Civilization," adopted at the Sixth Plenary Session of the 14th CCP Central Committee. Commentary in *Xizang Ribao*, 5 Nov. 1996, in SWB FE/2776 G/11, 22 Nov. 1996; *Xizang Ribao*, 7 Nov. 1996, in SWB FE/2775 G/6, 21 Nov. 1996; "Opinions of the TAR CCP on implementing the guidelines set forth at the sixth plenary session of the 14th CCP Central Committee," *Xizang Ribao*, 8 Nov. 1996, in SWB FE/2785 G/4, 3 Dec. 1996; Commentary in *Xizang Ribao*, 6 Dec. 1996, in SWB FE/2807 G3, 3 Jan. 1997; *Renmin Ribao*, 3 Dec. 1996, in SWB FE/2789 G/8, 7 Dec. 1996.
- 7 "Opinions of the TAR CCP on implementing the guidelines set forth at the sixth plenary session of the 14th CCP Central Committee," *Xizang Ribao*, 8 Nov. 1996, in SWB FE/2785 G/4, 3 Dec. 1996.

This was followed in July 1997 by a speech by TAR Party Secretary Chen in which he declared that "Buddhism is a foreign culture" and called the idea that Tibetan culture is Buddhist "totally absurd," saying that this position "belittles the ancestors of the Tibetan nationality and the Tibetan nationality itself." He added that "separatists now go all out to put religion above the Tibetan culture and attempt to use the spoken language and culture to cause disputes between nationalities." Rather, said Chen, "in inheriting the culture, it is necessary to analyze it, to discard its dross, and carry forward the good part of it. The development of national culture is a result of 'developing what is useful or healthy and discarding what is not.'"⁸

This section discusses Chinese policies that threaten to erode elements of Tibetan identity and culture. Many of these policies also constitute breaches of specific provisions of international law binding on the PRC.

A. Population Transfer

Many Tibetans refer to the policy and practice of populating Tibet with people of non-Tibetan origin as the most serious threat facing Tibet. In an interview with the ICJ, the Dalai Lama stated:

The most serious threat to the survival of the Tibet's culture and national identity is presently China's population transfer program, which is reducing the Tibetans into an insignificant minority in their own land at an alarming rate.⁹

In 1949 some Chinese settlement had already taken place where low-lying parts of the Tibetan plateau form natural corridors between ethnographic Tibet and indigenous Chinese territory. There were, however, few Chinese settlers in most of the areas that became Tibetan autonomous prefectures and counties in the middle of the 1950s¹⁰. In central Tibet the Chinese population was practically negligible. Lhasa had a Chinese population estimated at 2,000 in 1949 and half of those

8 "Cultural Policy: History Book Banned, Tibetan Culture Declared 'Non-Buddhist,'" *TIN News Update*, 15 Aug. 1997.

9 Annex 1. ICJ Interview with the Dalai Lama.

10 *New Majority: Chinese Population Transfer into Tibet* (London: Tibet Support Group - UK, London, 1995), 84.

were expelled in that year. The Chinese population in Kham was only a few thousand.

According to Chinese statistics, the Chinese population of Qinghai was over 700,000, compared to some 438,000 Tibetans but in Tibetan areas these figures were often based on loose estimates as the local Muslim warlord only had actual control in some of the Tibetan areas. The Chinese population in Qinghai was almost entirely confined to the Ma Chu (Yellow River) valley and its tributaries, especially the Xining valley, most of which does not now have Tibetan autonomous status.

Chinese policy on colonisation in the TAR, if not in eastern Tibetan areas outside the TAR, was at first restrained, whether for logistical or political reasons, or both. Tibet, the most ethnically homogeneous nationality territory incorporated within the PRC, had a special status, a fact recognized at least for the future TAR by the 1951 17-Point Agreement. Upon entering Tibet in 1950-51, PLA advance units claimed that the Chinese had come only to help improve Tibet and they would leave as soon as Tibetans were able to take care of themselves. The Dalai Lama was told by the Chinese that they had come to Tibet to help Tibet develop her resources and protect her against imperialist domination. He quotes the Chinese PLA commander in Lhasa as saying: "When you can stand on your feet, we will not stay here even if you ask us to."¹¹ In October 1952, however, in an address to a group of Tibetan delegates in Beijing, Mao made a cryptic statement on Chinese plans for population increases in Tibet:

Tibet covers a large area but is thinly populated. Its population should be increased from the present two or three million to five or six million, and then to over ten million.¹²

Mao's plan to increase Tibet's population is sometimes interpreted as implying the encouragement of Chinese settlement in Tibet; however, Mao's actual intentions remain somewhat unclear. The Dalai Lama, after his flight in 1959, said that he understood that Mao intended Chinese colonization:

11 Dalai Lama, *My Land and My People* (New York: Potala Press, 1983), 92.

12 Mao, as quoted in "Radio Address of Leosha Thuptentarpa to the Religious and Secular Officials of the Tibet Local Government and the Entire Tibetan People." *People's Daily*, 22 Nov. 1952, in *Tibet 1950-67*, 43.

It was clearly stated to me while I was in Peking in 1955 that Tibet was a vast country with scarce population and China has a large population with insufficient land, so land and people should be exchanged.¹³

Similar indications can be derived from a speech by Zhou Enlai given in 1957.¹⁴

Between 1954 and the mid-sixties, there was a large-scale resettlement of Chinese into Qinghai to construct and provide labour for state farms reclaiming land for agriculture.¹⁵ State farms were also created in the TAR, but on a much smaller scale. This demographic movement also

13 "Statement of the Dalai Lama to the Legal Inquiry Committee at Mussoorie, India," 14 Nov. 1959, in ICJ, *Tibet and the Chinese People's Republic*, 311. The Dalai Lama also mentioned a statement made to the Panchen Lama: "In 1955, just before returning to Lhasa we had been to see Liu Shao-ch'i. He mentioned to the Panchen Lama that Tibet was a big country and unoccupied and that China had a big population which can be settled there." "Statements to the legal inquiry committee by the Dalai Lama and officials," in *ibid.*, 289. The PRC was simultaneously practising a policy of colonization in Inner Mongolia and Xinjiang. In Inner Mongolia, where the Mongols were already a minority in 1949, colonization increased the ratio of Chinese to Mongols to 7 to 1 by 1962. Asia Watch *Crackdown in Inner Mongolia* (Washington: Human Rights Watch, 1991), 18. Colonization of Xinjiang, where there were only some 200,000 Chinese in 1949, was initiated by the Chinese Production and Construction Corps (PCC), which was composed of PLA units, decommissioned PLA soldiers and civilian colonists. Lee Fu-Hsiang, "Turkic-Moslem Problem in Sinkiang," 313. After completion of the Lanchou to Urumchi railroad in 1954, recruitment of civilian colonists began; by 1957 the PCC in Xinjiang had some 300,000 members, almost all of whom were Han Chinese. *Chinese Communist Power and Policy in Xinjiang* (London: MacMillan, 1979), 65. By 1964 Chinese numbered 3,500,000 out of a total Xinjiang population of eight million.

14 Zhou Enlai: *Selected Works of Zhou Enlai* (1989), as cited in TSG-UK, *New Majority*, at 35.

15 "From 1956 until about 1980 the area cultivated by state farms should be increased from the 1955 figure of over 13 million *mu* to about 100 million *mu*. Wherever conditions permit, land reclamation should be carried out by organized new settlers." H. Yuan Tien, "The Demographic Significance of Organised Population Transfers in Communist China" in *Demography*, 1964, 1, citing the "National Programme for Agricultural Development, 1956-1967" (Peking: Foreign Languages Press, 1961). A *mu* is a measure of land area equal to 0.0667 hectares. 1500 *mu* = 1 sq. Km.

included peasants attracted by agricultural opportunities, compulsory relocated exiled cadres as well as prisoners and those sentenced to "reform through labour" resettled in Qinghai province after their release.¹⁶ Released prisoners were encouraged to have their families come to join them and thus became permanent residents.¹⁷ Hundreds of thousands of Chinese settled in Qinghai in this period, including 200,000 in Xining, its Han capital.¹⁸

From 1956, the "xiafang" campaign encouraged the further transfer of millions of people from the urban areas of eastern China to the sparsely populated areas in the north and west of the PRC.¹⁹ These early campaigns, besides their immediate demographic impact, enabled subsequent economic development and its accompanying population movements.²⁰ Some 600,000 people are thought to have been sent to Qinghai, Gansu, Ningxia, Xinjiang and Inner Mongolia.²¹

In that part of Tibet scheduled to become the TAR, during the first thirty years of Chinese rule, the number of Chinese settlers rose slowly but steadily, laying the foundation for the present accelerated population influx. Thousands of Chinese settlers arrived in the Chamdo area of the future TAR to work on the land²² and the large numbers of PLA and

16 Graham E. Clarke, "The Movement of Population to the West of China: Tibet and Qinghai," in Judith M. Brown and Rosemary Foot, eds., *Migration: The Asian Experience* (London: MacMillan Press, 1994), 236.

17 Hongda Harry Wu, *Laogai—The Chinese Gulag* (Boulder: Westview Press, 1992), 113.

18 Clarke, "The Movement of Population," 236, indicating that this number constitutes 20% of the current total.

19 June Teufel Dreyer, "Go West Young Han: The Hsia Fang Movement to China's Minority Areas," in *Pacific Affairs*, vol. 3, 1975, 353-354.

20 Clarke, "The Movement of Population," 233, also points to the establishment of entirely new towns, such as Golmud, which had a 4% Tibetan population in 1989. Other significant categories of government sponsored population movements to Tibet were the transfer of military personnel, CCP and government cadres and technically skilled personnel, many of whom settled permanently after their demobilization or the termination of their assignment. See also Judith Banister, *China's Changing Population* (Stanford: Stanford University Press, 1987), 306-307.

21 Dreyer, "Go West Young Han," 354. Exact numbers not available.

22 G. Ginsburg and M. Mathos, *Communist China and Tibet: the First Dozen Years* (The Hague: 1964), chapter 2.

Chinese cadres were sent to Tibet where before there had been almost no Chinese; many of these Chinese remained so long that they were essentially permanent residents. There are also reports of rural settlement of Chinese farming communities in the south-east of the TAR in the early sixties.²³

With the post-Mao liberalization in Tibet, and the 1980 visit of Hu Yaobang, a program was initiated to reduce the number of Chinese in the TAR and the number of Chinese cadres was actually reduced, though by far less than the 85 percent reduction promised by Hu.²⁴ Technical personnel continued to be sent in to Tibet, however.²⁵ Ordinary workers were not encouraged to move to Tibet.²⁶ At the 1984 Second National Forum on Work in Tibet, the movement of workers was facilitated, however, ostensibly as a temporary measure to achieve economic development in Tibet. Forty-three development projects were announced to coincide with the 20th anniversary of the founding of the TAR in 1985; all were contracted to provincial and municipal firms in the Chinese

23 Clarke, "The Movement of Population," 241.

24 According to a Chinese demographer, the number of Han in the TAR was reduced from 92,000 in 1982 to 71,000 in 1985. This figure does not include the PLA, whose numbers were estimated at 100,000 or more. Zhang Tianlu, "Tibet's Population Develops," *Beijing Review*, 17 August 1987, 20. According to an unpublished paper of the Institute of Sociology, Beijing, the number of Chinese cadres was down from 55.4% of the total number of cadres in 1978 to 38.65% in 1987. Cited in Yasheng Huang, "China's Cadre Transfer Policy towards Tibet in the 1980's," in *Modern China*, vol. 21, no. 2, April 1995, 184, at 196.

25 Huang, "China's Cadre Transfer Policy towards Tibet in the 1980's." The author refers to the resumption of the transfer of cadres to remote and border regions after the Third Plenum of the Eleventh Central Committee in Dec. 1978, as cited in selected documents on Personnel Work, Ministry of Personnel, 1991, 72. The transfer coincided with the withdrawal of an equal number of cadres from Tibet, *ibid*, 190.

26 *Ibid*, 190. In 1983, this policy was re-affirmed by the department of Organization and the Ministry of Labour and Personnel: "Selecting and dispatching cadres to Tibet must be handled strictly and should be carried out on the principle that they should be few in number but high in quality. Cadres to be transferred to Tibet must be in the most urgent demand in Tibet; those not in need should be delayed being sent in." According to Department of Organization and Ministry of Personnel, 82% of the cadres transferred performed economic and technical functions. *Ibid*, 192.

interior and were to employ Chinese personnel. An estimated 60,000 Chinese workers associated with these projects arrived in the TAR, primarily in Lhasa, in 1984 and 1985.²⁷ All of the Chinese workers were on temporary contracts, but many eventually remained in the TAR to pursue other economic opportunities. In addition, the simultaneous lifting of restrictions on freedom of movement within the PRC resulted in a rush of petty entrepreneurs to Tibet from adjacent and interior provinces to pursue private economic opportunities associated with the development projects.²⁸

By 1987 the increase in the numbers of Chinese in the TAR had reversed the reductions of the early 1980s. Tibetan opposition to the influx of Chinese was one of the factors behind the demonstrations of 1987, 1988 and 1989. Nevertheless, the policy of "development and opening up," which primarily meant the opening of the TAR to interior Chinese provinces and the influx of large numbers of Chinese, became official after Deng Xiaoping stated in 1987 that the CCP would no longer "judge China's nationalities policies and the Tibet issue against the number of Han people in Tibet."²⁹ Deng added that

Tibet is a region with a sparse population and has a vast expanse of land. The more than 2 million compatriots of the Zang nationality alone are insufficient for construction. There is no harm for the Han people to go and help them. Some

27 Tseten Wangchuk Sharlho, "China's Reforms in Tibet: Issues and Dilemmas," *The Journal of Contemporary China*, vol. 1, no. 1, Fall 1992, 50. Sharlho cites Liu Rui (ed.) *Zhongguo Renkou: Xizang fence [China's Population: Tibet]*, (Beijing, 1988), 153, and lists the numbers of these workers as 28,650 from Sichuan, 4,410 from Gansu, 4,380 from Qinghai, 3,870 from Zhejiang, 2,470 from Anhui, 1,290 from Shanxi, 1,870 from Hunan, 1,860 from Ningxia, 1,850 from Jiangsu, 1,670 from Fujian, 1,540 from Henan, 810 from Hebei, 720 from Hubei, 663 from Shandong and 750 from other provinces or cities. Ibid.

28 Ibid.

29 Cited in "Tibet Article Urges 'Correct' Nationalities Views," *Lhasa, Tibet Daily*, 4 July 1994, in FBIS-CHI-94- 137, 18 July 1994, 77.

more Han people there will be conducive to the development of the local nationality economy. This is not a bad thing.³⁰

Deng's proclamation was described as a "guiding document" on Tibet policy. The implication of the new policy was that the CCP would judge the success of its Tibet policy on whether Tibet was economically developed—without regard to who was doing the developing or who were the beneficiaries. Chinese "skilled personnel" would share in the economic development of Tibet as in any other area of China.³¹

Lhasa was made a "special economic zone" in 1992, leading to an increase in both skilled and unskilled Chinese moving to the TAR. Official statements referred explicitly to increasing migration to Tibet. For instance, in September 1992, Chen Lianchang, executive vice-minister of the Ministry of Personnel, stated that:

All provinces, municipalities and other autonomous regions must unconditionally guarantee the supply of party and

30 Cited in *Xizang Ribao*, 11 August 1995, SWB FE/2411 G/13-17, 18 Sept. 1995. Deng's statement and its implications for Tibet policy were explained in an article in *Tibet Daily* in 1994:

Tibet cannot develop on its own. On the one hand, with the central government's kind attention and economic support, it should carry out some infrastructure projects to create conditions for economic development. On the other hand, it should seek help from fraternal provinces and municipalities in terms of manpower and materials. In the area of manpower, we need to get large numbers of Han comrades into Tibet so that they can impart scientific and technological knowhow, share their scientific management expertise, and help Tibet train scientific, technological, and managerial personnel to speed up its economic development. While Tibet is being helped with its development, no one should unilaterally stress the need to "judge China's nationalities policies and the Tibet issue against the number of Han people in Tibet."

Ni Banggui, "Fostering Correct Views on Nationalities," in FBIS-CHI-94-137, 18 July 1994, 79.

31 The ten-year programme for national economic and social development (1991-2000) and the Eighth five year plan (1991-1995) provided further indications of this policy. "It is necessary to continue to implement the existing policies of supporting the development in minority areas, poor areas, revolutionary base areas and border regions." Report by Li Peng on the 10-year programme, in Summary of World Broadcast (SWB) FE/1031 C1/10, 1991.

government cadres as well as specialized technicians needed by Tibet for its economic construction. In addition, various methods must be adopted, such as drawing up preferential policies, to attract scientists, technologists and students who have graduated from colleges and technical secondary schools from the hinterland to work in Tibet.³²

In the early 1990s the Chinese influx to the Tibetan plateau was increased as infrastructure projects, particularly the improving and upgrading of roads, imported large numbers of Chinese workers. Road checks between provinces were eliminated, allowing Chinese to enter Tibetan autonomous districts of eastern Tibet or the TAR without restrictions.³³ A gold rush in Qinghai and the northern TAR attracted tens of thousands of Chinese while Chinese government gold mining development imported additional thousands. Regulations governing private enterprises in Tibet were relaxed, allowing Chinese to start businesses in Lhasa and other Tibetan towns,³⁴ and loans were made available to Chinese firms for this purpose. Thousands of Chinese from the surrounding provinces flocked to Lhasa to establish shops and

32 Broadcast on Tibet Television, 5 Sept. 1992, in SWB FE/1487 B2/6, 16 Sept. 1992. "We should open Tibet to all countries and regions and open our job market to all fellow countrymen. We should understand that to speed up reform and opening up is conducive to national progress and social development, to unity among nationalities, and to the anti-splittist struggle." Address by Chen Kuiyuan at a TAR Party Committee meeting, July 1992, SWB FE/1447 B2/2, 1992. Gyaltsen Norbu, chairman of the TAR government stated in January 1993 that "[t]o bring in qualified personnel, we must open our door wide and show eagerness in seeking the help of well-qualified personnel, and we should formulate preferential policies to attract qualified personnel and adopt a system that combines organizational appointments with liberal appointments, permanent appointments with mobile appointments, and long-term appointments with short-term appointments, thereby bringing in all types of suitable qualified personnel who are badly needed." *Xizang Ribao*, 21 Jan. 1993, in FBIS-CHI-93-022, 4 Feb. 1993, 57-59.

33 "The Government of the Tibet Autonomous Region has decided to remove all the checkpoints on the highways leading to neighbouring provinces." *Xinhua*, 4 Jan. 1993, in SWB FE/1578 B2/5, 5 Jan. 1993.

34 "Some regulations of the TAR people's government concerning accelerating the development of the individual and privately-owned economic sectors," adopted 27 Nov. 1993, *Xizang Ribao*, 13 Jan. 1994, SWB FE/1914 S2/1, 5 Feb. 1994. See also "Tibet Policies Designed to Attract Chinese Traders," TIN News Update, 5 July 1994; TSG-UK, *New Majority*, 57.

restaurants, engage in trade, or find work on construction sites.³⁵ The new Chinese immigrants' connections with Chinese officials in Tibet and their business connections with the Chinese interior gave them an advantage over Tibetans.

In the summer of 1992, work units in Lhasa, including government, PLA and PAP, were allowed to tear down the exterior walls of their compounds and replace them with shops and market stalls that were then rented to private businesses, mainly Chinese and Chinese Muslim (Hui), with dramatic effect:

An unprecedented market wave swept across Tibet. In Lhasa a metals market was set up on Linguo Road, Beijing Road was changed in to a street of clothes shops and deluxe restaurants and hotels were found on West Beijing Road.... In the June-July period alone, over 500 individual industrial and commercial entrepreneurs were added, almost 10% of the city's total.³⁶

Chinese farmers leased land from Tibetans or acquired land from the Tibetan government or the PLA for greenhouse vegetable farms in the Lhasa valley that supplied the needs of Chinese residents in Lhasa.³⁷ While the government had earlier claimed that the Chinese labour was skilled and temporary, from 1992 a policy had emerged that also encouraged the movement of unskilled non-Tibetans into Tibet.³⁸

At the Third Tibet Work Forum in 1994, the policy of assimilating Tibet in the Chinese economic structure was proclaimed, at least internally. Chinese President Jiang Zemin opened the meeting by saying: "[w]hile paying attention to promoting Tibet's fine traditional culture, it is also necessary to absorb the fine cultures of other nationalities in order to integrate the fine traditional culture with the fruits of modern culture. This will facilitate the development of socialist new culture in Tibet."³⁹

35 Ibid, 99,

36 *Renmin Ribao*, 16 May 1994, SWB FE/2010 G/5-6, 31 May 1994.

37 TSG-UK, *New Majority*, 114-119, citing *Tibet Daily*, 4 Feb. 1994, 22, 23.

38 "In the area of manpower, we need to get large numbers of Han comrades into Tibet." *Xizang Ribao*, 4 July 1994, SWB FE/2052 G/5, 20 July 1994.

39 "Third National Work Conference on Tibet 20-23 July," NCNA, Beijing, 26 July 1994, in FBIS-CHI-94-144, 27 July 1994, 19. The first Tibet Work Forum meeting was in 1980; the second in 1984.

Acknowledging the necessity "to continue to select and assign some cadres of the Han and other ethnic groups in Tibet," he called on all "central departments, ministries and commissions, as well as all provinces, autonomous regions and municipalities" to "do a good job of supporting Tibet in manpower, funds, technology and material resources persistently and unremittingly for a long time to come."⁴⁰ The Forum announced that 62 construction projects would be undertaken to commemorate the 30th anniversary of the TAR in September 1995. The majority of the projects, as in 1984-85, would be contracted to provincial firms that would import their own workers or hire Chinese already in Tibet.⁴¹ An article in *Tibet Daily* justified the importation of Chinese into Tibet as necessary for Tibet's economic development and called for more "special allowances" to Chinese settlers:

We should intensify opening up to various provinces, municipalities, and regions; encourage and support economic entities and individuals in the hinterland to set up enterprises of all kinds in Tibet; earnestly expand economic cooperation and exchanges with the interior with preferential policies and abundant resources; and establish close organic ties between Tibet's and China's economies. ... We should take effective steps to maintain the current ranks of Han cadres and transfer Han and other minority cadres from the hinterland into Tibet. ... We should introduce special allowances, increase cadres' salaries and fringe benefits, and help cadres who come to Tibet solve such problems as housing and schooling and employment for their dependents.⁴²

In the publication *A Golden Bridge Leading Into a New Era*, the Propaganda Committee of the TAR Communist Party summarised the decisions of the Third Tibet Work Forum:

The focal point of the policy of opening the door wider in Tibet should be towards the inner part of the country [interior

40 Xinhua, 26 July 1994, SWB FE/2059 G/3-4, 28 July 1994.

41 Ibid., 24. According to a 1994 article referring to the construction projects in 1984 "[a]ctual construction got underway in early 1984, when some 20,000 construction workers converged on Tibet." Doje Zhandui, "Forty-Three Projects Benefit Tibet," *China's Tibet*, vol. 6, 1994, 12-15.

42 "Tibet to Implement Work Forum Guidelines," Lhasa, *Tibet Daily*, 2 August 1994, in FBIS-CHI-94-159, 17 August 1994, 53.

China]...We should encourage traders, investment, economic units, and individuals to enter our region to run different sorts of enterprises. ... By learning from the experiences of the past we must ...obtain a contingent of cadres from different nationalities who will work in Tibet permanently. ... When assigning cadres from the inner parts to work in Tibet we should be farsighted and strive to have cadres living and working long-term in Tibet. We should enroll students by deciding that their future professional work [will be] in Tibet. Universities in the inner areas should enroll those students at their own expense. The TAR military command and the People's Armed Police should transfer their outstanding officers and soldiers to civilian work when their military service is over. In these ways we should strive to have a permanent contingent of cadres in Tibet. The Central Committee has divided the tasks and responsibilities among other provinces within set time limits to support Tibet with people from all walks of life as we have requested. This is a new strategy corresponding to a new era in which we need to sum up our past experiences and find ways to perfect our work.⁴³

The CCP's new willingness to admit, at least internally, that the cornerstone of Chinese policy in Tibet was colonization was evident in a subsequent article referring to civilian "armies" from various provinces that had taken over different local occupations in Tibet:

Taking advantage of its favourable geographical position, the "Sichuan army" had a head start and moved into Tibet in the early 1980s. On its heels came the "Shaanxi army," "Hunan army," "Zhejiang army," and migrant workers from Qinghai, Gansu, Guizhou, Shandong, Henan and other provinces. For these "inland legions," Tibet is a virgin land. ... In Lhasa today,

⁴³ *A Golden Bridge Leading Into a New Era- Material to Publicise the Spirit of the Third Forum on Work in Tibet*, issued 1 October 1994 by the TAR Communist Party Propaganda Committee, published by the TAR People's Publishing House, translated in TIN Doc. 29 (WJ). Also TIN/Human Rights Watch, *Cutting Off the Serpent's Head*, 154, 167-168. The meaning of this last statement was apparently that each province was to be responsible for sending a certain number of people to Tibet "within set time limits."

the food and beverage industry is the exclusive domain of the "Sichuan army," while the garment industry is divided between the "Sichuan army" and the "Wenzhou legion." The furniture and building construction industries are also dominated by self-employed entrepreneurs and migrant workers from the interior.⁴⁴

From the end of 1994, articles in the Chinese press indicated that the decision to move Chinese to Tibet was being implemented. In December 1994 the Chinese authorities announced that 400 students from China had applied for 100 positions in Tibet, advertised at a nationwide job-fair through the Ministry of Personnel.⁴⁵ In February 1995 China announced that 1,000 "outstanding leading officials and technicians" from inland China were going to be sent to the TAR for five years on a rotation basis⁴⁶ while Sichuan radio announced that the military authorities had started a "transfer trainee programme" for high level military officers in Tibet.⁴⁷ Officials' statements openly referred to the settlement of Chinese in Tibet. For instance, Chen Kuiyuan, Secretary of the TAR CCP, stated that:

All localities should have an open mind and welcome the opening of various restaurants and stores by people from the hinterland. They should particularly encourage development projects which invite the participation of Tibetans. They should not be afraid that people from the hinterland are taking their money or jobs away. Under a socialist market economy, Tibet develops its economy and the Tibetan people learn the skills to earn money when a hinterlander makes money in Tibet.⁴⁸

44 "Tibet Expanding Ties to Inland Provinces," *Beijing Liaowang*, 18 Sept. 1995, in FBIS-CHI-95-210, 31 Oct. 1995, 58.

45 *TIN News*, 20 Feb. 1995. Also Xinhua, 6 June 1995, announcing that the CCP Central Committee's Organization Department and the Ministry of Personnel had decided to send 100 outstanding college graduates of good character "to temper themselves in Tibet." SWB FE/2359 G/13, 19 July 1995.

46 Xinhua, 25 Feb. 1995, SWB FE/2239 S1/5, 28 Feb. 1995.

47 *TIN News*, 20 Feb. 1995.

48 *Tibet Daily*, 28 Nov. 1994, SWB FE/2170 G/10, 5 Dec. 1994.

In May 1995 Gyaltsen Norbu, chairman of the TAR, told the sixth TAR People's Congress that:

Tibet should, first of all, open itself wider to the nation's other areas ... An open mindset, a receptive attitude, a will to share benefits and the creation of beneficial conditions are required to attract businesses and individuals from other provinces to run various economic entities in Tibet. ... While paying attention to training cadres of Tibetan and other minority nationalities, we should adopt practical measures to stabilize the existing contingent of cadres of Han nationality and get qualified personnel to Tibet through various channels and transfer a certain number of skilled workers here.⁴⁹

Cadres' incentives to go to the TAR include higher retirement pensions, various income supplements and priority job assignments for children.⁵⁰ Incentives to non-cadres include economic and job-opportunities, financial incentives with tax relief for entrepreneurs and favourable investment conditions.⁵¹ Chinese immigrants say they can

49 Address of 15 May 1995, *Xizang Ribao*, 8 June 1995, SWB FE/2363 S2/1-16, 24 July 1995.

50 Huang, "China's Cadre Transfer Policy towards Tibet in the 1980's," 187-189. Tibet is in the highest "salary zone." Income supplements for cadres in Tibet can be as high as 71.82 % of the original salary. Li Li, Professor at the Institute of Sociology of Beijing University, in a 1990 study, refers consistently to a "mandatory migration policy." He stated, *inter alia*, that "in spite of the scale of migration in Tibet and certain stable migration centres, such migration is based on a rigid administrative system and mandatory principles and against the background of a weak, dependent economy and the migrants mainly consist of government officials. ... In the past 30 years, the Central Government and the local government in Tibet, which designed the policy of mandatory migration, made a tremendous investment in and sent a large number of people to Tibet." Li Li, "An Analysis of the Migration of the Tibetan Population in 1986 and 1987" in *Chinese Journal of Population Science*, 1990. The ICJ is aware of only one reported case of someone punished for refusing to work in Tibet: vice-mayor Zhao Fuqing of Ziaoshan in Zhejiang province, who refused to go to Tibet despite repeated attempts at persuasion by his superiors. As a result he was stripped both of his post as vice-mayor and his seat on the city's communist party committee. Reported by Reuter, Shanghai, 29 May 1995.

51 Clarke, "The Movement of Population," 248.

earn up to five times as much in Tibet as they can in China.⁵² More relaxed birth planning regulations may provide another incentive for Chinese families to resettle in Tibet.⁵³ In 1994 a government official stated that "the growing interest in jobs in Tibet and other border areas" amongst students had arisen because "graduates in these regions enjoy better pay, quicker promotion and more welfare compared with those working in inland cities."⁵⁴ The Chinese press has reported that millions of Chinese change their personal status from Han to minority status, which may be due in part to the legal benefits of minority status, particularly in the area of family planning and education.⁵⁵

The most thoroughly-researched analysis of China's population transfer policies calculated its results as follows:

Two patterns of migration have been revealed - in eastern Tibet (Kham and Amdo), the process of the Chinese influx has in some places been one of expansion into Tibetan areas and the appropriation of Tibetan land for agriculture, along with the the introduction of new economic frameworks. In central and western Tibet (U-Tsang) [roughly equivalent to the TAR], the pattern has been one of urbanisation with Chinese towns

52 Hans Vriens, "Lhasa Lost," *Far Eastern Economic Review*, 29 May 1997. Sheila Tefft, "China Tightens Its Grip on Tibet In Attempt to Rule Feisty Region," *The Christian Science Monitor*, 29 April 1996, 7 (describing Chinese engineer who "agreed to go to Tibet because he was unemployed and would receive more than double the pay he was earning in Beijing").

53 In some prefectures, the right to have a second child is extended to all "Han farmers, herdsmen and market gardeners" in the region; Chinese cadres who live in a "high, cold and remote mountainous area" for over eight years are also allowed to have two children, and Chinese farmers who live in "extremely cold and remote mountainous areas" can have three children like rural Tibetans. Planned Birth Procedure in the Ganze Tibetan Autonomous Prefecture, issued by the Ganze Tibetan Autonomous Prefecture Planned Birth Committee, 20 July 1989, translated in TIN Doc. 7(XB). See TIN, "Survey of Birth Control Policies in Tibet," Background Briefing Paper, Mar. 1994, 12.

54 Xinhua, 14 Dec. 1994, cited in *TIN News*, 20 Feb. 1995.

55 Cited in Arthur Rosett, "Legal Structures for Special Treatment of Minorities in the People's Republic of China" in 66 *Notre Dame Law Rev.* 1503 (1991). An individual's nationality status is recorded as part of the household registration system, maintained by the police. The extent to which the phenomenon of status change exists in Tibet is unknown.

being created in the middle of a still-Tibetan countryside and the sinicisation of Tibetan urban centres. These towns are the focus of current strategies for economic growth, and reflect development for the benefit of the Chinese rather than the Tibetan population.⁵⁶

According to the 1990 Chinese census there were 44,945 Chinese in Lhasa municipality, or about 12% of a total Lhasa population of 375,968.⁵⁷ The total number of Chinese in the TAR was given as 80,837 (3.7 % of the total population), compared to a Tibetan population of 2.196 million. The census theoretically included Chinese with permanent residence permits for the TAR as well as those with permits in other areas who had been in the TAR for more than a year, but excluded army personnel. The census recorded the total Tibetan population of all the areas with Tibetan autonomous status as 4.34 million (4.59 million Tibetans in all of the PRC). The non-Tibetan population in the same area was given as 1.5 million.⁵⁸ With slight corrections for growth, these figures would give a 1994 estimate for all Tibetan autonomous areas of 23% Chinese, 66.8% Tibetan and 10.2% other non-Chinese.⁵⁹ In 1996 TAR officials stated that the percentage of Han people had dropped to 3.3 of the total TAR population in 1995.⁶⁰

56 TSG-UK, *New Majority*, 158. This survey was based on two years of travel in Tibet, targeted fieldwork in various locales and an analysis of written sources. *Ibid.*, 101.

57 *Tabulations on China's Nationalities (Data of 1990 Population Census)*, Beijing, 1994 and *China Statistical Yearbook 1992* (Beijing, 1993).

58 *Ibid.* This last figure excludes the city of Xining and other non-autonomous status areas of Qinghai.

59 Steven D. Marshall & Susette Ternent Cooke, *Tibet Outside the TAR: Control, Exploitation and Assimilation. Development with Chinese Characteristics* (Washington: The Alliance for Research in Tibet, 1997), 2564-65. (Published as a CD-ROM).

60 "China denies population transfer into Tibet," *Xinhua*, 12 June 1997. Raidi was quoted as referring to the results of a recent sample survey which was said to include all persons living in Tibet for more than six months. "From this we can see that the ratio of Han people to Tibet's population has shown an annual tendency towards decline." In 1993, a delegation of European Community ambassadors which visited the TAR found that "[o]fficial figures that Han Chinese make up 3% of the population are understated." *Summary Report of the EC Delegation*, in *TIN Reports from Tibet, 1992-1993*, 88.

The Tibetan government-in-exile puts the number of Chinese living in the TAR at 1,400,000, for Qinghai at 4,545,086 and for the remaining Tibetan areas at 2,000,000, for a total Chinese population of 7,945,000 living in traditionally Tibetan areas.⁶¹

A well-researched and credible estimate puts the Chinese population in Lhasa, including the Hui (muslims), at 110,000 and in the TAR at 250,000-300,000, including military and police and the "floating" population.⁶² The same report puts the total number of Chinese in all Tibetan autonomous areas as 2.5 to 3 million.⁶³ According to these estimates Chinese and Hui now account for 35 to 39 percent of the total population of formerly ethnic Tibet (as compared to 6 to 10% in 1950) and for 10 to 12 percent of the population of the TAR (compared to 0.1% in 1950).⁶⁴

The discrepancy between official Chinese figures and independent estimates might partly be explained by the failure of the Chinese census to record the non-registered "floating" Chinese population in Tibet (those whose *hukou*, or household registration, remained in an interior province and who have not been in Tibet for more than one year or who for some other reason have not been registered in Tibet)⁶⁵ as well as PLA and PAP personnel.⁶⁶ Only a change in registered permanent residence is considered an act of migration. Those who work elsewhere without change in their registered permanent residence are counted as part of the

61 Tibetan government-in-exile figures were given to the ICJ in Dharamsala in Dec. 1996. These numbers include the city of Xining which had some 50,000 Chinese in 1949 and some 700,000 non-Tibetans in 1990.

62 TSG-UK, *New Majority*, 123, 153.

63 *Ibid.*, 154.

64 *Ibid.*, 158. Percentiles determined by the ICJ in consultation with Anders Andersen, researcher for *New Majority*.

65 Floating population often describes rural migrants drifting to the cities in search of work opportunities. In the Chinese media, the term is used to refer to unregulated and unregistered population movements.

66 The normal troop garrison in the TAR was described in a 1990 official document as around 50,000. "Troops Move Into Tibet," *TIN News Update*, 24 April 1994. The actual number is believed to be about 80-100,000. Estimate by Robbie Barnett, Bundestag Hearing on Tibet, 19 June 1995.

floating population,⁶⁷ which has been estimated at 100,000 for Lhasa alone.⁶⁸ China has also been accused of hiding the actual number of Chinese in Tibet by not requiring many of the Chinese floating population to register and by "deliberate misinformation and the withholding of information."⁶⁹

Where Chinese have settled, they tend to dominate commerce. Field research revealed, for instance, that 756 of 1,061 individual businesses in old Lhasa's main market hall were Chinese or Hui, as were 1,357 of 1,458 salespersons in Lhasa's vegetable markets.⁷⁰ The same phenomenon is occurring in other towns around the TAR. The centre of Thetang (1990 pop. 15,474), for instance, has changed completely since 1987. Chinese own 277 of the 397 businesses there.⁷¹ Permanent Chinese settlement in the surrounding rural areas is negligible, however. According to a research team which visited all the Tibetan Autonomous Prefectures outside of the TAR, "in few cases do Tibetans hold a share of commercial and trading activity proportional to their numbers or patronage....[R]arely was a Tibetan majority seen in local commerce in a county or prefectural seat. Even in locations as climatically inhospitable as Lithang or remote as Yushu, Chinese or Hui shopowners make up a large if not dominant part of the commercial scene. In genuinely Tibetan towns Tibetan-operated businesses generally accounted for between one

67 According to a cadre in the Ministry of Public Security in charge of household registration. *Renmin Ribao*, SWB FE/1332 B2/6, 18 March 1992. Chinese officials have stated that most Chinese seen in Tibet are part of the floating population. *Xinhua*, 22 July 1995, SWB FE/2365 G/7, 26 July 1995.

68 According to a Document of the Lhasa Municipal Planned Birth Leading Municipal Planned Birth Document Number 5, May 1994, translated in TIN Doc. 20(WP), Dec. 1994, put the official number of the floating population in Lhasa at 150,000-170,000. In March 1992, Ngapo Ngawang Jigme, the Vice-Chairman of the Standing Committee of the National People's Congress, stated that: "The Tibetan people cannot be separated from the support and assistance of the fraternal Han people. However, a large number of labourers, including peddlers and hawkers, have now flowed into Tibet, with a total of at least 100,000 in Lhasa alone. This has created a lot of trouble for public order." *Renmin Ribao*, 22 March 1992, in FBIS-CHI-89-056:21.

69 TSG-UK, *New Majority*, 166.

70 *Ibid.*, 110, 115.

71 *Ibid.*, 128. The percentage on the outskirts is probably greater.

quarter and one third of private businesses seen, with a few cases nearer one half."⁷²

Virtually all Tibetans interviewed by the ICJ voiced strong concerns about the negative impact of the increased presence of Chinese in Tibet, in the fields of employment, housing, education, and about various forms of social degeneration. Informants describe growing unemployment among Tibetans, fear of job loss and incidents of lay-offs of Tibetans in favour of Chinese.⁷³ Tibetans complain about the transformation of Lhasa into a Chinese town through increased building construction, and the shortage of Tibetan housing.⁷⁴ Additionally, Tibetans have expressed anxiety about the rise in crime, prostitution, and other forms of social degradation and social marginalisation and linked these developments directly to the influx of Chinese into Tibet and the unwillingness of the authorities to control such behaviour. One Tibetan expressed what appears to be a widely-held view: "Alcohol, cigarettes, gambling and time-wasting has been made part of society. The Chinese never try to stop or regulate them. Discos and bars, karaoke and restaurants and brothels can be found in all sections of Lhasa, Chamdo and Shigatse. The owners are Chinese."⁷⁵ Other reports from rural areas in Tibet confirm the marginalisation of Tibetans and mounting tension between Tibetans

72 Steven D. Marshall & Susette Terner Cooke, *Tibet Outside the TAR: Control, Exploitation and Assimilation. Development with Chinese Characteristics* (Washington: The Alliance for Research in Tibet, 1997), 106-107. (Published as a CD-ROM).

73 See also TIN Docs. 3.6 (YA), 22/23 Nov. 1992; 17 (XF), 17 June 1992; TIN Doc. 3.3 (YA), 22/23 Nov. 1992. One Tibetan stated that "[w]e don't want Chinese people any more. It is already overpopulated here and this is leading to unemployment, shortage of accommodation, price rises in essential commodities and shortage of places in schools." TIN Doc. 5(XC), May 1992.

74 "Everywhere, houses are being constructed for Chinese in great haste; this can be seen by anyone who has eyes." TIN Doc. 2(XR), August 1992. "About 80% of the occupants of the new buildings are Chinese, including the PLA and the PAP." TIN Doc 8(XR), 7 Sept. 1992. See section on Cultural Heritage, *infra*.

75 TIN Doc. 5(YE), 26 Feb. 1993. The per capita consumption of liquor in the TAR rose from 28.5 to 45.9 kg. from 1988 to 1991. Bai Tao (ed.) *Xizang nongye jiegou yu liangshi luntong* [The Agricultural Structure and the Circulation of Grains], (Beijing, 1994), 134. See also "Tibetan Views of Immigration into Central Tibet, 1992-93," TIN Background Briefing Paper, October 1993, 19.

and Chinese settlers as a result.⁷⁶ In May 1995, a Tibetan underground group circulated leaflets calling for China to control the migration of Chinese into Tibet.⁷⁷ The statement alleged increased levels of poverty for Tibetans and preferential treatment of Chinese miners.

The Chinese government has consistently rejected allegations that it is practising a policy of population transfer into Tibet. In response to the 1991 Sub-Commission resolution on Tibet, China asserted that "the Chinese government has never formulated and implemented the plan of emigration to Tibet."⁷⁸ Yet Chinese policy statements and other evidence analysed in this section confirm that the increasing influx of Chinese into Tibetan areas in the PRC results from government policies and programmes to transfer in Chinese, particularly cadres and professionals, and to encourage voluntary migration of ordinary Chinese. Prior to 1980 the movement to Tibet was both limited in scope and categories of immigrants. Over the past decade and particularly after 1992, administrative, economic and infrastructural measures have facilitated and further encouraged the migration of Chinese, including less skilled workers and petty traders, to Tibet. The Third Work Forum in 1994 officially confirmed this policy.

76 *TIN News Review* No. 23, 23-24.

77 *TIN Doc.* 29 (WQ), May 1995.

78 "Human Rights Protection in Tibet," Annex to the reply of the Permanent Representative of China to the United Nations in Geneva, in *Question of the Violation of Human Rights and Fundamental Freedoms in any Part of the World, with Particular Reference to Colonial and Other Dependent Countries and Territories: Situation in Tibet*, Note by the Secretary-General submitted pursuant to Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/10, UN Doc. E/CN.4/1992/37, at 35. The statement added that "The State, in line of the need of construction of Tibet, has elected a few personnel of Han and other nationalities to serve in Tibet. Most of them are professional and technical personnel with high-level education and skills. Together with the Tibetan people, they have made contributions to the economic and cultural construction in Tibet. They are welcomed by the Tibetan people. (Ibid., para. 42) In recent years, as Tibet has implemented the economic policy of opening and reform, some Han and Hui people have gone to Tibet to do business or as craftsmen. These people are always on the move and limited in number. They have not emigrated to Tibet" (Ibid, para. 43). See also *Xinhua* in SWB FE/1046 B2/4, 1991; *Renmin Ribao* in SWB FE/1716 B2/9, 16 June 1993.

Population transfer, defined as "the movement of people as a consequence of political and/or economic processes in which the State government or State-authorized agencies participate,"⁷⁹ has been condemned as "*prima facie* unlawful and violat[ive of] a number of rights affirmed in human rights and humanitarian law for both transferred and receiving populations."⁸⁰ The UN Special Rapporteur on Population Transfer, has concluded that "the disparate elements of international human rights law indicate the developing right of individuals and groups not to be subject to population transfer, either as participants or recipients. The cumulative rules of existing and emerging human rights and humanitarian law are consistent with a legal prohibition against most known forms of population transfer."⁸¹ It is the view of the ICJ that China's policy of population transfer into Tibet, implemented against the wishes of the Tibetan people, falls within this definition.⁸² Moreover, China's attempt to alter the demographic composition of traditionally Tibetan areas through its population transfer policy is incompatible with any meaningful exercise of autonomy by Tibetans in the PRC.

B. Tibet's Cultural Heritage

"Democratic reforms" in eastern Tibet in 1956 were accompanied by cultural destruction, which began with the depopulation, looting and

79 *Preliminary Report of the Special Rapporteurs on Population Transfer of the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities*, UN Doc. E/CN.4/Sub.2/1993/17, 6. . See also *First Progress Report of the UN Special Rapporteur on Population Transfer*, UN Doc. E/CN.4/Sub.2/1994/18.

80 UN Sub-Commission res. 1990/17; 1991/28; 1992/28, 1993/34. See also C. Meindersma, "Legal Issues surrounding Population Transfers in Conflict Situations," *Netherlands Int'l. Law Rev.*, vol. XLI, 1994, 31-84.

81 UN Doc. E/CN.4/Sub.2/1993/17, 79.

82 In 1996 the UN Committee on the Elimination of Racial Discrimination expressed its concern over reports "concerning incentives granted to members of the Han nationality to settle in autonomous areas as this may result in substantial changes in the demographic composition and in the character of the local society of those areas" and called on China to review policies "that may result in a substantial alteration in the demographic composition of autonomous areas." *Concluding Observations of the Committee on the Elimination of Racial Discrimination*, 20 August 1996, UN Doc. forthcoming.

destruction of monasteries. At the same time, the lifestyles of Tibetan villagers and nomads were disrupted by being subjected to "socialist transformation," during which they were herded into collectives leading to uprisings in Kham and Amdo. After the 1959 revolt, the process of depopulation, looting and destruction of monasteries began in central Tibet. Tibetan monasteries contained the vast majority of Tibetan material as well as intellectual culture. Virtually all of this was destroyed by Chinese "democratic reforms" after the 1959 revolt. By the beginning of the Cultural Revolution in 1966, the basis of Tibet's unique culture was already destroyed by the destruction of the monastic system. The Cultural Revolution merely continued that process with the physical destruction of most of Tibet's unique religious buildings and monuments and an assault on the cultural identity of individual Tibetans.

More than two thousand Tibetan monasteries and religious monuments in the TAR and in eastern Tibet were physically destroyed during the Cultural Revolution. Buddhist texts, the basis of much of Tibet's intellectual culture, were burned or defiled. Material manifestations of Tibetan culture virtually disappeared, except for those 13 monasteries the Chinese state had decided to preserve as "ancient relics of culture." Monastic buildings that were not destroyed were in many cases desecrated by being used as storage or toilet facilities or for soldiers.

Although some Tibetans were Red Guards and participated in both the destruction of Tibetan cultural monuments and indoctrination of Tibetans in Chinese socialist ideology, the majority of Tibetans cannot be said to have willingly destroyed all that made Tibet unique and to have subjected themselves to remoulding in the Chinese socialist pattern.⁸³ By the end of the Cultural Revolution, Tibet's physical and material culture was visibly eradicated. It has been estimated that 95% of Tibet's cultural heritage was destroyed.⁸⁴ All that had made Tibet distinct had been attacked in a systematic process of national and cultural extermination intended to eradicate any and all evidence of Tibet as a separate national or cultural entity. Tibetans were not only not allowed to preserve their culture but were required to falsely malign and denigrate Tibetan traditional culture to satisfy Chinese ideological and political

83 Smith, *Tibetan Nation*, 541.

84 Heather Stoddard, "Tibetan Publications and National Identity," in Barnett and Akiner (eds.), *Reform and Resistance in Tibet*, (London: Hurst & Co. 1994), 121 at 131.

imperatives. Tibetans had no control over the education of their own children, who were taught to believe that traditional Tibetan culture was barbarism. Tibetans had no freedom of thought or political expression and were not even allowed to openly seek solace in their own religion.

Since 1979 the Chinese government has allowed some greater cultural freedom in Tibet. During his 1980 visit to Tibet, Hu Yaobang told cadres in Lhasa that "it is erroneous to denigrate" Tibetan civilization, adding that "it merits research and development."⁸⁵ A number of surviving monasteries have been partially restored at government expense and the government has allowed Tibetans to rebuild many monasteries and religious monuments at their own expense. Some thousands of metal statues have been returned to Tibet from China.⁸⁶ Tibetans were once again allowed to celebrate some of their religious and secular festivals. The government sponsors dance and drama groups and has built six art and cultural centres in Tibetan cities and 25 county facilities. The state sponsors "nearly 5,000 professional cultural workers, with Tibetans accounting for 90 percent of the total."⁸⁷

Cultural activities and rites are, however, purged of any nationalist content and in many cases altered with Chinese content and styles. For instance, in August 1994 monks of Drepung and the Potala were for the first time allowed to hang the large Tibetan *thangkas* (paintings) as part of the Shoton festival, one of the most celebrated religious festivals. However, attendance at the secular part of the festival was limited to Tibetans officially screened, and monks and others participating in the ceremony "had been told to practice for one month, without any choice."⁸⁸ Cultural and historical publications have multiplied,⁸⁹ but are purged of any indications that Tibet was ever separate from China in the past and are heavily weighted toward accounts of Tibet's historical

85 Stoddard, "Tibetan Publications and National Identity," 134.

86 Rinbur Trulku, *Search for Jowo Mikyoe Dorjee* (Dharamsala: Office of Information and International Relations, 1988).

87 "Tibet—Its Ownership and Human Rights Situation," 37.

88 Letter from Lhasa describing the event, TIN Doc. 12 (WE), August 1994. The Tibetan describes that when the monks and dancers appeared, "from the loudspeaker a young Chinese lady described them as patriots and said that their actions in front of the leaders represent their grateful feeling towards the warm care the party and government have taken of the Tibetan people."

89 See Chapter V, C, 4 on Freedom of Expression, *infra*.

relations with China, negative aspects of pre-liberation Tibet, positive aspects of post-liberation Tibet and Chinese accounts of Tibet's "liberation." Tibetan cultural workers are said to have "created a number of literary and artistic works and programs which have a strong national flavour and reflect features of our age."⁹⁰

Nevertheless, Tibet's cultural landscape remains irrevocably altered. Only a small percentage of monasteries and religious monuments and a few of the buildings of each monastery have been restored or rebuilt. Some completely new monasteries have been erected where none existed before 1949. Tibetan secular architecture has also suffered from confiscation and destruction of property after 1959 and Chinese development projects since. Lhasa and other Tibetan towns have been overwhelmed by new Chinese construction to the extent that the Tibetan visual character is becoming lost. The current area of Lhasa is 50 square kilometres, twenty times larger than in 1950, with nearly all the new construction being for Chinese administrators, police, armed police, PLA and settlers. The Tibetan part of Lhasa surrounding the Jokhang temple is now less than one square kilometre, only 2 percent of the total city area.⁹¹

Chinese modernization plans since 1979 have resulted in the destruction of much of surviving traditional Tibetan secular architecture. Said one scholar of Tibetan culture:

Traditional Tibetan architecture, with its sombre, timeless beauty - and durability - is one of the major outward expressions of a unique civilisation. The superb part of the Tibetan heritage is now being progressively replaced by faceless, monotonous modern structures, which are high cost and deteriorate rapidly in the extreme climate.⁹²

Traditional Tibetan houses of Lhasa's old city have been destroyed to make way for "modern" housing that offers few of the advantages of traditional architecture and practically no improvement in amenities such as water supply, sanitation facilities or electricity.⁹³ More than half of the

90 "Tibet—Its Ownership and Human Rights Situation," 37.

91 Scott Leckie, *Destruction by Design: Housing Rights Violations in Tibet* (Utrecht: Centre on Housing Rights and Evictions, 1994), 89.

92 Haether Stoddard, *The City of Lhasa*, Special Report. August 1993 (unpublished), 3.

93 *Ibid.*, 107, 134.

Tibetan houses around Lhasa's Barkhor surrounding the Jokhang temple, representing some of Tibet's most distinctive secular architecture, were demolished between 1989 and 1993.⁹⁴ Since November 1992, "the accelerated destruction of old and perfectly valid buildings is alarming."⁹⁵ In 1994-95, the Chinese government demolished the historic *Shol* area beneath the Potala Palace and evicted its residents to create a plaza and park with Chinese shops for tourists, including a disco. "The effect," said one Lhasa resident, "has been to drive Tibetan residents who cannot afford the exorbitant new rents to the outskirts of Lhasa, where there is little opportunity for business, and to populate what were once historical landmarks with Chinese entrepreneurs who monopolize the tourist trade."⁹⁶ Between January and June 1997, an estimated twenty-eight historic buildings were destroyed in Lhasa. In June 1997 the Tromsikhang Palace built in the 17th century by the Sixth Dalai Lama in the and regarded as one of the most important historic buildings remaining in Lhasa was demolished.⁹⁷

Many of the evictions and demolitions have been carried out under the TAR CCP's Lhasa Municipal Plan, which blueprints the reconstruction of Lhasa between 1980-2000 and indicates that the old

94 *Ibid.*, 108. The Chinese government is able to demolish these Tibetan houses with little resistance since many were the property of Tibetan aristocrats confiscated by the government after 1959 and therefore not the property of the current inhabitants.

95 Stoddard, *The City of Lhasa*, 3.

96 TIN Doc. 21 Sept. 1993. In April 1996, Xinhua reported that 2,500 families in Lhasa had moved into new homes, under a housing project the goal of which is to "renovate old housing in the old urban area." The article was ambiguous as to whether people were moved into their renovated old homes or new homes in a different location.

97 "Historic Lhasa Palace Demolition," *TIN News Update*, 18 June 1997.

98 CCP Central Committee Document No. 31-1980, TIN Doc. 13(WZ). The preface to the Plan explains its objective as "the need to construct a modern socialist city with local national characteristics. Lhasa must therefore be built up in a gradual and rational way conforming to the following criteria: well-structured, full of national characteristics, with lots of trees to provide a congenial environment, etc. to create a city that is relatively perfect, beneficial for production, convenient for daily life, rich, civilized and clean." Preface to Lhasa Municipal Planning Maps, Planning Department, 1980.

Tibetan neighbourhoods of Lhasa will no longer exist by the year 2000.⁹⁸ One commentator held that:

If the Development Plan is implemented, the Tibetan quarter of Lhasa will effectively cease to exist. In the Plan's drawing for the year 2000, the old city has been consumed by an amorphous mass of modern Chinese buildings with "Tibetan characteristics." Only the Jokhang and Ramoche temples, Tibet's oldest places of worship and the religious centre of the country, and a handful of historic homes have been earmarked for preservation as "cultural relics" - in keeping with the mayor's intention "to leave a few examples of traditional Tibetan architecture, here and there, as a souvenir."⁹⁹

Many Tibetans strongly resist these "improvements." One Tibetan resident from Lhasa, in an appeal to the United Nations, asserted that "The government ignored the opinions of the people who have been living in the traditional buildings.... According to the traditional Tibetan residential pattern, three to four rooms are essential to set up one household. However, the new buildings reduced this to between one and half rooms and three rooms per household."¹⁰⁰ The demolitions and urban construction are also interpreted as a means to simply eradicate another aspect of Tibet's distinct material culture, portrayed as backward and steeped in religion as opposed to modern Chinese construction.

99 Scott Leckie, "Housing as Social Control in Tibet," *The Ecologist*, vol. 25, no. 1 Jan/Feb. 1995, 10, referring to a report by Heather Stoddard *A Report on the Protection of Tibetan Cultural Heritage* (Paris, 1992), 6. In April 1995, Xinhua recorded the progress made in the "renovation" of the old Tibetan area in Lhasa, stating, *inter alia*, that "an old part of downtown Lhasa with historic value has taken on a new look while retaining the traditional style thanks to renovation measures. ... Despite its [the old city's] value, however, it was worn down with the passage of time and lack of adequate care, with 90 per cent of its buildings believed to be in "danger of falling down," SWB FE/2281 G/11, 19 April 1995.

100 TIN Doc. 1(WE), 12 July 1994. Many Tibetans suspect that the Chinese motives for the demolition of Tibetan housing in the old city of Lhasa are political, to provide roads wide enough for police surveillance and movement, to punish opponents of the regime by denying them new housing and to reward collaborators, to destroy Tibetan social and political cohesiveness and to infiltrate informers into new housing. Leckie, *Destruction by Design*, 104, 112, 117, 118.

As one Chinese news report noted:

Before liberation in 1959, Tibet was under the control of religion, a city dotted with numerous large and small temples, especially the Potala Palace, the largest in Tibet. Yet, living conditions were mostly slums crowded into certain sections of the city. After the 1960s, construction work was carried out in an organized way in the city. In the 1970s, the city build a service section in the centre, an industrial district in the north and a transportation centre in the west part of the city, giving it a contoured form. A large shelterbelt was also built around the city, which, at that time, only covered 18 sq. km., with a population of 100,000. Since 1984, the central government has made more efforts to improve the city's infrastructure, and the city has expanded to cover over 50 sq. km., with a population of over 300,000.¹⁰¹

Plans have recently been announced to increase Lhasa's urban population from 140,000 to 400,000 by the year 2015.¹⁰² At the same time, rural areas in Tibet, previously relatively free from Chinese colonization, saw the construction of many new exclusively Chinese settlements. These settlements were provided with modern facilities and utilities while nearby Tibetan areas remained without.¹⁰³ In June 1996 the TAR government announced that it would build an additional seven county-cities and speed up the construction of small cities and towns.¹⁰⁴

In September 1996, the Lhasa Municipal Government issued a regulation stipulating that from that day onwards "all projects for rebuilding of structures in dangerous condition," must obtain the prior permission of the Municipal government. It adds that "during reconstruction or restoration, the work must respect the restoration of the old as old, and must maintain the original aspect."¹⁰⁵

101 Xinhua, Beijing, 24 Jan. 1995, in SWB FE/2213 S1/12.

102 Xinhua, Beijing, 28 May 1996, in SWB FEW/0438 WG/2, 5 June 1996.

103 Leckie, *Destruction by Design*, 143.

104 SWB FEW/0438 WG/2, 5 June 1996.

105 *Reinforcement of Regulations concerning the Reconstruction of Buildings in Dangerous Condition in the Old City*, Official Document No. 59, issued by the Lhasa Municipal Government, 10 Sept. 1996. TIN Doc. 45 (VH).

However, in 1997, the demolition of old and historic buildings has continued unabated. Since January 1997, 28 historic buildings in the old city are reported to have been demolished.¹⁰⁶ The Tromsikhang Palace, designated as due for "strict preservation as a cultural relic" by the Municipal Development Plan for the Barkhor area was raised to the ground in June.¹⁰⁷ Other buildings of great historic significance, such as the Tibetan historian Shakapba's house (the facade of which remained intact with minor damage), and the Durgye King's Palace, were also demolished in the summer of 1997.

Traditional Tibetan Medicine

Traditional Tibetan medicine has been transformed as a result of Chinese policy towards expressions of "traditional" culture.¹⁰⁸ The traditional Tibetan healing system, incorporating elementary Buddhist conceptions, has in some ways been converted into a "modern," rational Tibetan medical system, devoid of some of its traditional healing practices.

From 1951 to 1959 Tibetan medicine was "tolerated but ignored," and the Mentsikhang, the secular medical college, and the traditional monastic Chagpori College of Tibetan Medicine in Lhasa continued to operate. After the destruction of Chagpori in 1959, the Mentsikhang was brought under direct control of the Chinese health bureaucracy and became the only institution for the training and practice, as well as hospital facility, of Tibetan medicine.¹⁰⁹ Under the social and land reforms, private practice of Tibetan medicine was eradicated and many local traditions of Tibetan medicine died out.¹¹⁰

106 TIN Update, 19 June 1997

107 *ibid.*

108 See Craig R. Janes, "The Transformations of Tibetan Medicine," *Medical Anthropology Quarterly*, vol. 9, no. 1, March 1995.

109 The length of training, and the use of standardized curricula in classroom settings were dictated by the Chinese government and represented a diversion from the traditional Tibetan training methods.

110 *Ibid.*, 15-19.

During the Cultural Revolution, Tibetan medicine came under heavy attack and sat on the verge of extinction by 1978. Many Tibetan physicians were labeled class enemies, singled out for particularly harsh treatment and sent to labour camps and forbidden to practice medicine.¹¹¹ By 1973, Tibetan medicine had virtually disappeared. In the later seventies, some combined training of western and Tibetan medicine was given but Tibetan physicians agree that those trained between 1974-1980 are not "qualified to practice Tibetan medicine."¹¹²

Hu Yaobang's visit to Tibet¹¹³ and the ensuing reform policies were reflected in financial and political support for the development of Tibetan medicine. Training programs in Tibetan medicine emerged in a number of prefectural capitals and some religious elements were re-introduced into instruction. By 1985 Tibetan medicine had expanded and emerged as an official component of government health bureaucracy.¹¹⁴ However, this also meant more state control over the practice and training of Tibetan medicine.

Training in Tibetan medicine was made to conform to the standard medical training methods used in China and included courses in politics and biomedicine. The substance and presentation of Tibetan medicine has undergone fundamental changes. For instance, "modern" Tibetan medicine is presented according to categories of illnesses - like western medicine - rather than on the basis of humoral theory, central to traditional Tibetan medical theory.¹¹⁵ While traditional Tibetan medicine is more widely available now to the Tibetan populace, the director of the Mentsikhang recognised, under the current policies, "the real possibility that Tibetan medicine will become biomedically dominated, impersonal, and fully materialist in its perspective."¹¹⁶

111 *Ibid.*, 19.

112 *Ibid.*, 20. An estimated 10-20% of these doctors make up the current staff of county and prefecture health facilities.

113 See Chapter on History, *supra*.

114 The Mentsikhang was upgraded to a sub-bureau of the TAR Health Bureau. Janes, "The Transformations of Tibetan Medicine," 21-22.

115 *Ibid.*, 26. Tibetan medicine starts from the premise that illness results from an imbalance in three humours: lung (wind), bile and phlegm.

116 Cited in *ibid.*, 28. Janes lamented that Tibetan medicine was "on the verge of becoming a shallow herbalism." *Ibid.*, 32.

C. Language

The Tibetan oral and written language forms one of the pillars of Tibetan culture and identity. While regional divergences exist in the spoken language, all Tibetans share a common Tibetan script.¹¹⁷

Tibetans were guaranteed the "freedom to develop their own spoken and written languages" in the 17-Point Agreement and subsequently in the PRC Constitution and laws on national regional autonomy. Under the PRC Constitution, "people of all nationalities have the freedom to use and develop their own spoken and written languages."¹¹⁸ Moreover, "[i]n performing their functions, the organs of self-government of the national autonomous areas, ... employ the spoken and written language or languages in common use in the locality."¹¹⁹

The Tibetan language was declared the official language of government in the TAR in July 1988. In March that year Wu Jinghua, then TAR Party Secretary, announced:

due to leftist interference, study and use of Tibetan in Tibet has suffered a great loss now we have brought order out of chaos. We should seriously tackle the work of studying and using Tibetan so as to truly make it the dominant language in Tibet and to embody the party policy on minority-nationality written and spoken languages and the policy of autonomy for nationality regions.¹²⁰

The TAR established a "Leading Committee on Work in Spoken and Written Tibetan" to further the development of Tibetan language. In

117 As a Tibetan scholar wrote in November 1995, "written and spoken language, customs and habits are the pivot of the common national psyche. What we must realize with certainty is the fact that the existence of a Nationality among a host of other Nationalities is due mainly to the fact that they share in common their language, customs and habits, territorial space and a common psyche." *Causes of Instability in Tibet and Policies and Strategies to Counter Them*, an unpublished scholarly paper circulated by the authorities in Tibet for internal discussion, translated in TIN Doc. 12 (VJ), 24 Nov. 1995; also TIN Doc. 21(WX-PT1).

118 Art. 4, 1982 Constitution.

119 Art. 121, 1982 Constitution.

120 In Lhasa Tibet Regional Service, 13 March 1988, in FBIS, 14 March 1988; also see comments of Panchen Lama, 9 Feb. 1988, in FBIS, 10 Dec. 88.

March 1989 the TAR Congress promulgated the "Regulations on the Study, Use and Development of the Tibetan Language," which stipulated that Tibetans must speak in Tibetan at important meetings; that all official seals, official documents and signboards should be written both in Tibetan and Chinese; that proficiency in Tibetan should be one of the qualifications for government employment and promotion; that by the end of 1990 all official communications should be "primarily" in Tibetan; that the public should have the right to use Tibetan in judicial, procuratorial and police proceedings; that by 1993 all teaching in junior middle schools should be in Tibetan and by 1997 most lessons in senior secondary education and technical schools should be in Tibetan, and that "after the year 2000," "most" lectures in tertiary institutions should "gradually" be in Tibetan.¹²¹ The use and development of the Tibetan language was officially justified as a necessary prerequisite for the dissemination of official information, to achieve economic progress and safeguard "the unity of the motherland."¹²²

121 Yang Xinhua and Duo Ji "Tibet enacts law to strengthen teaching in and the use of Tibetan language," Xinhua, reporting from Hong Kong, 16 March 1989, in FBIS, 21-3-1989 and Xinhua, reporting from Lhasa, 17 March 1989, in FBIS 17-3-1989.

122 At the second Plenary Session of the Sixth Meeting of the TAR CPPCC, Phunstok Tsering underscored the importance of using the Tibetan language for propaganda purposes and commented that "The Central Party's instructions couldn't reach the vast masses in Tibet because all the documents are only written in Chinese. So it is important to develop Tibetan spoken and written language, especially in agricultural and pastoral areas." 11th Bulletin, May 1994, in TIN Doc. 25(WD). On 16 March 1993, TAR Deputy Party Secretary Tenzin, told the TAR Leading Committee on Spoken and Written Tibetan that "we have no alternative but to aim at translating scientific technological knowledge and the advanced experiences of the fraternal nationalities into the Tibetan language, and then spreading this amongst the people, especially amongst the broad masses of peasants and herders to improve the Tibetan nationality's education level. If the issue is not properly sorted out, then the construction of Tibet's four modernizations will meet an obstacle." He referred to State Council's Document No. 32 which emphasises the "important effect that the work in nationality languages have in strengthening the solidarity of the nationalities and safeguarding the unity of the motherland," published in *Dakpo, the Owner*, Issue 2, 1993, 13-18, TAR General Trade Union, cited in Catriona Bass, *Education in Tibet - An Analysis of Policy and Implementation Since 1950* (London: TIN, forthcoming 1998), 66.

Chinese language, however, remains the predominant language in government, administration, commerce, education and daily life. Officials acknowledge that the Tibetan language is not used for official purposes.¹²³ Ordinary Tibetans have expressed concern that "under the Chinese regime, virtually all the administration, be it that of offices, factories, schools, and even the buying of grain from a shop, has to be done in the Chinese language."¹²⁴

According to a research team which visited all the Tibetan Autonomous Regions outside of the TAR:

Not a single government bookshop was visited in any Tibetan site which did not offer substantially more Chinese titles than Tibetan. Dartsedo, the capital of the most populous TAP, was the worst and had almost no Tibetan language books for sale. Xinhua [government] bookshops in Gyalthang, Chabcha, Machen and Yushu had only meagre supplies of Tibetan language books of any description. Somewhat better selections of Tibetan language material were available in Tsö and Regong, and in an occasional county town (e.g. Sangchu). The best government shop was in Barkham, where between one quarter and one third of the titles were Tibetan language. Tibetan patronage in that shop was active. Private bookshops were usually better than government shops where they were seen (e.g. Sangchu, Regong and Kubum), but they are scarce.

123 "In recent years, the government at all levels did not attach much importance to using the Tibetan colloquial and written language. The work on the Tibetan colloquial and written language must be strengthened and the Law of Regional National Autonomy and the Party's Nationality Policy must be seriously implemented." Fourth Plenary Session of the Sixth CPPCC of TAR, fifth Summary report, compiled by the Secretariat of the Conference, 15 May 1996, translated in TIN Doc. 14 (VF). Also Tin Doc. 9(YR), *Lhasa City CPPCC Bulletin*, vol. 1, 16 July 1993, noting that oral and written Tibetan was not used in most departments, especially the lower levels of the administration.

124 Appeal from Tibet in reply to the Chinese White Paper, TIN Doc. 9(XV). Another appeal dated 10 Jan. 1996 states that cadres at official meetings could only speak Chinese, even if they were all Tibetan; and that Chinese language was the medium of instruction in schools and a necessary condition for employment. Some people have forgotten their Tibetan, the document states. TIN Doc. 11(WT).

Tibetan reading material was decidedly more plentiful in Amdo.¹²⁵

The marginalisation of Tibetan language in contemporary Tibetan society has been identified as one of the causes of instability in the area.¹²⁶ In December 1988, a group of Lhasa University students demonstrated to demand greater use of the Tibetan language in education and government.¹²⁷ The non-use of Tibetan leads many Tibetans to feel that the Tibetan language is somehow useless and backward and not fitted to the requirements of modern life. One critical essay published by a Tibetan in Tibet, states:

The main causes of Tibetans not knowing their own written and spoken language are the disregard and non-implementation of the Constitution provision which stipulates that all Nationalities have the freedom to use and develop their own language; and the erroneous view being promoted that Tibetan is a useless language. The fact that Tibetans do not know their own written and spoken language, which they have used as a common language over centuries, is not only a matter of national disgrace but also a fundamental issue that affects our national destiny and fortune. ... The Tibetan language is recognized as one of the highly developed languages of the world, adequate for dealing with the social sciences, the natural sciences and many other sciences or for translation into Tibetan and from other languages.¹²⁸

125 Steven D. Marshall & Susette Ternent Cooke, *Tibet Outside the TAR: Control, Exploitation and Assimilation. Development with Chinese Characteristics* (Washington: The Alliance for Research in Tibet, 1997), 144-145. (Published as a CD-ROM).

126 "The root cause of instability in Tibet is that the Tibetan oral and written language can't have its own standing to play its part in society." TIN Doc. 21 (WX). The author of this statement, a Tibetan intellectual and Party Member, has published a collection of essays, entitled "Causes of Instability in Tibet and Policies and Strategies to Counter Them," as a petition to the Party leadership, in which he discusses the causes of instability in Tibet in eight chapters. "The failure to accord the deserved status to the Tibetan language and realize its potential is a prime factor for accentuating the Nationalities conflict," he observes. Translated in TIN Doc.12 (VJ).

127 TIN *Reported Demonstrations 1987-1994*.

128 TIN Doc. 12(VJ), Dec. 1996.

Since 1985 Tibetan has been the medium of instruction in most primary schools for Tibetans. Chinese is taught as a second language. However, graduation exams are conducted in Chinese and sufficiency in Chinese writing is crucial to passing the entrance exam to middle school. In secondary schools, students are required to study in Chinese, placing the Tibetan student at a natural disadvantage. Children not fluent in Chinese enter separate classes in a non-Chinese "stream" in secondary education.¹²⁹ Non-Chinese streams do not have access to English language courses. Since virtually all subjects at the university level are taught in Chinese, and all employment except for a few jobs in Tibetan cultural departments is dependent upon Chinese language fluency, Tibetans are under pressure to pursue the Chinese language course of instruction. This causes a major dilemma for Tibetan schoolchildren. As a former teacher of English at Lhasa University commented:

Either the child becomes so adept at Chinese that his/her own language is pushed into a very poor second place, thus reinforcing the supposition that the Tibetan language (and thus Tibetan identity) is inferior to Chinese language (and thus Chinese identity); or, the child's Tibetan remains his/her better language [t]hus reducing him/her to an academically inferior position in the class. Non-mastery of Chinese is equated with stupidity and, within the school system, means non-mastery of math., physics, geography and so on.¹³⁰

In 1989 at the initiation of the Panchen Lama, the Lhasa Experimental School Project was established in three secondary schools, where all subjects were taught in Tibetan. In 1995 students who had attended this program passed their senior school exams with markedly higher scores than the Tibetan students in Chinese-medium secondary schools. In its 1995 report, the TAR Education Committee called for implementation of the project in rural areas.¹³¹

129 See Chapter V, B. 1, on the Right to Education, *infra*.

130 Jane Peak, *Discrimination in Education in Lhasa* (unpublished paper), June 1989.

131 Also "Report on the Work Affair of Experimental Teaching in Tibetan Language at Middle Schools," TAR Education Committee, Fourth Volume 1995. TIN Doc. 1vk P6.

Currently, a number of Tibetan language teachers are in prison. Samdrup Tsering, sentenced for counter-revolutionary incitement, was a research scholar at the Qinghai Minority's Institute in Xining. He had published several articles and poems in a Tibetan quarterly literary journal and had also received official permission to establish a school where Tibetan, Mongolian and English were taught. After his arrest the school was closed down.¹³² Konchog Tenzin, a teacher who worked for the Chinese government for 17 years and had propagated the importance of the study of Tibetan language, was arrested in November 1994 on suspicion of having put up independence posters.¹³³

In late 1995 the TAR CCP was rumoured to have decided that the use of Tibetan language is linked to the pro-independence movement, overriding its previous stand that Tibetan is essential for development and for the dissemination of government policies.¹³⁴ As one Tibetan scholar noted:

Since people who know the language are most likely to be involved in [nationalist] activity, the government thinks of language in a political sense ... they think the Tibetan language was a tool to maintain the feudal slave-system. ... Also many people think that Tibetan is just a language for Buddhism. Thus, it is associated with superstition. Language and religion look like the same thing and the government does not want to promote Tibetan language.¹³⁵

Signs of this policy shift are already evident. The Tibetan-medium classes initiated by the Panchen Lama were dissolved at the end of 1996 despite encouraging result. (Officially because of lack of funds and qualified teachers, although 500 teachers had been trained to serve this

132 TIN Doc. 1(WK); *TIN Background Briefing Paper No. 26*, Dec. 1995), 56-57.

133 *Ibid.*, 50.

134 A number of secret meetings were reportedly held in September 1995, at which the Tibetan language was defined as a vehicle of Tibetan culture, and Tibetan culture and religion were denounced as components of separatism. David Karmazine, "Death of a Language," unpublished, 1996. See also "Policy Shift in Teaching in Tibet," *TIN News Update*, 7 May 1997.

135 Paper by Palden Nyima for the Northwest Teacher Training School in Lanzhou, cited in "Student Unease at Language Policies in Schools, University," *TIN News Update*, 31 Dec. 1996, 4.

project.) At the same time, projects to provide bilingual education starting from grade one at the primary school level were announced.¹³⁶

In December 1996 authorities announced that the course on the history of Tibet offered in the Tibetan Language Department of the Tibet University, would be taught in Chinese instead of Tibetan. Tibetan students came close to staging a demonstration in protest.¹³⁷ The Tibetan head of the university was replaced in 1996 by a Chinese official who reportedly does not speak Tibetan.¹³⁸

In April 1997 a top Tibetan official reportedly told the visiting U.S. Ambassador to China that the use of Tibetan as the sole language for education in primary schools would end.¹³⁹ The TAR Agriculture Department closed its translation section, suggesting that future documents might be issued only in Chinese. The Leading Committee on Spoken and Written Tibetan was rumoured to be disbanded or downgraded.¹⁴⁰

The UN Convention of the Child, ratified by the PRC, provides:

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and

136 "Student Unease as Language Policies in Schools, University," *TIN News Update*, 31 Dec. 1996. The TAR Education Committee in 1995 identified the need to "set up a curriculum for primary education which is taught in both Tibetan and Chinese, with emphasis on the Tibetan Language," *TIN Doc.* 1vk P6.

137 "Student Unease..." *TIN News Update*, 31 Dec. 1996. Virtually all other courses at the university - including such subjects as Tibetan art - are already taught in Chinese.

138 *Ibid.* The powerful head of Tibet's Education Commission and a Vice-President of the university, Yang Chaoji, is also Chinese.

139 "Policy Shift in Teaching in Tibet," *TIN News Update*, 6 May 1997. Chinese officials denied the report. Agence France-Press, "China denies education clampdown in Tibet." 7 May 1997.

140 *Ibid.*

practice his or her own religion, or to use his or her own language.¹⁴¹

The Tibetan language is being reduced to a folk language unable to satisfy the requirements of "modern" life. The predominance of Chinese language in education, commerce, and administration, compelling Tibetans to master Chinese, is resulting in the marginalisation of the Tibetan language.

D. Development

The 1986 UN Declaration on the Right to Development provides that the "right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized. The human right to development also implies the full realization of the right of peoples to self-determination, which includes ... the exercise of their inalienable right to full sovereignty over all their natural wealth and resources."¹⁴² The Declaration formulates the "right and the duty" of States "to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom" and obliges States to "encourage popular participation in all spheres as an important factor in development."¹⁴³ The right to development was reaffirmed in the Vienna Declaration as "a universal and inalienable right and an integral part of fundamental human rights law."¹⁴⁴

141 Art. 30 CRC.

142 Art. 1, Declaration on the Right to Development, GA Res. 41/128, 4 Dec. 1986.

143 Arts. 2(3), 8(2), *ibid.*

144 Part I, para. 10, Vienna Declaration and Program of Action, UN Doc. A/CONF.157/23, 12 July 1993. The right to development as an "integral part of fundamental human rights" was also reiterated in the Copenhagen Declaration on Social Development, *Report of the World Summit for Social Development*, UN Doc. A/CONF.166/9, 19 April 1995, Commitment 1(n).

The International Commission of Jurists is concerned that the pattern of development of Tibet, while materially beneficial in its transfer to Tibet of modern technologies such as health care, transport and communications, has marginalized Tibetans, and excluded them from effective participation, which is an intrinsic aspect of development. The livelihood of most Tibetans, who live in small rural communities, has been neglected, receiving little of the Chinese investment. This report finds that the relative poverty of Tibetans, the exploitation of Tibetan resources for China's development and the settlement of considerable numbers of Chinese in new urban centres impact negatively on Tibetan communities.

1950s

The 17 Point Agreement of May 1951 stressed that: "In matters related to various reforms in Tibet, there will be no compulsion on the part of the central authorities. The local government of Tibet should carry out reforms of its own accord."¹⁴⁵ Until 1959 the result was that: "no truly basic changes were introduced in the patterns of Tibetan socioeconomic relations ... most of the effect was informal and indirect."¹⁴⁶

Beijing's central planners made little allocation of funds for Tibetan development and Tibet was not included in the First Five Year Plan announced for China. From 1951 to 1959 China's investment was in the primary infrastructure of control, in a land which lacked motorable roads. The initial priority was on extending across Tibet a network of roads usable by military vehicles, with fuel depots, road maintenance crews and garrisons to secure both the external borders and the principal Tibetan towns. Inflation accelerated on some items as high as 800%,¹⁴⁷ "the result of the influx of a large number of PLA soldiers and civilian Han cadres with money and the money that was dispensed to the peasantry in the form of grants and loans."¹⁴⁸

145 *Concerning the Question of Tibet* (Beijing: Foreign Languages Publishing House, 1959), 15.

146 George Ginsburg, Michael Mathos, *Communist China's Impact on Tibet: The First Decade* (Far Eastern Survey 29, 1960), 123.

147 *Hungarians in Tibet: The Genesis of Revolt*, Eastern Europe 8, 1958 #8, 18.

148 A Tom Grunfeld *The Making of Modern Tibet* (Armonk: M.E. Sharpe, 1996), 114.

1960s-1970s

After crushing the 1959 revolt, Chinese premier Zhou En-lai, in a lengthy speech to the National People's Congress, delivered China's developmental promise: "With the defeat of the rebellion of the Tibetan reactionaries, the Tibetan people are now in a position to shake off the fetters of serfdom and realize their desire for democratic autonomy and social progress. With the help of other nationalities of the country, they will build the Tibetan Plateau step by step into a true paradise on earth."¹⁴⁹

Early Chinese reports emphasized progress on all fronts, as work was collectivized and labour intensive methods were applied to intensifying agricultural production by digging irrigation ditches, reclaiming waste land, opening up new land,¹⁵⁰ introducing modern farm tools and deeper plowing of the soil.¹⁵¹ Reservoirs were built, trees planted, double cropping begun, new crops such as wheat introduced, as well as vegetables and the breeding of pigs.¹⁵² Stocking rates on the grasslands

149 *Concerning the Question...*, 64 - 65. The speech is printed in full in :*Communist China 1955 - 1959: Policy Documents with Analysis*, Centre for International Affairs and East Asia Research Centre, Cambridge, Harvard University Press, 1965, 523. The authoritative *Red Flag* was as forthright: "There is no doubt that once the Tibetan people are rid of their many shackles, they will succeed in creating an earthly paradise on the Tibetan plateau. The Tibetan nationality, like other brother nationalities of our country, will become an advanced nationality with a prosperous economy, thriving culture and happy life. A brilliant future of boundless promise has unfolded before the Tibetan people."

150 "The cultivated land might possibly be increased by fifty percent or even perhaps doubled, but only by expenditure of labor, in drainage, irrigation and other forms of reclamation." Anna Louise Strong, *When Serfs Stood Up*, 300-310.

151 "We also urge deep ploughing with metal ploughshares, but we do not know how far they [Tibetans] will accept this, for the old belief was that iron poisons the soil." Lhasa Experimental Farm manager Chang Chun-tien, in Anna Louise Strong, *When Serfs Stood Up*, 299.

152 Ginsburgs and Mathos, *Communist China and Tibet: the First Dozen Years*, 148 - 156.

were pushed to the limit. Between 1958 and 1964 the size of the national herd grew by 36%.¹⁵³

Development in the 1960s and 1970s occurred when it was Chinese policy that "politics is in command," with expertise devalued and destruction of everything old as the highest priority.¹⁵⁴ Chinese publications depicted tractors, combine harvesters, irrigation,¹⁵⁵ chemical pest control,¹⁵⁶ the introduction of fish meal as cattle food,¹⁵⁷ establishment of apple orchards and tea gardens, and "free medical services for the common people."¹⁵⁸

The biggest constraint on development projects in Tibet was a factor unfamiliar to Chinese planners: a shortage of labour. Chinese authorities crystallized this into an aphorism:

"There are three great lacks in Tibet: fuel, communication, and people. And there were three abundances before. Poverty, oppression, and the terror of the supernatural. The three latter caused the former."¹⁵⁹

The roads built in the 1960's made intensive use of Tibetan labourers undergoing reform-through-labor resulting from their classification as reactionaries in the class war. "It is true that the roads themselves are insufficient to promote major industrial development. The lack of fuel supplies in Tibet meant that in every convoy of ten trucks, three were needed to carry fuel. From the beginning, it was clear to Chinese planners

153 *Tibet: No Longer Mediaeval*, Beijing, Foreign Languages Press, 1981, 75. "For Tibet's future prosperity, the rational development of the pastures will pay off even better than the reform in the agricultural areas." Strong, *When Serfs Stood Up*, 302.

154 Richard C. Kraus, *Class Conflict In Chinese Socialism* (New York: Columbia University Press, 1981).

155 *Tibet: No Longer Mediaeval* (Beijing: Foreign Languages Press, 1981), 83.

156 "The killing of pests, no longer tabooed as sacrilegious, is done with insecticides and by other scientific methods." *Ibid*, 83.

157 "In some communes, weak or sick cattle are strengthened by feeding them a soup made from fish meal -impossible in old Tibet where fish, though abundant in rivers and lakes, were worshipped as water gods and hence seldom caught." *Ibid*, 83 - 84.

158 *Ibid*, 43.

159 *Ibid*, 9.

that only a railroad could bring Tibet firmly into the industrial age¹⁶⁰ The roads did, however, cut prices of commodities Tibet traditionally imports from China, especially tea, which is a staple food.¹⁶¹ After the 1962 war between China and India, Tibet's trade with south Asia was curtailed, and the road access to China facilitated Tibet's dependence on the Chinese economy. The only railroad into Tibet serves the extraction of Tibetan oil and gas for Chinese industry. It terminates in far northern Tibet at Gormu (Golmud). Extension of the railroad to the more productive and populated centers of Tibet has long been proposed by Chinese planners,¹⁶² most recently in October 1994,¹⁶³ when the cost was put at 20,000 million yuan, a sum greater than the cumulative Chinese central outlays on Tibet from 1950. to 1993.¹⁶⁴ Unlike the TAR, such massive sums are available for Qinghai, where profitable returns on investment are assured.¹⁶⁵

As the Chinese population grew, Tibet rapidly lost its customary self sufficiency in staple grains, and became an importer of considerable quantities. "In the 28 years between 1955 and 1983, 82 per cent of the merchandise sold in Tibet was imported. In 1983 alone the figure was 94.12 per cent."¹⁶⁶ "Attempts to change the nomads to sedentary farmers failed. Efforts to coax Tibetans away from their staple of barley to winter wheat also failed. (This wheat was unsuited to Tibet's soil as it depleted the soil's essential nutrients at a far greater rate than did the native

160 Grunfeld, *The Making of Modern Tibet*, 122.

161 Ibid, 121.

162 "A railroad is therefore projected from Sining to Lhasa. Nobody will even guess just when it will come...but everyone expects it sometime within five years" Strong, *When Serfs Stood Up*, 305. Strong states that Lhasa Experimental Farm manager Chang told Tibetan peasants tractors could not be transported into Tibet: "Until there was a railroad to Lhasa, for it was too costly to bring tractors over a thousand miles by road." Ibid, 297.

163 *China Announces Construction of Railway to Tibet*, Tibet Environment and Development News #16, 1994, 1-3.

164 Xiaoqiang Wang, Nanfeng Bai, *Poverty of Plenty* (New York: St Martin's Press, 1991), 67-76.

165 "Massive resource development will soon begin in northwest China's Qaidam (Tsaidam) Basin, with at least 35 billion yuan to be poured into the project over the next 15 years." Xinhau, Beijing, 8 October 1995 BBC/SWB/FEW/0405/WG/1, 11 October 1995.

166 Wang, *Poverty of Plenty*, 76.

barley- resulting in rapidly diminishing outputs after some initially huge harvests)."¹⁶⁷

The First Work Forum - 1980

By 1980 Party leaders were ready to concede that their efforts in Tibet had been counterproductive. "Excessive capital investment was used without regard to actual situations or the availability of supplies, leading to poor results and even heavy losses."¹⁶⁸ A 1981 official publication for foreign consumption was even more explicit: "The main problem in developing Tibet's industry is that some of the handicrafts have been neglected while certain industries which have no source of raw materials have been established."¹⁶⁹ The biggest constraint was the lack of electricity.

In order to create the first integrated developmental strategy for Tibet, the CCP convened the First Work Forum on Tibet in 1980. China's Communist party Secretary Hu Yaobang made a remarkably frank self-criticism: "Our present situation is less than wonderful because the Tibetan people's lives have not been much improved. There are some improvements in some parts, but in general, Tibetans still live in relative poverty. In some areas the living standards have even gone down. ..."¹⁷⁰

The self-criticism of other Chinese leaders was also far reaching: attacking the "mechanical implementation of policies ... the forced planting of wheat, the setting of unreasonably high targets for production, and state purchases all leading to people having difficulty in their living."¹⁷¹ The mistakes of the past, all attributed to the disgraced Cultural Revolution included: "striking blows at minority peoples and

167 Grunfeld, *The Making of Modern Tibet*, 217.

168 Weihai Li, *The Road of Liberation of the Tibetan Nationality-Commemorating the 30th Anniversary of the Signing of the Agreement on Measures for the Peaceful Liberation of Xizang*, Radio Beijing, 24 May 1981, translated in FBIS OW241709, 27 May 1981.

169 *Tibet: No Longer Mediaeval* (Beijing: Foreign Languages Press, 1981), 102.

170 Cited in Robert Barnett & Shirin Akiner eds, *Resistance and Reform in Tibet* (Bloomington: Indiana University Press, 1994), 288.

171 Li *The Road of Liberation of the Tibetan Nationality-Commemorating the 30th Anniversary of the signing of the Agreement on Measures for the Peaceful Liberation of Xizang*, Q2.

their cadres as if they were class enemies.”¹⁷² The persecution of Tibetan cadres for their Tibetan loyalties impacted negatively on development, as cadres had been selected for their ability to be change agents, persuading their local communities to embrace the agenda of development.¹⁷³

Beijing backed its willingness to try anew to foster development by injecting more capital, on the expectation that industry would grow, including the new tertiary industry of tourism. Central subsidies grew, equaled, then exceeded the total value of all production in Tibet by farmers, herders, secondary and tertiary industry.¹⁷⁴ However, barley output was not increased,¹⁷⁵ and development remained restricted to a few enclaves with little observable multiplier effect.

State owned enterprises in Tibet failed to generate significant output, and their accumulated losses accelerated dramatically.¹⁷⁶ The state enterprises which acquired, marketed and distributed Tibetan grain ceased making a financial surplus after 1965, and after 1979 annual losses which had been under two million yuan a year rapidly grew to 5 million yuan a year by 1983.¹⁷⁷ Despite a theoretically diminished role for the

172 “Is the National Question Essentially a Class Question?” Renmin Ribao, translated in Beijing Review 34, 25 August 1980, 17-22.

173 Elisabeth Croll, The Negotiation of Knowledge and Ignorance in China’s Development Strategy, 161 - 178 in Mark Hobart ed, *An Anthropological Critique of Development* (London: Routledge, 1993). Elisabeth Croll, *Heaven to Earth: Images and Experiences of Development in China* (London: Routledge, 1994), 116 - 134. An American commentator wrote hopefully in 1981: “Two-thirds of the Chinese cadres are being sent back to China and their functions turned over to Tibetans. All Chinese who remain in Tibet must learn the language. Private business, private property, private ownership, private farming and animal husbandry have been restored. Taxes are being remitted in an effort to restore the economy. Ill-advised schemes to grow rice and wheat in Tibet’s high altitudes have been abandoned and Tibet has been given back to the yak, the sheep and the goat China’s mistakes in Tibet have been openly acknowledged. See, Harrison Salisbury, Preface, 14-15 in Ngapo Ngawang Jigmei, *Tibet* (New York: McGraw Hill, 1981).

174 Wang and Bai, *Poverty of Plenty*, 74 - 76.

175 Grunfeld, *The Making of Modern Tibet*, 173 - 176. *Xizang Shehui Jingji Tongji Nianjian* [Tibet Yearbook and Economic and Social Statistics] annual.

176 Wang and Bai, *Poverty of Plenty*, 144.

177 *Ibid.*, 144 - Fig 6.1 Revenues of industrial enterprises and the transportation, commercial and grain sectors in Tibet.

state in controlling the grain trade, the state sector did not wither away and continued to payroll large numbers of Chinese, including their retired colleagues receiving pensions. "As in China, the implementation of the system in Tibet is in the hands of local officials, who are representatives of an administrative structure that is a legacy of the collective period. These officials are responsible for seeing that quotas are met. They also obtain their own livelihood from the producers that they administer. In addition to state purchases, they receive 'taxes' in the form of payment in kind for their own upkeep -meat, butter etc. The potential for corruption and the abuse of power is an intrinsic element in the administrative structure."¹⁷⁸

Transportation was another sector which failed to thrive, as the ongoing failure of industry meant there was little to load into empty trucks leaving Tibet, to return with grain, fuel and almost anything required in Tibet which was factory made. The losses of the state transportation enterprise accumulated since beginning to lose money in 1963, and by 1983 were 2 to 3 million yuan per year.¹⁷⁹ Industry still failed to develop. Industrial sales in 1983 earned 12.32 million yuan, contributing 1.8% to Tibet's total output, while the costs of maintaining a largely Chinese industrial workforce in Tibet, and other costs of industry, exceeded revenue by 1.96 million yuan.¹⁸⁰

The 1982 census revealed marked inequality across Tibet. Census data showed that those Tibetan counties developing fastest, with highest incomes and/or highest industrial employment, were the intensively logged regions of Kham (west Sichuan).¹⁸¹

178 Ronald Schwartz, *The Reforms Revisited: The Implementation of Chinese Economic Policy and the Future of Rural Producers in Tibet*, paper presented to the 7th seminar of the International Association for Tibetan Studies, Australia, 1995, 37-8.

179 Ibid.

180 Ibid.

181 *Population Atlas of China*, (Hong Kong: Oxford University Press, 1987), 194-5 and 200-201. *The National Economic Atlas of China*, (Hong Kong: Oxford University Press, 1994) shows the industrial output of these counties to be dominated by logging, 298.

Second Work Forum - 1984

By 1984 a Second Work Forum again drew together senior Party leaders and representatives of all ministries operating in Tibet, to try once more to focus on economic growth. The targets of the 1980 First Work Forum had not been met. The authoritative *Beijing Review* reported that "since 1980 living standards had not improved much."¹⁸² A recent assessment concludes: "it is most likely that the average Tibetan continued to consume the same amount of food or only slightly more after 1950 as before. ... Chinese officials have recently been candid about the shortages in agricultural output in Tibet. *Renmin Ribao* reported that 'no marked improvement had been brought about in the Tibetan people's livelihood' since at least the years of the GPCR (Cultural Revolution). Yin Fatang, head of the CCP in Tibet, has been quoted as having said 'the greatest reality in Xizang was its poverty.'.... In sum, it is probably safe to say that for the average Tibetan peasant, living in a small village, the availability of food has increased only slightly since 1950."¹⁸³

In response the State Council in Beijing sent two macroeconomists to Tibet who recommended turning to the "small is beautiful" approach and adopting appropriate technology which Tibet might find more digestible.¹⁸⁴

The Second Work Forum identified the political importance of development: "The Chinese government believed a conspicuous increase in the standard of living and a noticeable decrease in restrictions on Tibetan culture and religion would win more adherents to the idea that Tibet is better off remaining a part of the Chinese state."¹⁸⁵ Again, Beijing was willing to finance ongoing deficits. The subsidies soon reached one billion yuan a year. Throughout, China's logic has been consistent: "Expanding Tibet's economy is not a mere economic issue, but a major political issue that has a vital bearing on Tibet's social stability and progress. This work not only helps Tibet, but is also related directly to the struggle against the Dalai Lama's splittist attempts."¹⁸⁶

182 Zhiguo An, *Tibet Carries Out New Policies*, *Beijing Review* 27, 1984, 4-5.

183 Grunfeld, *Making of Modern Tibet*, 174-177 and 293.

184 Wang and Bai's, *Poverty of Plenty*, is the fruit of that research.

185 Grunfeld, *The Making of Modern Tibet*, 225.

186 Communist Party Politburo member Li Ruihan, chairing a meeting in Beijing on 16 April 1997 on accelerated economic growth in TAR. BBC/SWB/FE/2897 S1/1-2, 19 April 1997.

"The First Work Forum decollectivized agriculture and stopped state taxes, which, along with the return of small private entrepreneurship, brought an immediate increase in prosperity due to higher incomes but a decrease in output due to the abandonment of modern techniques such as the use of fertilizer, the sales of which plummeted 74 per cent from 1979 to 1986. The Second Work Forum was called largely to deal with this problem."¹⁸⁷ Collectively organized growing of fodder crops, building of animal shelters, fencing off of tree shelter belts, harvesting and storage of hay had been imposed by command and quota. Once compulsion was removed, there was no new form of social organization, such as the contracted responsibility system of China, to ensure veterinary care was maintained, farm machinery was repaired and its use shared. The new initiatives failed to generate rates of return on investment.

The Second Forum acknowledged the absence of most basic infrastructure of modernity in Tibet, and approved a range of construction projects, to be financed by Beijing. Few of the 43 capital construction projects resulting from the Second Work Forum were expected to become productive profit centers. Even though the macroeconomists, in *Poverty of Plenty*, warned of a slide into further dependency, Beijing was willing to risk making the investments deemed necessary to create the preconditions for development. Construction of tourist hotels, sports stadiums, telecommunications networks were among the priorities. So too was transport, as not one highway was sealed, except for a short stretch between Lhasa and its airport. The urban spread of metropolitan Lhasa was constrained by a shortage of electricity, especially during the dry, cold winters, when water to drive turbines was low and demand high. Deep geothermal heat sources were tapped but were insufficient. Not until 1997 did electricity supply to Lhasa increase, due to an expensive project using one of the most sacred of Tibetan freshwater lakes to generate hydroelectricity.

Chinese policy exhorted farmers to enter the cash economy and produce for market, but their experience of doing so was that the state procured their produce at prices the farmers had no control over. The reforms allowed Tibetan farmers to reduce their production of winter wheat, China's preferred crop, and revert to their customary barley. However, the 43 large-scale development projects in Tibet required

¹⁸⁷ Grunfeld, *The Making of Modern Tibet*, 226.

sending more than 60,000 Chinese workers to undertake the construction work.¹⁸⁸ The necessity of annually trucking in tens of thousands of tons of grain grew greater.

Plans to exploit Tibetan minerals were slow to grow, in the absence of transport infrastructure adequate for bulk handling, a chronic shortage of capital for long term investment, long supply lines to industrial users, absence of local energy supplies for local processing, and the absence of local consumers enabling output to achieve economies of scale. On paper both the hydropower potential and the likely reserves of minerals made Tibet seem attractive,¹⁸⁹ and the minerals sector the likeliest long term source of revenue which might at last end the dependence on Beijing. However, the long haul transport of minerals was uneconomic, and within economic short haul distances there were no customers. The same applied to Tibet's agricultural surpluses.

Third Work Forum - 1994

The 1994 Third Work Forum on Tibet attracted the highest Party leaders. By this time there had been a high level of sustained capital investment in urban infrastructure. The 43 projects begun in 1984 were complete, and a further round of 62 projects were announced. Again, their focus was on preconditions for development led by industrial growth. There was little for education, primary health care, targeted poverty alleviation or welfare, as these were no longer matters for which Beijing was primarily responsible.¹⁹⁰

Concerns over poverty of Tibetans were expressed internally. In May 1994 CPPCC members pointed out that as a result of the relaxation of price controls "the number who normally rely on our relief funds has increased, and many people are now in poverty."¹⁹¹ Others pointed out

188 *New Majority*, 97.

189 Wanlun Huang ed., *A General Introduction to Tibetan Economy* (Lhasa: Tibetan People's Publishing House, 1986).

190 Included in the 62 was the construction or renovation of five middle schools, three health institutions, and a Party training school for cadres. *China's Tibet* #1, 1996, 7-9.

191 Second Plenary Session of the People's Political Consultative Conference of the TAR, Conference Bulletin, issue 2, 14 May 1994, TIN Doc. 16(WD).

that: "The masses in the three eastern counties of Nagchu prefecture have reached a situation where not only have the people relying on relief funds fallen into dire straits in increasing numbers, but the number of new people who have fallen into poverty has also increased. The proportion of the population relying on relief funds in Sog county was over 40%. Amongst them were 4,446 people from 649 families who had recently fallen into poverty. They had run out of grain and were in danger of starving."¹⁹² In July 1994 Yin Kesheng, governor of Qinghai, reported that "over one million peasants in the province are still below the breadline."¹⁹³

In 1994 local officials reported that 20% of the total population in Tibet, "the poorest region in China," was living below the poverty line and earmarked financial assistance for the "economic development of the poor farming and pastoral areas" in order to eliminate poverty.¹⁹⁴

Poverty levels

As stated above, China acknowledges that many Tibetans live below the poverty line, and it attributes this to the poverty inherent in backwardness and remoteness.¹⁹⁵ One of the most senior Tibetan officials of the TAR gives the 1997 poverty figure as 300,000 Tibetans, spread across 18 counties, whose incomes are below the 1997 poverty line of 650 yuan (US\$80) income per year.¹⁹⁶ In 1995 the figure was 480,000 people. In Qinghai, China defined 1,190,00 people as poor in 1993, and 676,000 in 1996, 26.4% and 15.0% of Qinghai's population respectively.¹⁹⁷ The above average poverty level found in Tibet is actually attributed to the low level of human capital formation among Tibetans.

192 Ibid.

193 Report on Xining Radio, 5 June 1994, *TIN News Review*, 8 Nov. 1994.

194 Xinhua, 26 Nov. 1994, FBIS-CHI-94-229, 29 Nov. 1994.

195 Outline of the Tibet Autonomous Region's Five-Year Plan for Economic and Social Development and Its Long-Term Target for 2010, approved by the fourth session of the Sixth Regional People's Congress on 24th May 1996, published in Chinese in Xizang Ribao, Lhasa, 7 June 1996, English translation by BBC Monitoring Service. BBC/SWB/FE/2688/S1/1-28 12 August 1996.

196 Tsereng, Assistant Director, TAR Economic Commission, AFP, 4 June 1997.

197 Xinhua, Beijing 10 April 1997. BBC/SWB/FE/2890 S1/2.

On the basis of China's definition of poverty as an income of US 60 cents a day, China claims poverty in Tibet, and throughout China, will have disappeared by 2000.¹⁹⁸ However the World Bank, after examining the actual purchasing power of poor Chinese, concluded that: "China is much poorer than the international community had realized... Because average income is now lower than previously thought, the number of people below the international (\$1 a day) poverty standard -at about 350 million- is more than triple the previous estimate."¹⁹⁹ Using international standards, the number of poor in the TAR rises from China's figure of 20.7 % of TAR population²⁰⁰ to over 70%, whose consumption spending is under 2600 yuan a year, or \$1 a day at 1994 exchange rates.²⁰¹

China's strategy for alleviating poverty is economic growth rather than programs specifically targeting the poor. There is a modest state funded poverty alleviation program for the 58 million people officially

198 While acknowledging that poverty exists, China does not follow standard definitions of poverty accepted worldwide, causing distortions on the true level of poverty. The world definition is 67% higher than the Chinese definition. The universal definition is US\$1 per person per day, a level unrealistically low for much of Central Asia, Eastern Europe and Latin America, according to the World Bank. However, the Chinese definition is much lower, enabling China to claim it has dramatically reduced poverty. See Pfitzer and Barrett, *Poverty in China: What do the Numbers Say?* World Bank Background Note 1996, 1 - 6. See also Xinhua, Beijing, 9 January 1997, translated in BBC/SWB/FE 2817 S1/1-2, 15 1997, where it is stated: "In the just concluded year of 1996, a total of 120,000 people in the Tibet region shook off poverty ... Poverty will be completely wiped out in the region by the year 2000.

199 Pfitzer and Barnett, *Poverty in China: What do the Numbers Say?*, 3.

200 480,000 people, or 20.7% of TAR population. Xinhua, 26 Nov. 1994, FBIS-CHI-94-229, 29 Nov. 1994.

201 Calculated on the basis of consumption spending rather than income statistics, in accordance with world practice. Tibetan income statistics calculated from 1990 census, reported in: Tibet Autonomous Region Population Census Office, *Tibet Autonomous Region Fourth Population Census Data* (Beijing: China Statistics Publishing House, 1990, ISBN 7-5037-0532-9). Tibetan consumption spending statistics from *China Agriculture Yearbook 1995*, 334.

classified as below the poverty line.²⁰² In recent years the Australian government has worked with the Chinese poverty alleviation system in Qinghai. Australian documents describe China's poverty alleviation system:

Within the bureaucracy at provincial, prefecture, county, township and administrative village levels there is a lack of conceptual understanding of what constitutes a community initiated and based poverty alleviation program. There is a lack of understanding of the value of small, community based income generation activities ...The understanding of the causes of poverty by policy makers and service providers is limited and will need expanding in order to achieve sustainable change... The Chinese approach to poverty alleviation supported by the international banks is characterized by:

(i) infrastructure development (both social overhead and capital infrastructure such as roads, water supplies and irrigation);

(ii) township and village enterprise (TVE) development. These enterprises can be urban and rural in nature but are large in magnitude and manufacturing in nature;

(iii) labor mobility and migration from poverty areas with little development potential, to areas of greater economic potential.

This approach to poverty alleviation places emphasis on activities that are project oriented in nature and not necessarily on the participation of the poor in identifying and developing solutions to their poverty. It also places emphasis on large enterprise activities and does not target poor households.²⁰³

202 Hongbin Gao, Xingqing Ye, *Anti-poverty Focussed Programmes in the Mountains: Experiences in China*, 591 - 608, in N.S. Jodha et al eds, *Sustainable Mountain Agriculture* (London & New Delhi: Oxford & IBH, 1992), 607. Gao is the Deputy Director and Ye the Secretary of the Leading Group for the Economic Development of Poor Areas, (LGEDPA) under the State Council. LGEDPA, which is the agency responsible for poverty alleviation program in China.

203 Australian Agency for International Development, *Qinghai Community Development Project: Project Implementation Document*, May 1995, B 12,14,18 and 19.

Tibetan religious and cultural values continue to be perceived as obstacles to development. Chinese research on fostering cash consciousness in Tibetans found that: "there is undue emphasis on *Xisha* or refrain from killing and on the disparagement of commerce. *Xisha* results in people hesitating to use pesticides, in their looking down on fishermen, butchers, and their disinterest in commercial development."²⁰⁴ The officials in charge of China's poverty alleviation system state: "...Only through the demands of the market economy can there be any fundamental change in the traditional concepts of value, thinking habits, and modes of behavior which gives rise to social evolution."²⁰⁵

Rural Subsistence Economy

In the 1990's nearly all Tibetans continue to exist at subsistence level, their lives little touched by China's massive investment in Tibetan infrastructure and superstructure.

China's developmental promise to Tibet in the 17-Point Agreement stressed step by step improvement of the Tibetan economy, which is based on herding and farming. The statistics reveal decades of neglect of primary producers, and of value-adding industrial processing of primary produce. Chinese statistics on Tibetan rural employment, electricity consumption, herbal medicine output, flour milling, fine wool production, farm mechanization, fertilizer use, income derived from animal husbandry, mechanization and production of fodder all show an indigenous economy chronically starved of development capital, unable to increase productivity, falling further and further behind rural China's level of development. On all these measures, TAR and Qinghai lag far behind the Chinese average.²⁰⁶

204 International Centre for Integrated Mountain Development (ICIMOD), reproduced in *Tibet Environment and Development News*, issue 9, June 1993, 5. Efforts to increase the use of fertilizer were reported by Deputy Party Secretary Yang Chuantang, 27 April 1995, SWB FEW/0385, 24 May 1995.

205 Gao and Ye, *Anti-Poverty Focussed Programmes in the Mountains: Experiences in China*, 607.

206 In the tables which follow, 1994 statistics for Tibet, Qinghai, and China are listed, drawn from *China Agriculture Yearbook 1995*, a Ministry of...

Fig 1: Spending²⁰⁷ on Health care and Medical Treatment per capita, Rural Areas, 1994

	yuan	% of Chinese average
Tibet Autonomous Region (TAR)	4.93	15.37
Qinghai (Amdo)	31.34	97.72
Sichuan	23.13	72.12
Zhejiang	60.25	187.87
China	32.07	100.00

source: *China Agriculture Yearbook 1995* (Beijing: China Agriculture Press, 1996), 335.

206... Agriculture publication (Beijing, China Agriculture Press 1996) which draws on its own statistical compilations and those of other ministries. As the nonurban population of the TAR is almost entirely Tibetan, these statistics serve as the best available baseline for assessing China's actual achievement of development in Tibet. By comparison, rural Qinghai is in area overwhelmingly Tibetan but in population a mix of poor Chinese peasants who have migrated in the past one or two generations, Tibetan farmers and nomadic herders and other nationalities. Sichuan is Tibet's closest neighbor, the biggest market for Tibet's produce, and home to a million Tibetans, insignificant in a population of 110 million. Historically Sichuan has lagged behind the coastal provinces (Chris Bramall, *In Praise of Maoist Economic Planning: Living Standards and Economic Development in Sichuan since 1931*, (Oxford: Oxford University Press, 1993)), so its recent development, assisted by its utilization of Tibetan resources, is a yardstick. For the sake of comparison, other provinces are included in some tables. Some show levels of development for the most developed provinces which exceed the Chinese average. Others list statistics for Xinjiang and Inner Mongolia, both autonomous regions of minority nationalities where Chinese investment in development has proceeded further than in Tibet Autonomous Region (Donald McMillen: *Chinese Communist Power and Policy in Xinjiang 1949-1977*, (Boulder: Westview, 1979) Their present statistics may prove indicative of what can be expected in TAR in future. The statistics issued by the Ministries of Agriculture, Forestry, Public Security Bureau and the policy departments of various academies, rural research offices, all collected in the annual China Agriculture Yearbook, give as reliable guide as Chinese statistics can, to the extent of development in Tibet.

207 Spending is a more reliable indicator of poverty than income, according to the World Bank.

Fig 2: *Spending on Education, Culture and Recreation per capita, Rural Areas, 1994*

	yuan	% of Chinese average
Tibet Autonomous Region (TAR)	5.76	7.67
Qinghai (Amdo)	22.81	30.37
Sichuan	56.06	74.64
Guangdong	179.64	239.17
China	75.11	100.00

source: *China Agriculture Yearbook 1995* (Beijing: China Agriculture Press, 1996), 335.

Rural Tibetans are officially 86.23% of the TAR population,²⁰⁸ and the source of wealth generation of the Tibetan economy. Yet rural Tibetans spend only 15% of the rural Chinese average on health care and under 8% of the Chinese average on educating their children, culture and recreation (figs 1 and 2).²⁰⁹

Three hypotheses explaining such low expenditure might be advanced:

- Health and education are provided by the state and by state owned enterprises. This was true in urban areas, but is no longer so. Such expenditure is for the user to pay, with assistance from local government in areas wealthy enough to tax local inhabitants sufficiently to set up health care cooperatives. Allocations of government funds for education in the TAR, from regional, prefectural and city level authorities is only 10,47 million yuan, while parents contribute double this amount.²¹⁰
- Tibetans are too poor to afford to pay for health and education.
- Spending is low because there are few facilities to spend money on. As discussed in later chapters primary health care has not been

208 *China Agriculture Yearbook 1995*, 211.

209 Pfito & Barrett, *Poverty in China*, 2.

210 Xinhua, Beijing, 9 December 1996. BBC/SWB/FE/2791 G/9 10 December 1996. Parental payments to schools are given as 105.23 million yuan "in the past six years."

effectively extended to the decentralized countryside of Tibet, and is concentrated in towns and cities which may be difficult and expensive to access. Schooling is undercapitalised, starved of central funds, no longer seen as essential to development.

Chinese statistics show that rural Tibetans in the TAR in 1989 ate only 168 kilos of grain per person per year, by far the lowest per capita consumption in China, despite the fact that *tsampa* barley flour is the basis of the Tibetan diet, and Tibet is a major grain growing region, and has been for thousands of years.²¹¹ The 1994 harvest was better, permitting consumption in Tibetan rural areas of 265 kg of grain.²¹² Tibetan grain production thus at last exceeded the subsistence level of 200 kg per person which was produced historically, in precommunist Tibet and throughout the communist era.²¹³

If the 1994 crop can be maintained, Tibet would be capable of generating sufficient staple food to maintain a minimum subsistence diet, a historic achievement allowing grain production to keep up with the growth in population caused by the influx of Chinese settlers. Subsistence consumption in Tibet now approaches China's level.

Tibetans in the TAR in 1989 had just 38.26 yuan per person per year available to spend on clothing, and 13.07 yuan a year on provision and maintenance of housing, only 17% of the Chinese average.²¹⁴ Five years later, after considerable inflation, rural Tibetan spending on clothing was at the average level for rural China.²¹⁵

211 *China Agriculture Yearbook* 1990, 340.

212 Processed and unprocessed grain added together. *China Agriculture Yearbook* 1995, 334 and 338.

213 Examining 39 published estimates of grain consumption in Tibet, covering the past 50 years, Grunfeld concluded that 200 kg per person is the likeliest figure, despite official claims of output as high as 457 kg consumed per person. Grunfeld, *Making of Modern Tibet*, 174-5 and 293. Jing Wei, *Tibet: An Inside View* (III), *Beijing Review* 49, 6 December 1982, 21 -24.

214 *Ibid.*

215 Per capita spending on clothing in rural TAR 1994 was 74.84 yuan, for rural China an average of 70.32 yuan. *China Agriculture Yearbook* 1995, 221.

Fig 3: Production & Ownership of Basic Manufactures, Rural Areas, 1994

	% of population owning a watch or clock	% of population owning a television	pairs of leather shoes made by rural village & township enterprises
Tibet Aut Region	17.47	1.10	nil
Qinghai (Amdo)	41.02	8.46	80,000
Sichuan	49.34	16.45	85,730,000
Shanghai	109.54	34.46	
China	52.79	16.56	1,123,810,000

source: *China Agriculture Yearbook 1995* (Beijing: China Agriculture Press, 1996), 292 and 340.

Statistics on ownership of basic consumer manufactured goods such as watches, sewing machines or television (figs 3 & 4) indicate low consumption levels, although all three are basic tools of rural development in a land of great distances, low literacy, insufficient dissemination of print materials, and little tradition of clock-bound instrumentality. The absence of shoe manufacture indicates an absence of indigenous enterprises with sufficient capital to enter a market dominated by state owned enterprise, and by home crafting of shoes, in a land which generates plenty of hides and felt.

In 1989 rural TAR ownership of sewing machines, a reliable indicator of household self-reliance, was 2.68 per 100 farmers, compared with the Chinese average of 11.05.²¹⁶ By 1994 4.4% of rural Tibetans had a sewing machine.²¹⁷ The low penetration of sewing machines suggests a lag in transfer of basic technologies.

Consumption spending on the necessities of subsistence, and basic modern services are consistently low, far below Chinese average spending. The modest expenditures on housing and food could be indicators of poverty.

²¹⁶ *China Agriculture Yearbook 1990*.

²¹⁷ *China Agricultural Yearbook 1995*, 340.

Fig 4: *Subsistence Spending: Food Payments by Rural Households Including Barter, Subsistence and Noncash Payment, 1994*

	yuan per capita	% of Chinese average
Tibet Autonomous Region (TAR)	328.28	54.85
Qinghai (Amdo)	456.75	76.32
Sichuan	560.82	93.71
Fujian	898.48	150.13
Jiangsu	822.88	137.50
China	598.47	100.00

source: *China Agriculture Yearbook 1995* (Beijing: China Agriculture Press, 1996), 334.

Fig 5: *Subsistence Spending : Housing Payments, Rural Areas, 1994*

	yuan per capita paid to construct, extend & maintain housing & appliances	yuan per capita paid for house-hold utilities, services, facilities, furniture
Tibet Aut. Region	91.15	39.14
Qinghai (Amdo)	92.01	30.18
Sichuan	142.77	43.25
Guangdong	282.05	114.69
China	142.34	55.46

source: *China Agriculture Yearbook 1995*, (Beijing, China Agriculture Press, 1996), 334.

Fig 6: *Total Household Spending on Food, Clothing, Housing, Health, Education and all Other Consumption, Including Barter and Noncash Payments, Rural Areas, 1994*

	yuan per capita	% of Chinese average
Tibet Autonomous Region	563.62	55.43
Qinghai (Amdo)	745.72	73.34
Sichuan	904.28	88.93
Fujian	1439.53	141.57
Jiangsu	1500.51	147.57
China	1016.81	100.00

source: *China Agriculture Yearbook 1995* (Beijing: China Agriculture Press, 1996), 334.

Total household spending, at 564 yuan per capita, is only 22% of the global poverty line benchmark of 2600 yuan, or US \$1 per person per day.²¹⁸ By world standards, Tibet is very poor. Total household consumption spending in Tibetan rural areas is 55% of the Chinese average. If these statistics are accurate, it indicates persistently depressed levels of consumption spending, and consumption spending is a global benchmark of poverty rather than China's preferred measure, which is income.²¹⁹ The only other possibility is that consumption spending is depressed because rural Tibetans save much of their incomes. However, Chinese statistics show TAR rural savings to be low, only 129 million yuan in 1993, which is a cash reserve for emergencies of only 64.5 yuan per capita.²²⁰

China has been unable to industrialize the processing of the agricultural commodities of Tibet, or provide industrial employment for rural Tibetans. Despite massive Chinese state investment in infrastructure, very little has resulted in viable enterprises which actually employ Tibetans. Chinese investment has concentrated on state owned enterprise in urban areas, largely reserved for Chinese employees. Only 2.5% of rural Tibetans in TAR are employed outside the traditional

218 *Poverty Reduction and the World Bank: Progress and Challenges in the 1990s* (Washington: World Bank, 1996).

219 Lauren Ptito, Graham Barrett, *Poverty in China: What do the Numbers Say?* World Bank Background Note, 1996 fn #2, 2.

220 *China's Tibet* #5 1994.

Fig 7: *Availability of Employment in Secondary and Tertiary Industry Sectors, Rural Areas, 1994*

	Employed in secondary & tertiary	Total rural population	% rural population employed in nonagriculture
Tibet Autonomous Region	50,000	2,000,515	2.50
Qinghai (Amdo)	198,000	3,245,536	6.10
Sichuan	11,354,000	92,620,300	12.26
Jiangsu	11,913,000	51,892,633	22.96
Xinjiang Uighur Aut. Region	274,000	10,562,650	2.59
Inner Mongolia Aut. Region	799,000	15,052,842	5.31
China	119,632,000	900,356,386	13.29

source: *China Agriculture Yearbook 1995* (Beijing: China Agriculture Press, 1996), 211, 215, and 216.

Tibetan agricultural economy. That suggests a meager return on 40 years of Chinese efforts at modernization and development. If Tibet was lacking in secondary and tertiary industry prior to 1950, it remains chronically underdeveloped today.

Chinese policy advisers have frequently suggested that the best route to prosperity for the Tibetans is a radical change in the Tibetan way of life. The *People's Daily* in 1996 ran a series of 14 articles investigating the state of the grasslands, concluding that: "Only a no-nonsense cash-minded approach (that will give herders an incentive to abandon their nomadic existence and settle down) and supportive actions by local governments can bring prosperity to the herders."²²¹

221 *People's Daily* August 17, 19, 20, 21, 22, 27, 28, 30, Sept 2, 11, Oct 10, 15, 21, 25, 1996. The conclusion is in *China News Analysis* #1584, 1 May 1997. Earlier research proposing to "shift animal husbandry from mountains to basin oases" is reported in Xinshi Zhang, *Chinese Literature on Grassland Studies: Xinjiang*, 109 - 120 in National Research Council, *Grasslands and Grassland Sciences in Northern China*, Washington, National Academy Press, 1992.

The poverty of the Tibetan countryside contrasts with the wealth of the cities. Chinese personnel stationed in the towns and cities of the TAR are recipients of government subsidies and investments, making Lhasa the highest waged city in China, exceeding even Beijing. "Per capita income of urban residents in 1996 was 5,036 yuan, almost three times that of 1990, and annual income of Tibetan farmers and herdsmen was 960 yuan, more than twice that of 1990."²²² Urban income, five times greater than rural incomes, are growing at twice the rate.²²³

The gap between cities, with their large Chinese populations, and the Tibetan rural districts is striking. While 1.1% of rural Tibetans own a television set, 17% a watch or clock and 4.4% a sewing machine, "in larger cities there were 98 color TV sets, 78 washing machines and 50 refrigerators for every 100 households."²²⁴

Capital flows

China often portrays its public expenditure in Tibet as intended to create development where none existed. Current central allocations to TAR have accelerated to billions of yuan a year, with a promise that this level will be maintained at least until 2000.²²⁵ However, the irrational economy of which the Chinese macroeconomists complained in the 1980s,²²⁶ dependent on handouts from Beijing, with little industry from which to raise its own revenues, remains.

What is little publicized is the outflow of capital from Tibet. Profitable returns to the state are generated by high profit levels of monopoly state enterprises reliant on Tibetan raw materials as their primary inputs, obtained at prices below market rates, sometimes even below production

222 Xinhua, Beijing, 22 May 1997, BBC/SWB/FE/2930 G/9 28 May 1997. Those employed by state owned enterprises were even richer: "The averager wage of staff and workers stood at 7,382 yuan."

223 "1997 Plan for TAR: Agriculture, Industry, and Re-education" *TIN News Update*, 18 July 1997.

224 *Weekly Report: The Gap Between Tibet and the Hinterland*, Tibet TV, Lasha, 23 June 1996, BBC/SWB/FE/2660 S1/2-4.

225 Tsering, Assistant Director, TAR Economic Commission, cited in AFP, 4 June 1997. Some estimates are as much as 6 billion yuan in a peak year.

226 Wang and Bai, *Poverty of Plenty*.

costs, because of the power of the state to set prices. Transfer pricing is a systemic feature of the extraction of Tibet's resources for Chinese use, concealing the profitability of extraction.

In the case of forestry, current log prices of 700 to 800 yuan per m³ on the open market can be used as a yardstick to calculate industry profitability.²²⁷ The Sichuan Province Communist Party Policy Research Department estimates production costs at no more than 200 yuan per m³, and market price historically averaging 400 yuan per m³, while actual purchase price has been set at a compulsory 150 yuan per m³.²²⁸ Thus the profit per cubic meter, prior to the value adding at the sawmill, is already 250 yuan per m³. On a very conservative estimate 120 million m³ has been cut from Tibetan forests since 1949.²²⁹ So the profit accruing to the Chinese state is 30,000 million yuan.

The profitability of deforesting Tibet averages 833 million yuan a year over the 36 years between 1949 and 1995, while the central subsidy to the TAR, which has grown in recent years to one billion yuan a year, never rose above 100 million yuan a year until 1969, and not above 500 million yuan a year until 1979.²³⁰ The total subsidy has been about 19,000 million yuan over the same period, averaging 528 million a year. Thus the Chinese state has apparently profited on average by at least 305 million yuan a year just from one industry. The net flow of capital has been negative with the state remaining the sole source of investment finance.

227 Daniel Winkler, *The Forests of Eastern Tibet: Human Impact and Deforestation - Past and Present*, paper presented to Seventh seminar of the International Association for Tibetan Studies, Austria, 1995.

228 Ang Zhao, *Sichuan zhangqu senlin de diwei, kunjing he zouxiang liangxin xunhuan de sikao* (Crisis in Forest Industry of Sichuan, and Proposals for Amelioration) *Jinji dili* (Economic Geography) 12 #1, 1992, 55 - 61.

229 Calculation based on a figure of 81 million cubic meters cut from the forests of Tibetan prefectures in western Sichuan between 1949 and 1985. That figure does not include deforestation in the TAR, or figures for the accelerating deforestation in years since 1985. Yupo Yang, *Importance of Ecological Balance in the Subalpine Forest of Western Sichuan, China*, International Association for Ecology, INTECOL Bulletin 13, 1986, 41 - 44. Yang is from the official Sichuan Research Institute of Forestry in Chengdu.

230 Wang and Bai, *Poverty of Plenty*, 75.

The development potential of the Tibetan prefectures of western Sichuan is great. In these prefectures, between 50% and 64% of revenues at prefectural and county level come from the meager returns of forestry.²³¹ This area of 237,000 sq. km is climatically the most fertile in Tibet, with rainfall up to 1200 mm a year, sustaining a population of over one million Tibetans, second only to the TAR. The nomadic herders of the plateau have always been wealthy,²³² traditionally using their wealth to finance the education which produced a high proportion of Tibet's scholars and spiritual virtuosi.

Recent Chinese surveys have identified between 300 and 400 agricultural products which could be commercially produced in this region, as a basis for small scale agro-based cottage industries.²³³ However, very few of the herbs, fruits, mushrooms and wild peppers the region could produce are cultivated, because the extensive road system built for extraction of timber is in the wrong place and "agricultural production in this region is underdeveloped and basically stagnant."²³⁴ Roads are so poorly maintained that in the growing season they are impassable due to rain and inadequate road construction. Because "the major markets are too far away... a transportation network is vital."²³⁵

New crops and cottage industries depend on agricultural extension education and literacy, which in turn depend on the availability of schools and teachers. Yet the dominance of the timber extraction

231 Ang Zhao, *Sichuan zhangqu senlin de diwei, kunjing he zouxiang liangxin xunhuan de sikao* (Crisis in Forest Industry of Sichuan, and Proposals for Amelioration) *Jinji dili* (Economic Geography) 12 #1, 1992, 55 - 61, and 56. Chepu Ao et al *The Historical Statistics of National Economy and Social Development in the Area of Minority Nationalities of Sichuan Province* (Chengdu: Sichuan People's Publishing House, 1988).

232 Chris Bramall, *In Praise of Maoist Economic Planning: Living Standards and Economic Development in Sichuan since 1931* (Oxford: Oxford University Press, 1993), 151 - 153 contains a careful analysis of the statistics indicating the precommunist wealth of Songpan, a Tibetan county and one of the few remaining panda habitats.

233 Zhaogang Liu, Ning Wu, *A Local Resource-Centered Approach to Rural Transformation: Agro-Based Cottage Industries in Western Sichuan, China*, 637 - 650 in N.S. Jodha et al (eds), *Sustainable Mountain Agriculture* (Oxford: Intermediate Technology Publications, 2 vols., 1992), 641.

234 *Ibid*, 645.

235 *Ibid*, 645.

industry, and its transfer pricing practices deprive local governments of revenue needed to provide schools, in an era when the central government in Beijing has devolved responsibility for education, health and welfare back to local communities, to the great detriment of poor local government areas.

Other industries, also state controlled, have been highly profitable. The extraction of Tibetan oil and gas from the Tsaidam basin began in the early 1970's and has continued uninterrupted.²³⁶ The profitability of oil, and the petroleum refineries built in the Tsaidam to process Tibetan oil, have fluctuated greatly. In 1980 and the oil and gas sector enjoyed a profit rate of 55.8% and petroleum refining 98.3%,²³⁷ making them among the most profitable of state sectors. In later years their profit margins declined, not because they were any closer to paying market rates at the wellhead but because retail prices were held down by government order, for fear of sparking inflation and its political consequences among an urban populace disenchanted with Party policies.²³⁸

The Tsaidam field has, to 1997, produced 14 million tons of crude oil and more than seven million tons of refined oil.²³⁹ Production is now at 1.5 million tons of oil and gas a year, and is scheduled to double by 2001, and by 2005 to reach 10 million tons a year.²⁴⁰ Since other remote oil fields have recently proven disappointing, China is now stepping up Tsaidam production. Salt mining nearby provides feedstock for chemical fertilizer manufacture and petrochemical plants. China's valuation of the potential economic returns of the basin, once exploitation is fully implemented, is 15,000 billion yuan.²⁴¹

236 H.C. Ling, *The Petroleum Industry of the People's Republic of China*, Hoover Institution, 1975

I. Taner, A.A. Meyerhoff, *Petroleum at the Roof of the World*, *Journal of Petroleum Geology* 13, 1990, 157 - 178 and 289 - 314.

237 Barry Naughton, *Growing out of the Plan: Chinese Economic Reform 1978-1993* (Cambridge: Cambridge University Press, 1995), 236-239.

238 *Ibid.*, 290-291. In 1989 petroleum refining had a profit rate of 38.7%, more than double the national industrial average.

239 *Oil and gas exploration to speed up in West*, *China Daily*, 28 May, 1997, 5.

240 *Ibid.*

241 *Qinghai taps potential of Qaidam Basin*, *China Daily*, 3 June, 1997, 5.

The Tsaidam basin, "regarded as a treasure trove"²⁴² by China, also hosts "China's biggest potash fertilizer plant, its largest asbestos production base and the second biggest lead and zinc mines, with a 1 million ton annual production capacity... Other industrial projects include high energy plants producing steel, aluminum and magnesium."²⁴³

E. Environment

Principle 23 of the Rio Declaration, the final document of the "Earth Summit,"²⁴⁴ provides that: "the environment and natural resources of people under oppression, domination and occupation, shall be protected."²⁴⁵ The Declaration also emphasises participation of citizens in the decision making process at all levels and access to information about environmental issues in their communities.²⁴⁶ An authoritative statement of principles on the management of forests, adopted at the same conference, stresses that "forest resources and forest lands should be sustainably managed to meet the social, economic, ecological cultural and spiritual human needs of present and future generations."²⁴⁷

According to Chairman Mao:

The population of the minority nationalities in our country is small, but the area they inhabit is large. The Han people comprise 94 per cent of the population, an overwhelming majority.... And who has more land? The minority nationalities, who occupy 50 to 60 per cent of the territory. We say China is a country vast in territory, rich in resources and large in population; as a matter of fact it is the Han nationality

242 *Treasure Trove*, China Daily Business Weekly, 9 June, 1997, 6.

243 *Natural Resources Buttress Qinghai's Economy*, China Daily Business Weekly, 9 June, 1997, 6.

244 United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992.

245 UN Doc. A/CONF.151/5, 3.

246 Principle 10, *Ibid.*

247 *Non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainability of all types of forests*, UN Doc. A/CONF.151/6.

whose population is large and the minority nationalities whose territory is vast and whose resources are rich, or at least in all probability their resources under the soil are rich.²⁴⁸

Chinese perceptions of the Tibetan plateau as waste deeply influences Chinese policies which impact on the environment.²⁴⁹ China sees in Tibet its potential usefulness, rather than an existing, balanced, sustainable economy adapted to ecological constraints unique to such a high, cold, dry environment. In China, environmental consciousness was relatively rudimentary,²⁵⁰ while the dominant discourse is about wealth generation and material affluence. "In accordance with the popular teachings of Confucianism, most Chinese believed that human beings were the centre of the universe and that it was their mandate to control nature... It is not surprising that the continued deforestation and colonization of virgin soil have been going on for thousands of years."²⁵¹

Tibet is 1.6% of the land surface of the planet, and is home to major habitat types from tropical to arctic, sometimes on the slopes of a single mountain. This diversity of biome sustains a biological diversity with at least 3,000 plant species, of which as many as 450 species may be endemic - unique - to Tibet.²⁵² The major rivers of Asia, and the booming coastal cities of Asia all take for granted the purity of their water supply,

248 Mao Tse-tung, *On The Ten Major Relationships*, Beijing, People's Publishing House, 1977 17 Mao's speech is also reprinted in vol 5 of *Selected Works of Mao Tse-tung*, 1977.

249 Owen Lattimore, *Inner Asian Frontiers of China*, New York, American Geographical Society, 1940; Stevan Harrell, *Linguistics and Hegemony in China*, *International Journal of the Sociology of Language*, 93, 1993, 97-114; Richard L. Von Glahn, *The Country of Streams and Grottoes: Geography, Settlement, and the Civilizing of China's Southwestern Frontier, 1000-1250*, PhD dissertation, Yale 1983, 10: "For the Han immigrant, the frontier appeared as a barren, desolate wilderness that impeded, or suppressed altogether, normal habits of life and work."

250 George Schaller, *The Last Panda* (Chicago, University of Chicago Press, 1994).

251 "Without an understanding of ecology, the Chinese people since the beginning of recorded history have struggled to conquer nature and fully exploit its resources, from the densely inhabited regions to the border areas. Bin Lin, review of Cui-rong Liu and Mark Elvin (eds), *Ji jian suo zhi: Zhongguo huanjingshi lunwenji*, (*Sediments of Time: Environment and Society in Chinese History*), *China Review International*, 4, 1997 203.

originating in Tibet. Pakistan, India, Bangladesh, Burma Nepal, Thailand, Laos, Cambodia, Vietnam and China - over half the world's population - are all downstream of Tibet.

The diversity of Tibet's subtropical evergreen broadleaf forests, dense temperate coniferous forests of the east, scrub and meadow of the north-east, shrub and steppe of the south, highland steppe of the north, and desert and semi-desert of the far north-west provide the "home to the world's most impressive collection of large mammals: Argali sheep, shou (Sikkimese Stag, or red deer), markhor, blue sheep, wild yak, Tibetan antelope, wild ass, snow leopard, takin, two bears, and varieties of birds, including the blacknecked crane."²⁵³

Many of the high altitude plants growing in the mountains which ring Tibet are used both in Tibetan medicine, and in Chinese traditional medicine, both of which are now rapidly industrializing and expanding their production, in accordance with Chinese plan priorities.²⁵⁴

Tibetans developed land and risk management strategies needed to sustain Tibet as a core of world heritage while maintaining extensive human use, in close symbiosis with the reliable yak.²⁵⁵ Tibetans created a curated landscape, moulded by the interventions of farmers and their irrigation channels; herders and their flocks. This indigenous knowledge system embraced the medicinal uses of hundreds of species growing in the mountains, the veterinary care of animals, the conservation of forest and wildlife, widely accepted prohibitions on hunting and fishing,

252 Based on Tibetan fieldwork by Chicago botanist Dr Carol LaBranche, who is assembling the first comprehensive English language floristic survey of Tibet. The one comprehensive work to date is *Flora Xizangica*, in Chinese, in five volumes. See *Tibet Environment & Development News*, #17, 1995 p. 8, Washington, International Campaign for Tibet.

253 World Wild Fund for Nature, *A Review of Wildlife and Biodiversity Conservation Needs in Tibet*, 1995 (unpublished internal report) 2.

254 The gathering of certain rare species, especially a caterpillar fungus symbiosis (*yersa gungbu*), attracts large numbers of Chinese unemployed displaced peasants seeking quick wealth. Some of this harvesting is indiscriminate and unsustainable.

255 Yenhu Tsui, A Comparative Study of the Attitudes of the Peoples of Pastoral Areas of Inner Asia Towards their Environments, 1-24 in Caroline Humphrey ed, *Culture and Environment in Inner Asia*, Vol II (Cambridge : White Horse Press, 1996).

nomadic grazing strategies to rotate stock in pastures so they could regenerate seasonally, and a wide range of practices to adapt to the unpredictable variability of climate.²⁵⁶ Wealth accumulation as an end in itself was strongly discouraged, growth was not the engine of development, and equilibrium was seen as the basis of renewable, lasting civilization. Human population on the grasslands was in equilibrium, a stasis maintained by a slow steady settlement of excess numbers as farmers, and the popular practice of each family sending at least one child to be a monk.²⁵⁷

The nomadic way of life evolved historically after Tibet was settled by agriculturists, as a chosen lifestyle, which Tibetans continue to see as ideal, archetypally Tibetan, a life of freedom and mobility, combining an intimacy with herds and landscape with opportunity to trade and undertake spiritual pilgrimage, integrated into the annual nomadic cycle.²⁵⁸

256 This is a selective list. Fuller accounts are to be found in the writings of Namkhai Norbu on the indigenous knowledge of Tibetan *drogpa* nomads, published in 1997 by Library of Tibetan Works & Archives.

257 Thomas Barfield, *The Perilous Frontier: Nomadic Empires and China*, (Cambridge: Basil Blackwell, 1989).

Geoffrey Samuel, *Civilized Shamans: Buddhism in Tibetan Societies*, Washington, Smithsonian Institution Press, 1993.

258 Robert Ekvall, *Fields on the Hoof: Nexus of Tibetan Nomadic Pastoralism*, New York, Holt, Rinehart, 1968.

Chinese in Tibet seem to assume no-one would voluntarily live out on the grasslands unless there was no alternative and that nomadism is ecologically determined.²⁵⁹ Chinese development policies appear to be predicated on the assumption that if nomads had the option of a concrete apartment in a new town the grasslands would be promptly abandoned, so urbanization is the way to solve the poverty of Tibet.²⁶⁰

The Situation from 1951-1990

In forty years, most Tibetan wildlife has been destroyed and much of the forest has been cut, watersheds and hillslopes eroded and downstream flooding heightened. The most extensive environmental impact of Chinese practice is the widespread degradation of the

259 "In the framework of communist doctrine and experience -particularly in Russian experience with their own nomadic pastoralists in central Asia- there is no logical and acceptable place for the nomad. He and his economy do not fit into Marxist theory of the socialist state, and the Russians found it expedient to eradicate nomadic pastoralism as a system. Thus, when the Chinese turned their attention to the unfinished business of Tibet, they were impelled to make an end to the nomads once and for all. There was, however, another framework of experiential knowledge that also affected policy making. The leaders, from Mao Tse-tung down, had bitter, first-hand knowledge of the harsh ecology of the high pasturage, of the rich resources but evasive quality of its economy, and of the unfriendly truculence of its inhabitants. The justly famed Long March (1935-1936) did have its nonsuccesses and, near its end, the attempt by the Chinese to cross the north-eastern corner of the Tibetan plateau was a disaster. Ten years later the communist Chinese leaders whom I met in Peking still shivered and shuddered when they talked about the high grassland and the elusive, unfriendly, people who lived there, whom they could neither convert nor defeat." Ekvall, *Fields on the Hoof* 94 - 95.

260 "Half of north-west China's remaining 400,000 households of nomadic herdsmen have bid farewell to a lifestyle that has spanned thousands of years. About 200,000 households of horseback herdsmen have finally settled down, ending their traditional nomadic lives. Generations of Tibetans, Mongolians and other nationalities had been moving about in search of new pastures in the vast north-west China, boasting of some 100m ha of grassland, for thousands of years. However, the out-dated living style could neither take full advantage of pastures or cope with natural disasters, nor facilitate the modernization drive of social lives in the area." Xinhua, Beijing, 7 May 1996. Reprinted in BBC/SWB/FE/2607 G/10 9 May 1996.

rangelands, resulting in desertification of huge areas until recently capable of sustaining both wild and domestic herds. The extent of grassland deterioration has reached a point where, unless measures are taken soon, the long term continuity of nomadic Tibetan civilization could be brought into question.

As described in the chapter on Autonomy, Chinese political power has fragmented Tibet, bisecting ecological zones and land systems. Tibet has lost its self sufficiency and is heavily reliant on external inputs to sustain a human population far in excess of anything in Tibetan tradition. Decisionmaking for resource allocation, forestry, investment, wildlife management is centralized, and is not in Tibetan hands. Tibet was redrawn as if a virgin land, its development bound to the ribbons of highway built to connect Tibet with China. Tibet was made to look east for everything. Supply lines are long, requiring an enormous fleet of trucks which operate, according to Chinese economists, way below optimal efficiency. The energy deficit of Tibet is now great, as a consequence of the political necessity of trucking manufactures to persuade Chinese settlers in Tibet to stay.

The biodiversity of Tibet has suffered greatly from the 1950's onwards, as Chinese soldiers careened about the plains in jeeps, sniping at anything on legs. Tibetan herds of gazelles and other deer used to graze undisturbed amidst herds of domestic animals, and until the PLA arrived were unafraid of humans. The abundance of wildlife in Tibet until recent decades is attested by many 19th century and early 20th century visitors to Tibet.²⁶¹

The collectivization of both nomads and farmers into communes and production brigades in the 1960's was done with scant regard to the carrying capacity of the land, long term sustainability, or the slow rate of renewal of forest in cold dry uplands. Customary Tibetan practices of not fishing or mining, frowning on hunting, and freeing some domestic animals to graze to the end of their natural life without hindrance, were all seen by the scientific modernizers both Chinese and Tibetan as feudal superstition. Chinese cadres commanded Tibetan communes to fulfil rigid production quotas, even when the farmers themselves were

261 *Vanishing Wilderness of Tibet*, (Dharamsala, Amnye Machen Institute, 1998) provides a bibliography of travellers' accounts.

hungry.²⁶² Production quotas were arbitrarily set without knowledge of the limiting factors of each biome. Tibetans were ordered to grow wheat, a grain familiar to the northern Chinese, rather than the customary highland barley, with catastrophic results.²⁶³

During the 1960s roads were cut, using conscripted and unpaid Tibetan labour, through unstable mountain passes, exacerbating the danger of landslides, which regularly cut roads even today. The thrust of Chinese efforts to maximize extraction, and make the wastelands useful was concentrated in the forested counties of eastern Tibet. The shortage of wood for socialist construction in the inland provinces of China made the timber of Tibet valuable. China lacked the capital to invest in an extensive network of logging roads, and lacked the will to process logs into timber in Tibet. Only the armed forces possessed the logistic infrastructure capable of reaching the steep forested slopes, and logging is to this day often a commercial operation of the People's Liberation Army.

Slopes were indiscriminately clearfelled, leaving neither ridge tops, gullies nor steep slopes unharmed, as is standard logging practice anywhere. Logs were hauled out by truck, or rolled into the nearest river to be floated haphazardly downstream to the populous Chinese provinces of Sichuan and Yunnan. This practice is highly wasteful of timber, utilizing only part of the tree, with much lost or damaged in downstream transport.²⁶⁴ There has been little scientific study of how to regenerate forests which grow slowly at high altitude and low temperatures, reliant on rainfall concentrated in summer.

China has frequently emphasized its reforestation policies, stating that forest growth in Tibet is greater than the amount of cutting.²⁶⁵ A survey of the forest stock of Tibet, using remote sensing technology, was

262 Dawa Norbu, *Red Star Over Tibet*, New York, Envoy Press, 1987.

263 Thomas Grunfeld, *The Making of Modern Tibet*, (Armonk: M.E. Sharpe, 1996) 217; Pradyumna P. Karan, *The Changing Face of Tibet: The Impact of Chinese Communist Ideology on the Landscape*, Lexington, University of Kentucky Press, 1976 39-42.

264 S.D. Richardson, *Forests and Forestry in China* (Washington: Island Press, 1990). See photographs pages 124-125.

265 BBC/SWB/FEW/0364 WG/5, 21 December 1994.

reported in 1994: "The forest growth in the Tibet Autonomous Region has greatly exceeded its timber consumption."²⁶⁶ The survey was restricted to those parts of Tibet incorporated into the TAR, however, while the most intensive logging has occurred in the designated Tibetan autonomous prefectures in Sichuan and elsewhere. In addition, the rate of regeneration of Tibetan hillslopes is not as great as indicated by the extent of overflight by PLA planes dropping seed.²⁶⁷

In the 1970s the determination to completely remake Tibet, by acts of revolutionary will, paid little heed to environmental consequences. These were decades in which revolutionary slogans included: "Win the war between man and grass."²⁶⁸ All that was old was swept aside, including the entire indigenous Tibetan knowledge system of ecosystem sustainability. It was the very lack of Tibetan impact on the environment that condemned Tibetans, in Chinese eyes, as primitives.²⁶⁹

The 1960s and 1970s saw politically mandated campaigns to increase production at all costs, including massive cost to the environment. Photographic archives showing the extent of forest in premodern Tibet,

266 Xinhua, 1 December 1994.

267 Growth rates of logged and reseeded forests are documented below. Yupo Yang, *Importance of Ecological Balance in the Subalpine Forest of Western Sichuan*, in J.H.Cooley ed, *Ecology of the Development of Tropical and Subtropical Mountain Areas*, International Association for Ecology, INTECOL Bulletin, 13, 1986, 41-44; additionally, the area of forest stock safe from timber cutting in TAR is greatly exaggerated by the Chinese practice of including nearly all of the Indian province of Arunachal Pradesh as an intrinsic part of TAR, and mapping it as almost entirely forest. On the TAR map in the *National Economic Atlas of China*, the area of forest free from logging is trebled by the inclusion of Arunachal, *National Economic Atlas of China*, Hong Kong, Oxford University Press, 1994 305. The inclusion of an Indian province in maps of Tibet is standard Chinese practice.

268 Geping Qu & Jinchang Li, *Population and the Environment in China*, (Boulder, Lynne Rienner, 1994), 74.

269 "Few areas in the world were as backward economically and culturally as old Tibet... Industry did not exist. Even matches and nails were imported. There were no modern roads. Transport was by pack animals or on human backs." *Tibet: No Longer Medieval*, (Beijing, Foreign Languages Press, 1981) 7,11.

compared with the present, demonstrate widespread deforestation²⁷⁰ not only in south eastern Tibet, but also much further north, in Amdo, where traditional Tibetan practice set aside north-facing hillslopes for forest cover and the abundant wildlife therein. In political campaigns such as the Great Leap Forward, and the Cultural Revolution, directives required remaining stands of trees be sacrificed for the revolutionary experiment in backyard steel smelting.

In most areas where forests were cut there is no sign they are returning. Forest was clearfelled, leaving no seed trees. Clearfelling altered the microclimate, increasing water runoff and reducing availability of rain to feed regrowth. There has been little investment in reforestation. The climate requires very lengthy rotations which Chinese policy fails to acknowledge, and population numbers have grown greatly due to Chinese settlement, putting pressure on any remaining forest for both construction timber and fuel wood. A scientist of the Sichuan Forestry Research Institute states: "Forest regeneration after cutting is difficult owing to high relief, bad weather, and environmental changes associated with cutting."²⁷¹

China insisted that Tibet be made to sustain a greatly increased human population. The economic reforms since 1979 were motivated by: "the exploitation of land and natural resources for the benefit of a Han-defined program of modernization, under conditions of 'market socialism.'"²⁷² "In Tibet, the combination of government policies, immigration and commercial activities by Tibetan entrepreneurs and

270 Tibet Image Bank, Duisburg and London. Library of Tibetan Works & Archives, Dharamsala. *Cutting Down Tibet*, eyewitness footage of logging in Tibet, BBC television 13 May 1996.

271 Yupo Yang, "Importance of Ecological Balance in the Subalpine Forest of Western Sichuan", in J.H.Cooley ed, *Ecology of the Development of Tropical and Subtropical Mountain Areas*, International Association for Ecology, INTECOL Bulletin, 13, 1986, 42.

272 Terry Cannon, *China's Development Policy and the Environment : Problems and Prospects for Tibet*, submission to the Third Pole Conference, *Report of the Conference* (Paris, 1993), 61. The same author states that the attitude of the CCP towards minorities is that they "are subservient (and inferior), and whatever is found in their territory is defined as being of value for the central government, under its (i.e., a Han) definition of what it should be used for" *Ibid.*, 63.

herders has led to an increased rate of deforestation, rangeland degradation and other forms of damage."²⁷³

Biodiversity in Tibet has suffered dramatically. Chinese and international scientists concur in finding a high proportion of Tibetan wildlife warrants listing as species whose survival is now threatened by modernity.²⁷⁴

"Since the Chinese Government has occupied Tibet, its wildlife and natural resources have been heavily exploited by poaching, poisoning and the destruction of natural habitats."²⁷⁵ Scarcity of animals of all kinds has been reported.²⁷⁶ As one well-known wildlife scholar observed during an excursion to the Changtang, the high plateau of the

273. *Ibid.*, 62.

274 Mammals of the high plains and slopes of the Tibetan plateau which are now on the International Union for Conservation of Nature (IUCN) Red List of Endangered Animals are: snow leopard, Eurasian brown bear, Bactrian camel, White-lipped (Thorold's) deer (*cervus albirostris*), markhor goat, gray wolf (*canis lupus*), wild yak (*bos grunniens*), Kozlov's pika, and muli pika (*ochotona muliensis*). In the wetter, forested south east of Tibet the following mammals are on the IUCN Red List of Endangered Species: giant panda, Tibetan or Asiatic black bear, red panda, goral (*nemorphedus baileyi*), takin, McNeil's deer (*cervus elephas macneilli*), shou or red deer or Sikkimese stag (*cervus elephas wallichii*), clouded leopard (*neofelis nebulosa*), Pere David's deer, Tibetan macaque (*macaca tibetana*), and snub-nosed golden monkey (*rhinopithecus roxellanae*). In addition there are several species which, while not threatened with extinction, are locally threatened in many of their Tibetan habitats, in the judgment of the World Wildlife Fund. On the plateau and surrounding slopes of Tibet these species are: argali sheep, serow, chiru Tibetan antelope, goa Tibetan gazelle, Mongolian gazelle, goitred gazelle, Marco Polo sheep, bharal blue sheep, lynx, corsac fox, red fox, wild ass, Himalayan leaf-nosed bat, masked palm civet and wild dog (*cuon alpinus*). The WWF further lists species of the forested south east of Tibet which are threatened: leopard, musk deer, alpine musk deer, river otter, muntjac, long-tailed leaf monkey, Pallas' cat, small Indian civet cat, large Indian civet cat, leopard cat, Assamese macaque, tufted deer and langur. See also World-Wide Fund for Nature, *A Review of Wildlife and Biodiversity Conservation Needs in Tibet*.

275 Ulrich Gruber, "Tibet's Highly Endangered Wildlife," Third Pole Conference, 29.

276 S. Dillen Ripley, "Xizang: Observations During a Scientific Excursion 3-15 June 1980" in *Geological and Ecological Studies of Qinghai-Xizang Plateau*, Proceedings of a Symposium on Qinghai-Xizang Plateau, (Beijing, China), 2103-2115.

TAR: "Those plains are now empty of yaks, killed for meat since the 1950s, when a new road made the area accessible to hunters. This species of wild cattle is now largely confined to the most remote parts of the Chang Tang, and even there it is becoming increasingly scarce."²⁷⁷

The wild yak has become extremely rare, confined to a few small areas of the north western Changtang, due to poaching with modern hunting guns.²⁷⁸ Wild yaks are legally protected but slaughter and sale of these animals has been reported.²⁷⁹ The quality of ordinary yaks has also degenerated because of poor grassland and inbreeding.

Tibetan customary practice of curating landscapes without making them solely serve human purposes has enabled the watersheds of the great rivers of Asia to remain pure, and remain home to migratory water birds. Nomadic Tibetan herders share the wetlands in which many rivers have their headwaters, with populations of black necked cranes, in a huge area of 300,000 hectares, undisturbed. The black necked crane is on the IUCN Red List of Endangered Species, and these marshes, known in Chinese as Ruoergai, are the second largest remaining wetland in China.²⁸⁰ There is no official recognition or protection of the area, and power to protect the cranes from modernity is not in Tibetan hands. Nomads are under pressure from the state to increase production, and must maintain larger and larger herds to keep pace with rapid inflation of grain which they cannot grow, and must buy as the staple of their survival.²⁸¹ This puts grazing pressure on steppe and wetlands, further exacerbated by Chinese moves to fence and privatize the open grasslands, which has had negative environmental impact when done in similar circumstances in China.²⁸²

277 George Schaller, "Tibet's Remote Chang Tang: In a High and Sacred Realm," *National Geographic*, August 1993, 76.

278 Ulrich Gruber, "Tibet's Highly Endangered Wildlife," 24.

279 *Tibetan Environment and Development News*, Issue 6, Nov. 1992, 1.

280 D. A. Scott, *The Black-Necked Cranes grus nigricollis of Ruoergai Marshes, Sichuan, China*, Bird Conservation International, 1993, 245.

281 Nancy E. Levine, "Adapting Modernization: Production, Consumption and Herd Management Strategies among Golok Pastoralists," paper presented to First International Conference of Amdo Studies, Harvard University, May 1997.

282 Dee Mack Williams, "Grassland Enclosures: Catalyst of Land Degradation in Inner Mongolia," *Human Organization*, 55 #3, 1996, 307-313.

Far from the rare birds of Tibet being protected, the IUCN lists many Red List species facing extinction.²⁸³ The mammals which are rare in Tibet, already endangered, are equally under threat in adjacent areas of the Himalayas, which are much more densely populated.²⁸⁴ Similarly, one third of all species of plants growing in the Himalayas where the timberline meets the upland grasslands are now endangered.²⁸⁵ The most vulnerable habitats are open slopes at forest edge, crevices in boulders and rocks, and marshes.

There are areas of Tibet where China does protect habitat, sometimes with international assistance. Enforcement of environmental law is poor, as Qinghai Vice-Governor Wang Hanmin, states: "The phenomena of refusing to abide by the law governing the protection of environment and natural resources, of not strictly enforcing the law and of not investigating law violators generally exists in the province."²⁸⁶

One Tibetan area which has a high level of protection is Jiuzhaigou in Sichuan, which annually attracts four times as many tourists as the whole of the TAR. This area of scenic mountains and waterfalls is also home to a considerable Tibetan population, who have become part of the tourist package experience, yet the entire area has been granted World Heritage status by UNESCO, at China's request. This creates a pressure to remove the Tibetans from the park, to conform with World Heritage

283 Blyth's tragopan, Cabot's tragopan, Sclater's monal, Sichuan partridge, black necked crane, Blyth's kingfisher, gray-sided thrush, Przewalski's parrotbill, rufous-headed parrotbill, large-billed bush warbler, brown-chested jungle flycatcher and beautiful nuthatch. In addition WWF considers further species to be endangered: golden eagle, peregrine falcon, Pallas' fish eagle, cinerous vulture, Tibetan snowcock. The listing of species drawn from the IUCN Red List is in WWF, *A Review of Wildlife and Biodiversity Conservation Needs in Tibet*, 1996, 6.

284 Wildlife Institute of India, *Strengthening of National Database, Final report*, Dehra Dun, 1992.

285 Ranbeer S. Rawal, Uppeandra Dhar, *Sensitivity of Timberline Flora in Kumaun Himalaya, India: Conservation Implications*, Arctic & Alpine Research, 29 #1, 1997, 112-121.

286 Qinghai People's Broadcasting Station, Xining, 4 November 1996, in BC/SWB/FE/2762/G/3-4, 6 November 1996.

requirements.²⁸⁷ Tibetans, long the guardians of such unspoiled places, may be displaced in the name of preserving natural wilderness values.

Rangelands and Nomadic Pastoralism

Destruction of habitat and desertification and degradation of rangelands have dramatically accelerated throughout Tibet. Chinese statistics show that 17% of the TAR and 14.7% of Qinghai province have been turned into desert.²⁸⁸

287 Lawrence Epstein, Peng Wenbin, *Changing Times at Jiuzhaigou*, paper presented to First International Conference of Amdo Studies, Harvard University, May 1997.

288 "Large areas of Qinghai Province have turned into desert, according to the Chinese provincial newspaper *Qinghai Ribao*. Four Tibetan Autonomous Prefectures, eight counties, two cities and three towns suffer desertification... 10.64 million hectares of land in the province have become deserts, 14.7% of the province's total." *Qinghai Ribao*, Xining, 6 July 1996, translated in BBC/SWB/FEW/0447/WG/16, 7 August 1996; "The first desertification survey of southwest China's Tibet Autonomous Region has been completed, showing the region has 21 million hectares of desert, accounting for 17% of its total lands." See also Xinhua, Beijing, 18 August 1996, reprinted in BBC/SWB/FE/2695/S1/4, 20 August 1996; Tibet Autonomous Regional Bureau of Urban and Rural Construction and Environmental Protection, *Communique of the Tibet Autonomous Region's Environmental Situation in 1993*, Lhasa, *Xizang Ribao*, 5 June 1994, translated by BBC/SWB/FE/2025 G/2-4, 18 June 1994: "Tibet's grasslands continued to degenerate with decreasing grassland growth and coverage area. There were serious problems of grass diseases and weed growth, as well as rat and insect pests in the grassland regions." Qinghai province Communist Party standing committee member Wang Hanmin, on Qinghai People's Broadcasting Station, Xining, 4 November 1996, translated by BC/SWB/FE/2762/G/3-4, 6 November 1996: "The [Qinghai] province now faces considerably serious problems related to the environment... Increasingly more ecology is being destroyed. Soil erosion is becoming more serious, and grasslands are becoming seriously degenerated and desertized. There generally exist the phenomena of destroying and wasting natural resources. Environmental pollution and ecological destruction in some areas has become a key factor in restricting the development of the economy and threatening the people's health."

The problem is not unique to Tibet. A large-scale Chinese research project announced in 1997 that more than 27% of China's land mass was threatened with being turned into desert. Vast swathes of barren desert and gobi have already swallowed up 1.7 million square kilometres - almost a sixth of all land in the country.

Degraded pasture at worst becomes desert, or supports only noxious weeds, the useful plants having been grazed to death. Loss of vegetation exposes thin topsoil to fierce wind erosion. In a dry, windy and cold climate, with very little organic matter, soils rebuild very slowly. At the heart of the debate is the loss of high alpine pasture. The sedges which live as high as plants can manage, below the bare peaks, steadily recede, baring rock and exposing the soil to be blown away in the gales which often occur. These *kobresia* sedge meadows have sustained yak herds, as summer pasture, for centuries without evidence that they were in retreat, yet scientific reports from all over Tibet now show steady erosion and degradation of the grasslands, especially at their upper limits.²⁸⁹

Factors contributing to this degradation include compulsory collectivization, imposition of production quotas and the ongoing state price fixing of herder products well below market rates, all failures of state policy. The combination of population explosion, command economy, compulsory collectivization, diminution of personal responsibility for environmental impacts, stifling of all dissent, artificially low prices for Tibetan timber and grassland produce, the availability of exploitable new frontier resources, and officially sponsored migration of Chinese into Tibet, also help explain the steady degradation of the grasslands. The herders are becoming more and more marginal, in a literal spatial sense, as well as economically and as icons of Tibetan identity.

Tibetan herders evolved risk management strategies to deal with the uncertainties of life on the highest inhabited plateau on earth. Today they face new uncertainties and have to practice further risk management strategies, to cope not only with natural disasters and seasonal limitations. They have to cope with the steady deterioration of the quality and productivity of their rangelands, and with the human intervention of

289 Georg Miehe, *On the Connexion of Vegetation Dynamics with Climatic Changes in High Asia*, *Palaeogeography, Palaeoclimatology, Palaeoecology*, 120, 1996, 5-24.

state policy imposed on them. From the point of view of the herders, the changeability of state policy is as much a hazard as blizzards.

Since 1959, state policy has changed frequently and dramatically, each time with environmental impacts. At times, private ownership of animals was forbidden, herders and their animals were collectivized, and the only earnings available to herders were calculated on the basis of work points scored according to contributions towards achieving quotas imposed by the state.²⁹⁰ The twenty years of collectivization, class war and stigmatization of all things Tibetan were the cause of excessive grazing pressure, from which the grasslands have yet to recover. Herders remember these decades as a time of bare survival, with all connection broken between work and wealth, in which the state extracted surpluses for itself, leaving little for survival.²⁹¹ Never before was famine known in Tibet, but, as the early ICJ reports indicate, starvation became widespread.

For herders the risks are many, and risk management is a fundamental indigenous knowledge system essential for ongoing sustainability of both herds and pastures.²⁹² Recent scientific research shows that herders have curated the landscapes of Tibet for thousands of years, selectively using fire to clear forest regrowth off south facing hill slopes to maximize pasture availability.²⁹³ In the Tibetan prefectures of western Sichuan the use of fire to restrict forest cover to north facing hillsides was a risk management technique suited to long term sustainability of forest, pasture and herds.

The climate of the Tibetan plateau, especially on the wetter eastern portion where Qinghai, Sichuan and TAR meet, is unpredictable, and prone to massive blizzards. Because of the variability of climate, herders'

290 Dhondub Choedon, *Life in the Red Flag People's Commune*, Dharamsala, Information Office, 1978.

291 Dawa Norbu, *Red Star Over Tibet*, (New York, Envoy Press, 1987).

292 Maria Fernandez-Gimenez, *The Role of Ecological Perception in Indigenous Resource Management*, *Nomadic Peoples*, 33, 1992, 31.

293 B Frenzel et al, *On the Upper Quaternary Paleocology of Eastern Tibet- Preliminary results of an expedition to to the Eastern Tibetan Plateau, 1992*, *Science in China, Series B*, 38 #4, 1995, 485, 493.
W.W. Huang, *The Prehistoric Human Occupation of the Qinghai-Xizang Plateau*, *Göttingen Geografische Abhandlungen* 95, 1994, 201.

risk strategies are essential.²⁹⁴ The basic strategy is to maximize herd size. For this reason, and because it is offensive from a Buddhist point of view, herders seldom kill their animals, and resist the idea of commercializing their practices so as to maximize meat production. They continue to set many animals free to graze out their days undisturbed, as a pious act compensating for the consequences of the inevitable occasional slaughter of a beast for human survival.

These are three key risk management strategies - seasonal migration, burning, and maintaining herd size - in response to the constraints inherent in the close symbiosis of people and yaks on the highest plateau on earth, making human use possible and sustainable.²⁹⁵

Since the early 1980s, Chinese policy changes resulted in redistribution of herds and land use rights to family groups, or tribes (*tshowa*). Redistribution was done according to who had best Party connections, and was always conditional, a favour rather than a right, revocable at any time.²⁹⁶

In recent years, herders responded to their new opportunities to rebuild herds, which are their primary security. They reverted to the tradition that wealth on the hoof is the most fundamental form of wealth, compatible with their preference for a mobile life. This is a basic difference in outlook to the modern Chinese, for whom accumulation of fixed assets is the yardstick of wealth.²⁹⁷ Under these circumstances, everything pointed to herd maximization as the best strategy to manage both the natural risks of climate and the human risks of renewed state extraction of herder production.²⁹⁸

294 Guy Templer et al, *The Changing Significance of Risk in the Mongolian Pastoral Economy*, *Nomadic Peoples*, 33, 1992, 105.

295 B Erdenebaatar, "Socio-Economic Aspects of the Pastoral Movement Patterns of Mongolian Herders," 58-110, in Humphrey ed, *Culture and Environment in Inner Asia*, Vol I.

296 Dee Mack Williams, *Boundaries of Knowledge as Contested in Asian Grassland Environments*, paper presented to Association of Asian Studies, Chicago, March 1997.

297 P.B. Tseren, "Traditional Pastoral Practice of the Oirat Mongols and their Relationship with the Environment", 147 - 159 in Humphrey ed, *Culture and Environment in Inner Asia*, Vol II.

298 Dennis P. Sheehy, *Grazing Management Strategies as a factor influencing Ecological Stability of Mongolian Grasslands*, *Nomadic Peoples*, 33, 1992, 17-30.

Chinese populations most immediately adjacent to Tibet have grown at extraordinary rates. In 1850, well into a population explosion fostered by mid-Qing conquests and dynastic prosperity, the combined population of the provinces neighbouring Tibet was 27.19 million.²⁹⁹ In the communist era the population of the Chinese hinterland - the immediate beneficiaries of extraction of Tibetan resources - has grown from 70 million to over 180 million people.³⁰⁰ Urban consumer demand in the Chinese hinterland was met by centralized state enterprises capable of commanding resources, determining prices, imposing production quotas and investing in transport fleets required to bring Tibetan commodities cheaply to Chinese urban markets. Two senior Chinese environmental monitoring officials reported recently that "the average distance travelled to harvest timber is 1,200 km."³⁰¹

A discreet reference to the root causes of rangeland degradation is made by Qu, Chairman of the Environment Protection Committee of the Chinese National People's Congress, and Li, an adviser to the Chinese National Environment Protection Agency: "A delicate balance exists between human population density and biomass productivity. By internationally accepted standards, a typical grassland area may support 5 persons per km². Populations in grassland areas currently far exceed these standards. On average, Inner Mongolia is home to 15 persons per km². If that density is taken as a standard, the eastern counties and prefectures of Tibet, which have absorbed the Chinese influx, now mostly support excessive numbers."³⁰²

299 Ping-ti Ho, *Studies on the Population of China, 1368-1953*, (Cambridge, Harvard University Press, 1959), 283.

300 Totals include Tibetans in all provinces listed. Ho, *Studies on the Population of China*, 94-5. Judith Banister, "Provincial Population Size and Interprovincial Migration", 683-698 in Dudley L. Poston ed *The Population of Modern China*, (New York: Plenum Press, 1992), 684-5.

301 Geping Qu & Jinchang Li, *Population and the Environment in China*, (Boulder: Lynne Rienner, 1994), 59.

302 The most recent censuses in China, 1982 and 1990, indicate that in a broad belt of eastern Tibet, from Qinghai in the north, through Gansu and Sichuan to Yunnan in the south, the Chinese transmigrants have pushed densities above the standard set by the National Environment Protection Agency. See *Population Atlas of China*, Hong Kong, Oxford University Press, 1987; Tianlu Zhang & Mei Zhang, *The Present Population of the Tibetan Nationality in China*, Social Sciences in China, 1994; *New Majority: Chinese Population Transfer into Tibet*, (London: Tibet Support Group UK, 1995), 150-155.

The degradation of the grasslands is the most pervasive environmental impact of the era of Chinese control of Tibet, and the impact which most threatens the sustainability of Tibetan civilization.³⁰³ German research reports degradation of the sedge turf, at the upper limit of plant growth, which has always sustained the nomadic cycle by providing late summer and early autumn pasture for the yak herds, enabling the grasses at slightly lower altitudes to be kept for autumn and winter forage.³⁰⁴

A lengthy review of the evidence of the loss of rangeland savannah concluded: "The continued loss of the natural savannahs on a global scale has implications for mega-environmental concerns such as global climatic change and loss of genetic diversity which are at least as serious as those associated with the destruction of rainforests."³⁰⁵ "The major blame is laid at the feet of policy. The policy environment in China since 1949 has created the incentives and uncertainties which have induced pastoralists to behave in an exploitative manner. Furthermore, the availability of modern technology has facilitated and intensified the 'mining' of natural pastures in China's pastoral region."³⁰⁶

The loss of grassland quality directly affects the productivity of the nomadic backbone of Tibetan civilization. Chinese scientists have quantified the impact. In the Tibetan prefectures of western Sichuan, the

303 Chen Shan, *Inner Asian Grassland Degradation and Plant Transformation*, 111, in Humphrey ed, *Culture and Environment in Inner Asia*, Vol I. Much recent research on rangeland degradation focuses on the rangelands of Mongolia, because the loss of pastoral amenity is most acute, and because independent Mongolia, since the end of communism, has been open to independent research, more than China. The rangelands of inner Asia, including Mongolia, Tibet and Xinjiang can be considered together.

304 Georg Miehe, *On the Connexion of Vegetation Dynamics with Climate Change in High Asia*, *Palaeogeography, Palaeoclimatology and Palaeoecology*, vol 120, 1996, 5 - 24.

305 John Longworth, Gregory Williamson, *China's Pastoral Region: Sheep and Wool, Minority Nationalities, Rangeland Degradation and Sustainable Development*" Oxford, CAB International, 1993.

306 Longworth & Williamson, *China's Pastoral Region*, 332-3. see also: Australian Centre for International Agricultural Research, *Economic Aspects of Raw Wool Production and Marketing in China*, 1993, including a chapter *Rangeland Degradation in the Pastoral region of China: Causes and Countermeasures*, by Liu Yuman, of the Institute of Development, Academy of Social Science, Beijing.

home of over one million Tibetans, "the quality of grassland has deteriorated a great deal. During the period from 1960 to 1980 (on the basis of grassland surveys at county level), the average yield of grass decreased from 316 kg/*mu* to 250 kg/*mu*. In terms of the composition of grasses, the content of poisonous grass increased from 1.5 to 4 per cent."³⁰⁷ Grass productivity in 1960 was 26.4% higher than in 1980. Due to increasing Chinese population transfer, this grassland of diminished productivity was required to carry a heavier stocking rate of animals: "The grassland available per sheep unit decreased from approximately nine *mu*/sheep in 1976 to approximately six *mu*/sheep unit in 1986. The grassland available per capita (at village level) decreased from 458 *mu*/person in 1982 to 376 *mu*/person in 1988."³⁰⁸

The decline is over a short period, which, if extrapolated, could suggest an impending crisis of viability for Tibetan nomadic civilization. Degradation of the uplands is having a considerable impact on the yaks, according to Zhang Yun, the head of the Damxung Frozen Yak Sperm Station, north of Lhasa: "In the last few decades, however, the breed of yaks has been degenerating in some areas. Major reasons behind this situation include the degeneration of grasslands and inbreeding. In the 1950s, one male yak weighed some 460 kg, but one male yak weighs only some 300 kg now. In the same period, milk produced by one female yak has dropped for 200 kg to 120 kg."³⁰⁹

Increasing urbanization on the steppes has environmental consequences. Once forests are gone, the only available fuel for heating and cooking is dried dung, which is removed from the grasslands, its nutrients lost. Levine found the poorest Tibetans were those closest to the

307 Li Yanhua, Wang Fei, Yu Dafu, "Farmers' Strategies in the Mountain Areas of West Sichuan: China", in N.S. Jodha ed, *Sustainable Mountain Agriculture*, (Oxford: Intermediate Technology Publications, 1992), 423-436.

308 Ibid.

309 Zhang Dan, *Improving the Breed of Yaks*, *China's Tibet* #6, 1994 6 - 7. See also B Telenged, *Livestock Breeding in Mongolia Past and Present: the Advantages and Disadvantages of Traditional and Modern Animal Breeding Practices*, 161 - 188 in Humphrey ed op cit Vol I.

new towns, whose grazing land had been encroached for urban construction.³¹⁰

Current Chinese policy is to make herders responsible for specific tracts of land. This privatization of responsibility falls short of outright ownership. Land use decisions and risk management strategies in much of Tibet are now personal choices for which the state accepts no blame. However it is the state which allocates land, and recent anthropological fieldwork suggests allocations go to those who enjoy personal connections with the Communist Party.³¹¹ Once land is allocated, equitably or not, those with the biggest herds and best connections continue to run their animals on the remaining commonly owned land for as long as possible, reserving for emergencies their own allocated areas, fenced off with finance from an agricultural bank made possible only by utilizing Party connections.³¹² Only when there is no alternative is the personal fenced area grazed. Further fencing of the rangelands is proceeding.³¹³

A delegation of American scientists and social scientists specializing in grasslands, challenged the view that degradation of the rangelands is due to the selfishness of herders who own their herds but not the grasslands, so exploit it without heed to long term consequences.³¹⁴ They pointed out that:

far from being the object of abuse by private owners, common pool resources such as pastures are often subject to well

310 Nancy Levine, "Cattle and the Cash Economy: Adaptations of Tibetan Nomadic Pastoralists in Sichuan, China", paper presented to First International Conference of Amdo Studies, Harvard University, May 1997, 5 - 7.

311 Williams *Boundaries of Knowledge*, also *The Barbed Walls of China: A Contemporary Grassland Drama*, *Journal of Asian Studies*, 55 #3, 1996, 665 - 691.

312 Williams, *Boundaries of Knowledge*, also *The Desert Discourse of Modern China*, *Modern China*, 1997 and *Boundaries of Knowledge as Contested in Asian Grassland Environments*, paper presented to Association of Asian Studies, Chicago, March 1997.

313 "Another 800,000 mu of enclosed grassland built" in Tibet in 1995: *Xinhua* 22 August 1996, translated by BBC/SWB/FE/2699 S1/3 24 August 1996.

314 National Research Council, *Grasslands and Grassland Sciences in Northern China*, (Washington: National Academy Press, 1992).

defined access and management rules enforced by effective customary institutions. Such rules specify who has access to the resources and under what conditions, regulate access and levels of use, and provide for the resolution of conflicts and enforcement of sanctions....Where members of such groups share similar production objectives and methods, where there are no large differences in wealth or social status, where group membership has important benefits in addition to those concerned with production, and especially where rules governing resource use are effectively enforced by the group or by some superior authority, it is likely that the common resources will be managed in a sustained manner. Conversely, where these conditions do not apply, it is unlikely that common resources such as pasture can be sustained. This is the case... where there are large wealth or status differentials, where group membership has few benefits, and especially where rules about resource use and management are unenforced or unenforceable. The last condition prevails where governments attempt to manage common resource use through ill-equipped centralized bureaucracies and inappropriate regulations and, in so doing, undermine the rules and procedures adopted by the resource user groups themselves. In this situation, individual producers may find it rational to ignore the rules, which result in a tragedy of the commons.³¹⁵

Forestry and Downstream Impacts

The other primary cause of biodiversity loss is the felling of the Tibetan forests.³¹⁶ While most forests are renewable, because of the altitude, cold temperatures, steep slopes and sharp differences between day and night temperatures, no-one knows how long it may take for clearfelled conifer/rhododendron/juniper forests to regenerate. Once a forest has been clearfelled there is no tree canopy to protect seedlings

315 *Grasslands and Grassland Sciences in Northern China*, 186-191.

316 The deforestation of neighboring Nepal has been intensively researched, but few independent researchers have been allowed into the forests of eastern Tibet, which are split administratively between Tibet Autonomous Region, Sichuan, Qinghai, Gansu and Yunnan Provinces.

from temperature extremes.³¹⁷ It may be that, in the absence of reforestation practices specifically designed for the special requirements of eastern Tibet, the forest does not regenerate at all. Many species grow slowly: juniper are often 1500 years old. The World Wide Fund for Nature (WWF) fears that clearfelled forest exposes remaining Tibetan soils to frost heave, destroying seedlings as they sprout, and preventing regeneration.³¹⁸

A Chinese scientist frankly reported in 1992:

Long term overcutting has caused severe consequences to ecology, economy and society in the Tibetan area. It is nearly impossible to find a big tract of forest along the banks of the four primary rivers which join to become the Yangste. Especially in the Dadu River valley, where logging has continued longest, the eight timber companies assigned to its forests lack an exploitable resource and the annual harvest floated downstream in boom years, 1.5 million cubic metres. has dropped to 0.18 million cubic metres. Soil erosion is serious, floods and debris flows occur often in summer. The siltation load dumped by the rivers increases, harming downstream dams. Also the water conserving capacity of the forests is destroyed. The 1981 flood in Sichuan can be traced to the forest reduction. Flood disaster frequency in western Sichuan has increased from once in 15 years to once in five. On the other hand, the winter seasonally lowest flow level in the Min River has dropped to 1/42 of levels recorded throughout the 1930s.³¹⁹

A Chinese environmentalist in 1991 estimated that: "If the unrestrained activities of local and provincial (state) enterprises and greedy individuals continue at this rate, the western Sichuan forest will

317 Yupo Yang, "Importance of Ecological Balance in the Subalpine Forest of Western Sichuan," in J.H.Cooley ed, *Ecology of the Development of Tropical and Subtropical Mountain Areas*, *International Association for Ecology*, INTECOL Bulletin, 13, 1986, 41-44, 43.

318 World Wide Fund for Nature, *A Review of Wildlife and Biodiversity Conservation Needs in Tibet*, 1995 (unpublished internal report) 2.

319 Ang Zhao, *Sichuan zhangqu senlin de diwei, kunjing he zouxiang liangxin xunhuan de sikao* (Crisis in Forest Industry of Sichuan, and Proposals for Amelioration) *Jinji dili* (Economic Geography) 12 #1, 1992, 55, 58.

not last more than 13 years."³²⁰ However, as logging expands westward within Sichuan, there is no sign of any reduction of logging to a sustainable rate, and some indications that the massive Three Gorges dam, currently under construction, has actually increased the demand for Tibetan timber, for use in dam construction formwork.³²¹

China's population explosion is the underlying pressure for the accelerating destruction of Tibetan forests and panda habitat. "Since the modern world made its way into the Tibetan Plateau via Chinese modernization the forests have been reduced nearly by half."³²² The rate of destruction is by various estimates three to four times faster than the forests can regrow, a practice which results in a renewable resource becoming non-renewable.³²³ Vaclav Smil terms this extraction the "planned destruction" of the portion of Tibet annexed to Sichuan.³²⁴

Chinese surveys of Kham, (western Sichuan), published in 1986, reveal the extent of deforestation, with consequent soil erosion and flooding: "In Western Sichuan 160 million cubic metres of timber, 1/5th of the total forest resource stock was consumed in the last 30 years. Forest exploitation is 2.3 times more than the forest productivity." In addition, "[f]or 30 years the process of deforestation has been widespread, and clearing of forests for grazing, cultivation and firewood has rapidly depleted the forest cover." Problems with clear felling, erosion of hillsides and of stream banks due to rafting of timber, increased sediment in streams and rivers and floods are reported.³²⁵

320 Bochuan He, *China on the Edge: the Crisis of Ecology and Development*, (San Francisco: China Books, 1991), 26.

321 Tsultrim Palden Dekhang, paper presented to *Endangered Tibet* conference, Sydney, September 1996.

322 Daniel Winkler, *The Forests of Eastern Tibet: Human Impact and Deforestation: Past and Present*, paper presented to Seventh Seminar of the International Association for Tibetan Studies, Austria, 1995.

323 Yang, *Importance of Ecological Balance*, 41; He, *China on the Edge*, 26.

324 Vaclav Smil, *The Bad Earth - Environmental Degradation in China*, London, 1984, 19.

325 "Watershed Management in Mountain Region of Southwestern China, Collected Papers from the International Workshop on Watershed Management in the Hindu Kush-Himalaya Region," International Centre for Integrated Mountain Development, Kathmandu, Nepal and Commission for Integrated Survey of Natural Resources, Beijing, China, 1986, 9.

According to a Chinese scientist, “[a]dministration of the forest industry has not conformed to natural and economic principles.”³²⁶ Deforestation and decreased water retention of watershed areas has reduced or eliminated the power output of many hydropower units and increased flooding.³²⁷ Because many forest areas are inaccessible, cutting has been concentrated in accessible areas and among the best stands of forest with deleterious results.³²⁸ Afforestation, including aerial seeding, has been attempted, but in only 30 percent of the afforested areas has the forest successfully regenerated.³²⁹ Similar concerns from an economic perspective are echoed by the Policy Research Department of the Sichuan CCP: “the Sichuan Tibetan area is very important to our economic development. Additionally, it is a lot different from other forest areas, the E. China and the S. China forest areas: 1) The forest has vertical distribution and the growth cycle is very long, so it is difficult to renew it... To renew the natural forest needs 120 years... ; 2) being located in a Tibetan area, problems of benefit distribution among the central and provincial government and the minority nationality arise ; 3) The forest industry is most important to economy on the Tibetan area.... In many counties, the timber industry provides 70% of the revenues.”³³⁰

The study acknowledged that since the beginning of the 1980s, the forest industry in this area has plunged into a resource crisis³³¹ and asserted that “[i]f this trend continues, in 20 years the forest will be used up, we need at least 40-50 years to renew it.”³³² It expressed concern at the consequences for logging enterprises in the region. “Because of heavy felling for a long time, many forest factories have no trees to fell. In the Aba district, there are 11 forest factories and the forest resources of 8 of them are exhausted. These have no continuous forest areas left and in order to let the company survive, they are forced to fell forest shelter

326 Ibid., 55.

327 Ibid., 61.

328 Ibid., 68.

329 Ibid., 72.

330 CCP Sichuan Committee, Policy Research Department, Chengdu, 1992, 3.

331 Ibid., giving figures for the available timber resources as: In Sichuan area: 1949: 780 Mm³ forest resources; 1992: 540 Mm³, of which 87Mm³ can be used for log production; Aba region: 1950: 340 Mm³ forest; 1992: 180 Mm³ left, of which 34 Mm³ can be used, 4.

332 Ibid., 4.

walls and protection forests. There is no other way to keep the local economy except overfelling. Of course, they all knew overfelling will bring harm to the economy, the environment and the social development."³³³

Mining and Other Environmental Impacts

Extraction of minerals occurs both officially and unofficially. Unofficial mining, in a country which until recently commanded both resources and labour, has spread unchecked. China now has a population of at least 100 million displaced peasants³³⁴ seeking some way of surviving, unwelcome in the great cities where they greatly outnumber the available jobs. Much of this floating population is willing to follow rumours of fabulous lodes found in remote areas. The resulting rush is entirely without official standards, supervision or regulation, other than the extortion of bribes by officials to not interfere.³³⁵

Large numbers of vagrant Chinese immigrants descend on particular locations, sometimes conscripting local Tibetans as labourers, to work deposits with no thought to environmental consequences. Cyanide is commonly used in processing gold, and the most accessible deposits are alluvial, with residues returned immediately to the stream.

Official mining in Tibet is still at an early stage. "The [Tibet] autonomous region is determined to make mining the mainstay of its economy."³³⁶ The total value of known reserves of economic minerals in TAR is put at 650 billion yuan.³³⁷ The Chinese have published 19 volumes of collected papers describing Tibet's mineral wealth. The TAR Mining Bureau employs 2400 people, almost half of them Tibetans.³³⁸ Current Chinese practice is that major mines are state-owned, requiring

333 Ibid., 4.

334 Lincoln H. Day ed, *Migration and Urbanization in China* (Armonk: M.E. Sharpe, 1994).

335 "Gold Rush To The Forbidden Province," Paris, *Libération*, 4 February 1994; "Flood Of Prospectors Prompts China Gold Mine Close," Beijing, Reuters, 14 October 1995.

336 BBC/SWB/FE/2517 S1/3, 24 Jan. 1996.

337 BBC/SWB/FEW/0409 WG/6 8 Nov. 1995.

338 Dondup Namgyal, (head of TAR Mining Bureau), *Geological Prospecting and Mining in Tibet*, China's Tibet #5, 1995.

the state to be both the profit earner and environmental regulator. There may be a conflict of interests, as the state pursues maximizing its revenues, thus neglecting the legitimate concerns of workers and local communities near the mine.

Mining is highly localised, often happening in remote areas, and requires that a mining town be built, such as Bayi, (First of August Town), currently under construction in Kham, at the Yulong copper mine. Under the Chinese plan, each county throughout Tibet is to have an urban centre, to accelerate the urbanization of all Tibet, and Bayi is to be one such urban centre, "so that it will become a major city of the region."³³⁹

The decades of mining, resource extraction and industrialization of Qinghai have a marked environmental impact. "Excessive and rapid economic development in the [Huangshui] valley in recent years have caused soil erosion, water pollution and a water shortage. Hundreds of thousands of litres of polluted water have been poured into the river each day, untreated. Dozens of ferrosilicon, iron, steel, aluminium and silicon carbide plants are releasing thick smoke every day. Some 76% of the valley's 16,000 sq. km. area has suffered soil erosion and water loss."³⁴⁰

Urbanization concentrates human activity, to the exclusion of other life, and concentrates the generation of wastes. Lhasa already fully occupies its valley, reducing farmable land. Urban growth far beyond any historic level requires import of grains and other necessities from great distances, consuming fossil fuels burned at low efficiencies. Tibet's loss of self-sufficiency has great environmental impact. The maintenance of a modern Chinese lifestyle in Tibet requires importation of almost everything, along supply lines stretching to coastal China.

339 Outline of the Tibet Autonomous Region's Five Year Plan for Economic and Social Development and Its Long-Term Target for 2010, approved by the fourth session of the Sixth Regional Peoples' Congress on 24th May 1996, published in Chinese in Xizang Ribao, Lhasa, 7 June 1996, English translation by BBC Monitoring Service, Section IV, subsection 3: Eastern Economic Area; also Section V, subsection 8: Urban Construction.

340 Xinhua, Beijing. 21 March 1996, reprinted in BBC/SWB/FEW/0430 WG/20 10 April 1996.

Urban wastes are increasingly problematic as Lhasa's population now approaches 200,000,³⁴¹ with no adequate treatment of wastes before discharge into the Kyichu River,³⁴² a tributary of the Tsangpo, which is known in India and Bangladesh as the Brahmaputra. Large scale infrastructure investment has not gone into water treatment. Higher priority has always been given to installing technologies of population monitoring and surveillance.

Chinese Conservation Programmes in Tibet

The least populated quarter of Tibet, the high cold semidesert of the Chang Tang, in north west Tibet is the largest declared nature reserve, over 247,000 sq. km. Other nature reserves are on the north slope of Chomolangma (Mt. Everest), Nielamu, Jiangcun, Nyingji Baji, Bomi, Zayul, Metog, Yigong, Leiwuqi-Changmaoling, Mankang, Napahai, Bitahai, Arjin Shan, Kokoshili, Chilian range, Aksai-Gobi, Niao Dao, Pengbo Crane reserve, Shengzha Crane reserve, Longbao Crane reserve.³⁴³ The Jiuzhaigo area has been granted UNESCO World Heritage status for its landscape values and its authentic Tibetan villagers.

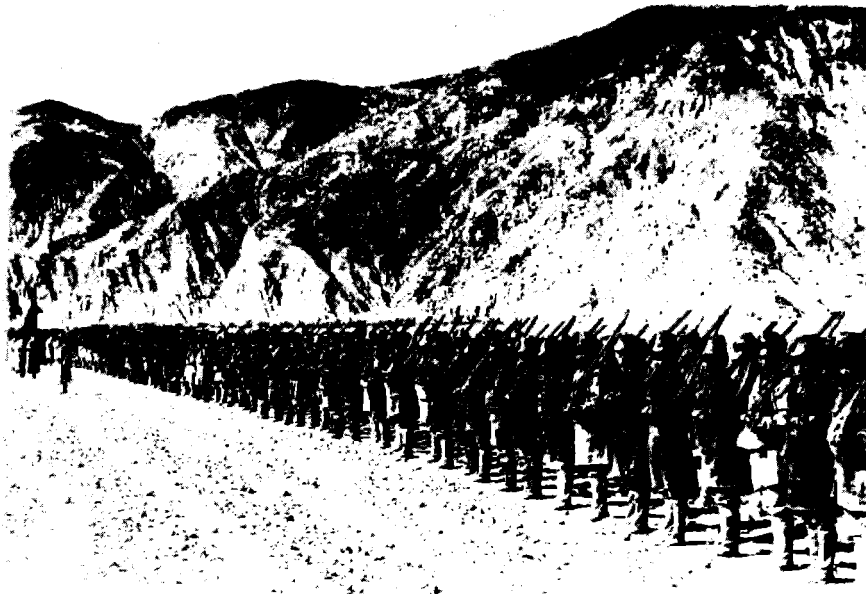
Most of these nature reserves are small, understaffed or unstaffed,

- 341 China estimates Lhasa's population will reach 400,000 by the year 2015, an estimate which does not count the existing presence of large number of unregistered Chinese migrants. Other -higher- estimates are to be found in *New Majority: Chinese Population Transfer into Tibet*, London, Tibet Support Group, 1995 pp. 103 - 123 and in John Kransky, *Chinese Migration into Central Lhasa, Tibet*, Sydney, University of Technology, 1995. Outline of the Tibet Autonomous Region's Five-Year Plan for Economic and Social Development and Its Long-Term Target for 2010 approved by the fourth session of the Sixth Regional People's Congress on 24th May 1996, published in Chinese in *Xizang Ribao*, Lhasa, 7 June 1996. English translation by BBC Monitoring Service.
- 342 Tibet Heritage Fund, *Programme for the Development of a Conservation Plan for the Historic Inner City of Lhasa*, Berlin, 1997.
- 343 Michael Green, *Nature Reserves of the Himalayas*, 1991. George Schaller, *Tibet's Remote Chang Tang: In a High and Sacred Realm*, National Geographic, August 1993, 62-87. Daniel J Miller, *Chang Tang Wildlife Reserve Tibet: Rangeland Survey Report*, New York Zoological Society, March 1994.

and lack authority to prevent exploitative activities. This reflects the low status and powerlessness of environmental agencies in China. The designation of these areas is often the result of concern over the fate of a particular species and the area may not be large enough, or comprehensive enough to preserve a habitat. Many of these areas are populated, yet local Tibetan populations have no representation on management committees.

Responsibility for managing the reserves is split among a variety of official agencies. As the Beijing central government receives lesser percentages of national GDP each year in revenue, authority for managing and financing conservation increasingly devolves onto local agencies such as the TAR Department of Forests, whose primary task, and source of income, is the exploitation of forests. Bureaucratic obstructiveness, jealous clinging to local fiefdoms, lack of cooperation among regulating agencies is a common feature of institutional management of nature reserves. The World-Wide Fund for Nature understandably refers to many existing reserves as "paper parks."³⁴⁴

344 World-Wide Fund for Nature, *A Review of Wildlife and Biodiversity Conservation Needs in Tibet*, 1995 (unpublished internal report).



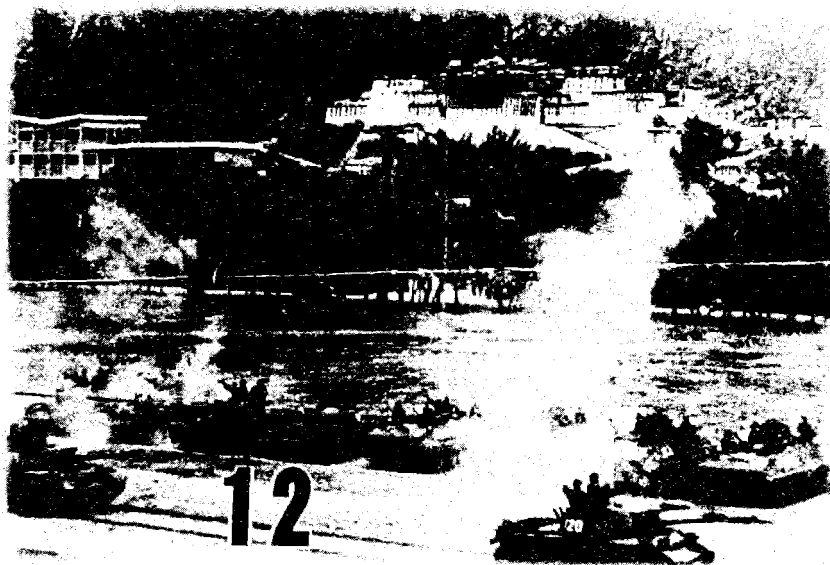
Tibetan Army, Circa 1950. Photo: the Tibet Bureau (Geneva).



*North Eastern India. The Dalai Lama's escape from Tibet in March 1959.
Photo: the Tibet Bureau (Geneva).*



*Early 1980's Nomadic Children.
Photo: the Tibet Bureau (Geneva).*



Tanks on parade in park at back of Potala Palace. Beginning of Martial Law in Lhasa, March 1989. Photo: Tibet Information Network.



Tibetan Monks enter burning police station to free imprisoned colleagues in 1 October 1987 uprising. Photo: J. Ackerly/International Campaign for Tibet.



Gedhun Choeki Nyima designated by the Dalai Lama as the reincarnation of the Panchen Lama, the second-most important figure in Tibet's Buddhist hierarchy, has been in detention since he was six years old.



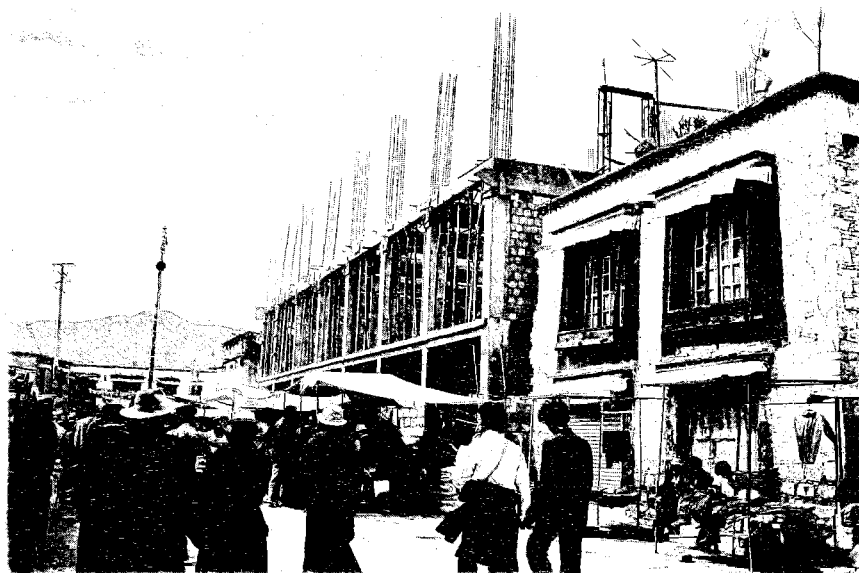
*Palden Gyatso,
a Buddhist monk
who spent three decades
in Chinese prisons,
displays handcuffs.*



*Mid 1990's.
Refugee Child from Tibet suffering an amputated limb
after frostbite while fleeing Tibet into Nepal.
Photo: Maura Moynihan.*



Karaoke Hall in Shigatse. Photo: Jirina Simajchlova.



*New construction replacing Tibetan housing in Lhasa's Barkhor.
Photo: Jirina Simajchlova, courtesy TIN.*



*Pelt of endangered Tibetan snow leopard on sale in Xining.
Photo J. Ackerly/International Campaign for Tibet.*

V. Individual Rights

A. Legal Framework

1. The PRC's International Legal Obligations

The People's Republic of China has assumed a number of legal obligations under conventional international law. It has ratified, *inter alia*, the Convention on the Elimination of All Forms of Racial Discrimination,¹ the Convention on the Elimination of All Forms of Discrimination against Women,² the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,³ the Convention on the Rights of the Child,⁴ the Convention on the Prevention and Punishment of the Crime of Genocide,⁵ and the International Convention on the Suppression and the Punishment of the Crime of Apartheid.⁶ China has not yet signed or ratified the International Covenant on Civil and Political Rights. On 28 October 1997, China signed the International Covenant on Economic, Social and

- 1 CERD, GA Res. 2106 A (XX), 21 Dec. 1965; ratified by the PRC 29 Dec. 1981. The PRC has made a reservation to Article 22 (Dispute Settlement by the International Court of Justice).
- 2 CEDAW, GA Res. 34/180, 8 Dec. 1979; ratified by the PRC 4 Nov. 1980. A reservation not to be bound by Article 29(1) (Dispute Settlement by the International Court of Justice), has also been made by the PRC.
- 3 CAT, GA Res. 39/46, 10 Dec. 1984; ratified by the PRC 4 Oct. 1988. The PRC has made two reservations to this Convention. Its reservation to Article 20 means that it does not recognise the competence of the Committee against Torture to conduct enquiries. The other reservation is to Article 30(1) (Dispute Settlement by the International Court of Justice).
- 4 CRC, GA Res. 44/25, 20 Nov. 1989; ratified by the PRC 2 March 1992. The PRC has made a reservation to Article 6 (obligation to recognise the inherent right to life, and to ensure the survival and development of the child), to the extent that the Convention is consistent with Article 25 of the Constitution of the PRC concerning family planning and Article 2 of the Law of Minor Children of the PRC.
- 5 Genocide Convention, GA Res. 260A(III) (1948); ratified by the PRC 18 April 1983. The PRC has made a reservation to Article IX (Dispute Settlement by the International Court of Justice).
- 6 GA Res. 3068 (XXVIII), 30 Nov. 1973; ratified by the PRC 18 April 1983.

Cultural Rights, which now awaits ratification. In a 1986 speech to the UN General Assembly, Chinese Foreign Minister Wu Xueqian said that "the two covenants have played a positive role in realizing the purposes and principles of the UN Charter concerning respect for human rights. The Chinese government has consistently supported these purposes and principles."⁷

Additionally, most of the norms elaborated in the Universal Declaration of Human Rights,⁸ as well as certain rights promulgated in both international covenants, are generally held to constitute customary international law and are therefore binding on the PRC. In a 1988 UN speech, China's Foreign Minister said that "the Universal Declaration of Human Rights ... is the first international instrument which systematically sets forth the specific contents regarding respect for and protection of fundamental human rights."⁹ In the following sections, we will examine the situation of certain individual rights in Tibet according to conventional and customary law binding on the PRC.

2. Chinese Internal Law

The People's Republic of China is described as a "democratic dictatorship, which combines democracy among the people and dictatorship against the people's enemies."¹⁰ A basic principle of China's legal system is the "unity between rights and duties." The Constitution stipulates that citizens are "entitled to the rights prescribed by the Constitution and the law and at the same time must perform the duties prescribed by the Constitution and the law, and that in exercising their freedoms and rights, citizens may not infringe upon the interests of the state, of society or of the collective."¹¹

The Chinese Constitution guarantees its citizens equality before the law; the right to vote and stand for elections at the age of 18; the right to freedom of speech, press, assembly, association, of procession and

7 "Human Rights In China," *Beijing Review*, 4 Nov. 1991, at 43.

8 UDHR, GA res. 217 A (III), 10 Dec. 1948.

9 "Human Rights in China," 43.

10 *Ibid.*, 16.

11 *Ibid.*

demonstration; freedom of religious belief; inviolability of the person and their dignity; protection against arbitrary arrest; inviolability of the home; freedom and privacy of correspondence, the freedom to engage in scientific research and the right to criticise. The Constitution also provides the right to work; for working people, the right to rest; the right to material assistance from the state and society for the old, ill or disabled; and the right to receive an education. As a corollary, citizens have a duty to work, the duty to receive education, a duty to pay tax, as well as a duty to practice family planning. Women enjoy equal rights under the Constitution, and marriage, the family and mother and child are protected by the state.¹² The Constitution provides that the "exercise by citizens ... of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective, or upon the lawful freedoms and rights of other citizens."¹³

3. The PRC's Stated Position on Human Rights

The position of the Chinese government on human rights was laid out in *Human Rights in China*, a 1991 White Paper issued by the Information Office of the State Council:

The issue of human rights has become one of great significance and common concern in the world community. The series of declarations and conventions adopted by the United Nations have won the support and respect of many countries. The Chinese government has also highly appraised the Universal Declaration of Human Rights, considering it the first international human rights document that has laid the foundation for the practice of human rights in the world arena. However, the evolution of the situation in regard to human rights is circumscribed by the historical, social, economic and cultural conditions of various nations, and involves a process of historical development. Owing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights. From their different situations,

12 Arts. 35-56, 1982 Constitution.

13 Art. 51, 1982 Constitution.

they have taken different attitudes towards the relevant UN conventions. Despite its international aspect, the issue of human rights falls by and large within the sovereignty of each country.¹⁴

The Chinese government's position is that "the right to subsistence is the most important of all human rights, without which the other rights are out of the question."¹⁵ The provision of basic subsistence for all Chinese is considered the greatest achievement of the Chinese Communist revolution, the fundamental condition for which was the "preservation of national independence and state sovereignty and the freedom from imperialist subjugation."¹⁶ "Only when exploitation is eradicated, production boosted, and people are free from hunger and coldness, can primary rights to existence and development be obtained."¹⁷ Nevertheless, "[w]hile struggling for the right to subsistence, the Chinese people have waged a heroic struggle for democratic rights."¹⁸ The Chinese people's democratic rights are founded on the theory that "all power in the People's Republic of China belongs to the people. That the people are masters of their own country is the essence of China's democratic politics."¹⁹ As regards "national minorities," the "stipulation that all nationalities in China are equal has ensured that all the nation's minority nationalities enjoy equal democratic rights with the Han people."²⁰

In 1995 the Information Office issued the report "Human Rights Progress in China," to explain China's basic human rights position and practices as well as progress made since the 1991 White Paper.²¹ The

14 "Human Rights in China," 8.

15 Ibid., 9.

16 Ibid., 12. The famine of 1959-62, during which an estimated 20-30 million Chinese perished of starvation due to Mao's Great Leap policies is not mentioned. See Jasper Becker, *Hungry Ghosts* (New York: Free Press 1996).

17 Zhu Muzhi, President of the Human Rights Society of China, speech at the Second National Meeting of the Executive Council of the China Human Rights Society, Beijing, 25 Nov. 1996, SWB, FE/2780 G/10, 27 Nov. 1996.

18 Ibid.

19 "Human Rights in China," 13.

20 Ibid.

21 *Human Rights Progress in China* (PRS State Council Information Office, Beijing, Dec. 1995), translated in FBIS-CHI-96-112, 23-40.

report emphasised the "right to live and develop" as "the most urgent demand of the Chinese people,"²² while reiterating that "China takes care to ensure that they [the people] enjoy all civil and political rights provided for by law and to practice and further socialist democratic politics."²³

China challenges the perceived western notion of human rights. "The so-called human rights of the western world and the human rights we talk about are two different things in nature and the viewpoints are different. First of all, it [the difference] lies in the class nature of the main human rights body. Do we want human rights of the proletariat and the overwhelming majority of the people or do we seek human rights of the exploiting classes and the minority of the people? Only by adhering to the class viewpoint can we make clear the nature of the human rights issue, a fundamental issue."²⁴ China maintains that "human rights are essentially an issue within the scope of sovereignty of a country" and often discards criticism of its human rights performance as "interference in internal affairs."²⁵

The Information Office of the State Council also published a 1992 White Paper, *Tibet - Its Ownership and Human Rights Situation*,²⁶ in which Beijing laid out the progress which Tibet was said to have achieved since its "peaceful liberation." The assertions made in this paper will be explored in subsequent sections of this chapter.

22 Ibid., 24.

23 Ibid., 25.

24 Zheng Yan "Distinguishing between right and wrong on the human rights issue in Tibet," *Xizang Ribao*, 30 Dec. 1996, SWB, FE/2820 G/4, 18 Jan. 1997.

25 Ibid. "In view of the plot of western countries to interfere with the internal affairs of our country by advocating "no national boundary for human rights" and flaunting the banner of so-called 'international protection for human rights,' Deng Xiaoping gave tit for tat and pointed out: 'People support human rights, but we should not forget there are also national rights. National rights are much more important than human rights. The country's sovereignty and security should always be put in the first place.'"

26 "Tibet—Its Ownership and Human Rights Situation," (Beijing: Information Office of the State Council of the People's Republic of China, 1992) 55.

4. Independence of the Judiciary

According to the Universal Declaration of Human Rights, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."²⁷ The UN Special Rapporteur on the Independence and Impartiality of the Judiciary has observed that "the requirements of an independent and impartial judiciary, and independent lawyers, which are necessary for the implementation of [the fair trial and non-discrimination provisions of the ICCPR], are also necessary for the effective realization and enjoyment of most other rights and freedoms."²⁸ Because of the importance of an independent judiciary and fair legal procedures in the protection of human rights, this section will provide a brief outline of the independence of the judiciary in the PRC and Tibet in the light of international standards.

According to the UN Basic Principles on the Independence of the Judiciary:

The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.²⁹

27 Art. 10 UDHR. Among China's conventional obligations which require or imply judicial independence and impartiality, are arts. 5(a), 6 CERD; arts. 2(c), 15(1), 15(2) CEDAW; art. 2(1) CAT; and arts. 9(1), 12(2) CRC.

28 UN Doc. E/CN.4/1995/39, para. 42.

29 Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by GA res. 40/32 of 29 Nov. 1985 and 40/146 of 13 Dec. 1985, art 1. These and other UN and NGO standards are collected in Reed Brody, ed., *The Independence of Judges and Lawyers: A Compilation of International Standards*, CIJL Bulletin, vol. 25-26, 1990. See also the final report of Mr. L.M. Singhvi UN Doc. E/CN.4/Sub.2/1985/18 and Add.1-6, and Working Paper by Mr. Louis Joinet, UN Doc. E/CN.4/Sub.2/1990/35 on the Independence of the Judiciary.

The Vienna Declaration, adopted at the UN World Conference on Human Rights, and endorsed by the PRC, reaffirms that:

Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.³⁰

In China, the judiciary is subservient to the Communist Party. Although China's Constitution recognises the independent exercise of the power to adjudicate, and states that courts "are not subject to interference by administrative organs, public organizations or individuals,"³¹ the CCP is not an "administrative organ" nor a "public organization."

While judicial independence in China increased in the 1980s, after the Tiananmen crackdown, the Party squarely re-asserted its control. Ren Jianxin, People's Supreme Court President stated in 1990 that "leadership of the Party over the courts is the basic guarantee for the courts to achieve their adjudicatory tasks. ...[This] is fundamentally different from the 'judicial independence' in bourgeois countries."³²

In practice, the selection and promotion of individual judges, and the process of adjudication, is strictly controlled by the party. At each geographic level, judges are appointed by the corresponding people's

30 Part I, para. 27, Vienna Declaration and Programme of Action, UN Doc. A/CONF.157/23, unanimously adopted 25 June 1993.

31 Art. 126 1982 Constitution. This formulation may not necessarily exclude interference by the CCP.

32 Fazhi Ribao, 5 Jan. 1990, cited in Lawyers Committee for Human Rights, *Criminal Justice with Chinese Characteristics*, (1993) 57.

congress.³³ Court Presidents appoint the chief judge of each hearing panel or serve themselves in that capacity.³⁴ The President also chairs the "examination and evaluation committee" that conducts an annual appraisal of the judges' performance, and on which promotions, salaries, training opportunities, rewards and penalties, are based.³⁵

According to China's Supreme People's Court Work Report for 1994, "courts across the country took measures to raise the political and ideological quality of our court personnel, organizing cadres and policemen at large to study the 'Selected Works of Deng Xiaoping' and to use the theory of building socialism with Chinese characteristics to arm their minds."³⁶ As two top political officials put it: "the basic line of thought for this year's public security, procuratorial and judicial work is to conscientiously implement the spirit of the seventh plenary session of

33 The National People's Congress has the power to elect the President of the Supreme People's Court (art. 62(7) Constitution; and to recall or remove him from office (art. 63(4)). The Standing Committee of the National People's Congress has the power "to supervise the work of the Supreme People's Court," (art. 67(6)) and to "appoint and remove the Vice-presidents and Judges of the Supreme People's Court, members of its Judicial Committee and the President of the Military Court at the suggestion of the President of the Supreme People's Court," (art. 67(11)). Local people's congresses at and above the county level elect, and have the power to recall, presidents of people's courts (art. 101). The standing committee of the local people's congress at and above county level "supervises the work of the people's court" Local people's governments conduct administrative work concerning "judicial administration" (art. 107). Article 128 reiterates that "the Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Local people's courts at different levels are responsible to the organs of state power which created them."

34 Art. 147, RCPL.

35 Arts. 22, 46, 47, Judges Law of the PRC, adopted 28 Feb. 1995, referred to in *Opening to Reform?: An Analysis of China's Revised Criminal Procedure Law* (Washington: Lawyers Committee for Human Rights, Oct. 1996), 60.

36 Work report of the Supreme People's Court, presented by Ren Jianxin, president of the Supreme People's Court, at the third session of the Eighth National People's Congress, 13 March 1995, SWB FE/2264, 29 March 1995.

the 13th CCP Central Committee [and] unswervingly uphold the party's basic line."³⁷

In June 1996 the President of the Tibet Regional Higher People's Court, discussing China's anti-crime "Strike Hard" campaign,³⁸ underscored the intimate connection between the judiciary and Party objectives in Tibet:

A struggle to rigorously crack down on active crimes of sabotage by separatists and on serious criminal activities is being unfolded in this region like a raging fire. At present, in compliance with the unified arrangement and specific demands of the regional party committee and in close coordination with public security and procuratorial organizations, people's courts at various levels and all cadres and policemen are bound by a common hatred for the enemy and are going all out to fight against serious criminals, reactionaries and saboteurs who are dead set on following the Dalai Lama, and who vainly attempt to split the motherland, oppose socialism and the leadership of the Chinese Communist Party and boldly commit serious crimes.³⁹

He called on courts to "study the instructions of the Party Central Committee on unfolding the 'Strike Hard' struggle" and asserted that:

After the failure of their schemes to split the motherland, the Dalai clique took desperate measures and frenziedly instigated separatists to carry out sabotage activities. ... Safeguarding the

37 Report by Qiao Shi, then member of the Standing Committee of the Political Bureau of the CCP Central Committee, and Ren Jianxin, Deputy Secretary of the Central Commission of Political Science and Law, SWB FE/1006 B2/4, 26 Feb. 1991.

38 According to the Tibet Information Network, "The Chinese authorities in Tibet have turned a China-wide drive against crime, known as the 'Strike Hard' campaign, into a struggle against bombings allegedly by pro-independence groups. In inland China the Strike Hard campaign is directed at common crimes, such as murder, rape, and gun-running, and does not explicitly target political offenders." *TIN News Update*, 26 Dec. 1996.

39 Bai Zhao, President of the Tibet Regional Higher People's Court, "Give Full Play to the Functions and Role of Trial, Unfold the 'Strike Hard' Struggle in a Deep-Going Manner," *Xizang Ribao*, SWB FE/2661 G/6, 11 July 1996.

social stability and order as required by the 'Strike Hard' guidelines laid down by the Central Party Committee and the regional party committee is a political responsibility that people's courts must discharge. Whether or not we are able to respond to the call and throw ourselves into this struggle with a high sense of responsibility and mission is an expression of whether people's courts in Tibet have the mass viewpoint and pay attention to politics, an important indicator of whether we maintain a high degree of unity with the party Central Committee and the regional party committee People's courts, as the state's adjudicatory organs, wield the final power of punishing criminal elements. ... The decisive role that people's courts play in the 'Strike Hard' struggle is irreplaceable by any other organ. Only when we fully understand the importance, urgency, and necessity of the 'Strike Hard' struggle, correctly understand the 'Strike Hard' guidelines laid down by the party Central Committee and the regional party committee and use these guidelines to guide our adjudication can we give full scope to our role in rebuffing crime and protecting the people and truly accomplish the 'Strike Hard' struggle as a political mission in discharging our adjudicatory responsibilities.

Courts were required, *inter alia*, to "work on close coordination with public security and procuratorial authorities so as to give play to their functions of being the main force in the 'Strike Hard' struggle." The achievements of the courts still falling "short of the party's requirements," the objectives for the near future were described as focusing on the active sabotage and criminal activities of separatists "under the direct leadership of party committees and governments at all levels." As to the adjudication process itself, the President advised, in "trying cases, we must adhere to two basic principles - do not get bogged down in minor details so long as the facts about the crime are clear and the evidence of the crimes conclusive."⁴⁰

In a similar vein, TAR Chief Procurator Yang Youcai stated in his work report for 1993 that "under the joint leadership of the Tibet regional CCP committee and the Supreme People's Procuratorate, people's procuratorates at all levels in Tibet have resolutely carried out the Party

40 Ibid.

Central Committee's instructions on launching an anticorruption struggle."⁴¹ The achievements made in the previous year, the Deputy Procurator said, were partly due to "the system of reporting our work to party committees and people's congresses...."⁴²

The ICJ interviewed Amdo Sangye, a former judge of the Qinghai High Court in Xining. His Court had three chambers with nine judges, two of whom were Tibetan and all of whom were Party members. The judge insisted that he was never assigned Tibetan political cases which, in practice, would be heard by a panel of Chinese judges. The President of the Court, who was not a judge, would assign the cases. The Court language was Chinese; Tibetan defendants were provided with an interpreter. The Judge recalled that virtually all of the judgments were based on reports of the police investigation and that judges did not possess the power to acquit on the basis of the examination in court. "If a Judge's conclusion is different from that of the police report, he will have to confer with the police and the procuratorate and they will have to come to a mutual decision." Important decisions could only be reached with the approval of the President of the Court and the adjudication committee, of which the President is chairman. The Judge informed the ICJ that, though defendants would have lawyers, in actual practice the lawyer could not effectively defend the accused. In the great majority of cases that came before him, defendants had been beaten by the police and had signed confessions.

The existence of an independent bar is also critical to the right to a fair trial and the protection of human rights.⁴³ Under the 1996 Lawyers' Law, lawyers are no longer characterised as "state legal workers," paid as cadres by the government, but as "personnel ... who are providing legal services for the public."⁴⁴ The law also granted lawyers formal

41 *TAR People's Tibet Procuratorate Report*, delivered by Lan Rifeng, Deputy Chief Procurator of the TAR People's Procuratorate, to the second session of the Sixth TAR People's Congress, 20 May 1994.

42 *Ibid.*

43 See the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by GA res. 45/121 (1990).

44 Art. 2 Law on Lawyers and Legal Representation, adopted at the 19th meeting of the Eighth National People's Congress Standing Committee, 15 May 1996, taking effect 1 Jan. 1997, Xinhua, SWB FE/2633 S2/5, 8 June 1996.

permission to establish private law firms and provided for oversight by the judicial administration department of the State Council. Political defendants in China, however, have frequently found it difficult to find an attorney as authorities have retaliated in the past against lawyers representing such defendants.⁴⁵

China's criminal process is governed by the Constitution and the Criminal Procedure Law (CPL), amended as of 1 January 1997.⁴⁶ The amendments were designed, in part, to bring China's procedure into greater conformity with international standards, and are a positive if limited and incomplete development. In particular, the new law provides for greater roles for defence counsel and the trial court, potentially converting trials that have essentially been sentencing hearings based on pre-determined verdicts into actual inquiries in to the facts.⁴⁷ In 1996 defendants were found not guilty in only eight of 1,853 in TAR criminal cases to reach verdicts.⁴⁸

Despite the constitutional and legal guarantees, former Tibetan prisoners interviewed in India by the ICJ and others frequently describe never even having been brought before a judge or court, nor having seen a defence lawyer.⁴⁹ Tashi Dolma, a nun arrested in possession of material supporting Tibetan independence spent almost two years in detention but told the ICJ "I never saw a judge or a lawyer. I never went to a court." Ngawang Choedon, a nun arrested during a peaceful independence demonstration in Lhasa in 1989 spent three years behind bars but "was

45 See, e.g. Reed Brody, ed., *Attacks on Justice: The Harassment and Prosecution of Judges and Lawyers June 1990 - May 1991* (Geneva: Centre for the Independence of Judges and Lawyers, 1991).

46 Criminal Procedure Law incorporating amendment adopted by the NPC, 17-3- 1996. For a detailed comparison between the CPL and the Revised CPL and analysis of the latter, see Lawyers Committee for Human Rights, *Opening to Reform?* For the text of the amended CPL (hereinafter RCPL), SWB FE/2588 S1/6, 17 April 1996.

47 See Lawyers Committee for Human Rights, *Opening to Reform?*

48 Speech by Bai Zhao, head of the Tibet Region's Higher Court, printed in *Tibet Daily*, 3 June 1997, cited in "Crime on the Increase in Tibet," *TIN News Update*, 22 June 1997.

49 Lawasia and the Tibet Information Network concluded in 1991 that there were no known cases in the preceding years in which political defendants had been assisted by a lawyer. *Defying the Dragon: China and Human Rights in Tibet* (London: 1991) 35.

never brought before a judge. I was never formally charged or convicted." Others tell similar stories. "After a week [in Gutsa detention centre], our sentence was announced. We did not go to the Court. We gathered and it was announced we were all sentenced to three years."⁵⁰ Others recall having had a "show trial," or a public sentencing rally. It is often only at this time that detainees are told what they stand accused of. "[Thousands of people attended.] We were made standing, handcuffed, with a written board hanging on our neck. Each of us had a soldier at each side. A man on a tribune told the crowd what we had been doing. They put us on a truck, three armoured vehicles going ahead, and we made a round in town."⁵¹

A monk arrested for demonstrating around Lhasa's Barkhor was held for six months in Sitru detention centre. He gave a detailed account of his ensuing trial:

They told me [about the trial] two days in advance. We did not have any advocate as common-law prisoners do. ... Each prisoner was guarded by two soldiers and handcuffed. ... They read the accusations to each of us, asking if it was so or not. Each prisoner could answer. They told us we had committed a serious offence and asked why we had behaved so. ... We said: "we have not committed any offence; ... We have done that to help our people, to help Tibet." They prevented us from talking any more. On the way back to the prison, the soldiers beat us extremely hard. At our arrival at the prison, [we] had to be taken to the hospital....When the sentence was decided, each of us had to sign a paper and put his fingerprints as proof that we agreed with the trial and the sentence. We all refused. They gave us a piece of paper and a

50 TIN Doc. R33R2ED, interview with a nun, 29 Oct. 1995.

51 TIN Doc. R43RM2, interview conducted 8 Nov. 1995. See, also, interviews with Tibetan refugees contained in TIN Docs. R70RM2 (2 hour trial in Chinese which the defendant did not understand, no opportunity to defend himself, no lawyer, immediate sentencing); R25RM2 (no prior announcement of trial, no defence lawyer, no prior formal charge); R19RM2 (no defence lawyer; corrupt judges); DRAMO (trial after 2 years and 15 days in prison; no prior announcement of charge or trial- date; sentencing formality); ANI3 and R33RM2 (did not attend trial, sentence announced in prison); 16AKR-PR (no presumption of innocence).

pen, saying we had to write individually a letter to the Court, telling that we were pro-independence activists; we had been beaten on the way back from the Court. Then they apologised for the beating, saying it was a mistake of the soldiers. The answer of the High Court officer was that our appeal was useless and founded on no reason.⁵²

While the ICJ considers the amendments to the China's Criminal Procedure Law to be a significant positive step, the procedure applied in practice to Tibetans, particularly those accused of political crimes, lacks the most elementary safeguards. Most troubling, however, is the general dependence of the judiciary on the CCP and its subordination to state policy - including the policy of repressing those advocating Tibetan independence. In practice, this means that criminal defendants, and Tibetan political defendants in particular, are not in a position to receive a fair trial based on international standards.

B. Economic, Social and Cultural Rights

The obligation of states to protect and promote economic and social rights involves three aspects: (1) the obligation to *respect* - not to violate the right directly by its actions; (2) the obligation to *protect* - to prevent others from violating the right; and (3) the obligation to *fulfill* - to take measures necessary to ensure the right.⁵³ With this framework, we examine China's obligations with respect to three rights: education, housing and health.

1. The Right to Education.

China has ratified the UN Convention on the Rights of the Child which recognizes the "right of the child to education" and calls on states to make "primary education compulsory and available free to all," make

52 TIN Doc. R79RM2, interview conducted 5 Nov. 1996.

53 *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 26 Jan. 1997, para. 6. The Maastricht Guidelines were elaborated by a group of experts convened by the ICJ, the Urban Morgan Institute on Human Rights, and the Centre for Human Rights of the Faculty of Law of Maastricht University. See also Asbjorn Eide, "Realization of Social and Economic Rights and the Minimum Threshold Approach," *Human Rights Law Journal*, vol. 10, 35 at 37 (1989).

secondary education "available and accessible to every child," "make higher education accessible to all on the basis of capacity" and "take measures to encourage regular attendance at schools and the reduction of drop-out rates."⁵⁴ Under the Convention, states also "agree that the education of the child shall be directed to ... the development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own."⁵⁵

As the Convention has been ratified by all but three states,⁵⁶ these articles constitute not only the most detailed elaboration, but also the most authoritative and universally accepted standard of the right to education under international law.⁵⁷ The core of the right to education constitutes the right to receive education and the corresponding state obligation to provide for educational facilities. China's Constitution stipulates that citizens "have the duty as well as the right to receive education."⁵⁸ According to the PRC Education Law, "a citizen shall enjoy equal educational opportunities regardless of race, nationality, sex, occupation, financial status and religion."⁵⁹

54 Art. 28 Convention on the Rights of the Child. See also Art. 26 UDHR encompassing three elements: the right to give instruction; the right to receive education; the freedom of choice in education. See F. Coomans *De Internationale Bescherming van het Recht op Onderwijs* (The International Protection of the Right to Education), Doctoral Dissertation, Maastricht, 1992, at 51.

55 Art. 29 *ibid.* Article 26 of the UDHR proclaims that: (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. ... (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

56 The Cook Islands, Somalia and the United States of America.

57 Manfred Nowak, "The Right to Education," in A. Eide, C. Krause and A. Rosas, eds., *Economic, Social and Cultural Rights*, (Dordrecht: Martinus Nijhoff Publishers, 1995), 94.

58 Art. 46, 1982 Constitution.

59 *Human Rights Progress in China* (PRC State Council Information Office, Beijing, Dec. 1995), in FBIS-CHI-96-112, 23, at 41.

Two National Conferences on Minority Education were convened in 1951 and 1956 in Beijing and the first two primary schools, and first secondary school opened in Lhasa in 1952 and 1956 respectively.⁶⁰ The 1960s saw the establishment of several institutes of higher and minority education which soon came under heavy attack during the Cultural Revolution with the introduction of mass education at the primary and secondary levels.⁶¹ A system of community schools (*minban*) was established in which the local population was responsible for setting up schools; the distinction between government schools and schools funded by the community exists to date.

From 1979 in the context of social, political and economic reforms, a new policy on minority education was introduced providing for specialized "minority" education and emphasizing the role of minority language and culture in the development of education programmes.⁶² The 1980 First Tibet Work Forum emphasized the "development of Tibetan culture, language and education following socialist orientation" and was followed by the "Intellectual Aid Scheme for Tibet from other Provinces" in 1984. The scheme had three components: (i) sending selected Tibetan children for secondary education to Central China; (ii) sending teachers from other provinces in China to work in schools and colleges in Tibet for two to eight years; and (iii) the creation of links between certain schools and colleges in Tibet and similar institutions in China in order to improve teaching standards and school management.⁶³

The 1985 Decision on Education, the precursor of the 1986 Law on Compulsory Education, provided that compulsory education in China was to be accomplished in three stages. With regard to areas such as the TAR, it stipulated that "economically under-developed areas would, as economic development permits, take a variety of measures to spread elementary education in varying degrees."⁶⁴ In December 1993 the TAR

60 *Lhasa in Progress: 1952-1984, Statistics on Economic and Social Development*, cited in Catriona Bass, *Education in Tibet - An Analysis of Policy and Implementation Since 1950* (London: TIN, forthcoming 1998), 7.

61 *Ibid.*, 8-9.

62 *Ibid.*, 10.

63 Dai Yannian, "Helping Tibet Train its People," *Beijing Review*, no. 4, 25, cited in *ibid.*, 12.

64 Decision of the CCP Central Committee, May 1985, in *ibid.*, 18.

Education Commission announced that compulsory education in the TAR would begin in 1994, providing for four years compulsory education in pastoral areas, six years in agricultural areas and nine years in major cities and towns.⁶⁵ However, in 1996, the target set for the length of compulsory education for the pastoral areas was reduced to three years, while it remained six and nine for the other areas.⁶⁶

Chinese 1990 census statistics reveal that the illiteracy rate for the TAR was 44%, with 975,652 "illiterates and semi-literates" compared to 15.88% for China as a whole.⁶⁷ It was officially announced that this makes Tibet the most "backward" region in China and that the rate of eradication of illiteracy in Tibet and Qinghai since 1982 has been twice as slow as in any other region.⁶⁸ Even among Party members in Tibet, only 12% have received education above high-school level, while 81% have received education below the primary school level. Among the latter,

65 Xinhua, 16-12-1993, in SWB FE/1877 G/3, 21 Dec. 1993.

66 Outline of the TAR's Five-Year Plan for Economic and Social Development and its Long-term Target for 2010, approved by the 4th session of the Sixth Regional People's Congress, 24 May 1996, 31.

67 Defined as "people aged 15 or over who can read or write very little or not at all." Census statistics for the TAR, announced on Tibet TV, 8 Nov. 1990, SWB FE/0919 B2/5, 12 Nov. 1990. By 1995, illiteracy in China had decreased to 7%, *Beijing Review*, 16-22 Dec. 1996; the 1994 combined illiteracy and semi-literacy rate for the TAR was estimated at 60% while the rate of illiteracy was held to be 60%. Catriona Bass, *Education in Tibet*, 31.

68 SWB 12 Nov. 1990, *ibid.* Long-term literacy targets set out in the ninth Five-Year plan include, bringing down the illiteracy rate to 40% by the year 2000; eliminating illiteracy among the young and middle-aged people in cities and economically developed areas; eliminating illiteracy among young and middle-aged by the year 2010. Five-Year Plan, *Outline of the TAR's Five-Year Plan for Economic and Social Development and Its Long-Term Target for 2010*, approved by the fourth session of the Sixth Regional People's Congress on 24 May 1996, 32. However, according to the Adult Literacy Section of the TAR Education Bureau, solid government commitment for such a program is lacking: "[a]t present, responsibility for adult literacy is left entirely to the Education Bureau instead of it being considered an important social issue, with equal responsibility being taken by the various government bureaus and relevant departments. ...For example, there is no regulation specifying who should take responsibility for the literacy campaign at the different levels of county government. There are no funds for literary programs in each county," Literacy Section, TAR Education Bureau, *Xizang Ribao*, 23 Oct. 1990, cited in *Priorities for Education Funding*, 35.

23% are completely illiterate with no ability to read or write Tibetan or Chinese.⁶⁹

Investment in schools in the TAR has fluctuated. Between 1978 and 1985 the number of primary schools in the TAR reportedly decreased by 70% because government regulations stipulated that all rural secondary schools and most elementary schools should gradually be taken over by the state. The new policies required that *minban* teachers should sit for qualifying exams.⁷⁰ Between 1986 and 1994, according to Chinese official figures, the number of government-run primary and middle schools increased by 48% and 16% respectively, while the number of school-age children attending primary schools increased by 43%.⁷¹

School fees are levied for most primary and middle school education.⁷² The high cost of school fees is often forwarded by Tibetans as a reason as to why their children have not, or can no longer, attend school.⁷³ Since the early 1990s, the population in rural areas has, in part, directly financially supported the establishment and running of

69 *Tibet Daily*, 7 Jan. 1991, TIN Doc. N91JA07.

70 Suzanne Pepper, "Chinese Education After Mao: Two Steps Forward, Two Steps Back and Begin Again?" in *China Quarterly*, vol. 19, 10.

71 TIN, *Examination of the State of Education in Tibet, with particular reference to the TAR*, 1994, 1. Based on the official figures provided in the Statistical Yearbook 1995, and assuming that students enroll in the first year and graduate in the last and that classes are of equal size each year, one can make a rough indicative calculation of the drop-out rates. In junior middle school the drop-out rate for 1994 was 46%; for senior middle school 17%. The drop-out rate for primary schools would be 80%.

72 Most interviews conducted by the ICJ with Tibetan refugees indicate that school fees are charged, although a few interviewees stated that primary education was free while fees had to be paid for secondary education. See also TIN doc. 4KR-ED, 1995. TIN Doc. 7(YK), April 1993. Accounts vary widely as to the scale of the school fees. For Lhasa, amounts ranging from 60 yuan/month to 150 yuan/six months; persons without a *themto* (registration card) must pay considerably higher fees to get their children admitted. TIN Docs. R.87.FV2; LHATSO; R65RM2. China-wide raising of educational funds as well as tuition and 'miscellaneous' fees from the general public was announced in 1993. *Xizang Ribao*, 30 Oct. 1994.

73 See, e.g. TIN Docs. R39RM2; R68-ED; ICJ interviews with Tibetan refugee children in India confirmed that economic factors were the primary reason why children did not attend or dropped out of school.

schools.⁷⁴ However, the quality of education of those who manage to graduate remains poor,⁷⁵ partly because the conditions in rural schools are inadequate.

At the Fifth Regional Meeting on Education, in 1994, TAR Party Secretary Chen Kuiyuan recognised that "our region still lags far behind other provinces and municipalities with regard to educational development."⁷⁶ A significant discrepancy exists between conditions of education in rural and urban areas. Many schools lack basic facilities, such as desks and chairs, and electricity, have insufficient classrooms, and are in buildings needing urgent repair. The local population has been urged to contribute financial support or labour service to improve conditions.⁷⁷ As one rural middle school teacher attested:

The school has four classrooms, all of which are in a bad state of repair. Several have broken windows. They have desks and chairs, some of which are broken. Students sit four to a desk. The school has no facilities for science, music or sport, and no library. In 1995 a new building which would house six

74 *Renmin Ribao*, Beijing, 1 Nov. 1994, reported that schools were financed through "voluntary donations of the vast numbers of peasants and herders." According to incomplete statistics, 15 million yuan for labour and materials have been donated over the past two years. in SWB FE/2158 S1/9, 21 Nov. 1994. At the second Session of the Sixth TAR People's Congress, May 1994, the public was encouraged "to run schools by pooling resources, so as to accelerate the development of education." Government Work Report by Gyaltzen Norbu, Chairman TAR, Part II.

75 At the Second Committee Meeting of the Sixth Session of the TAR CPPCC, May 1994, one member, Gyaltzen Palchor stated that "these days the type of student that has graduated from the Institute of Agriculture and Animal Husbandry and (also from) Tibet University, their nature is very poor quality." Translated in TIN Doc. 28(WD).

76 Chen Kuiyuan, Fifth Regional Meeting on Education, 26 October 1994, SWB FE/2158, S1/1, 21 Nov. 1996.

77 Gyaltzen Norbu at the Fifth Regional Meeting on Education stated that "we should continue to encourage industrial and mining enterprises, social institutions, and people of all walks of life in society to give financial support for education. Whenever possible, local governments should mobilize and organize peasants and herdsman to reconstruct unsafe village schools, build new schools and improve teaching conditions by contributing their labour service or construction materials on a voluntary basis," SWB FE/2158 S1/8, 21 Nov. 1994.

classrooms and teachers' rooms was under construction. It was being funded by donations collected over the past years from the local community. However, the money had run out before the inside of the building was complete.⁷⁸

In 1995, the total enrolment of school-age children in schools in the TAR was officially put at 64%.⁷⁹ According to Mayor Lobsang Thundrup, enrolment in Lhasa amounted to 85% in 1994,⁸⁰ an impressive achievement. As in China and throughout the world, enrolment in rural areas is lower. For instance, enrolment in Qamdo of school-age children is estimated to be 34%.⁸¹ According to one 1993 Chinese newspaper article, "of over 110,000 children in Qamdo [prefecture], 70,000 remain trapped in dim ignorance, wandering the vast desolate plains where nothing educational could be seen or heard."⁸² Tamdin Tsering, the senior Communist Party leader in Dokarmo county in Tsekhog Dzong, Qinghai province, from 1988 to 1990, told the ICJ that of the 700 children of school age, only 158 could be admitted to school. The *xiang* has not had a single student go on for higher studies in its entire history under Communist Chinese rule.

78 TIN Doc.14 (VH), interview with teacher of county middle school. The situation in Chamdo is described in Xiaoli and Qing, "Pathetic State of Education in Qamdo": "according to statistics compiled by the Sports and Education Department, in the whole of Chamdo Prefecture, 20% of school buildings are in a perilous state as before ... In some counties more than 20% of the primary school classes are held throughout the year in teacher's homes. Buildings in some schools remain in a state of disrepair and empty." See also Teng Xing "Put Minority Education in the Orbit of a Benign Circle," in *Beijing Quishi*, no. 7, 1 April 1989, 8-9, mentioning that funds have been insufficient to solve the problem of the salaries of teachers, and rebuild school buildings in critical or dangerous shape, and get the necessary school equipment. Reportedly, Tibetan schoolchildren have protested and demonstrated at the poor conditions. *TIN News Update* July 1993, TIN Doc. 2(YS).

79 Report of the PRC to the Committee on the Rights of the Child, UN Doc. CRC/C/11/Add.7.

80 *Municipal Government Work Report*, 24 April 1995, Fourth Plenary Session of the Lhasa City's Sixth Congress, TIN Doc. 11WP-1.

81 Xiang Xiaoli and Zhang Qing, "A Report on the Pathetic State of Education in Qamdo," original in Chinese, in *Qamdo Newspaper*, the official newspaper of the Qamdo Prefecture of the TAR, 15 July 1993.

82 *Ibid.*

Although the Chinese government has made great strides in providing compulsory primary education to Tibetan children, it has failed to meet its obligations under the Convention to make secondary education "available and accessible to every child" and has failed to develop respect for Tibetans' "cultural identity, language and values." A major obstacle Tibetans face is access to secondary and tertiary educational institutions as a result of discrimination and government-instituted language policies. Until very recently Tibetans at primary school were taught in Tibetan with some hours of Chinese tuition a week. Upon completion of primary school all children, Chinese and Tibetan, must pass an entrance exam given in the Chinese language to compete for places in junior secondary education. All secondary education except the Tibetan language itself is taught in Chinese. Children not fluent in Chinese are segregated and put in a separate stream, the "Tibetan stream," and inevitably learn slower than their counterparts in the "Chinese stream." Again, the entrance exam to higher middle school education is conducted in Chinese. University entrance exams also include an English exam which requires a certain level of fluency in English. A Tibetan middle school teacher from Lhasa remarked:

There are two stages in the programme, middle level and higher level. The first stage lasts three years for the students in the Chinese stream and four years for students in the Tibetan section. They have to study for one more year in order to catch up with Chinese language and literature. Very few students of the Tibetan section pass on to the higher level. In fact there are so few that it's not worth having a special class for them. The school cannot afford to give them separate education. These days they have to join the Chinese stream. During the English periods they have to study Tibetan instead."⁸³

Facilities at "Tibetan" schools are often inferior to that of their Chinese counterparts. Tsegjam, who was headmaster of the Ngaba⁸⁴ Dzong People's Middle School, and now works for the Tibetan government-in-exile, told the ICJ that a majority of Tibetan children in his mostly Chinese district did not go to school. He also compared his school, whose 160 students were all Tibetan, and the "Ngaba Dzong Middle School," a

83 TIN Do. 68(FV2).

84 Chinese: "Apa."

"Chinese stream" school whose 700 children were mostly Chinese. Both schools used Chinese as the language of instruction, but the Chinese school had better facilities, including computers and a science laboratory, unlike his, which was heated by fire only and did not even have a playground.

There is also a shortage of qualified teachers at all levels.⁸⁵ Particularly in *minban* schools, still the main pillars of education in rural areas, teachers have sometimes received no more than junior middle school level education themselves. During the Fourth Plenary Session of the Sixth CPPCC of the TAR, 15 May 1996, members of the CPPCC recognized the low quality of teachers and identified as the main causes the fact that teacher's incomes were too low; that teachers do not have enough opportunity to receive academic degrees; and the inadequacy of the educational budget.

At the primary school level in the TAR, Tibetans constitute 94% of the total number of pupils, while in middle school this number drops to 83% at middle school. At vocational schools, 72% of the students are Tibetan and at university the number is 57%.⁸⁶ Chinese, who officially constitute

85 In his address at the Fifth Regional Meeting on Education, Chen Kuiyuan admitted that "the lack of qualified personnel on the education front is a prominent contradiction. Tibet's universities, middle and elementary schools, and various types of special schools generally lack qualified backbone leaders as well as key teaching and scientific research personnel. A serious problem is that some leading cadres are not concerned about work for schools, resulting in the loss of qualified personnel in schools." SWB FE/2158, S1/1, 21 Nov. 1996. See also interviews with Tibetan refugees, TIN Docs. R53-2ED (1995).

86 Figures provided by the Education Commission in Tibet, in *Report on the Visit of the Swedish Human Rights Delegation to China and Tibet, 20-30 March 1994*, 38. According to TIN, at the primary school level in the TAR, Tibetans constitute 95%, in middle school 75%, at universities and colleges 45%. TIN Submission to the UN Committee on the Rights of the Child, 1996; TIN's numbers are calculated on the basis of information in "The Change in Education in Tibet" (Beijing: New Star Publishers, 1992), citing 1990 figures. Liu, Leader of the TAR University Students Collection Office announced on 5 October 1992 that 55% of the applicants were Chinese and 45% Tibetan. 18% of the applicants were given places at the university, 55% of whom were Chinese and 45% Tibetan. Liu explained that his Office has set the pass marks for Tibetans lower to ensure that the same proportion of Tibetans as applied would pass the exam. TIN Doc. 21(YV).

only 3.7% of the TAR population, thus occupy 25% of the places in secondary education and 55% at institutions of higher education. This may be explained by: the inaccuracy of population statistics,⁸⁷ discrimination against Tibetans, and the intake of mainland Chinese into secondary and higher educational institutions in Tibet. One middle school teacher described how mainland Chinese students are enrolled during the final year of middle school:

In the 6th grade, when the students in the Chinese section have to take their final examination, a lot of Chinese students from mainland China join the class and take part in the same exam. This is because the level of education at Chinese schools in mainland China is much higher than at the Chinese schools in Tibet. These students ... pretend that they live in the TAR, that their parents work there and in this way they can occupy the places which are meant for minorities or for Chinese living in Tibet. Since their educational background is much stronger because they have been to better schools, they can really come up among the other students and pass the final examinations very well. ... But they take the places of the Tibetan students who cannot compete with them when applying for places at universities. Some of these Chinese have relatives in Tibet and organize through them. In some ways the school wants these students because they give the school a good name because they get very high marks.⁸⁸

"Unauthorized" children born in contravention of birth control guidelines⁸⁹ are also often discriminated against by being prevented from going to school, in violation of the Convention on the Rights of the Child. Choekyi, a woman farmer from Tsonvan (Amdo) interviewed by the ICJ in India, said that her fourth child - born after she paid a 400 yuan fine and before she was sterilized - was not allowed to attend school. "He was not included as a human being," she said.

87 See Chapter IV, A on Population Transfer, *supra*.

88 TIN Doc. R86-ED, interview with an urban middle school teacher, May 1995.

89 See Chapter V C, 7 on Population Control Policies, *infra*.

A Tibetan comprehensively summarizes the problems in accessing education and the ensuing consequences:

It is true to say that there are some schools available for the Tibetan children. However, the Tibetans are so poor that they have enormous problems with their daily survival. Therefore, they can not afford to send their children to school. Even of those who have gone to school, most cannot find any work when they have finished their studies. Those who do get work are often not given any responsibility by the government. As a result they usually start drinking and cannot support their family. Seeing these problems, the parents refuse to send their children to school. In reality, the number of students in those schools is very few and the standard of education is very poor. Tibetan is learnt only up to secondary school. Once they enter higher education, the students stop learning Tibetan because only the Chinese language is used in the workplace. There is supposed to be one primary school in every village. However, the turn out for schools is very low. The schools that remain are there only in name. There is no functioning education going on, except for the teachers who still get their regular salaries.⁹⁰

The drop-out rate of Tibetan children is significantly higher than the drop-out rate among Chinese children in the TAR.⁹¹ Teng Xing points to the unified and centralized curriculum based on Chinese culture as one of the factors and states that "the contents of the teaching texts are seriously out of joint with the social and economic conditions in the nationality areas. What the students learn cannot directly serve their family's economy, social production, and social life. This renders the extensive masses in the nationality areas devoid of any desire to send their children to receive education."⁹² The Convention on the Rights of the Child implies that a child's education should be relevant to his or her social and economic conditions.

90 TIN Doc. 23(WX).

91 TIN Doc. R.68-ED, May 1995. Between 1979-1990, primary enrolment has decreased by 37%, secondary enrolment by 24% while tertiary enrolment has gone up 37%, TAR Statistical Yearbook, 1995.

92 Teng Xing, "Orbit of a Benign Circle," 14, 15.

In the absence of schools or teachers in the village or because of dissatisfaction with the curriculum, the facilities or the level of available education, Tibetans have been sending their children to monasteries rather than to schools, a reversion to pre-1950 practice. In 1994 TAR Party Secretary Chen Kuiyuan reported that in Jomda county, the number of lamas and nuns outnumbered the number of students.⁹³ In 1996 Xinhua reported that "there are over 46,000 nuns and monks outnumbering secondary school students throughout the region."⁹⁴ Refugees arriving in Nepal and India assert that having children admitted to monasteries often offers the only opportunity to get a basic and culturally relevant education. Monks and nuns who escape cite wanting an education as their main reason to join a monastery. Monks from the monasteries have been recruited to teach at local primary and secondary schools and run literacy classes for adults.⁹⁵

Another educational alternative is to acquire a seat at one of the education institutions for Tibetans in interior China. Since 1985, eighteen provinces and municipalities in the Chinese interior have established junior and senior middle schools as well as technical/vocational education for Tibetans. In 1995 Xinhua reported that 13,000 Tibetan primary school graduates had enrolled in these schools since 1985 and at the time 10,000 were enrolled, representing 28% of the Tibetans in secondary education.⁹⁶ Tibetan children were studying in 150 middle and secondary polytechnics schools in twenty-six provinces and municipalities in central China, while an additional 800 were pursuing

93 Speech by Chen Kuiyuan at Fifth Regional Meeting on Education, 26 Oct. 1994.

94 Catriona Bass, *Education in Tibet*, (London: TIN, forthcoming 1998), 36.

95 Teng Xing, "Orbit of a Benign Circle," describing the situation in Gannan Tibetan Autonomous Prefecture (Gansu Province) where 150 monks were selected as teachers by the Education Authority and assisted in 228 primary and middle schools, others were appointed as anti-illiteracy teachers, 25, 26.

96 Figure 4.10. Catriona Bass, *Education in Tibet* (London: TIN, forthcoming 1998), 55.

higher education in 60 colleges in various fields.⁹⁷ The ostensible reason to bring Tibetans to these schools is to train Tibetan "mid-level professionals and technicians," making "use of the schools' favourable conditions, such as teachers, equipment and teaching environment, to expedite the training of professionals for Tibet." All instruction is in Chinese, but Tibetan teachers are reportedly brought to the interior schools for Tibetan language instruction.⁹⁸ Since the Chinese government has decided to bring Tibetan students to the interior rather than bring teachers to Tibet, or train teachers in Tibet, many Tibetans suspect that the purpose of sending Tibetans to schools in the interior, like a similar program of the 1950s and 1960s, is the acculturation of Tibetan children.⁹⁹

97 Xinhua, 4 March 1995. Also *Beijing Review*, 7-13 August 1995, SWB FE/2063 G1/11, 2 August 1994. Most schools are in the form of Tibetan classes attached to Chinese secondary schools; eighteen entire schools have been established, known as "Tibet Secondary Schools." Edward Kormondy, "Observations on Minority Education, Cultural Preservation and Economic Development in China." *Compare*, Vol. 25, 1995, cited in Catriona Bass, *Education in Tibet*. An increase in the enrolment of Tibetans in these schools is to be foreseen; an official stated that "Tibetan classes opened in schools in the inner part of China accept on average 1,300 students per annum. This number should increase to 2,000 per annum." TIN Doc.29(WJ). One Lhasa middle schoolteacher testified that since 1986-1987, the top 25% of Tibetan primary school graduates from all over Tibet are sent to various secondary schools in China, TIN Doc. R86-ED. According to this teacher, once selected, the student cannot refuse. Official reports as to the numbers differ slightly: according to Xinhua, 29 July 1994, in SWB FE/2073 G1/17, 13 August 1994, 10,000 Tibetans were studying in 143 schools throughout China, including 3,000 in specialized secondary schools and 561 colleges. According to Gyaltzen Norbu, 11,000 Tibetans attend schools in China, 15 May, SWB FE/2022 S1/2, 15 June 1994.

98 *Tibet: From 1951 to 1991* (Beijing: New Star Publishers, 1991), 83.

99 Tibetans identify the negative effects of children being sent to China for schooling as: loss of family environment; loss of mother tongue and culture; problems of cultural re-integration on return; lack of job-opportunities upon return; high costs for parents; reduced funding for development of education in Tibet itself, TIN Doc. Rv-fv2.doc, Oct. 94; TIN interview 5-5-1996 (cb); Teng Xing, "Orbit of a Benign Circle." One Tibetan asserted: "every year, the Chinese government takes about one thousand Tibetan school children to China for four years for the purpose of what they call education. However, the Tibetan students are being encouraged to change their attitudes, and are taught barbaric behavior and customs. The money to fund the program is taken out of the budget for Tibetan education in the provinces with Tibetan areas and the TAR." TIN Doc. 1WE-ED.

Moreover, raises in grants for students participating in this program were announced in early 1994.¹⁰⁰

Some Tibetans resort to sending their children abroad to India in order to receive education. An estimated 700 children per year cross the Himalayas, often unaccompanied, to enroll in schools run by the Tibetan exile administration.¹⁰¹ The 1994 Third Work Forum launched an attack against cadres who sent their children abroad. Raidi, Deputy Secretary of the TAR Communist Party, accused the "Dalai clique" of having "enrolled lots of teenagers in their schools abroad to imbue them with the idea of 'Tibetan independence' and splittist ideas" and asked "what will happen after some decades? Will our teenagers grow up as successors to the cause of socialism or to the cause of splittism?" He stated that Party members call back their children "within a specified period."¹⁰²

Educational policies in Tibet are also meant to serve underlying ideological strategies, which can have a discriminatory impact on access to education.¹⁰³

We must settle the issue of what kind of people should be trained, and this issue carries a special and important significance in Tibet. We must train qualified personnel who love the motherland and maintain national unity, and by no means should we train people who seek to practice splittism. In weighing education in our region, we must see whether the students we train are politically qualified.¹⁰⁴

At the Fifth Regional Meeting for Education, in 1994, TAR Party Secretary Chen Kuiyuan reiterated the crucial importance of political,

100 Xinhua, 2 March, in SWB FE/1937 G1/5, 4 March 1994. Also SWB FE/2669 G/5, 20 July 1996, reported a positive change in attitude of Tibetans towards sending their children to "inland" schools.

101 TIN Docs. R47RM2; R46RM2, interviews with recent arrivals in India.

102 Doc. No. 5, of the Sixth Enlarged Plenary Session of the Standing Committee of the Fourth Congress CCP, 5 Sept. 1994.

103 A campaign to carry out political education and strengthen the Party in schools was announced in 1990, Lhasa Evening News, 21 August 1990.

104 "Tibet Secretary Speaks at Education Forum," *Radio Lhasa*, 11 Sept. 1989; in FBIS, 14 Sept. 1989, cited in *Asia Watch, Merciless Repression* (1990), 85.

ideological and moral education, following renewed calls for campaigns to oppose splittism in schools.¹⁰⁵

The success of our education does not lie in the number of diplomas issued to graduates from universities, colleges, polytechnic schools and middle schools. It lies, in the final analysis, in whether our graduating students are opposed to or turn their hearts to the Dalai clique and in whether they are loyal to or do not care about our great motherland and the great socialist cause. This is the most salient and the most important criterion for assessing right and wrong, and the contributions and mistakes of our educational work in Tibet. To successfully solve the problem, we must improve political and ideological work at schools and have political and ideological work run through all the teaching, study and work at schools. The leading bodies of educational departments and particularly those of schools - ranging from kindergarten and primary schools to university - should be firm in their political orientation. ... To judge whether the party secretary or principal of a school is qualified politically, we should observe their attitude towards major political issues. More importantly and practically, we should see whether or not the political climate in their school is healthy, what kind of ideology they use in nurturing and guiding the broad masses of teachers and students, whether its graduates are qualified builders of the country, and whose successors they become. As a place for cultivating people, schools are not a forum for 'freedom'. Schools should be captured by socialism. We should not allow splittist elements and religious idealism to use the classrooms to poison people's sons and daughters. they should be captured firmly only by socialism.¹⁰⁶

105 *Tibet Daily*, 11 Oct 1993, in SWB FE/1845 G1/8, 13 Nov. 1993. In 1991 newspaper articles reported on political ideology classes introduced in all elementary schools in Lhasa. The Party Branch No. 1 elementary school in Lhasa was reported to have been holding criticism sessions on life-style, "in which they criticize themselves as well as others." TIN Doc. Supp. 291.

106 SWB FE/2158 S1/3, 21 Nov. 1994.

After examining China's report on compliance with the CRC, the Committee on the Rights of the Child expressed concern that:

school attendance in minority areas, including the Tibet Autonomous Region, is lagging behind, that quality of education is inferior and that insufficient efforts have been made to develop a bilingual education system which would include adequate teaching in Chinese. These shortcomings may make Tibetan and other minority pupils disadvantaged when applying for entry to secondary and higher level schools.¹⁰⁷

The Committee therefore suggested that the PRC undertake a review into "measures to ensure that children in the Tibet Autonomous Region and other minority areas are guaranteed full opportunities to develop knowledge about their own language and culture as well as to learn the Chinese language. Steps should be taken to protect these children from discrimination and ensure their access to higher education on an equal footing."¹⁰⁸ In 1996 the Committee to End Racial Discrimination also expressed "concern ...that in secondary schools and university levels children from minority nationalities are underrepresented" and that "the instruction provided on the history and culture of minority nationalities" was inadequate.¹⁰⁹

The ICJ recognises the important progress made in providing compulsory primary education. At the same time, it would appear that the education system in Tibet puts Tibetan children at a structural disadvantage as compared to Chinese children and is discriminatory under the terms of the Convention. The low enrolment and high drop-out rate among Tibetans, the low quality of education facilities and teachers for Tibetans, the difficulties in educational access for Tibetans as well as the high illiteracy rate in Tibet as compared to the rest of China, are indicative of policies which contravene the Convention.¹¹⁰ Moreover, rather than instilling in Tibetan children respect for their own cultural identity, language and values, as required under the Convention,

107 UN Doc. CRC/C/15/Add.56, paras. 19.

108 *Ibid.*, para. 20.

109 Concluding observations of the Committee on the Elimination of Racial Discrimination, 20 Aug. 1996, para. 16 - forthcoming UN Document.

110 Art. 28 CRC.

education in Tibet serves to ideologically indoctrinate Tibetan children and to convey a sense of inferiority of their own culture, religion and language in comparison to the dominant Chinese culture and values.

2. The Right to Housing

The Universal Declaration of Human Rights provides that "[e]veryone has the right to a standard of living adequate for the health and well-being of his family, including ... housing."¹¹¹ The International Convention on the Elimination of Racial Discrimination prohibits discrimination on the basis of race, colour, or national or ethnic origin, in the enjoyment of the right to housing.¹¹² According to the UN Committee on Economic, Social and Cultural Rights, "forced evictions are *prima facie* incompatible" with the right to adequate housing.¹¹³ The Committee also considered that a "general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties, and in the absence of compensatory measures, would be inconsistent" with the right to housing.¹¹⁴

The Chinese Government considers that the right to adequate housing is a basic human right. During the preparatory meetings for the 1996 UN Conference on Human Settlements (Habitat II) in Istanbul, China

111 Art. 25(1), UDHR. See also art. 27(3), CRC.

112 Art. 5(e)(iii) CERD.

113 *General Comment No. 4 on the Right to Adequate Housing*, UN Doc. E/1992/23, para. 18, in HRI/GEN/1/Rev.2, 29 March 1996. The Committee defines "forced evictions" as "the permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection." *General Comment No. 7 on Forced Evictions* (1997), UN Doc. E/C.12/1997/4, para. 4. The Committee stressed that "[t]he non-discrimination provisions of Articles 2(2) and 3 of the Covenant impose an additional obligation upon governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no forms of discrimination are involved." Even though the PRC has not ratified the UN Covenant on Economic, Social and Cultural Rights, the authoritative interpretation of the UN Committee constitutes is relevant to clarifying the obligations incurred by States under housing rights provisions in other international instruments such as the UDHR and article 27(3) of the CRC.

114 *General Comment No. 4*.

reiterated that "housing is a basic need for the life of human beings" and "adequate housing a basic human right."¹¹⁵

Nationwide, China has spent an increasing amount on housing.¹¹⁶ The Chinese government asserts that in Tibet, the "living conditions of the people have improved markedly. According to statistics produced by the local government of old Tibet, of a population of 1 million in Tibet in 1950, some 900,000 lacked real housing. Currently, except for the pastoral areas, all households have fixed housing."¹¹⁷

While this assertion is difficult to verify, the ICJ's 1960 report already introduced a note of scepticism:

The tremendous housing construction in Lhasa is of some considerable significance. Many Tibetans had been transferred from Lhasa and Chinese were living in the Potala and the Norbulingka. This in itself indicates a sizable influx of Chinese, since these were mainly the functionaries, and the doubling of Lhasa's housing at a time when Tibetans were being sent or taken away is a clear indication that the housing needs were created by the growing Chinese population in Lhasa. The feverish building reported can, therefore, scarcely be regarded as an advance in the social conditions of the Tibetan people.¹¹⁸

The destruction of Tibetan housing in Lhasa (described in the chapter on Tibet's Cultural Heritage) is more than a cultural blow. It is both a typical occupier's tactic and a violation of human rights. While the number of homeless Tibetan families in Lhasa was said by one source to exceed 2,000,¹¹⁹ hundreds of new buildings were under construction to

115 Statement of the Chinese Delegation at prepcom for Habitat II, Nairobi, April-May 1995. The Istanbul Declaration reaffirmed the right to adequate housing. UN Doc. A/CONF.165/14, para. 8.

116 Public expenditure has reportedly increased from an average of 0.77% of GNP from 1949 to 1979 to nearly 4% of GNP during the 1980s. Cited in Scott Leckie, *Destruction by Design: Housing Rights Violations in Tibet*, (Utrecht: Centre on Housing Rights and Evictions, 1994), 56.

117 "Tibet—Its Ownership and Human Rights Situation," (Beijing: Information Office of the State Council of the People's Republic of China, 1992), 54.

118 ICJ, *Tibet and the Chinese People's Republic*, 116-117.

119 Cited in Leckie, *Destruction by Design*, 113.

house Chinese migrants. Most visitors to Tibet are struck by the contrasts between Chinese and Tibetan housing. An official Australian Human Rights Delegation found that "housing in the Tibetan quarter of Lhasa appeared to be badly maintained, whereas extensive new housing and construction was conspicuous in Chinese-populated areas."¹²⁰ In 1988, Asia Watch remarked that "[o]ne area of clear-cut inequality between Tibetans and Chinese, obvious even to many casual visitors to the TAR, is in housing. ... By and large the Tibetan quarters of most towns and cities are surrounded and often dwarfed by larger and more expansive new Chinese quarters. In a good many cases, these new buildings are equipped with running water as well as electricity. The Tibetan quarters of such towns remain without running water and in many cases without reasonable sanitation facilities."¹²¹ A Tibetan farmer from a village in north west Kham described the differences in living standards between the Chinese miners in his village and the local Tibetan farming population:

The Chinese do have running water [in their houses] but not a single Tibetan family has running water ... The Chinese houses do have some kind of sewage system; it's not very good, but it is some kind of system, and they also have electricity, which the Tibetan families don't have even where the [Tibetan and Chinese] houses are mixed together, the Tibetans do not have electricity.¹²²

Financial constraints prevent Tibetans from building their own houses or even engaging in the building trade.¹²³ Tibetans without residence permits for Lhasa are forcibly removed while Chinese without permits are allowed to remain. Tibetans from rural areas wishing to move to Lhasa or other Tibetan cities are refused permission while Chinese settlers are actively encouraged to reside in Lhasa and other towns.¹²⁴

120 Report of the Australian Human Rights Delegation to China, 14-26 July 1991 (Sept. 1991), 67.

121 Asia Watch, *Human Rights in Tibet* (Washington: Feb. 1988).

122 TIN Doc. 1(KR), interview conducted 22 Sept. 1995.

123 Leckie, *Destruction by Design*, 120.

124 *Ibid.*, 116, 119.

The demolition of the historic *Shol* neighbourhood evicted 670 households.¹²⁵ According to one resident, "[t]hose evicted are routinely relocated to concrete block apartments often half the size and up to ten times the monthly rent of their original homes."¹²⁶

The Centre on Housing Rights and Evictions concluded in a 1994 report that, "at least 5,000 Tibetans have faced forced evictions from their homes in Lhasa during the past several years and ... Tibetans face systematic racial discrimination in the housing allocation process. Tibetans are methodically prevented from influencing housing and planning policies affecting them, and from participating in housing-related decisions having a bearing on their residential choices and overall standard of living."¹²⁷

The destruction of Tibetan neighbourhoods, the evictions of Tibetans and demolition of their homes, and the preferences shown to Chinese in the building of new housing constitute racial discrimination in the housing sphere and evictions on racial grounds in violation of CERD.¹²⁸

3. The Right to Health

The "enjoyment of the highest attainable standard of health" has been recognised as a "fundamental right" by the international community since the adoption of the constitution of the World Health Organisation in 1946.¹²⁹ The Universal Declaration of Human Rights provides that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including ... medical care and necessary social services."¹³⁰ Treaties ratified by China prohibit racial discrimination in the enjoyment of the right to public health and medical

125 Agnes Cheung, "Lhasa gets ready for anniversary," *South China Morning Post*, 15 Jan. 1995.

126 TIN Doc. 21 Sept. 1993.

127 Leckie, *Destruction by Design*, 10.

128 For a more extensive analysis of the obligations implicated by China's housing policies in Tibet, see Leckie, *Destruction by Design*, 151-159.

129 Preamble, Constitution of the World Health Organisation. Virginia A. Leary, "The Right to Health in International Human Rights Law," *Health and Human Rights*, Vol. 1, No. 1, 25.

130 Art. 25, UDHR.

care,¹³¹ "recognise the right of the child to the enjoyment of the highest attainable standard of health" and to facilities for the treatment of illness and rehabilitations of health,¹³² and bar discrimination against women in the field of health care "in order to ensure, on a basis of equality of men and women, access to health care services."¹³³

The primary state obligation flowing from the right to health has been described as "establish[ing] an institutional framework and set of policies for the health sector to assure basic standards of health and to promote the progressive realization of the highest attainable standard of physical and mental health."¹³⁴ The Covenant on Economic Social and Cultural Rights lists four steps to be taken by states in fulfilment of the right (which are also relevant to the treaties ratified by China): those necessary for (a) the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child, (b) the improvement of all aspects of environmental and industrial hygiene; (c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.¹³⁵

The PRC's Constitution does not speak of the right to health. The highest levels of government and the CCP, however, recognise health

131 Art. 5(e)(iv), International Convention on the Elimination of All Forms of Racial Discrimination..

132 Art. 24, Convention on the Rights of the Child. Under the Convention, states must take appropriate measures to, *inter alia*, diminish infant and child mortality, to ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care, to combat disease and malnutrition and to ensure appropriate pre-natal and post-natal health care for mothers.

133 Art. 12(1), Convention on the Elimination of Discrimination against Women. Article 14(2)(b) also seeks to ensure rural women "access to adequate health care facilities."

134 Audrey R. Chapman, "Violations of the Right to Health," paper submitted to the Conference on Violations of Economic, Social and Cultural Rights, Jan. 1997, Maastricht, Netherlands. She identifies 9 elements of the core content of the right to health, such as, the potential to provide basic standards of health to all citizens and residents; effective measures to prevent discrimination; recognition of some form of legally enforceable entitlement to health protection and/or health services.

care as an important component of socialist modernization.¹³⁶ A recent health care conference recommended that "by the year 2000, we should initially establish a health care system with Chinese characteristics, whereby everyone can enjoy basic health care, and further raise people's health level."¹³⁷

Following the Cultural Revolution, health care in Tibet was basically provided free of charge, or at low cost through the commune system or state enterprises. With the economic reforms of the late 1970s and following the dissolution of the communes and redistribution of land in 1984, the system of village doctors was reorganised. Some doctors discontinued their work while others thereafter received a salary. In some areas, consultation fees were established. In March 1991 the central government launched a policy to have one village doctor per village by the year 2000 and to achieve 50% of the target by 1995.¹³⁸ European Union experts described the structure of the TAR health care system:

The health system in Tibet is organized in a hierarchical way with a health facility near the population functioning as the first line; the health post with the village doctor. He provides curative as well as preventive services. At the Shyang [*xiang* - township or group of villages], in some areas a Shyang doctor can be found. Here beds are available and patients can be kept under observation. At the county level a county level hospital can be found with personnel of an increased level of competence. The county hospital should provide specialized care (paediatrics, surgery, etc.) and investigations should possibly be performed (X-ray, lab). ...Next to this a network of

135 Art. 12 (2), CESCR.

136 Speech by Li Peng at the National Conference on Health Work, Beijing, 9 Dec. 1996, SWB FE/2794 G/5, 13 Dec. 1996.

137 Speech by Li Peng at a discussion meeting of the National Health Care Conference, 11 Dec. 1996, SWB FE/2796 G/3, 16 Dec. 1996.

138 Swiss Red Cross Survey, Answers to Questionnaire, SRC, Sept/Oct. 1991, 6. The Red Cross Society of China, Shigatse sub-branch, reported that at the end of 1990, "still 32.8% of the Shangs [*xiangs*] and 68% of the villages are without doctors. These are areas in desperate need of health care, where a common illness rapidly develops in chronic complication leading to life dangers," "Suggestions to the training of village doctors ..." annexed to *ibid.*

Tibetan medicine exists, with a referral hospital in Lhasa. ... The policy of the health service is provision of free health care, certainly at the primary levels. Every person is given a little green booklet which enables him to get free health care. ...For every consultation, at every level, a registration fee of one mao (0.1 yuan) had to be paid in 1990. ... [Government spending on a county hospital in Lhasa] amounted to 75 cents US per inhabitant per year for first line health services and first line referrals in 1990.¹³⁹

Traditional Tibetan medicine, after a period of repression and near-elimination during the Cultural Revolution, has also experienced a revival and is now strongly supported by the government. In the TAR, there are now some 1,200 practitioners of Tibetan medicine.¹⁴⁰ The head of the Mentsikhang, the Tibetan medical college, noted that it had more practitioners, more patients, produced more medicines, and was markedly more accessible to Tibetans than at any time in history¹⁴¹. Outside the TAR, too, Tibetan medicine hospitals and/or research institutes are found in all the capitals of Tibetan autonomous prefectures except Kangding in Kartse TAP, Chabcha in Tsolho (Hainan) TAP and Xihai City in Tsojang TAP, though ICJ sources report that they range from inadequate to barely functioning in terms of maintenance, staffing and equipment.

Official Chinese sources, although recognising that "Tibet is still lagging behind other areas,"¹⁴² report major improvements in the enjoyment of the right to health in Tibet, particularly with respect to the control of communicable diseases. "The incidence of various infections and endemic diseases has gone down by a substantial margin, and some serious diseases that threaten the lives of people have been wiped out or brought under basic control. ... [A] planned immunization program has

139 Commission of the European Communities, *China - Feasibility Study for an Integrated Rural Development Project in Pa Nam County, Tibet* (Ref.: CC/A/KAMP/1/B7-3000/93/155) (Sept. 1994), Main Report, 20-21.

140 Craig R. Janes, "The Transformations of Tibetan Medicine," *Medical Anthropology Quarterly*, vol. 9, no. 1, March 1995, 6 at 22.

141 *Ibid.*, 32.

142 Xinhua, 28 August 1994, SWB FE/2087 G/8, 30 August 1994.

been widely implemented in Tibet since 1986. Over 85 percent of children have been inoculated."¹⁴³

Official statistics depict a dramatic improvement in the availability of health care in the TAR. "In 1991, the region boasted 1,197 medical establishments, 401 times as many as in 1951. There were no hospital beds in 1951 but 5,077 in 1991. Professional medical workers numbered 9,740, or 98 times higher than in 1951." Many of these workers are in rural areas to "directly serve the masses of farmers and herdsman. In Tibet, on average, there are 2.3 beds and 2.1 doctors per 1,000 people, figures higher than the national average respectively, and also higher than that of middle income countries."¹⁴⁴

As in China itself, the results of these policies are seen in overall health levels in Tibet. According to official statements, average "life expectancy has risen from 36 years before liberation to 65 years at present. When compared with 1965, the average height and weight of young Tibetans in the Lhasa area increased by 8.8 cm and 5.2 kg respectively."¹⁴⁵ A detailed Chinese survey of life expectancies, however, shows that Tibetans average 59.67 years, ranking them the lowest of China's 18 major nationalities.¹⁴⁶

These are important achievements in *fulfilling* the right to health. Other chapters of this report touch on China's failure to *respect* the right to health in Tibet through the wide use of torture and ill-treatment, unsafe abortions and the degradation of the natural environment. The remainder of this chapter examines some problems faced by Tibetans in enjoying the highest attainable standard of health.

143 "Tibet—Its Ownership and Human Rights Situation," (Beijing: Information Office of the State Council of the People's Republic of China, 1992), 69.

144 "Tibet—Its Ownership and Human Rights Situation," 69. The comparison with 1965 is, however, somewhat misleading as this was in the midst of a prolonged period of terrible repression and dislocation.

145 *Ibid.* 70-71.

146 Jin Yangsun, Su Li, Chang Pei, and Wang Husheng, "A Study on Patterns in the Average Life Expectancies and Mortality Rates of 56 Nationalities in China in 1990," *Chinese Journal of Population Science*, vol. 6, no. 3, 1994, 263, at 268.

A report of the Western Consortium for Public Health, a private US-based concern, states that the "survival of Tibetan children is threatened by malnutrition and disease. Three years of research has documented an area of huge neglect regarding the health of this unique and endangered human population."¹⁴⁷ The research found that:

many children within the TAR are extremely short for their age, so short that 60% fall drastically below accepted international growth reference values. Data indicates that this shortness is a result of *nutritional stunting* — chronic malnutrition during the first three years of life — rather than a result of genetics or altitude, as previously assumed. These findings should be cause for alarm. Nutritional stress at this critical period in a child's early growth affects neurological development and increases risk of acute illness and death. Chronic malnutrition renders children vulnerable to the common fatal diseases of childhood in the developing world: diarrhea and pneumonia. *Therefore, an entire generation of children is now at risk for irreversible compromise of intellectual potential, as well as increased likelihood of death before age seven.* The dire health status of Tibetan children is further complicated by the disruption of traditional food and agricultural patterns. This reflects the far-reaching effects of even subtle alterations in indigenous cultures confronting the challenges of rapid change. Nonetheless, evidence indicates that the solutions to the current crisis in child nutrition will be found within the available cultural, agricultural and ecological resources still existing on the Tibetan plateau.¹⁴⁸

This grim picture was confirmed to the ICJ by a number of foreign travellers who have reported child malnourishment, particularly in central and western Tibet.

147 Tibet Child Nutrition and Collaborative Health Project, *Annual Report, 1995/1996*, International Health Programs, Western Consortium for Public Health, 1.

148 Ibid. Emphasis added. The research found that 52% of the 1994 sample of non-urban children, suffered from protein deficiency; 74% had clinical rickets, a vitamin A and D deficiency that exposes a child to respiratory and gastro-intestinal infections. Ibid., 5-6.

The infant mortality rate of over 90 per 1,000 live births for Tibetan children is triple the overall mortality rates for infants in China in its entirety.¹⁴⁹ A comprehensive outside appraisal of the health and nutritional situation in the Lhasa Valley, commissioned by the Lhasa Health Bureau in 1990 indicated that Tibetan children in urban and rural areas fall behind Han children (in lowland areas in China) in both weight and height by the age of 3-6 months. It concluded that weight-for-age and height-for-age of Tibetan children were "borderline unacceptable" and in certain counties "unacceptably low" by WHO standards.¹⁵⁰

According to the European experts, "morbidity in Tibet is characterized by a high incidence of tuberculosis, followed by pulmonitis, bronchitis, cataract and hepatitis. Gastroenteritis is common; as are digestive tract ulcers and rheumatosis."¹⁵¹

Overall problems appear to include the cost and poor quality of primary care, including the shortage of trained village-level health professionals. The Lhasa Health Bureau outside appraisal concluded that "the health system is well-structured and well-staffed down to the level of the county. Hospital medicine is currently more emphasised than the first-line health service of village and *xiang*." The European Union

149 Tibetans' infant mortality rate (IMR) of 92.46 per 1,000 live births is three times the national rate of 31.23, and places Tibetans a close second to Uygurs (93.91) among Tibetan's 18 target nationalities. "A Study on Patterns in the Average Life Expectancies and Mortality Rates of 56 Nationalities in China in 1990," op. cit. 268. A survey of three villages near Mount Everest found the IMR to be about 136. Woodlands Mountain Institute, *Health Survey of Three Villages North of Mt. Qomolungma (Mt. Everest)*. The official TAR infant mortality rate of 91.4, and under five mortality rate of 126.7, far exceed the rates of 31.23 and 43 respectively for children nationwide. The mortality rate for children under five and for infants in China has not changed since 1985. William C.L. Hsiao and Yuanli Liu, "Economic Reform and Health -Lessons from China," *The New England Journal of Medicine*, vol. 335, no. 8, August 1996, p. 431, citing UNICEF statistics for 1993.

150 *Nutrition, Health, Water and Sanitation Assessment in the Lhasa Valley*, May-July 1990, I. Assesment obtained by the Tibet Information Network. A Survey conducted by the Woodlands Mountain Institute in 1990 showed a compromise in height for age by age 12 months to below the third percentile of WHO growth standards and a stunting prevalence of 60% indicating that Tibetan children suffer long-term chronic malnutrition. *Health Survey of Three Villages*.

151 European Communities, *Feasibility Study*, Main Report 21.

experts likewise described the system as "top heavy" with "relatively more doctors in the county hospital ... perhaps too many ... while the first-line is rather under-staffed."¹⁵² It noted the lack of nurses and said that the part-time village doctor had become "over loaded with work."¹⁵³ A survey of 75 villages by the Swiss Red Cross also revealed that about one third of the villages did not have a village doctor while one *xiang* had neither a village nor a *xiang* doctor. Some village doctors had stopped working for reasons of family obligations and lack of professional skills.¹⁵⁴ The Swiss Red Cross noted that there "are not enough personnel trained to a high level; most personnel have had mid - or low - level training lasting typically three years or one-to-six months respectively."¹⁵⁵

The Swiss Red Cross observed that "the time and labour costs as well as financial costs of going to health services do deter farmers from going to the county hospitals. The lack of drugs at all levels also deters people from using the health services. Drugs can be bought privately in Lhasa if the doctor tells the patient what is needed. However, not everyone has easy access to or contacts in Lhasa." The survey observed that "in the absence of drugs and skills people contact persons of a certain importance whom they know or they go to a clinic or hospital in the district town or even to Shigatse. They can also individually purchase drugs at the Medical Store. Of course, these strategies are only possible for quite rich or influential people."¹⁵⁶ Sources have reported to the ICJ the practice by which funding-starved hospitals route their stocks of drugs into private dispensaries where they sell for several times the state subsidized price. Doctors working for hospitals are encouraged to open

152 European Communities, *Feasibility Study*, Technical Annexes, 4.

153 Ibid. An additional problem it detected was the lack of female doctors.

154 *Swiss Red Cross Survey*, ii.

155 Ibid., 72, 77. Village doctors with at best six months training may be the only medical personnel available to villagers. The village doctor performs her medical functions mostly on a part-time basis. Village doctors have complained about the lack of medicine, and lack of follow-up training as well as the availability of medical reference books in Tibetan language. See also *ibid.*, 16. According to SCF-UK, village doctors have been trained for one month on average. *Ibid.*, 13. There is a difference between village and *xiang* doctors; village doctors are not state employees and they have no access to training schools for the *xiang* doctors.

156 *Swiss Red Cross Survey*, Answers to Questionnaire, Sept/Oct. 1991, 3.

private clinics and charge as much as possible for their work there, with the hospitals receiving some of the proceeds.

Another problem cited by the European Union is poor disease management. "Diagnostic apparatus is not often available, and most villagers' diseases are never diagnosed."¹⁵⁷ It noted that "a number of prevalent diseases are not taken care of as should be" because of inefficient vertical programs and because, as many diseases are unique to the region, prevention and treatment methods had not been developed.

Villagers have complained about the lack of drugs, particularly at the first level of health care, about the cost of staying at hospitals¹⁵⁸ and the shortage of local doctors.¹⁵⁹ Further complaints relate to the way many city doctors treat poor farmers in the county and prefecture hospitals; to occupational health.¹⁶⁰ Others cite discrimination against Tibetans.¹⁶¹

157 European Communities, *Feasibility Study*, Main Report, 21.

158 A farmer from the city of Markham, Kham, gave a representative complaint: "It is difficult for poor people to buy medicine because it is expensive. Only rich people can afford to stay in the hospital. A consultation costs 0.4 RMB (yuan) but if the doctor gets medicine for you, it costs 0.6 RMB." TIN Doc. T4RM, interview conducted in 1993; Also 2KRK2; 4KR-ED; 1KR-ED: "the hospital is very accessible, and the facilities are good but you have to pay. If you cannot pay, then you will get no medical treatment at all, even if you are dying, and left there."

159 Ibid., ii. As to the cost of health, *ibid.*, 55. Villagers perceive medicine and a stay in a government hospital as expensive. Private clinics are more expensive, while the traditional Tibetan hospital was said to be less expensive. In addition, in terms of time and labour costs, taking a sick person to the hospital and caring for her there is expensive, *ibid.*, 56. Analyzing the situation in China as a whole, Hsiao and Liu argued that the economic reforms have adversely affected the health status of the Chinese. Many people cannot afford health care and according to the authors, inflation of health care costs has become one of the major causes of poverty in rural China. "Economic Reform and Health-Lessons from China," *The New England Journal of Medicine*, vol. 335, no. 8, August 1996, p. 431.

160 One man who worked in the Chusum mine said the office would pay half of the expenses for work-related injuries; medical facilities at the mine site were poorly equipped. Getting good medical facilities from another hospital would be very expensive. TIN Doc. R21RM2.

161 A farmer from the Lhasa area, interviewed in 1995, believed that the better medicines were used for Chinese cadres or leaders and that Tibetans would receive inferior treatment. TIN Doc. 19KR.

One complained that Chinese doctors at the *xiang*-level would refuse to treat monks and nuns as they are "followers of the Dalai Lama."¹⁶²

Tibetans wounded in demonstrations have reported being denied medical treatment in the government hospitals. A girl from Lhasa, interviewed in June 1995, told of a friend who "went to the hospital for 11 days on end but without being treated. One of the doctors told her that he was not going to treat her as she had participated in the demonstration."¹⁶³ Others are reluctant to go due to fear of arrest and have been treated by individual doctors.¹⁶⁴ Still others forgo treatment altogether.¹⁶⁵

The ICJ recognises the significant strides which China has made in improving the general level of health of Tibetans. Serious problems persist, however, as reflected in the high infant mortality rate and the prevalence of child malnutrition. The lack and cost of primary care and the shortage of trained village-level health professionals contribute to preventing Tibetans from achieving the highest attainable standards of health.

C. Civil and Political Rights

1. Arbitrary Arrest and Detention—Political Imprisonment

Article 9 of the Universal Declaration of Human Rights prohibits arbitrary arrest or detention.¹⁶⁶ China's 1982 Constitution provides that

162 TIN Doc. 24 KR.

163 TIN Doc. R87-FV2. For accounts of negligence in medical treatment in prison, see section VI.C.1 on torture. TIN Docs. R25RM2; R24RM2; R33RM2.

164 See, for instance, TIN Doc. 93MYNOEL.

165 Private communication to ICJ.

166 Article 9 of the ICCPR contains the same provision. According to a U.N. study, "an arrest or detention is arbitrary if it is (a) on grounds or in accordance with procedures other than those established by law, or (b) under the provisions of a law the purpose of which is incompatible with respect for the right to liberty and security of person." Study of the right of everyone to be free from arbitrary arrest, detention and exile, UN Doc. E/CN.4/826/Rev. 1, para. 27 (1964). See Reed Brody, "The UN Creates a Working Group on Arbitrary Detention," *85 Am. J. Int. Law* 709, at 713 (Oct. 1991).

"no citizen may be arrested except with the approval of or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ. Unlawful deprivation or restriction of citizens' freedom of person by detention or other means is prohibited; and unlawful search of the person of citizens is prohibited."¹⁶⁷

During the anti-rightist campaign that followed the 1957 Hundred Flowers campaign, thousands of Chinese citizens were sent to reform through labour¹⁶⁸ for criticizing communism or the Communist Party. Tibetans and other minority nationalities received similar punishment for the ideological crime of "local nationalism." In Tibet during "democratic reforms," thousands of local leaders and lamas were sent to reform through labour or received prison sentences simply because of their social or economic status.

During and after the revolts against Chinese rule culminating in 1959, thousands more were sent to prisons or labour camps for aiding or sympathizing with the revolt. The Panchen Lama complained that, after the Lhasa revolt, "[t]he authorities did not make any distinction between those guilty and not guilty of participation in the disturbances. People were arrested and jailed indiscriminately."¹⁶⁹ Tibetans' prison sentences were repeatedly extended for continuing to hold "anti-socialist" or "counterrevolutionary" pro-Tibetan independence views. In a speech to the National People's Congress in 1987, the Panchen Lama revealed his estimates on the numbers of Tibetans imprisoned and killed, information that he had included in his 1962 "70,000 character" petition to the

167 Art. 37, 1982 Constitution.

168 "Reform through labour" applies to prisoners serving judicial sentences while "reeducation through labour" refers to imprisonment without trial after a "sentence" has been handed down by a quasi-judicial government committee.

169 *The Panchen Lama Speaks, Text of the Panchen Lama's Address to the TAR Standing Committee Meeting of the National People's Congress held in Peking on 28 March 1987*, (Dharamsala: Department of Information and International Relations, 1991), 9. In his 1962 petition to the Chinese government, the Panchen said: "In each area 10,000 or more have been arrested. Good and bad, innocent or guilty, they have all been arrested, contrary to any legal system that exists anywhere in the world." "Secret Report by the Panchen Lama Criticises China," *TIN News Update*, 5 Oct. 1996.

Chinese government and for which he was subjected to struggle (*thamzing*) in Lhasa and imprisonment in Beijing for the next nine years:

In my 70,000 character petition, I mentioned that about five per cent of the population had been imprisoned. According to my information at the time, it was between 10 to 15 per cent. But I did not have the courage to state such a huge figure. I would have died under *thamzing* if I had stated the real figure. ... In Qinghai, for example, there are between one to three or four thousand villages and towns, each having between three to four thousand families with four to five thousand people. From each town and village, about 800 to 1000 people were imprisoned. Out of this, at least 300 to 400 of them died in prison. This means almost half the prison population perished.¹⁷⁰

Today, China claims to have no political prisoners:

In China, ideas alone, in the absence of action which violates the criminal law, do not constitute a crime; nobody will be sentenced to punishment merely because he holds dissenting political views. So-called political prisoners do not exist in China. In Chinese Criminal Law "counter-revolutionary crime" refers to crime which endangers state security, i.e., criminal acts which are not only committed with the purpose of overthrowing state power and the socialist system, but which are also listed in Articles 91-102 of the Criminal Law as criminal acts, such as those carried out in conspiring to overthrow the government or splitting the country, those carried out in gathering a crowd in armed rebellion, and espionage activities. These kinds of criminal acts that endanger state security are punishable in any country.¹⁷¹

170 *The Panchen Lama Speaks*, 14. The Panchen's 1962 report was based upon information he gathered during inspection tours of all Tibetan-inhabited areas in 1961 and early 1962. The Panchen Lama's written criticism of Chinese policy in Tibet presented to Zhou Enlai in 1962 was finally obtained by the Tibet Information Network in 1996.

171 "Human Rights in China," 24. In a reply to the UN Special Rapporteur on the Right to Freedom of Opinion and Expression, regarding the case of the imprisoned dissident Wei Jingsheng, the Chinese government stated that "having different views without committing acts endangering national security does not constitute a crime." UN Doc. E/CN.4/1997/31, para. 35.

During and after the demonstrations of 1987-89, and up to the present, however, Tibetans have been detained for long periods without charge or sentenced to prison for peacefully advocating Tibetan independence, in Chinese law a crime.¹⁷² Tibetans are imprisoned on the suspicion of harbouring or for expressing anti-Chinese, or "counterrevolutionary," opinions, possession of any "reactionary" or "counterrevolutionary" materials, especially materials advocating Tibetan independence.¹⁷³ These detentions are carried out pursuant to China's Criminal Law prohibition on "crimes of counterrevolution," broadly defined as "all acts endangering the PRC committed with the goal of overthrowing the political power of the dictatorship of the proletariat and the socialist system."¹⁷⁴ Indeed, as Asia Watch calculated in 1994, while the overall PRC rate of those sentenced for "counterrevolutionary" crimes is only 0.3 percent of the total convicted prisoner population, the rate in Tibet is 6.5 percent. The group also noted that in Tibet, whose population accounts for only around 0.2 percent of the total population of China, there were more known political and

172 See *Human Rights in Tibet* (Washington: Asia Watch, Feb. 1988), 25-40; *Evading Scrutiny: Violations of Human Rights After the Closing of Tibet* (New York: Asia Watch, July 1988); *Merciless Repression: Human Rights in Tibet* (New York: Asia Watch, May 1990), 29-47; TIN/Lawasia, *Defying the Dragon: China and Human Rights in Tibet*, 37-46; *Political Prisoners in Tibet* (New York: Asia Watch and Tibet Information Network, Feb. 1992); *People's Republic of China: Repression in Tibet 1987-1992*, (New York: Amnesty International, 1992), 18-35.

173 Political offenses for which Tibetans have been imprisoned include "organizing a counterrevolutionary group," advocating the overthrow of the "people's dictatorship and the socialist system," "separatist" or "splittist" acts intended to "harm the sovereignty or territorial integrity of the motherland," participating in demonstrations, shouting reactionary slogans, singing reactionary songs, shouting "Long live the Dalai Lama," possession or exhibition of the Tibetan flag, attempting to escape Tibet, passing political information to foreigners including foreign delegations sent to Tibet to collect information about human rights abuses, and contacts with exiled Tibetans or the Tibetan exile government. See the cases listed in TIN/HRW Asia, *Cutting Off the Serpent's Head*, 77-98; TIN/Lawasia, *Defying the Dragon*, 37-46; *Detained in China and Tibet: A Directory of Political and Religious Prisoners* (New York: Asia Watch, 1994), 33-43, 163-215, 312-331, 351-354, 514-542, 584-589. These offenses would come within the definition of "counterrevolutionary crimes" under arts. 97-101 Criminal Law of the PRC.

174 Art. 90, Criminal Law of the PRC.

religious prisoners reported to be in jail than in the rest of the country combined.¹⁷⁵ A 1995 study of 879 political detainees found that the largest categories of offense were demonstrating (65.3%) and writing and distributing leaflets (15.5%).¹⁷⁶

"Counterrevolutionary" crimes include: plotting to subvert the government or dismember the state; providing intelligence for an enemy; taking part in a secret service or espionage organization; leading or actively participating in a counterrevolutionary group; organizing or using feudal superstitious sects and secret societies to carry on counterrevolutionary activities; carrying out sabotage activities for the purpose of counter-revolution or; for the purpose of counterrevolution, inciting the masses to resist or sabotage the implementation of state's laws and decrees, through counterrevolutionary slogans, leaflets or other means, propagandises for and incites the overthrow of the political power of the dictatorship of the proletariat and the socialist system.¹⁷⁷ The implementing Regulations to the National State Security Law (NSSL)¹⁷⁸ in 1994 and its specific

175 "And why are so many of these prisoners, the great majority of whom are peaceable Buddhist monks and nuns, so often arrested and sentenced on charges of 'counterrevolution' rather than less serious counts?" *Detained in China and Tibet: A Directory of Political and Religious Prisoners* (Asia Watch, New York, 1994), xxvi. The report also points out that the "greater part of the prison system in Tibet, unlike that in the rest of China, falls under the jurisdiction of the Ministry of Public Security—the police—rather than that of the Ministry of Justice." *Ibid.*, xxiv.

176 TIN/HRW Asia, *Cutting Off the Serpent's Head*, 79-80. The next categories were social-economic protests (4.7%), links to the exile government (3.3%), and possession of pro-independence materials (2.5%). The study found that about 44% of the detainees were monks and 23% nuns.

177 Arts. 97-100, 101, *ibid.*

178 The State Security Law of the PRC was adopted by the thirteenth session of the seventh NPC Standing Committee, Feb. 22, 1993. The "Implementation Regulations of the PRC's National State Security Law," were adopted by the 19th Council Meeting of the State Council, 10 May 1994 and promulgated 4 June 1994 by PRC State Council Directive No. 157. In August 1994, the 10th Session of the Sixth People's Congress Standing Committee of the TAR, adopted the "Interim Regulations of the TAR Concerning Comprehensive Management of Public Security." TIN Doc. PSB-LAW.

addition for Tibet ¹⁷⁹ added offenses such as "spreading rumours" and "stealing state secrets." Under the former, activities listed as "harmful to state security" include: "fabricating and distorting facts, issuing and distributing writings or speeches or manufacturing and propagating recorded products harmful to state security," "using religion to carry out activities harmful to state security" and "creating national disputes or instigating national separation harmful to security."¹⁸⁰

Looking at China's criminal law, the UN Working Group on Arbitrary Detention has held that "municipal legislation that considers such activities as 'counterrevolutionary propaganda and agitation,' ... is liable to be declared inconsistent" with the UDHR and the ICCPR.¹⁸¹

In March 1997 the National People's Congress, partly in response to international pressure, eliminated crimes of counterrevolution from the criminal code. In the same act, however, it introduced the equally vague notion of "endangering state security" to cover a potentially wider range of internationally-protected dissenting activities.¹⁸² The new law, which will come into force on 1 October 1997, does not define the concept

179 The TAR Regulations are aimed at managing problems relating to public security, in order to "maintain social order, safeguard the unification of the motherland, strengthen national unity and guarantee social stability." Art. 2 Interim Regulations for TAR. The regulations list the fundamental tasks of the comprehensive management of public security as "to combat, in accordance with the law, criminal elements who aim to split the motherland," "to severely prohibit the use of religious activities to endanger the unification of the motherland, sabotage unity," and "to conduct education among citizens on socialist ideology, the importance of safeguarding the motherland." Art. 4 *ibid*.

180 Art. 8 Directive No. 157, *ibid*. In March 1995, Li Hui, TAR State Security Department Director, explained that the Regulations were necessary in the struggle in the TAR against splittism, SWB FE/2267 G/8-9, 1 April 1995. Under the NSSL, national separatist activities include, *inter alia*, plotting to subvert the government or to dismember the state; taking part in an espionage organisation and stealing, secret gathering, buying or illegally providing state secrets. Art. 4 National State Security Law, reprinted in SWB FE/2267 G/8-9, 1 April 1995.

181 UN Doc. E/CN.4/1995/31, Add.1, Decision 53/1993 (People's Republic of China), para. 8.

182 For a translation and analysis of the new law, see generally Human Rights in China and Human Rights Watch/Asia, *China: Whose Security?*, "State Security" in *China's New Criminal Code*, April 1997.

"endangering state security," leaving the door open to an elastic usage. It does, however, set forth a broad range of banned acts in twelve new articles. Many of these essentially reproduce the provisions of the former law on counterrevolution. An entire article is now devoted, however, to "organising, scheming or acting to split the nation or sabotage national unity," apparently aimed at movements in Tibet, Xinjiang (East Turkestan) and Inner Mongolia.¹⁸³ Maximum punishment ranges from life imprisonment for "ringleaders involved in organising, scheming or acting to split the nation or sabotage national unity" to five years for those who "carr[y] out incitement" for the same purpose.¹⁸⁴ Another provision strengthen controls against "colluding" with "institutions, organisations or individuals" outside China to split the nation.¹⁸⁵ The broadest article punishes those "involved in organising, scheming or acting to subvert the political power of the state and overthrow the socialist system," including those who "carr[y] out incitement" for the same purpose by "spreading rumours, slander or other means."¹⁸⁶ While the new phrase "other means" allows for constant reinterpretation, the other phrases have well-worn and broad meanings in Chinese law that presage allow repression of a wide range of peaceful activities.¹⁸⁷

China also continues to send Tibetans to "re-education through labour" which differs from prison only in that there are no trials, and sentences are handed down by quasi-judicial government committees. The lack of trials is justified on the theory that this measure is "not a criminal but an administrative punishment."¹⁸⁸ Although "re-education through labour" is theoretically limited to a three year period, the lack of any sentence has meant that authorities can detain citizens for indefinite periods without judicial procedure.

The UN Working Group has questioned the propriety of most forms of rehabilitation through labour and determined that "the case of a coercive administrative measure whose purpose is not only occupational

183 Art. 103, Criminal Law (revised).

184 "Incitement" is a broad term in Chinese practice, not even requiring a potential for violent action.

185 Art. 102, Ibid.

186 Art. 105, Ibid.

187 HRIC and HRW/Asia, *China: Whose Security?*

188 "Human Rights in China," 26.

rehabilitation, but mainly political and cultural rehabilitation through self-criticism" was among "cases where the measure of deprivation of freedom is inherently arbitrary in character."¹⁸⁹ The UN experts have found that Chinese and Tibetan prisoners held pursuant to "re-education for labour" were arbitrarily detained.¹⁹⁰ The practice of administrative detention with a view to compulsory re-education has also been deemed a "direct violation of article 18" as well as a "flagrant violation of article 14(3)(g)" of the ICCPR.¹⁹¹

In 1994 the UN Working Group on Arbitrary Detention found that 32 Tibetan prisoners whose cases it examined were "arbitrarily detained in contravention of Articles 19 and 20 of the Universal Declaration of Human Rights" and called for their release.¹⁹² Those arbitrarily detained included:

- ten monks from Drepung monastery who received sentences averaging 15 years in 1989 for "counterrevolutionary" crimes which included publishing leaflets about democracy and human rights, including a Tibetan translation of the Universal Declaration of Human Rights and a pamphlet about a future democratic Tibet;
- eight monks from Ganden monastery, sentenced to 5-12 years for demonstrating, making posters, calling for Tibetan independence and possession of a leaflet;

189 UN Doc. E/CN.4/1993/24, Chapter II, Deliberation 04. Other factors making re-education through labour arbitrary in the eyes of the Working Group include: cases of administrative measures of indefinite duration, where 1. The duration is linked to the progress, which, in the view of the authorities, has been made in rehabilitation, 2. Where the measure is continuously renewable and, 3. Where, upon expiry, the person is kept in detention, whether for a fixed or indefinite period, in order to use his working capacity for productive ends, Deliberation 04, Ibid.

190 UN Doc. E/CN.4/1995/31/Add.1, Decision No. 66/1993 (People's Republic of China).

191 Administrative detention is that which "*de jure*, or *de facto*, has been ordered by the executive and the power of decision rests solely with the administrative or ministerial authority, even if a remedy *a posteriori* does exist in the courts against such a decision, as well as police custody not effected under the responsibility of a judge." UN Doc. E/CN.4/Sub.2/1989/27, paras. 17, 43.

192 UN Doc. E/CN.4/1995/31/Add.1, Decision No. 65/1993 (People's Republic of China); TIN News Update, 13 Dec. 1994. On Yulo Dawa Tsering, see Chapter V, C, 5, on Freedom of Religion, *infra*.

- Lobsang Tsultrim, an ailing 72 year old Drepung theologian and monk serving six years for "failure to reform through re-education" and "becoming a reactionary with the hope of splitting the great motherland." He had reportedly been beaten by prison guards, and suffered from a heart condition;¹⁹³
- Jampa Ngodrup, a doctor serving 13 years who, "with counterrevolutionary aims, collected lists of people detained" during 1988 demonstrations and "passed them on to others, thus undermining the law and violating the laws of secrecy;"
- Tsering Ngodrup, a 57 year old restaurant owner, serving 12 years for "encouraging reactionary singing" "counter-revolutionary propaganda" and "espionage" for taping songs about Tibetan independence and sending to India the names of Tibetans arrested and wounded in 1988 protests;
- a school teacher, Dawa Drolma, serving five years for offenses such as writing a "counterrevolutionary song" on the classroom blackboard;
- Yulu Dawa Tsering, a university teacher sentenced to fourteen years for speaking about independence to an Italian tourist.

In its unsuccessful defence to the UN Working Group, China stated that the penalties were motivated by the fact that demonstrations had developed into a "situation bordering on insurrection,"¹⁹⁴ referring to three days of unrest in March 1989 during which police shot dead an estimated 100 or more demonstrators in Lhasa. But only nine of the 32 detainees were arrested in connection with those incidents. The Working Group decided that in all cases under consideration, the right to freedom of opinion and expression had not been respected and that therefore these persons were being arbitrarily detained.¹⁹⁵ In its 1996 report, the Working Group listed 22 of these 32 Tibetan prisoners who, although they had been in detention over six years "continue to be deprived of their liberty, despite the fact that the Working Group has declared their

193 Amnesty International, *People's Republic of China: Persistent Human Rights Violations in Tibet*, May 1995.

194 Decision No. 65/1993, para. 6

195 *Ibid.*, paras. 10-11.

detention arbitrary.”¹⁹⁶ One of the Drepung monks cited, Kelsang Thutop, would later die in Drapchi prison after reportedly suffering physical abuse and failing to receive medical care.¹⁹⁷

Although nuns only account for some 3-4% of the monastic population, they account for between one quarter and one third of known political prisoners.¹⁹⁸ Nuns are frequently sentenced to three years of re-education through labour. In November 1995, the UN Working Group ruled that 21 Tibetan nuns were being held in violation of UDHR and ICCPR article 18 for “exercising their right to freedom of thought, conscience and religion” for having expressed their attachment to their religion through demonstrations accompanied by slogans and by singing religious-patriotic songs and prayers, in particular praising the Dalai Lama ... or having merely demonstrated or attempted to demonstrate in public.”¹⁹⁹ Eight months later, one of these arbitrary detainees, Ngawang Sangdrol, a 19 year old nun, reportedly had her sentence increased by nine years because she did not stand up when an official entered the room, failed to tidy her bedding and shouted “Free Tibet” when she and other women were made to stand in the rain as punishment for refusing to keep their cells clean, apparently in protest at

196 UN Doc. E/CN.4/1996/40, para. 113. That the detention of these 22 prisoners was arbitrary had been decided by the UN Working Group in Decisions 53/1993; 65/1993. In view of its visit to China in July 1996 and its projected follow-up visit to China in 1997, the Working Group has deferred all deliberations regarding communications received relating to China, UN Doc. E/CN.4/1997/4, para. 35.

197 “Second Monk Dies in Lhasa Prison,” *TIN News Update*, 26 July 1996. See Chapter VI, C, 3 on Extrajudicial Executions for further details.

198 According to Amnesty International, about 200 nuns - one third of known political prisoners - have been reported detained since 1989 and 74 since July 1996, almost all for participating in small-scale demonstrations in support of Tibetan independence, many of which have lasted no more than five minutes. Amnesty International, *Women in China*, 4. TIN and Human Rights Watch Asia calculate that they account for 23% of political prisoners. A report by the India-based Tibetan Women’s Association lists a total of 453 Tibetan women, the majority of whom were nuns, who have been arrested and imprisoned between 1987 and June 1994. *Our Will Against Their Might: Women Prisoners of Conscience in Tibet* (Dharamsala: Tibetan Women’s Association, 1995).

199 UN Doc. E/CN.4/1997/4/Add. 1, Decision No. 46/1995 (People’s Republic of China), paras. 6 (l) and 9 (a).

a re-education campaign which demanded that the women accept the child appointed by China as the Panchen Lama.²⁰⁰

Reports suggest that the number of those detained for political reasons continues to rise, most likely as a result of the hard-line policies adopted at the 1994 Third Work Forum. The Tibet Information Network and Human Rights Watch/Asia found that "the number of political prisoners in Tibet substantially increased in 1994-1995" to a documented total of 610.²⁰¹ In 1996, according to official Chinese reports, 98 individuals in the TAR had been brought to trial in the 47 cases involving "endangering state security."²⁰² There has been a new assertiveness as well. In May 1996, it was announced at a "sentencing rally" in a sports stadium in Shigatse that five Tibetans had received sentences of up to five years for calling for Tibetan independence. This marked the first official admission of a political trial in Tibet for nearly two years. The announcement, which listed the six activists before eight cases of murder and theft in which the death penalty was imposed, gave credence to suggestions that political dissent is the primary target for the anti-crime "Strike Hard" campaign in Tibet.²⁰³

In December 1996 Ngawang Choephel, an exile Tibetan ethnomusicologist and U.S. Fulbright scholar who was detained in Tibet filming and recording traditional music, was sentenced to an unusual 18 years in prison for espionage. Authorities accused him of "intelligence gathering" and claimed that he was caught in "an attempt to provide information" to groups abroad. The government gave no indication as to what secret information Ngawang Choephel was allegedly collecting.²⁰⁴

200 "Nun Sentenced to 9 Years for 'Not Standing Up,'" *TIN News Update*, 18 Nov. 1996.

201 TIN/HRW Asia, *Cutting Off the Serpent's Head*, 1,2. The average sentence for a political offense also increased to nearly six and a half years. *Ibid*, 91.

202 Speech by Bai Zhao, head of the Tibet Region's Higher Court, printed in *Tibet Daily*, 3 June 1997, cited in "Crime on the Increase in Tibet," *TIN News Update*, 22 June 1997. This does not include, however, cases such as the trial of fourteen monks for the disturbances in Ganden monastery following the order to remove photographs of the Dalai Lama, see section on Freedom of Religion, *infra*.

203 "Tibetans in Shigatse Sentenced to Up to 5 Years," *TIN News Update*, 31 May 1996.

204 It was reported in February 1997 that he had appealed his sentence. *Xinhua*, 5 Feb.1997, quoted in "Tibet 'Spy' Case Goes to Appeal," *TIN News Update*, 13 Feb. 1997.

At least 56 Tibetans were detained in connection with the dispute over the Panchen Lama's reincarnation, including 19 monks at the Panchen's Tashilhunpo monastery detained after a July 1995 protest.²⁰⁵ In April 1997 Chadrel Rinpoche, the former abbot of Tashilhunpo monastery, was convicted after a closed trial of "the crime of splitting the country" and sentenced to six years in prison for his handling of the search for the reincarnation of the Panchen Lama. He was apparently the most senior lama and the highest-level official in Tibet to have been convicted of a political offence for at least 15 years.²⁰⁶

In 1997 the UN Working Group on Enforced Disappearances reported on disappearances of Tibetans in the context of "recurrent detention," a practice by which a person is taken into custody for a few days or hours, released, and the process repeated a few days later. Normally, the family is not informed of the detention and the practice typically targeted at those suspected of human rights activities or monitoring.²⁰⁷

205 "Senior Lama Sentenced in Panchen Lama Search Dispute," *TIN News Update*, 9 May 1997.

206 Xinhua, 7 May 1997. The announcement of his sentencing marked the first time since the abbot disappeared in May 1995 that authorities acknowledged that he was in detention. For the first five months after his disappearance, the Chinese government said that he had been taken ill and was recovering in an unnamed hospital. The abbot had been a member of the national-level Chinese People's Political Consultative Conference and a vice-chairman of its TAR Committee. The trial was held in secret because one of the charges against Chadrel Rinpoche was "leaking state secrets." Authorities gave no indication of the nature of the "state secrets" involved, but an earlier Xinhua report suggests that this is based on the accusation that in late 1994 Chadrel Rinpoche had sent a letter to the Dalai Lama naming 25 boys identified by the search team as candidates for the reincarnation. It is, of course, unclear why such information was classified as a "state secret." See Amnesty International, *People's Republic of China: Three Tibetans sentenced on political charges in Panchen Lama dispute*, 27 May 1997. Chadrel Rinpoche is reportedly being held in a secret compound in Chuandong No.3 prison in Eastern Sichuan. He is said to be denied permission to leave his cell and all contact with the outside world save with only two Ministry of Justice officials and a fellow prisoner who acts as cook and guard and is not permitted to leave. Human Rights in China press release, 9 Sept. 1997.

207 UN Doc. E/CN.4/1997/34, para. 105.

The ICJ believes that the detention of Tibetans for peacefully expressing their views warrants grave concern and contravenes China's obligations under international law, notably the prohibition of arbitrary arrest and detention. The practice of sentencing Tibetans to "re-education through labour" without any of the safeguards of due process and fair trial also violates these international norms.

2. Torture and Ill-Treatment

In October 1988 China ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment which provides that "each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."²⁰⁸ In 1992 the PRC reported to the UN Committee against Torture (CAT) that it had adopted effective legislative, judicial, administrative and other measures to "rigorously forbid all acts of torture and guarantee that the rights of citizens are not violated."²⁰⁹ The PRC asserts that "[a]s a matter of principle and discipline for China's public security and judicial organs in handling cases, it is strictly prohibited to extort confessions by torture."²¹⁰

China's Criminal Law and Criminal Procedure Law prohibit only certain forms of torture, however, not penalising the use of torture to punish, intimidate or coerce as required under international law. Chinese laws also fail to mention psychological torture, prohibited under the

208 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ("Torture Convention") GA. Res. 39/46 Annex, 39 UN GAOR, Supp. (No. 51) 1984, U.N. Doc. E/CN.4/1984/72, Annex (1984), art. 2, para. 1.

209 UN Doc. CAT/C/7/Add.14.

210 "Human Rights in China," 22.

Torture Convention.²¹¹ The crime of torture is further narrowed and defined by the standards elaborated for investigation and prosecution of torturers.²¹² Members of quasi-governmental bodies involved in torture practices fall outside the purview of these rules.²¹³ The UN Committee against Torture has expressed concern about China's "failure to incorporate the crime of torture into the domestic legal system, in terms consistent with the definition contained in article 1 of the Convention."²¹⁴

211 Article 1 of the Torture Convention defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in official capacity." Article 136 of the Criminal Law prohibits "the use of torture to coerce a statement." Article 143 prohibits unlawful detention and any beating, humiliation, serious injury or death in connection therewith. Article 189 provides for the punishment to three years of judicial personnel who subject prisoners to corporal punishment and abuse, when the circumstances are serious, and if they are exceptionally serious, to between 3-10 years. Article 32 of the Chinese Criminal Procedure Law prohibits the use of torture to coerce statements and the gathering of evidence by threat, enticement, deceit or other unlawful methods.

212 Under these rules, the investigation of cases of torture and other forms of ill-treatment is limited to such treatment inflicted for the purpose of coercing a statement only if additional factors are present, such as giving vent to personal spite or exact revenge, using torture repeatedly, employing very cruel means, creating a wrongful or non-existent case, causing disability, death, insanity, or suicide or, causing other serious results. Article 136 "Rules on Standards for Filing for Investigation Cases Directly Handled by the Peoples Procuratorates Involving Violations of Citizens' Democratic Rights, Personal Rights or Dereliction of Duty," in *Encyclopedia of Judicial Interpretation of New China*, People's Procurates' Press, 1990, 152, cited in *Words Without Substance: The Implementation of the Convention against Torture in the People's Republic of China*, (New York: Human Rights in China, April 1996), 9- 10. Also art. 189, adding to cases to be investigated those resulting in serious wounding or death; using batons causing serious injury or death; casing insanity or suicide; repetition; causing 'other serious results.'

213 Ibid., 11.

214 *Report of the Committee against Torture: China*, UN Doc. A/51/44.

In fact, torture has been and continues to be applied routinely and on a wide scale throughout China.²¹⁵ In 1996, the UN Special Rapporteur on Torture reported that he had continued to receive information indicating that "the use of torture and ill-treatment against persons held in police stations, detention centres, prisons and labour camps was occurring with frequency" and that in China, "many persons detained for political reasons were convicted of offences partly or wholly on the basis of 'confessions' that had been obtained through the application of torture."

Torture and public humiliation were the primary techniques of "struggle" against landlords in China and local leaders and lamas in Tibet during "democratic reforms." Torture was particularly applied to lamas to demonstrate their lack of any reputed supernatural powers. Imprisoned Tibetans were tortured by repeated "struggle" sessions and by overwork and starvation.²¹⁶ Palden Gyatso, a monk who spent over three decades in Chinese prisons, told the ICJ that during this time for "whole days I was kept suspended in the air, had hot water poured over my body and was burned by a fire lit underneath me." Later, he was "hand-cuffed, kicked and beaten with a stick which had sharp points of nails protruding from one end."

215 Amnesty International stated that "torture continues in China because of inadequate legislation, the lack of legal guarantees for prisoners' rights and the impunity extended to many torturers. The pattern of torture across China and the authorities' failure to introduce effective measures to combat it or acknowledge and impartially investigate torture allegations suggests that torture often results from institutionalized practices and official policies," *China: No One is Safe: Political Repression and Abuse of Power in the 1990s* (London: Amnesty International, 17 Jan. 1996), at 78. The NGO Human Rights in China identified several factors hampering the implementation of existing Chinese legal standards on torture, such as: political control of the judiciary; inadequate monitoring mechanisms and procedures; admissibility in court of evidence obtained through torture; the practice of holding defendants incommunicado without access to family or lawyers before trial; widespread use of administrative detention. Human Rights in China, *Words Without Substance*, 1.

216 Smith, *Tibetan Nation*, 401-412, 470-488.

Torture was regularly applied to Tibetans arrested after the riots and demonstrations of 1987-89²¹⁷ and continues to be applied on a routine basis to Tibetan prisoners and detainees.²¹⁸ The Special Rapporteur had received information according to which "the torture and ill-treatment of persons arrested for political reasons in Tibet was particularly pervasive. The methods of such torture reportedly include beatings, electric shocks, deprivation of food and drink, exposure to cold, handcuffing or shackling for long periods, and denial of medical treatment."²¹⁹

ICJ interviews in India with former policemen, judges and detainees in Tibet confirmed that torture is widespread in Tibet, and that torture of political detainees is general practice.²²⁰ One policeman from Horthoe county in Qinghai (Amdo) told the ICJ that "100% of detainees are tortured." Amdo Sangye, a former judge of the Qinghai High Court in Xining, told the ICJ that "not a single case came to the court in which the defendant is not beaten by the police, and when the defendant is a Tibetan political prisoner, the beating is much worse." The judge stated that it was policy to ask defendants if they had been mistreated, but that nothing could be done if they had been.

Torture and other forms of ill-treatment occur in police stations upon arrest, during transport to detention facilities, in detention centres and in

217 See *Human Rights in Tibet; Evading Scrutiny: Violations of Human Rights After the Closing of Tibet; Torture and Ill-Treatment in Detention of Tibetans* (New York: Amnesty International, 1989); Asia Watch, *Merciless Repression: Human Rights in Tibet*, 49-55; TIN/Lawasia, *Defying the Dragon*, 47-58; Amnesty International, *People's Republic of China: Repression in Tibet 1987-1992*, 36-43.

218 TIN/HRW Asia, *Cutting Off the Serpents Head*, 99-106.

219 UN Doc. E/CN.4/1996/35/Add.1, paras. 102, 104.

220 Random interviewing of Tibetan exiles in India by a team of US doctors revealed that 16 out of 17 individuals arrested for political activities had been tortured. Keller, Eisenman, Saul, Kim, Connell and Holtz, *The Prevalence and Effects of Torture Among Tibetan Refugees*, June 1997, unpublished.

prisons.²²¹ Torture is applied in order to extract confessions and to force prisoners to reveal the names of accomplices, organisations or foreign associates. The documented varieties of torture against Tibetans include beatings with a variety of instruments, such as sticks and iron bars, shocks applied to sensitive parts of the body, including the genitals and mouth, with electric cattle prods, hanging by the arms twisted behind the back, exposure to cold water or cold temperatures and long periods of solitary confinement.²²²

The ICJ interviewed Palden Gyatso was transferred to Drapchi Prison in 1990:

Paljor, whom I had known before as a cruel heartless torturer, was waiting for me in the interrogation cell. Browsing through my file, he raised his eye-brows and said to me: "I see that you have been imprisoned twice. You must be very bad. Why are you here again?" I replied that I put up wall-posters in Lhasa. Paljor slowly rose up from his chair and said again: "Do you still want independence?" I stood still, without answering. Paljor took out his electric baton and shoved it into my mouth, and then thrust it down my throat. I lost consciousness. When

221 In detention centres, Tibetans are typically held for a few hours to a few days or weeks for interrogation. Torture and ill-treatment here is applied in the context of trying to obtain confessions. In detention centers where detainees may be held for several months to several years, more sophisticated methods of torture are applied often to extract detailed information. Torture also occurs in prison, where prisoners are normally held after having been convicted and sentenced. TIN/HRW Asia, *Cutting Off the Serpents Head*, 99-106.

222 See Asia Watch, *Human Rights in Tibet*, 25-31; Asia Watch, *Evading Scrutiny*, 25-26; *Torture and Ill-Treatment in Detention of Tibetans* (Amnesty International, London, 1989); Asia Watch, *Merciless Repression*, 49-55; TIN/Lawasia, *Defying the Dragon*, 47-58; Amnesty International, *People's Republic of China: Repression in Tibet 1987-1992*, 36-43; Asia Watch, *Detained in China and Tibet*, 33-43, 163-215, 351-354, 514-542, 584-589; TIN/HRW Asia, *Cutting Off the Serpent's Head*; *People's Republic of China: Gross Human Rights Violations Continue* (London: Amnesty International, Feb. 1996). A physician from the Philadelphia Inquirer examined Tibetan torture survivors in India in 1996 and found their physical and psychological conditions to be consistent with the torture they described, similar to those described in this chapter. Loretta Tofani, "Bodies scarred, spirits unbroken," *Philadelphia Inquirer*, 8 Dec. 1996, A1.

I woke up, I found myself lying in a pool of vomit and urine; I had lost twenty of my teeth.

Nuns appear to be subjected to some of the harshest torture and ill-treatment in detention centres, reform through labour camps, police stations and prisons; some young nuns have died in prison as a result of ill-treatment.²²³ They are subject to gender-specific torture, including rape by inserting an electric cattle-prod into their sexual organs. Other forms of torture frequently used against women, particularly nuns, include stripping them naked, targeting breasts for physical ill-treatment, and the use of trained dogs to bite them. The UN Special Rapporteur on Torture has held that sexual abuse is one of the most humiliating and traumatizing methods of torture.²²⁴

The ICJ interviewed several women torture survivors in India:

- Ngawang Choedon, a nun, was arrested and beaten by police during a peaceful independence demonstration in Lhasa in 1989. After being interrogated and beaten at a police station, she and others were taken to Gutsa detention centre:

We had to go through the whole process of interrogation again.... I saw ropes, chains and electric instruments lying on a table nearby. I was first made to sit on a chair. While questioning, my hands were tied behind my back with a rope and the end of that rope was tied to the iron ceiling. Two of the men pulled the rope till I was hanging in the air. The pain in my arms was unbearable and soon I was unconscious. When I regained consciousness I was on the floor with my hands released. But I could not move my hands. My wrists were blue with the mark of the tied rope. I could not get up on my feet. Someone was kicking me from the back. I was hit all over my body with a thick chain. I did not have answers for

223 Sherab Ngawang died May 1995, aged 15 as a result of ill-treatment in a "re-education through labour" facility; Phuntsog Kelsang, serving a prison sentence in Drapchi prison, aged 20, died in June 1994 as a result of severe beatings; Gyaltzen Kelsang, aged 24, died in Feb. 1995, on medical parole, after lack of medical treatment for a sustained illness as a result of ill-treatment in prison.

224 UN Doc. E/CN.4/1997/40, para. 93, referring to UN Doc. E/CN.4/1996/35.

any of their questions, which annoyed them more. One of them picked up the electrical instrument and poked me in the nape of the neck, on the breast and inside my mouth with it. The pain was so terrible that after a while, I did not feel as if my body belonged to me. I still did not feel like listening to or answering any of their questions. I was stripped naked and once again the electric prod was poked all over the upper part of my body. I saw them laughing at me. I was made to stand still for three hours. If I moved slightly, I would be slapped and beaten.

- Ngawang Tendol, a nun arrested for shouting independence slogans in August 1990, was also tortured in Gutsa:

We were searched and made to stand in the heat with our hands raised, facing the sun. We were beaten in groups of three until sunset. The next morning we were interrogated. We were kept in solitary confinement for 26 days without a blanket or quilt. We were fed only steamed bread and water. Our hands were tied and a cattle prod was used on the back of our necks. The electric shock numbed my body. We were beaten continuously for a week.

She was then taken to Drapchi Prison, where she was kept for four years. "The first day in Drapchi I was beaten with an electric cattle prod until I fell unconscious. Two days later I was beaten unconscious again. These beatings were so severe that I have no memory of their aftermath."

- Tashi Dolma, who was arrested for carrying material supporting Tibetan independence, was held in Sithog prison in Chamdo district:

There I was kept in a very small cell chained to an iron bed. During interrogation I was poked with cattle-prods and was beaten with sticks. I was routinely kicked, beaten with a rifle-butt, shocked with electric rods, and tortured in many ways.

Female prisoners frequently refer to sexual torture and rape in prison:

Then we were tied with both knees behind our head and our hands tied in the back. Then they put some rubber thing [inside our mouths] to keep our mouths open and then they urinated in our mouths. They put their penis in our mouths too. When I closed my eyes, they hit me. I had to keep my eyes

open. They hit me with a belt to keep my eyes open. After urinating, they had some iron thing to take the rubber thing out of my mouth.²²⁵

Even though many Tibetan nuns are too ashamed to explicitly mention rape by electric baton or otherwise, it is implied in their testimonies and explicitly mentioned when they describe the experiences of other nuns in prison:

They took off all our clothes. Then, they poked electric prods and showered blow after blow with sticks. They made us completely naked without a single piece of clothing on our body and yet they ask us what we have with us. They poke the electric prod everywhere; on our eyes, in mouth, in ears, and everywhere they do it. And we fall on the ground just like that. And lose consciousness as they poke everywhere.²²⁶

Kalsang, 26 years of age, a nun from Shungsep nunnery, was imprisoned after demonstrating. Following a protest in prison against their treatment, she and some fellow nuns were made to stand in front of a wall, where other common prisoners could watch:

They told me to take off my clothes. They made me take off everything. They told me to lie with my face down, and started beating me with sticks. I died with shame as so many people were watching. Later the beating was so unbearable that I forgot about my shame. Underneath me was a concrete floor and on top they were beating me with the poking sticks used for fire. They sent someone to get it from the kitchen. They hit me all over and the room turned upside down. I was like a corpse, but they made me stand up and poked that wooden stick in my bottom and all over. Later they put it away and took an electric prod. They put it in my mouth, my eyes, everywhere from my head to my feet, then into my bottom.²²⁷

225 TIN Doc. 42KR.

226 TIN Doc. Gyaltsen-CH2, interview conducted in 1995.

227 TIN Doc. Kalsang.Pal, interview conducted 16 March 1995.

Another nun saw "the Chinese put the electric prod in her [companion's] private part, let dogs on her and beat her with the electric prod."²²⁸

Minors detained in prisons and detention facilities in Tibet are not exempt from torture. Abuse and beatings of minors has also occurred upon arrest. For instance, three nuns from Michungri nunnery, aged 14 or 15, were badly beaten in the South Barkhor police station in March 1993 after having been arrested for taking part in a demonstration. Six school children aged between 13 and 17 were arrested at gunpoint for singing nationalist songs. In police custody, they were kicked and beaten throughout the night, stripped of their clothes and slapped with wire. Abuse of juveniles has also been reported from prison and re-education through labour camps, such as Trisam. Sherab Ngawang, sentenced without trial to three years re-education through labour when she was officially fifteen - although believed to have been only 12 - died in April 1995 after having received severe beatings and torture in Trisam.²²⁹

The Tibet Information Network and Lawasia list several factors that encourage prison officials in Tibet to torture and mistreat Tibetan prisoners, including the Chinese government policy of "merciless repression" of Tibetan nationalist activity; a presumption of guilt rather than innocence in the Chinese legal system and, therefore, the need to extract confessions; incommunicado detention prior to making formal charges during which torture and abuse often occurs; the dedication of the police and judicial system not to the rule of law but to the repression of Tibetan opposition; and, the fact that the prison system is under the Public Security Bureau instead of the Ministry of Justice.²³⁰ The UN Committee against Torture expressed concern in 1996 about NGO allegations that Tibet's "special environment" creates "conditions that

228 TIN Doc. Gyaltzen.Cho, interview conducted 16 March 1995. The Philadelphia Inquirer examined five nuns who described how electric cattle-prods were rammed in to their rectums and nightsticks were thrust in their vaginas. Two said the police also put the cattle-prods in their vaginas. A doctor working with the newspaper found they the nuns' physical and psychological conditions to be consistent with these tortures. Loretta Tofani, "Bodies scarred, spirits unbroken," *Philadelphia Inquirer*, 8 Dec. 1996, A1.

229 TIN Doc. R24RM-ED.

230 TIN/Lawasia, *Defying the Dragon*, 54.

result in alleged maltreatment and even deaths of persons held in police custody and prisons.”²³¹

Other accounts detail physical injuries in prison due to negligent medical treatment. One ex-detainee interviewed in November 1996 described the fate of a fellow-inmate who was transferred to Drapchi prison in 1993:

His health got worse when they made us have endless physical exercise. It was June 1994. They made us run in the hot sun for hours Tenzin started suffering from his leg and knee. They pushed him for more exercise, even though he was saying he could not any more; both of his legs got paralysed. After one month in the Police Hospital, he returned to Drapchi but wasn't able to do anything. In 1996, they took him for two months to the Police Hospital, but he didn't receive any special treatment. It was rather for them to be able to say it wasn't their fault, that they were doing well by taking him to the Hospital. He was permanently walking with 2 crutches.²³²

A confidential and internal TAR Party study document, issued in September 1989, revealed that the government of the PRC is aware that torture takes place:

There have been serious cases of some PSB leaders and cadres inflicting severe corporal punishment on culprits arrested and detained in prison. People have been severely beaten in some prisons and in some detention centres in the course of body searches and awaiting reform. Some detention centre officials have tried to use new methods of punishment on the culprits. For example, in summer they are made to stand in direct sunlight wearing only cotton clothes or they are stripped naked and forced to lie spread-eagle over a ditch, supporting themselves on their hands and feet on either side of the ditch. Whatever implements they can find are used to beat the culprits, causing them serious bodily harm. A few cadres have, in violation of the legal limits and precedents, given special treatment to people with whom they have had friendly relations, or to children of cadres, or to their own relatives,

231 UN Doc. A/51/44, para. 149(e).

232 TIN Doc. R84RM2.

while they have been awaiting trial for their crimes. In short, such selfishly motivated actions obstruct the natural course of justice.²³³

The ICJ is unaware of any TAR officials being prosecuted in connection with allegations of torture. The UN Special Rapporteur on Torture, who indicated that he continued to be concerned by the persistence of the allegations reaching him, has sought, without response, an invitation to visit China.²³⁴ In 1997, the Rapporteur informed the Chinese government that "he had continued to receive reports according to which the practice of torture was endemic to police stations and detention centers in Tibet."²³⁵

3. The Right to Life — Extrajudicial Executions

The Universal Declaration of Human Rights guarantees everyone the right to life, liberty and security of person.²³⁶ The Convention on the Rights of the Child recognizes that "every child has the inherent right to life."²³⁷

233 TIN Doc. 6NH.

234 UN Doc. E/CN.4/1996/35/Add. 1, paras. 104-122 and 47.

235 UN Doc. E/C.4/1997/7, para. 59. According to the Rapporteur, "police stations, the forms of torture and ill-treatment would include "kicking; beating; application of electric shocks by means of batons or small electrical generators; the use of self-tightening handcuffs; deprivation of food; exposure to alternating extremes of hot and cold temperatures; enforced standing in cold water; prolonged shackling of detained spread-eagled to a wall; placing of heated objects on the skin and striking with iron rods on the joints or the hands."

236 Art. 3 UDHR.

237 Article 6(1) CRC provides that "States Parties recognize that every child has the inherent right to life." This right is absolute and allows no derogations. China's reservation to article 6, in accordance with its laws concerning family planning, is not relevant in this context. The imposition of the death penalty for crimes committed by persons under the age of 18 is also barred by article 37 (a) of the Convention on the Rights of the Child and rule 17.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), adopted by the General Assembly in resolution 40/33 of 29 November 1985.

While the Constitution of the PRC does not speak of the right to life, China's Criminal Law states that "[c]apital punishment is applied only to criminals who are guilty of the most heinous crimes."²³⁸ However, in 1996 alone, Amnesty International recorded 6,000 death sentences and 3,500 executions in China.²³⁹ Under the penal code, 21 offences are punishable by death, including 13 "crimes of counter-revolution." Subsequent decisions of the Standing Committee of the National People's Congress mean that the death penalty now applies to an estimated 68 offences, including many non-violent offences, such as theft and economic crimes.²⁴⁰ A secret August 1993 Party Directive, listed seven categories of criminal elements as the major targets of the "crackdown on crime" to be "given severe and prompt punishment." "Those who deserve to die must be executed." One of the categories targeted included "active counterrevolutionary elements who write counterrevolutionary slogans, flyers, liaison messages and anonymous letters."²⁴¹ The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions is "deeply concerned at the continued grave allegations of lack of respect for the safeguards and guarantees protecting those who may face capital punishment in China."²⁴²

238 "Human Rights in China," in *Beijing Review*, 4 Nov. 1991, 23.

239 Amnesty International *Report 1997*, (London: 1997), 121. Amnesty International believed the true figure to be much higher.

240 Amnesty International, *People's Republic of China: Gross Human Rights Violations Continue*, Feb. 1996, 10-11; See also Amnesty International, *People's Republic of China: At least 100 people executed in "strike-hard" campaign against crime* July 1996. China's Criminal Law provides for suspended death sentences with reprieve to life imprisonment contingent upon a prisoner's repentance and reform. These suspended death sentences are often employed and are claimed to usually result in the reformation of the prisoner: "The system of announcing the death sentence with a two-year reprieve and forced labour, as provided in China's Criminal Law, is an original creation in the application of capital punishment. It is an effective system by which strict control is exercised over the use of capital punishment in China." "Human Rights in China," 24.

241 "Decision of the Central Committee of the CCP to Strike Severe Blows against Criminal Activities", CCP Central Committee Document No. 31, 25 August 1983, excerpts in *Annals of the Dazu County Procuracy*, Dazu County Procuracy, Sichuan, 1988, 132-133, cited in *Organ Procurement and Judicial Execution in China*, (Asia Watch, New York, August 1994), 22.

242 UN Doc. E/CN.4/1994/7, para 219.

China asserts that "extremely strict limits were imposed on the use of the death penalty in China, which was only applied to the most heinous criminals. Any final sentence of a court of second instance in a capital case tried in a court other than the Supreme People's Court had to be referred to the People's Supreme Court or to a people's high court duly empowered by the Supreme Court, for a thorough review of facts, evidence, verdict, sentence and trial procedure. Only after ratification did the sentence acquire legal force. Detection of a possible error, even after ratification, led to a stay of execution."²⁴³ However, in practice, this procedure has been effectively curtailed since 1983 when the law was amended to provide for a quicker procedure in the case of defendants "who seriously endanger public security," allowing the High Court to directly approve some death sentences.²⁴⁴

Since the Chinese takeover of Tibet, thousands of Tibetans have been killed because of their position within Tibetan society or for opposition to Chinese rule. During "democratic reforms" in eastern Tibet (Kham and Amdo) from 1956 and in the TAR after 1959, uncooperative Tibetan social, political and religious leaders were subjected to "struggle." During active Tibetan resistance, thousands of Tibetans were killed. Others were killed attempting to escape to India. Thousands more were later arrested for supporting the resistance or merely for opposition to Chinese rule; many thousands of these died in prisons and labour camps during the famine years of 1959-62. Those who resisted Chinese pressures to conform suffered the worst, often being denied food sufficient for subsistence or being executed within prisons as an example to others.²⁴⁵

243 Reply sent to the Special Rapporteur on Summary Executions, 26 Oct. 1992, reported in UN Doc. E/CN.4/1993/46, para.181. In reply to the allegations transmitted by the Special Rapporteur in 1991, "the Government of China replied that there were no summary or arbitrary executions in China. There were narrow restrictions on the application of the death penalty, which was only imposed on a small number of highly vicious elements for grave breaches of Chinese criminal law. Death sentences were also subject to stringent review procedures. Upon investigations into allegations of Tibetans being tortured to death, it had been concluded that these were sheer fabrications. No religious figures had died under torture." UN Doc. E/CN.4/1993/46, para. 182.

244 *China: Gross Human Rights Violations Continue*, (London: Amnesty International, Feb. 1996), 12.

245 Smith, *Tibetan Nation*, 480.

Dozens of Tibetans were publicly executed without trial after the Nyemo rebellion of 1969-70 that grew out of the chaos of the Cultural Revolution. Leaders of a youth independence movement were also publicly executed without trial at about the same time.²⁴⁶

During the demonstrations and riots of 1987-89, numerous Tibetans were shot and killed by Chinese People's Armed Police. The most notorious example is that of the monk leader of a peaceful demonstration on 10 December 1988 intended to commemorate the 40th anniversary of the Universal Declaration of Human Rights. The monk, who was carrying a Tibetan flag, was shot in the head and at close range and killed by a Chinese officer. Another monk, who had also been carrying a Tibetan flag, died later of gunshot wounds.²⁴⁷ An estimated 60 to 80 Tibetans were killed by Chinese police firing indiscriminately at demonstrators or pursuing demonstrators into shops or houses during the riots of 5 to 7 March 1989.²⁴⁸ Since that time, reports of shooting of peaceful demonstrators have been sporadic and unconfirmed.

A number of unclarified deaths have occurred in Tibetan prisons, however, allegedly as a result of torture or negligence. On 4 June 1994, Phuntsog Yangkyi, a 20 year old Tibetan nun serving a five-year sentence for taking part in a pro-independence demonstration in 1992, died in a police hospital in Lhasa after being beaten by prison guards for singing nationalist songs in prison.²⁴⁹ Another Tibetan nun, Gyaltzen Kelsang, died shortly after leaving custody on medical parole, on 20 February 1995. She had been badly beaten and was put to hard labour while serving her 2-year sentence in Drapchi prison. According to Amnesty International in 1995, she was the tenth Tibetan political prisoner to have died shortly after being sent to hospital from prison, the three most

246 *Ibid*, 550.

247 TIN/Lawasia, *Defying the Dragon*, 26.

248 *Ibid*, 27; Amnesty International, *People's Republic of China: Repression in Tibet 1987-1992*, 46.

249 *People's Republic of China: Persistent Human Rights Violations in Tibet* (New York: Amnesty International, May 1995), 15.

recent deaths being young women.²⁵⁰ Kelsang Thutop, a leading Tibetan dissident and a monk from Drepung monastery, died in Drapchi prison in Lhasa on 5 July 1996. He had served a third of his 18 year sentence. The monk, who suffered from high blood pressure, had been physically abused in the prison and had suffered from malnutrition during his years in custody.²⁵¹ Another monk, Sangye Tenphel, died on 6 May 1996 in the same prison after reportedly being beaten by prison officials who had found him writing pro-independence material.²⁵² A monk from Sakya monastery died allegedly of suicide at Sakya County prison on 14 September 1996, following his arrest during a meeting of all Sakya monks.²⁵³

250 *Ibid.*, 17-18. The Tibet Information Network provided the ICJ with the following Tibetans who died in prison since 1987 - in prison or after release- allegedly as a result of treatment: Geshe Lobsang Wangchuk, 3 Nov. 1987 ; Yeshe, painter, 22 August 1989; Choazed Tempa Choephel, 25 Aug. 1989; Ngawang Tsonдру, Kyormorlung monk, Dec. 1989; Lhakpa Tsering, student, 15 Dec. 1990; Lawa Dondrup, Nov. 1991; Dawa Tsering, 22? at time of death, schoolboy, March 1994 (4 yrs after release); Sangye Tenpa, 6 May 1996; Kelsang Thutop, 5 July, 1996. Women: Tsam-la, businesswoman, 23 August 1991; Kunsang Choekyi [a.k.a. Rigzin Choedron?], Oct. 1992; Phuntsog Yangkyi, 4 June 1994; Gyaltzen Kelsang, 20 Feb. 1995; Sherab Ngawang, aged 15 or 18, 15 May 1995. Outside Lhasa: Tegchog Tenphel, Sakya monk, at Sakya police station, 14 Sept. 1996; Jamyang Thinley, Chamdo Monk, 5 days after release from Chamdo prison, 18 Sept. 1996.

251 "Second Monk Dies in Lhasa Prison," *TIN News Update*, 26 July 1996. In 1987, Kelsang led the 21 monks whose street protest in Lhasa set off a chain of unrest. He was arrested then and re-arrested in April 1989 at the Tibetan border as he tried to escape to Nepal. He was one of the leaders of a group in Drepung monastery which had printed a famous booklet "The Precious Democratic Constitution of Tibet" outlining a future Tibet, as well as a translation of the Universal Declaration on Human Rights. He and nine other monks were sentenced at a public rally on 30 November 1989 for membership of the group. *Ibid.* See also, Amnesty International, *People's Republic of China: Tibetan prisoner of conscience dies in prison*, 26 July 1996.

252 *Ibid.* The monk had been arrested in April 1995 while staging a demonstration in Lhasa.

253 *TIN Documents 1-1-1996-1-1-1997*, 40.

Some 34 people were reportedly executed in the TAR in 1996 in connection with the "Strike Hard" campaign.²⁵⁴ The one known recent judicial execution for political offences concerns Migmar Tashi and Dawa. They were officially executed in 1990 for "attempted escape from prison,"²⁵⁵ but court documents establish that they were accused of planning pro-independence activities after their escape.²⁵⁶ The TAR High Court sentenced the two men to death and denial of political rights for life.²⁵⁷ Meetings were held in Drapchi prison to announce their death sentences and Dawa and Migmar were executed that same day.²⁵⁸

Tibetans have described how persons scheduled to be executed are driven around town in open trucks guarded by a number of security personnel.²⁵⁹ The Strike Hard campaign launched on 28 April 1996 has led to an increase in the numbers of executions and mass sentencing rallies.²⁶⁰ Executions of arrested Tibetans were publicly announced on six

254 "Bombing in Sog County; 'Strike Hard' to Continue," *TIN News Update*, 26 Dec. 1996. For further details of the "Strike Hard" campaign, see Chapter V, A,4 *supra*.

255 Under article 96 of the Criminal Law, organising a mass prison raid or jailbreak is a capital crime.

256 TIN Doc. 23(YY). Lhasa Municipal People's Middle Court Procurate, Nov. 1989, states that "in the opinion of this Procurate/Court, the [defendants] have not accepted their crimes and carried out the sentences according to laws but on the contrary... set up an organization with a proper system, aims and plans to escape from prison for the Independence for Tibet -which violates ... Criminal/Penal Law-96 sub-clause 20 and 'Circular providing guidelines for the appropriate punishment and beatings of prisoners on hard labour by the prison authorities on duty.' They are guilty of 'Attempted escape from prison, causing obstacles to the administration/Authority; holding counter revolutionary aims and planning to escape from prison.'"

257 Pronouncement made in TAR Prison No. 1, 17 May 1990, *ibid*.

258 TIN Doc. R79RM2, 5-11-1996, Interview with ex-prisoner referring to the incident.

259 Interview with Tibetan from Shigatse, 24 Sept. 1996, TIN Doc. 45KR; Interview with person from Kham, 15-06-1995, TIN Doc. R81-FV2. See also *Tibet Daily* 16 Oct. 1994, reporting on a public sentencing rally held in Lhasa "followed immediately by the execution of 4 Chinese criminals." SWB FE/2141, 1 Nov. 1994.

260 *China: Death Penalty Log: July-December 1995*, (London: Amnesty International, 5 June 1996).

different occasions, the prisoners to be executed paraded around,²⁶¹ and executed in different localities in the TAR.²⁶² On 24 January 1997 it was unofficially announced that as from 1 January 1997, "to strive for a better image in the world and improve its human rights record, the mainland changes the practice of parading convicts through the streets to show them to the public before escorting them to the execution ground."²⁶³

The UN Special Rapporteur on Extrajudicial, summary or arbitrary executions, "in view of the alarming allegations received," has repeatedly expressed his interest in visiting China to study *in situ* questions relating to the right to life. The government has not yet replied, however, to the four inquiries he has sent regarding a proposed visit.²⁶⁴

4. Freedom of Expression

The Universal Declaration of Human Rights guarantees everyone "the right to freedom of opinion and expression; this freedom includes the right to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."²⁶⁵ According to the Convention on the Rights of the Child,

261 In one case, for instance, the sentences were announced by the Shigatse Intermediate People's Court at a "verdict announcement rally" held at a sports stadium in order "to deal a hard blow to various criminal elements, protect the people's lives and property, and genuinely maintain social stability." "Tibetans in Shigatse Sentenced to Up to 5 Years," *TIN News Update*, 31 May 1996. A witness to the 11 September execution in Tsetang describes that "four Chinese and one Tibetan were executed during a public audience. Many government employees had to attend." TIN Doc. 42(VG).

262 *TIN Documents 1-1-1996-1-1-1997*, forthcoming, 11.

263 "News from Guangzhou," *Ping Kuo Jih Pao*, SWB FE/2825 G/7, 24 Jan. 1997. It is the view of the ICJ that the practice of parading prisoners around the streets before their execution or by public humiliation rallies adds an element of degrading treatment, in contravention of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

264 UN Doc. E/CN.4/1996/4, para. 125.

265 Arts. 18, 19, UDHR. The rights contained in the UDHR are subject only to "such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." Art. 29(2) UDHR.

this right includes "to seek, receive and impart information and ideas of all kinds, regardless of frontiers."²⁶⁶

China's Constitution grants citizens freedom of speech and of the press²⁶⁷ and states that "citizens have the right to criticize and make suggestions regarding any state organ or functionary and the right to make to relevant state organs complaints or charges against, or exposures of, any state organ or functionary for violation of the law or dereliction of duty; but fabrication or distortion of facts for the purpose of libel or frame-up is prohibited."²⁶⁸ However, in exercising these and other rights, Chinese citizens "may not infringe upon the interests of the state, or society and the collective, or upon the lawful freedoms and rights of other citizens"²⁶⁹ while they must "keep state secrets" and "must not commit acts detrimental to the security, honour and interests of the motherland."²⁷⁰

The Chinese government asserts that its citizens "enjoy freedoms of speech, the press, assembly, association, procession and demonstration. There is no news censorship in China."²⁷¹ Despite these claims, Chinese citizens have not enjoyed true freedom of thought or expression since after the Hundred Flowers era of 1957, when criticism of the CCP was punished by prison sentences or reform through labour. Tibetan and other minority nationalities' "local nationalism" was repressed at the same time.²⁷² Since the 1959 revolt, Tibetans have in practice not been allowed to express the opinion that Tibet had ever been independent and that China's annexation of Tibet had been anything other than a "peaceful liberation." The period of the Cultural Revolution, [i]n terms of literary and artistic activity ... is one of the leanest in the history of

266 Art. 13, CRC. These rights are also subject to restrictions provided by law and necessary to protect the rights and reputation of others, national security, public order, or public health or morals. Ibid.

267 Art. 35, 1982 Constitution.

268 Art. 41, 1982 Constitution.

269 Art. 51, 1982 Constitution.

270 Arts. 53, 54, 1982 Constitution.

271 "Human Rights in China," in *Beijing Review*, 4 Nov. 1991, 15.

272 Smith, *Tibetan Nation*, 426-435.

mankind."²⁷³ In addition, [t]he vast majority of Tibetan monastic libraries, manuscripts, woodblock prints and the woodblocks themselves were burnt, buried, made into the soles of shoes, used for toilet paper, for building and so forth."²⁷⁴

After 1979 Tibetans gained some freedom of speech, mostly limited to cultural and religious issues. Classical Tibetan texts and literary works were published. However, when cultural and religious freedom led to the demands for political freedoms and to a revival of the Tibet issue within Tibet and internationally, freedom of cultural, religious and political expression was again restricted.

Dissent expressed during and in the wake of the demonstrations that started in 1987 in Lhasa has met with suppression. In this period, dissident activity broadened to include the distribution of political literature, pasting of wall posters and leaflets calling for human rights, religious freedom and language rights, independence and a democratic system of governance.²⁷⁵ The government responded with a political campaign of ideological education as well as control and information gathering at all levels of society.²⁷⁶ Neighbourhood committees were required to inform on dissenters and announced rewards for informers against those involved in demonstrations or in putting up wall-posters.²⁷⁷ A network of paid informants, often compelled to cooperate, was maintained by the Public Security Bureau (PSB). Regular meetings were conducted by neighbourhood committees in order to identify potential dissidents and to instill correct thought.²⁷⁸ Work teams

273 Heather Stoddard, "Tibetan Publications and National Identity," in Barnett and Akiner (eds.), *Reform and Resistance in Tibet*, (London: Hurst & Co. 1994), 121 at 131.

274 *Ibid.*, 132.

275 Ronald D. Schwartz, "Resistance in Tibet: 1987-1990, The Anti-Splittist Campaign and Tibetan Political Consciousness," in R. Barnett and S. Akiner (eds.) *Resistance and Reform in Tibet* (New Delhi, Motilal Banarsidass Publishers, 1994), 207.

276 *Ibid.*, 211, citing an announcement made by the TAR People's Government on 2 Oct. 1987, requiring neighbourhood committees to carry out ideological education among the masses and to "report any special information they come to know" to the authorities.

277 *Ibid.*, 213.

278 *Ibid.*, 217. At the same time, work teams were sent out to the monasteries to conduct re-education. See Chapter V,C,5, *infra*, on religious freedom.

assumed responsibility for identifying splittists among the general Tibetan public.

Since then, Tibetans continue to be arrested and imprisoned - with or without trial - or sentenced to re-education through labour for the peaceful expression of their political views. Some of these cases were described in the earlier chapter on Arbitrary Arrest and Detention. Among the many other cases is that of five lay persons tried in 1992 for "pasting reactionary slogans," demonstrating, and displaying the Tibetan flag.²⁷⁹ Ten nuns were sentenced after demonstrating and displaying the Tibetan flag, deemed an "illegal counterrevolutionary demonstration." They were convicted for "inciting counterrevolutionary propaganda," and received sentences ranging from four to six years.²⁸⁰ In 1993, a monk was sentenced to four years imprisonment for putting up a leaflet containing "reactionary slogans" on the door of a government office in Chamdo. He was found guilty of "counterrevolutionary propaganda and incitement."²⁸¹ Fourteen nuns imprisoned in Drapchi prison had their sentences doubled or tripled for singing and recording pro-independence songs.²⁸²

Some persons arrested after peaceful expression of their opinion have disappeared. The UN Working Group on Enforced or Involuntary Disappearances, "extremely concerned about the recent increase of disappearances in China,"²⁸³ reported in 1997 that some Tibetans had allegedly disappeared after "being arrested for writing or singing national poems or songs," others for involvement in human rights activities, and several Tibetans in 1995 and 1996 for "having distributed leaflets containing political messages."²⁸⁴

Several minority publishing houses print books and periodicals by Tibetan writers and artists in Tibetan as well as Chinese. Numerous important Tibetan historical texts have also been re-published as well as

279 Lhasa City Prosecution Department, Investigation Report, No. 92, Letter No. 36, Lhasa People's Middle Court, 22 Sept. 1992.

280 Criminal Sentence, TAR Lhasa City Intermediate People's Court, 26 April 1993. TIN Doc. 34(WJ).

281 *TIN News Update*, 24 Nov. 1993.

282 The tape was subsequently smuggled out. *TIN News Update*, 20 Feb. 1994.

283 The majority of reported cases of disappearances in China concern Tibetans, UN Doc. E/CN.4/1997/34, paras. 102, 109.

284 *Ibid.*, paras. 102, 103.

studies by contemporary Tibetan historians. There are a number of periodicals and learned journals as well as three collections of classical Tibetan literature. A considerable number of volumes have collected sayings, folk tales and songs from all over the plateau. There are some modern novels by new authors as well.²⁸⁵ The political or national content of these publications is, of course, restricted to officially-acceptable discourse. In 1996 and 1997, for instance, a historical play and book, both accounts of 17th century Tibetan history, were banned because of references which allegedly ran counter to the PRC's version of history.²⁸⁶

Even in 1990, the official view was that "before Liberation literary creation in Tibet was zero, and after Liberation a branch of army writers and Chinese writers came along to write a large amount of works on the life of the Tibetan people."²⁸⁷ That year, writers and artists at a conference of the TAR Association of Culture were officially advised to propagate "national solidarity" as a focus of their creative works. Two "advanced" individuals honored for their outstanding contributions to "national minority literature" were Chinese officials.²⁸⁸ A few months later, "ethnic writers" were told that "they should study Marxism and encourage equality and unity among all nationalities and reflect the colorful life of all ethnic groups and what they are doing in the course of reform."²⁸⁹

Control over information reaching Tibet from the outside as well as the flow of information out of Tibet has been tightened. The imposition of martial law in 1990 temporarily sealed the TAR off for foreign visitors. In

285 Stoddard, "Tibetan Publications and National Identity."

286 "Cultural Policy: History Book Banned, Tibetan Culture Declared 'Non-Buddhist,'" *TIN News Update*, 15 Aug. 1997.

287 *Tibet Daily*, 6 Oct. 1990, quoted in *Ibid.*, 146.

288 Zhang Zhiwei, vice-secretary of the party group of the TAR's Association of Culture and vice-chairman of the TAR Party Standing Committee stated that "it is the primary task of entertainment to strengthen national solidarity." TAR Minister of Propaganda Department, Li Weilun, stated that "he hoped that they [the artists] would further propagate and praise the advanced deeds and the model people that emerged from such national solidarity; that they would further strengthen study and firmly establish the Marxist world view, the view of literature, nationality and religion." *Tibet Daily*, translated in TIN Doc. N23SE90B, 23 Sept. 1990; report in TIN Doc. TIBINTPR.

289 *Xinhua*, 18 Nov. 1990, SWB, 22 Nov. 1990, reported in *ibid.*

general, visitors travelling with government permission have been confined to limited sections of three prefectures in the central TAR: Lhasa, Shigatse and Lhoka. The prefectural capitals of each (Lhasa, Shigatse and Tsethang) are, officially, the only three towns in the TAR which are "open" to foreigners, though they are occasionally closed unofficially because of fears of local political instability. Foreigners are "strictly forbidden ...to participate in, follow along with, take pictures or video film" any rally or demonstration.²⁹⁰

Foreign human rights monitors - such as the ICJ and Amnesty International - are strictly banned from visiting Tibet.²⁹¹ Journalists are only sporadically allowed to go - no Beijing-based journalist was permitted in to the TAR for three years after 1990.²⁹² Travel agencies in Tibet are routinely closed down if they accept bookings from journalists or diplomats.²⁹³ When official visitors are allowed in, their movements are tightly controlled. An official Australian human rights delegation complained:

From the start of the visit, the Delegation felt that it was being insulated from the general populace through a well-planned yet very hectic schedule....The delegation was not readily able to have open conversations with Tibetans since, collectively or individually, members were almost constantly accompanied by one or more government officials. This was taken to extreme lengths in the case of the Delegation's Tibetan linguist ... and certainly inhibited free movement and discussion.²⁹⁴

Similarly, one member of a German parliamentary delegation to Tibet in September 1997 reported that the team could not freely contact people and that the visit "was totally set up." "Prisoners were not allowed to

290 Notice by Foreign Travel Bureau of Lhasa, 10 June 1993. TIN Doc. 2(YR)

291 For the ICJ's efforts to visit Tibet, see Preface, *supra*. Regarding Amnesty International's repeated requests to visit Tibet, see e.g. Amnesty International, *People's Republic of China: Repression in Tibet 1987-1992* (1992), 3.

292 Nicholas D. Kristof and Sheryl WuDunn, *China Wakes*, (New York: Vintage Books, 1994), 145.

293 "Travel Restrictions Target Americans," TIN News Update, 8 Oct. 1997. During the UN Fourth World Conference on Women in Beijing in 1995, travel agencies were warned that they would be closed if they made travel arrangements for conference participants.

294 *Report of the Australian Human Rights Delegation to China*, 14-26 July 1991 (Sept. 1991), 62-63.

look at us. It was a very bizarre scene. It reminded me of the past in East Germany."²⁹⁵ The first time a UN monitor visited Tibet, the 1994 trip of the Special Rapporteur on Religious Intolerance, heavy security prevented ordinary Tibetans from meeting him.²⁹⁶ On the next UN visit, by two members of the Working Group on Arbitrary Detention in October 1997, the monitors were only allowed to see four or five prisoners from a list of detainees they had asked to see. When a delegation of European Community ambassadors visited the TAR in May 1993, several Tibetans who sought to meet the diplomats were arrested.

Ordinary tourists are subject to ever-changing regulations apparently designed to limit contact with ordinary Tibetans and shield them from witnessing troublesome events. Much of the TAR and other Tibetan autonomous areas are totally off-limits to foreigners, while travel to many other areas requires a myriad of permits. As of September 1997, agencies could no longer book travel to the TAR for individual American tourists.²⁹⁷

In recent years, foreigners leaving Tibet after disturbances were strip-searched and films, diaries, tapes, letters and documents confiscated. Hotels where foreigners are permitted to reside are regularly searched and attempts have been made to identify foreigners who witnessed certain events in order to prevent their photographs from reaching the outside.²⁹⁸ Tibetans have been arrested for contact with

295 Reuters, "German parliamentarians see progress on Tibet," 10 Sept. 1997; AFP, "German human rights delegation to Tibet decries concealment." 9 Sept. 1997.

296 See Chapter V, C, 5 on Freedom of Religion, *supra*.

297 "Travel Restrictions Target Americans," *TIN News Update*, 8 Oct. 1997.

298 On 4 July 1995, a tourist leaving Tibet was strip searched and her materials confiscated; she and two others who underwent a similar search all spoke Tibetan. "Police Strip-Search Tourists in Hunt for Letters," *TIN News Update*, 10 June 1995; Police conducted an intensive manhunt for a tourist who photographed disturbances at Ganden Monastery in 1996, rounding up French tourists and Lhasa hotels and detaining them at checkpoints. "Tourist Account of Monks' Protest, Police Search for Photographs," *TIN News Update*, 24 May 1996; A New Zealand mountain climber who faxed his wife that he had heard a bomb explode near his hotel was detained for a week, accused of attempting to "subvert the government, split the country and overthrow the socialist system," made to refax his wife retracting the story and expelled from the country. "Tourist Denounced for 'Bomb' Fax From Lhasa," *TIN News Update*, 21 March 1996; "Increased Restrictions on Tourists in Tibet," *TIN News Update*, 5 Aug. 1996.

foreigners.²⁹⁹ Ngawang Pekar, a Drepung monk in Drapchi prison, had his sentence increased by eight years in March 1996 when he was caught trying to smuggle a list of prisoners intended for international human rights groups.³⁰⁰ In 1996, two Tibetans, Shol Dawa and Topygal, received sentences of nine years and six years, respectively, when a court found that they had "gathered together such items as a list of names of current and released prisoners from our region" with the intent to send the list abroad.³⁰¹ Likewise, Tibetans found in possession of materials received from abroad, especially India, have been imprisoned.³⁰²

The 1994 promulgation of the Implementing Regulations of the National Security Law tightened restrictions on international contacts. "Establishing links with or getting support and help from outside bodies, organisations and individuals to carry out activities harmful to state security" was defined as "collaboration," while "issuing and distributing writing or speeches or manufacturing and propagating recorded products harmful to state security" was deemed a damaging activity, within the meaning of the term in the NSSL.³⁰³ The Regulations also defined for the first time as "damaging activities to state security," individual foreigners "who violate the relevant provisions, who do not listen to dissuasion, who of their own volition meet inside persons whose

299 In 1995, four Tibetans were detained for having given letters to tourists. *Ibid.* On 19 January 1989, Kusho Yulu Dawa Tsering, former philosophy lecturer at the Tibet University in Lhasa, was sentenced to 14 years for "spreading counterrevolutionary propaganda," discussing politics with an Italian tourist in July 1987. *TIN Update*, 15 May 1989. The announcement of their arrest stated that "[o]n July 29 1987, he and Thubten Tsering discussed Tibetan independence and even criticized the Chinese Communist Party and the policies of the People's Government in the course of their conversation with reactionary foreigners posing as tourists." FBIS, 10 March 1988, 12-13.

300 "Second Monk Dies in Lhasa Prison," *TIN News Update*, 26 July 1996.

301 "Tibetan Sentenced to 9 Years for Prisoner List," *TIN News Update*, 23 Aug. 1997, citing Lhasa Criminal Court Trial Document No.48 (1996).

302 Lobsang Changchu was sentenced to re-education through labour for receiving seven leaflets from a Nepali trader and distributing them in Lhasa. See Chapter V, C,1 *supra*.

303 Arts. 7,8 Implementation Regulations of the PRC National State Security Law, PRC National Council Directive No. 157.

behaviour is harmful to state security or is strongly expected to be harmful to state security.”³⁰⁴

The tightening of the security laws is in line with the more aggressive policies of dealing with dissent announced at the Third Work Forum in July 1994:

In recent years, some people have sung counterrevolutionary songs in public. Some people have been selling Dalai photographs and badges. Some people bring from abroad published counterrevolutionary materials and materials such as cassettes and tapes and then they record them or make copies of them in great numbers for distribution. The Public Security Bureau, the Commercial and Cultural Departments, etc. should check up on these things seriously and confiscate them as soon as they appear, without any hesitation. They should cancel the licenses of those who sell these things and fine them. Those who encourage teenagers to sing counterrevolutionary songs should be punished severely according to the law. Those who make, put up or distribute counterrevolutionary publications, and those who shout counterrevolutionary slogans should be punished severely and in a timely manner, according to the relevant stipulations in the law.³⁰⁵

The Forum strengthened the Comprehensive Management of Public Security System, established in 1990 to provide information to the security apparatus, and identified organising “the masses to oppose splittism” as its main objective. In July 1994, it was announced on Tibet TV that a provincial tribunal in Chamdo had handed down sentences of 12 and 15 years to a group of Tibetans convicted of “counterrevolutionary sabotage and propaganda” such as putting up posters calling for independence.³⁰⁶

304 Art. 8 *ibid.*

305 Document No. 5 of the Sixth Enlarged Plenary Session of the Standing Committee [of the Fourth Congress of the TAR Branch of the CCP], excerpted in TIN/HRW Asia, *Cutting off the Serpent's Head*, 150, at 160-161.

306 TIN Doc. 94NOV.

The current "Strike Hard" anti-crime campaign, the ban on displaying photographs of the Dalai Lama and the monastic re-education campaign have further restricted the freedom of expression in Tibet.³⁰⁷ These restrictions cannot be justified under international law.³⁰⁸

5. Freedom of Religion

Tibetans are a devout people and the Buddhist religion forms a significant part of their lives and their identity. The Universal Declaration of Human Rights provides that "[e]veryone has the right to freedom of thought, conscience and religion; this right includes ... freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance." The Convention on the Rights of the Child provides that states "shall respect the right of the child to freedom of thought, conscience and religion"³⁰⁹ and that "[f]reedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others."³¹⁰ The 1981 UN Declaration on the Elimination

307 See Chapters V,B,1, *supra*, on education, and V,C,5, *infra*, on religious freedom.

308 Under the ICCPR, for instance, "restrictions on freedom of expression and information to protect national security are permissible only in serious cases of political or military threat to the entire nation." See Manfred Nowak, *CCPR Commentary*, (Kehl/Strasbourg/Arlington: N.P. Engel, 1993), 355.

309 Art. 14 (1) CRC.

310 Art. 14 (2) CRC. See also Art. 5: "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: ... (d)(vii) The right to freedom of thought, conscience and religion.

of All Forms of Intolerance and of Discrimination Based on Religion or Belief spells out these rights in more detail.³¹¹

Chinese law at once protects and restricts religion.³¹² China's 1982 Constitution provides that:

Citizens of the People's Republic of China enjoy freedom of religious belief. No state organ, social organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The State protects *normal* religious activities. *No one may make use of religion to engage in activities that disrupt public order, impair the health of the citizens or interfere with the educational system of the State. Religious bodies and religious affairs are not subject to any foreign domination.*³¹³

311 GA res. 36/55, 25 Nov. 1981. Article 1 states: "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice. 3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." Article 2 provides "1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief. 2. For the purposes of the present Declaration, the expression 'intolerance and discrimination based on religion or belief' means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis."

312 According to the TAR Chairman, "on the one hand, [religious freedom] is protected by the law, and on the other hand, it is subject to restrictions by the law." Lhasa TV, 10 Oct. 1991, in FBIS 17 Oct., 1991.

313 Art. 36, 1982 Constitution. Emphasis added. Previous constitutions varied in their protections of religion. Article 88 of the 1954 Constitution stated that "citizens of the People's Republic of China enjoy the freedom of religious belief." Article 28 of the 1975 Constitution and article 46 of the 1978 Constitution, reflecting Cultural Revolution policies, guaranteed citizens of the PRC "the freedom to believe in religion and freedom not to

Under Chinese law, officials who illegally deprive a citizen of freedom of religious belief are subject to up to two year's imprisonment.³¹⁴ The ICJ is not aware of any officials who have been prosecuted under this clause. The 1984 Law on Regional Autonomy states that, "[t]he self-governing body of autonomous areas shall guarantee the freedom of religious belief to citizens of the various minority nationalities. On the other hand, the Central Government may restrict religious activities in the interest of public order, health, and education and religious groups are prohibited from being subject to any foreign domination."³¹⁵

The Early Years

The Chinese government did not consider the provisions of the 17-Point Agreement, which guaranteed respect for the religious beliefs of

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believe in religion and to propagate atheism," suggesting by omission that the propagation of religion, one of the functions of institutional religion, was not protected.

314 "Human Rights in China," Beijing Review, 4 Nov. 1991, 30. Section 147 of the PRC's Criminal Law states: "State officials who violate the freedom of worship or the customs of national minorities are punishable in serious cases by imprisonment for not more than two years or by a short term of imprisonment. Any person who forcibly prevents legal religious activities, compels believers to abandon their religion, compels a citizen to practice any form of worship, illegally closes or demolishes legal places of worship or other religious premises is violating democratic rights and individual freedom and failing in his duty and is punishable by law."

315 Art. 11, 1984 Law on Regional Autonomy. Other relevant domestic laws or regulations include the 1990 "Regulations on the Protection of Relics," China Daily, 6 August 1990, and the 1994 "Regulations concerning the Functioning of Places of Worship," Council of State Decree, No. 145. Its purpose is to protect "normal" religious activities. According to article 2, "all places devoted to religious activities must be declared to the authorities in accordance with rules established by the government Office of Religious Affairs. Cited in UN Doc. E/CN.4/1995/91, p. 114.

Tibetans and for monasteries,³¹⁶ applicable to Tibetan areas outside Central Tibet, and consequently in the early 1950s the economic basis of monastic Buddhism was attacked during democratic reforms in eastern Tibet and lamas were subjected to "struggle" and torture. Torture was particularly applied to lamas in order to demonstrate to lay Tibetans the lamas' lack of supernatural powers.³¹⁷

The 1959 and 1960 ICJ reports identified religious belief as the primary criteria used by China for repression against Tibetans. The 1959 report, finding that "freedom of religion and worship have been systematically denied," concluded that "the Chinese were determined to use all methods at their disposal to eliminate religious belief and to substitute Communist doctrines."³¹⁸ The 1960 Legal Inquiry Committee report to the ICJ accused China of refusing to "permit adherence to and practice of Buddhism in Tibet," of having "set out to eradicate this religious belief in Tibet," and of having "killed religious figures because of their religious belief." It concluded "that acts of genocide had been committed in Tibet in an attempt to destroy the Tibetans as a religious group."³¹⁹ The ICJ Committee cited evidence of "the deliberate killing of lamas and leading monks," widespread arrests of religious persons and their enslavement into forced labour, and the ransacking and destruction or secularization of monasteries.³²⁰

316 Article 7 of the 17-Point Agreement stipulated that "[t]he religious beliefs, customs, and habits of the Tibetan people shall be respected, and lama monasteries shall be protected. The central authorities will not effect a change in the income of the monasteries." The 1949 Common Program of the CPPCC stated in art. 53: "All national minorities shall have freedom to develop their spoken and written languages, to preserve or reform their traditions, customs, and religious beliefs." The 1952 General Program for the Implementation of Regional Autonomy for Minorities contained similar language in art. 26: "The autonomous organ of an autonomous area shall guarantee to all people in the area, irrespective of nationality, freedom of thought, speech, publication, assembly, association, correspondence, person, domicile, change of domicile, religious belief, and the freedom to hold processions and demonstrations."

317 Hugh Richardson, *A Short History of Tibet*, (New York: E.P. Dutton, 1962), 201.

318 ICJ, *The Question of Tibet and the Rule of Law*, 36.

319 ICJ, *Tibet and the Chinese People's Republic*, 3.

320 *Ibid.*, 14-41.

In 1962, four years before the Cultural Revolution, the late Panchen Lama, in the "70,000 Character Petition,"³²¹ suggested that the Party was trying to eliminate religion:

Of the 2,500 monasteries which had once existed [in what is now the TAR], only 70 were left and 93 per cent of the monks and nuns had been forced out. The cadres are using a few people to denounce religion and mistakenly taking this as the views of the whole Tibetan masses, with the result that they mistakenly think the conditions for the elimination of religion itself are ripe. Therefore the enlightenment-endowing Buddhist religion that flourished throughout Tibet seems to be on the verge of being erased in front of our eyes from the land of Tibet. There is no way that 90% of the Tibetans will tolerate this.³²²

During the Cultural Revolution, the destruction of almost all the remaining monasteries was completed. Virtually all religious practice was banned. Monks and nuns were forced to copulate in public and made to marry. Others were killed or put in labour camps.³²³

The post-Mao liberalization initiated in Tibet in 1979 included new freedom of individual religious practice plus a limited revival of institutional Buddhism. Tibetans were permitted to engage in religious practices such as circumambulation of Buddhist shrines, spinning of prayer wheels, prostrations and making butter and money offerings at reopened shrines. The Jokhang temple in the heart of Lhasa was reopened to the public and the iron fence that had previously prevented Tibetans from prostrating was removed. Restoration began at the Potala (former home of the Dalai Lama), Sera and Drepung in Lhasa. Other monasteries not completely destroyed, such as Tashilhunpo, Gyantse and Sakya, were restored with state funds while Tibetans were allowed to rebuild other monasteries and religious shrines. Tibetans devoted their private time and resources to the rebuilding of Ganden, the first

321 This secret report has only recently come to light. "Secret Report by the Panchen Lama Criticises China," *TIN News Update*, 5 Oct. 1996.

322 Ibid.

323 See International Campaign for Tibet, *Forbidden Freedoms, Beijing's Control of Religion in Tibet* (Washington: Sept. 1990), 12-13. In 1996, the ICJ interviewed former monks and nuns forced to marry at this time.

monastery of the Gelugpa sect and an important symbol of the Tibetan nation and state. In 1982 the Chinese Government announced plans to restore an additional 53 large or historic monasteries, including the main temples of Tibet's four primary religious sects.³²⁴ Restoration and rebuilding of monasteries outside the TAR was also allowed and Tibetans from those areas were allowed to make pilgrimages to Lhasa for the first time since 1959. Of course, the monasteries were a shadow of what they once were - religious texts had been destroyed and, more importantly, there remained few monks with enough knowledge to impart advanced learning.

Tibetans devoted a large portion of their regained economic assets after 1979 to the revival and support of religion. The rebuilt monasteries attracted former and new monks, all of whom were supported by private donations. Many Tibetans began to send their children to the monks for schooling. The religious shrines became the locus of a Tibetan cultural revival, a revival with inevitable political consequences due to the role of religion and monastic Buddhism in Tibetan national identity. Recognizing that the policy of allowing the unsupervised revival of religion had led to a revival of Tibetan nationalism, the CCP soon moved to restrict the reconstruction of monasteries, the number of monks being initiated and religious instruction by monks. Reconstruction at Ganden was virtually halted in 1983 by the arrest of many of the monks and workers there.

Since the mid-eighties, more restrictive policies on religion have been announced.³²⁵ These were implemented haphazardly, however, until the 1994 Third Work Forum on Tibet (see below). A 1985 publication of a National People's Congress panel is revealing about policy on Tibetan religion:

Religion poisons the minds of people with fatalistic conceptions. It leads people to think that every aspect of their life as well as their fate is dictated by the mandate of heaven.

324 "Tibet: An Inside View (V)—Religious Freedom Returns," *Beijing Review*, 20 Dec. 1982.

325 In 1982, the Central Government promulgated "The Basic Viewpoint and Policy on the Religious Questions during our Country's Socialist Period," also referred to as Document No. 19, outlining policy guidelines to Party and other cadres on the permissible scope of religious freedom. Cited in *A Season to Purge: Religious Repression in Tibet* (Washington: International Campaign for Tibet, April 1996), 14.

Such ideas seriously dampen the religious people's enthusiasm for work. This is especially true of pre-liberation Lamaism, which was so closely associated with the feudal system of exploitation and oppression. Lamaism constituted a major impediment to social progress of every minority nationality in which it had sizable numbers of adherents, including the Tibetans, Mongolian, Moinba and Tu minorities. So it is but natural that the unjust feudal system practised by Lamaism should have been abolished to the satisfaction of both believers and non-believers.³²⁶

Monasteries and temples are under the purview of the Religious Affairs Bureau (a local government body), the local Party Committee, Party work teams, and branches of police stations set up under the Public Security Bureau. Since the 1959-revolt, almost every monastery has been overseen by a Democratic Management Committee (DMC) which manages the monastery's affairs including religious affairs, study, security and finances. These DMCs have supplanted the traditional role of the abbot in guiding the religious and administrative functioning of the monastery.³²⁷

326 Document of the "National Minorities Questions Editorial Panel" of the Nationalities Affairs Commission of the National People's Congress in *Questions and Answers about China's National Minorities* (Beijing: New World Press, 1985), 75.

327 Democratic management committees were first instituted in the TAR after the 1959 revolt, ostensibly for the purpose of eliminating exploitation of ordinary monks by upper class reincarnated lamas and the monastic hierarchy. DMCs function as the highest authority in the monasteries. The committees were theoretically freely elected by monks: "The committee, elected by all monks in the monastery on the basis of full consultation, is responsible for overseeing the monastery's Buddhist activities, its repair and upkeep, selecting administrative personnel and any work that goes on. The committee receives guidance and support from relevant government departments in charge of religious affairs, and keeps them informed of any problems in implementing state policies," in Jing Wei, *100 Questions About Tibet* (Beijing: Beijing Review Publications, 1989), 61. ICT, *Forbidden Freedoms*, 24-30, describes the DMCs which governed the major monasteries in 1990. In 1986, the DMCs were strengthened by the "Provisional Regulations for the Management of Religious Institutions in the TAR." Mickey Spiegel, "Religion in China," in *China Rights Forum*, Spring 1995, 14.

The DMCs have been under increasing government control. In 1990, TAR Governor Gyaltzen Norbu announced that "controlling the monasteries actually means solving two problems: the first is that no matter how, we must ensure that the DMCs are in the hands of people who support the leadership of the Communist party, the socialist system, and the preservation of the unity of the motherland."³²⁸

Regulations in particular monasteries prescribe official rules for monks in order to "become national and religious patriots as well as to become law-abiding, patriotic and outstanding monks."³²⁹ One such document, dated May 1992, stated that "the monastery should respect the leadership of the Chinese Communist Party," and elaborated rules on such subjects as "political education," "religious affairs," "management of cultural relics," "security" and "discipline."³³⁰ It also provided that:

The monastery should announce the Party's policy, direction and work in a timely fashion and should carry out the practice of the four Principles [the supremacy of the socialist system; the leadership of the Party; the supremacy of Marxist-Leninist-Mao Zedong Thought; the dictatorship of the Proletariat] The capitalist liberals and individuals should be opposed while promoting self-force and self-nature.³³¹

State control over monasteries was increased after the demonstrations and riots of 1987-89. "Work teams" were sent to monasteries in the Lhasa

328 Address by Gyaltzen Norbu, Oct.1990, in Tibet Comprehensive Management of Public Security Committee Publication No. 1 (1992), 4 Sept 1992, TIN Dc. 10(YM) and the 1994 Government Work Report.

329 "The monastery functions under the conditions of socialism. Therefore, it has responsibility to protect the people's freedom of religion as well as to protect the legal rights of the monastery and its residents. Moreover, the monks should maintain their commitment to the practice of the socialist system and should follow the socialist path. In short, the monastery should respect the leadership of the Chinese Communist Party and oppose the behavior and views of those small number of splittists. It should also strengthen the friendship between the nationalities and protect the unity of the motherland. In order to fulfil the above tasks and to become national and religious patriots as well as to become law-abiding, patriotic and outstanding monks, the following special rules and systems should be implemented." TIN Doc. 12(YA).

330 Ibid.

331 Ibid.

area that had contributed monks to the demonstrations to expel monks with anti-Chinese or nationalistic sentiments. The remaining monks were subjected to indoctrination on patriotism and the Chinese version of Tibetan history. Admission of new monks was restricted. Limits on the numbers of monks and nuns were applied to the Lhasa area monasteries and nunneries and a number of nuns and monks expelled. These limits and expulsions resulted in a renewed flight to exile in India of monks and nuns or those who wished to pursue a monastic life. Permission to reconstruct destroyed monasteries was restricted.³³² As before, these rules and restrictions were applied more severely in the Lhasa area and less so in rural areas of the TAR and in Tibetan areas outside the TAR where there had been few political disturbances.³³³

The Tibetan religious revival thereafter shifted to areas outside Lhasa and, along with it, so did political protest against Chinese policies. This was one of the reasons advanced at the Third Work Forum for more far-reaching restrictions on religion.

The Third Work Forum on Tibet

The Third Work Forum on Tibet³³⁴ identified the influence of the Dalai Lama and the "Dalai clique" as the "root of Tibet's instability" and characterized the struggle against the Dalai Lama and his "clique" as an antagonistic contradiction, or a contradiction "between us and an enemy."³³⁵

332 See *TIN Report* 14 Oct. 1990, citing the document "Propaganda Speeches on Strengthening National Unity and Unifying the Motherland," issued February 1990 by the Propaganda Committee of the Ganze Autonomous Prefecture Party Committee. The document emphasizes that religious activity, as opposed to religious belief, is strictly controlled. It states a ban on becoming monks and nuns under the age of 18 and prohibits performing religious ceremonies outside a monastery. Further reconstruction of monasteries is discouraged, and emphasis is put on preserving existing religious sites for, among others, tourist purposes.

333 See ICT, *A Season to Purge*.

334 For background on the Third Work Forum, see Chapter IV.A, on Population Transfer, *supra*.

335 "Document No. 5 of the Sixth Enlarged Plenary Session of the Standing Committee [of the Fourth Congress of the Tibet Autonomous Regional Branch of the Chinese Communist Party]," excerpted in *TIN/HRW Asia, Cutting of the Serpent's Head*.

The struggle between ourselves and the Dalai clique is not a matter of religious belief nor a matter of the question of autonomy, it is a matter of securing the unity of our country and opposing splittism. It is a matter of antagonistic contradiction with the enemy, and it represents the concentrated form of the class struggle in Tibet at the present time. This struggle is the continuing struggle between ourselves and the imperialists since they invaded Tibet a hundred years ago. We must safeguard the achievements of the [post-1959] democratic reform and the [current] Open Reform Policy.³³⁶

Policies reinforced at the 1994 Tibet Work Forum were aimed at stricter control over monasteries, undercutting the Dalai Lama's influence and a campaign against religious belief and practice among Tibetan cadres. The Work Forum attempted to more strictly apply already established rules for monasteries and to further restrict the political activities of monks and nuns:

Recently there have been no limitations on the development of monasteries, and the numbers of monks and nuns have increased by a great amount. Some monasteries have become a basic place for the Dalai clique to practice splittism in our region and they have sneaked into these monasteries. A handful of monks and nuns have become the vanguard of disturbances.... The Dalai clique assumes that "getting hold of a monastery is equivalent to [getting hold of] a district of the Communist Party," so our prefectures, cities and counties should seriously consolidate [reorganize] the monasteries which have problems. Those monasteries which take sides with the splittists and which are always causing trouble in order to stir up disturbances should be reorganized within a certain time, and if necessary their doors can be closed in order to do so. Those monks and nuns who joined the splittists to cause disturbances and who could not be persuaded to change their attitudes should be punished severely according to the law. This wind of building monasteries and of recruiting new monks and nuns just as they wish should be stopped entirely. In future to build a new monastery, permission must be received from the Religious Affairs Bureau of the TAR. No monastery is allowed to build without its permission. Those monasteries where the

336 Ibid., 156.

numbers of monks have already been set still need to be limited as much as possible, and are not allowed to go beyond that limit. The excess monks should be expelled, and those monasteries which have not set a stipulated number of monks and nuns should set a number as soon as possible.³³⁷

The thrust of the religious policy guidelines issued by the Third Work Forum was to implement stricter control over monastic institutions. These guidelines appeared subsequently in the publication "*The Golden Bridge Leading into a New Era*" which foreshadowed increasing political control over monasteries.

At present we must enhance the administration of the monasteries and of the monks and nuns in accordance with the law. We must fix the number of monks and nuns in the monasteries. We must enhance the administration of the Monasteries, especially of the three troublesome ones. The Democratic Management Committees (DMC) in each monastery are the grass-roots units of our administration and they assist the government in administering the monasteries. We must elect well the members of the DMC so that those who exercise authority over the monasteries are patriotic devotees who act according to the civil and religious laws. We must enhance the knowledge of the monks and nuns about patriotism and law. To claim the Tibetan Buddhist Trulku's reincarnations, we must follow the relevant decisions of the State and implement them according to our region's reality and make them more practical. We must teach Tibetan Buddhism about self-reform and teach them to adapt themselves to a socialist system.³³⁸

337 Ibid., 157-58.

338 Official Notice printed in the *Tibet Daily*, 25 Nov. 1994, extract from *The Golden Bridge Leading into a New Era*, issued by the Propaganda department of the CCP, 20 Nov. 1994 to publicize the spirit of the Third Work Forum in Tibet. Published in book form Oct. 1994. Translated in TIN Doc. 51(WJ). The Forum identified seven main problems in the area of religion: monasteries that have been opened without permission; interference of religion in education, administration, law and marriages; use of religious institutions as counter-revolutionary bases; children under 18 in monasteries; party members participating in religious activities, monks and nuns not knowing party policies; influence of the enemy, "especially the Dalai clique." TIN Doc. 51(WJ).

The religious policies announced at the Third Work Forum boiled down to five major points: To exercise control over the selection of members of the DMCs; to enforce a ban on the construction on religious buildings except with official permission; to enforce set limits on the number of monks and nuns per monastery and to screen and re-educate the monks and nuns in order to register or deregister them; and to demand that each monk or nun denounce the Dalai Lama.³³⁹

Although opposition against the indiscriminate building of monasteries dates back to the early eighties,³⁴⁰ it was not until March 1994 that officials openly announced that no more monasteries should be built and that there would be a set limit as to the number of monks and nuns. Jampa, Chairman of the TAR Religious Affairs Bureau, told a visiting Swedish human rights delegation (in the delegation's words) that there "were now 1,400 active monasteries in Tibet and the number of monks and nuns totalled 34,000. This fully satisfied the demands. Religious liberty had now been fully implemented." Jampa considered that there were neither demands nor economic possibilities for the people to pay the costs of more restorations. Freedom of religion was now guaranteed in the constitution and "would remain a permanent policy 'until all religion disappears.'"³⁴¹ In June 1994 a Lhasa city regulation provided that:

- From now on, no new monasteries are allowed to be built. In the event of the construction of a monastery without authorisation from the local government, the district authority, besides finding out the people responsible, should destroy the monastery within a given period;
- No monastery is permitted to encourage the local community to engage in the renovation of monasteries. In cases where a monastery

339 *Golden Bridge*, section 12, and TIN/HRW Asia, *Cutting Off the Serpent's Head*, 25-34.

340 "Indiscriminate Building of Monasteries in Rural Areas should be Curbed" in *Nanfang Ribao*, June 5, 1983, cited in ICT, *A Season to Purge*, 27.

341 Report on the Visit of the Swedish Human Rights Delegation to China and Tibet, 20-30 March 1994, submitted to the Minister for Foreign Affairs 4 Oct. 1994, 46. This policy was reflected in a *Golden Bridge* which stated that "at present, the number of monasteries, monks and nuns in our region is sufficient to fulfil the needs of the daily religious practice of the masses."

needs to be reconstructed, either the district authority or the City's People's government should be informed and authorization for reconstruction should come from them.³⁴²

Although a limit on the number of monks already applied to the larger monasteries in the TAR, many "unofficial" monks resided in the monasteries. Following the Third Work Forum, in March 1995 announcements were made that "overstaffed monasteries must liquidate their excesses."³⁴³ The process of obtaining government approval to become a monk or nun in monastery was reinforced. Admission criteria may vary depending on the location of the monastery. One restriction applied more consistently since the Third Work Forum is the minimum age of 18. Tibetans without official permission or whose presence creates an excess over the permitted number will be expelled.³⁴⁴

Tibetans interviewed by the ICJ have expressed concern about the lack of qualified teachers in monasteries and the availability of canonical texts, a legacy of the destructive pre-1979 period. Interviews in the TAR by the official Australian Human Rights Delegation "revealed that the numbers of teachers able to impart the doctrine to the next generation was very small and declining."³⁴⁵

In 1994 officials of the Religious Affairs Bureau told the monks of a rural monastery near Lhasa in a re-education session that "teaching cannot be given by a Lama without the permission of the Religious Affairs Bureau" and that "monks from any other monastery must have permission to attend such teachings."³⁴⁶

342 Document #15, Party Secretariat of the Lhasa City Administration Bureau, 22 Oct. 1994, released by the Human Rights desk of the Tibetan Government-in-Exile, 2 Feb. 1995.

343 *Xizang Ribao*, 10 March 1995, *infra*. See also TIN Doc. 2(WJ).

344 See TIN Doc. 4(WJ).

345 Report of the Australian Human Rights Delegation to China, 14-26 July 1991 (Sept. 1991), 65.

346 *TIN Briefing Paper No. 25*, 17, case 2. Permission was refused for a religious teaching in Sera monastery. TIN Doc. 1(WJ).

The ICJ interviewed several nuns and monks who were convicted of political crimes and served their sentence but were refused permission to re-enter their nunnery or monastery.³⁴⁷ Nuns have also been expelled on suspicion of political activities or certain political sympathies.³⁴⁸ Although the Party has promulgated guidelines on the re-admission of monks and nuns who have been imprisoned, recently imprisoned and released clergy have been systematically barred from re-entering a monastery or nunnery.³⁴⁹

The Work Forum also attempted to deal with the alienation of Tibetan cadres, which, like problems among monks and nuns, was blamed upon the influence of the Dalai Lama:

In recent years the Dalai clique has had a corrosive effect on some of our region's cadre contingent and intellectuals, and were looking for their supporters to rebel against us. Some of our Party members believe in religion and have participated in religious activities. Some cadres and leaders put up religious symbols inside or outside their locations and have prayer rooms and altars in their houses, and hang up the Dalai's pictures.³⁵⁰

Because the fight against ideological pollution of Tibetan cadres was an essential element in the fight against "splittism," the Work Forum directed that cadres who did not have a "firm standpoint" should be subjected to "investigation and purification." Tibetan cadres would no longer be allowed to keep religious symbols, altars or pictures of the

347 See also the cases of Ngawang Kyizom and Tenzin Choekyi in "Restrictions on Religious Practice in Tibet," *TIN News Update*, 15 Nov. 1995.

348 Ibid.

349 The Party provisions state that "[t]hose who prove to be politically reliable, patriotic and law-abiding, and who are well-versed in religious matters, can, upon examination and approval by the patriotic religious organizations, be allowed to perform religious duties. As for the rest, they should be provided with alternative means to earn a living." Cited in Donald E. MacInnis (ed.), *Religion in China Today* (New York: Orbis Books, 1989).

350 Doc. No. 5 of the Sixth Enlarged Plenary Session of the Standing Committee. The term "cadre" refers not only to Party members but to all government employees, including school teachers.

Dalai Lama in their houses and those who did so or who had sent their children for education in India would be expelled from the Party or removed from their positions. Those who were involved in "splittist or counterrevolutionary" activities would be "dealt with by the law."³⁵¹ Although the government would continue to "guarantee the rights of the law-abiding religious masses," Party members were excluded: "this religious freedom policy does not include Party members—no Party member is allowed to believe in religion."³⁵² The implementing document underscored that Party members do not enjoy freedom of religion:

We must emphatically note: The policy on freedom of religious belief does not apply to communists. Communists are atheists, and, regardless of their ethnic origins, they should uphold materialism and atheism instead of believing in religion. Communists have a duty to propagate atheism among the people and to help the latter gradually cast off religious influence. They may not believe in religion and participate in religious activities, nor may they engage in matters that increase religious influence."³⁵³

351 Ibid.

352 Ibid. A follow-up to this policy was announced in August 1996 by Raidi, Deputy Secretary of the Tibet Communist Party, *infra*.

353 *Golden Bridge*; this passage was also reported in *Xizang Ribao*, Lhasa, in SWB, 17 Jan. 1995. A Document issued by the Lhasa Government in October 1994 further implementing the guidelines of the Third Work Forum, explicitly stated that: "Party members and cadres must not send their children to schools run by the deserter's administration. Those who fail to bring back their children ... will be punished ... through the code of the Communist Party and through the political process; Party members and cadres are not allowed to acknowledge a reincarnation recognized by the Dalai clique. ... They should shun them; Party members and cadres are not allowed to keep Dalai photographs, and no badges of the Dalai are allowed; This document also comes into effect for all retired Party members and cadres." Doc. #58 "Investigation and Scrutiny Program," Lhasa City Administration Bureau, 22 Oct. 1994. Released by the Tibetan government-in-exile, 2 Feb. 1995. See also remarks by Party Secretary Chen Kuiyuan in SWB FE/2170, 5 Dec. 1994

The Work Forum also initiated a campaign against the religious authority and person of the Dalai Lama. The PRC had frequently denounced the Dalai Lama as a political figure; however, this was the first explicit attack against the Dalai Lama as a spiritual leader. It identified the Dalai Lama and his influence as the source of Tibetan political unrest: "[t]he focal point in our region in the struggle against splittism is to oppose the Dalai clique. As the saying goes, to kill a serpent, one must first cut off its head."³⁵⁴ The Dalai Lama's religious as well as political influence was denounced: "The Dalai clique is making use of religion in its aim to carry out splittist mischief and we must be able to perceive this reality. We must reveal the true political face of the Dalai hidden behind the religious mask, and prevent by all means and ways the monks and nuns in the monasteries of our region from being affected by the influence of the Dalai clique."³⁵⁵ The Work Forum directed that not only cadres but monks and nuns should "demonstrate their determination to differentiate themselves from the Dalai Lama politically."³⁵⁶ Work teams already engaged in enforcing regulations in monasteries were thereafter required to elicit denunciations of the Dalai Lama and his "splittist" attempts from all monks and nuns.³⁵⁷ Given the reverence in which the Dalai Lama is held by most Tibetans, this campaign represented an important policy move. Subsequent policy documents continued the attack on the Dalai Lama's religious stature. One article questioned:

The purpose of Buddhism is to deliver all living creatures in a peaceful manner. Now that the Dalai and his clique have violated the religious doctrine and even have spread rumours to fool and incite one people against the other, in what way can he be regarded as a spiritual leader? As for Dalai, he has always incorporated "Tibetan Independence" into the doctrines which he preaches in his sermons,wildly attempting to use godly strength to poison and bewitch the

354 Doc. No. 5 of the Sixth Enlarged Plenary Session of the Standing Committee.

355 Ibid.

356 Ibid.

357 Ibid.

masses ... Such flagrant deceptiveness and demagoguery constitute a blasphemy to Buddhism.³⁵⁸

The Panchen Lama affair and its aftermath

The Chinese government sought to drive a new wedge in Tibetan Buddhism in late 1995 with the dispute over the reincarnation of the 10th Panchen Lama, the second most prominent figure in Tibetan Buddhism.³⁵⁹

When the Panchen died in January 1989, the Chinese government adopted an accommodating posture, allowing the Panchen Lama's Tashilhunpo monastery selection committee to search for the incarnation by traditional Tibetan methods. In 1993 it even authorised Chadrel Rimpoche, the abbot of Tashilhunpo, to meet the Dalai Lama's brother in Beijing and send, through him, a request for assistance to the Dalai Lama. When the search team identified the reincarnation, however, it secretly conveyed the news to the Dalai Lama and requested his approval, and the Dalai Lama announced his recognition of the Panchen's reincarnation in April 1995.

China swiftly denounced the recognition, arrested Chadrel Rimpoche and his assistants,³⁶⁰ detained the six year old boy identified by the Dalai

358 "Clearly Understand the True Nature of the Dalai Clique, Oppose Splittism and Safeguard Stability," *Tibet Daily*, March 10, 1995, in SWB, March 28, 1995. See also Li Weng "Splittism is doomed to failure" in *Xizang Ribao*, 10 June 1996 stating that "[t]he Dalai Lama is an 'abnormal phenomenon' whose religious cover will be seen through by all Tibetans and he will be 'utterly isolated.'" TIN Doc. 96-7-10T.

359 The issue over who has the right to choose the Panchen Lama's reincarnation has both symbolic and practical significance. China bases its claim to Tibet partly on a 1792 agreement between the Tibetan government and the Emperor Qianlong which provided that the Emperor's representative would be involved in the selection of the Dalai Lama and the Panchen Lama. The current dispute also presages the key issue of who will select the next Dalai Lama.

360 Chadrel Rimpoche, formerly Vice-Chairman of the TAR CPPCC, was convicted in May 1995 for his role in the search. See Chapter V,C,1, *supra*.

Lama, purged the Tashilunpo monastery,³⁶¹ and launched a campaign requiring all leading monks, as well as Tibetan cadres, to denounce the Dalai Lama for making his announcement. In the next months, virtually all top Tibetan lay and religious officials in the TAR made public statements condemning the Dalai Lama's announcement, though without rejecting the choice of the boy himself - thereby leaving open the possibility that the Chinese could make the same selection. The campaign was not limited to the TAR, however.

In November 1995 Tibetan religious leaders were ordered to a closed meeting at a military-owned hotel in Beijing to declare that the child selected by the Dalai Lama was not the re-incarnation. The Chinese government then officially rejected the child, already widely accepted by Tibetans, in favour of a child of its own choice whose acceptance would have to be forced upon the Tibetan people. The Chinese choice for Panchen Lama was installed in a closed midnight ceremony in Lhasa.

The Chinese government used the dispute in its campaign to eradicate the Dalai Lama's religious as well as political influence. Tibetan cadres' and religious figures' loyalty was tested by requiring them to denounce the Dalai Lama's interference in the Panchen Lama's recognition, to accept the Chinese choice for Panchen Lama and to reject the Dalai Lama's choice. Phagpalha Geleg Namgyal, a senior religious figure and chairman of the TAR branch of the Chinese People's Political Consultative Conference, which includes all major lamas, warned members:

All CPPCC members should participate in condemning the Dalai both orally and in writing. No matter what their rank,

361 The government launched a denunciation campaign against Chadrel Rimpoche who, in October 1994, had received an award from the regional government for turning his monastery into a "Resplendent Model of Safeguarding the Unification of the Motherland by Displaying the Spirit of Patriotism." The commendation noted that "The splittists hate the Tashilhunpo monastery for holding up the banner of patriotism, and hate their patriotic attitude." Cited in "Senior Lama Sentenced in Panchen Lama Search Dispute," *TIN News Update*, 9 May 1997. A "work team" of 50 officials took up residence in the monastery to carry out the purge which, after weeks of re-education sessions, led to the arrest of 33 monks and one lama who refused to denounce Chadrel Rimpoche and replacement of the monastery's leadership with monks loyal to China. See *TIN/HRW Asia, Cutting Off the Serpent's Head*, 53-56.

they must maintain a firm, clear stand. That is because their stand regarding the issue of exposing and criticizing the Dalai is a major political question that serves as the main basis for determining whether the political orientation, stand and viewpoint of CPPCC cadres, particularly high-ranking cadres, including CPPCC members, is correct.³⁶²

China also attempted to make patriotism to China a requirement for the freedom to practice religion: "A qualified believer should, first of all be a patriot. Any legitimate religion invariably makes patriotism the primary requirement for believers."³⁶³ The Tibet CCP secretary criticised the Dalai Lama as "not only reactionary politically, but also a religious renegade who degenerated into betraying Buddhism," and called upon Tibetans to "mercilessly expose and denounce the Dalai Lama's conspiracy and criminal acts."³⁶⁴

Following the announcement at the Third Work Forum that government officials could not possess pictures of the Dalai Lama or other religious objects, a ban on the public display of photographs of the Dalai Lama was announced in April 1996 as "part of an escalating effort to remove the Dalai Lama from his dominant position in Tibetan Buddhism." The announcement referred to the Dalai Lama as "no longer

362 Speech to the 11th Meeting of the Standing Committee of the TAR Committee of the CPPCC, Tibet Television, November 24, 1995; SWB, 28 Nov. 1995. See also "Anti-Abbot Campaign Begins, Aims to Eliminate Dalai Lama Influence," *TIN News Update*, 5 Dec. 1995. Phagpalha Geleg Namgyal set forth four main criteria by which the Tibetan leaders would be judged: "exposing and criticizing the Dalai's crimes of undermining the work related to the reincarnation of the Panchen ...; thoroughly exposing and criticizing the crimes of the former responsible persons of [Tashilunpo monastery] who colluded with the Dalai; resolutely negating the so-called reincarnated boy arbitrarily confirmed by the Dalai; persisting in drawing lots from a gold urn [to select the reincarnation] and in the principles approved and recognized by the central government.

363 "Why China Picked Its Own Panchen Lama," *Tibetan Review*, Jan. 1996, 5.

364 "Tibet Holds Fifth Regional CCP Party Congress," FBIS-CHI-95-168, 30 August 1995, 56. China condemned the Dalai Lama's unilateral action in recognizing the Panchen Lama's reincarnation as "going against Buddhist doctrine," "infringing upon state sovereignty," and "splitting the motherland through religious means." "Dalai Lama's Choice for Panchen Lama Rejected," *Xinhua*, 12 Nov. 1995, in FBIS-CHI-95-220, 15 Nov. 1995, 32.

a religious leader who can bring happiness to the masses but a guilty person of the motherland and the people."³⁶⁵ By the end of April, photos of the Dalai Lama had been ordered removed from hotels, monasteries, and other public places.³⁶⁶ The campaign was extended, at least in some areas, to private dwellings and was enforced by house searches in May 1996, though this appears to be the exception.³⁶⁷ One family from the Lhasa valley interviewed by the ICJ in India told of officials confiscating Dalai Lama pictures and warning that the family "would be subject to the death penalty" if new pictures were found. Children at Lhasa's middle schools were told at meetings that they could not possess Dalai Lama photographs or protection cords.³⁶⁸

In June 1995 a team was set up to register all temples and monasteries in order to check their legal status. A number of monasteries in rural areas were closed and some immediately demolished.³⁶⁹ On 29 November 1995, 20 nuns of Shongchen nunnery in Ngamring county were ordered to vacate and demolish their living quarters and return to

365 Ibid.

366 "Dalai Lama Photographs Banned from Monasteries; Dalai Lama 'no longer a religious leader,'" *TIN News Update*, 29 April 1996. The ban met with resistance. Some street traders in Lhasa reportedly placed empty picture frames on their stalls alongside photographs of permitted lamas. In Gyu-me Tantric College in Lhasa monks removed a famous picture of the Dalai Lama from one of their shrines but originally refused to take down other pictures. In January 1996, monks rebuffed a government delegation at Ramoche Monastery threatened to boycott religious ceremonies if the removal order was carried out. Ibid.

367 "House to House Searches for Photographs Begin," *TIN News Update*, 21 May 1996. "We have launched mobilisation meetings and will carry out home-by-home searches this afternoon to check for possession of photographs of the Dalai Lama," said one factory official. Reuters report quoted in *ibid.*

368 "Anti-Dalai Lama Campaign Shifts to Schools," *TIN News Update*, 20 May 1996. Protection cords are worn around the neck and are given by Buddhist teachers during religious ceremonies.

369 These both preceded and followed announcements by the Tibet Committee of Nationalities and Religious Affairs. *Tibet Daily*, 15 Feb. 1996: "We must close the doors of lamaseries which have serious problems or where political problems often occur for overhauling and consolidating and set at time limit for correction."

their villages to resume farming.³⁷⁰ In the summer of 1996, according to ICJ sources, authorities ordered monks to tear down a newly-completed small chapel above the main monastery near Dargyeling Monastery in Kartse Dzong (Kartse TAP). When the senior lama went to town to plead their case, he was arrested.

1996: Re-education campaign in the monasteries

In 1996 the TAR Communist Party announced a "patriotic education campaign" in the monasteries. According to the Party Secretary, "there are a few die-hard reactionaries in the monasteries who are hell-bent on following the Dalai Lama. ... In order to beat the splittist and sabotage activities of the Dalai Clique and protect the normal religious life of the masses of religious devotees, we must carry out a carefully differentiated rectification of the monasteries within our region."³⁷¹

Strengthened and higher-level work teams (Chinese *gongzuo dui*; Tibetan *ledun rukhag*) were sent to monasteries in the TAR and in Tibetan areas outside the TAR to enforce adherence to previously instituted regulations. Work teams were initially stationed at the three major monasteries - Ganden, Sera and Drepung - to register and deregister as well as conduct three-month long re-education sessions among the monks. These large re-education teams consist typically of junior and middle-ranking party members led by senior Tibetan cadres and scholars.³⁷²

370 "Nunnery and Monastery Closed Down; Religious Policy Tightens," *TIN News Update*, 4 March 1996, also cited other examples of closures such as Namrab Samtenling in Lokha, March 1994.

371 Address Chen Kuiyuan, Party Secretary TAR, to members of the Tibet People's Congress, TIN Doc. 19(VD). See also Five-Year Work Report, Speech by Gyaltzen Norbu, Chairman TAR Government, at the fourth session of the Sixth TAR People's Congress, 15 May 1996, TIN Doc. WRKREP96.

372 TIN Doc. 18(VJ). The composition of the work team sent to Sera monastery was 69 provincial level leaders, 14 members of the Public Security Bureau and 3 staff from the Religious Bureau. In Drepung, the team consisted of 200 officials. A team of 5 officials went to Shalu, which has about 20 monks; a team of 15 was at Gyantse, with 60 monks; and a team of 20 at Sakya where there are 80 monks. "Re-education Campaign Extended to all Tibet Region," *TIN News Update*, 7 Sept. 1996.

The re-education campaign met with fierce resistance. Fighting erupted at Ganden monastery on 6 May when a work team ordered the removal of the Dalai Lama's photograph. Younger monks threw stones at the officials and beat one badly before senior monks intervened and gave first aid to the official. That evening, troop trucks took up positions on the hills surrounding the monastery and fired randomly into the temples, injuring three monks. One, Kelsang Nyendrak, reportedly died from his wounds. Five other monks with bullet wounds and one who was beaten reportedly went into hiding. The next day, soldiers fired warning shots before entering the monastery and arrested at least 61 monks, followed by some 30 arrests in following days, before shutting down the monastery for "restructuring and reorganisation."³⁷³ Protests at Sera and Drepung monasteries also greeted the arrival of the work teams.³⁷⁴ At Drepung monastery, at least one monk, Ngawang Tharchin, who argued with the work team received a three year prison sentence, while four others were also reported detained. Nine monks from Sera monastery were arrested, apparently after being found with literature which criticised the re-education process.³⁷⁵

373 "13 Year Old Arrested at Ganden; Monk Dies from Bullet Wounds," *TIN News Update*, 12 June 1996; "Tourist Account of Monks' Protest, Police Search for Photographs," *TIN News Update*, 24 May 1996. As of November 1996, 26 Ganden monks had been released, leaving at least 15 still in custody and about 45 unaccounted for. According to the 1996 annual TAR court report, 14 "criminals" at Ganden monastery were convicted of "inciting monks to shout reactionary slogans, organising illegal demonstrations, smashing up a police sub-station, beating up state functionaries, stubbornly following the Dalai clique, [and] vainly attempting to smash up the motherland. ... The Lhasa Intermediate People's court adjusted major elements of the trial procedure and brought this case to a rapid conclusion, dealing a ruthless blow to the rampant arrogance of the splittists." *Tibet Daily*, 3 June 1997, cited in "Crime on the Increase in Tibet," *TIN News Update*, 23 June 1997.

374 "Lhasa Monasteries Closed after Monk Shot, 40 Detained," *TIN News Update*, 17 May 1996.

375 "Re-education Drive: Sera Monks Issue Statement - Arrests Rise to 13," *TIN News Update*, 18 Sept. 1996. Sera monks had issued a statement, smuggled out of Tibet, saying they were refusing to comply with official demands.

Despite these protests, the campaign was extended to monasteries throughout the TAR.³⁷⁶ Referring to the achievement of pilot projects in conducting "patriotic education and establishing normal order in temples," Deputy TAR Party Secretary Raidi announced the screening of temples throughout Tibet in order to establish "a normal and strict religious order that suits socialist society."³⁷⁷ He expounded:

In the course of educating and re-organizing these monasteries, we should consolidate and improve the patriotic and law-abiding monasteries; resolve the problems of the monasteries under confused management, to establish a normal order; resolutely eliminate the monasteries used by the Dalai clique as strongholds for splittist activities and punish the splittists according to the law; resolutely purify the monk's contingent and seriously deal with the law-breakers; and resolutely adjust and improve the democratic management committees so that the leadership power will remain in the hands of patriotic and law-abiding monks In the light of the actual security situation in the region, we shall conduct a

376 The Tibet Daily of 23 August indicated that the campaign would cover the entire TAR. "Re-education Campaign Extended to all Tibet Region," *TIN News Update*, 7 Sept. 1996. Later reports have confirmed re-education in other monasteries in TAR.

377 "Whether religion upholds the motherland's reunification and opposes splittism among nationalities should be the most basic criteria when judging whether religion suits the socialist society." Address by Raidi, Deputy Executive Secretary Tibet Communist Party, to the enlarged meeting of the Tibet Regional Party Standing Committee, 16 August 1996, in SWB FE/2732 G/4, 2 Oct. 1996.

patriotic education campaign among all monasteries and temples in the region.³⁷⁸

Protests continued, however. At Sakya monastery, Tenchog Tenphel, a monk, was said to have died in the local prison on 14 September after being arrested for arguing with the work team during a re-education session.³⁷⁹

Official documents issued by re-education teams at Sera³⁸⁰ instruct the monks to study the four re-education manuals.³⁸¹ One of these manuals provides that:

378 Ibid. Raidi analyzed religion as a social phenomenon and held that: "[U]nder the prerequisites that state laws and policies are obeyed, normal religious activities can be acceptable in socialist society. However, ideologically, religion, with an idealist's world outlook, objectively contradicts communist dialectic materialism and historic materialism. The reason for our party to respect freedom in religious beliefs are that people's scientific and educational levels are different, and that their views and their abilities in understanding the objective world are also different. Also, some people regard religious beliefs as spiritual ballast. Religion continues to prevail because of certain natural and historic conditions. We communists should educate the masses in scientific atheism and lead them along the bright path of promoting science and technology to develop Tibet. Contradictions exist objectively and the key is for us to adapt religion to the socialist society."Ibid.

379 "Expulsions, Arrests, Death Reported During Re-education Drive," *TIN News Update*, 27 Nov. 1996.

380 For instance, one document called *The Important Points to be Understood by All Sera Monks During the Study Sessions* states that the purpose of carrying out the education sessions is "to implement the Party's policy on religion totally and correctly" and to initiate efforts for the "harmonious co-existence between the religious and socialist societies," at "creating the thought of patriotism and implanting in the masses of the monks the views of the government, the political view and the legal view," issued by the Sera Monastery Work Affairs Committee and the Sera Monastery Democratic Management Committee, TIN Doc. 21(VG), 5 July 1996.

381 Nos. 1-4 of the series *Explanations and Commentaries for the Propagation of Patriotic Education in Monasteries Throughout the TAR*. The series consists of: "A Brief Explanation and Proclamation on Tibetan History" [*bod kyi lo rgyus sgrog sbyang 'grel bshad kyi gnad bsdus*], "A Brief Explanation and Proclamation on Opposing Splittism" [*kha phral la ngo rgol bya rgyu'i sgrog sbyang 'grel bshad kyi gnad bsdus*], "A Brief Explanation and Proclamation on Legal Knowledge" [*khrims lugs shes bya'i sgrog sbyang 'grel bshad kyi gnad bsdus*], and "A Brief Explanation and Proclamation on Religious Policy" [*chos lugs srid 'jus kyi sgrog sbyang 'grel bshad kyi gnad bsdus*]. TIN Doc. Ref.: 21(VG).

[I]n the monasteries, only those monks and nuns who are shown to be truly patriotic and law-abiding should hold positions of power, authority, and leadership. ... It is forbidden for religion to be used to harm the unification of the country; to oppose the leadership of the party or the socialist system; to harm the unity of the nationalities and to interfere with the development of production, educational work, judicial or political matters. Those monks and nuns who have been found to be in support of the splittist faction must be given counseling, and any of those who do not reform must be dealt with severely, according to the law. All monks and nuns must make sure that their behavior is up to the standard set by the constitution and the law.³⁸²

At Sakya Monastery, reference material for re-education was put up in the form of posters stating:

What is our position concerning the struggle with the Dalai clique? Answer: Our position concerning the struggle with the Dalai clique is to show a clear stand that Tibet is an inseparable part of China. To destroy the Dalai clique splittists, we must be consistent in confronting the Dalai clique and prepare for a long running struggle. We must also set current foundations to increase management over work affairs. We must effectively achieve the region's internal tasks and effectively carry out international struggle so as to win higher international awareness. The truth and justice are on our side, and we must be energetic, self-motivated, truthful, proud, accurate and articulate in fighting the Dalai splittist clique.³⁸³

Monks are required to give speeches in the meetings, attend tutorials and smaller classes, spend one hour on home-work, take part in discussions and engage in the "practice of speaking individually from one's heart." Those with "a bad attitude" or "those with poor results or deliberately causing obstacles to the study will be severely criticised and

382 *A Brief Summary Explanation of the Announcement on Opposing Splittism*, Reference Material No.2 on the explanation of the announcement to promote patriotic education in all the monasteries of the region, Book II, Chapter I, part 4, 17-28, TIN Doc. 59(VF).

383 Published by the "Work Team residing at the two monasteries." 2 Sept. 1996, in TIN Doc. 11(VH).

their right to remain among the number of monks will be struck out.”³⁸⁴ After the study re-education sessions, monks have to pass a written examination³⁸⁵ and are asked to sign a document containing five points.³⁸⁶ The five points include the unity of Tibet and China, acknowledging the China-appointed Panchen Lama, and denouncing the Dalai Lama. Monks can either accept the five points and remain or refuse and leave the monastery.³⁸⁷

The ICJ interviewed Tsering Dawa who was at Samye Monastery when the re-education team arrived in August 1996. There were 10 in the team, most or all of whom carried pistols. The team distributed manuals and held small-group meetings to discuss Tibetan history and the current situation at which the monks were encouraged to speak up:

They came to advise the monks to love the motherland. They said they wanted good monks. Those who reject their ideas

384 “*Dgon sde’i grwa grangs khongs kyi ‘os bab med pa bzo rgyu yin*,” Ibid. Quoted in “Re-education Campaign Extended to all Tibet Region,” *TIN News Update*, 7 Sept. 1996.

385 At Ganden Monastery, one monk was expelled after not answering a question correctly. He escaped to India and testified that the question was “write down the four hats of the Dalai Lama.” “I wrote that a religious lama has nothing to do with politics.” The correct answer, according to a copy of the paper obtained by the Tibetan Government-in-Exile, was “promoting Tibetan independence, being a tool of anti-China international forces and a leader of a political group, being the main cause of instability in Tibet and being the main obstacle to the smooth functioning of Buddhism in Tibet.” Other questions included 1. What are the main points of the Communist Party Policy on religious freedom? 2. What is the policy of the People’s Government of Lhasa City regarding mass assemblies and demonstrations? 8. What are the main requirements of each religion as identified by Ruihan? (Answer: respect for the constitution of China; protect the interests of the people; promote friendship among nationalities; preserve the unity of the motherland); 10. What are your feelings about the incident at Ganden on May 6?. TIN Doc. GNDN-QS.

386 The five points have been described by three separate sources. TIN Docs 48(VF), 20 (VG) and 96au15.

387 Ibid. “The Chinese officials took the monks one by one and forced them to sign. They said if we accepted it we would be permitted to stay in the monastery” reported one monk from Drepung, Ngawang Kelsang. “1,000 Monks Face Expulsion in Lhasa Re-education Drive,” *TIN News Update*, 15 Aug. 1996.

will be expelled. "We don't care if there are only two or three monks left," they said. They said that His Holiness [the Dalai Lama] was not a real lama, that he is the enemy and that we had to choose between our enemy and our friend. "If you want the friend, you have to denounce the Dalai Lama and give up any thoughts of Tibetan independence." ... We were divided in to groups of six, with one member of the [re-education] team in each group. The team member would introduce each topic and we would have to discuss it, give our thoughts and read the manuals they gave us. We were all asked if we agreed with what they said. Most of the monks would say OK. But when it came to denouncing His Holiness, no one really went along. They put on the blackboard 12 reasons to denounce His Holiness - because he was trying to split the motherland, because he was creating trouble over the reincarnation of the Panchen Lama, etc.... Finally, one person was called from each group to report to the plenary. They read out what was discussed, but nothing was read out about His Holiness. The Chinese were unhappy because the monks had not denounced the Dalai Lama. The monastery's Democratic Management Committee drafted a statement on behalf of the monastery to the team denouncing the Dalai Lama.

By the end of 1996, several hundred monks had reportedly been expelled from monasteries in Tibet.³⁸⁸ The first wave of expulsions took place in August 1996 at Ganden monastery, and were announced at an assembly "surrounded by about 200 soldiers with their guns pointed at us," according to one expelled monk. The leader of the DMC "read out the names and each monk called had to stand up and join the group of those already named. We were all made to stand in line while they explained that we had gone against our nation. Then they took our photographs." The monks were informed that they could not rejoin any monastery, were given one and a half hours to pack, and divided into groups to be accompanied by officials or soldiers back to their birthplace.³⁸⁹

388 One source reported a total of 1,295, including 500 from Chamdo Monastery, 216 from Drepung, 162 from Ganden and 59 from Sera. Tibetan Centre for Human Rights and Democracy, *Tibet: One more year of political repression*, (Dharamsala: Jan. 1997), 9.

389 Ibid.

In December 1996, it began to appear that the re-education drive might allow a kind of compromise; offering official registration in exchange for accepting certain re-education principles, which might differ from the five principles to which the monks were originally asked to agree.³⁹⁰ The re-education campaign at Drepung was concluded with the inauguration of a new "Monastery Management Committee." The chief of the Drepung Monastery Work Team, a Party member, asked the committee to "unswervingly follow the leadership of the people's government, firmly implement the Party's policies towards religion and their principles and policies." He then urged the monks to "take a firm and clear-cut stand in fighting splittism; resolutely resist the political infiltration of hostile forces from abroad; work for political stability, economic development and social progress in Tibet; make sure the party and government's decrees are carried out without obstruction in the monastery; and complete all missions handed down by the people's government." He also called for "conducting political education in patriotism, socialism, current events and policies, and state laws and regulations among monks on a regular basis. ... monks should be guided to actively participate in the building of socialist material civilization and spiritual civilization." He demanded that "regular religious activities be conducted according to the party's policy."³⁹¹

In other monasteries, re-education continued in 1997. Visitors to Lhasa in May 1997 reported that the Jokhang closed each afternoon for re-education sessions and that monks' "grades" were posted on the walls.³⁹² At Ganden, a police station was being built *within* the monastery.

A new two-track registration system involves offering candidates for official monk status a temporary permit which lists the principles and

390 *Tibet Daily*, 12 Dec. 1996, in SWB FE/2804, 30 Dec. 1996. TIN Doc. 16(VJ) lists a final set of principles the monks at Drepung monastery had to agree to in their final examinations. "The political standards required for monks and nuns who are to join the monasteries: accept the leadership of the party and the government; respect the socialist system and protect the unity of the motherland; respect the state law, monastery law, and religious law; oppose splittism, do not participate in riots, love the nation and religion; be a good monk or nun."

391 *Ibid.*

392 Private communication to the ICJ.

requirements of registration as a monk. The monk implicitly subscribes to these principles by accepting the permit. Throughout one year of probation, this document is stamped regularly, endorsing the behavior of the monk. After one year the probationer is automatically advanced to an official monk.³⁹³

In the wake of the re-education drive in the monasteries, a nationwide "socialist spiritual civilization" campaign has been presented in Tibet with the objectives of subjugating Buddhism to socialism, diminishing religious influence and eliminating religious superstition.³⁹⁴ The campaign, announced by the CCP in November 1996, represents a further intensification of the repression of religious freedom. The fundamental tenet of the policy is that Tibetan Buddhism has to "accommodate itself to socialist society," in the sense that "religion should accommodate the demands of the development of socialist society and not vice-versa;" a process that will ultimately result in the eradication of social conditions that give rise to religion and the elimination of religion itself.³⁹⁵ While recognising that Buddhism permeates every aspect of Tibetan life and culture, the CCP considers it a serious impediment to development and progress of Tibetan society along materialistic and scientific lines.³⁹⁶ "Our guiding principle is that we must weaken religion's negative impact on the people and on social life and focus our attention on diverting the broad masses' energies to

393 TIN Doc. 39(VG).

394 "Actively guide religion to accommodate itself to socialist society," *Xizang Ribao*, 4 Nov. 1996, SWB FE/2771 G/1, 16 Nov. 1996.

395 *Ibid.*, G/2.

396 CCP delegates to the second plenary session of the Fifth Tibet Regional CCP Committee discussed "ways to eliminate the ideological trammels of religious idealism in people's minds and to foster the scientific, materialist outlook on the world. They generally agreed that religion, which is systematized idealism, could not provide the spiritual propelling force for Tibet's development and progress, much less useful assistance to the people in Tibet to shake off poverty and become prosperous and happy. Only the socialist spiritual civilization, which comprises the fruits of outstanding, advanced, scientific and modern civilization, could unite the people, inspire their fighting power and rejuvenate the nation." "Delegates to the second plenary session of the fifth regional party committee point out in discussion: safeguarding the motherland's unification and opposing splittism is a major task of promoting spiritual civilization," reported in SWB FE/2775 G/7, 21 Nov. 1996.

developing the economy and building a beautiful home."³⁹⁷ In addition to the adaptation of Tibetan Buddhism to socialism, a major task of the socialist spiritual civilization campaign is to "eliminate the Dalai's influence in the spiritual field."

In November 1994, the the UN Special Rapporteur on Religious Intolerance Adelfattah Amor visited China, including Tibet, at the invitation of the Chinese government — the first visit China had ever permitted by a UN human rights official — to study the "current situation in the sphere of freedom of religion." Although prevented from having any genuine unofficial contact with Tibetans during his two-day visit to Lhasa,³⁹⁸ Amor was able to meet with Yulo Dawa Tsering, the veteran political detainee released conditionally on November 4, just weeks before the visit.³⁹⁹ It is not clear if the meeting was fully endorsed by the authorities, and has led to repercussions for the lama, a former abbot and philosophy lecturer at Tibet University who has apparently again been deprived of some of his liberty.⁴⁰⁰ In his discussions with the Rapporteur, the lama confirmed reports that there was a ban on religious activity in prison and a ban on readmission to their monasteries for monks and nuns who have completed prison sentences for political offenses.⁴⁰¹

After his visit, the Rapporteur recommended that the PRC amend article 36 of its constitution (see above) to guarantee the freedom to

397 Ibid., G/4.

398 Chinese security forces were reportedly deployed to deter Tibetans from contacting the Rapporteur. See "Tibetans Prevented From Contacting UN," *TIN News Update*, 2 Jan. 1995; Amnesty International, *People's Republic of China: Persistent Human Rights Violations in Tibet*, May 1995, 5.

399 Yulo Dawa Tsering was one of those ruled to be arbitrarily detained by the UN Working Group on Arbitrary Detention. See Chapter V, C, 1, *supra*. For a transcript of his conversation with an Italian tourist, see "Yulo Dawa Tsering: In His Own Words," Tibet Press Watch, Oct.-Nov. 1994, 8.

400 "Leading Dissident Under House Arrest," *TIN News Update*, 9 Nov. 1996, reporting a visit by three members of the European Parliament to Lhasa in Nov. 1996. The MEPs were allowed a ten minute meeting with Yulo Dawa Tsering and remarked that "he appeared to us to be under some kind of restraint - he did not have the freedom to come or go ... they said he was on parole but during the meeting it appeared to us that this was not parole in our sense of the word. He was not the master of his own movements."

401 *TIN News Update*, Feb. 10, 1995.

manifest one's religion or belief in accordance with the UN Declaration. He recommended that the PRC adopt a provision explicitly mentioning the right of persons under the age of 18 to freedom of belief to comply with the Convention on the Rights of the Child. He observed that the constitutional "distinction between normal and abnormal religious activities was not drawn very clearly" and urged the disappearance of the distinction. The Rapporteur also recommended that at events "there must not be any surveillance of a kind to infringe the right to freedom of belief and to manifest one's beliefs," called for "adoption of a text recognizing the right of freedom of belief and freedom to manifest one's belief for all, including members of the Communist Party," and urged the release of detained religious persons.⁴⁰²

In an unusually strong comment, The UN Committee on the Rights of the Child expressed its "deep concern in connection with violations of human rights of the Tibetan religious minority. State intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population."⁴⁰³ The UN Committee on the Elimination of Racial Discrimination also expressed "concern...with respect to the actual enjoyment of the right to freedom of religion in the State, particularly in the Muslim parts of Xinjiang and in Tibet, including the preservation of places of worship and the exercise of religious rights by members of all ethnic groups."⁴⁰⁴

The ICJ finds that there is pervasive interference with religious freedom and activity in Tibet. While superficial manifestations of religion are permitted, the government and Communist Party have institutionalised their control over religious institutions and religious practice. The very essence of Tibetan Buddhism, including the traditional role of the Dalai Lama, is the object of direct and official attack. Monks

402 UN Doc. E/CN.4/1995/91, p. 132. He also warned the PRC that "any repression of religion can lead to greater religiousness, or even, in some cases, a form of extremism, despite the apparently non-violent nature of Buddhism in general and Tibetan Buddhism in particular, the values of which might be severely tried by changes to the demographic data of Tibet." UN Doc. E/CN.4/1995/91, 134.

403 UN Doc. CRC/C/15/Add.56, para. 20.

404 Concluding observations of the Committee on the Elimination of Racial Discrimination, 20 Aug. 1996, para. 13 - forthcoming UN Document

and nuns are subjected to official and intensive indoctrination and reeducation while the private practice of Buddhism is restricted and Party members are prohibited from practicing religion altogether. This pervasive interference is contrary to right to freedom of religion guaranteed by the Universal Declaration and the Convention on the Rights of the Child, and contravene the provisions of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

6. Freedom of Assembly and Association

The Universal Declaration of Human Rights proclaims that "everyone has the right to freedom of peaceful assembly and association."⁴⁰⁵ The Convention on the Rights of the Child provides that children have the "right to freedom of association and to freedom of peaceful assembly."⁴⁰⁶ Restrictions on these rights are limited to those "necessary in a democratic society in the interests of national security or public safety, public order ...or the protection of the rights and freedoms of others."⁴⁰⁷ China asserts that its citizens enjoy the right of assembly and association.⁴⁰⁸ and its Constitution explicitly entitles citizens to "freedom of assembly, of association, of procession and of demonstration"⁴⁰⁹ but provides that the exercise of freedoms may not infringe upon the "interests of the state, of society and of the collective or upon the lawful freedoms and rights of other citizens."⁴¹⁰

In practice, these rights have been severely limited since the PRC's creation by restrictions on political activity outside the Chinese Communist Party and by compulsory participation in CCP associations and political campaigns. In eastern Tibet from 1956 and in the TAR after the 1959 revolt, Tibetans' rights to political and religious assembly and association were abrogated by "democratic reforms." Participation in ideological indoctrination was mandatory and those Tibetans suspected

405 Art. 20 UDHR.

406 Art. 15 CRC. See also art. 21, ICCPR.

407 Art. 15(2) CRC. Art. 21 ICCPR contains identical language. See also art 29(2) UDHR.

408 "Human Rights in China," in Beijing Review, 4 Nov. 1991, 15.

409 Art. 35, 1982 Constitution.

410 Art. 51, 1982 Constitution.

of sympathy with the revolt were restricted in their freedom of movement and prohibited from association with other Tibetans. During the Cultural Revolution, Tibetans' right to political assembly and association was essentially limited to acts aimed at the destruction of their own culture. Collectivization and communization further limited Tibetans' rights to association.

Peaceful Tibetan demonstrations of 1987-89 and since have been met by the Chinese authorities with violent force, including beatings and torture of those arrested. After the demonstrations of 1987-89, China imposed martial law in Tibet and enacted a "Law Governing Assemblies, Marches and Demonstrations" that required a permit from the security department and prohibited any demonstration that would "endanger national unity, sovereignty, or territorial integrity" or "involve agitation for ethnic separatism."⁴¹¹ Other regulations required all organizations to be registered and approved by governmental authorities.⁴¹²

There have been 167 reported demonstrations since 1987,⁴¹³ the majority including demands for independence or respect for basic human rights, or specifically calling for the release of prisoners. Typically, the demonstrations are peaceful and involve protesters walking one or more rounds ("koras") around the Barkhor market encircling Lhasa's main temple, the Jokhang, before they are arrested by police. The *kora* route is now usually punctuated by makeshift police stands every hundred yards or so, while video surveillance cameras look down the sides of the temple and on to the plaza at its entrance.

Tibetan women, particularly Buddhist nuns, have been in the forefront of protest against Chinese rule.⁴¹⁴ Many of the smaller demonstrations since 1989 have been led by Tibetan lay women and

411 Law of the People's Republic of China Governing Assemblies, Marches, and Demonstrations, adopted by the Standing Committee of the National People's Congress on 31 October 1989, SWB, 2 November 1989.

412 Regulations on the Registration and Management of Social Organizations, 21 *State Council Gazette*, 1989, 779-83.

413 Information provided to the ICJ by the Tibet Information Network.

414 Between 1987 and 1994, 62 demonstrations, all calling for independence, were led by or involved a significant number of women, mainly nuns. TIN, Oct. 1994. See Hanna Havnevik, "The Role of Nuns in Contemporary Tibet," in Barnett and Akiner, eds. *Resistance and Reform in Tibet*, (Bloomington: Hursts/Indiana University Press, 1994).

nuns. All of these were non-violent in nature; nevertheless, in each case the demonstrators were arrested, beaten and tortured and many were sentenced to long prison terms for "counterrevolutionary incitement and propaganda."⁴¹⁵ Ngawang Choeden, a nun described a demonstration to the ICJ:

On 15 October 1989, three nuns [including myself] from Chubsang demonstrated in the Barkhor. Only a few minutes after we started the protest march a truck full of Chinese police came to arrest us. Each one of us had 5 or 6 Chinese police pouncing on us. I remember two police officials grabbing my hands, one official kicking me from the back and another one hitting me in front and kicking me in the stomach. I was thrown in a police vehicle by two police officials.

Another nun, Ngawang Dorji, recalled to the ICJ:

On 6 May 1992 four of us managed to get a Tibetan flag and we made many posters. We made about five hundred small and four hundred big posters. On 9 June the copies were ready and on the 10th we were back in Lhasa. Three nuns wished to join us. We were nine in all. On Wednesday 14 August at 12 p.m. we met at Tsuglhakhang [Jokhang], fearful yet determined. We distributed the pamphlets around the Barkhor. The Chinese police saw the national flag from a distance. They snatched the flag and caught me by the neck. Somehow I managed to escape, I hid myself on the terrace of a restaurant and saw the three nuns and a monk being led away. As I came out, after the confusion died out, I was caught, hand-cuffed and beaten.

After five nuns staged a peaceful demonstration in Lhasa in June 1994, Chinese paramilitary police placed a cordon around their nunnery while armed police and security officials raided the nunnery and nearby monastery. All nuns were interrogated and some arrests were made.⁴¹⁶

415 14 nuns at Drapchi prison had their sentences increase to between 8 to 17 years for singing pro-independence songs in prison, *Women in China: Detained, Victimized but Mobilized*, (New York: Amnesty International, July 1996), 4.

416 R. Barnett, "Police Swoop on Nuns in Rural Tibet", in *Washington Post*, 25 July 1996.

Some demonstrations, however, do not include explicit demands for independence. Traditionally, these have been tolerated to a degree by the authorities. In May 1993 over 1,000 lay people protested rising food prices and other economic issues such as medical and school fees. Unlike the independence protests, which are immediately broken up, police allowed the demonstration to continue for several hours until protesters called for independence, at which point they intervened with tear gas and caused several injuries.⁴¹⁷ 1993 also saw the spread of political unrest to the rural areas; several demonstrations, calling for independence, as well as protesting the influx of Chinese settlers, took place in the TAR countryside.⁴¹⁸ In May 1994, some 200 shopkeepers protested an increase in tax assessment in front of a local tax office; after the protest was allowed to last for several hours, about five demonstrators were detained and many more beaten by police.⁴¹⁹ According to the Tibet Information Network and Human Rights Watch/Asia, this violent suppression of an economic protest marked an important shift for Chinese authorities who had previously distinguished between "antagonistic" contradictions threatening the Party or the state, and "non-antagonistic" contradictions relating to the economy or the bureaucracy, and marked "a new and important expansion of the concept of unacceptable dissent.... [P]reviously tolerated economic protests would be met by force, as if they were covert political attacks."⁴²⁰

The forceful repression of peaceful demonstrations by the PAP appears as part of a policy to suppress any manifestation of pro-independence sentiment in Tibet. Political Commissar of the TAR PAP corps, Zhang Zhu, was promoted for his role in quelling disturbances in Lhasa. Gyaltzen Norbu, Chairman of the TAR government, congratulated Zhu:

As the political commissar of the TAR PAP corps and a leader in army building, Comrade Zhang Zhu has firmly implemented the party's line... He has always placed his

417 See "Accounts of Lhasa Demonstration, May 1993," in "Reports from Tibet, October 1992-1993," *TIN News Review*, October 1993.

418 *TIN News Update*, 11 August 1993; 30 Nov. 1994.

419 SWB FE 2010 G/5, 31 May 1994; TIN Doc. 94my27.

420 TIN/HRW Asia, *Cutting off the Serpent's Head*, 10-12. The report cites official party documents coining the phrase "hot topics" to describe economic concerns susceptible of manipulation by dissidents.

troops under absolute party leadership, united and led members of the autonomous regional party committee in carrying out various fields of work in army building, and splendidly accomplished various tasks assigned to him by the party and people. Particularly during the struggle to quell the riots in Lhasa and stabilize Tibet's situation, Comrade Zhang Zhu led all officers and men in taking a clear-cut stand at the forefront of the anti-splittist struggle and in resolutely battling against splittist forces, thus making remarkable contributions to safeguarding the motherland's unity and stabilizing Tibet's situation.⁴²¹

Zhu answered by pledging to lead the PAP to "serve as daggers with which to cope with riots and contingencies and make new contributions to opposing splittism."⁴²² In 1995, newly issued Regulations enhanced police power to use apparatus and weapons while performing their duties so as to better crack down on criminal activities.⁴²³ A regional public security conference in Lhasa in March 1996 acknowledged still "facing serious challenges" in Tibet and identified the region's general objectives in the field of public security as "to resolutely deal with disturbances and trouble-making and sabotage incidents and to give separatists no opportunity."⁴²⁴ Tougher measures to improve public

421. "Promoted police official commended for role in quelling Lhasa riots," Tibet People's Broadcasting Station, Lhasa, 1 Jan. 1994, in SWB FE/1887 G/1, 5 Jan. 1994.

422 Ibid. In an April 1996 ceremony presided over by Zhu, the PAP was praised in similar terms: "Particularly, in the past disturbances created by a handful of separatists ... the leading body of the armed police group, with a strong patriotic spirit and dauntless revolutionary heroism, have closely united its officers and men to charge forward; members of the group have always fought in the forefront of the struggle against separatism; ... they have safeguarded the unification of the motherland, national unity and the stability of the situation in Tibet with their own blood or even with their own lives." *Xizang Ribao*, 8 Apr 96 p1, in SWB FE/D2603/CNS 4 May 1997.

423 "Regulations on the Use of Apparatus and Weapons by the Police of the PRC," *Xinhua*, SWB FE/2523G/8, 31 Jan. 1996. Details of the Regulations were not given.

424 "The western hostile forces vainly attempt to open a breach in Tibet by kicking up a rumpus about ethnic and religious issues and to divide China by undermining the stability of our region," FBIS-CHI-96-075, 17 April 1996.

order in Lhasa were again announced in May⁴²⁵ and December 1996.⁴²⁶

Chinese practices preclude any meaningful exercise of the right to freedom of peaceful political assembly and association by Tibetans. The repression of peaceful assembly by Tibetans cannot be justified under international law as a legitimate restriction of these rights.⁴²⁷

7. China's Population Control Policies in Tibet

This section examines some of the human rights implications of the application, in Tibet, of China's strict population control policies. Although these policies are more relaxed towards Tibetans and other minorities than towards Han families, the ICJ finds that they violate a number of rights related to women's reproductive freedom and physical integrity.

"Reproductive self-determination" may be said to involve four fluid categories of interests - reproductive security and sexuality, reproductive health, reproductive equality and reproductive decision-making.⁴²⁸ Each of these interests, in turn, implicates a range of human rights binding on China.

The Convention on the Elimination of Discrimination against Women stipulates that

States Parties shall take all appropriate measures to ... ensure, on a basis of equality of men and women...the same rights to

425 A public Notice issued by the Regional Higher People's Court, the Regional Procuratorate, the regional Public Security Department, and the Public Judicial Department, 20 May 1996, announcing an anti-crime and anti-separatist campaign and obliging all sectors of society to participate in the struggle and to inform against, and to expose "criminals," and criminals to surrender themselves, FBIS-CHI-96-110, 6 June 1996. See also CCP Secretary Raidi calling for a three-month crackdown on sabotage by separatists. SWB FE/2615 G/11, 18 May 1996.

426 *Xizang Ribao*, 16 Dec. 1996, in SWB FE/2807 G/5, 3 Jan. 1997.

427 Under the ICCPR, for instance, "restrictions on freedom of assembly to protect national security are permissible only in serious cases of political or military threat to the entire nation." Manfred Nowak, *CCPR Commentary*, (Kehl/Strasbourg/Arlington: N.P. Engel, 1993), 380.

428 Rebecca J. Cook, "Human Rights and Reproductive Self-Determination," *American Univ. Law Rev.* 975, at 979 (1995).

decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.⁴²⁹

In the Beijing Declaration governments reaffirmed that the "human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free of coercion, discrimination and violence."⁴³⁰ Governments also reiterated their commitment to refrain from violence against women, defined as "physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs," including "forced sterilization and forced abortion, coercive/forced use of contraceptives ..."⁴³¹

The Programme of Action, adopted by consensus at the Cairo International Conference on Population and Development, confirmed the essential importance of voluntariness in the implementation of birth control policies:

The aim of family planning programs must be to enable couples and individuals to decide freely and responsibly the number and spacing of their children and to have the

429 Art. 16 CEDAW. Article 12 of the Convention is said to imply the obligation of States to take measures aimed at "the full respect for the autonomy and privacy of women, notably by ensuring that a woman's sexual and reproductive choices are always based on a woman's free and informed consent." Aart Hendriks, "Promotion and Protection of Women's Right to Sexual and Reproductive Health under International Law," 44 *American Univ. Law Rev.* 1123, at 1142 (1995). See also Carlota Bustelo, "Reproductive Health and the Women's Convention," in *ibid.*, 1145 at 1150: "[t]hrough the ratification of CEDAW, State Parties have committed themselves to take all appropriate measures in order to guarantee woman's reproductive health. States must ensure: women's right to decide freely on the number and spacing of their children ... Moreover, the Convention calls upon States to prevent coercion and ensure voluntary regulation regarding fertility and reproduction." See also Eva Herzer and Sara B. Levin, "China's Denial of Tibetan Women's Right to Reproductive Freedom," 3 *Michigan J. of Gender and Law*, 522 (1996).

430 Platform for Action, Fourth UN World Conference on Women, Beijing, Sept. 1995, in *Report of the Fourth World Conference*, UN Doc. A/CONF/177/20, para. 96.

431 Platform for Action in *ibid.*, paras. 113, 115.

information to and means to do so and to ensure informed choice and make available a full range of safe and effective methods. ... The principle of free and informed choice is essential to the long-term success of family planning programmes. Any form of coercion has no part to play. Demographic goals, while legitimately the subject of government strategies, should not be imposed on family-planning providers in the form of targets or quotas for the recruitment of clients.⁴³²

China has the largest population in the world and a population density which puts a strain on its resources. In 1980 the CCP Central Committee called for a radical halt to population growth by limiting each couple to one child. The 1982 PRC Constitution called this a "basic national policy," stipulating that the state should promote the practice of family planning and calling on couples to practice family planning.⁴³³ Implementation has been left to local and provincial officials and enforcement varies.⁴³⁴ The policy and its subsequent implementation have generally been characterised by the following principal features:

- couples must apply for birth permits before they start a pregnancy;
- the national average target for births per couple is 1.6. One child is generally encouraged, though another chance can be given to rural couples, especially if their first child was a daughter. A third is forbidden;

432 ICPD programme of Action, principle 7.12. U.N. Doc. A/CONF.171/13. The same paragraph found that "In every society there are many social and economic incentives and disincentives that affect individual decisions about child-bearing and family size. Over the past century, many Governments have experimented with such schemes, including specific incentives and disincentives, in order to lower or raise fertility. Most such schemes have had only marginal impact on fertility and in some cases have been counterproductive."

433 Arts. 25, 49, 1982 Constitution.

434 Local authorities are "authorised to decide their own specific population policies, according to local conditions." Family Planning Minister Peng Peiyun, *China Daily*, 14th March 1990. Sharon K. Hom, "Female Infanticide in China: The Human Rights Specter and Thoughts About (An)other Vision," 23 *Columbia Hum. Rts. Law Rev.*, 249 at 264-265 (1995).

- after having the permitted number of children, women are required to wear an IUD;

- those who proceed with unauthorised pregnancies generally must have them terminated; after that one spouse must be sterilised.⁴³⁵

The policy has had a major impact in controlling China's population growth.⁴³⁶

Since the early 1980s, China's nationwide family planning policies have been applicable to minority areas, although local officials were advised to take a more flexible approach and adapt policies to the local situation.⁴³⁷

Tibet, of course, has always been sparsely populated. Its population has been controlled over the centuries by the tradition of sending a boy from each family to be a monk, and often sending girls to be nuns. Even with the influx of Chinese and the limitations on the number of monks and nuns, the TAR's population density, while growing, is some 1% that of China's.⁴³⁸ There was no tradition of birth control, however, and traditional Buddhist beliefs run counter to abortion.⁴³⁹

The regulations governing different Tibetan autonomous areas are usually more permissive towards Tibetan than towards Chinese families. Policy also appears to sharply differ between the TAR and eastern Tibetan areas which are part of other Chinese provinces. In general, policies began earlier, and were stricter, in eastern Tibet, while the rules in the TAR came into force later, and were applied first in the towns and only more recently in rural areas.

435 This summary is taken from *Caught Between Tradition and the State: Violation of the Human Rights of Chinese Women* (New York: Human Rights in China, Aug. 1995), 35-36.

436 According to Chinese statistics, the birthrate dropped from 33.43 per thousand in 1970 to 21.06 per thousand in 1990. "Human Rights in China," *Beijing Review*, 4-10 Nov. 1991, 37

437 *Renmin Ribao*, 14 March 1982, cited in *TIN Background Briefing Paper: Survey of Birth Control Policies in Tibet*, 30 March 1994. See also Melvyn C. Goldstein and Cynthia M. Beall, "China's Birth Control Policy in the Tibet Autonomous Region: Myths and Realities," in *Asian Survey*, vol. XXXI, no. 3, March 1991, 288.

In 1985, a first set of guidelines was introduced for the TAR,⁴⁴⁰ followed by official regulations in 1992.⁴⁴¹ The 1992 rules establish that Tibetans cadres, workers, staff of enterprises and residents in cities and towns are allowed to have two children, which must be spaced by three years, while Chinese families in the same categories were allowed only one. Rural and nomadic Tibetans could have as many as three children under some circumstances.

In the early years of the policy, application in the TAR appears to have been flexible and loose, particularly in rural areas. After detailed field research in from 1986-1988, Goldstein and Beall found "no evidence

438 TIN, *Survey of Birth Control Policies in Tibet*, 25. The combined zones of Tibetan autonomy (about 2.4 million sq km) make up about 25% of China's total area (about 9.6m sq km) but Tibetans make up only about 0.5% of China's total population. Roughly 5.5 million Tibetans live in that area, a population density of about 2.3 Tibetans/sq km. Outside the TAR, the population density in non-autonomous areas is much greater than in Tibetan autonomous areas:

Population Density outside the TAR (in persons per square km.)		
Province	Tibetan Autonomous areas	Han areas
Yunnan	14.1	167
Gansu	16	96
Qinghai	2.2	212
Sichuan	7.3	414

Source: Alliance for Research in Tibet.

439 In a recent survey of 148 women aged 16-45 interviewed in India and Nepal, three-quarters of whom were born in exile or left China before 1990, only 23% had ever used birth control. Of these, 40% used sterilization, 16% injectable contraception, 16% IUDs and 12% oral pills. Of those who did not use family planning methods, 32.4% cited religious reasons. Paula Nersesian and Tsering Yangdon, *Reproductive Health Assessment of Tibetan Refugees in South Asia*, March 1997 (unpublished).

440 Established Guidelines Relevant to Granting Birth Permits [in accordance with] Planned Birth (hereinafter: 1985 TAR regulations), TAR Planned Birth Steering Committee, Doc. 01 (1985), 28 Feb. 1985, translated in TIN Doc. 2(XC).

441 The Temporary Method for the Management of Planned Birth in the Tibet Autonomous Region (hereinafter 1992 TAR Regulations), TAR Planned Birth Leading Group, Doc. No. 6 (1992), translated in TIN Doc. 1(XL).

of any policy restricting the number of children that herding and farming women can bear" and that among nomads contraception was hardly available.⁴⁴² In Lhasa, however, the same researchers found that there was "clearly a policy of coercive birth control."⁴⁴³ Similarly, a survey of rural villages near Mount Everest "found no evidence of coercion in family planning and ... few people know that it is possible to limit births."⁴⁴⁴ In 1990, however, birth control teams were active in at least some rural areas around Lhasa. Teams reportedly performed 1,467 birth-control operations in three Lhasa counties.⁴⁴⁵ A pilot programme in Gyatsa county, 150 km east of Lhasa, resulted in 700 of the 4,000 women of child-bearing age being sterilised.⁴⁴⁶ In 1990, it was announced that 3% of the 600,000 Tibetan women of child-bearing age in the TAR had had sterilisation operations.⁴⁴⁷

Since then, however, application in the TAR appears to have become somewhat more uniform. "Planned Birth Management Offices" in each *xiang* (township or group of villages) are responsible for carrying out the policies which specify "rewards and penalties." Rewards are given for late marriage and late births as well as for IUD insertion, abortions and sterilisation. Single children also receive special treatment. According to the draft 1992 regulations: "A single child enjoys priority arrangements with respect to entering kindergarten and going to hospital if other conditions are equal. They also enjoy advantageous arrangements with respect to enrolment at university, in factories and in the army."⁴⁴⁸

"Punishments" include fines of 500 yuan for the first extra birth - compared to an official 1995 annual per capita TAR income of 960 yuan

442 Goldstein and Beall, "China's Birth Control Policy," 294.

443 Ibid., 293.

444 Woodlands Mountain Institute, *Health Survey of Three Villages North of Mt. Qomolungma (Mt. Everest)*.

445 *Lasa Wanbao* (Lhasa Evening News), 31 Jan. 1991. Cited in TIN, *Survey of Birth Control Policies*. The report did not say if the operations involved abortions, sterilisations, or vasectomies.

446 Xinhua report quoted in *ibid.*

447 TIN, *Survey of Birth Control Policies*, 19.

448 Article 29, 1992 TAR Regulations. Because a page is missing from the copy of the final regulations obtained abroad, which generally track the draft, it cannot be confirmed that this provision is included. See TIN Background Brief Paper.

for rural dwellers and 5,036 for urban dwellers.⁴⁴⁹ For the second extra birth, the fine is 1,000 yuan. In addition, "for three years neither members of the couple will be promoted, be given a raise or enjoy a bonus (including a salary award) and should not be awarded the status of advanced workers. One member of the couple is also advised to have a sterilisation operation.⁴⁵⁰ Grain and oil allotments for the extra child are not subsidized.

Other penalties might include demotion, disqualification from the right to stand for elected positions, and the punishments against the child. Unauthorised children are temporarily excluded from food rations and do not get a residence card, without which access to schools, health care and government employment is seriously hampered or not possible.⁴⁵¹

Policies in eastern Tibet outside of the TAR began earlier, were implemented in rural areas from the start, and seem to be stricter. In Ganze Prefecture in Sichuan Province, for instance, Tibetan farmers and nomads have been generally limited since at least 1989 to two children. Tashi Dolma, a Tibetan doctor from Tsholho (Chinese "Hainan") in Qinghai, told the ICJ that from 1988, cadres were allowed only one child and other Tibetans two. In these areas, there have been many official reports of sterilisation and abortion campaigns in rural areas, during which between 30 and 50 sterilisations a day were carried out. The official sterilisation rate in these campaigns was between 10% and 20 % of the female population of child-bearing age.⁴⁵² In 1990, it was announced

449 Information Office of the State Council, "Progress in China's Human Rights Cause," (Beijing: March 1997). The statistic for urban dwellers includes a large number of Chinese. The use of fines as a way to force women to accept abortions or birth limitations is inherently a discriminatory weapon, since the poor are more susceptible to this.

450 Art. 34(2), 1992 TAR Regulations.

451 Herzer and Levin, "China's Denial of Tibetan Women's Reproductive Freedom," 552; TIN, *Survey of Birth Control Policies*, 21. As for the ban on Party elected positions, see art. 17, Temporary Regulations on the Treatment of CCP Members ... Who Have Violated the Ganze Prefecture Birth Control Procedure, 1 Oct. 1991, TIN Doc. 7(XB). Regarding non-party positions, see TIN Doc. T5(NH), an interview with a *xiang* official from Ngapa, July 1990.

452 TIN, *Survey of Birth Control Policies in Tibet*.

that in Qinghai province, which has a Tibetan population of over 20%, over 87,000 women, about 10 per cent of women of child-bearing age, had been sterilised.⁴⁵³ Fines appear to be generally higher than in the TAR.

While official policy is to "stick to contraception as the main method,"⁴⁵⁴ contraceptives that exist are widely seen as dangerous and ineffective, and medical standards of manufacture and implementation are said to be low.⁴⁵⁵ Abortion and sterilisation have become common since they are necessary for enforcement of the policy. Reports describe abortions carried out in the later stages of pregnancy,⁴⁵⁶ and reports of complications and even deaths from abortions are common.⁴⁵⁷ A Tibetan para-medical from Ganze (a Tibetan prefecture within Sichuan) working as an interpreter personally witnessed multiple abortions being carried out. In earlier stages of pregnancy she witnessed abortion through the removal of water from the womb and subsequent induced stillbirth.⁴⁵⁸ She also witnessed infanticide in which the foetus was extracted from the womb in later stages of pregnancy and killed upon birth.

453 Qinghai People's Broadcasting Service in Chinese, 20 April 1990, in SWB, FE/W0126 A/1, 2 May 1990.

454 Art. 12, 1992 TAR Regulations.

455 TIN, *Survey of Birth Control Policies in Tibet*, 17.

456 TIN Doc. T2(BB). Many of the cases in the later stages of pregnancy describe being injected in the stomach to induce a miscarriage, usually at around 5 months into the pregnancy. One woman refugee who had four abortions before she left Tibet told TIN how she had been given this injection in Lhasa. "When I was five months pregnant, they aborted my child at the main People's Hospital in Lhasa. After this injection, the child came out the next day still born," she said. Another Tibetan from Lhasa who had three abortions - in at least one case the contraceptives she was given were ineffective - described the injection method in similar terms, and added that it was done without local anaesthetic. TIN, *Survey of Birth Control Policies in Tibet*.

457 *Tears of Silence: A Report on Tibetan Women and Population Control* (Dharamsala: Tibetan Women's Association, May 1995).

458 TIN Doc. T8(BB).

China officially forbids forced abortions.⁴⁵⁹ Recent official policy statements emphasise the element of voluntariness.⁴⁶⁰ However, in practice, Tibetan women are subjected to intense pressure to have abortions if their pregnancies are in violation of any of the birth control regulations or if they already have two or in some cases more children. One woman doctor stated:

they used to tell them that if you have had one child and then have another, [that child] won't get any ration, any house, any education or any facility. That is the first threat. And secondly, if the threatening did not work, they would take them to the hospital and forcibly sterilise them.⁴⁶¹

Dr. Tashi Dolma told the ICJ:

I became pregnant for the second time when my daughter was three and a half years old. We paid 1700 yuan so that we could keep the baby. ...When I was two months pregnant a Chinese woman doctor ... tried to pressure me to have an abortion. I was told that the fine that we had already paid was small compared to other penalties for violating the birth control policy. I was told: "... you will get only thirty percent of your monthly salary, and you will never get a raise. Your child will not get a ration card and will not be admitted to either a nursery or a school." We had thought that we only had to pay a fine. We never thought the officials were going to impose all these measures and restrictions. Therefore, we had no other choice but to agree to the birth control policies and abort the child.

459 "Tibet—Its Ownership and Human Rights Situation," (Beijing: Information Office of the State Council of the People's Republic of China, 1992).

460 Speech by TAR Chairman Gyaltzen Norbu at the Regional Discussion Meeting on Family Planning Work, 23 May 1996, translated in FBIS-CHI-96-120 where he states that "one point we should stress here is that family planning work should employ the method of persuasion and education, of conducting propaganda and giving guidance, and of helping the masses solve concrete problems rather than resorting to coercion and commandism. This will help safeguard the overall situation of social stability," 54. See also Family Planning White Paper, August 1995, citing the "combination of state guidance with voluntary participation" as the leading principle of China's family planning policy. In SWB FE/2393 S2/1.

461 TIN Doc. To(SM), Interview conducted 10 Oct. 1991.

Quotas are established for the number of planned births or "multiple-births prevented" in a district; the rewards and punishments for officials who fulfill, exceed or do not meet the set targets may encourage excessive enforcement and lead to abuses by officials.⁴⁶² These quotas are established first at the provincial level, then the prefecture, then the counties, which in turn distribute them among work units, districts, *xiangs* and neighbourhoods. In Sichuan province, for instance, quotas had to be achieved in each of four areas (numbers of births, the planned birth rate, the increase in the number of two-children families, and the out-of-plan pregnancy rate). Under a complex mathematical system, officials who fell below 90% of their score would be punished, and could be demoted or dismissed. A score of over 110% would earn the official a prize of 1,500 yuan (about a year's income for a high ranking cadre). In Ganze autonomous prefecture, these levels were twice lowered to reflect the difficulty of achieving compliance, but two new quotas were included: "basic work" and "numbers of contraceptive operations," apparently an explicit incentive to increase abortions and sterilisations.⁴⁶³

A 1991 county-level document detailing implementation of the birth planning policy at the local level explicitly refers to the coercive nature of the measures and implies that force may be employed to achieve the objective. The document imposes retrospective fines and "birth prevention operations" to "be carried out imperatively" on couples who had unauthorised children since 1982.⁴⁶⁴ The document also links the failure of the birth planning policy so far, to a perceived backwardness of the Tibetans:

But because of a wide variety of reasons, there are still households with a large number of members who because of their stubborn adherence to old customs and traditions resist

462 Chinese officials admitted to an Australian Human Rights delegation in 1991 that abuses had occurred due to "the over-enthusiasm of Party cadres and those administering the policy." Australian Human Rights Delegation to China, 47, para. 49. Also TIN, *Survey of Birth Control Policies*, 13.

463 The evolution of these regulations is described in *ibid.* As an example of final distribution quotas, the *Survey* cites the Lhasa Holiday Inn whose staff of between 400 and 650 (60 % Tibetan) was allocated a quota in 1992 of five children for its Tibetan staff, and two for its Chinese staff.

464 Birth Control Regulations, A Document of the Gungho County People's Government, Doc. No. 90(1991), Gungho County People's Administration, 25 Jan. 1991, translated in TIN Doc. 14 (WA), 17 August 1993.

birth prevention operations. This continues to render implementation of the policy difficult.

It also details future policy:

From 1 January 1991 onwards, birth planning policy will be strictly implemented and in the case of those exceeding the limit, a birth prevention operation will be carried out within the year and the fine of the whole amount of 900 Yuan will be collected. ...In the case of staff and technicians, [the rules] of the county people's administration will be fully implemented. Whoever violates the birth planning policy will be operated upon within the year to prevent further child birth and no concessions will be granted.⁴⁶⁵

While abortion appears to be the most common method of birth control, sterilisation of one partner is the preferred option for Tibetan couples who have given birth to the maximum number of allowed children. For instance, in Ganze, the "Procedure for Planned Birth" provides that:

It should be advocated that one [partner] in couples which are cadres, workers, urban residents, market gardeners, Han peasants with two children and minority nationality peasants and nomads with three children should adopt the method of sterilisation.⁴⁶⁶

In 1996 it was reported that during the Eighth Five-Year Plan period (1990-1995), the birth rate in the TAR had dropped from 1.84 to 1.61 and 63,200 births had been prevented due to the implementation of family planning in the TAR. A further drop in the growth rate was envisaged so that "the population in 2000 will be brought under 2.62 million people."⁴⁶⁷ According to official Chinese statistics, from 1990 to 1994 only one autonomous Tibetan area outside the TAR (Kanlho Tibetan

465 Ibid., paras. 4,5.

466 Planned Birth Procedure in the Ganze Tibetan Autonomous Prefecture, item 13, issued by the Ganze Tibetan Autonomous Prefecture Planned Birth Committee, 20 July 1989; translated in TIN Doc. 7(XB).

467 Gyaltzen Norbu addressing the Regional Discussion Meeting on Family Planning Work, 23 May 1996, *Xizang Ribao*, 30 May 1996, SWB FE/2645 G/13-17, 22 June 1996. Tibet Daily 24 May 1996, quoted in "China aims to restrict family size in Tibet," Reuter 1 June 1996.

Autonomous Prefecture in Gansu) had a growth rate exceeding 1% annually. The growth rate for that period in Kartse TAP (Sichuan) was about 0.5% annually and about 0.25% annually in Ngawa (Sichuan).⁴⁶⁸

In the early 1990's, China enunciated improving the quality of the population as an objective of planned birth policy in minority areas.⁴⁶⁹ Premier Li Peng stated in 1990:

Planned parenthood is a basic state policy of China. ... However, in order to take into consideration the matter of fundamental importance of raising the qualities of minority nationalities, people of minority nationalities should also launch a campaign for high quality in child birth and raising and bringing up children in order to improve the qualities of the population.⁴⁷⁰

In certain Tibetan prefectures, laws forbid persons "who have serious hereditary diseases such as hereditary mental illness, mental disability, or

468 The mixture of these statistics and strict birth control policies presents questions. If the population figures are not deliberately understated, then either there is no justification for present birth control policies in Tibetan areas or they have been so successful at reducing growth they should now be eased.

469 Xinhua, 1 Sept. 1989, reports that experts concerned about the decline of the "quality of China's ethnic minorities as a whole" participated in a "seminar on quality population of ethnic minorities" and warned that "ethnic minorities should not be neglected in the country's efforts to raise the quality of the Chinese people," in SWB FE/0560 B2/5, 13 Sept. 1989; Central Committee Document No. 9 *The Decision of the State Council of the Communist Party Central Committee on How to Strengthen the Work of Planned Birth and Strictly Control Population Growth*, 12 May 1991, translated in TIN Doc. 7 (XB) stated that "in order to raise the economic and cultural standard and national quality in the minority areas, planned birth must also be implemented among minorities ..." Also in Regional Discussion Meeting on Family Planning, 52, emphasizing that "the issue of population is not just an issue of quantity and it includes population quality, structure, and distribution."

470 Li Peng "Perform our Work Well Among Nationalities and Strive for the Common Prosperity of All Nationalities," Xinhua, 19 Feb. 1990, FBIS-CHI-90, 9, 12, cited in "Legal Structures for Special Treatment of Minorities in the PRC," 1521.

471 Planned Birth Procedure in the Ganze Tibetan Autonomous Prefecture.

physical deformity" from giving birth.⁴⁷¹ The 1992 TAR regulations prohibit births to "people who have serious hereditary diseases proved by medical evidence."⁴⁷² The regulations do not specify who has ultimate authority to decide to whom these provisions apply.⁴⁷³ During a TAR Meeting on Family Planning Work in 1996, Gyaltzen Norbu, Chairman of the TAR, underscored that "the issue is not just an issue of quantity and it includes population quality, structure and distribution."⁴⁷⁴

The PRC's family planning policies as implemented in Tibet violate numerous obligations under international human rights law. When women are compelled to undergo abortions and sterilizations, by physical or economic coercion, their right to liberty and security of person is violated,⁴⁷⁵ and the core element inherent in various other human rights is breached.⁴⁷⁶ The ICJ believes that "[b]ecause every health intervention constitutes interference with the individual, it is

472 Article 11, 1992 TAR Regulations.

473 In May 1990 the Chinese announced that there were 10,000 mentally handicapped people in Tibet, a sign of inferior quality of the population. Herzer and Levin, "China's Denial of Tibetan Women's Right to Reproductive Freedom," 559.

474 Regional Discussion Meeting on Family Planning Work, 23 May 1996, *Xizang Ribao*, 30 May 1996, SWB FE/2645 G/13-17, 22 June 1996.

475 See art. 3, UDHR; art. 5(b), CERD.

476 Rights that may be implicated by practices of coerced abortions and sterilizations are, *inter alia*, the right to life, the right to liberty and security of the person, the right to be free from torture and cruel, inhuman, and degrading treatment, the right to marriage and to found a family, and the right not to be subjected to arbitrary or unlawful interference with privacy or the family. See Cook, "Human Rights and Reproductive Self-Determination." China's reservation to article 6 of the Convention on the right to life, in accordance "with the provisions of article 25 concerning family planning of the Constitution ... and in conformity with the provisions of article 2 of the Law of Minor Children" is not relevant to the obligations discussed in this section.

subject to the requirement of free and informed consent."⁴⁷⁷ According to the UN Special Rapporteur on Violence against Women, China's "one-child policy violates a woman's right to physical integrity and security of person, and the right of both parents freely to determine the timing and spacing of their children."⁴⁷⁸

Discrimination against second children, or "extra" or "out-of-plan" children is impermissible under the Convention on the Rights of the Child,⁴⁷⁹ as is the denial of any rights - such as education or health care - provided by the pact.

477 Katarina Tomasevski, "Health Rights" in A. Eide, C. Krause and A. Rosas, eds., *Economic, Social and Cultural Rights*, (Dordrecht: Martinus Nijhoff Publishers, 1995), 136. According to another commentator: "In terms of maternal health, there is little difference between coerced contraception, sterilization or abortion, because society *does not want* the child, and coerced motherhood, because society *wants* the child. Both interventions deny women the dignity of making a choice in their reproductive life." M.F. Fathalla, "Impact of Reproductive Subordination on Women's Health: Family Planning Services," in 44 *American Univ. Law Rev.*(1995), 1179.

478 UN Doc. E/CN.4/1996/53 para. 95. Recently refugees from China have won asylum based on China's policy of forced abortions. One claim was accepted in the US. *Guo Chun Di v. Carroll*, 842 F. Supp. 858 (E.D. Va. 1994). See also *Xin-Chang Zhang v. Slattery*, 859 F. Supp. 708 (S.D.N.Y. 1994); One claim in Canada (*Cheung v. Canada*, 2 F.C. 314 (Fed. Ct. 1993)) concerned a woman who fled China to escape coerced sterilization after she gave birth to her second child. The Federal Court held that forced sterilisation is a form of persecution, even if it results from the enforcement of a law of general application. *Ibid.*, 323. The court invoked articles 3 and 5 of the UDHR and characterised forced abortion as a "serious and totally unaccepted violation of [the] security of the person" and as "cruel, inhuman and degrading treatment," *Ibid.*, 324. The court concluded that "the practice of forcing women to undergo sterilization is such an extreme violation of their basic human rights as to be persecutory." *Ibid.*, 325. Another Canadian court disagreed with this ruling, however. *Chan v. Canada*, 3 F.C. 675 (Fed. Ct. 1993). See Reed Boland, "Civil and Political Rights and the Right to Nondiscrimination: Population Policies, Human Rights and Legal Change" in 44 *American. U. Law Rev.* 1257 at 1269-1270 (1995).

479 The Convention bars discrimination, inter alia, on the basis of the parent's activities. Art.2(2).

VI. The Right of the Tibetan People to Self-Determination

*"The effective exercise of a people's right to self-determination is an essential condition or prerequisite ... for the genuine existence of the other human rights and freedoms."*¹

In 1960 the Legal Inquiry Committee of the ICJ, after a thorough legal analysis of Tibet's status under international law, concluded that:

throughout the period 1912-1950 the Government of Tibet exercised exclusive authority in domestic affairs within its territory, that it successfully defended its territory against attack under colour of a claim to sovereignty and that vis-a-vis the Republic of China no act was committed or declaration made that compromised its internal independence. It is therefore considered that there was an effective government in Tibet, which owed no subservience whatsoever in internal affairs.²

In this period, Tibet exercised *de facto* independence³ and consistently opposed Chinese attempts to assert control. According to the Legal Inquiry Committee:

Tibet demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In

- 1 Héctor Gros Espiell, *The Right to Self-Determination, Implementation of United Nations Resolutions*, Study of the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, New York, UN Doc. E/CN.4/Sub.2/405/Rev.1, 1980, para 59. "Only when self-determination has been achieved can a people take the measures necessary to ensure human dignity, the full enjoyment of all rights, and the political, economic, social and cultural progress of all human beings, without any form of discrimination. Consequently, human rights and fundamental freedoms can only exist truly and fully when self-determination also exists." *Ibid.*
- 2 *Tibet and the Chinese People's Republic: A Report to the International Commission of Jurists by its Legal Inquiry Committee on Tibet* (Geneva: ICJ, 1960), 148.
- 3 *Ibid.*, 162.

1950 there was a people and a territory, and a government which functioned in that territory, conducting its own domestic affairs free from any outside authority. From 1913-1950 foreign relations of Tibet were conducted exclusively by the Government of Tibet and countries with whom Tibet had foreign relations are shown by official documents to have treated Tibet in practice as an independent State.⁴

The Legal Committee concluded that "Tibet was at the very least a *de facto* independent State when the Agreement on Peaceful Measures in Tibet was signed in 1951, and the repudiation of this agreement by the Tibetan Government in 1959 was found to be fully justified."⁵

The Legal Inquiry Committee did not address the question of Tibet's *de jure* status, since it was only concerned with determining whether the question of Tibet could be considered by the United Nations without running afoul of the prohibition of Article 2(7) of the United Nations Charter. If, of course, Tibet had been a fully independent state, China's incursions into Tibet in 1950 would be a breach of international law and China could not claim sovereignty over Tibet as a result of this action or the 17-Point Agreement.⁶

In any event, the Legal Inquiry Committee's examination and the conclusions set forth above were limited to that part of Tibet ruled by the government in Lhasa, which is only a part of the territory historically and currently inhabited by the Tibetan people. Because the present report is concerned with the rights of the entire Tibetan people, it will examine the question of self-determination from this point of view, rather than on a historical basis.

Legal Basis and Scope of the Right to Self-Determination

One of the purposes of the United Nations is "to develop friendly relations among nations based on respect for the principle of equal rights

4 Ibid., 5-6.

5 Ibid., 6.

6 See, e.g., article 51, Vienna Convention on the Law of Treaties ("A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations").

and self-determination of peoples.”⁷ The UN further developed the principle of self-determination, particularly in the decolonization context, beginning with the 1960 “Declaration on the Granting of Independence to Colonial Countries and Peoples,”⁸ in which it spoke of the “right” of peoples to self-determination, by virtue of which “they freely determine their political status and freely pursue their economic, social and cultural development,” and called for immediate steps to provide non-independent territories with complete independence and freedom. Two years later, the General Assembly emphasised the economic side of self-determination, affirming the “right of peoples and nations to permanent sovereignty over their natural wealth and resources.”⁹

When the General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) in 1966,¹⁰ the right of all peoples to self-determination was for the first time recognised in two treaties. Pursuant to common article 1 of the two covenants, “all peoples ... freely determine their political status and freely pursue their economic, social and cultural development,” and “freely dispose of their natural wealth and resources.” The inclusion of the right of self-determination into the most important UN human rights treaties was initiated by socialist and Third World states, whereas most western states, above all the European colonial powers, opposed and voted against it.¹¹ The expression “all peoples” refers not only to peoples under colonialism but also to peoples living in independent states, in particular in multinational

7 Article 1(2), United Nations Charter.

8 GA res. 1514 (XV), 14 Dec. 1960.

9 “Permanent Sovereignty over Natural Resources.” GA res. 1803 (XVII), 14 Dec. 1962, art.1. Essential contributions were later made by the Declaration on the Establishment of a New International Economic Order, GA res 3201 (S-VI) 1 May 1974 and the “Charter of Economic Rights and Duties of States,” GA res. 3281 (XX), 2 Dec. 1974.

10 GA res. 2200 A(XXI), 16 Dec. 1966.

11 See Manfred Nowak, *CCPR Commentary*, (Kehl/Strasbourg/Arlington: N.P. Engel, 1993), 9 et seq. with further references; Marc J. Bossuyt, *Guide to the “travaux préparatoires” of the International Covenant on Civil and Political Rights*, Dordrecht, 1987, 19 et seq.; UN Doc. A/2929, 13 et seq.; Antonio Cassese, “The Self-Determination of Peoples” in Louis Henkin (ed.) *The International Bill of Rights—the Covenant on Civil and Political Rights*, New York, 1981, 92 et seq. For the historical background, see also GA res. 421 (V), section D and GA res. 545 (VI).

states such as the former USSR and the former Yugoslavia.¹² The Indian reservation to Article 1, declaring that the right to self-determination only applies to "peoples under foreign domination" and not to "sovereign independent States or to a section of a people or nation," was formally objected to by France, the Netherlands, and the Federal Republic of Germany on the grounds that the right attaches to all peoples and not only to those under foreign occupation.¹³ The Covenants were adopted by consensus by 106 states.¹⁴ As of 31 December 1996, a total of 135 states were Parties to the ICESCR and 136 states to the ICCPR. The PRC has not yet ratified either Covenant.

The content of the right of self-determination was further developed in the 1970 "Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States."¹⁵ The principle of equal rights and self-determination of peoples, in particular, clarifies that "subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter." The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by the people."

Two special studies prepared at the request of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities¹⁶ as well as a General Comment of the UN Human Rights

12 See Nowak, *CCPR Commentary*, 19 et seq.; Bossuyt, *Guide to the "travaux préparatoires"*, 32 et seq.; Cassese, "The Self-Determination of Peoples," 94 et seq.; Yoram Dinstein, "Collective Human Rights of Peoples and Minorities" in 1976 *ICLQ* 102 at 108 et seq.; Felix Ermacora, "The protection of Minorities before the United Nations" in 1983 *Hum. Rts. Law J.* 165 at 172 et seq.; Jean-Bernard Marie, "Relations between peoples' rights and human rights: semantic and methodological distinctions," in Vol.7 *Hum. Rts. Law J.* (1986)195, at 203.13 Centre for Human Rights *Human Rights-Status of International Instruments*, (New York: United Nations, 1987), 9, 18-19, 50.

14 The PRC was not a member of the UN at the time.

15 GA res. 2625 (XXV), 24 Oct. 1970.

16 Gros Espiell, *The Right to Self-Determination*; Aureliu Cristescu, *The Right to Self-Determination, Historical and Current Development on the Basis of United Nations Instruments*, Study of the Special Rapporteur of the UN Sub-Commission, UN Doc. E/CN.4/Sub.2/404/Rev.1, 1981.

Committee (HRC) in accordance with Article 40(4) of the ICCPR elucidated the legal and factual significance of the right to self-determination in the light of the various UN instruments. The HRC's General Comment emphasized that the right of self-determination is an inalienable right of all peoples, the realization of which is "an essential condition for the effective guarantee and observance of individual human rights."¹⁷ The right was recently reaffirmed in the Vienna Declaration and Programme of Action, adopted at the conclusion of the World Conference on Human Rights, as a right of "all peoples ... the denial of which constitutes a violation of human rights."¹⁸

The special significance and universal recognition of the right of self-determination has led to the qualification of this right as a norm of general international law, often even as *jus cogens*, an absolute norm of international law, in the sense of article 53 of the Vienna Convention on the Law of Treaties.¹⁹ The International Court of Justice, in the *East Timor* case, upheld the assertion that "the right of peoples to self-determination, as it evolved from the Charter and from United Nations practice, has an *erga omnes* character."²⁰ There are, however, different opinions as to whether the right of self-determination as a peremptory norm of international law is identical with the scope and content of common article 1 of the covenants, *i.e.* applying to *all* peoples. But it is beyond doubt that the character of *jus cogens* applies to all peoples under alien

17 General Comment 12/21, 12 April 1984, reprinted in UN Doc. HRI/GEN/1/Rev.2, 29 March 1996, paras. 1,2; reproduced in Nowak, *CCPR Commentary*, 856.

18 Vienna Declaration and Programme of Action, UN Doc. A/CONF/157/23, para. 2.

19 See, e.g., Gros Espiell, "The Right to Self-Determination," paras. 70-87 with further references; Gros Espiell "shares, with full conviction, and in full awareness of all its consequences, the idea that today the right of peoples to self-determination is one of the cases of *jus cogens*." *Ibid.*, para. 85. Ermacora, "The protection of Minorities," 325; Alexandre Kiss, "The peoples' right to self-determination, vol. 7, *Hum. Rts. Law J.* (1986), at 174; Cassese, "The Self-Determination of Peoples," 111; Dinstein, "Collective Human Rights," 106; Nowak, *CCPR Commentary*, 7 et seq.; Tatjana Ansbach/Joachim Heintze *Selbstbestimmungsrecht und Verbot der Rassendiskriminierung im Völkerrecht*, Berlin (GDR), 1987, 19.

20 *East Timor (Portugal v. Australia)*, Judgment, I.C.J. Reports 1995, 90 at 102. The Court added that self-determination "is one of the essential principles of contemporary international law." *Ibid.*

subjugation, colonial domination and exploitation in the sense of the above-mentioned 1970 Declaration on Friendly Relations which is considered as an authentic interpretation of the relevant provisions of the UN Charter.²¹

Do Tibetans Have A Right of Self-Determination?

It follows that the right of self-determination as a norm of general international law applies, as a minimum, to "peoples":

- under colonial domination and exploitation;
- under alien subjugation;

The first question to be answered in this context is whether the Tibetans are a "people" under international law. The General Assembly has three times referred to the "Tibetan people."²² There is no accepted definition of what constitutes a "people." Aureliu Cristescu, the Romanian Special Rapporteur of the UN Sub-Commission, for example, defined a people as a social entity possessing a clear identity and its own characteristics, which implies a relationship with a territory and which should not be confused with ethnic, religious or linguistic minorities.²³ According to the other UN Rapporteur, Héctor Gros Espiell, the right to self-determination attaches to "peoples, in other words a specific type of human community sharing a common desire to establish an entity capable of functioning to ensure a common future."²⁴ In 1990, UNESCO organised a meeting of Experts on the Further Study of the Rights of Peoples in Paris which arrived at the following conclusion:²⁵

21 See Cassese, "The Self-Determination of Peoples," 111; Nowak, *CCPR Commentary*, 8.

22 GA res. 1353 (XIV) (1959); GA res. 1723 (XVI) (1961); GA res. 2079 (XX) (1965).

23 Cristescu (note 9), 41, para. 279.

24 Gros Espiell, "The Right to Self-Determination," para. 56, adding that "[u]nder contemporary international law minorities do not have this right." Cassese describes a people as "a national or ethnic group constitutionally recognized as a component part of a multinational state." Cassese, "The Self-Determination of Peoples," 96.

25 UNESCO, International Meeting of Experts on further Study of the Concept of the Rights of Peoples, Draft Final Report and Recommendations, Doc.SNS-89/CONF.602/7, 22February 1990.

A people for the rights of peoples in international law, including the right to self-determination, has the following characteristics:

1. A group of individual human beings who enjoy some or all of the following common features:
 - a) a common history;
 - b) racial or ethnic identity;
 - c) cultural homogeneity;
 - d) linguistic unity;
 - e) religious or ideological affinity;
 - f) territorial connection;
 - g) common economic life.
2. The group must be of a certain number who need not be large (e.g. the people of micro States) but must be more than a mere association of individuals within a State;
3. The group as a whole must have the will to be identified as a people or the consciousness of being a people -allowing that groups or some members of such groups, though sharing the foregoing characteristics, may not have the will or consciousness; and
4. Possibly the group must have institutions or other means of expressing its common characteristics and will for identity.

Taking into account the independent history of the Tibetans, their specific ethnic, religious, linguistic and cultural identity, their connection to a well-defined territory, their common institutions and the position of the Dalai Lama as spiritual and temporal leader of Tibet,²⁶ as well as the Tibetans' strong will to be identified as a people even after almost half a century of Chinese domination and the experience of genocide,²⁷ there

26 See Chapter IV, Threats to Tibetan Identity, *supra*. The Dalai Lama's political status and functions have always been recognized by China. See, *inter alia*, Annex 2, the 17-Point Agreement.

27 *The Question of Tibet and the Rule of Law*, 68-75; *Tibet and the Chinese People's Republic*, 10-65.

can be no doubt that the Tibetans satisfy the requirements stated above and are a "people" for the purposes of international law.²⁸

Although, literally speaking, "all peoples" should enjoy the right of self-determination, international law further restricts the application of this right, at least as a peremptory norm, to those peoples under colonial domination and exploitation or under alien subjugation. Does the Tibetan people fall under either of these categories? Although the concept of colonialism does not only apply to the overseas territories of the former European colonial powers, and although some would argue that the domination of Tibet by the Chinese is a form of colonial rule,²⁹ the present study does not further pursue this legal argument. We will analyse, rather, whether the people of Tibet have been subjected to "alien subjugation, domination [or] exploitation" in the sense of the 1970 Friendly Relations Declaration.

The concept of alien subjugation has not been greatly explored by international legal scholars. However, it is generally accepted that the concept of alien subjugation is wider in scope than the classical decolonisation cases dealt with by the Fourth Committee of the UN

28 This conclusion is supported by many studies on this issue: see, e.g., the 1993 "London Statement on Tibet" by a group of international lawyers, in Robert McCorquodale and Nicholas Orosz (eds.) *Tibet: the Position in International Law*, (London: Edition Hansjorg Mayer/Serindia, 1994); Felix Ermacora and Wolfgang Benedek, *Bericht der osterreichischen Rechtsexpertendelegation ueber ihren Besuch in China/Tibet im Juli 1992*, Wien/Graz 1992, 12, para. 25; International Alert, *Self-Determination: Report of the Martin Ennals Memorial Symposium on Self-Determination*, Saskatoon, Canada, March 3-6, 1993, 5.

29 Richard Falk, "The Right to Self-Determination and International Law," 3: "Tibet qualifies within the narrow conception of self-determination because the combination of occupation and alien domination has created a new circumstance of 'colonisation' to which this kind of narrow conception applies." Moreover, the General Assembly, in various resolutions, has adopted a broad interpretation of the term "colonialism," considering "racism, apartheid and activities of foreign economic and other interests which exploit colonial peoples" incompatible with the UN Charter and the Declaration on the Granting of Independence. See, *inter alia*, GA res. 2548, 11 Dec 1969; 2708, 14 Dec. 1970; res. 2878, 20 Dec. 1971; res. 2787, 6 Dec. 1971.

General Assembly.³⁰ The UN Rapporteur, Héctor Gros Espiell, stated, that:

“[C]olonial and alien domination” means any kind of domination, whatever form it may take, which the people concerned freely regard as such. [C]olonial and alien domination does not exist where a people lives freely and voluntarily under the legal order of a State, whose territorial integrity must be respected, provided that it is real and not merely a legal fiction, and in this case there is no right of secession. ... Accordingly, the right of peoples to self-determination exists as such in modern international law, with all the consequences flowing therefrom, where a people is subject to any form or type of colonial and alien domination of any nature whatsoever.³¹

30 The UN Rapporteur noted that, “[o]bviously, these [cases recognized as such by the UN] are not the only cases in which the right of peoples under colonial and alien domination to self-determination has been or could be invoked.” Gros Espiell, *The Right to Self-Determination*, para. 251.

31 Gros Espiell, *The Right to Self-Determination*, paras. 44, 45. Various governments forwarded their views to the Special Rapporteur as to the meaning of “peoples under colonial and alien domination.” Afghanistan held the view that “‘alien domination’ is understood as covering all forms of domination, both direct and indirect, regarded or declared ‘alien’ by peoples of any area and which constitutes an impediment or a suppressive factor in the realization of their fundamental freedoms and human rights,” *ibid.*, fn. 19 to para. 43; the German Democratic Republic held that “the term covers in particular peoples or larger groups of people on whom a fascist, colonial or racist rule is imposed. It also applies to peoples or larger groups of people whose territory has been illegally occupied or annexed by an aggressor,” *ibid.*, fn. 20; Iraq held that the distinguishing factor was “the presence of a foreign element,” fn. 21; New Zealand expressed the view that “the decision as to whether people are under colonial or alien rule must rest with the people concerned. The international community should be receptive to the stated wishes of such a people, and should assist in securing change where change is sought,” *ibid.*, fn. 23; to Pakistan, the right of self-determination was applicable to “all peoples whose freedom had been illegally suppressed by external force, near or far, but that freedom did not include secession of a part of the State unless the association in question had been accomplished illegally against the wishes of the people concerned,” *ibid.*, fn. 25.

The Rapporteur recognized that the key is the *de facto* situation facing a people rather than its formal classification. "If, however, beneath the guise of ostensible national unity, colonial and alien domination does in fact exist, whatever legal formula may be used in an attempt to conceal it, the right of the subject people concerned cannot be disregarded without international law being violated."³²

The United Nations has applied the concept of alien subjugation in relation to the Palestinian people in the Israeli Occupied Territories³³ and to Cambodia.³⁴ The occupation of Namibia by South Africa was considered "illegal and colonial occupation."³⁵ When the General Assembly in 1961 called for "the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination," it seemed to have considered the Chinese occupation of Tibet as a form of alien subjugation as well.³⁶

During the three General Assembly debates on Tibet in 1959, 1961 and 1965, several delegations asserted that the Tibetans formed a distinct people whose traditional autonomy or independence was threatened by the alien rule imposed by China. These debates, contemporaneous with the original occupation, carry weight as state practice on the factual question as to whether Tibetans were considered a "people" subject to "alien subjugation." During the 1959 debate, the representative of

32 Gros Espiell, "*The Right to Self-Determination*," para. 60.

33 Annual General Assembly resolutions on the "Importance of the universal realisation of the right of peoples of self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights" refer to the "inalienable right of the Palestinian people and all peoples under foreign occupation and colonial domination to self-determination, to independence and sovereignty." See for instance, GA res. 48/94, 20 Dec. 1993. See Howard Berman, "Issues Relating to the Right of Self-Determination," in McCorquodale and Orosz, *Tibet: the Position in International Law*, 93;

34 General Assembly resolutions. 44/22, 16 Nov. 1989; 43/19, 3 Nov. 1988; 42/3, 14 Oct. 1987; 41/6, 21 Oct. 1986; 40/7, 5 Nov. 1985; 39/5, 30 Oct. 1984 etc. on Cambodia/Kampuchea refer to the application of the right of self-determination to peoples under colonial or alien domination or foreign occupation.

35 See, *inter alia*, GA res. 42/14, 6 Nov. 1987; GA res. 39/50, 12 Dec. 1984.

36 GA res. 1723 (XVI); recalled in res. 2079(X). GA res. 1353 (XIV).

Malaya, co-sponsor of the resolution, found the evidence sufficient to establish "an attempt to destroy the distinctive religious and cultural heritage and autonomy of the Tibetan people."³⁷ The Irish delegation, the other co-sponsor, compared the situation in Tibet to one of "imperialism" against a country "almost legendary by reason of its separateness,"³⁸ and stated that:

The Tibetans are a distinct people by race, by language, by culture and by religious organization. We know that over centuries they have developed a separate individuality and a characteristic way of life.³⁹

Other countries also recognised the special relationship that had existed between China and Tibet and the large measure of autonomy or sovereignty that Tibet had traditionally enjoyed.⁴⁰ New Zealand referred specifically to the prohibition against subjecting a people to alien subjugation, domination and exploitation.⁴¹ El Salvador denounced the

37 GAOR, fourteenth session, 831st meeting, A/PV.831, 20 Oct. 1959, para. 13.

38 *Ibid.*, para. 31.

39 *Ibid.*, para. 26, 29, 30.

40 Statement Nepal, *ibid.*, para. 58; Cuba "It may be stated that Tibet enjoyed *de facto* independence in various parts of its history, especially from 1911 until the arrival of the Chinese communist forces at Lhasa in 1951," *ibid.*, para. 118. The representative also branded the Tibetans "victims of aggression." *Ibid.*, para. 124; Belgium referred to the independence enjoyed by Tibet as from 1912 and the five international agreements that Tibet concluded in this period. 832nd meeting, UN Doc. A/PV.832, para. 44; France referred to the fact that "flagrant denial of the principle of self-determination." para. 123; Netherlands: "In October 1950 Chinese forces invaded Tibet." UN Doc. A/PV.833, para.24; the delegate of India referred to "effective suzerainty over Tibet," and the "forcible uprooting" of a "society [that] has existed for hundreds and hundreds of years." UN Doc. A/PV.834, para. 67, 82; Costa Rica referred to Tibet as victim of aggression, *ibid.*, para. 195.

41 *Ibid.*, para. 16, 17. The UK delegate, while unable to support the draft resolution in view of art. 7(2) of the UN Charter, stated on the substance of the matter that there was no justification for the fact that "the Tibetans should be dragged by brutal force into the twentieth century and subjected to a materialistic form of living alien to their history and spiritual traditions." UN Doc. A/PV.834, para. 34; Ecuador maintained that "not even the most beneficent of political systems can be imposed by outside force against the will of the people, which are the masters of their own fate." *Ibid.*, para. 106.

"invasion of Tibet by foreign forces."⁴² It contended that "Tibet is not, and never has been a province of China, as the Peking regime claims, but is a separate country, which has enjoyed political independence even if at times it has been subjugated and placed in that peculiar position described by French-speaking writers as under *suzeraineté* and which we Spanish-speaking peoples call *vasallaje*."⁴³ The Pakistani delegation asserted that "[f]or hundreds of years [the Tibetan people] have pursued their traditional way of life. They have a right to choose the way in which they wish to live."⁴⁴

Similar statements were made in 1961, with several delegations also referring to the right of the Tibetan people to self-determination. The delegate of Malaya referred to the Tibetans as a distinctive people.⁴⁵ Affirming the right to self-determination of the Tibetan people was, in his view, consistent with the position the General Assembly had taken "on other issues involving colonialism, self-determination and fundamental human rights."⁴⁶

42 UN Doc. A/PV.833, 21 Oct. 1959, para. 5.

43 *Ibid.*, para. 9.

44 UN Doc. A/PV.832, 20 Oct. 1959, para. 4.

45 GAOR, Sixteenth Session, 1084th meeting, UN Doc. A/PV.1048, 19 Dec. 1961, para. 143.

46 *Ibid.*, paras. 148, 149. Malaya referred to GA res. 1514 on the granting of independence to colonial countries and the fact that the subjection of peoples to alien subjugation, domination and exploitation was contrary to the UN Charter. El Salvador likewise referred to China's 1950 invasion of "Tibet territory" and its attempt to "subjugate the population of this small Asian country." *Ibid.*, para. 152; In the same vein, the USA stated "it is our duty to consider the warlike attempts of these same Chinese Communist rulers to subjugate the traditional autonomous people of Tibet," para. 165; Ireland referred to the declaration, adopted at the 1955 Bandung Asian-African conference, which affirmed that subjecting peoples to alien subjugation is contrary to the UN Charter, and accused China of "pursuing a policy of force and intimidation, the victims of which are a small nation whose citizens stand to lose not only their individual liberties but also their very existence as a distinctive people." UN Doc. A/PV.1085, 20 Dec. 1961, para. 20; According to Thailand, to oppose the draft resolution "would be tantamount to denying to the Tibetan people the very right [of self-determination] that has been advocated for all." *Ibid.*, para. 50; Tunisia stated that the actions of the Chinese government "constitute a deliberate attempt to suppress permanently the autonomy of Tibet." *Ibid.*, para. 96.

Ireland considered the terms of GA resolution 1514 on the granting of independence to colonial countries and peoples applicable to Tibet as Tibetans constituted a people subjected to alien subjugation, domination and exploitation.⁴⁷

The 1965 debate echoed similar views. The delegate of the Philippines referred to the "heroic attempts" of the Tibetans to "resist foreign domination and to safeguard their national integrity and independence"⁴⁸ and held that "[t]he record of the Chinese communist occupation of Tibet conforms to the worst type of imperialism and colonialism, past or present."⁴⁹ He wondered

who would question the fact that the Tibetans are a separate people having their own distinct culture, language, religion, and system of government. This fact cannot be gainsaid by the circumstance that in some period of Chinese imperialist expansion, Tibet did come under some form of Chinese suzerainty. Nor can it be denied that from 1912, when the thirteenth Dalai Lama proclaimed his formal independence from China, up to 1950, when the 17-point Agreement was forced upon the Tibetans, Tibet functioned as an independent country. During this long period, Tibet maintained its own army, issued its own passports and currency, and ran its own customs, postal and telegraph services. From this it is clear that on the eve of Chinese invasion in 1950, Tibet was not under the rule of any foreign country.⁵⁰

The representative of India, now voting in favour of the third Tibet resolution, listed extensively the Chinese atrocities in Tibet and asserted that "suppression of a whole people surpasses anything that colonialists have done in the past to the peoples whom they ruled and enslaved⁵¹ [t]he naked truth is that the Chinese government is determined to obliterate the Tibetan people."⁵² Thailand maintained that "[e]ven if we overlook the views of the majority of States refuting the contention that

47 *Ibid.*, paras. 239, 241.

48 GAOR, Twentieth Session, UN doc. A/PV.1394, 14 Dec. 1965, para. 1.

49 *Ibid.*, para. 11.

50 *Ibid.*, paras. 21, 22.

51 *Ibid.*, para. 35.

52 *Ibid.*, para. 38.

Tibet is part of China, one cannot deny that there is a background of separate identity between the Tibetans and the Chinese against which one could consider the evidence of suppression of fundamental human rights."⁵³ Ireland reiterated that Tibet had historically been an independent country and that "the relatively short periods in the course of the last 2,000 years in which it was partially occupied cannot be held to constitute a denial of its right to independence."⁵⁴ For the General Assembly to ignore this would be contrary to the Charter and resolution 1514.⁵⁵ Costa Rica deemed the situation in Tibet one of neo-imperialism and called upon the UN to assist Tibet to "throw off the yoke of foreign domination" so that it could freely decide its own political future.⁵⁶ New Zealand concluded that "the Tibetan people have for centuries preserved their separate identity; their own institutions of government and their unique way of life within the borders of their own homeland. It would be difficult to conceive of circumstances in which a stronger case could be made for the exercise of self-determination."⁵⁷

53 Ibid., para. 50.

54 Ibid., para. 63. Declaring Tibet an autonomous region "rather than providing autonomy, is calculated to achieve the eventual absorption of the Tibetan people. The measure can thus be described only as a ruthless attempt to ... secure the liquidation of the people of Tibet as a distinctive race." Ibid., para. 71.

55 Ibid., para. 72; El Salvador reiterated its stand that Tibet was a country under military occupation and that "the annihilation of the Tibetan people and the complete absorption of their territory by the PRC, have been intensified." Ibid., paras. 50, 53; The USA delegate referred to the situation in Tibet having its origin in "the occupation of Tibet by the armed forces of Communist China." Ibid., para. 114. The establishment of the TAR "is designed purely and simply to camouflage the systematic eradication of Tibetan culture ... the Assembly and Council [of the TAR] were created and remained as a mere facade, not a reality. Therefore, the word 'autonomy' is a meaningless word. There is no freedom of action for the Tibetans, no freedom to reject the directives from Peiping, no freedom from the armed oppression of Chinese Communist military forces." Ibid., para. 121; Nicaragua referred to the invasion of Tibet and the aggression of a big country against a small neighbour, *ibid.*, paras. 137, 139, 142; Australia stated that "[s]ince the occupation of Tibet in 1950, the Tibetan people have been subject to domination by the armed forces of the mainland Chinese ... Peking's effort to absorb Tibet into an alien way of life is still continuing." Ibid., para. 178.

56 UN Doc. A/PV.1403, 18 Dec. 1965, para. 64.

57 UN Doc. A/PV.826, 12 Oct. 1959, para. 38.

The General Assembly debates show that the Tibet question was considered in the context of a distinct people under alien subjugation and domination entitled to exercise its legitimate right to self-determination. The debates add credence to the view that the Tibetan claim of self-determination falls within the "minimalist conception" of self-determination in international law.⁵⁸

Tibet's status as separate and distinct from China was thus not disputed, irrespective of the qualification of the historic relation between China and Tibet in terms of "*cho-yon*," a personal relationship between the Dalai Lama and the Manchu Emperor, "suzerainty" or *de facto* or *de jure* independence.

Both the Republic of China (Kuomintang) and the PRC and the Chinese Communist Party acknowledge that the Tibetans constitute a separate entity. Early CCP policy envisaged a federal Chinese Republic, one federation consisting of the Han and the Manchus, the other comprising Tibet, Mongolia and Xinjiang.⁵⁹ In these days, before Mao gained control of the CCP, resolutions recognised the principle of national self-determination, including full Tibetan power to join with China, with the Soviet Union or to be independent.⁶⁰

58 Richard Falk, "The Right to Self-Determination and International Law" in *The Question of Self-Determination: The Cases of East Timor, Tibet and Western Sahara*, Conference Report, Palais des Nations, UN, Geneva, 25-26 March 1996, 1. The minimalist conception of self-determination refers to a restrictive interpretation of the right of self-determination, as applicable to people under colonial or alien rule.

59 Manifesto of the Second National Congress of the CCP, 1922, cited in Dawa Norbu, "China's Policy towards its Minority Nationalities in the Nineties," in *China's Tibet*, vol. 27, issue 3, 1991, 220.

60 See the resolution adopted in 1931 in the Jiangsi Soviet:
The First All-China Congress of Workers', Peasants' and Soldiers' deputies declares that the Chinese Soviet Republic categorically and unconditionally recognizes the right of the national minorities to self-determination. This means that in districts like Mongolia, Tibet, Sinkiang, Yunan, Kweichow, and others, where the majority of the population belongs to non-Chinese nationalities, the toiling masses of these nationalities shall have the right to determine for themselves whether they wish to leave the Chinese Soviet Republic and create their own independent state, or whether they wish to join the Union of Soviet Republics, or form an autonomous area outside the Chinese Soviet Republic. Cited in *ibid.*, 221.

The Constitution of the Chinese Soviet Republic granted national minorities the right of self-determination, including the right to separate completely from China and form independent states.⁶¹ Mao Zedong envisaged a "free union of nationalities."⁶² The 1947 Constitution of the Republic of China stated that "the self-government system of Tibet shall be guaranteed."⁶³ The 1951 17-Point Agreement recognized the Tibetan nationality as "one of the nationalities with a long history" that at the time of signing possessed its own political system, the institutions of the Dalai Lama and Panchen Lama, its army, language and religion. Subsequent PRC Constitutions and the 1984 Regional Autonomy Law recognized the Tibetans as a separate nationality.⁶⁴ In 1980, after his fact-finding mission to Tibet, CCP General Secretary Hu Yaobang issued a six-point directive on autonomy for Tibet, defining autonomy as "having the right to decide for oneself."⁶⁵

Tibetans did not participate in the revolution that created the Republic of China. Nor did Tibetans at any time express the will to be integrated into China or consent to Tibet's formal incorporation into a Chinese state. Tibet showed a willingness to define its relations with China in the 1914 Simla Convention, "recognising that Tibet is under the suzerainty of China, and recognising also the autonomy of Outer Tibet" and guaranteeing non-interference in the administration of Outer Tibet "which shall remain in the hands of the Tibetan Government at Lhasa." China, after initialling the draft, did not sign or ratify the convention.⁶⁶

61 "General Principles of the Constitution of the Chinese Soviet Republic," adopted 7 Nov. 1931, art. 14, in Tao-Tai Hsia "People's Republic of China" in Albert P. Blaustein & Gisbert H. Flantz, eds., *Constitutions of the Countries of the World* (New York: Oceana Publications, Inc., 1992), 1.

62 Mao compared China to a United Nations in itself, "with several of its minority nationalities much larger in population and territory than some states in the U.N." Cited in Dawa Norbu, "China's Policy," 223.

63 Art. 120 1947 Constitution of the Republic of China, adopted 25 Dec. 1947 in Amos J. Peaslee, ed., *Constitutions of Nations*, Vol. I (Concord: The Rumford Press, 1950), 445 *et seq.*

64 See Chapter III, Tibet in China - Autonomy?, *supra*.

65 Cited in Dawa Norbu, "China's Policy," 231.

66 See Chapter II, A, Tibet in the Twentieth Century, *supra*. China, Tibet and Great Britain arrived at Simla as equal Parties to negotiate the Simla Convention as can be evidenced from the exchange and recognition of each other's Plenipotentiary Powers. As China did not sign nor ratify the Convention, it never became operative for China.

After the advance of Chinese forces into Eastern Tibet in 1950, and an unsuccessful appeal by the Tibetan Government to the United Nations, Tibet signed the 17-Point Agreement in 1951 at "pistol-point"⁶⁷ and agreed to "return to the big family of the Motherland- the People's Republic of China." However, this agreement was repudiated by the Dalai Lama in 1959 on the ground of subsequent breach of its provisions by China; a repudiation the ICJ considered legally justified.⁶⁸

From the Chinese invasion up to the present, all indications are that the vast majority of Tibetans have continued to oppose Chinese rule, which they consider a form of alien domination.⁶⁹

It follows that Tibetans are a people under alien subjugation or domination, entitled to the right of self-determination under international law. The Tibetan people have not yet been enabled to exercise that right.

Content of the Right of Self-determination

The right of self-determination is the right of a people to determine its own destiny by act of free choice. The right entails a political aspect granting peoples the right to "freely determine their political status" as well as economic, social and cultural aspects to "freely pursue their economic, social and cultural development."⁷⁰ The political aspect of the right has an "external" component - the act by which a people determines its future international status and liberates itself from "alien" rule - and

67 ICJ, *The Question of Tibet and the Rule of Law*, 95.

68 ICJ, *Tibet and the Chinese People's Republic*, 214.

69 On protest and demonstrations against Chinese rule, see chapters V(B)(4) and (6), *supra*, and Ronald D. Schwartz, *Circle of Protest: Political Ritual in the Tibetan Uprising* (1994). On the overwhelming responses to the delegations sent in the 1980's by the government-in-exile, see chapter 3, *supra*. This is also the view of official delegations to visit Tibet. See *Report of the Australian Human Rights Delegation to China 14-26 July 1991* (Sept. 1991), 63: Tibetans "unconnected with the government overwhelmingly opposed Chinese control of Tibet, [and] sought independence and the return of the Dalai Lama"; See also *Report on the Visit of the Swedish Human Rights Delegation to China and Tibet, 20-30 March 1994*, 42: "It was clear to us, as it had been to earlier delegations, that the Dalai Lama enjoyed the greatest respect and admiration among Tibetans in general."

70 Articles 1 ICCPR, ICESCR; GA Res. 1514 (1960).

an "internal" one - the selection of the desired system of government.⁷¹ According to a 1996 General Comment adopted by the UN Committee on the Elimination of Racial Discrimination:

In respect of the self-determination of peoples, two aspects have to be distinguished. The right to self-determination of peoples has an internal aspect, i.e. the rights of all peoples to pursue freely their economic, social and cultural development without outside interference. ... In consequence, governments are to represent the whole population without distinction as to race, colour, descent, national, or ethnic origins. The external aspect of self-determination implies that all peoples have the right to determine freely their political status and their place in the international community based upon the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination, and exploitation.⁷²

The exercise of the right of self-determination can result in a variety of outcomes ranging from the establishment of a sovereign and independent state, or the free association or integration with an independent state to the emergence into any other political status freely determined by a people.⁷³ The right to self-determination is a continuing right; where the exercise of the right to self-determination results in the establishment of an independent state the people of that state possess the right to choose their own political system.⁷⁴

The economic aspect of the right entails the right to permanent sovereignty over natural resources while the social and cultural aspects relate to the choice for a social and cultural system under which to live.⁷⁵

71 M. Pomerance, *Self-Determination in Law and Practice* (The Hague: Martinus Nijhoff, 1982) 37.

72 CERD General Recommendation XXI (48), 8 March 1996.

73 GA res. 2625; GA res. 1541 defined "self-government" in relation to a Non-Self-Governing Territories as (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State. Principle VI.

74 Gros Espiell, "*The Right to Self-Determination*," para. 114.

75 *Ibid.*, paras. 135 et seq.

The Question of Territorial Integrity

Outside the context of alien subjugation, domination and colonialism, where the right to self-determination constitutes *jus cogens*, the right of self-determination of peoples is not absolute and must be balanced against competing rights and principles, including that of territorial integrity. Resolution 2625 on "Friendly Relations" provides that the implementation of self-determination cannot result in the territorial dismemberment of states. Only by way of exception does it allow for a right of self-determination, including independence, for peoples within the territory of a state:

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to a territory without distinction as to race, creed, or colour.⁷⁶

This paragraph imposes a requirement of *legitimacy* on a government relying on territorial integrity against the claims of a constituent people for self-determination. A lack of government legitimacy may flow from the absence of formal or *de facto* representation or effective and meaningful participation in political processes.⁷⁷ Alternatively, a legal claim to self-determination, including the option of independence, by peoples within an existing State appears justified where "a State brutally violates or lacks the will or the power to protect human dignity and the most basic human rights," and in addition, "a people conscious of its own identity and settling on a common territory is discriminated against as such and if no effective remedies exist in municipal and international

76 GA res. 2625, para. 7

77 Patrick Thornberry, "The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism" in Donald Clark and Robert Williamson (eds.) *Self-Determination: International Perspectives* (London: MacMillan Press LTD, 1996).

law to adjust the situation."⁷⁸ Moreover, "if the national unity claimed and the territorial integrity invoked are merely legal fictions which cloak real colonial and alien domination, resulting from actual disregard of the principle of self-determination, the subject people or peoples are entitled to exercise, with all the consequences thereof, their right to self-determination."⁷⁹

While the Tibetans are a people under alien subjugation or domination, entitled to the absolute right of self-determination as such, even if they were not considered to be under alien subjugation, their right to self-determination would trump China's right to territorial integrity because, as this report has abundantly shown, China (at least with respect to Tibet) is not "possessed of government representing the whole people belonging to a territory without distinction as to race, creed, or colour."

The Tibetan Claim

It is obvious from the preceding chapters of this report that the Tibetans have not been provided the opportunity to freely choose their own political status. The "autonomy" which they have been accorded is more fictitious than real. Nor have they been able to freely pursue their economic, social and cultural development. Quite the contrary, Tibetans

78 Daniel Thurer, "Self-Determination" in *Encyclopedia of Public International Law*, Vol. 8 (1985), 473; Christian Tomuschat, "Self-Determination in a Post-Colonial World" in Christian Tomuschat (ed.) *Modern Law of Self-Determination* (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1993), 9-10. According to Hurst Hannum, "a state will not be considered to be representative if it formally excludes a particular group from participation in the political process, based on that group's race, creed, or color (such as South Africa or Southern Rhodesia under the Smith regime)." Hannum, "Rethinking Self-Determination" in *Virginia Journal of International Law*, vol. 34, no. 1, Fall 1993, 17. International law does not prohibit nor explicitly recognize a right to secession from a State. Pomerance, *Self-Determination in Law and Practice*, 25; M. Kirby "The Peoples' Rights to Self-Determination - A New Challenge to the ICJ," in *New Zealand Law J.*, Sept. 1993, 343; The UN Committee on the Elimination of Racial Discrimination formulated the view that "international law has not recognized a general right of peoples to unilaterally declare secession from a state." UN Doc. E/CN.4/Sub.2/404, para. 279. See also UN Doc. A/51/18 Annex VIII, General Recommendation XXI (48), 8 March 1996.

79 Gros Espiell, "The Right to Self-Determination," para. 90.

are victims of gross and systematic violations of their fundamental human rights. They are powerless to stop population transfer and the erosion of their culture. This repression challenges Tibetans' distinct identity.

The Dalai Lama and the Tibetan government-in-exile have sought to find peaceful ways to settle the question of Tibet.⁸⁰ In 1987 the Dalai Lama outlined his Five-Point Peace Plan for Tibet including the commencement of negotiations on the future status of Tibet and of relations between the Tibetan and Chinese peoples.⁸¹ In 1988, during an address to the members of the European Parliament in Strasbourg, the Dalai Lama forwarded some lines of thinking that might underlie a resolution of the Tibetan question.⁸² These points, which became known as the "Middle Way Approach," envisaged a "self-governing, democratic political entity" in the whole of Tibet "in association with the People's Republic of China." Social, economic and local affairs would be determined by the government of Tibet, while the government of the PRC "could be responsible for Tibet's foreign policy."⁸³ The Dalai Lama reaffirmed the Strasbourg formula to the ICJ.⁸⁴

With regard to the definition of Tibet for the purposes of self-determination, the Dalai Lama stated:

Whether Tibet was previously part of China or not, whether it was previously independent or not, if under present circumstances the Tibetan people want to be separate because they are ethnically, culturally and linguistically different, and are in danger of losing their identity and their culture, they have the right to exercise the right to self-determination. On

80 For these efforts, the Dalai Lama was awarded the Nobel Peace Prize in 1989 "[f]or his consistent resistance to the use of violence in his people's struggle to regain their liberty." Statement of the Norwegian Nobel Committee, 10 Dec. 1989.

81 Ibid.

82 Address to Members of the European Parliament by His Holiness the Dalai Lama, 15 June 1988, in *Government Resolutions and International Documents on Tibet* (Dharamsala: Office of Information and International Relations, 1989), 11. For fuller text, see Chapter II, J, Post-Maoist Chinese Policies in Tibet, *supra*.

83 Ibid.

84 ICJ interview with the Dalai Lama, Dec. 1996, Annex I.

that basis, the entire Tibet should be equal and share in the exercise of the right to self-determination. So the right of self-determination on that basis is the right of a people, the Tibetan people, regardless of the past and present status of Tibet. Now my position is seeking self-rule mainly in order to overcome the danger of extinction of Tibetan culture. So, therefore, when I talk about self-rule I am talking of the whole of Tibet, the six million Tibetan people.⁸⁵

Modes of Exercising the Right of Self-Determination

Whatever the outcome of the exercise of self-determination, the essence of the implementation of the right is that it should have come about as a result of a free and genuine choice of the peoples concerned. As the International Court of Justice stated in the *Western Sahara* case, "the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned."⁸⁶ According to Gros Espiell, self-determination "means that the will of the people must be expressed through popular consultation accompanied by all the safeguards necessary to ensure freedom of expression for the people concerned."⁸⁷

"The classical *means* to ascertain this desire [in respect to self-determination] is the holding of a referendum under conditions ensuring a free decision."⁸⁸ However, the conducting of a fair referendum raises

85 Ibid.

86 *Western Sahara* case, *ICJ Reports* 1975, para. 55.

87 Gros Espiell, "*The Right to Self-Determination*," para. 65.

88 Nowak, *CCPR Commentary*, 22 (emphasis in original). Gros Espiell, para. 65, warned that "[a] people under colonial and alien domination is unable to express its will freely in a consultation, plebiscite or referendum organized and controlled exclusively by the colonial and alien power. Only when it is really and genuinely free is the expression of a people's will capable of determining the politico-international status of the people in question." Article 21(3) of the UDHR states that "the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." See also HRC, General Comment No. 25 (57), 12 July 1996, recognizing the relation between the right of self-determination and article 25 of the ICCPR on political participation.

crucial questions as to who belongs to the population of a territory participating in the consultation exercise, and the critical date from which to determine the population. What significance should be given to movement of populations and the implantation of settlers by the dominant power, in the recent and more remote past? How can a legitimate consultation of the wishes of a people be reconciled with respecting the rights of an alien settler population that may outnumber the original population of the territory?⁸⁹ What has recent state practice been in similar cases?

The case of the Western Sahara provides the most relevant example. Decolonization there remains to be completed on the basis of the exercise of self-determination by the Saharawi people.⁹⁰ In 1985 the General Assembly urged the holding of a referendum in the former Spanish colony which had been occupied by Morocco after Spain's departure.⁹¹ Subsequent peace proposals laid down the conditions for the organisation of "a fair and impartial referendum, without military or administrative constraints," in the exercise of the people of Western Sahara's right to self-determination, to be organised and supervised by the UN in collaboration with the Organisation of African Unity.⁹² The Security Council established the UN Mission for the Referendum in Western Sahara (MINURSO) for the purpose of organising the referendum, which would allow the Saharawi people to choose "freely and democratically" between independence and integration with Morocco.⁹³ The Settlement Plan stipulated that the electoral roll should be established on the basis of the Spanish census of 1974,⁹⁴ stating that

89 Pomerance, 29.

90 GA res. 2229 (XXI); 2354 (XXII); 2428 (XXIII), 2983 (XXVII); 3162 (XXVIII), reiterating the "attachment to the principle of self-determination and its concern to see that principle applied with a framework that will guarantee the inhabitants of the Sahara under Spanish domination free and authentic expressions of their wishes, in accordance with the relevant UN resolutions on the subject."

91 GA res. 40/50 (1985).

92 UN Doc. 21360, 18 June 1990, paras. 1,5.

93 Ibid., para. 1, 31; UNGA res. 690, 29 April 1991.

94 This census preceded the "Green March," moving in several thousand Moroccans and subsequent transfers of Moroccan population into the territory of Western Sahara. UN Doc. S/21360, para. 61.

"all Saharawis 18 years old or more, that are included in the 1974 Spanish census will have the right to vote."⁹⁵ Under the Plan, an Identification Commission was established "to review carefully the census taken in the Territory in 1974 by the Spanish authorities and update it" and "calculate the real growth of the Saharan population in the period between the date of the above census and the date of organization of the referendum, taking into account ... births and deaths [and]... movement of the Saharan population."⁹⁶ All Saharan refugees counted in the census would be able to return to the Territory to participate in the referendum.⁹⁷ Absence from the Territory does not preclude members of indigenous Saharan tribes from participating in the referendum while at the same time, a "solid and demonstrable" link with the Territory was deemed necessary.⁹⁸ However, the referendum, scheduled for January 1992, has been delayed due to disagreement over the identification of those eligible to vote and renewed transfer of Moroccan citizens into the territory of the Western Sahara.⁹⁹

95 UN Doc. S/21360, para. 24. In December 1991, the voter eligibility criteria were altered to reflect a number of principles. Persons eligible to vote included: 1. Persons whose names are included in the revised 1974 census; 2. Persons, after presentation of an individual application, who lived in the Territory as members of a Saharan tribe at the time of the 1974 census, but have not been counted for in the census; 3. Members of immediate families of these two first groups (father, mother, children); 4. Persons of Saharan father born in the Territory; 5. Persons, members of Saharan tribes belonging to the Territory, who have resided 6 consecutive years or an intermittent time cumulative of a total of 12 years before 1 December, 1974. UN Doc. S/23299, 19 Dec. 1991.

96 *Ibid.*, paras. 25, 27.

97 *Ibid.*, para. 33(c).

98 *Ibid.*, paras. 27, 28. In 1993, the Secretary-General forwarded a Compromise Proposal, interpreting these voting criteria. Secretary General Compromise Proposal, UN Doc. S/26185, 28 July 1993; Up to December 1995, when its work was halted, the Identification Commission was able to identify and register 62,000 persons. The Spanish census for 1974 indicated 74,902 inhabitants in Western Sahara in 1974, 61,000 of whom are still alive. Out of a total of 242,000 applications submitted to the Identification Commission, 181,000 have been presented by Morocco, 100,000 of whom reside in Morocco. Polisario Front, *Memorandum to the UN Member States on the Peace process in Western Sahara*, May 1996.

99 UN Doc. A/51/1, 20 August 1996, para. 1036.

Thus the UN's basis for determining the people entitled to their exercise of self-determination was the indigenous population of the territory at the time it was still a Spanish colony, *before* the occupation by Morocco and subsequent population transfer. According to the letter and spirit of the various plans, the refugee population currently living outside the Territory has been included while the Moroccan settler population has been excluded.

Other cases are also relevant. The Anglo-Irish Agreement of 15 November 1985, although not mentioning the right to self-determination of Northern Ireland, reflects in essence the implementation of this right. The Agreement recognizes the right of the peoples of Northern Ireland to integrate and unite with the Republic of Ireland, if the majority of the population of Northern Ireland "express their consent formally" through democratic processes.¹⁰⁰

The case of Eritrea, a former Italian colony annexed in 1962 by Ethiopia in abrogation of the existing federal arrangement is also instructive.¹⁰¹ Following years of war and the collapse of the Ethiopian government in May 1991, the Provisional Government of Eritrea scheduled a referendum for 1993; the new government of Ethiopia formally recognised the right of the Eritrean people to determine their political future through an internationally supervised referendum.¹⁰² Qualified for registration by the Referendum Commission were persons over 18 years of age having Eritrean citizenship,¹⁰³ which was granted to anyone born to a father or mother of Eritrean origin, defined as "a person who was resident in Eritrea in 1933."¹⁰⁴ Eritrean nationality could also be obtained by persons who had resided in Eritrea between 1934 and 1951 "provided he has not committed anti-people acts

100 Text of the Agreement between the government of the United Kingdom of the Great Britain and Northern Ireland and the government of the Republic of Ireland in *Int'l. Legal Materials*, vol. 24, 1985, 1582.

101 *The United Nations and the Independence of Eritrea*, Department of Public Information, UN, New York, 1996, 4.

102 *Ibid.*, 18-20.

103 Art. 24, *Eritrean Referendum Proclamation*, issued 7 April 1992, Asmara, reprinted in *ibid.*, 158-169.

104 Art. 2 Proclamation No. 21/1992.

during the liberation struggle of the Eritrean people" and to persons who resided in Eritrea after 1952 who had integrated into Eritrean society.¹⁰⁵ A UN Observer Mission to Verify the Referendum in Eritrea (UNOVER) was established in January 1993.¹⁰⁶ The actual referendum was conducted on 23-25 April 1993. Voting also took place in various places outside Eritrea where Eritrean refugees resided. 99.8% of the voters (turnout 98.5%) voted for independence. Eritrea was admitted to the UN on 11 June 1993.¹⁰⁷

Even though every situation has its own unique characteristics, this brief overview of State practice in the field of implementing a people's right to self-determination, particularly the UN-sponsored exercise in Western Sahara, indicates some principles that may guide the exercise of the right in the case of Tibet. The people exercising their right to self-determination are the totality of persons with a genuine and demonstrable link to a territory and its original community. This link is of course first and foremost derived from the shared characteristics of a people as referred to above, while it can additionally be derived from an accumulation of a substantial number of years residence in the territory, affiliation with its language and culture and an intention to reside in the territory and be part of the community in the future. Refugees residing outside the territory, and their offspring, are also included.

The Dalai Lama has consistently maintained that "the final voice with regard to Tibet should be the Tibetan people."¹⁰⁸ He has emphasised that the Tibetan people must be the "ultimate deciding authority" and that any outcome of negotiations should contain a "procedural plan to ascertain the wishes of the Tibetan people in a nationwide

105 To be eligible the person must a) have entered legally and been domiciled in Eritrea for a period of ten years before 1974 or twenty years while making periodic visits abroad; b) possess high integrity and has not been convicted of any crime; c) understand and speak one of the languages of Eritrea; d) be free of mental and physical handicaps and will not become a burden to Eritrean society; e) have renounced nationality of another country; f) have decided to be permanently domiciled in Eritrea; g) not have committed anti-people acts in the liberation struggle. Art. 3, *ibid*.

106 A/RES/47/114, 16 Dec. 1992.

107 UN Doc. A/47/PV.104.

108 *Statement of His Holiness the Dalai Lama*, 10 March 1994.

Annex 5

United Nations General Assembly Resolution 2079 (XX)

18 December 1965

The General Assembly

Bearing in mind the principles relating to human rights and fundamental freedoms set forth in the Charter of the United Nations and proclaimed in the Universal Declaration of Human Rights,

Reaffirming its resolutions 1353 (XIV) of 21 October 1959 and 1723 (XVI) of 20 December 1961 on the question of Tibet,

Gravely concerned at the continued violation of the fundamental rights and freedoms of the people of Tibet and the continued suppression of their distinctive cultural and religious life, as evidenced by the exodus of refugees to the neighbouring countries,

- 1) *Deplores* the continued violation of the fundamental rights and freedoms of the people of Tibet;
- 2) *Reaffirms* that respect for the principles of the Charter of the United Nations and of the Universal Declaration of Human Rights is essential for the evolution of a peaceful world order based on the rule of law;
- 3) *Declares its conviction* that the violation of human rights and fundamental freedoms in Tibet and the suppression of the distinctive cultural and religious life of its people increase international tension and embitter relations between peoples;
- 4) *Solemnly renews* its call for the cessation of all practices which deprive the Tibetan people of the human rights and fundamental freedoms which they have always enjoyed;
- 5) *Appeals* to all States to use their best endeavors to achieve the purposes of the present resolution.

Chronology

- 630-842:** Tibetan Empire Period. Tibet achieves political unification in a confederation encompassing the entire Tibetan plateau. Tibetan Empire expands beyond the Tibetan plateau and comes into conflict with neighbouring states and empires including Tang dynasty China (618-907). In Treaty of 822 China recognizes Tibet as an independent country. Tibetan national and territorial identity is consolidated during the empire period.
- 842-1247:** Tibet is disunited but remains independent. Monastic Buddhist sects become the dominant political authorities within Tibet.
- 1247-1368:** Tibet comes under the domination of the Mongol Empire and Yuan Dynasty China (1271-1368). The Cho-Yon, or Patron-Priest relationship is established between Tibetan lamas and Mongol emperors.
- 1368-1644:** Ming Dynasty China. Tibet is free of Chinese control or administration. Tibet retains its association with independent Mongols. In 1577 Altan Khan gives the title Dalai Lama to Sonam Gyatso, who becomes the third Dalai Lama. In 1642 Tibet is unified under the Fifth Dalai Lama with the patronage of Kokonor Mongols.
- 1644-1911:** Tibet becomes a dependent state of the Manchu Empire and Qing dynasty China. Tibet acknowledges the authority of the Qing but remains a separate nation. Tibet is part of the Qing Empire but not part of China.
- 1911-1951:** Tibet achieves de facto independence. British invade Tibet in 1904. China invades eastern Tibet in 1905. Qing dynasty falls in 1912 and Tibet declares its independence. 1914 Simla Conference between British India, China and Tibet attempts to define Tibet's status. Tibet creates army and reestablishes control over parts of eastern Tibet.
- 1949:** People's Republic of China (PRC) is established. PRC threatens to "liberate" Tibet. Tibet appeals to United Nations. People's Liberation Army moves into eastern Tibet.
- 1950:** Chinese Communists invade central Tibet. Tibetan Government forced to negotiate Tibet's "peaceful liberation".
- 1951:** Tibet is incorporated in the PRC by means of the 17-Point Agreement for the Peaceful Liberation of Tibet.

- 1951-1954:** Period of coexistence between the Tibetan Government and Chinese authorities. China pursues careful policy until military, logistical and political control of Tibet is secure.
- 1954:** Roads from China to Tibet are completed. India recognizes Chinese sovereignty over Tibet in Panchshila Agreement. China begins political transformation of Tibet.
- 1955:** Inauguration of the Preparatory Committee for the Tibetan Autonomous Region (TAR) and effective dissolution of the Tibetan Government.
- 1956:** "Democratic reforms" are forcibly imposed in eastern Tibet outside the TAR, Anti-Chinese revolt begins in eastern Tibet. Dalai Lama visits India and threatens to seek asylum.
- 1957:** Chairman Mao institutes retrenchment policy in TAR, including delay in reforms and reduction of Han Chinese cadres, but "democratic reforms" and repression of revolt are continued in eastern Tibet.
- 1958:** "Great Leap Forward." Collectivization is begun in eastern Tibet, exacerbating revolt. Revolt spreads to the TAR.
- 1959:** Tibetan opposition to Chinese rule culminates in the Lhasa revolt and flight of the Dalai Lama to India. Tens of thousands of Tibetans are killed in 1956-1959 revolt, the majority in eastern Tibet. After the revolt China institutes "democratic reforms" in the TAR and repression of Tibetan resistance.
- 1959-1962:** Tens of thousands of Tibetans imprisoned. "Democratic reforms" of religious establishment leads to depopulation of monasteries, arrest of many monks and state-supervised looting of religious wealth. Great Leap famine in China and Tibet results in starvation of thousands of Tibetans especially those in prisons. By 1962 some 70,000 Tibetans have fled into exile in Nepal and India.
- 1966-76:** Great Proletarian Cultural Revolution. Tibetan monasteries and religious monuments are destroyed and Tibetan culture is repressed. Chaos of Cultural Revolution culminates in anti-Chinese Nyemo revolt of 1968-1969. Communization is begun at the beginning of the period and completed by the end. Communization and Chinese war preparations create renewed food shortages 1969-1972.
- 1976:** Death of Chairman Mao.
- 1979:** Deng Xiaoping introduces post-Maoist liberalization policy in China and Tibet.

- 1979-1984:** Sino-Tibetan dialogue on return of the Dalai Lama. Economic and cultural liberalization in Tibet produces revival of Tibetan religion, culture and nationalism. Opening of Tibet to the outside world internationalizes the Tibetan issue.
- 1984:** CCP introduces economic development policy for Tibet that greatly increases the number of Chinese in Tibet.
- 1987:** The Dalai Lama announces his Five-Point Peace Plan in Washington D.C. Demonstrations in Lhasa in Support of Dalai Lama and Tibetan independence. Dalai Lama makes Strasbourg Proposal.
- 1987-1989:** Demonstrations and riots occur continually in Lhasa in support of Tibetan independence.
- 1989:** Martial Law is declared in Tibet shortly before Tiananmen massacre in Beijing. Dalai Lama awarded Nobel Peace Prize.
- 1992:** Chinese restrict all aspects of Tibetan autonomy identified with Tibetan nationalism, including language and religion.
- 1994:** Third National Forum on Work in Tibet endorses policy of economic development, colonization, restriction of autonomy, repression of resistance and eradication of Dalai Lama's influence.
- 1995:** China chooses its own Panchen Lama in opposition to the Dalai Lama's choice. Campaign continues to eradicate the Dalai Lama's religious as well as political influence.
- 1996:** Intensive re-education drive in monasteries begins.
- 1997:** Campaign begins against aspects of Tibetan culture identified as obstacles to development.

The Comment of the Tibetan Government-in-exile

**MINISTER
Information & International Relations
Central Tibetan Administration
Dharamsala - 176215
INDIA**

Dear Mr. Dieng,

His Holiness the Dalai Lama has instructed me to thank you for forwarding a copy of the ICJ report on Tibet entitled Tibet : Human Rights and the Rule of Law to him and advised me to make our formal comments on the report.

The Tibetan Government welcomes the report, which should be seen as adding to the work already done by the ICJ in the form of its two reports published in 1959 and 1960.

Despite the great amount of work that was put into the research and writing of this report, we believe that it contains a number of mistakes or unsubstantiated statements. At times Chinese sources or statistics are used where Tibetan ones are equally available; and some Chinese sources are given a credibility they do not warrant.

The historical section of the report suffers from a lack of detail which is necessary in order to understand the complexities of Tibet's relations with its neighbours, including China. This is reflected in the report's assessment of territorial authority of the Tibetan government over Northern and Eastern portions of Tibet at various times in history. Evidence shows that the Tibetan government did exercise authority, including taxation, in most Tibetan areas which the report suggests were outside the authority of the Tibetan state. That the Tibetan state authority was in places highly decentralised and even weak, does not imply that those areas were under Chinese sovereignty.

There are a number of specific historic events that are not fully understood: The meeting of the Fifth Dalai Lama and the Manchu Emperor in 1652 is mentioned in the report, but the recognition of the Dalai Lama's sovereign status which it implied is not discussed and neither are the honorific titles which they each bestowed on the other as an important token of mutual respect. Similarly, the report relates the military interventions by Manchu imperial troops in Tibet between 1720 and 1792, but fails to mention that they mostly came to Tibet at the request of the Tibetans, not to conquer them. The Manchu emperor in fact was acting as the Patron should in a Patron-Priest relationship. Chinese officials histories claim that Tibet became a vassal of the Chinese empire in 1720. The report should have examined the concept of vassalage as it existed in the Chinese world view, by which all international relations maintained by the emperor were by definition cast in terms of overlord-vassal relations. Thus other Asian states and even European states that were not part of China with whom the Chinese or their rulers maintained relations were regarded as vassals, and often honorific titles were bestowed upon those foreign rulers by the Emperor.

In some places the report leaves out information which sheds a different light upon a situation. The author for example states that in 1750 the Manchu Amban was murdered, leading to a renewed intervention by the Manchu emperor, but leaves out the reason for the murder: the assassination by the Amban of Tibetan ruler, Gyume Namgyal. The 1792 reforms which the report states were instituted by the Qing in Tibet, and which the Chinese claim today show the sovereignty of Beijing over Tibet, were in fact presented to the Tibetan government at the time as "suggestions", not orders, which Tibetans could choose to accept or reject. Many of them were in fact not adopted by Tibetans.

The complex situation in which Tibet found itself in the first half of the twentieth century, a crucial time in Tibet's independent history, is not well analysed. The implication of the formal recognition by Britain, China and Tibet of each other's plenipotentiaries at the start of the Simla Conference as equal representatives of sovereign powers bearing no allegiance to one another is, for example, not at all referred to. Tibet entered the Simla Conference (a process which the Dalai Lama initiated, not the British as the report suggests) as a fully independent state owing no allegiance to any power, including China. This the British and Chinese governments formally recognised at the time (China albeit reluctantly). The Conference ended leaving this unchanged, since China refused to

sign the draft Simla Convention, which would have recognised a nominal suzerainty of China in exchange for full autonomy (in internal as well as international affairs) for the major part of Tibet. The Conference also ended with Britain recognising the territorial integrity of the whole of Tibet (including Kham and Amdo).

The fact that between 1911 and 1940s the Chinese President and his representatives in official communications repeatedly invited Tibet to "join" the Chinese Republic and the Dalai Lama and his government consistently refused to become the part of that state is legally of major importance. This was recognised by the international lawyers at the Conference of International Lawyers on Issues Relating to Self-Determination and Independence for Tibet, held in London from January 6-10, 1993, but is missed by the ICJ in its report. As between China and Tibet the fact that Tibet was indeed independent was clear. It was towards third parties that China maintained the fiction of some nominal authority over Tibet. That this was a fiction could not have been more convincingly demonstrated than by Tibet's neutrality during World War II, a position Tibet maintained despite strong pressure from China, Britain and the US.

China's invasion of Tibet was an aggression in violation of international law. The treaty which it forced Tibet to sign after its armies had defeated the small Tibetan army, was invalid *ab initio*, since it was procured by force and the threat of further force. Therefore, the aggression and the treaty, which was formally repudiated by the Tibetan Head of State when he could do so freely, as soon as he had fled his homeland in 1959, left the legally independent status of Tibet unchanged: Tibet became, and is still today, a state under illegal occupation.

His Holiness the Dalai Lama has stated officially on numerous occasions that as for the future, he is willing to enter into negotiations with the Chinese government about a form of association of Tibet with China that could involve a recognition of Tibet being a part of the PRC state. Ultimately, it is for the Tibetan people to decide their own destiny. Their choice could be to join China if this would be for the benefit of both parties.

The report explains China's population transfer policy and practices in clear terms. This is a policy which threatens the very existence of the Tibetans as a people and is increasingly being recognised to constitute a serious violation of international law. As for the figures of Chinese and

Tibetan population in various parts of Tibet, the ICJ relies heavily on Chinese statistics of dubious validity since China has consistently denied and tried to hide its population transfer into Tibet. Even the figures cited from the report by the Tibet Support Group UK greatly underrate the number of Chinese currently in the so-called Tibet Autonomous Region. As of today, there are 7.5 million Chinese settlers in Tibet as opposed to six million Tibetans. In addition, there are an estimated 300,000 to 500,000 Chinese troops stationed in Tibet, a figure quoted as the nearest approximation of the actual number by research institutions around the world.

It is our sincere hope that some of the concerns we have raised in this letter will find space in your published report.

T. C. Tethong
Member of Kashag

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Adama Dieng

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