

**VIOLENCE, DISCRIMINATION AND NEGLECT TOWARDS  
TIBETAN CHILDREN**

*A Report Submitted to the*

**UNITED NATIONS  
COMMITTEE ON THE RIGHTS OF THE CHILD**

*On*

**VIOLATIONS OF THE CONVENTION ON THE RIGHTS OF THE CHILD  
BY THE PEOPLE'S REPUBLIC OF CHINA  
AGAINST THE CHILDREN OF TIBET**

*Submitted By*

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## EXECUTIVE SUMMARY

This report evaluates China's compliance with the Convention on the Rights of the Child (CRC)<sup>1</sup> with respect to Tibet, in connection with Committee's review of China's Second Periodic Report.<sup>2</sup> This report focuses on the time period covered by China's Second Periodic Report (1994-1999) with reference to some more current information. It assesses the degree to which the Chinese government respects and promotes Tibetan children's human rights in three areas: arbitrary detention in inhumane conditions, torture, and other maltreatment by state actors; education; and health care and nutrition. It concludes that in all three areas, China has fallen far short of its obligations under international law, and has failed to respond to the concerns and recommendations made by this Committee in its Concluding Observations regarding China's Initial Report (CRC/C/15/Add.56; 7 June 1996).

Our report begins with an overview of the history and political status of Tibet, because the human rights violations against Tibetan children cannot be understood outside the context of Tibet's history or of the human rights abuses against the Tibetan people generally. Tibet was a sovereign state prior to the Chinese invasion in 1949. As a consequence, humanitarian law continues to apply during the entire period of the illegal occupation of Tibet. In addition, the Tibetan people have the right to self-determination, and the failure to recognize that right remains a root cause of the human rights violations against Tibetans generally and Tibetan children specifically.

We also discuss, in particular, the policies adopted by the Government of China towards the Tibetan people during the 1994 Third Forum on Work in Tibet. The impact of these policies was not fully felt at the time this Committee reviewed China's Initial Report. The Third Forum, however, including policies designed to further suppress Tibetan Buddhist culture, allegiance to the Dalai Lama and nationalist sentiment, have deeply touched Tibetan children's lives.

The report first addresses the subject of arbitrary detention of children and abuse and torture during detention. China systematically detains Tibetan children arbitrarily. The detentions are unlawful, because: (a) they are generally done by executive, rather than judicial, action; (b) they result from children's participation in activities which are protected by the CRC and other international legal instruments; and (c) the children are afforded no procedural rights or other legal protections.

China subjects Tibetan children to torture in detention. Detained children are beaten with a host of different implements, burned with hot irons, subjected to electric shocks, and tortured in various other ways. Girls have been subjected to sexual abuse. In addition, Tibetan children are detained in inhumane conditions. Detained children often do not receive sufficient food, are denied medical care, and are often not provided adequate heat, clothing, water, light, and sanitation facilities.

China subjects Tibetan children to torture and other cruel, inhuman, and degrading treatment and punishment in state-run schools. Tibetan children have been beaten, subjected to electric shocks, forced to kneel on sharp objects, locked in dark rooms for long periods of time, and burned.

The report next discusses the availability and adequacy of education for Tibetan children. China unlawfully charges fees for primary education -- fees which sometimes exceed the average per capita income in rural Tibet. Bribes and political connections often determine whether Tibetan children are admitted to primary and secondary schools, as well as whether those Tibetan children who are admitted are actually taught. Tibetan children whose parents' political opinions are disfavored by the Chinese government are discriminated against.

China devotes most of its educational funding in Tibet to the urban areas with the highest concentrations of Chinese settlers, leaving the rural areas, where eighty percent of Tibetans live, to fend for themselves. State-run educational facilities are, as a result, scarce in Tibet. But China has also been closing some monastic-affiliated and private schools that are the only alternative for rural Tibetan children to distant and poorly funded government facilities.

China discriminates against Tibetan children by making Chinese the primary medium of instruction, by imposing a political and ideological curriculum in schools, by refusing to teach Tibetan children about their own history, and by prohibiting manifestations of Tibetan cultural and religious identity.

The report finally addressed the provision of healthcare for Tibetan children. China fails to provide adequate medical care to Tibetan children. In rural areas, medical facilities are so scarce that many Tibetans cannot obtain any medical care at all. In rural and urban areas alike, Tibetans are charged exorbitant "security deposits" for medical care. As a result, infant mortality is three times as high in Tibet as in China as a whole, easily treatable diarrheal diseases are rampant, tuberculosis (for which there is an effective vaccine) is widespread, and more than half of Tibetan children suffer severe growth stunting caused by chronic malnutrition.

We conclude with recommendations for action to address these findings.

## I. INTRODUCTION

Tibet Justice Center is honored to submit this Report to the Committee on the Rights of the Child (“Committee”). Tibet Justice Center (previously named International Committee of Lawyers for Tibet) is a non-governmental organization based in Berkeley, California. Tibet Justice Center advocates self-determination for the Tibetan people through legal action and education. We promote human rights, environmental protection and a peaceful resolution to the situation in Tibet. Our Report provides additional information to facilitate the Committee’s evaluation of China’s compliance with the CRC with regard to Tibetan children. In the Report, we emphasize the special circumstances that render Tibetans particularly susceptible and sensitive to rights violations.

We urge the Committee to review the evidence of violations of Tibetan rights in the context of China’s illegal invasion of Tibet in 1949, its division of historical Tibetan territory, and China’s failure to accord the Tibetans their right to self-determination. We will, throughout this Report, also place violations of children’s rights in the contexts of violations of Tibetans’ human rights generally.

### A. Tibet's Historical Sovereignty And The Tibetan People's Right To Self-Determination

The Chinese occupation of Tibet is illegal under international law because Tibet was an independent nation when Chinese troops invaded. Extensive study by legal scholars, including the International Commission of Jurists, supports the conclusion that Tibet was a sovereign nation when it was invaded by China in 1949 and that the entry of China’s armed forces into Tibet was an act of aggression under international law.<sup>3</sup>

When we refer to Tibet, we mean the Tibetan provinces of Kham, Amdo and U-Tsang. The Chinese authorities have divided Tibet into the Tibetan Autonomous Region (“TAR”) (about 40 percent of historical Tibet) and a number of Tibetan prefectures that have been subsumed into the Chinese provinces of Sichuan, Qinghai, Yunnan and Gansu. China’s division of traditional Tibet is in itself a major international law violation. We also point out that, because China’s invasion was illegal, all provisions of humanitarian law, including those relating specifically to racial discrimination, are in force in Chinese-occupied Tibet.<sup>4</sup> The application of humanitarian law in Tibet underscores our sense of gravity of the violations carried out by China in Tibet, including the division of the Tibetan territory.

The Tibetan people also have a right to self-determination. By self-determination, we mean the collective right of a people to determine freely their own political status and to pursue their own economic, social and cultural development.<sup>5</sup> The Tibetans are a “people,” with a common history, racial and ethnic identity, distinct culture and language, definable territory and common economic ties, in terms of the right to self-determination.<sup>6</sup> Moreover, the United Nations General Assembly has not retreated from its recognition that the Tibetan people have a right to self-determination.<sup>7</sup>

China’s occupation of Tibet and its failure to honor the Tibetan people’s right to self-determination are the root cause of the violations of Tibetan children’s rights that we report on here. We recognize that the principle of self-determination is widely considered a preemptory norm of jus cogens.<sup>8</sup> Accordingly, we urge the Committee to give full legal weight to the principle of self-determination as it considers the evidence of gross violations of the Convention by China against Tibetan children.

## **B. The Third Forum On Work In Tibet**

At the time of this Committee's review of China's Initial Report, political and religious repression in Tibet had been escalating since nationalist demonstrations broke out in Lhasa in 1987. The new repressive measures reflected an accurate perception on the part of high-level Chinese Communist Party (CCP) officials of intensifying resistance to the Chinese occupation, as well as the spread of protest from urban centers like Lhasa, located in central Tibet (the former Tibetan province of Ü-Tsang) to rural and eastern Tibet (the former Tibetan provinces of Kham and Amdo). In late July 1994, the Government of China held a conference in Beijing known as the Third National Forum on Work in Tibet (Third Forum),<sup>9</sup> ostensibly to develop policies to expedite economic growth in the TAR. In fact, the Third Forum brought about “the most fundamental revision of policies on Tibet since the relaxation of hard-line Maoist policies in 1979.”<sup>10</sup>

The Third Forum led the CCP to reformulate strategies to tighten its control over Tibet and to sanction a new series of repressive policies intended to stifle the persistence of social and political dissent against China's occupation. These included, most prominently: (1) the initiation of “patriotic reeducation” campaigns in monasteries and nunneries to increase the government's control of religious activity in Tibet; (2) purges of Tibetan cadres and government employees suspected of “harboring nationalist sympathies;” (3) an aggressive campaign to discredit the Dalai Lama by means of propaganda that, for the first time, sought to undermine his continuing religious, as well as political, influence among Tibetans; (4) a policy of transferring huge numbers of Chinese settlers into Tibet; and (5) an initiative to assert greater control over the education of Tibetan children.<sup>11</sup> The impact of the Third Forum continues to this day.<sup>12</sup> In large measure, it defines the social, economic and political atmosphere in which Tibetans presently live.

Under Chinese rule, the Tibetan people have suffered violations of the full range of civil, political, economic, social and cultural rights that modern international law guarantees to all persons. Almost invariably, these violations originate in, and are symptomatic of, the Chinese government's systematic efforts to impose Chinese political, economic and social systems on the Tibetan people and to suppress any nationalist sentiment by Tibetans. Over the years, non-governmental organizations,<sup>13</sup> foreign governments<sup>14</sup> and journalists<sup>15</sup> alike have documented widespread human rights abuses against Tibetans, including torture, political imprisonment, religious repression, discrimination in employment, education and government, cultural destruction, environmental degradation and exploitation of Tibet's natural resources. Most recently, governmental policies intended to encourage mass resettlement of Chinese into Tibet have reduced Tibetans to, in the words of one recent study, “strangers in their own country.”<sup>16</sup> Lhasa, Tibet's capital, is now populated predominantly by Chinese.

For fifty years, the Government of China has adopted policies towards Tibet that have had a direct and negative impact on the lives of Tibetan children. Our report shows that these range from the — perhaps unintended — consequence of malnutrition, caused at least in part by the imposition of economic structures unfamiliar to Tibetan culture, to the increasingly blunt effort to assimilate Tibetan children through the educational system, to the cruel practices of detaining and torturing Tibetan children in order to terrorize them and other Tibetans into political and cultural allegiance to China. Indeed, China's torture of Tibetan children shows just how deeply focused its authorities remain on destroying any perceived manifestation of Tibetan nationalism.

## **C. Fact Finding Regarding Tibetan Children**

This report is based largely on a fact-finding mission Tibet Justice Center conducted in 1999. From October 29 to November 10, 1999, a team comprised of Tibet Justice Center psychologists and lawyers interviewed fifty-seven Tibetan children who now live, study and work within refugee communities in northern India. The team used a standard questionnaire developed by Tibet Justice Center in consultation with teachers, doctors and healthcare workers, as well as human rights experts. Research within Tibet would have been desirable, but the Government of China forbids all non-governmental organizations, including purely humanitarian organizations such as the International Committee of the Red Cross, from independent monitoring in Tibet.<sup>17</sup>

Interviewees represented a broad demographic cross-section of Tibetan society. Some grew up in Lhasa or other urban centers, others in rural and nomadic communities. Some lived in Ü-Tsang, the region roughly equivalent to the TAR, others in eastern Tibetan regions of Kham and Amdo now incorporated into Chinese provinces. At the time of the interviews, children ranged in age from nine to twenty-three years. This report, however, relies solely upon information obtained about their lives as children in Tibet. Tibet Justice Center followed the U.N. Convention on the Rights of the Child in defining a child as every human being below the age of eighteen.<sup>18</sup> Our study spanned the seven-year period from 1992 to 1999, with emphasis on conditions in Tibet since the Third Forum (roughly 1994 to 1999).

Tibet Justice Center also interviewed Tibetan teachers, doctors, healthcare professionals and others who regularly work with Tibetan refugee children and/or who had relevant experience inside Tibet. We supplemented these primary sources with extensive background research into the three principal areas on which this report focuses. A full copy of the report, entitled *A Generation in Peril: The Lives of Tibetan Children Under Chinese Rule* (published under our previous name, International Committee of Lawyers for Tibet), is available from Tibet Justice Center, or can be viewed and downloaded from our website ([www.tibetjustice.org](http://www.tibetjustice.org)).

## II. THE COMMITTEE'S PREVIOUS CONCERNS AND RECOMMENDATIONS

In its prior Concluding Observations (CRC/C/15/Add.56; 7 June 1996), the Committee made the following comments relevant to the issues we address here. As we will document below, China has not made progress in addressing any of these concerns.

17. The Committee remains concerned about the actual implementation of the civil rights and freedoms of children. The Committee wishes to emphasize that the implementation of the child's right to freedom of thought, conscience and religion should be ensured in the light of the holistic approach of the Convention and that limitations on the exercise of this right can only be placed in conformity with paragraph 3 of article 14 of the Convention.

19. The Committee shares the concern expressed by the State party as regards the number of children in China who still do not attend school. It is also concerned about reports that school attendance in minority areas, *including the Tibet Autonomous Region*, is lagging behind, that the 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 disadvantage *Tibetan and other minority pupils* applying to secondary and higher level schools.

20. In the framework of the exercise of the right to freedom of religion by children belonging to minorities, in the light of article 30 of the Convention, *the Committee expresses 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.

22. Additionally, the Committee remains concerned about the extent to which adequate safeguards are in place within the present system of juvenile justice in China. In this context, the Committee expresses concern with respect to the access of parents during the pre-trial detention of their children, the possibilities for the provision of legal assistance to children, the sufficiency of the time allocated for the preparation of a child's defence as well as respect for the presumption of innocence and the principle of *nullum crimen sine lege, nulla poena sine lege* as reflected in article 40, paragraph 2 (a).

40. The Committee suggests that a review be undertaken of 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 to ensure their access to higher education on an equal footing.

41. The Committee recommends that the State party seek a constructive response to the concerns expressed in paragraph 20 above.

42. The Committee concurs with the contents of the observations adopted by the Committee against Torture where the points raised are relevant to the situation of children below the age of 18. The Committee recommends that a thorough review of the legislative and administrative measures and procedures in place within the State party in relation to juvenile justice be reviewed to ensure their conformity with the principles and provisions of the Convention, notably its articles 37, 39 and 40, and other instruments relevant to the field of the administration of juvenile justice . . . .

We also note that several other treaty bodies, in the course of reviewing China's compliance, have made special note of continuing evidence of human rights violations against the Tibetan people, which are relevant here. For example, the Committee against Torture, in its Concluding Observations (A/55/44, paras. 106-145; 9 May 2000), stated:

116. The Committee is concerned about the continuing allegations of serious incidents of torture, *especially involving Tibetans* and other national minorities.

In addition, the Committee on the Elimination of Racial Discrimination, in its Concluding Observations (A/56/18, paras. 231-255; 9 August 2001), observed:

244. While noting the State party's information in this regard, some members of the Committee remain concerned with regard to the actual enjoyment of the right to freedom of religion by people belonging to national minorities in the State party, *particularly in the Muslim part of Xinjiang and in Tibet*. The Committee recalls that a distinctive religion is integral to the identity of several minorities and urges the State party to review legislation and practices that may restrict the right of persons belonging to minorities to freedom of religion.

245. While recognizing efforts made, which have resulted in an increased number of schools and a decrease of illiteracy in minority regions, the Committee is concerned about continuous reports of discrimination with regard to the right to education in minority regions, *with particular emphasis on Tibet*, and recommends that the State party

urgently ensure that children in all minority areas have the right to develop knowledge about their own language and culture as well as the Chinese, and that they are guaranteed equal opportunities, particularly with regard to access to higher education.

In addition, the Special Rapporteur on the Right to Education, in her report on her mission to China (E/CN.4/2004/45/Add.1; 21 November 2003, at page 2), made the following comments with respect to education in China:

China's law does not yet conform to the international legal framework defining the right to education. Its Constitution defines education as an individual duty, adding a "right to receive education". Freedom to impart education is not recognized, nor is teachers' freedom of association, and religious education remains prohibited. Therefore, the Special Rapporteur recommends that China's law be reviewed using the yardstick of its international human rights obligations so that human and minority rights can be integrated in education policy, law and practice.

China's international obligations include ensuring free education for all school-age children through the elimination of all financial obstacles. However, the private cost of public education precludes access to school and is the most important reason for non-attendance and school abandonment.

We request that the Committee take note, not only of its own prior observations, but those of other treaty bodies and United Nations agencies and Rapporteurs. They reveal a persistent pattern of rights violations against the Tibetan people in general, and against Tibetan children in particular. As a specific recommendation, we suggest that the Committee invite the Special Rapporteurs on Torture and on the Right To Education to participate in the review of China's Second Periodic Report.

### **III. MALTREATMENT BY STATE ACTORS: ARBITRARY DETENTION IN INHUMANE CONDITIONS, TORTURE, AND OTHER CRUEL, INHUMAN, AND DEGRADING TREATMENT AND PUNISHMENT**

#### **A. The Legal Context: Pertinent Provisions of the CRC**

A number of provisions of the CRC prohibiting discrimination, and protecting children's rights to freedom of thought, conscience, religion, expression and assembly, are relevant here. Our findings show that Tibetan children continue to be detained, and tortured or mistreated while in detention, because they have expressed allegiance to their own culture and history, or to the Dalai Lama, or because there are merely Tibetan. The CRC provides, in pertinent part:

Art. 2: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her

parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

\* \* \*

Art. 13 (1): The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

\* \* \*

Art. 14 (1): States Parties shall respect the right of the child to freedom of thought, conscience and religion.

\* \* \*

Art. 15 (1): States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

\* \* \*

Art. 24 (1): States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

\* \* \*

Art. 19 (1): States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

\* \* \*

Art. 28 (2): States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

\* \* \*

Art. 30: 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 practice his or her own religion, or to use his or her own language.

\* \* \*

Art. 32 (1): States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely

to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

In addition, the CRC contains specific provisions addressing arbitrary detention, process of law, and torture or other abuse while in detention. The CRC provides:

Art. 37: States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. . . .

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. . . .

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.<sup>19</sup>

\* \* \*

Art. 34: States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

We find that China continues to violate those provisions. Tibetan children are detained arbitrarily, often without formal charges or a hearing of any kind, let alone the assistance of counsel. Tibetan children are subjected to torture and other cruel, inhuman, or degrading treatment and punishment, including sexual abuse and forced labor, when detained, in school, and in other circumstances. And this maltreatment takes place in a context of pervasive anti-Tibetan discrimination.

## **B. China's Three-Level Detention System**

As the Tibet Information Network has explained, detention facilities in China fall into three categories:

- Prisons (Chinese: *jianyu*) and reform through labor centers (Chinese: *laogai*) hold prisoners who have been criminally sentenced through the

judicial system . . . .

- Re-education through labor centers (Chinese: *laojiao*) for prisoners sentenced administratively by officials of the Bureau of Re-education Through Labour.
- PSB [Public Security Bureau] detention centers (Chinese: *kanshousuo*) for police, procuratorial or court investigation and other non-process detention; . . . .<sup>20</sup>

The majority of detained Tibetan children are held in PSB detention centers or in the re-education through labor centre colloquially known as "Trisam". As the U.N. Working Group on Arbitrary Detention found in 1994, China's "re-education through labor" practices in Tibet constitute unlawful arbitrary detention.<sup>21</sup> Moreover, "the lack of any sentence has meant that authorities can detain citizens for indefinite periods . . . ."<sup>22</sup> "Administrative detention, which generally means detention authorized by executive, rather than judicial, authority or discretion, violates international law in nearly all cases."<sup>23</sup> Thus, "police, absent any judicial, administrative, or other official supervision, often exercise long-term authority over detainees, including most detained children," which "may enable the perpetration of torture and other abuses with greater impunity because of the lack of transparency and accountability in these facilities."<sup>24</sup> Furthermore, "because PSB detention centers are intended to serve only short-term detainees, it is less likely that they will contain adequate provision for long-term prisoners (*e.g.*, sufficient beds, protection from the cold and hygienic facilities)."<sup>25</sup> In sum, China's preference for "punish[ing] children by administrative rather than judicial sentencing"<sup>26</sup> leaves detained children, as the U.N. General Assembly has recognized, "particularly vulnerable to abuse, victimization and the violation of their rights."<sup>27</sup>

### C. Arbitrary Detention in Inhumane Conditions and Forced Labor

As mentioned above, the detention of Tibetan children is usually arbitrary, because it is done by executive, rather than judicial, action. But the arbitrariness of the detention runs deeper. Tibetan children are commonly detained for engaging in activity protected by the CRC as well as by other international instruments. Advocacy of Tibetan independence is a common cause of detention; indeed, some children have been detained merely because they were suspected of harboring "separatist" sympathies.<sup>28</sup> For example, a fourteen-year-old nun named Choekyi was detained for three years, because she had spent ten minutes participating in a demonstration in Lhasa.<sup>29</sup> Such detention violates both the children's right to freedom of expression and their right to freedom of assembly.<sup>30</sup> Children have also been detained for their religious beliefs, as in the case of a four-year-old boy who was beaten by Chinese police, because, in his view, "'in Tibet you're not supposed to recite any prayers or keep pictures of His Holiness [the Dalai Lama].'"<sup>31</sup> Such detention violates the children's right to freedom of thought, conscience, and religion.<sup>32</sup>

Tibetan children are commonly detained without due process of law. In fact, "detained children in Tibet receive *no* procedural rights. None of the children we interviewed who had been detained for 'political' activities reported receiving access to counsel, relatives or guardians of any kind prior to 'sentencing.'"<sup>33</sup> For example, an eleven-year-old boy was incarcerated in a PSB detention center for a full year, despite having "received no judicial hearing of any kind."<sup>34</sup> Likewise, a seventeen-year-old boy was held for eighteen months, even though he "was not charged, not permitted to contact a lawyer . . . not even allowed to inform his family of his detention[, and] received no hearing."<sup>35</sup> Such detention violates the children's "right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent,

independent and impartial authority . . . ."<sup>36</sup>

The conditions in which Tibetan children are detained are often appalling:

At Gutsa [the colloquial term for the PSB detention center in the Lhasa prefecture], Choekyi shared a cell with two other girls. . . . Food was meager, no bedding was provided, and items for hygiene were non-existent. Choekyi developed frostbite on her hands and feet, but police officials provided no medical treatment. . . .

\* \* \*

Children apprehended for political activities are held at the discretion of non-judicial officials in severely substandard conditions and deprived of minimal needs, such as food, heat, clothing, adequate sanitation and hygiene items. . . .

\* \* \*

Children told us that guards provided little if any food: "a little rice porridge in the morning and half a piece of bread and cabbage in the afternoon;" "breakfast was soup and tea and sometimes they had *tsampa* flour;" "one bowl of *tsampa* daily." Health conditions were also poor. Toilets usually consisted of a single bucket that the children cleaned themselves. There was no access to clean water or other hygienic facilities. Cells rarely had windows or light. Though children often became physically sick from these deplorable conditions . . . none of the children we spoke with received medical care.<sup>37</sup>

Inadequate food, heat, clothing, etc., violate the children's right to be free from "cruel, inhuman or degrading treatment or punishment."<sup>38</sup> The refusal to provide medical care additionally violates the children's right "to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health."<sup>39</sup>

"[U]pon transfer from a 'pre-sentencing' detention center to a prison or 'reeducation through labor' center, some children, like adult prisoners, must perform hard labor."<sup>40</sup> For example, Choekyi, a fourteen-year-old nun, was forced by Chinese officials at Trisam "to perform hard labor five days each week: construction, cleaning toilets and working in the fields."<sup>41</sup> Likewise, a fifteen-year-old boy was forced by Chinese officials at Trisam to "gather[] rocks for a construction project in shifts that ran from twenty-four to forty-eight hours."<sup>42</sup> Such forced labor violates the children's right "to be protected from . . . performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development."<sup>43</sup>

#### **D. Torture in Detention**

Many prior reports have documented the pervasive use of torture in Tibet.<sup>44</sup> Prior reports have also documented the use of torture against Tibetan children.<sup>45</sup> Torture of children remains a common practice in Chinese detention centers:

To obtain information and confessions, to intimidate and to punish, we

found that authorities subject very young children to beatings, whipping, burns with irons and heated metal bands, electric shocks with cattle prods, forced staring at the sun, assault by police dogs, suspension in painful positions and various forms of psychological torture, such as solitary confinement, threatening children's parents or forcing children to witness others being tortured. Virtually every child detained -- whether for political activity, attempted flight to India or otherwise -- suffered torture. Several young children were tortured merely for suspected association with others' political activities.<sup>46</sup>

Torture of children continues to be pervasive in Chinese detention centers in Tibet:

- A thirteen-year-old nun detained at Gutsa was "interrogated . . . under torture about once each week. During these sessions, [guards] beat her and applied electric cattle prods to the back of her neck."<sup>47</sup>
- A twelve-year-old boy "'had wires placed on [his] hands which made them black.'"<sup>48</sup>
- A thirteen-year-old girl was subjected to electric shocks and had cold water poured over her face.<sup>49</sup>
- When a ten-year-old boy was found attempting to escape into Nepal, "[g]uards beat his legs repeatedly with wooden sticks, joking that 'these were the legs that tried to escape and must be punished.' They also forced him to hold heated metal bands and shocked him with cattle prods."<sup>50</sup>
- A twelve-year-old girl was beaten by Chinese police "for over an hour in an effort to force her to tell them who had taught her about Tibet's freedom."<sup>51</sup>
- A thirteen-year-old girl who was detained for joining a protest "recalled that the guards asked, "'How can you think of such things at such a young age?' . . . They came to slap me, and began beating and boxing me. . . . They wanted to know who put me up to the demonstration, who took me there. I was told, "If you don't tell the truth, I'll use this [the electric cattle prod].'"<sup>52</sup>
- A sixteen-year-old girl detained for allegedly having written "independence" in her school notebook was "shocked . . . with cattle prods, burned . . . with a hot iron and threatened . . . with death over the

course of a three-day interrogation."<sup>53</sup>

- A sixteen-year-old boy was handcuffed and burned on the calf with a hot iron. "In the beginning, it really burned, but then I didn't feel much."<sup>54</sup>

One of the most disturbing aspects of the torture of Tibetan women and girls is its sexualization. Previous reports have documented that women and girls, especially nuns, have been raped and sodomized with electric batons.<sup>55</sup> There is some welcome evidence that "the incidence of rape among young children has been declining,"<sup>56</sup> but it continues to occur. For example, two teenage girls, apprehended while attempting to escape into Nepal, were raped by five Chinese police officers. One of them was first beaten with an electric baton until she could neither see nor talk. "It was only in the morning that [she] regained consciousness, and [she] was bleeding from the lower part of [her] body. [Her] friend told [her] what they had done to [her]."<sup>57</sup>

### **E. Torture and Other Cruel, Inhuman, and Degrading Treatment and Punishment in Schools**

Corporal punishment is routinely employed in primary schools in Tibet. We do not refer here to minor physical punishment used to discipline misbehaving children. Rather, we refer to the infliction of pain and injury which constitutes, at a minimum, cruel, inhuman, and degrading treatment and punishment. Some of it even rises to the level of torture.<sup>58</sup>

A study of corporal punishment in Tibetan primary schools "found that teachers beat children with sticks, bamboo staffs, whips, wires, brooms, and belts, shocked some with cattle prods, made others kneel for several hours on glass, sharp stones or rectangular iron bars, forced one child to hold ice in his hands for an hour and locked another child in a dark room for four weeks."<sup>59</sup> Beatings are the most common form of corporal punishment:

- Some students were forced to lie on a table and then struck with a broom.<sup>60</sup>
- A ten-year-old boy was kicked and beaten with a wire for tardiness and "small errors."<sup>61</sup>
- A girl under the age of twelve lost a scarf which she had been given by a teacher, who then "kicked her several times, took off her trousers and beat her so badly that she could not attend school for two days."<sup>62</sup>

Another common form of corporal punishment is being forced to kneel in various painful positions, as on glass, sharp rocks, or metal bars. For example, "[o]ne boy, under the age of ten at the time, described being forced to kneel for two to three hours on a rectangular bar with a sharp point in the middle. For a minor misbehavior, he knelt on the flat surface; for a more serious infraction, the teacher forced him to kneel on the sharp point."<sup>63</sup> Other methods of corporal punishment are also employed:

- A primary-school student failed to hold the Chinese flag at an assembly as required, whether deliberately or through inadvertence, and school authorities pricked him repeatedly with a pin and burned the area around the wounds with a stick of incense.<sup>64</sup>
- A boy under the age of thirteen was given electric shocks, imprisoned in a dark room for four weeks, and deprived of adequate food and water.<sup>65</sup>

Such treatment violates the children's right to be free of "torture or other cruel, inhuman or degrading treatment or punishment."<sup>66</sup> It is also a breach of China's obligation to "ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the [CRC]."<sup>67</sup>

## **F. Pervasive Anti-Tibetan Discrimination**

Over the years, systematic anti-Tibetan discrimination -- linguistic and religious -- by Chinese authorities in Tibet has been documented.<sup>68</sup> It is not clear whether Tibetan children are arbitrarily detained, subjected to forced labor, and tortured more commonly than are Chinese children detained for alleged "political activity." But it is clear that in Tibet, Tibetan children are far more likely to engage in, or to be suspected of engaging in, such activity than are Chinese children. Thus, the infliction of such violations of international law on Tibetan children is, at least arguably, inherently discriminatory.

Tibetan children also suffer pervasive discrimination with respect to corporal punishment in schools. In some schools attended by both Tibetan and Chinese children, corporal punishments are inflicted exclusively on the Tibetan children; in others, corporal punishments are also inflicted on Chinese children, but far more rarely and less severely than on Tibetan children.<sup>69</sup> When Tibetan children fight with Chinese children, even in self-defense, the Tibetan children are beaten, but the Chinese children are not.<sup>70</sup> Tibetan children also have less recourse than do Chinese children in cases of abusive corporal punishment, because most of the school authorities are Chinese government officials. Some children have even been threatened with retribution against their parents if they complained.<sup>71</sup>

Tibetan children are also subjected to humiliation and degrading treatment. "For example, one girl, roughly ten years old at the time, said that Chinese teachers at her primary school in Lhasa verbally harassed Tibetan students by calling them 'meh,' which she said is a terrible word in Tibetan, meaning the person does not exist. ('Meh' is a derogatory pronoun for women in colloquial Tibetan with no exact equivalent in English.) Another boy, roughly eight or nine years old at the time, recalled similar incidents at his primary school in Lhasa: '[The] Chinese teacher would call us "keh" [the male equivalent of "meh"].'"<sup>72</sup>

Finally, the most severe cases of corporal punishment -- as with the most severe cases of arbitrary detention and torture -- are inflicted for acts perceived to have political significance. For example, a boy under the age of thirteen reported that "Tibetan students in his Lhasa primary school who talked about the Dalai Lama were taken to another room and given electric shocks to the temples from an object resembling a hand radio."<sup>73</sup> Also, "in some instances Chinese school teachers would arrange for students to be driven by jeep to the police, who would themselves administer electric shocks and detain children for talking about the Dalai Lama or engaging in other acts deemed 'political.'"<sup>74</sup>

Such cooperation between primary school authorities and state police "suggests that the Chinese government's intense preoccupation with political control in Tibet extends even to young children. It also underscores a broader conclusion about the education system in Tibet to which [the] evidence points: that it is intended less to prepare Tibetan children to be productive members of a modern society than it is to secure political compliance among a resentful population."<sup>75</sup>

#### **IV. EDUCATION: IMPEDIMENTS TO ACCESS AND DISCRIMINATORY CONTENT**

##### **A. The Legal Context: Pertinent Provisions of the CRC**

The CRC provides, in pertinent part:

Art. 2: States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

\* \* \*

Art. 28 (1): States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

Art. 28 (2): States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the [CRC].

Art. 28 (3): States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the

world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Art. 29 (1): States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) 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;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of the sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

\* \* \*

Art. 30: 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 practice his or her own religion, or to use his or her own language.

China violates those provisions. Primary schools charge fees which, in many cases, exceed the average per capita income of rural Tibetans. As a result, many Tibetan children do not attend school at all. The Special Rapporteur on the Right to Education in fact reported that illiteracy among Tibetan children is 39.5%.<sup>76</sup> Some children must perform uncompensated physical labor in exchange for admission to primary school. Bribes and political connections often determine whether Tibetan children are admitted to primary and secondary schools, as well as whether, once they are admitted, they are actually taught. State-run schools are scarce in rural Tibet, where eighty percent of Tibetans live, and China has been closing some monastic-affiliated and private schools that are the only alternatives. Tibetan children are not taught in Tibetan, are indoctrinated into Chinese communist ideology, are not taught Tibetan history, and are prohibited from manifesting their Tibetan cultural and religious identity.

## **B. School Fees**

Although Chinese law prohibits primary schools from charging tuition or "school fees,"<sup>77</sup> it permits them to charge "miscellaneous fees," which effectively amount to the same thing. "In practice, Tibetan children virtually always must pay fees to attend primary school. These include charges for admission,

registration, desks, chairs, books, uniforms, fines for alleged misbehavior and extra fees to augment their teachers' salaries."<sup>78</sup> The fees range from 10 to 300 yuan per month, with most children reporting fees of 100 to 200 yuan per month.<sup>79</sup> Those are remarkable amounts, given that, according to China's own official figures, the average per capita income in rural Tibet (both the TAR and Tibetan regions incorporated into neighboring Chinese provinces) ranges from 100 to 150 yuan per month.<sup>80</sup>

In some cases, poor Tibetan families that cannot afford the fees can still send their children to school, but the children must perform physical labor, such as cleaning toilets, as the price of admission.<sup>81</sup> In other cases, however, the inability to afford the fees means that the children do not attend school at all:

- A young orphan from Kham did not attend school, because the fees -- which she believed to be 800 yuan per year plus 80 yuan for a uniform -- were far more than she could afford.<sup>82</sup>
- A young girl from Lhoka, where there are many primary schools, could not attend -- nor could her three siblings -- because their parents, poor farmers, could not afford the 2000 yuan per year in fees plus the cost of books.<sup>83</sup>
- A young nomad from western Tibet was unable to attend school until she was twelve years old, when her parents had finally saved enough money to pay the fees for her, but not for any of her several siblings.<sup>84</sup>
- A young girl from Lhasa was the only one of her parents' five children to attend school, because her parents -- a wood trader and a cloth seller -- could not afford the fees.<sup>85</sup>

The imposition of any fees for primary education, regardless of whether they are prohibitive or merely burdensome, violates China's obligation to "[m]ake primary education compulsory and available free to all . . . ."<sup>86</sup> Although an investigation by the TAR government in 1993 resulted in a central directive instructing county governments to cancel six so-called "exorbitant fees,"<sup>87</sup> the practice apparently remains widespread.<sup>88</sup>

### **C. Bribes, Political Connections, and Political Opinions**

Closely related to the fees charged for primary education are the necessities of paying bribes and/or having political connections (*guangxi*) in order to obtain that education. The fees for primary education often vary, depending on whether the child possesses a *themto* pass. *Themto* is a document or list in each local Chinese government office which authorizes the listed person to live in that area, to attend school, to receive subsidized health care, and to obtain a job. It is difficult to get *themto* for "unauthorized" children -- those born in violation of family planning rules.<sup>89</sup> But with bribes and/or political connections, the necessary *themto* pass can be acquired:

- A boy from Lhasa reported that the school fees were 500 yuan

without a *themto* pass but only 300 yuan with it; the pass, however, cost 1000 yuan and was difficult to obtain without government connections.<sup>90</sup>

- Another boy from Lhasa reported that his family had to pay additional money, beyond the 100 to 200 yuan of monthly fees, to get him admitted to school without a *themto* pass.<sup>91</sup>

Even when a *themto* pass is not at issue, admission to primary school can still require political or other connections. For example, a boy from Kham "could not attend a . . . primary school because, he said, only students with influence in the Chinese government or relatives among the school staff would be admitted. Most of these students were Chinese, though Tibetan children whose parents worked for the Chinese government could also gain admission."<sup>92</sup>

Connections play a similar role in admission to secondary schools:

- A Tibetan girl who was listed first in her class at a primary school in Kham was told that she had been chosen as one of only two students to be sent to China for higher education, but when the next school year began, she discovered that the Chinese teacher's own child, whose grades were not comparable to hers, had been sent in her place.<sup>93</sup>
- A Tibetan girl from Lhasa reported that a Chinese girl had taken her spot in secondary school, because the Chinese girl's parents had connections within the Chinese government.<sup>94</sup>

Politics also plays a role in admission to secondary schools. For example, "[a]fter a Chinese teacher told her that she had passed her exams, another Tibetan girl, the child of a family of poor farmers from the region of Ngawa, discovered that the official list neglected to include her name. She believes [that] authorities tampered with her grade because her mother is a former political prisoner."<sup>95</sup>

The practice of making admission to primary school dependent on bribes or political connections violates China's duty to "[m]ake primary education compulsory and available free to all . . ."<sup>96</sup> The practice of making admission to secondary school dependent on bribes or political connections violates China's duty to make secondary education "available and accessible to every child . . ."<sup>97</sup> And the practice of making admission to any school dependent on a parent's politics violates China's duty to "respect and ensure the rights set forth in the [CRC] to each child within [its] jurisdiction . . . irrespective of the child's or his or her parent's . . . political or other opinion . . ."<sup>98</sup>

Bribes -- in the form of money, other material goods, or uncompensated labor -- also often determine whether Tibetan students who have been admitted to primary school are actually taught, as well as whether they are mistreated:

- An eleven-year-old girl from Lhasa reported that the quality of the teaching which students received "depended on whether the students gave [the teachers] 'gifts,' usually watches or money. She explained that each day her Chinese teacher would divide the class into students who

did and those who did not give gifts. He taught the former group first. Only when they fully understood the lesson did he teach the latter group. At times, this meant [that] he did not teach them at all."<sup>99</sup>

- "A boy from Lhasa similarly told us that his teachers beat Tibetan students if their parents could not afford to give the teacher gifts. Chinese children in the same school, whose parents typically could afford gifts, received lenient treatment."<sup>100</sup>
- "Another Tibetan girl, who had initially been informed that she had passed her board exams, was later threatened with failure unless her father agreed to give the Chinese teacher two blankets as a bribe."<sup>101</sup>
- "At one girl's mixed primary school in Kham, the teachers forced Tibetan students to arrive early and stay late in order to clean the school and cook for the teachers. If they did not cooperate, she said, teachers did not punish them physically but refused to teach them."<sup>102</sup>
- "Another Tibetan girl from Lhasa said [that] she was forced to wash dishes and perform other uncompensated work for her Chinese teachers."<sup>103</sup>

Again, the practice of making whether a child is actually taught dependent on bribes, of whatever form, violates China's duty to "[m]ake primary education compulsory and available free to all . . . ." <sup>104</sup> And the practice of treating Tibetan and Chinese children differently violates China's obligation to "respect and ensure the rights set forth in the [CRC] to each child within [its] jurisdiction . . . irrespective of the child's . . . national, ethnic or social origin . . . ." <sup>105</sup>

#### **D. Lack of Public Education Facilities in Rural Tibet and the Closure of Private and Monastic Schools**

Most state primary schools that receive significant funding from China's central government are located in urban regions.<sup>106</sup> But more than eighty percent of Tibetans live in the rural regions of Tibet.<sup>107</sup> Thus, many Tibetan children do not attend school at all, because the travel distances are too great. For example, an eleven-year-old-boy and his four siblings in Kham did not attend school, because the closest one took over an hour to reach by truck. Similarly, another eleven-year-old-boy in Amdo did not attend school, in part because the nearest one was two days away by yak.

In the urban areas, however, which are increasingly populated predominantly by Chinese settlers, the situation is rather different. At least as of the early 1990s, primary-school enrollment in the Lhasa municipality stood at roughly seventy percent, whereas primary-school enrollment in rural Ngari was a mere twenty percent.<sup>108</sup>

Despite the manifest need for greater educational funding in rural Tibet, the TAR government has

chosen to devolve this burden to the impoverished local Tibetan residents. In addition to registration fees, supply costs, and payments to supplement teacher salaries, Tibetans must contribute to "a system by which the funding of schools in rural areas . . . depend[s] directly on voluntary labor and the donation of materials by local people."<sup>109</sup> The poorest Tibetan families often bear the greatest financial burden in providing their children with a basic primary education.

In addition, China has been closing some of the monastic-affiliated and private Tibetan schools that exist, even though they are often the only feasible alternatives to distant and poorly funded government educational facilities. For example, there used to be a boarding school in Lhoka, established and funded by a Tibetan *rinpoche*. At one point, the school, which was open to all, provided instruction to more than 400 boarding students and 300 day students, teaching Chinese, Tibetan, mathematics, electrician's skills, Tibetan medicine, and secretarial work. But Chinese authorities arrested the *rinpoche* for alleged political activities and closed the school, leaving the children with no alternative for their education. Two months later, many of the former students were arrested and interrogated under torture about what the *rinpoche* had been teaching. At least one student, after her release from detention, was barred from attending any school at all for three years.<sup>110</sup>

A physician in a rural village in Amdo, concerned at the number of Tibetan children without access to primary education, established a small school to teach first through third grades. He taught in Tibetan and charged no fees. But Chinese authorities would not let him continue to operate the school unless he would "teach China's political system and way of life and exclude Tibetan culture and tradition."<sup>111</sup>

In Ngaba Autonomous Prefecture in Amdo, the Kirti monastery operated a school for some 500 students. It taught, among other subjects, Tibetan, mathematics, and poetry, and apart from math class, its teachers used Tibetan as the medium of instruction. But in 1998, Chinese authorities took over administration of the school. From then on, all lessons except Tibetan language had to be taught in Chinese, all students had to purchase and wear Chinese clothing instead of their traditional monastic robes, and all teachers had to participate in a "re-education" program focused on Chinese history and culture.<sup>112</sup>

According to the two teachers who described these events, the transformation of Kirti's primary school is only one example of a new rule that the Chinese authorities are now enforcing throughout Amdo. It forbids 'individually-sponsored' schools of any kind. This includes those sponsored by foreign charities and Tibetan *rinpoches* -- two major sources of private-school funding in Tibet. [¶] It is not clear whether Chinese authorities in the TAR or in the Chinese provinces that comprise Kham have instituted a similar rule.<sup>113</sup>

The prohibition of all "individually sponsored" schools violates "the liberty of individuals and bodies to establish and direct educational institutions . . ."<sup>114</sup> And the practice of reducing rather than increasing educational opportunities for Tibetan children violates China's obligation to "[m]ake primary education compulsory and available free to all . . ."<sup>115</sup>

#### **E. Pervasive Anti-Tibetan Discrimination: The Language of Instruction, the Political and Ideological Curriculum, and the Repression of Tibetan Culture, History, and Religious Expression**

In the state-run primary schools in Tibet, the prevailing medium of instruction is Chinese. That situation has long been documented.<sup>116</sup> In 1988, rules were issued by the TAR government concerning "the study, usage and development of Tibetan language, and set[ting] the principle of using both Tibetan and Chinese languages with Tibetan as the main language."<sup>117</sup> Whether those rules were ever effectively implemented remains in dispute.<sup>118</sup> In 1997, however, China officially shifted course and announced that Chinese would be the primary medium of instruction in all state-run schools, beginning in the first grade.<sup>119</sup> That policy has largely been implemented, as demonstrated by the accounts of Tibetan children:

- One Tibetan boy in Lhasa was taught in Tibetan for the first three grades, after which Chinese became the language of instruction for all classes except Tibetan language; in 1996, however, the school began using Chinese as the primary language of instruction in all grades.<sup>120</sup>
- Another boy in Lhasa reported that four times as much emphasis was placed on Chinese as on Tibetan at his primary school.<sup>121</sup>
- Of the eight class periods per day in which a girl from Kham participated, only one -- Tibetan language itself -- was taught in Tibetan.<sup>122</sup>

"Academically, the Tibetan language appears to be regarded as an unimportant or futile subject. . . . The reason for this is readily apparent. After the first three grades, most tests -- and all state board exams -- are administered in Chinese. Furthermore, advanced Chinese language skills appear to be a prerequisite for most good jobs in Tibet."<sup>123</sup> As a result, "Tibetans are becoming illiterate in their own language but are actively encouraged to learn how to read and write Chinese."<sup>124</sup>

Beyond the core subjects taught in most primary schools -- Chinese, Tibetan, and mathematics -- much of the curriculum aims to indoctrinate Tibetan children in China's version of socialism and in the idea that Tibet is an integral part of China. Several children, for example, reported being forced to pledge allegiance to the Chinese government. National pledges are not inherently objectionable, but "[i]nternational law emphasizes . . . that children, no less than adults, must be permitted to exercise the right to freedom of speech.<sup>[125]</sup> National pledges must be voluntary."<sup>126</sup> In Tibet, they are not. A boy from Amdo reported that Tibetan children who refused to pledge that Tibet is part of China were beaten, and a child from Chamdo reported that such children were denied food and embarrassed in front of their peers.<sup>127</sup>

Primary schools generally respect and celebrate Chinese holidays. But Tibetan holidays are ignored, and celebrating them is discouraged and even banned. Primary schools that teach Chinese history devote little attention to Tibet, but such mention as there is emphasizes only the alleged benevolence that China has shown to Tibet throughout history. The severest forms of ideological education occur in monasteries and nunneries -- the only educational facilities available to some Tibetan children. A fifteen-year-old student described a "test" given on materials vilifying the Dalai Lama which students had been forced by Chinese cadres to study:

During the exams, the Chinese would surround us with guns and demand we answer the question, 'Who is the destroyer of world peace?' The right

answer would be the Dalai Lama.<sup>128</sup>

The ideological education which Tibetan children receive goes hand in hand with the complete absence of any education about Tibetan history and culture. In most primary schools, there simply is no such education offered, and attempts to offer it -- as well as expressions of Tibetan cultural identity, especially Buddhism and respect for the Dalai Lama -- are discouraged or punished:

- One boy from Lhasa learned nothing about Tibetan history other than the date of the building of the Potala.<sup>129</sup>
- A boy from Kham reported that if students wore traditional Tibetan garb to school, they and their parents would be arrested, and a girl from central Tibet reported that she had been harassed by school authorities for doing so.<sup>130</sup>
- In at least one primary school in Lhasa, teachers beat students for singing Tibetan songs.<sup>131</sup>
- Many children reported that their schools prohibited all discussion of Tibetan religion and of the Dalai Lama, and even carrying photos of him would result in severe punishment.<sup>132</sup>
- In one primary school in Amdo, attended exclusively by Tibetan children, a student was expelled for owning a copy of the Dalai Lama's autobiography.<sup>133</sup>

Pursuant to the CRC, "the education of the child shall be directed to . . . [t]he development of respect for the child's . . . own cultural identity, language and values . . ." <sup>134</sup> But in Tibet, "[b]oth at school and at home, harsh laws and regulations restrict discussion of Tibet's history, limit manifestations of Tibetan traditions and punish expressions of Tibetan religious beliefs, creating an atmosphere of pervasive hostility to the Tibetan cultural identity. . . . Primary schools in Tibet, far from permitting each Tibetan child 'to enjoy his or her own culture, to profess and practice his or her own religion, [and] to use his or her own language,' [<sup>135</sup>] accelerate the atrophy of Tibetan children's cultural identity."<sup>136</sup>

## **V. HEALTH CARE: IMPEDIMENTS TO ACCESS, DISEASE, AND MALNUTRITION**

### **A. The Legal Context: Pertinent Provisions of the CRC**

The CRC provides, in pertinent part:

Art. 2 (1): States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political

or other opinion, national, ethnic or social origin, property, disability, birth or other status.

\* \* \*

Art. 24 (1): States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

Art. 24 (2): States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; . . . .

China falls far short of these objectives.

## **B. Access to Health Care**

China claims that it "provides free medical care for all Tibetans."<sup>137</sup> In fact, however, two principal factors limit Tibetan children's true access to health care: the absence of adequate health care facilities, particularly in rural areas; and the high cost of health care even where facilities exist. (And as mentioned above, only those children with *themto* are even nominally entitled to subsidized health care; "unauthorized" children are not.)

Farmers, villagers, and nomads, in contrast to urban residents, often live in regions without adequate health care facilities. One nurse reported that in rural regions of Tibet, "no one has access [to a hospital]."<sup>138</sup> A physician who practiced medicine in parts of Kham and Amdo estimated that Tibetan villagers must walk as much as forty kilometers to reach the nearest clinic, and outside of the cities, most facilities do not have modern medical equipment.<sup>139</sup> Children report that hospital treatment was either difficult or impossible to obtain, because the hospitals were too distant:

- A girl from Kham explained that the closest hospital was a full day's journey by car, so in the event of an emergency, it would have been difficult to find someone with a vehicle to drive her there.<sup>140</sup>

- A boy who had been mauled by Chinese police dogs was taken by his father to the nearest hospital -- a two-day journey by yak.<sup>141</sup>
- A nomadic boy from Kham had been afflicted with a disease (probably chicken pox) at the age of five, but he did not receive any medical care, because his family did not have the means to take him to the closest health care facility -- a five-hour journey by vehicle.<sup>142</sup>

In addition, most district health care facilities, at least in Amdo, are administered by Chinese officials who instituted regulations to prevent Tibetan doctors from providing treatment to their patients without authorization from their Chinese superiors.<sup>143</sup> Thus, in rural areas, access to health care is a gravely serious problem. As one doctor put it, in emergencies, rural Tibetans will most likely have died before reaching an appropriate facility.<sup>144</sup>

Those Tibetans who can reach health care facilities face another major obstacle to receiving medical treatment: the substantial -- often prohibitive -- costs. Many children and health-care workers report that hospitals charge "security deposits," without which they will not treat many Tibetan patients. A former medical aide at a Chinese clinic in central Tibet reports that the security deposits range from 1000 yuan at the village level to 2000 yuan at the larger hospitals. In practice, he also reports, the Chinese hospitals generally require no (or very minimal) security deposits from Chinese patients and Tibetans who work for the Chinese government.<sup>145</sup>

In the face of such costs, many Tibetan families cannot afford necessary health care:

- One boy's family had to sell all of its possessions to pay for his mother's four months in the hospital.<sup>146</sup>
- Another boy's father had to agree to serve as a porter in a Chinese hospital in Lhasa in order to pay for the boy's mother's medical treatment.<sup>147</sup>
- A twelve-year-old girl from Kham, who said that she suffered from "eye and heart problems," was never taken to a clinic for treatment, "because the hospital is Chinese. They take too much money."<sup>148</sup>
- A nomadic boy from Kham who had injured his knee had to pay high fees for his stitches, and when his knee became infected, a hospital charged him 200 yuan for treatment; when he subsequently required treatment for a frostbite-related gash on his foot, he sewed his own stitches, because he could not afford to pay hospital fees again.<sup>149</sup>
- A girl from Kham, who said that she suffered from a "jaundice problem," had to pay 450 yuan for hospital treatment.<sup>150</sup>
- In some areas, children without *themto* are charged much higher fees -- sometimes more than double -- by state-run health care facilities.<sup>151</sup>

Many Tibetans, especially in rural areas, choose to visit traditional Tibetan physicians, rather than the largely Chinese-administered clinics and hospitals. After the Cultural Revolution subsided, traditional Tibetan medicine enjoyed a general revival,<sup>152</sup> and there are many more practitioners of traditional Tibetan medicine today than there were fifteen years ago.<sup>153</sup> Nonetheless, many Tibetan children, especially in rural areas, do not have access to vaccinations and medications.<sup>154</sup>

The failure to provide accessible health care facilities and the practice of charging large "security deposits" for medical treatment violate China's obligation to "ensure the provision of necessary medical assistance and health care to all children . . ." <sup>155</sup> The disparate treatment of Tibetan and Chinese children also violates China's obligation to "ensure the rights set forth in the [CRC] to each child within their jurisdiction . . . irrespective of the child's . . . national, ethnic or social origin . . ." <sup>156</sup>

### **C. Disease and Malnutrition Among Tibetan Children**

In 1990, the infant mortality rate among Tibetans was 92.46 per 1000 live births, roughly triple the national average for China.<sup>157</sup> The most common serious health problems for Tibetan children appear to be acute upper respiratory infections, diarrheal diseases, hepatitis, hydatid disease, and tuberculosis.

The most striking cause of child mortality in Tibet is diarrheal disease, which can be caused by parasites, tainted water, or spoiled food. One doctor noted diarrheal disease as the single greatest cause of infant mortality in rural Tibet.<sup>158</sup> Unofficial statistics blame diarrheal disease for 46% of child mortality in the TAR.<sup>159</sup> This is especially disturbing, because, as the World Health Organization has observed, to prevent most deaths caused by "diarrheal disease, there exists a simple, inexpensive and effective intervention: oral rehydration therapy."<sup>160</sup>

Another striking cause of child mortality in Tibet is tuberculosis. A former Tibetan medical aide estimated that five percent of the people of his village suffered from tuberculosis, and unofficial statistics range as high as twenty percent in some areas.<sup>161</sup> The likelihood that a child will contract tuberculosis can be greatly reduced by a simple vaccination. But according to the chief medical officer of a hospital in Dharamsala, vaccinations are rare to non-existent in rural Tibet.<sup>162</sup> And a school nurse in Dharamsala observed that most refugee Tibetan children do not arrive with a "TB mark," which indicates that the standard tuberculosis vaccination has been administered.<sup>163</sup>

Severe malnutrition is another serious health problem among Tibetan children. According to a study published in the *New England Journal of Medicine* in 2001, more than fifty-six percent of children between the ages of two and seven manifested severe growth stunting due to malnutrition.<sup>164</sup> That accords with a 1997 finding that roughly sixty percent of children in the TAR suffer growth stunting due to "chronic malnutrition during the first three years of life . . . ."<sup>165</sup>

The principal causes of malnutrition among Tibetan children are poor diet and a lack of clean water. Most children report having enough food most of the time. But mere quantity is not enough to meet children's nutritional needs. A resident physician at a health center in Dharamsala found that most refugee children arriving in India suffer from some form of malnutrition, typically vitamin and mineral deficiencies.<sup>166</sup> And a 1995 study of 557 subjects in twelve villages in the Lhasa Prefecture found that sixty-six percent had urinary iodine values indicative of severe iodine deficiency, and forty-six percent suffered from goiter.<sup>167</sup>

Most children also report having access to clean water, particularly in winter, when an abundance of snow and rain provide a clean, fresh water supply. But some report being plagued by unclean water for much of the year:

A former aide at a Chinese medical clinic in central Tibet commented that water supplies generally are not treated, leading to problems with parasites, particularly during the summer. An eleven-year-old boy from Kham said that the water in his village contained parasites, which he believed caused many people stomach problems. Another twelve-year-old nomadic boy from Kham reported that when he drank, his intestine would hurt. One twelve-year-old girl from Lhasa reported that her family's drinking water had an odor. Its source, she said, was a Chinese bathing pool at a higher elevation. This bath water would run down the pipes to the inhabitants below. She believed that wealthier residents benefited from a separate pipeline carrying clean water.<sup>168</sup>

China's policies are inadequate to "diminish infant and child mortality" and to "combat disease and malnutrition" among Tibetan children.<sup>169</sup> For example, high taxes and price-fixing cause food shortages among nomadic and farming families.<sup>170</sup> And according to China's own official statistics, in 1997, among

China's rural populations, the TAR ranked last in improved access to clean drinking water: only eighteen percent of the TAR's rural population enjoyed improved access to drinking water.<sup>171</sup>

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

### **A. Arbitrary Detention, Torture And Other Inhumane Treatment Of Children**

Arbitrary detention and torture remain widespread and systematic instruments of Chinese political repression in Tibet, even to the extent of being wielded against children. The "special environment that exists in Tibet," in particular its status as a *de facto* colony of China and the ongoing denial of the Tibetan people's right to self-determination, creates conditions that place all Tibetans, including Tibetan children, at grave risk of arbitrary detention and torture. We therefore submit the following recommendations for the Committee's consideration:

1. China should clearly prohibit, and enforce the prohibition of, the detention of all Tibetans, but especially children, for the peaceful expression of religious, political and other opinions and beliefs.
2. China should adopt and enforce clear standards for the treatment of child detainees, including but not limited to: notice of detention and access to parents or guardians; access to independent legal advice; detention in facilities separate from adult detainees; detention in sanitary and humane conditions; prompt review of any charges by an impartial judicial officer; and access to a prompt and impartial trial and right to appeal any verdict and sentence.
3. China should adopt and enforce a prohibition on all torture and inhumane treatment and punishment of child detainees.
4. China should permit the Special Rapporteur on Torture, and/or other appropriate United Nations experts, to investigate the widespread allegations of torture in Tibet, including by unrestricted visits to Tibet.
5. China should allow independent human rights monitors access to Chinese prisons and detention centers in Tibet, where they can speak privately with detainees, including child detainees, to ascertain the conditions and report on the incidence of torture.
6. China should amend its laws to incorporate explicitly the Torture Convention's definition of torture and clearly ban all forms of torture, for any reason, notwithstanding any other provision of Chinese law.
7. China should establish strict and clear rules and procedures for the investigation and prosecution of the crime of torture to ensure that all persons who commit torture are prosecuted and punished.
8. China should permit outside assistance in training its police, prison, and security officials, as well as for enhancing the legal training and sensitivity of the judiciary, regarding the rights of detainees and the special needs of child detainees.
9. China should abolish the administrative punishment of "reeducation through labor."
10. China should ban corporal punishment in schools throughout Tibet.

11. The Committee should invite the Special Rapporteur on Torture to participate in the Committee's deliberations on China's Second Periodic Report.

**B. Education**

We recommend that the Committee include as written directives to the Chinese government the following:

1. China should abolish all fees for primary schools, regardless of purpose or label, and ensure adequate financing for all compulsory education.
2. China should institute a policy to build new schools and improve existing facilities in rural parts of Tibet so that all Tibetan children have access to education. China should describe the practical steps, including sources of funds, it will take to in order to accomplish this goal.
3. China should allow the Tibetan people to control the curriculum regarding Tibetan culture and history at all educational levels. China should allow Tibetan children to learn about Tibetan culture and history. Books on these subjects should be in Tibetan. It should stress to all educators and students in Tibet that Tibetan history and culture are not inferior to Chinese history and culture.
4. China should allow freedom of expression in education. China should cease censoring teachers' expression, particularly regarding Tibetan traditions or religion. China should describe how it promotes freedom of expression in children.
5. China should immediately withdraw those policies adopted as part of the Third Forum that seek to suppress Tibetan Buddhist culture and religion, and should immediately call off all "patriotic re-education campaigns" being conducted in monasteries and nunneries all over Tibet.
6. China should permit and encourage the education and testing of Tibetan students in the Tibetan language, at all levels of education.
7. China should teach Chinese to Tibetan students as a foreign language. China should also describe how language lessons and the rest of the curricula promote the advancement of Tibetans in employment.
8. China should ensure equitable distribution of educational resources amongst students at all levels. China should describe how it plans to improve Tibetan resources to bring them up to a level comparable to resources enjoyed by Chinese students.
9. China should ensure fair requirements for entrance into higher level education institutions. China should describe the actions it has taken to prevent reliance on *guangxi* and bribes in the acceptance of students at educational institutions.
10. The Committee should invite the Special Rapporteur on the Right to Education to participate in the Committee's deliberations on China's Second Periodic Report.

**C. Health Care**

We recommend that the Committee include as written directives to the Chinese government the following:

1. China should provide equal access to health care. China should describe particularly the actions it has taken to prevent the assessment to Tibetans of special fees for medical services or medication and hospital security deposits.
2. China should describe how it intends to provide equal quality medical care to Tibetans living in rural areas, including the number and location of new medical facilities and the technology, doctors and medications they will possess.
3. China should describe those steps it is taking, and will take, to remedy the widespread malnutrition among Tibetan children.
4. China should describe those steps it is taking, and will take, to ensure that all Tibetan children have access to clean water.

#### **D. General Recommendations**

In addition to the recommendations above intended to address the specific violations of the CRC against Tibetan children, we ask the Committee to consider the following general recommendations which attempt to get at the fundamental underlying cause of these violations; that is, the denial of the Tibetan people's right to self-determination:

1. China should enter into direct negotiations without preconditions with His Holiness the Dalai Lama and the Tibetan Government in Exile to reach an amicable and peaceful solution to the Tibetan question and to protect and promote the rights of the Tibetan people.
2. In light of the unique situation of Tibet and the credible allegations of violations in all areas of human rights protections, the Committee should consider requesting the reporting bodies established under treaties to which China is a State Party to organize a special task force on Tibet.

## Notes

1. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25, 20 November 1989, entry into force 2 September 1990.

<sup>2</sup> Although China submitted its Second Periodic Report in on 27 June 2003, as of February 8, 2005, an English translation was not yet available.

<sup>4</sup> International Commission of Jurists, Tibet and the Chinese People's Republic, at pp. 5-6 (1960); International Commission of Jurists, Tibet and the Chinese People's Republic, A Report to the International Commission of Jurists by its Legal Inquiry Committee on Tibet (Geneva 1960); Tibet: The Position in International Law, Report of the Conference of International Lawyers on Issues relating to Self-Determination and Independence for Tibet, London 6-10 January, 1993 (McCorquodale, et al., eds. 1994) ("London Statement"), at p. 147; International Committee of Lawyers for Tibet, Tibet's Sovereignty and the Tibetan People's Right to Self Determination (1998).

<sup>4</sup> Under fundamental principles of humanitarian law, humanitarian law is applicable as long as an occupying power still governs, even if actual armed conflict is not still taking place. See, e.g. Article 2 Common to the Geneva Conventions I-IV of 1949.

<sup>5</sup> See, e.g. International Covenant on Civil and Political Rights, Art. 1, G.A.res. 2200 A (XXI) of 16 December 1966, entered into force 3 January 1976.

<sup>6</sup> London Statement, *supra* note 4, at pp. 145-46.

<sup>7</sup> See, e.g. G.A. Res. (XVI) of 20 December 1961: "The General Assembly, . . . solemnly renews its call for the cessations of practices which deprive the Tibetan people of their fundamental rights and freedoms, including their right to self-determination." We note that the most recent General Assembly resolution (Resolution 2079 (XX) of 1965) "affirms" resolution 1732.

<sup>8</sup> See, e.g. H Gros Espiell, Report on the Right to Self-Determination, U.N. Doc.E/CN.4/Sub.2/405/rev.1 (1980) at pp. 11-13. In particular, Rapporteur Gros Espiell states: "[N]o one can challenge the fact that in light of contemporary international realities, the principle of self-determination necessarily possesses the character of ius cogens." *Id.* at 12. International Court of Justice Judge Ammoun states: "Self-determination is a norm of ius cogens derogation from which is not permitted under any circumstances." Legal Consequences for States of the Continued Presence of South Africa in Namibia (S.W. Africa notwithstanding Security Council Resolution 276, 1971 I.C.J. 16, 89-90 (Ammoun, J., separate opinion).

<sup>9</sup> *See* TIBET INFORMATION NETWORK (TIN), HOSTILE ELEMENTS: A STUDY OF POLITICAL IMPRISONMENT IN TIBET: 1987-1998, at 5-6 (1999) [hereafter HOSTILE ELEMENTS]; TIN & HUMAN RIGHTS WATCH/ASIA, CUTTING OFF THE SERPENT'S HEAD: TIGHTENING CONTROL IN TIBET, 1994-1995 (1996) [hereafter TIN & HRW/ASIA];

<sup>10</sup> TIN & HRW/ASIA, *supra* note 9, at 1.

<sup>11</sup> *See id.* at 3-4; *see generally* TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY (TCHRD), THE NEXT GENERATION: THE STATE OF EDUCATION IN TIBET TODAY (1997) [hereafter THE NEXT GENERATION].

<sup>12</sup> *See, e.g.*, HOSTILE ELEMENTS, *supra* note 9, at 5-6; TIN News Update, Religious Crackdown Intensifies in Lhasa, Aug. 25, 2000; TIN News Update, New Religious Restrictions Threaten Tibetan Traditions, July 26, 2000; TIN News Update, Harsher Measures to Enforce Ban on Dalai Lama Birthday Celebrations, Aug. 6, 1999.

<sup>13</sup> *See, e.g.*, CHINA'S GREAT LEAP WEST, *supra* note 20 (2000) (violations of the Tibetan people's right to development); HOSTILE ELEMENTS, *supra* note 9 (political imprisonment); INTERNATIONAL COMMITTEE OF LAWYERS FOR TIBET, VIOLENCE AND DISCRIMINATION AGAINST TIBETAN WOMEN (1998) (violations of Tibetan women's rights); INTERNATIONAL COMMISSION OF JURISTS, TIBET: HUMAN RIGHTS AND THE RULE OF LAW (1997)(hereinafter ICJ) (comprehensive analysis of Tibet's human rights circumstances as of 1997); PHYSICIANS FOR HUMAN RIGHTS, STRIKING HARD: TORTURE IN TIBET (1997) (torture) [hereafter PHR, TORTURE IN TIBET]; THE NEXT GENERATION, *supra* note 11 (educational access and discrimination); UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION, "CHINA'S TIBET": THE WORLD'S LARGEST REMAINING COLONY (1997) (colonial exploitation); TIN & HRW/ASIA, *supra* note 9 (heightened political and religious repression in the wake of the Third Forum); INTERNATIONAL CAMPAIGN FOR TIBET, A SEASON TO PURGE: RELIGIOUS REPRESSION IN TIBET (1996) (religious repression) [hereafter A SEASON TO PURGE].

<sup>14</sup> *See, e.g.*, U.S. DEP'T OF STATE, COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 2000: CHINA (Tibet annex) (2001); U.S. DEP'T OF STATE, 2000 ANNUAL REPORT ON INTERNATIONAL RELIGIOUS FREEDOM: CHINA (Tibet annex) (2001).

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<sup>15</sup> For a recent journalistic account of Tibet's plight, see *Inside Tibet: A Country Tortured*, PHILADELPHIA INQUIRER, Dec. 8, 1996; see also JOHN AVEDON, IN EXILE FROM THE LAND OF SNOWS (1979).

<sup>16</sup> TIBETAN YOUTH CONGRESS, STRANGERS IN THEIR OWN COUNTRY: CHINESE POPULATION TRANSFER IN TIBET AND ITS IMPACTS (1994).

<sup>17</sup> See ICJ, *supra* note 13, at 8-9 (describing how China rebuffed the ICJ's repeated requests to visit Tibet for their study.)

<sup>18</sup> CRC, art. 1 ("For the purposes of the present Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.").

19. CRC, Arts. 2(1), 13(1), 14(1), 15(1), 19(1), 24(1), 28(2), 30, 32(1), 34, and 37.

20. Hostile Elements, *supra* note 9 at p. 67.

21. See U.N. Doc. E/CN.4/1995/31/Add.1.

22. ICJ, *supra* note 13, at p. 238.

23. International Committee of Lawyers for Tibet, *A Generation in Peril: The Lives of Tibetan Children Under Chinese Rule* (2001) (hereafter *Generation in Peril*) at p. 24 (footnote omitted).

24. *Id.* at p. 23 (both quotations) (footnote omitted).

25. *Ibid.*

26. *Hostile Elements*, *supra* n. 9, at p. 68.

27. G.A. Res. 45/113, 45 U.N. GAOR, U.N. Doc. A/RES/45/113 (1990).

28. See *Generation in Peril*, *supra* n. 23, at p. 24.

29. See *id.* at p. 25.

30. See CRC, Arts. 13(1) and 15(1).

31. *Generation in Peril*, *supra* n. 23, at p. 35 (quoting Lawyers for Tibet interview with A-7 (Oct. 31, 1999)) (brackets in *Generation in Peril*).

32. See CRC, Art. 14(1).

33. *Generation in Peril*, *supra* n. 23, at p. 26 (italics in original).

34. *Ibid.* (footnote omitted).

35. *Id.* at p. 27.

36. CRC, Art. 37(d).

37. *Generation in Peril*, *supra* n. 23, at pp. 25, 27, and 29 (footnotes omitted) (quoting Lawyers for Tibet interviews with A-9 (Nov. 1, 1999), C-2 (Nov. 6, 1999), and B-26 (Nov. 7, 1999)). *Tsampa* is roasted barley meal.

38. CRC, Art. 37(a).

39. *Id.*, Art. 24(1).

40. *Generation in Peril*, *supra* n. 23, at p. 27.

41. *Id.* at p. 25.

42. *Id.* at p. 26.

43. CRC, Art. 32(1).

44. See, e.g., *Hostile Elements*, *supra* n. 9, at pp. 82-93; ICJ, *supra* note 13, at pp. 244-254; Andrew G. Dulaney, *Resolving Claims of Self-Determination: A Proposal for Integrating Principles of International Law with Specific Application to the Tibetan People* (a Report by the International Committee of Lawyers for Tibet to the World Conference on Human Rights) (1993) (hereafter *Resolving Claims of Self-Determination*) at pp. 130-137.

45. See, e.g., *Generation in Peril*, *supra* n. 23, at pp. 33-36; Amnesty International, *Hidden Scandal, Secret Shame: Torture and Ill-Treatment of Children* at p. 41; Comm. on Human Rights, *Report of the Special Rapporteur on Torture Pursuant to Res. 1997/38*, U.N. Doc. E/CN.4/1998/38/Add.1 (1998).

46. *Generation in Peril*, *supra* n. 23, at p. 33. Such forms of torture have been repeatedly documented over the years. See, e.g., *Torture in Tibet* (a Report to the U.N. Committee Against Torture by the Tibetan Government-in-Exile) (2000) at p. 5 (footnotes, internal quotation marks, and brackets omitted):

A disturbing variety of torture techniques employed in Tibetan prisons and detention centers has been documented since 1996. Some of the most common are electric shocks delivered by cattle prods to the genitals, mouth, eyes, and other sensitive areas; beatings with metal rods, sticks, pistols or rifle butts, plastic hoses filled with sand, and pieces of furniture; exposure to extreme heat or cold; and aerial suspension or restraint by rope in painful positions. Other documented torture techniques include starvation, forcing victims to stare at the sun for prolonged periods, attacks by ferocious trained dogs, and sexual assaults, as

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well as psychological tortures, such as mock executions, forcing victims to witness others being tortured, urinating in victims' mouths, prolonged solitary confinement, and death threats.

*See also* International Association of Educators for World Peace (1989), U.N. Doc. E/CN.4/Sub.2/1989/NGO/11 at p. 3, ¶¶ 8-12 (collecting seventy-seven first-hand reports from Tibetans tortured in Chinese detention centers in 1987 and 1988):

They were routinely beaten at the time of detention, during interrogation sessions and at other times, with wooden clubs (sometimes with protruding nails), iron bars, pistol butts, tin mugs, ropes, chairs, leather straps and other objects.

\* \* \*

Most prisoners also report being tortured with electric batons (also referred to as cattle prods). . . . In most cases, the batons were applied to the soles of the prisoner's feet, to the stomach, chest, neck, mouth and even the eyes. Women prisoners, particularly young nuns, have been stripped naked and had the electric batons forced into their vagina[s].

\* \* \*

Sometimes the prisoner is hung from his arms tied behind his back: the "airplane", very common all over China during the cultural revolution. Several detainees report dislocated shoulders from this practice.

\* \* \*

A number of prisoners have been made to stand or lie on ice in cold water for extended periods of time; others have been forced to inhale the smoke from burning garbage or forced to eat human excrement.

Some report burning cigarettes["] being applied to the prisoner's body or boiling water["s] being poured over the body or in the mouth.

\* \* \*

Other forms of torture such as setting hungry dogs on naked female prisoners and various forms of sexual abuse are also reported. Some prisoners state that they were given injections which caused partial paralysis.

*See also Resolving Claims of Self-Determination, supra* n. 44, at pp. 131- 136 (exhaustively compiling incidents of torture as reported in Amnesty International, *People's Republic of China: Repression in Tibet 1987-1992* (1992); Amnesty International, *People's Republic of China: Amnesty International's Concerns in Tibet* (1991); Asia Watch, *Violations of Political and Civil Liberties in Tibet in 1991* (1992); International Committee of Lawyers for Tibet, *The Right of the Tibetan People to Self-Determination: A Preliminary Report* (1991); International League for Human Rights, *Submission Pursuant to Resolution 1991/10 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities*; LAWASIA and Tibet Information Network, *Defying the Dragon: China and Human Rights in Tibet* (1991); Office of the Representative of His Holiness of the Dalai Lama, *Human Rights in Tibet Today* (1992); Tibet Information Network, *Reports from Tibet: March - September 1992* (1992); and United States House of Representatives, Congressional Human Rights Caucus, *Letter to Premier Li Peng Zongli* (1992).

47. *Generation in Peril, supra* n. 23, at p. 33.

48. *Id.* at p. 34 (quoting Lawyers for Tibet interview with C-2 (Nov. 6, 1999)).

49. *See ibid.*

50. *Ibid.* (footnote omitted) (quoting Lawyers for Tibet interview with B-25 (Nov. 9, 1999)).

51. *Ibid.* (footnote omitted).

52. *Ibid.* (footnote omitted) (quoting Lawyers for Tibet interview with C-8 (Nov. 4, 1999)) (brackets and ellipses in *Generation in Peril*).

53. *Id.* at p. 35.

54. *Id.* at p. 33 (quoting Lawyers for Tibet interview with G-1 (Nov. 9, 1999)).

55. *See, e.g.*, International Association of Educators for World Peace (1989), U.N. Doc.

E/CN.4/Sub.2/1989/NGO/11 at p. 3, ¶9 ("Women prisoners, particularly young nuns, have been stripped naked and had the electric batons forced into their vagina[s]."); Amnesty International, *People's Republic of China: Repression in Tibet 1987-1992* (1992) at p. 40 (twenty-three-year-old nun and her companions, detained at Gutsa, "were raped with electric cattle prods"); *id.* at p. 42 (twenty-four-year-old woman "received electrical shocks from an electric police baton" and "indicated that the baton had been introduced into her vagina"); International Committee of Lawyers for Tibet, *The Right of the Tibetan People to Self-Determination: A Preliminary Report* (1991) at p. 12

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("two nuns in Gutsa prison had first rubber balls, then electric batons forced into their vaginas"); International League for Human Rights, *Submission Pursuant to Resolution 1991/10 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities* ("nuns have frequently . . . had electric batons inserted into their vaginas and/or rectums"); LAWASIA and Tibet Information Network, *Defying the Dragon: China and Human Rights in Tibet* (1991) at pp. 50-51 (when twenty-one-year-old nun was incarcerated at Gutsa, guards "inserted the electric truncheons in [her] vagina, rectum and mouth").

56. *Generation in Peril*, *supra* n. 23, at p. 36 (citing Lawyers for Tibet interview with Kelsang Phuntsok, Health and Education Project Officer of the Tibetan Government-in-Exile (Aug. 1999)).

57. *Id.* at p. 36 (footnote omitted) (quoting Tibet Information Network News Update, *Tibetan Girls Raped By Police* (Feb. 16, 1999)).

58. The distinction between torture and other cruel, inhuman, or degrading treatment or punishment "derives principally from a difference in the intensity of the suffering inflicted." (*Tyrer v. United Kingdom*, 26 Eur. Ct. H.R. (ser. A) at 167.) "Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment." (G.A. Res. 34352, Art. 1(2), U.N. GAOR, 30th Sess., Supp. No. 34, at p. 91, U.N. Doc. A/10408 (1975).) Regardless of whether the corporal punishments described here are sufficiently aggravated to rise to the level of torture, they are -- by virtue of constituting cruel, inhuman, or degrading treatment or punishment -- violations of international law.

59. *Generation in Peril*, *supra* n. 23, at p. 37.

60. *See id.* at p. 38.

61. *Ibid.* (quoting Lawyers for Tibet interview with A-4 (Oct. 30, 1999)).

62. *Ibid.*

63. *Id.* at p. 40.

64. *See ibid.*

65. *See ibid.*

66. CRC, Art. 37(a).

67. *Id.*, Art. 28(2).

68. *See, e.g., Resolving Claims of Self-Determination*, *supra* n. 44, at pp. 79-88; International Campaign for Tibet, *The Long March: Results of a Fact Finding Mission in Tibet* (1991) at pp. 14, 17-18, and 24; Felix Ermacora and Wolfgang Benedek, *Austrian Delegation of Legal Experts to China/Tibet, July 1992: Conclusions and Recommendations* (1992) at ¶¶ 13-14 and 19-20; Human Rights Advocates, *The Situation in Tibet: A Survey of Current Human Rights Violations, Including Denial of the Right to Self-Determination* (1992) at pp. 5-6; United States Senate, Foreign Relations Committee, Memorandum, *Hearing on "US and Chinese Policies Toward Occupied Tibet* (1992) at p. 9; Chimi Thonden, *Population Transfer Into Tibet* (1992) at pp. 2-3; John Ackerly and Blake Kerr, "Torture and Imprisonment in Tibet," in Petra K. Kelly, Gert Bastian, and Pat Aiello, eds., *The Anguish of Tibet* (1991) at p. 126 n. 1; International Campaign for Tibet, *Forbidden Freedoms: Beijing's Control of Religion in Tibet* (1990) at pp. 19-30, 50-51, 59, and 66-67; LAWASIA and Tibet Information Network, *Defying the Dragon: China and Human Rights in Tibet* (1991) at pp. 8-9, 11-12, and 14; International Committee of Lawyers for Tibet, *The Right of the Tibetan People to Self-Determination: A Preliminary Report* (1991) at p. 8.

69. *See Generation in Peril*, *supra* n. 23, at p. 39.

70. *See ibid.*

71. *See id.* at p. 40.

72. *Id.* at p. 39 (brackets in original; footnotes omitted) (quoting Lawyers for Tibet interviews with B-9 (Nov. 1, 1999) and B-12 (Nov. 6, 1999)).

73. *Id.* at p. 40.

74. *Ibid.*

75. *Id.* at p. 41.

<sup>76</sup> E/CN.4/2004/45/Add.1, at para. 36.

77. *See* Catriona Bass, *Education in Tibet* (1998) at p. 67.

78. *Generation in Peril*, *supra* n. 23, at p. 49.

79. *See ibid.*

80. *See 1999 China Statistical Yearbook* (1200 to 1800 yuan per year).

81. *See Generation in Peril*, *supra* n. 23, at p. 50.

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82. *See ibid.*
  83. *See ibid.*
  84. *See ibid.*
  85. *See id.* at p. 42.
  86. CRC, Art. 28(1)(a).
  87. *See Education in Tibet, supra* n. 77, at pp. 123-124.
  88. *See id.* at p. 124; *Next Generation, supra* note 11, at pp. 15-18.
  89. *See Generation in Peril, supra* n. 23, at p. 50.
  90. *See ibid.*
  91. *See id.* at pp. 50-51.
  92. *Id.* at p. 57 (footnote omitted).
  93. *See id.* at p. 58.
  94. *See id.* at p. 59.
  95. *Id.* at pp. 58-59 (footnote omitted).
  96. CRC, Art. 28(1)(a).
  97. *Id.*, Art. 28(1)(b).
  98. *Id.*, Art. 2(1).
  99. *Generation in Peril, supra* n. 23, at pp. 42-43.
  100. *Id.* at p. 58 (footnote omitted).
  101. *Ibid.* (footnote omitted).
  102. *Ibid.* (footnote omitted).
  103. *Ibid.* (footnote omitted).
  104. CRC, Art. 28(1)(a).
  105. *Id.*, Art. 2(1).
  106. *See Education in Tibet, supra* n. 77, at p. 116.
  107. *See Generation in Peril, supra* n. 23, at p. 52.
  108. *See Education in Tibet, supra*, n. 77, at p. 77.
  109. *Id.* at p. 119.
  110. *See Generation in Peril, supra* n. 23, at p. 54.
  111. *Ibid.* (quoting Lawyers for Tibet interview with physician from Amdo (Aug. 1999)).
  112. *See id.* at pp. 55-56.
  113. *Id.* at p. 56 (footnote omitted).
  114. CRC, Art. 29(2).
  115. *Id.*, Art. 28(1)(a).
  116. *See Resolving Claims of Self-Determination, supra* n. 44, at pp. 79-80; *Beijing Review*, 7-13 December 1987 (quoted in U.N. Doc. E/CN.4/1990/NGO/9 at p. 3 ¶ 10) (admitting that there was no education in Tibetan beyond elementary school).
  117. *Reply of the Permanent Representative of China to the United Nations Office at Geneva*, U.N. Doc. E/CN.4/1992/37 (1992) at pp. 15-16.
  118. *See, e.g.*, International Campaign for Tibet, *The Long March: Results of a Fact Finding Mission in Tibet* (1991) at p. 14 (schools are conducted in Chinese, primary schools do not teach Tibetan language, and Tibetans must choose between English and Tibetan as a second language in secondary school); Felix Ermacora and Wolfgang Benedek, *Austrian Delegation of Legal Experts to China/Tibet, July 1992: Conclusions and Recommendations* (1992) at ¶ 19 (Tibetans are *de facto* disadvantaged by linguistic discrimination in education).
  119. *See* Tibet Information Network, News Update, *Policy Shift in Teaching in Tibet* (rev. ed. 1998).
  120. *See Generation in Peril, supra* n. 23, at p. 62.
  121. *See ibid.*
  122. *See ibid.*
  123. *Id.* at p. 63 (footnote omitted).
  124. International Campaign for Tibet, *The Long March: Results of a Fact Finding Mission in Tibet* (1991) at p. 14; *see also id.* at p. 18: "Th[e] universal use of Chinese in offices, businesses, government and universities has rendered the written Tibetan language virtually useless even in areas where the Tibetans remain a majority of the

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population. At this rate, Tibetan is fast becoming a quaint, folk language . . . read and written only by an insignificant percentage of the Tibetan population."

125. See CRC, Art. 13(1).

126. *Generation in Peril*, supra n. 23, at p. 64.

127. See *ibid.*

128. *Id.* at p. 65 (quoting Lawyers for Tibet interview with A-9 (Nov. 1, 1999)).

129. See *id.* at p. 66.

130. See *id.* at p. 67.

131. See *ibid.*

132. See *ibid.*

133. See *ibid.*

134. CRC, Art. 29(1).

135. *Id.*, Art. 30.

136. *Generation in Peril*, supra n. 23, at p. 68.

137. Information Office of the State Council of the People's Republic of China, *Tibet -- Its Ownership and Human Rights Situation* (1992).

138. *Generation in Peril*, supra n. 23, at p. 79 (quoting Lawyers for Tibet interview with Dechen Tsomo (Aug. 1999)) (brackets in *Generation in Peril*).

139. See *ibid.*

140. See *id.* at p. 80.

141. See *ibid.*

142. See *ibid.*

143. See *id.* at p. 81.

144. See *id.* at p. 79.

145. See *id.* at p. 81.

146. See *ibid.*

147. See *ibid.*

148. *Id.* at p. 82 (both quotations) (footnote omitted) (quoting Lawyers for Tibet interview with A-2 (Oct. 29, 1999)).

149. See *ibid.*

150. See *ibid.*

151. See *ibid.*

152. See ICJ, supra note 13, at p. 226.

153. See *Generation in Peril*, supra n. 23, at p. 84.

154. See *id.* at pp. 84-87.

155. CRC, Art. 24(2)(b).

156. *Id.*, Art. 2(1).

157. See ICJ, supra note 13, at p. 229 (citing Jin Yangsung, et al., *A Study on Patterns in the Average Life Expectancies and Mortality Rates of 56 Nationalities in China in 1990*, 6 Chinese Journal of Population Science 263, 268 (1994)).

158. See *Generation in Peril*, supra n. 23, at p. 88 (citing Lawyers for Tibet interview with Tsetan Dorji Sadutshang, M.D. (Aug. 1999)).

159. See *ibid.*

160. World Health Organization, *World Health Report 1999: Making a Difference* (1999) at p. 20.

161. See *Generation in Peril*, supra n. 23, at p. 88.

162. See *id.* at p. 85.

163. See *ibid.*

164. See *Nutritional and Health Status of Tibetan Children Living at High Altitudes*, 344 N. Engl. J. Med. 341 (2001).

165. ICJ, supra note 13, at p. 228.

166. See *Generation in Peril*, supra n. 23, at p. 93 (citing Lawyers for Tibet interview with Dorji Damdul, M.D., physician at TCV, Dharamsala (Aug. 1999)).

167. See Rodrigo Moreno-Reyes, M.D., et al., *Kashin-Beck Osteoarthropathy in Rural Tibet in Relation to Selenium*

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*and Iodine Status*, N. Engl. J. Med. (Oct. 15, 1998) at pp. 1113-1114.

168. *Generation in Peril*, *supra* n. 23, at p. 95 (footnotes omitted).

169. CRC, Art.24(2)(a) and (c).

170. *See Generation in Peril*, *supra* n. 23, at pp. 93-94.

171. *See* People's Republic of China, *Year Book of Health in the People's Republic of China* (1998).