

Parallel Report Submitted to the
UN Committee on Economic, Social and Cultural Rights
(CESCR)
for Consideration of the Report on China
Concerning the Rights of the Tibetan People

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I. EXECUTIVE SUMMARY

1. Since China's last review under the Covenant for Economic, Social and Cultural Rights ("Covenant") in May 2005, conditions for Tibetans have worsened in all dimensions of rights enshrined in the Covenant. Most strikingly, since February 2009 more than 113 Tibetans – young and old, monastic and lay, men and women, across all Tibetan regions – have self-immolated. Virtually all self-immolators who have left behind a final statement have called for His Holiness the Dalai Lama to return to Tibet and for basic rights and freedoms, including the rights to practice their own religion, "learn their mother tongue, wear Tibetan clothes and be united."¹ These acts of self-immolation are only the most recent response to more than a half-century of the denial of the right to self-determination, the right to participate in cultural life, and indeed all rights enshrined in the Covenant.
2. The denial of economic, social and cultural rights to the Tibetan people has been compounded over the reporting period by the continued implementation of China's 'Western Development Strategy' in Tibet over the past 13 years, as well as severe policy restrictions on Tibetans' ability to enjoy a cultural life, particularly since March 2008, as a reaction to cultural forms being perceived as political dissent against the State of China. These rights violations feed into a cycle of repression – they have and will continue to spark public protest, including self-immolations, which in turn leads to government crackdowns and severe violations of Tibetans' civil and political rights, thus perpetuating the ongoing crisis situation in Tibet. Rather than look to the economic, social and cultural root causes of so-called Tibetan "unrest", China has consistently responded by seeking to increase its control over all aspects of Tibetans' lives, including religious and cultural expression, economic livelihood, education, and language.
3. This submission explains how the Tibetan people's current inability to exercise the right to self-determination (CESCR, Article 1) creates a context in which Tibetans are more vulnerable to social discrimination (CESCR, Article 2) and significantly hinders their ability to access all economic, social, and cultural rights – a situation compounded by blatant discrimination against Tibetans in education, employment, and otherwise. Hence violations of Articles 1 and 2 create the conditions in which Tibetans suffer further violations of their rights to work (Article 6), to an adequate standard of living (Article 11), to health (Article 12), to education (Article 13), and to cultural life (Article 15). Full enjoyment of these rights requires respect for the Tibetan people's fundamental right to self-determination.
4. In reference to **Article 1**, it is noted that over 113 Tibetans have self-immolated in protest against their treatment under Chinese rule. Many of those who spoke or left letters have referred directly to their absence of self-determination — or to religious repression — as the reason for these tragic acts. The Chinese occupation of Tibet in 1950 is highlighted because it violated the U.N. Charter and because it reinforces the Tibetan people's right to genuine self-determination under Article 1.1 of the Covenant. Since China assumed political control over Tibet in 1950, following occupation by the People's Liberation Army, it has persistently denied the Tibetan people the rights established in Article 1.1. ***We therefore recommend that China take concrete steps to enable the Tibetan people to exercise their right to self-determination – in both an overarching***

¹ Oiwan Lam, *China: Last Words of 19 Tibetans Who Committed Self-Immolation*, GLOBAL VOICES (Nov. 23, 2012) (quoting Nyankar Tashi, 24, who self-immolated on 24 November 2012, in Tongren County, Qinghai Province).

sense and in day-to-day respect for and fulfillment of their economic, social, and cultural rights.

5. Tibetans' lack of sovereignty over the land on which they live, and its resources, violates **Article 1.2** of the Covenant. The 'Western Development Strategy', which includes forcible resettlement of nomadic Tibetan families, is evidence of China's disregard for Tibetans' rights under Article 1.2. We also note the Special Rapporteur on Food's comments that the rights of Tibetan nomads to their traditional way of life should be respected and their forcible removal halted immediately.
6. China violates **Article 2** on non-discrimination through policies and practices that have made Tibetans second-class citizens in their own land, in part through the planned and incentivized influx of Han settlers into Tibet and in part through the commonly perpetuated Han perception of Tibetans as "backwards". These dynamics have exacerbated discrimination against Tibetans in terms of access to culturally appropriate healthcare, education, and employment. China disproportionately detains and punishes Tibetans, and it metes out such punishments for expressions of their cultural life, which is not respected by the Han administration of Tibet. *We recommend that the Chinese state take every reasonable step to respect, protect, and fulfill the rights accorded to Tibetan citizens under the Covenant.*
7. Chinese policies continue to violate Tibetans' rights under **Articles 6.1 and 6.2**, the right to work. The growing wave since 2006 of working-age Han arriving from China proper, under a policy that encourages relocation to Tibet, has further marginalized Tibetans in their own villages, towns, and cities, contributing to widespread discrimination towards Tibetans in hiring practices and wage rates. The 'Western Development Strategy' has also been responsible for greatly increasing unemployment rates among Tibetans by depriving nomads of access to their traditional livelihood. In turn, China continues to use two forms of forced labor in Tibetan areas: *laogai*, or "reform through labor," which is carried out in prisons with detainees; and *laojiao*, or "re-education through labor." The latter has been used frequently since 2008 within Tibet as a punishment for activity deemed "political" and therefore a perceived danger to China's unity. The apparent official cessation of this practice by the end of 2013 would be a positive step from China. *We recommend a combination of ceasing harmful policies and practices, such as nomad removal and forced labor, and proactively supporting Tibetans into work through positive discrimination measures, and support to nomads.*
8. Article 11, the right to an adequate standard of living, has been violated through numerous forced evictions of Tibetans from their homes in Lhasa and the forced evictions of literally hundreds of thousands of Tibetan nomads from their lands. *We recommend that China desist from forcibly removing Tibetans from their homes – be they nomadic or other – without consultation, free, prior and informed consent and due process, and that per the recommendation under Article 6.2, Tibetan nomadic pastoralists should be allowed to remain on the grasslands.*
9. China's violations of **Article 12**, the right physical and mental health, in Tibet are chronic and acute. They include forced sterilizations and abortions; remote, under-staffed and under-supplied healthcare facilities; the structural inability to serve the unique healthcare needs of women and children; and poor nutrition. *We recommend that China take steps to improve Tibetans' access*

to culturally sensitive, nondiscriminatory medical care and take substantive measures to end the practice of forcible sterilization and abortion of Tibetan women.

10. China violates **Article 13**, the right to education, in Tibet by depriving or failing to provide access for many Tibetan children to a basic education, by (sometimes prohibitive) school fees even for those who can access schools, and by an increasing focus on Mandarin over Tibetan as the primary language – in part a result of the planned population transfer of Han to Tibetan areas – resulting in student protests in 2010 and 2012. ***We recommend that China take steps to ensure access to primary education for all Tibetan children, to make secondary education generally available and to maintain Tibetan as an accepted language of tuition for both, and to allow and facilitate the teaching of religious education in monasteries and nunneries.***
11. Violations of **Article 15**, the right to take part in cultural life, have been significant and increasing during the reporting period. Restrictions on religious practice, including “re-education” programmes in monasteries and communities, the forcible resettlement of nomads, and the targeting of Tibetan cultural figures for their work are some of the ways in which China violates the Tibetan people’s right to a cultural life. These rights are not limited to the right to practice religion or respect for the rights of nomads to engage in their traditional livelihoods; rather, the violations in Tibet permeate all aspects of the Tibetan people’s sociocultural and socioeconomic values, practices, relations, and aspirations. ***We recommend affirmative action to support all Tibetans in partaking in their cultural life by suspending forcible resettlement of nomads from their grasslands, releasing political prisoners arrested for their work, implementing freedom of expression for Chinese citizens, ceasing re-education programmes and respecting Tibetans’ right to practice their religion.***

II. INTRODUCTION

12. Tibet Justice Center welcomes the opportunity to submit this report to the Committee on Economic, Social, and Cultural Rights (“CESCR”) in its review of the People’s Republic of China under the Covenant.
13. This report aims to bring Tibet (defined in Chinese administrative terms as the Tibetan Autonomous Regions and Tibetan areas of Gansu, Qinghai, Sichuan and Yunnan provinces) to the attention of the Committee as an area of particular and acute concern in the context of reviewing China.
14. Chinese government policy and practice -- some of which are specifically tailored to Tibet -- has long-resulted in *de facto* and *de jure* violations of Tibetans’ economic, social and cultural rights. The situation in Tibet has undergone some dramatic changes since China’s last CESCR review in May 2005. These changes can be broadly categorized by considering Chinese Government policies promulgated under the ‘Western Development Strategy’, which began in 2000, and their policies to control Tibetan cultural life, many of which were intensified or implemented in response to Tibetan protests and other forms of dissent. The details of particular violations will be supplied in the body of the report, but to summarize developments since the last report:

15. In October 2005, the Qinghai to Lhasa railway – part of China’s ‘Western Development Strategy’ – was completed and began operations in July 2006². This has disproportionately benefited the Han ethnic group³ over Tibetans, whose accelerated migration to Tibet further threatens the culture and livelihoods of Tibetan people.⁴
16. In 2007, in line with the Five Year Plan 2006-2010, China intensified its forced and permanent resettlement of traditionally nomadic pastoralists⁵. This policy has continued through to 2013: as of 2010, between 50 and 80 per cent of the 2.25 million nomads on the Tibetan plateau have been forcibly and permanently resettled in township-like housing areas.⁶
17. Regulations implemented or announced in 2007 effectively increased the authorities’ control over the clergy, inside monasteries and nunneries, and in the practice of Tibetan Buddhism, escalating tensions and sparking clashes between police and Tibetans.⁷
18. The year of the Beijing Olympics, 2008, was a watershed in terms of Chinese policy in Tibet. March 14th 2008 saw the start of over 150 predominantly nonviolent protests against Chinese policies across Tibet – the largest public dissent against the Chinese state since 1989. Press and NGO reports suggest that the strict controls on religious expression – a crucial part of Tibetan cultural life – were a contributing factor to the protests⁸. China responded with force, opening fire on protestors, arresting thousands of suspected protestors and sentencing dozens to long prison terms. China executed four Tibetans for their part in the protests⁹. Since then, Tibet has been under a tight security clampdown and the authorities have stepped up their “patriotic education” campaign to suppress Tibetan dissent, sending thousands of cadres to monasteries in order to “re-educate” the monks and nuns.
19. 2010 saw continued high levels of repression in the name of security. Government officials suggested that new language policies prioritizing Mandarin over Tibetan language should be implemented, prompting nonviolent student protests, which repeated in 2012.

² *Tracking the Steel Dragon: How China’s Economic Policy and the Railway are Transforming Tibet*, THE CAMPAIGN FOR TIBET [hereinafter *Tracking the Steel Dragon*].

³ See *Han Chinese Proportion in China’s Population Drops: Census Data*, ENGLISH.NEWS.CN (Apr. 28, 2011), http://news.xinhuanet.com/english2010/china/2011-04/28/c_13849933.htm (stating that Han ethnic group constitute some 91.5% of China’s total population according to 2010 census figures).

⁴ See ARCH PUDDINGTON, *Freedom in the World 2011: The Authoritarian Challenge to Democracy*, FREEDOM HOUSE, available at <http://www.freedomhouse.org/report/freedom-world/freedom-world-2011> [hereinafter *Freedom in the World 2011*].

⁵ See *Freedom in the World 2008: Global Freedom in Retreat*, FREEDOM HOUSE, available at <http://www.freedomhouse.org/report/freedom-world/freedom-world-2008> [hereinafter *Freedom in the World 2008*].

⁶ *Mandate of the Special Rapporteur on the Right to Food: Final Report on the Mission to the People’s Republic of China* at 15-16, available at http://www.srfood.org/images/stories/pdf/officialreports/20120306_china_en.pdf.

⁷ See *Freedom in the World 2008*, *supra* note 5.

⁸ See generally *2008 Human Rights Report: China*, U.S. DEPT. OF STATE (Feb. 25, 2009) [hereinafter *Country Report 2008*].

⁹ See www.tibet.no, *China Executes Four Tibetans Over Spring 2008 Protest*, HUMAN RIGHTS HOUSE NETWORK (Oct. 26, 2009), <http://humanrightshouse.org/Articles/12189.html>; Radio Free Asia’s Tibetan Service, *Tibetan Executions Reported*, RADIO FREE ASIA (Oct. 24, 2009), <http://www.rfa.org/english/news/tibet/execute-10242009185910.html>.

20. The dialogue process between the Tibetan Government in Exile and the Chinese authorities has not continued since 2010. In 2011, China began to significantly crackdown on and arrest intellectual and cultural figures, alongside those from monastic and activist communities.¹⁰
21. Following the first self-immolation of a monk in 2009, 12 more Tibetans self-immolated in 2011, and China responded by increasing political re-education programs, especially in monasteries – more than one-third of self-immolations have been nuns, monks, or former monks – amongst other tactics, which denied many Tibetans civil and political rights. Self-immolation protests have only increased in 2012 and 2013, with a current total figure of 114.¹¹
22. Chinese government policies and practices are the root causes of Tibetan protests and dissent, spanning the Tibetan plateau and increasing since China’s last CESC review. Indeed, these policies and practices continue to underlie the structural, chronic and acute denial of self-determination, the persistence of discrimination, and the persistence of the violation and denial of economic, social and cultural rights. The Chinese government has responded to dissent with an enhanced security apparatus and increased repression across all sectors of Tibetan society, leading in turn to further violations of economic, social, and cultural rights, as well as civil and political rights. This report will provide evidence to document these claims.

III. BASIC PRINCIPLES: SELF-DETERMINATION AND NONDISCRIMINATION

*The occupation of Tibet and repression of Tibetans are the primary reason for the self-immolations inside Tibet. The solution to the tragedy in Tibet lies with Beijing.*¹²

*To burn oneself by fire is to prove that what one is saying is of the utmost importance.*¹³

23. Since the drafting of the United Nations (U.N.) Charter, the international community through the U.N. has recognized the principles of self-determination of peoples,¹⁴ equality, and nondiscrimination¹⁵ as foundational, and the primary means to promote and sustain respect for

¹⁰ See *Freedom in the World 2011*, *supra* note 4.

¹¹ Figure accurate as of 30 March 2013. Note that six additional self-immolations have taken place in India and Nepal.

¹² Edward Wong & Jim Yardley, *100th Self-Immolation Reported Inside Tibet*, NY TIMES (Feb. 14, 2013), <http://www.nytimes.com/2013/02/15/world/asia/100th-self-immolation-inside-tibet-is-reported.html> (internal quotation marks omitted) (Lobsang Sangay, Prime Minister of Tibet government in exile discussing the recent wave of self-immolations inside Tibet).

¹³ INT’L CAMPAIGN FOR TIBET, STORM IN THE GRASSLANDS 3 (2012), *available at* <http://www.savetibet.org/files/documents/storminthegrassland-%20FINAL-HR.pdf> (internal quotation marks omitted) (“In Search of the Enemy of Man,” Thich Nhat Hanh to Dr. Martin Luther King, Jr. 1965) [hereinafter *Storm in the Grasslands*].

¹⁴ See e.g. Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. Doc. A/RES/2625 (XXV) (Oct. 24, 1970); G.A. Res. 216 (XXI), U.N. Doc. A/RES/2160 (XXI) (Nov. 30, 1966); G.A. Res. 1188 (XII), U.N. Doc. A/RES/1188 (XII) (Dec. 11, 1957); G.A. Res. 637 (VII), U.N. Doc. A/RES/637 (VII) (Dec. 16, 1952); G.A. Res. 545 (VI), U.N. Doc. A/RES/545 (VI) (Feb. 5, 1952).

¹⁵ See e.g. G.A. Res. 66/3, U.N. Doc. A/RES/66/3 (Sept. 22, 2011); G.A. Res. 56/267, U.N. Doc. A/RES/56/267 (March 27, 2002); G.A. Res. 46/115, U.N. Doc. A/RES/46/115 (Dec. 17, 1991); Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. Doc. A/RES/36/55 (Nov. 25, 1981); G.A. Res. 2784 (XXVI), U.N. Doc. A/RES/2784 (XXVI) (Dec. 6, 1971); International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. Doc. A/RES/2106 (XX) (Dec. 21, 1965); G.A. Res. 103 (I), U.N. Doc. A/RES/103 (I) (Nov. 19, 1946).

human rights among all peoples and states.¹⁶ More recently, the 1993 Vienna Declaration and Programme of Action reiterates the Charter’s founding principle that “all human rights are universal, indivisible, interdependent and interrelated.”¹⁷ This Covenant requires state parties to adopt policies and practices that guarantee these, among many others, as rights to all peoples.¹⁸ In turn, international law recognizes that economic, social, and cultural rights depend on respect for both “equal rights and self-determination of peoples.”¹⁹ Self-determination and the principle of non-discrimination empower peoples to “freely pursue their economic, social, and cultural development.”²⁰

24. Denial of the right to self-determination and the persistence of discrimination make it difficult, if not impossible, for any human being to exercise the freedoms and choices that aid in living the kind of life that a person has reason to value. The denial of self-determination, coupled with the systemic discrimination experienced by the Tibetan people have had devastating consequences on their ability to seek, by their own choices, ways of living that they value through their traditions and aspirations. The chronic and acute denial is seen, most recently, in the more than 113 self-immolations that have occurred since the previous CESCR review of China.
25. The U.N. General Assembly has, in the course of its history, passed three resolutions recognizing violations of these rights, and called for an end to the policies and practices that deny Tibetans the freedoms guaranteed by both the Charter and the Universal Declaration of Human Rights.²¹ The Assembly specifically acknowledged, in these resolutions adopted over a six-year period between 1959 and 1965,²² “the distinctive cultural and religious heritage of the people of Tibet and . . . the autonomy which they have traditionally enjoyed.”²³
26. China has nonetheless violated, and continues to violate, its obligations under Article 1 (self-determination) and Article 2 (non-discrimination) of the Covenant with regard to Tibetans across Tibet. These structural or foundational violations both explain and contribute to the specific violations of Tibetans’ other economic, social, and cultural rights vouchsafed by the Covenant, including the rights to freely choose one’s work and to an adequate standard of living; to physical and mental health and to education; to the continuous improvement of living conditions; to freely dispose of their natural wealth and resources, and “in no case . . . be deprived [as a people] of its own means of subsistence.” Violations of these broad, diverse and foundational human rights share a common origin in China’s more than 60 years of policies and practices designed to dilute and destroy the Tibetan people’s identity, cultural life and livelihood practices, and to disrupt Tibetans’ desires to “achieve steady economic, social and cultural development . . .

¹⁶ U.N. Charter art. 1, para. 2, 3.

¹⁷ World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme of Action*, ¶, U.N. Doc. A/Conf.157/23 (July 12, 1993).

¹⁸ International Covenant on Economic, Social, and Cultural Rights art. 1.1, 2.2, Dec. 19, 1966, 993 U.N.T.S. 3.

¹⁹ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, *supra* note 9; *see also* Econ. and Soc. Council, CESCR 42d Sess., May 4-22, 2009, U.N. Doc. E/C.12/GC/20 (July 2, 2009).

²⁰ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 1.1.

²¹ *See* G.A. Res. 2079 (XX), U.N. Doc. A/RES/2079 (XX) (Dec. 18, 1965); G.A. Res. 1723 (XVI), U.N. Doc. A/RES/1723 (XVI) (Dec. 20, 1961); G.A. Res. 1353 (XIV), U.N. Doc. A/RES/1353 (XIV) (Oct. 21, 1959).

²² *See id.*

²³ G.A. Res. 1353 (XIV) (Oct. 21, 1959).

under conditions safeguarding fundamental political and economic freedoms to the individual.”²⁴ The more than 113 self-immolations by Tibetans since February 2009—the majority of which have occurred in the past year – along with many nonviolent protests – are the most recent reactions from individual Tibetans and Tibetan communities to China’s denial of their basic right of self-determination – both in an overall sense, but also in the quotidian sense of day-to-day fulfillment of all economic, social and cultural rights.²⁵ The ongoing self-immolations and protests are a stark illustration that China continues to fail in its responsibility to protect, respect and fulfill the economic, social and cultural rights of the Tibetan people. China will need to take concerted action in order to address the root causes of these signs of dissent before more Tibetans burn themselves in protest of the lack of the rights they are entitled to as human beings.

IV. THE RIGHT TO SELF-DETERMINATION (ARTICLE 1)

Article 1.1: *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*

A. China’s Claims of Compliance with Article 1.1

27. China’s most recent submission to the Committee claims that China has adopted a legal system that recognizes the “regional national (ethnic) autonomy” of “minority nationalities.”²⁶ This legal system allows “minority nationalities” to self-govern and to enact their own economic, social, and cultural policies.²⁷ Specifically, “minority nationalities” enjoy the ability to maintain their own language, educational system, cultural traditions, and religious freedom.²⁸ Explicitly distinguishing between these so-called “minority nationalities” and the “majority Han nationality,” the core document explains that “management of national and local affairs” is an equally shared responsibility between each group.²⁹ Nevertheless, despite such purportedly “broad autonomy,” China places explicit limits on self-governance and “each autonomous national-minority area” must conform to State law and policy.³⁰

B. China’s Actual Compliance with Article 1.1

28. China’s denial of the Tibetan people’s right to self-determination, and the economic, social, and cultural rights violations that arise out of the denial of this right, cannot be appreciated without an understanding of Tibet’s current status. The purpose of the following information is to provide essential background without which it is impossible to understand the common origin of the CESCR violations in modern Tibet.

²⁴ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 6.2.

²⁵ See generally INT’L CAMPAIGN FOR TIBET, *supra* note 13, at 7-10.

²⁶ Int’l Human Rights Instruments, Core document forming part of the reports of State parties, U.N. Doc. HRI/CORE/CHN/2010, 11 (Mar. 10, 2011) [hereinafter *Int’l Human Rights Instruments*].

²⁷ *Id.*

²⁸ *Id.* at 30.

²⁹ *Id.* at 42.

³⁰ *Id.* at 30.

29. As of the date of this report over 113 self-immolations have taken place inside Tibet, all since China's previous CESCR review.³¹ The number of self-immolations steadily increased during late 2012³² and has continued to rise this year.³³ A recent report noted that, "virtually all of the Tibetans who have set fire to themselves in Tibet have communicated a wish for the Dalai Lama to return to Tibet and for freedom."³⁴ Tibet's self-immolators have been men and women, teenagers, parents and grandparents, monks, nuns and laypersons. As of December 2012, the oldest was 64, and more than half were under 30 years old, suggesting a new generation of frustration and increased resistance. Many were nomads, whom Chinese officials continue to remove, forcibly and permanently, from their ancestral grasslands home across the Tibetan Plateau, and from being able to earn a living through their traditional livelihood.
30. After 1911, when China overthrew the Manchu Qing Dynasty, Tibet expelled the two Manchu *ambans*, the representatives and last remaining vestiges of the Manchu empire's presence in Tibet. In early 1913, the Thirteenth Dalai Lama formally proclaimed and reaffirmed the restoration of Tibet's centuries-long independence. From 1911 to 1950, Tibet was a fully independent state with all attributes of statehood.³⁵ Tibet maintained its own functioning government, one that was led by the Dalai Lama and his cabinet (Kashag). There was a system of civil service, taxation, and currency, an established Tibetan Foreign Office and recognition of its delegations to foreign states.³⁶ Tibet and Mongolia concluded a treaty of mutual recognition and mutual assistance in 1913,³⁷ while Nepal's 1949 application to join the United Nations cited its relations with Tibet (and four other states) as proof of Nepal's own statehood.³⁸ Over the next several decades Tibet took significant steps to solidify its status as an independent state, while the international community sought to define its official stance. Great Britain's position as Tibet's main diplomatic partner throughout this period was that Tibet remained an independent territory: "Tibetans are a different race from Chinese and have a different religion, language, and culture. They have never been absorbed culturally by the Chinese." In 1949 the Chinese Communist Party took control of China and expressed its intention to "liberate" Tibet. In October 1950, 40,000 People's Liberation Army soldiers invaded the eastern part of historical Tibet, quickly overcame the Tibetan army and entered Lhasa, Tibet's capital, forcing capitulation. China's terms for its surrender agreement required Tibet to "return to the big family of the motherland."³⁹
31. The history summarized above is relevant to this report for two reasons. First, China's invasion of Tibet violated the 1948 Charter of the United Nations, which was already in force by the time

³¹ See Wong & Yardley, *supra* note 7.

³² See INT'L CAMPAIGN FOR TIBET, *supra*, note 8 at 7.

³³ See Wong & Yardley, *supra* note 7.

³⁴ See INT'L CAMPAIGN FOR TIBET, *supra*, note 8 at 9.

³⁵ MICHAEL C. VAN WALT VAN PRAAG, THE STATUS OF TIBET: HISTORY, RIGHTS, AND PROSPECTS IN INTERNATIONAL LAW 136-37, 140 (1987).

³⁶ *Id.* at 136-40.

³⁷ MICHAEL C. VAN WALT VAN PRAAG, A LEGAL EXAMINATION OF THE 1913 MONGOLIA-TIBET TREATY OF FRIENDSHIP AND ALLIANCE, 17 *Lungta*, Spring 2013; special edition: *The Centennial of the Tibeto-Mongol Treaty: 1913-2013*.

³⁸ Director-General of Foreign Affairs, Katmandu, Nepal to the U.N., Letter dated July 22, 1949 from the Director-General of Foreign Affairs, Katmandu, Nepal to the Chairman of the Committee on the Admission of New Members, U.N. Doc. S/C.2/16 (Aug. 8, 1949).

³⁹ This history has been documented in TIBET JUSTICE CENTER, THE CASE CONCERNING TIBET: TIBET'S SOVEREIGNTY AND THE TIBETAN PEOPLE'S RIGHT TO SELF-DETERMINATION (2013) [hereinafter *The Case Concerning Tibet*]. See also VAN WALT VAN PRAAG, *supra* note 30, *inter alia*.

China entered Tibet. The UN Charter requires member states to “settle their international disputes by peaceful means” and explicitly prohibits “the threat or use of force against the territorial integrity or political independence of any state.”⁴⁰ China’s use of force directly conflicted with its obligations under the U.N. Charter at the time, making the dissolution of Tibet’s independent status an illegitimate act.⁴¹ Although the U.N. never formally recognized Tibet’s sovereignty, the General Assembly passed three successive resolutions acknowledging Tibet’s traditional autonomy as well as the Tibetan people’s right to self-determination.⁴²

32. Second, and subsequently, China as a state party to the Covenant on Economic, Social, and Cultural Rights, has persistently denied the Tibetan people the rights established in Article 1.1 of the Covenant, in particular, the right to self-determination. The right to self-determination guarantees “all peoples have the right freely to determine without external interference, their political status and to pursue their economic, social and cultural development.”⁴³ This right is both necessary to ensure the protection of “individual human rights” and essential to promote friendly relations among states.⁴⁴ Furthermore, failure to recognize the right “creates conditions which may prevent further realization of the right itself.”⁴⁵ Implementation of the right may result in “[t]he establishment of a sovereign and independent [s]tate,” although the right to self-determination is also fulfilled by “the emergence [of] any other political status freely determined by a people.”⁴⁶
33. At minimum, the Tibetan people are entitled to develop their own economic, social, and cultural identity, and to freely engage in the practices and activities associated with that identity. Since 1950, when the People’s Liberation Army invaded Tibet, China has exercised pervasive control over Tibet’s economic, social and cultural development and severely restricted Tibetans’ capacity to engage in economic, social, and cultural activities of their choosing. The persistence of these policies shows China’s chronic and acute disregard for its responsibilities under the Covenant. The systemic nature of these policies reflects China’s intent to dilute and marginalize the unique identity of the Tibetan people as a means of absorbing Tibet economically, socially, and culturally into the Chinese state.

Article 1.2: All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

A. China’s Claims of Compliance with Article 1.2

⁴⁰ U.N. Charter art. 2, para. 3, 4.

⁴¹ See Robert D. Sloane, *The Changing Face of Recognition in International Law: A Case Study of Tibet*, 16 EMORY INT’L L. REV. 107, 151-54 (2002); see also VAN WALT VAN PRAAG, *supra* note 29, at 154-55.

⁴² See discussion, *supra* para. 11.

⁴³ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. Doc. A/RES/2625 (XXV) (Oct. 24, 1970).

⁴⁴ Office of the High Commissioner for Human Rights, CCPR Comment No. 12 ¶ 1, 7, CCPR 21st Sess. (Mar. 13, 1984).

⁴⁵ G.A. Res. 1188 (XII), U.N. Doc. A/RES/1188 (XII) (Dec. 11, 1957).

⁴⁶ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, *supra* note 38.

34. In the core document accompanying China's submission to the Committee, China claims that its Constitution protects an individual's right to private property.⁴⁷ The document further explains that China has implemented programmes that provide assistance to those who are financially disadvantaged.⁴⁸ Although the core document fails to provide extensive information on China's compliance with Article 1.2, it does acknowledge China's efforts to develop the western region of the country, of which Tibet is a significant part.⁴⁹ This discussion directly relates to China's actual compliance with the rights guaranteed by Article 1.2. China states that its initiatives over the past decade to develop and improve the standard of living in the western region have resulted in "economic, social, cultural and ecological" progress.⁵⁰ The core document specifically highlights China's efforts in Tibet, noting 2015 goals to improve infrastructure and increase income levels for farmers and herdsman.⁵¹

B. China's Actual Compliance with Article 1.2

35. The fundamental right to self-determination is inherently connected to a people's right to exercise sovereignty over their natural wealth and resources.⁵² This sovereignty is held specifically by "peoples" and nations, and the "exploration, development, and disposition of such resources" must be expressly authorized by those entitled to such sovereignty and the profits or benefits derived from such use must be shared. Furthermore, when a state exercises its power to expropriate resources, it must provide "appropriate compensation" to the owner. Sovereignty over natural wealth and resources ensures "the well-being of people of the state concerned"⁵³ and is extended to those people who are subjected to "colonial and racial domination and foreign occupation."⁵⁴
36. Thus, whether Tibetans are understood to be an independent people under occupation for more than sixty years, or a distinct people living for more than sixty years under a form of political governance not of their own choosing, they remain entitled to the right of access to and control over decision-making about the ecosystems, ecosystem services, and natural resources which they have managed and conserved for millennia. The right to access and control over their resources is vital to their economic, social, and cultural and livelihood practices, and to the advancement of their own well-being. In direct contravention of its obligations under the Covenant, China has enacted policies that subvert Tibet's rightful sovereignty over its resources and degrade the Tibetan people's economic, social, and cultural self-sufficiency, including their right to their "own means of subsistence." These, individually and in the aggregate, constitute chronic and acute violations of the Tibetan people's right to self-determination.

⁴⁷ Int'l Human Rights Instruments, *supra* note 26, at 29.

⁴⁸ *Id.*

⁴⁹ *Id.* at 44.

⁵⁰ *Id.*

⁵¹ *Id.* 44-45.

⁵² See Declaration on the granting of independence to colonial countries and peoples, G.A. Res. 1514 (XV), U.N. Doc. A/RES/1514 (XV) (Dec. 14, 1960) (affirming the principle that peoples may freely dispose of their wealth and natural resources); see also G.A. Res. 1314 (XIII), U.N. Doc. A/RES/1314 (XIII) (Dec. 12, 1958) (setting up commission to study the "character and extent" of the right and its connection to the right to self-determination; see also G.A. Res. 837 (IX), U.N. Doc. A/RES/837 (IX) (Dec. 14, 1954) (Requesting the Commission on Human Rights to complete its recommendations regarding the right to self-determination, namely the "right of peoples and nations [to exercise] permanent sovereignty over their natural wealth and resources").

⁵³ See G.A. Res. 1803 (XVII), U.N. Doc. A/RES/1803 (XVII) (Dec. 14, 1962).

⁵⁴ G.A. Res. 3171 (XXVII), U.N. Doc. A/RES/3171 (XXVII) (Dec. 17, 1973).

37. China's 'Western Development Strategy' (WDS)⁵⁵ is the most assertive and encompassing declaration of policy for China's western regions in general, and the Tibetan plateau in particular. The stated goal of the WDS is to "bring... prosperity to the people in the western regions" of China.⁵⁶ In reality, it shows China's disregard for the Tibetan people's access to and control over – their sovereignty over – their natural resources. One of the primary policies of the WDS is "resource extraction" from rural, western regions, and from the Tibetan plateau in particular, "for use in China's urban, coastal centers."⁵⁷ Tibetans have no input in the decisions about whether or not to exploit these resources, nor about how these resources are extracted or used. Nor do they share in the employment or other economic benefits⁵⁸ of the exploitation of their own resources.⁵⁹
38. In addition to the WDS policy towards Tibet, China has recently created a series of extensive parks and protected areas for the purpose of large-scale conservation of watershed and ecosystem services.⁶⁰ The establishment of these parks and protected areas has led to widespread confiscation of land and livestock, while between 50% and 80% of Tibetan pastoralists – who number some 2.25 million across Tibet – are to be forcibly removed from their traditional lands.⁶¹ As such, more than one million pastoralists have been permanently denied the fundamental right guaranteed in the Covenant's Article 1.2 and Article 11, the right to determine how they wish to secure an "adequate standard of living for themselves, including adequate food, clothing and housing, and to the continuous improvement of living conditions."⁶²
39. In 2010, the UN Special Rapporteur (SR) on the Right to Food reported on the Grassland Law of 1985 and a range of related policies put in place by China. The SR documented that since the WDS, the Grassland and related laws, including *tuimu huancao* ("removing animals to grow grass") and *tuigeng huanlin* ("returning farmland to forest") were implemented, somewhere between 50% and 80% of Tibetan nomadic pastoralists have been relocated.⁶³ The SR observed that as a

⁵⁵ Xinhua, *Western Development Strategy*, CHINA DAILY (Dec. 22, 2009),

http://www.chinadaily.com.cn/china/westdevelopment/2009-12/22/content_9215054.htm; see also Mitch Moxley, *China renews 'Go West' effort*, ASIA TIMES (July 23, 2010), http://www.atimes.com/atimes/China_Business/LG23Cb01.html; see also Michael H. Glantz, Qian Ye & Quansheng Ge, *China's western region development strategy and the urgent need to address creeping environmental problems*, ARIDLANDS NEWSLETTER, No. 49 (May/June 2001), <http://ag.arizona.edu/oals/ALN/aln49/glantz.html>.

⁵⁶ MINORITY RIGHTS GROUP INT'L, CHINA: MINORITY, MARGINALIZATION AND RISING TENSIONS 23 (2007) [hereinafter *Minority Rights Group Int'l*].

⁵⁷ *Id.*

⁵⁸ For example, in the recent tragic landslide east of Lhasa on March 30, 2013, all but two of the at-least 83 workers who were buried alive in worker housing were non-Tibetan. *Search for Tibet miners after landslide buries huts*, BBC NEWS (Mar. 30, 2013), <http://www.bbc.co.uk/news/world-asia-china-21976807>.

⁵⁹ *Id.* at 24.

⁶⁰ *Eco protection effective in Sanjiangyuan area*, CHINA TIBET ONLINE (July 23, 2009),

<http://chinatibet.people.com.cn/6708397.html>; see Xinhua, *Eco-conservation zone planned for Qinghai-Tibet plateau* (Nov. 18, 2011), http://news.xinhuanet.com/english2010/china/2011-11/18/c_131255667.htm.

⁶¹ HUMAN RIGHTS WATCH, "NO ONE HAS THE LIBERTY TO REFUSE" 17, 19 (2007), available at

<http://www.hrw.org/reports/2007/tibet0607/tibet0607web.pdf> (referring to 1999 policies of "convert farmland to forest" and "revert pasture to grassland" as well as the 2003 Grassland Act) [hereinafter *No One Has the Liberty to Refuse*]; see also Report of the Special Rapporteur on the right to food, Olivier De Schutter: Mission to China, 19th Sess., U.N. Doc. A/HRC/19/59/Add.1 at 15-16, para. 35-36 (Jan. 20, 2012), available at http://www.srfood.org/images/stories/pdf/officialreports/20120306_china_en.pdf

⁶² International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 11.1.

⁶³ Report of the Special Rapporteur, *supra* note 56, at 15, para. 35.

consequence of these policies, Tibet's nomadic herders were forced to sell their herds and resettle.⁶⁴ According to the SR, "the resettlement policy... in the Tibet Autonomous Region has expanded to non-herders, and is aimed at resettling, relocating or rehousing a majority of the Tibetan rural population."⁶⁵

40. The SR's Report further notes that the ICESCR prohibits depriving people of its means of subsistence, which is the effect of China's resettlement policies on the Tibetan people. The report also cites China's ratification of the Convention on Biological Diversity (1992), which guarantees rights to indigenous communities as protectors of the biodiversity of their own lands (art. 8 (j)).⁶⁶
41. The SR's Report ends with a set of conclusions and recommendations that are important for this Committee to consider. The Report urges "the Chinese authorities to take all appropriate measures to immediately halt non-voluntary resettlement of nomadic herders from their traditional lands and non-voluntary relocation or rehousing programmes of other rural residents."⁶⁷ The Report also adds that local authorities should not be pressured to accelerate the implementation of resettlement policies.⁶⁸
42. The Report also calls on the Chinese authorities to consult with and incorporate the wishes of the herding communities themselves, particularly with regard to the right of these communities to produce their own food. The Report emphasizes that the indigenous communities are entitled to assess for themselves "recent strategies of sustainable management of marginal pastures such as New Rangeland Management, in order to combine the knowledge of the nomadic herders of their territories with the information that can be drawn from modern science."⁶⁹

V. THE RIGHT TO NON-DISCRIMINATION (ARTICLE 2)

Article 2.2: the States Parties to the present covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

B. China's Claims of Compliance with Article 2

43. China's Constitution specifically guarantees "protection of the rights of women, the elderly, minors, the disabled, minority nationalities, foreigners and other special groups."⁷⁰ Among such protected rights are the economic, social and cultural rights guaranteed by the Covenant.⁷¹ Responding to concerns raised by the Committee in 2005 regarding Chinese discrimination of Tibetans in connection with its obligations under the Covenant, China refuted such allegations, claiming that Tibetan right to self-rule, creation of social welfare programs, access to healthcare

⁶⁴ *Id.* at 16, para 37 (referencing, specifically, China's obligations under ICESCR Article 1.2).

⁶⁵ *Id.*, at 15, para.34.

⁶⁶ Convention on Biological Diversity, art. 8, <http://www.cbd.int/convention/articles/default.shtml?a=cbd-08> (last visited Mar. 31, 2013).

⁶⁷ Report of the Special Rapporteur, *supra* note 56, at 16, para. 37.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Int'l Human Rights Instruments, *supra* note 26, at 10.

⁷¹ *See id.*

and education, improved housing conditions, and significant government representation by ethnic Tibetans provide concrete evidence to the contrary.⁷²

B. China's Actual Compliance with Article 2

44. Article 2.2 of the Covenant proscribes “discrimination of any kind” with regard to protection of economic, social, and cultural rights.⁷³ Such “discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds . . . and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.”⁷⁴ Moreover, the Covenant precludes laws and policies that overtly discriminate as well as those practices that indirectly lead to discrimination.⁷⁵ Just as self-determination is required to ensure protection of subsequent rights under the Covenant, non-discrimination is a necessary condition for the fulfillment of economic, social, and cultural development.⁷⁶
45. China has generally considered Tibetan culture and society to be “backwards.”⁷⁷ As a means of remedying this perceived backwardness and improving the development of Tibetans, China has adopted what it ironically refers to as “preferential policies” toward Tibet.⁷⁸ China claims that these policies are intended to better the lives of Tibetans. But almost invariably, they perpetuate China’s denial of the Tibetan people’s right to self-determination and reflect China’s discriminatory view of Tibetan culture as inferior and a threat to China’s political stability.⁷⁹
46. Although China’s laws may not be discriminatory on paper, in practice they result in disproportionately unfair treatment of Tibetans. China’s efforts to modernize and develop Tibet, most recently through the WDS, have involved government incentives that have deliberately encouraged an influx of Chinese settlers across Tibet, and investments that benefit them.⁸⁰ While Chinese settlers have benefited from some of these “preferential policies,” Tibetans’ access to adequate water⁸¹, food, clothing, housing, medical care, education, and economic opportunity is lacking as compared with their Chinese counterparts who have migrated to Tibet.⁸² The privileged status of Chinese migrants living in Tibet amounts to *de facto* discrimination against the Tibetan people by China.

⁷² Committee on Economic, Social and Cultural Rights, Implementation of the International Covenant on Economic, Social and Cultural Rights: Replies by Government of the People’s Republic of China, 34th Sess., Apr. 25 – May 13, 2005, U.N. Doc. CESCR/NONE/2004/10, at 28-29 [hereinafter *CESCR China Report 2005*].

⁷³ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 2.2.

⁷⁴ Econ. and Soc. Council, General Comment No. 20, CESCR 42d Sess., May 4-22, 2009, U.N. Doc. E/C.12/GC/20 (July 2, 2009) at ¶ 7 (referencing similar interpretations of the right included in ICERD, CEDAW, and CRPD).

⁷⁵ *Id.* at ¶ 8-10.

⁷⁶ *See Id.* at ¶ 1, 2.

⁷⁷ INT’L CAMPAIGN FOR TIBET, JAMPA: THE STORY OF RACISM IN TIBET, 49 (2001), available at <http://72.32.136.41/files/documents/JampaRacism.pdf> [hereinafter *Jampa: The Story of Racism in Tibet*].

⁷⁸ *Id.*

⁷⁹ *See id.* at 37-38

⁸⁰ *Id.* at 76-77

⁸¹ *See infra* note 118.

⁸² INT’L CAMPAIGN FOR TIBET, *supra* note 72, at 76-77, 82-84

47. China incarcerates Tibetans at a much higher rate than Chinese, and the majority of imprisoned Tibetans are incarcerated for offenses related to attachment to their cultural identity. Chinese persons are not, of course, subject to punishment for expressing loyalty to Chinese culture. Moreover, the detention of children, forced disappearances, and torture affect Tibetans at a much higher rate than their Chinese counterparts.⁸³
48. Despite China's claim that its laws and policies faithfully uphold its promise of non-discrimination under the Covenant, China's treatment of Tibetans illustrates China's attitude that Tibetans are inferior and pose a threat to the unity of China. This explains China's focus on eradicating the unique Tibetan cultural identity through systemic discriminatory practices, an eradication that China sees as necessary for the unity of the state.⁸⁴

VI. THE RIGHT TO WORK (ARTICLE 6):

Article 6.1: the States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

Article 6.2: the steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual

A. China's Claims of Compliance with Articles 6.1 and 6.2

49. China has adopted and continues to promote an employment policy that strives to create employment opportunities for workers and continuously expand the scope of employment.⁸⁵ China recognized, however, that unemployment rates have risen significantly in recent years. China also maintains that its employment policies address the problem of finding employment for the large number of workers laid off due to structural changes in the economy.⁸⁶ In addition, China asserts that in January 2010 it set forth goals for Tibet to reduce "the disparity between per-capita net income for farmers and herdsmen and the national average; a marked increase in basic public service capacities; further improvement in the ecological environment; major progress in basic infrastructure construction; and a further strengthening of the foundation for constructing a moderately prosperous society." Its goals emphasize improving conditions for farmers and herdsmen, balancing economic and social development, yet firmly maintain Central Government policies for Tibet.⁸⁷

B. China's Actual Compliance with Articles 6.1 and 6.2

⁸³ *Id.* at 71-73

⁸⁴ *Id.* at 13, 37-38.

⁸⁵ Int'l Human Rights Instruments, *supra* note 26, at 7.

⁸⁶ *Id.* at 7-8.

⁸⁷ *Id.* at 45.

50. Article 6.1 requires that China respect, protect, and ensure the right of every person to make a living on their own through their freely chosen activities.⁸⁸ Individuals have a right to freely choose their line of work, and have the right not to be unfairly deprived of work.⁸⁹ This right is not to be understood as an unconditional right to obtain employment, but rather as the right to freely choose one's own livelihood.⁹⁰ Violations include forced labor, the formal repeal or suspension of legislation necessary for continued enjoyment of the right to work, and denial of access to work to particular individuals or groups, whether that discrimination is based on legislation or practice.⁹¹ Article 6.2 lays out the clear steps that China must take in order to achieve the full realization of this right for its people.⁹²
51. "Forced labor," is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily."⁹³ The Committee on Economic, Social and Cultural Rights has previously noted that China should make every effort to abolish, forbid, and counter all forms of forced labor.⁹⁴
52. Forced labor is prevalent within Tibet. Forced labor comes in two forms in China and Tibet. *Laogai* is "reform through labor", carried out in prisons with detainees, and *laojiao*, which is "re-education through labor" which can last up to 3 years and doesn't require a judicial procedure.⁹⁵ This last is typically meted out as punishment for actions deemed politically insensitive but not large enough to carry a full prison sentence. Some of these so-called 'crimes' relate to cultural expressions, such as the case of Tashi Dhondup. Tashi was a popular Tibetan singer from Amdo, eastern Tibet, who was sentenced to 15 months of "re-education through labor" after he released a CD in October 2009 that included lyrics on the political situation in Tibet – in particular drawing comparisons between the Chinese government's repression across the Tibetan plateau after the 2008 protests and the Chinese takeover of Amdo in 1958⁹⁶. He was released on February 8, 2011 after serving the majority of his sentence⁹⁷. In October 2011, three monks, the youngest of whom was just 16 years old, were arrested and sentenced to between 2 and 3 years of re-education through labor for their alleged role in the self-immolation of another monk from their monastery.⁹⁸

⁸⁸ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 6.1.

⁸⁹ Econ. and Soc. Council, General Comment No. 18, CESCR 35th Sess., Nov. 7-25, 2005, U.N. Doc. E/C.12/GC/18, (Nov. 24, 2005) at ¶ 4 [hereinafter *General Comment No. 18*]; Int'l Labour Org. Convention No. 122, Employment Policy Convention (1964).

⁹⁰ General Comment No. 18, *supra* note 89, at ¶ 6.

⁹¹ *Id.* at ¶ 32.

⁹² International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 6.2.

⁹³ General Comment No. 18, *supra* note 89, at ¶ 23 (2005); Int'l Labour Org., Forced Labour Convention, 1930 (No. 29) (defining "forced labour").

⁹⁴ General Comment No. 18, *supra* note 89, at ¶ 9.

⁹⁵ Minami Funakoshi, *China's Re-education Through Labor' System: The View From Within*, THE ATLANTIC, Feb. 6, 2013, <http://www.theatlantic.com/international/archive/2013/02/chinas-re-education-through-labor-system-the-view-from-within/272913/>.

⁹⁶ Radio Free Asia's Tibetan Service, *Tibetan Singer Released From Jail*, RADIO FREE ASIA (Feb. 8, 2011), <http://www.rfa.org/english/news/tibet/released-02082011153914.html>.

⁹⁷ *1958-2008*, INTERNATIONAL CAMPAIGN FOR TIBET, <http://www.savetibet.org/resource-center/tibet-breaking-silence/march>.

⁹⁸ *Three Tibetan monks sentenced to 'Re-education Through Labour', China tries to dissuade Kirti monks with money*, TIBETAN CENTER FOR HUMAN RIGHTS AND DEMOCRACY, September 19, 2011, <http://www.tchrd.org/2011/09/three-tibetan-monks-sentenced-to-re-education-through-labour-china-tries-to-dissuade-kirti-monks-with-money/>.

53. In January 2013, Meng Jianzhu, head of the Chinese Communist Party’s Political and Legal Committee, stated that China would “stop using” the practice of Re-education Through Labor by the end of the year.⁹⁹ The official and complete abolition of such a practice stands as a baseline step for China’s international human rights compliance.
54. China’s primary obligation is to ensure the realization of the exercise of the right to work. It must adopt measures aimed at achieving full employment, and reduce the number of workers who are outside the formal economy and thus have no protection.¹⁰⁰ This also includes the duty to protect people from third parties from interfering with the enjoyment of the right to work, and ensuring that privatization measures do not undermine workers’ rights.¹⁰¹
55. The principle of non-discrimination as set out in Article 2.2 applies in relation to employment opportunities for Tibetans and other minorities, just as it applies to migrant workers and persons with disabilities.¹⁰²
56. Although China’s employment policies are not discriminatory on their face, in practice they result in disproportionately unfair treatment of Tibetans. Tibetans report that “they experienced discrimination in employment, and some job advertisements in the TAR expressly noted that ethnic Tibetans were not welcome to apply.”¹⁰³ Tibetans report that it is hard for them to get jobs because Chinese workers have been encouraged to migrate to Tibetan regions and are given preferential treatment, and that Tibetans receive lower salaries for the same work and have difficulty obtaining permits and loans to open their own businesses.¹⁰⁴ These reports show that China has not fulfilled its obligation to protect individuals from third parties violating the right to a freely chosen occupation.
57. Tibetans are disproportionately affected by the low level of wages in rural areas, such wages being insufficient to provide an “adequate” standard of living.¹⁰⁵ In 2005, this Committee expressed concern that China has no wage enforcement mechanism, no effective redress for wage claims, and no process for sanctions against employers who do not provide adequate payment to their workers.¹⁰⁶
58. There is an increasing rate of unemployment in China, particularly in rural areas.¹⁰⁷ The policy drive associated with the ‘Western Development Strategy,’¹⁰⁸ aims to dilute Tibetan cultural

⁹⁹ *China: Fully Abolish Re-Education Through Labor*, HUMAN RIGHTS WATCH, January 8, 2013, <http://www.hrw.org/news/2013/01/08/china-fully-abolish-re-education-through-labor>.

¹⁰⁰ General Comment No. 18, *supra* note 89, at ¶ 19.

¹⁰¹ *Id.* at ¶ 21.

¹⁰² *Id.* at ¶ 18; *Id.* at ¶ 22 (stating the state should not directly or indirectly interfere with the enjoyment of the right to work, meaning it should prohibit forced or compulsory labor and refrain from denying or limiting equal access to decent work for all persons, *especially disadvantaged and marginalized individuals and groups*) [emphasis added].

¹⁰³ *Country Reports on Human Rights Practices for 2011*, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR 7 (2011) (citing Chinese government campaign to resettle Tibetan nomads, kill or sell their livestock, and engage in compulsory resettlement schemes aimed at making Tibetans “pray to Buddha less and study culture and technology more.”) [hereinafter *Country Reports 2011*].

¹⁰⁴ *Id.*

¹⁰⁵ CESCR China Report 2005, *supra* note 72, at ¶ 25.

¹⁰⁶ *Id.* at ¶ 54.

¹⁰⁷ General Comment No. 18, *supra* note 89, at ¶ 20.

¹⁰⁸ NO ONE HAS THE LIBERTY TO REFUSE, *supra* note 61, at 5.

distinctiveness and to extend Chinese control over Tibetan lives and livelihood practices.¹⁰⁹ China's WDS includes the goal of removing all Tibetan pastoralist nomad families and communities from their ancestral grasslands homes; such a goal reflects egregious violations of Articles 6.1, 6.2, and Article 1.2.¹¹⁰ This is a direct violation of China's obligation to ensure and protect the right to a freely chosen livelihood, and directly contravenes China's obligation to adopt legislation ensuring the full realization of this right. In sum, although China's 1982 Constitution says that it guarantees minorities' rights, including cultural preservation, and that it outlaws discrimination, in reality these protections are not accessible and have little bearing on Tibetans' day-to-day lives.

59. Despite China's claims that it has an infrastructure in place to ensure that persons are gainfully and meaningfully employed, the reality of China's treatment of Tibetans illustrates China's view that Tibetans are not only inferior, but threaten both the regime of the Communist Party and a unified and harmonious China.¹¹¹
60. This Committee has concluded that just as self-determination is required to ensure protection of subsequent rights under the Covenant, the right to work is essential for realizing other human rights, contributes to survival of the individual and his family, and insofar as work is freely chosen or accepted, to his development and recognition within the community.¹¹²

VII. THE RIGHT TO ADEQUATE STANDARD OF LIVING (ARTICLE 11)

Article 11.1: *the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.*

A. China's Claims of Compliance with Article 11.1

61. China asserts that since the founding of the PRC, it has continued to improve the living standards of minority nationalities, and due to its emphasis on expanding medical and health care systems, minority populations have grown and prospered.¹¹³ China also maintains that extreme poverty had been almost entirely eliminated by 1991, meaning that people's basic needs for food and clothing were being met.¹¹⁴ It claims that the living standards of both urban and rural households more than meet basic needs, and strides are being made toward additional comforts, such as

¹⁰⁹ *Id.*

¹¹⁰ *See, e.g., id. See generally* THE CASE CONCERNING TIBET, *supra* note 39; MINORITY RIGHTS GROUP INT'L, *supra* note 56; *Tracking the Steel Dragon*, *supra* note 2. *See also Country Reports 2011*, *supra* note 103, at 5 (finding that, "[a]lthough a 2010 state media report noted that ethnic Tibetans and other minority ethnic groups made up 70 percent of government employees at the provincial level in the TAR, the top CCP position of TAR Party Secretary continued to be held by an ethnic Han. Also within the TAR, ethnic Han continued to hold most of the top security, military, financial, economic, legal, judicial, and educational positions. Tibetans holding government and CCP positions were often prohibited from openly worshipping at monasteries or otherwise practicing their religion.")

¹¹¹ JAMPA: THE STORY OF RACISM IN TIBET, *supra* note 77, at 13, 37-38; International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 6.1.

¹¹² General Comment No. 18, *supra* note 89, at ¶ 2.

¹¹³ Int'l Human Rights Instruments, *supra* note 26, at 5.

¹¹⁴ *Id.* at 7.

medical care, education, and entertainment, which have markedly increased.¹¹⁵ Rural per-capita net income has reportedly increased by 115%.¹¹⁶ China admits, however, that imbalances continue to exist between urban and rural development, and the population of poor people in rural areas is still very large.¹¹⁷ To address this, China reports it is increasing investment in rural infrastructure, drinking water safety projects, highway construction, and giving 92,000 herdsmen settled residences.¹¹⁸

B. China's Actual Compliance with Article 11.1

62. Article 11.1 requires that every individual have a right to an adequate standard of living and be able to freely seek and secure a livelihood. This means adequate water¹¹⁹, food, clothing, and housing, along with continuously improving living conditions.¹²⁰
63. With respect to the right to adequate housing, forced evictions are *prima facie* incompatible with the requirements of the Covenant.¹²¹ "Forced evictions" are defined as permanent or temporary removal against their will of individuals, families, and/or communities from the homes/land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.¹²² This includes the free, prior, and informed consent of those who are being removed, and their full participation in determining why the removal might be needed, the geographic and demographic extent of the removal, its duration, and whether it is temporary or permanent.¹²³ Similarly, the right to adequate shelter means adequate privacy, space, security, lighting, ventilation, basic infrastructure, and location with regard to work and basic facilities.¹²⁴
64. China must ensure that all alternatives are explored prior to evictions, and to avoid or minimize the use of force.¹²⁵ China must also ensure that all individuals have a right to adequate compensation for any property confiscated through the eviction.¹²⁶ The UN Conference on Human Settlements notes that there must be special attention paid to these rights when undertaking major clearance operations, specifically when forced population transfers occur and

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 44.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 45.

¹¹⁹ See Econ. and Soc. Council, General Comment No. 15, CESCR 29th Sess., Nov. 11-29, 2002, U.N. Doc. E/C.12/2002/11, (Jan. 20, 2003) at 1-2 (dealing with the right to water: "The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights" and defining the right to water as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses); H.R.C. Res. 18/1, ¶ 1, U.N. Doc. A/HRC/RES/18/1 (Oct. 12, 2011) (recognizing that the human right to water and sanitation are a part of the right to an adequate standard of living).

¹²⁰ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 11.1.

¹²¹ Econ. and Soc. Council, General Comment No. 7, CESCR 16th Sess., 1997, at ¶ 1, U.N. Doc. The Right to Adequate Housing: Forced Evictions (May 20, 1997) [hereinafter *General Comment No. 7*].

¹²² *Id.* at ¶ 3.

¹²³ The phrase "free, prior, and informed consent" appears in other legal instruments under international law; see Articles 15-18, especially Article 16.2, in ILO Convention No. 169 (1989), and the Declaration of the Rights of Indigenous Peoples (2007), especially Article 10. While the phrase originated in the process of defining the rights of indigenous peoples, these rights of access, participation, and decision-making should not be limited in application.

¹²⁴ General Comment No. 7, *supra* note 121, at ¶ 7.

¹²⁵ *Id.* at ¶ 13.

¹²⁶ *Id.*

there is major new development and conflict over land rights.¹²⁷ Even in cases where eviction is justified, it must be carried out in strict compliance with the relevant provisions of international human rights law and in accordance with the general principles of reasonableness and proportionality.¹²⁸ Evictions should not result in individuals being homeless or made vulnerable to the violation of other human rights.¹²⁹ Where those affected are unable to provide for themselves, the State party must take all appropriate measures to ensure that adequate alternative housing, resettlement or access to productive land is available.¹³⁰

65. China has failed to provide these protections for the Tibetan people in effecting their removals from their lands and in forcibly resettling them in urban areas. Tibetans are directly refused these rights in the context of forced evictions and demolitions in Lhasa. There is a complete lack of effective consultations, due process, and legal redress for persons affected by forced evictions.¹³¹ Although hard data for the number of forced evictions is largely unavailable, even official Chinese government reports have stated that many of the 74,000 nationwide protests in 2004 were sparked by forced evictions.¹³²
66. The Chinese government has been implementing permanent removal and resettlement, land confiscation, and exclusion-fencing policies across all pastoral areas of Tibet, drastically infringing on the right of some 2.25 or more million Tibetan pastoralists to determine where and how they live, cultural choices in housing and food supply, and how best to implement socio-economic and socio-cultural livelihood practices.¹³³ Although China stated that improving housing conditions was among its goals in resettling Tibetans, herders were unilaterally settled in isolated townships and roads and away from monasteries, the traditional providers of religious, community and social services.¹³⁴ This directly contradicts the requirement of Article 11.1 that forced evictions are *prima facie* unacceptable, and that adequate housing requires access to basic infrastructure.¹³⁵
67. Despite China's claims that it is addressing the problem of poverty and housing shortages with increased new construction, this new construction is directly depriving Tibetans of their right to culturally adequate housing and a decent standard of living. The newly constructed settlements are destroying traditionally constructed homes and traditional livelihood practices.¹³⁶ China's

¹²⁷ *Id.* at ¶ 7.

¹²⁸ *Id.* at ¶ 14.

¹²⁹ *Id.* at ¶ 16.

¹³⁰ *Id.*

¹³¹ CESCR China Report 2005, *supra* note 72, at 31.

¹³² *See generally*, NO ONE HAS THE LIBERTY TO REFUSE, *supra* note 61.

¹³³ *See id.* Land disputes have skyrocketed over the past decade and are particularly problematic for Tibetans, because they have minimal access to the Chinese justice system and they generally depend on land and undeveloped areas for their livelihood. Compulsory resettlement has been occurring in the Three Rivers Area (*Sanjiangyuan*) since 2003. Recent legislation, such as the 2003 Grassland Law, criminalized any use of grasslands.

¹³⁴ *Country Reports 2011*, *supra* note 103, at 7.

¹³⁵ Econ. and Soc. Council, General Comment No. 4, CESCR 6th Sess., 1991, U.N. Doc. The Right to Adequate Housing, (Dec. 13, 1991), at ¶ 7.

¹³⁶ *See, e.g.* NO ONE HAS THE LIBERTY TO REFUSE, *supra* note 61; MINORITY RIGHTS GROUP INTERNATIONAL, *supra* note 51; *Tracking the Steel Dragon*, *supra* note 2.

dissolution of the unique Tibetan cultural identity reflects its view of what is necessary for the unity of the state, but this view is at odds with the core requirements of the Covenant.¹³⁷

68. Just as self-determination is required to ensure protection of subsequent rights under the Covenant, the right to adequate standard of living is necessary to ensure the protection of other rights such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions.¹³⁸

VIII. THE RIGHT TO PHYSICAL AND MENTAL HEALTH (ARTICLE 12)

Article 12.1: *the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

Article 12.2: *the steps to be taken by the States Parties to the present covenant to achieve the full realization of this right shall include those necessary for:*

- (a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*
- (b) *The improvement of all aspects of environmental and industrial hygiene;*
- (c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
- (d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

A. China's Claims of Compliance with Article 12.1 and 12.2

69. China asserts that it has achieved broad availability of health care and services.¹³⁹ It also maintains that the Provisions on the Prohibition of Child Labour give special protection for the physical and mental health and lawful rights of various vulnerable groups.¹⁴⁰ China claims that through self-government, the national-minority autonomous areas enjoy broad autonomy in the areas of culture and health, among others.¹⁴¹ In addition, mental health care and rehabilitation work “was being carried out 1,727 cities and counties, and comprehensive prevention and treatment were provided for 4.903 million persons suffering from acute mental illness.”¹⁴²

B. China's Actual Compliance with Article 12.1 and 12.2

70. Articles 12.1 and 12.2 require the state to recognize the right of everyone to the highest attainable standard of physical and mental health. It also sets out the necessary objective measures that China must take in order to realize the right to health.¹⁴³ Enjoying the highest attainable standard of health is essential to living a life of dignity, and further depends on

¹³⁷ JAMPA: THE STORY OF RACISM IN TIBET, *supra* note 77, at 13, 37-38; International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 6.1.

¹³⁸ General Comment No. 7, *supra* note 121, at ¶ 13.

¹³⁹ Int'l Human Rights Instruments, *supra* note 26, at 5.

¹⁴⁰ *Id.* at 28.

¹⁴¹ *Id.* at 30.

¹⁴² *Id.* at 41.

¹⁴³ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 12.1 & 12.2.

ensuring the rights to water, food, housing, work, education, and equality, among others.¹⁴⁴ The right to health includes the right to control one's health and body, the right to be free from interference, and the right to be free from torture.¹⁴⁵ These rights, singly and together, are underscored by Article 1.1, the right to day-to-day self-determination, and to freely pursue their economic, social, and cultural development.¹⁴⁶

71. The right to health is inextricably tied to the prohibition of discrimination of any kind, because it entails the right to a system of health protection that provides equality of opportunity for people to enjoy the highest attainable level of health.¹⁴⁷ China must provide those who do not have sufficient means with the necessary health insurance and health care facilities, and prevent any discrimination on internationally prohibited grounds in the provision of health care and health services.¹⁴⁸ Violations of this right include government actions such as denial of access to health facilities, goods, and services to particular individuals or groups as a result of *de jure* or *de facto* discrimination.¹⁴⁹
72. This right extends to all underlying factors necessary for its existence, such as access to safe water, adequate sanitation, and the like.¹⁵⁰ It also guarantees the participation of the population in all health-related decision-making at the community, national, and international levels.¹⁵¹ This Committee has interpreted this article to mean that indigenous peoples have the right to specific measures to improve access to health services that are culturally appropriate, as well as resources to design, deliver, and control these services.¹⁵² This requires China to take positive measures to confirm and ensure Tibetans as individuals and communities their right to health in all its dimensions.¹⁵³
73. Healthcare in Tibet continues to lag behind the rest of China. Infant and child mortality rates are among the highest of anywhere in the world.¹⁵⁴ Reports from physicians state that Tibetans have no access to hospitals, and that hospital treatment is difficult or impossible to obtain because hospitals are too far away.¹⁵⁵ In addition, even if Tibetans could get to a hospital, they lack effective access to treatment because the hospitals are run by Chinese officials who institute regulations to prevent Tibetan doctors from providing treatment to their patients without authorization from Chinese superiors. They also charge substantial, often prohibitive fees that they refer to as "security deposits" without which they will not treat patients.¹⁵⁶ These deposits

¹⁴⁴ Econ. and Soc. Council, General Comment No. 14, CESCR 22d Sess., Apr. 25-May12, 2000, U.N. Doc. E/C.12/2000/4, (Aug. 11, 2000) at ¶ 1 & 3 [hereinafter *General Comment No. 14*].

¹⁴⁵ *Id.* at ¶ 8 & 34.

¹⁴⁶ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 1.1.

¹⁴⁷ *Id.*

¹⁴⁸ General Comment No. 14, *supra* note 144, at 18-19.

¹⁴⁹ *Id.* at ¶ 50.

¹⁵⁰ *Id.* at ¶ 11.

¹⁵¹ *Id.*

¹⁵² *Id.* at ¶ 27.

¹⁵³ *Id.* at 37.

¹⁵⁴ See generally *Tracking the Steel Dragon*, *supra* note 2.

¹⁵⁵ *Violence, Discrimination, and Neglect Towards Tibetan Children*, TIBET JUSTICE CENTER 24 (February 2005) [hereinafter *Violence Towards Tibetan Children*].

¹⁵⁶ *Id.*

range from 1000 to 2000 yuan, depending on the hospital's location.¹⁵⁷ Moreover, these security deposits are often waived for those patients who work for the Chinese government, instituting discriminatory practices to the already prominent health care violations.¹⁵⁸

74. None of the key indicia of the right to health that this Committee noted were lacking in 2005 for Tibetans have been ameliorated. Tibetans die in disproportionate rates from common treatable illnesses and diseases due to lack of adequate medical care.¹⁵⁹ Malnutrition is widespread, and even the Bubonic Plague still affects areas of Tibet.¹⁶⁰ China subjects Tibetans, including children, to torture in detention, unlawfully charges fees for medical treatment, and fails to provide adequate medical care to them.¹⁶¹ Further, funds allocated to public health in China have diminished, and the health care system that previously delivered basic health care to the majority of rural residents has been considerably reduced, disproportionately affecting Tibetans.¹⁶²
75. Forced sterilisation and abortion of Tibetan women, as practiced by state doctors in Tibet, contravenes the right to health as it pertains to the right to control over one's own body, and the freedom from interference.
76. Previously, the Committee on Economic, Social and Cultural Rights has stated that forced sterilization of girls and women is a breach of Article 10 of the International Covenant on Economic, Social and Cultural Rights.¹⁶³ In turn, the Committee Against Torture has recommended that States take urgent measures to investigate promptly, impartially, thoroughly, and effectively all allegations of involuntary sterilization of women, prosecute and punish the perpetrators, and provide the victims with fair and adequate compensation.¹⁶⁴ The Committee on the Elimination of Discrimination against Women has considered forced sterilization a violation of a woman's right to informed consent, infringing on her right to human dignity and physical and mental integrity.¹⁶⁵ Widespread or systematic forced sterilization has also been recognized as a crime against humanity in the explanatory memorandum of the Rome Statute.¹⁶⁶
77. Article 25 of China's State Constitution states, "The State promotes family planning so that population growth may fit the plan for economic and social development."¹⁶⁷ Article 4 of the Population and Family Planning Law (2002) states, "The People's Governments and staff at all

¹⁵⁷ *Violence Towards Tibetan Children*, *supra* note 155, at 25.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 23-27.

¹⁶² CESCR China Report 2005, *supra* note 72, at ¶ 32.

¹⁶³ Econ. and Soc. Council, General Comment No. 5, CESCR 11th Sess., 1994, U.N. Doc. Persons with Disabilities, (Sep. 12, 1994) at ¶ 31.

¹⁶⁴ Committee against Torture, Concluding Observations on Slovakia, 43d Sess., Nov. 2-20, 2009, U.N. Doc. CAT/C/SVK/CO/2, (Dec. 17, 2009) at ¶ 14; Committee against Torture, Concluding Observations on Czech Republic, 48th Sess., May 7-June 1, 2012, U.N. Doc. CAT/C/CR/32/2., (July 13, 2012) at ¶ 6(n).

¹⁶⁵ Committee on the Elimination of Discrimination Against Women, General Recommendation No. 24, 20th Sess., 1999, U.N. Doc. A/54/38/Rev.1, at ¶ 22.

¹⁶⁶ *See, e.g.*, THE ROME STATUTE OF THE INT'L CRIMINAL COURT, art. 7(g), *available at* [http://www.untreaty.un.org/cod/icc/statute/english/rome_statute\(e\).pdf](http://www.untreaty.un.org/cod/icc/statute/english/rome_statute(e).pdf).

¹⁶⁷ XIANFA art. 25, §1 (1982) (China).

levels implementing the family planning program shall act strictly within the law, enforcing it in a civil manner, and must not infringe on citizens' legitimate rights and interest."¹⁶⁸

78. Despite this legislation, abuses continue. This may be because the same law requires that local family planning bureaus conduct regular pregnancy tests on married women and administer unspecified 'follow-up' services.¹⁶⁹ Local authorities receive pressure and incentives from the State to achieve certain quotas of sterilizations and abortions. Radio Free Asia noted that, "Under China's draconian family planning rules, local officials must keep new births in their region down below a specified target or face fines and a poor career record."¹⁷⁰
79. Whilst China's famous 'one-child policy' is not comprehensive across China, forms of state-monitored family planning cover 95% of the country, including Tibet.¹⁷¹ The 'One-Child' policy is reportedly in place in some areas of eastern Tibet, whilst in the Tibet Autonomous Region (Western and Central Tibet) there is reportedly a two to three-child policy.¹⁷² The US Congressional Executive Committee on China noted that 10 provinces,¹⁷³ including those which make up part of Tibet – "require unspecified 'remedial measures' to deal with out-of-plan pregnancies", i.e. those which exceed the government-sanctioned birth policies.¹⁷⁴ In its analysis of official reports from local governments in over a third of China's provincial-level jurisdictions, the US Congressional Executive Committee on China found that the term 'remedial measures' (*bujiu cuoshi*) is used synonymously with compulsory abortion."¹⁷⁵
80. It is very difficult to get exact data on the extent of these practices in Tibet for reasons explained elsewhere in this Report. Dr Blake Kerr conducted research on the issue of enforced sterilisations and abortions during the 1990s. He found that "China's National Family Planning Policy operated on a pressure continuum. Tibetan women were informed that it is technically legal to have a second child, but it is "best" to have only one, like the Chinese. Chinese law required that both Chinese and Tibetan women must be married and have permission to give birth. Women with unauthorized pregnancies faced coercive abortion, sterilization and economic sanctions. China's birth control teams operated in hospitals in cities and towns throughout Tibet; mobile teams traveled to remote villages and nomad areas. Both teams had monetary incentives to induce abortions during the first trimester by D&C, and during the second and third trimesters by injections of Levanor into the uterus. The more procedures the doctors performed, the more money they received from the Chinese government."¹⁷⁶

¹⁶⁸ POPULATION AND FAMILY PLANNING LAW OF THE PEOPLE'S REPUBLIC OF CHINA, UNHCR Country of Origin and Legal Information: China (Sep. 1, 2002), available at <http://www.unhcr.org/refworld/country,,NATLEGBOD,,CHN,,42417cb54,0.html>.

¹⁶⁹ See generally *Country Report 2008*, *supra* note 8.

¹⁷⁰ Radio Free Asia's Tibetan Service, *Guangxi Officials Carry Out Mass Forced Abortions*, RADIO FREE ASIA (Apr. 22, 2007), http://www.rfa.org/english/china/china_abortions-20070422.html?searchterm=None.

¹⁷¹ *Women of the World: Laws and Policies Affecting their Reproductive Lives, East and Southeast Asia*, CENTER FOR REPRODUCTIVE RIGHTS, July 1, 2011, available at <http://reproductiverights.org/en/document/women-of-the-world-laws-and-policies-affecting-their-reproductive-lives-east-and-southeast->

¹⁷² See generally *Country Report 2008*, *supra* note 8.

¹⁷³ Fujian, Guizhou, Guangdong, Gansu, Jiangxi, Qinghai, Sichuan, Shanxi, Shaanxi, and Yunnan –

¹⁷⁴ *Country Report 2008*, *supra* note 8, at 1(f).

¹⁷⁵ CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, ANNUAL REPORT 2009, 111th Congress, 1st Sess., (Oct. 10, 2009) 153, available at <http://www.cecc.gov/pages/annualRpt/annualRpt09/CECCannRpt2009.pdf>.

¹⁷⁶ Blake Kerr, M.D., *Genocide in Tibet*, TIBETAN POLITICAL REVIEW (Dec. 26, 2011, 7:41 AM), <https://sites.google.com/site/tibetanpoliticalreview/articles/genocideintibet>.

81. Despite China's claim that it has implemented an effective public healthcare system and improved healthcare access in rural areas, *de facto* discrimination against Tibetans continues. Tibetans not only lack adequate access to healthcare because they reside mostly in rural areas, but they also lack meaningful participation in their access to and control over decision-making in healthcare. Moreover, Tibetans, and especially Tibetan children, are overrepresented in occupations that entail significant health hazards, such as mining.¹⁷⁷ Despite the fact that the Tibetan population is relatively small, it is still targeted for family planning – a strategy that is open to abuse by individuals and the institution. The reality of China's treatment of Tibetans illustrates China's view that Tibetans are inferior and undeserving of basic rights and protections.

IX. THE RIGHT TO EDUCATION (ARTICLE 13)

Article 13.1: *States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of dignity, and should strengthen the respect for human rights and fundamental freedoms.*

Article 13.2: *States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*

- (a) Primary education shall be compulsory and available free to all;*
- (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*
- (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*
- (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*
- (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*

A. China's Claims of Compliance with Article 13.1

82. China states that it promotes the development of cultural education among minority nationalities, and the national government has, in some cases, assisted minorities in developing or improving their own writing systems.¹⁷⁸ It asserts that it prioritizes education and the reduction of illiteracy, and is implementing universal primary education.¹⁷⁹ In addition, it claims that free compulsory education has been fully realized in both urban and rural areas as of 2009.¹⁸⁰ China claims to implement “regional national ethnic autonomy whereby regions whose population primarily comprises minority nationalities exercise autonomy . . . including the right to enact their own legislation and manage their own affairs in the areas of . . . education, science, culture, and

¹⁷⁷ CESCR China Report 2005, *supra* note 72, at ¶ 23-24 (citing children working in hazardous occupations such as mining, often in precarious conditions that fall short of labor safety standards and exploitative child labor in contradiction of CESCR Articles 6 & 7, and insufficient implementation of existing labor legislation resulting in poor working conditions).

¹⁷⁸ Int'l Human Rights Instruments, *supra* note 26, at 5.

¹⁷⁹ *Id.* at 9.

¹⁸⁰ *Id.*

health.”¹⁸¹ It states that it protects the rights of citizens to receive an education under the Constitution and the Law on Compulsory Education, and that these are fulfilled through practices such as waiving school fees in urban and rural areas to safeguard “the right of all school-age children and youth to receive compulsory education on an equal footing.”¹⁸² In terms of higher education, China has reportedly broadened admissions policies for minority-nationality examination candidates, and gives special consideration to minorities who come from especially small populations.¹⁸³

B. China’s Actual Compliance with Article 13.1

*“To all my spiritual brothers and sisters, and the faithful ones... You must unite and work together to build a strong and prosperous Tibetan nation in the future.... Give love and education to the children, who should study hard to master all the traditional fields of studies.”*¹⁸⁴

83. Article 13.1 gives every individual the right to an education that is directed toward development of personality and dignity, and strengthens respect for human rights and fundamental freedoms.¹⁸⁵ The right to education is key to the realization of other rights, especially the right to self-determination and the right to an adequate standard of living, because it is the primary vehicle for economically and socially marginalized populations to remove themselves from poverty and participate fully in their communities.¹⁸⁶ Under UN principles, education should be directed toward “enabl[ing] all persons to participate effectively in a free society” and promote understanding among all ethnic groups, as well as nations and racial and religious groups.¹⁸⁷
84. Article 13.2 lays out the objective factors that must be met in order for a state to achieve full realization of the right to education. In order to comply with this article, China must make education available, accessible, acceptable, and adaptable.¹⁸⁸ This means providing relevant resources, a non-discriminatory environment in a convenient geographical location that is affordable to all, culturally appropriate teaching methods, and flexible responses to the needs of changing societies and students in diverse social and cultural settings.¹⁸⁹ The phrase “generally

¹⁸¹ *Id.* at 11.

¹⁸² *Id.* at 29.

¹⁸³ *Id.* at 30.

¹⁸⁴ *Self-Immolation Amongst Tibetans*, SCOTTISH PARLIAMENT’S CROSS-PARTY GROUP ON TIBET, Briefing Paper No. 4 (1998-2012) (quoting Lama Sobha Rinpoche, who self-immolated on January 8, 2012, in Darlag (Ch: Dari) County, Golog (Ch: Guoluo) Tibetan Autonomous Prefecture, Qinghai Province, in the Tibetan region of Amdo).

¹⁸⁵ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 13.

¹⁸⁶ Econ. and Soc. Council, General Comment No. 13, CESCR 21st Sess., Nov.15-Dec.3, 1999, U.N. Doc. E/C.12/1999/10, Dec. 8, 1999) at ¶ 1 [hereinafter *General Comment No. 13*]; Econ. and Soc. Council, General Comment No. 11, CESCR 20th Sess., Apr. 26-May 14, 1999, U.N. Doc. E/C.12/1999/4, (May 10, 1999) at ¶ 6 (defining “compulsory” – the state is not entitled to treat as optional the decision as to whether the child should have access to primary education. It should be emphasized, however, that the education offered must be adequate in quality, relevant to the child and must *promote the realization of the child’s other rights*) (emphasis added) [hereinafter *General Comment No. 11*].

¹⁸⁷ General Comment No. 13, *supra* note 186, at ¶ 4.

¹⁸⁸ *Id.* at ¶ 6.

¹⁸⁹ *Id.* (citing four levels of obligation: 1) availability: all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology; 2) accessibility: non-discriminatory, within safe physical reach (convenient geographic location or via

available” in regards to secondary education means that secondary education is not dependent on a student's apparent capacity or ability and, secondly, that secondary education will be distributed throughout the State in such a way that it is available on the same basis to all.¹⁹⁰

85. This right entails educational freedom, meaning that China must respect the liberty of parents and guardians to ensure the religion and moral education of their children in conformity with their own convictions.¹⁹¹ This permits public school instruction in subjects such as the general history of religions and ethics if it is given in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression. China is required to ensure that education conforms to these aims and objectives, interpreted in light of the World Declaration on Education for All, the Convention on the Rights of the Child, the Vienna Declaration and Programme of Action, and the Plan of Action for the United Nations Decade for Human Rights Education.¹⁹²
86. China has failed to ensure the realization of the right to education for the Tibetan people. Through the process of population transfer, there has been a large influx of Han migrants into Tibet.¹⁹³ This has resulted in rising education inequities due to exclusion of minority languages and the forced assimilation of the Tibetan people.¹⁹⁴ Forty-five percent of the TAR population was illiterate in 2005. In 2004 only thirty-one percent of TAR children had access to nine-year compulsory education. Participation in economic life increasingly requires proficiency in written and spoken Chinese, but eighty percent of Tibetans are illiterate in Chinese.¹⁹⁵
87. In places where education is available, it is often reported that China engages in bribery and consideration of political affiliation when deciding who may receive it, in direct violation of the requirement that education be provided free of charge.¹⁹⁶ Prestigious universities do not provide any instruction in Tibetan or other ethnic minority languages.¹⁹⁷ Of late, China has threatened to implement policies to sideline the Tibetan language. In September 2010, Qiang Wei, the party secretary of Qinghai Province, was quoted as saying in a speech at a Sept. 13 education conference that mandating Chinese language instruction was crucial, sparking protests from

modern technology distance learning), and economically accessible, meaning affordable to all; 3) acceptability: teaching methods have to be culturally appropriate and of good quality; and 4) adaptability: flexible enough to respond to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings).

¹⁹⁰ *Id.* at ¶ 11.

¹⁹¹ *Id.* at ¶ 28.

¹⁹² *Id.* at ¶ 5. See also *A Generation in Peril: The Lives of Tibetan Children Under Chinese Rule*, TIBET JUSTICE CENTER (March 2001) (documenting widespread discrimination against Tibetan children in education and among other socio-cultural sectors of society). To the best of our knowledge, China has made no substantive changes since that time.

¹⁹³ See generally MINORITY RIGHTS GROUP INT’L, *supra* note 56.

¹⁹⁴ *Id.*; *Issues Facing Tibet Today*, TIBET.NET (stating that the government is making the language redundant in all sectors and that Tibet’s education system, controlled entirely by Chinese Communist ideology, is geared to suit the needs of Chinese immigrants) [hereinafter *Issues Facing Tibet Today*].

¹⁹⁵ *Tracking the Steel Dragon*, *supra* note 2 (stating that primary education is the most important).

¹⁹⁶ See, e.g., *Violence Towards Tibetan Children*, *supra* note 155; *Issues Facing Tibet Today*, *supra* note 194 (finding that Tibetan students suffer from prohibitive discriminatory fees and inadequate facilities in rural areas); International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 13.2; General Comment No. 11, *supra* note 186, at ¶ 7 (stating that indirect costs, such as compulsory levies on parents (sometimes portrayed as being voluntary, when in fact they are not), or the obligation to wear a relatively expensive school uniform, can also fall into the same category).

¹⁹⁷ See generally Country Report 2008, *supra* note 8.

thousands of Tibetan students, precipitating mass arrests.¹⁹⁸ This prompted four UN human rights experts to launch a joint urgent appeal to China. China's response was to deny that there had been any detentions related to the protests and to state that they had listened to the students' grievances – both of which were untrue.¹⁹⁹

88. Rather than addressing the concern over Tibetan language rights, China allowed the situation to repeat. In November 2012 in Tsolho (Ch: Hainan Autonomous Prefecture, Qinghai Province), over 1000 students reacted to a government-issued booklet that criticized the Tibetan language. The students protested for equal rights for ethnic minorities, including their right to study and use the Tibetan language. The resulting police crackdown left five students in a critical condition, and a further 15 who had to be hospitalized²⁰⁰.
89. China's claims that its Constitution already complies with Articles 13.1 and 13.2, that strides have been made to expand education, and that the only real problem lies with some lack of education in rural areas. The reality is that the Tibetan people have been marginalized and effectively denied the right to education because of systemic discrimination.

X. THE RIGHT TO CULTURAL LIFE (ARTICLE 15)

Article 15.1. *The States Parties to the present Covenant recognize the right of everyone:*
(a) *To take part in cultural life . . .*

A. China's Claims of Compliance with Article 15.1

90. China maintains that all nationalities are equal, and implements a system of regional ethnic autonomy. Regions with primarily minority populations can establish autonomous official organs, exercise autonomous rights, enact their own legislation, and manage affairs in the areas of culture, among others.²⁰¹ China asserts that national minorities enjoy broad cultural autonomy, that China ensures the freedom to use and develop languages, customs, faith and religion.²⁰² China claims it has increasingly preferred policies towards minority nationalities, such as support of educational development for minorities, special assistance funds for education of minorities, broader secondary school admissions policies for minorities, and an affirmative bias toward education funding for rural areas.²⁰³ Lastly, China reportedly promotes social and cultural endeavours in rural areas, including rural social insurance, rural medical care reform such as medical cooperatives, and a rural compulsory education program that is free of charge.²⁰⁴

¹⁹⁸ Edward Wong, *Tibetans in China Protest Proposed Curbs on Their Language*, NEW YORK TIMES (Oct. 22, 2010), <https://www.nytimes.com/2010/10/23/world/asia/23china.html>.

¹⁹⁹ See generally U.N. General Assembly Report of the Human Rights Council, HRC 17th Sess., U.N. Doc. A/HRC/17/2, (May 24, 2012).

²⁰⁰ Edward Wong, *Tibetan Protesters Injured in Crackdown; Self-Immolations Continued*, NEW YORK TIMES (Nov 27th 2012), <https://www.nytimes.com/2012/11/28/world/asia/tibetan-protesters-injured-in-crackdown-self-immolations-continue.html>.

²⁰¹ Int'l Human Rights Instruments, *supra* note 26, at 11.

²⁰² *Id.* at 30.

²⁰³ *Id.* at 43.

²⁰⁴ *Id.* at 46.

B. China's Actual Compliance with Article 15.1

*"We do not have the ability to help Tibetan's [sic] religion and culture. We do not have the economic means to help other Tibetans. For the sake of our Tibetan race, in particular for the return of His Holiness Dalai Lama to Tibet, we choose self-immolation."*²⁰⁵

*"Tibet needs freedom and independence. Release Panchen [Lama] and let Dalai [Lama] return home. I self-immolate to protest against the Chinese government! I follow the Buddha and Goodness. My wish is that six million Tibetans will learn their mother tongue, wear Tibetan clothes and be united."*²⁰⁶

91. Article 15.1 gives every individual the right to take part in cultural life.²⁰⁷ The right to take part in cultural life means that the state must both abstain from interfering with cultural practices and take affirmative action to ensure all preconditions for full "participation, facilitation, and promotion" of cultural life are met.²⁰⁸ This right is "intrinsically linked" to the right to education, as this is the medium through which people can pass on values, religion, customs, language, and other cultural practices.²⁰⁹ The right to engage freely in cultural life depends on other rights, such as the right to self-determination and the right to an adequate standard of living.²¹⁰
92. "Cultural life" is defined as "a broad, inclusive concept encompassing all manifestations of human existence" and is "an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future."²¹¹ "Take part" is defined as the individual's right to act freely, to choose his or her own identity, to choose whether or not to identify with a community, to take part in political life, to engage in cultural practices, and to express himself or herself in whatever language he or she chooses.²¹²
93. The concept of culture "takes account of the individuality and otherness of culture as the creation and product of society."²¹³ With the goal of implementing Article 15, however, there are some objective criteria for what Article 15 protects. It encompasses language, literature, music, religion, belief systems, ceremonies, methods of production, natural environments, food, and customs and traditions through which individuals or communities express their humanity, give meaning to their existence, and build their world view.²¹⁴

²⁰⁵ *Last Words*, *supra* note 1 (describing Tenzin Kedhup, age 24, herdsman and former monk, and Nogawang Norphel, 22, who self-immolated together on June 10, 2012 in Chindu County, Qinghai Province). Video available at <http://www.youtube.com/watch?v=4oD8QBVFJK8>.

²⁰⁶ *Id.* (describing Nyankar Tashi, age 24, who self-immolated on 24 November 2012, in Tongren County, Qinghai Province).

²⁰⁷ International Covenant on Economic, Social, and Cultural Rights, *supra* note 13, art. 15.

²⁰⁸ Econ. and Soc. Council, General Comment No. 21, CESCR 43d Sess., Nov. 2-20, 2009, U.N. Doc. E/C.12/GC/21, (Dec. 21, 2009) at ¶ 6 [hereinafter *General Comment No. 21*].

²⁰⁹ *Id.* at ¶ 2.

²¹⁰ *Id.*

²¹¹ *Id.* at ¶ 11. This comment also emphasizes that many definitions of culture have been put forth, but there is no single right definition. All definitions refer to the "multifaceted content implicit in the concept of culture."

²¹² *Id.* at ¶ 15(a).

²¹³ *Id.*

²¹⁴ *Id.* at ¶ 13.

94. In order to ensure the full realization of this right, China is required to ensure that the laws adopted by the State are implemented in such a way as to be acceptable to the individuals and communities concerned.²¹⁵ China must ensure that policies are flexible enough to adapt to cultural diversity, that cultural goods and services are available, and that individuals have access to effective and concrete opportunities to enjoy their culture fully. Only with these in place can the right be realized by every individual in a way that is respectful of his or her specific cultural context.²¹⁶
95. China has failed to provide the Tibetan people with the full realization of the right to take part in their unique cultural life.²¹⁷ For example, Tibetans' traditional ways of practicing pastoralism and agriculture are not only about choosing their livelihood, but also involve a suite of cultural practices rooted in Buddhist ethics and respect for the land, and which manifest in family and community practices. Removal of pastoralists from their ancestral grasslands home denies access to these livelihood practices, and as such is a violation of the right to work (Article 6) of the right to secure an adequate standard of living (Article 11), of the right to dispose of their natural wealth and resources, and is a deprivation of the pastoralists' "own means of subsistence" (Article 1.2). China has stated that its policy goal is the removal of all 2.25 million nomadic pastoralists from the grasslands. As such these rights, individually and in aggregate as the right to a cultural life, are being violated systemically, chronically and acutely.²¹⁸
96. In 2006 China completed the railway that runs south from Xining across the Tibetan plateau to Lhasa. Facilitated by the railway, China has encouraged the transfer of Chinese settlers into Tibet in a bid to assimilate the Tibetan people into Chinese culture.²¹⁹ Not only does this forced assimilation result in deprivation of native Tibetans' right to language and tradition, but the ongoing migration of Chinese to Tibet will exacerbate already stressed ecosystems, ecosystem services, and cultural sites.²²⁰ The Spanish National Court in 2011 noted that this population transfer into Tibet may be a grave breach of the Fourth Geneva Convention.²²¹
97. Assertions of Tibetan cultural identity and social critique from writers, singers, artists and intellectuals are often perceived by China to be a threat to the state. Since the last CESCR session in May 2005, many Tibetan cultural icons have thus been targeted by the Chinese on the basis of their work.²²² Dolma Kyab, a Tibetan writer, was arrested in September 2005 and

²¹⁵ *Id.* at ¶ 16(c) (emphasizing that consultations should be held with the individuals and communities concerned in order to ensure that the measures to protect cultural diversity are acceptable to them).

²¹⁶ *Id.* at ¶ 16.

²¹⁷ See, e.g. *NO ONE HAS THE LIBERTY TO REFUSE*, *supra* note 61; *THE CASE CONCERNING TIBET*, *supra* note 39; MINORITY RIGHTS GROUP INTERNATIONAL, *supra* note 51; *Tracking the Steel Dragon*, *supra* note 2.

²¹⁸ See generally *Environment and Development Issues*, TIBET.NET, <http://tibet.net/important-issues/tibets-environment-and-development-issues/> (last visited March 25, 2013) (finding that the 1949 invasion of Tibet resulted in such violations as agricultural mismanagement and exploitation of Tibet's resources through unregulated mining, along with the government's failure to respond to Tibetan petitions against this action).

²¹⁹ See generally *Tracking the Steel Dragon*, *supra* note 2.

²²⁰ *Id.*

²²¹ *Spanish Court Acknowledges Tibet as an Occupied State Under International Law*, TIBET JUSTICE CENTER, 2012 <http://www.tibetjustice.org/features/audencia-nacional-ruling/> (last visited March 29, 2013).

²²² *A List of Tibetan Writers, Artists and Intellectuals Detained, 'Disappeared', or Harassed for Their Work*, INTERNATIONAL CAMPAIGN FOR TIBET, available at http://www.savetibet.org/files/documents/List_Tibetan_Writers_Artists_Intellectuals.pdf (noting

sentenced for 10 years for “endangering state security”, widely believed to be as a result of his manuscript “The Restless Himalayas.”²²³ On March 11th 2013, a monk, Tritsun, was arrested for writing on the self-immolations in Tibet.²²⁴ Whilst some of this writing is on the Tibetan political situation or human rights, it is of particular concern that China also targets those artists and writers whose work focuses on Tibetan culture, such as the three Tibetan writers sentenced to between three and four years in December 2011 for writing on Tibetan culture and identity.²²⁵

98. The CESCR List of Issues submitted to China in 2004 requested further information regarding state efforts to preserve the indigenous culture of Tibetans living in areas “affected by the ‘China Western Poverty Alleviation Project’” and the right to practice the religion of one’s choice “by people belonging to minority groups” such as Tibetan Buddhists. China’s response denied any failure to protect these rights but CESCR Concluding Observations noted that insufficient information had been provided regarding the enjoyment of economic, social and cultural rights by populations in the ethnic minority areas, especially the free exercise of religion as a right to take part in cultural life, and the use and teaching of minority languages, history and culture in the Tibet Autonomous Region.
99. The right to freedom of religion or belief, “as defined by international standards, is a wide-ranging right covering a large number of distinct yet interrelated issues.”²²⁶ It is not only central to the right to freely choose one’s cultural life and practices (Article 15); it also links closely to other foundational CESCR rights, including the right to self-determination (Article 1.1) and the right to non-discrimination (Article 2). Additionally, during the more than twenty-five years since the establishment of the position of the U.N. Special Rapporteur on Freedom of Religion or Belief, the Special Rapporteur has articulated “a large number of distinct yet interrelated issues” to the right to religion or belief, linking each of these not only with articles in the Covenant, but also with subsequent UN resolutions, declarations, treaties, and covenants, as well as with general comments from the Human Rights Committee. Among these “distinct yet interrelated” rights are the right to manifest one’s religion or belief, freedom to worship, freedom from coercion to practice, security of places of worship, the right to use of religious symbols, the right to recognize and appoint clergy, and the unique and manifold religious rights of women, children (in Tibet, children historically had the right to enter monastic religious education), and minorities.²²⁷
100. Policy failures related to Article 15 and the right to a cultural life are systemic, chronic, and acute, and felt nowhere more strongly than in the heart of Tibetan cultural life and social

in 2010 nineteen Tibetan artists, writers, and intellectuals in detention, and a further twenty-four as having been harassed or in short-term detention).

²²³ *Dolma Kyab*, ENGLISHPEN, <http://www.englishpen.org/dolma-kyab-3/> (last visited March 30, 2013).

²²⁴ *Tibetan Writer Arrested for Book on Self-Immolations*, VOICE OF AMERICA, <http://www.voatibetanenglish.com/content/article/1625490.html> (last visited March 25, 2013).

²²⁵ *Tibet Writers Threatened*, RADIOFREEASIA.ORG accessed 03/25/13 <http://www.rfa.org/english/news/tibet/writers-12312010111557.html>.

²²⁶ Econ. and Soc. Council, Civil and Political Rights, Including the Question of Religious Intolerance, Commission on Human Rights 62d Sess., 2005, U.N. Doc. E/CN.4/2006/5, (Jan. 9, 2006) 9.

²²⁷ *See id.* at 24-42.

organization, the nunnery and monastery.²²⁸ While these policy failures stretch back more than sixty years, they have become increasingly acute since protests took place across Tibet starting in March 2008. Since then China has intensified police and military presence and control within monasteries, has increased surveillance both on the ground and across communications media, and has used Party cadres to oversee day-to-day religious practices in Tibetan society. Patriotic education campaigns also intensified dramatically after March 2008. ‘Legal education’ at monasteries and nunneries is a major theme of political education campaigns and reflects the Government's desire to influence monks and nuns not to engage in ‘illegal’ protests and gatherings.²²⁹ One analysis describes this intensification as “totalitarian – an approach in which the state recognizes no limits to its authority, imposes a climate of fear, and strives to regulate every aspect of public and private life,” and includes “actively establishing a Party presence.” Meanwhile, Chinese leaders continue to frame their response to Tibetan dissent as “a war against secessionist sabotage”²³⁰ and “fighting against the Dalai Lama group.”²³¹

101. In particular, the increasing presence of Party cadres and security forces in monasteries and nunneries underscores on-going policies designed to “discredit and imprison religious leaders, control the selection of clergy, ban certain religious gatherings, and control the distribution of religious literature.”²³² These policy practices violate the right of Tibetans to manifest their religion, to freely practice their religion as they see fit, their right to freedom from coercion of practice, and their right to appoint clergy and to the security of places of worship. In addition, Dr. John Powers, Centre for Asian Societies and Histories at the Australian National University, has noted that certain rituals and ceremonies often require decades of previous study, as well as authorization by a qualified master. For the Gelukpa sect “in particular, the period of study required to earn the degree of Geshe (something like a Doctor of Divinity) would be anywhere from 20-30 years.... Because the Chinese government severely restricts the time allowed for study... Tibetan monks today are simply unable to devote enough time to fulfill the requirements of either the Geshe degree or the further study required for performance of tantric rituals.”²³³
102. China continues to arrest, detain, torture and imprison Tibetans seeking to practice the “distinct yet interrelated” rights under the freedom of religion or belief.
 - i. Paljor Norbu, an 84 year-old Tibetan and master printer of Buddhist texts was arrested in late 2008. He had lived through the Cultural Revolution, repeated declarations of martial law, and the waves of Chinese settlers to Tibet and Lhasa, where he lived. Yet through more than a half-century of Chinese occupation, Paljor Norbu upheld Tibetan culture and traditional forms of religious printing.

²²⁸ See *Country Report 2008*, *supra* note 8; U.S. Commission on International Religious Freedom, Annual Report 2012 (March 2012) 136-141, available at [http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf) [hereinafter *2012 Int'l Religious Freedom Report*].

²²⁹ *2009 Report on International Religious Freedom*, U.S. DEPT. OF STATE (Oct. 26, 2009).

²³⁰ See Yang Jingjie, *Tibet Officials 'Prepare for War'*, PEOPLE'S DAILY ONLINE, <http://english.peopledaily.com.cn/90882/7725297.html>.

²³¹ See Liu Sha, *Leaders Focus on Stability*, GLOBAL TIMES, <http://www.globaltimes.cn/content/739820.shtml>; *Storm in the Grasslands*, *supra* note 13, at 25-29.

²³² *2012 Int'l Religious Freedom Report*, *supra* note 228, at 6-7.

²³³ *Country of Origin Information Report: China*, UK BORDER AGENCY (Nov. 15, 2010) 108-114.

He was arrested on “suspicion of inciting separatism,” and is serving a seven-year sentence.²³⁴

- ii. Tenzin Delek Rinpoche, a monk well-known and respected for his community service, has been in detention for more than ten years, having been sentenced to death, later commuted to life, for “inciting splittism.”²³⁵
 - iii. The nomad Runggye Adak was arrested in 2007 for calling for the return of His Holiness the Dalai Lama to Tibet. While presenting a ceremonial *khatag* scarf to the chief lama of nearby Lithang monastery, he said: “If we cannot invite the Dalai Lama home, we will not have freedom of religion and happiness in Tibet.” He also called for the release of the Panchen Lama and Tenzin Delek Rinpoche.²³⁶
103. Perhaps the most famous example of the denial of the “distinct yet interrelated” rights under the freedom of religion or belief is the on-going house arrest of Gendun Choekyi Nyima, who, in 1995, at age six, was recognized as the 11th reincarnation of the Panchen Lama, Tibetan Buddhism’s second highest lama. Born in Tibet, He was taken into custody by the Chinese government along with his family. At the time of His detention, He was considered to be the world’s youngest political prisoner. His continuing detention constitutes violations of the right to recognize and appoint clergy, and the unique and manifold religious rights of women and children; in His case, the right to enter monastic religious education as a child. The whereabouts of His Holiness and his family are unknown.²³⁷
104. In sum, any assessment of violations of these rights must begin and end not only with an understanding of the demographic diversity of the 113 self-immolations in Tibet,²³⁸ but also an understanding of why they have chosen this act.²³⁹ They range across age – three were over 60, three were 16 or younger and more than half were under 30. Twelve were women, and at least six were mothers. Some 41, or more than one-third, were known to be nuns, monks, or former monks. Yet, what underlies all of this demographic diversity is that the overwhelming majority who have left a final message before self-immolating call for the return of the Dalai Lama, for the release of the Panchen Lama, and to practice their religion.²⁴⁰ Many also have called for the right to speak Tibetan; the right to wear traditional clothes; for the right to practice traditional livelihoods to earn both a living and for enough “economic means to help other Tibetans.” That

²³⁴ See *Tibetan Heroes*, FREE TIBETAN HEROES (Aug. 25, 2011), available at <http://freetibetanheroes.org/hero-profiles/> (giving detailed biographies and chronologies of arrests and detentions).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ See *Panchen Lama*, FREE THE PANCHEN LAMA, <http://www.freepanchenlama.org/panchen-lama/> (last visited March 25, 2013).

²³⁸ As of 31 March 2013, a total of 120 self-immolations have taken place since 2009, including six by Tibetans in exile: four in India, and two in Nepal. All but one of the 120 self-immolations have occurred since March 2011, and all of them have taken place since China’s previous review under the CESCR.

²³⁹ See also *Self-Immolations in Tibet*, INTERNATIONAL CAMPAIGN FOR TIBET (March 29, 2013), <http://www.savetibet.org/resource-center/maps-data-fact-sheets/self-immolation-fact-sheet>; *Map Documenting Self-Immolations*, http://www.rangzen.net/downloads/Map_TsampaRevolution_20130325_EN_XXL.jpg (providing more information about the self-immolators, including names and demographic information, and a map showing the geographic scope of the self-immolations).

²⁴⁰ See *Storm in the Grasslands*, *supra* note 13, at 72-85 & 87-175 (containing images and summary statements about the self-immolators and longer biographies and final statements).

is, they have called for the rights enshrined in the CESCRC in general and in Article 15 in particular.²⁴¹

*“Self-immolation is a reclamation of sovereignty over one’s own self within a state of siege. Biological life is taken in an assertion of political life. It is this possibility that is terrifying to the state in its quest to stabilize territorial sovereignty.”*²⁴²

XI. CONCLUSION

105. In sum, Article 1 of the Covenant is quintessential and foundational: that is, self-determination underlies, enables, and enhances all sociocultural and socioeconomic norms, institutions, relations, and practices. It establishes the conditions such that an individual and a people may exercise their day-to-day rights and freedoms and make choices in ways that helps them seek “the kind of life one has reason to value.”²⁴³ The right to self-determination thus assures, in practice, that all subsequent rights enshrined under the Covenant will in fact be-- to paraphrase the Vienna Declaration of 1993-- universal, indivisible, interdependent, and interrelated.
106. Furthermore, the right to “take part in cultural life” (Article 15) includes “a broad, inclusive concept encompassing all manifestations of human existence,” which is “an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future.”²⁴⁴ From this perspective, an indispensable requirement to respect and enhance the Tibetan people’s rights to self-determination and to participate in their cultural life is to enable meaningful and genuine Tibetan participation in deliberations and decisions about how their diverse social, economic, and cultural rights are to be respected, protected, and fulfilled. This right of participation includes the principle of free, prior, and informed consent regarding any State action that might abridge, suspend, or deny Tibetans’ rights under the Covenant.
107. Denial of participation and decision-making in matters affecting any of the rights enshrined in the Covenant violates Article 2, the right to non-discrimination.
108. At this stage in time, with over 113 Tibetans in the past two years having self-immolated, thousands having protested, and all having struggled in the economic, social, and cultural aspects of their lives under Chinese policies and practices, a concerted focus on Tibet as an area of concern is vital to China’s upcoming review by the Committee.

XII. RECOMMENDATIONS

109. Tibet Justice Center makes the following recommendations to the Committee on Economic, Social, and Cultural Rights (“Committee”) in its review of the People’s Republic of China under the Covenant on Economic, Social, and Cultural Rights (“Covenant”). We make these

²⁴¹ See generally *Last Words*, *supra* note 1.

²⁴² Emily T. Yeh, *On “Terrorism” and the Politics of Naming*, J. SOCIETY OF CULTURAL ANTHROPOLOGY (Apr. 2012), <http://www.culanth.org/files/HotSpot-Yeh.pdf>.

²⁴³ Amartya Sen, *Development as Freedom* 226 (1999).

²⁴⁴ See General Comment No. 21, *supra* note 208, at ¶ 10. This comment emphasizes that many definitions of culture have been put forth, all of which refer to the “multifaceted content implicit in the concept of culture.”

recommendations to promote the manner in which China's policies and practices can respect, protect, and fulfill the "distinct yet interrelated" rights, as enshrined in the Covenant, of Tibetans across all Tibetan regions of China.²⁴⁵

110. Recommendations I through IV engage foundational rights that underlie all other rights enshrined in the Covenant, while Recommendations V through X reference specific Articles in the Covenant.
111. RECOMMENDATION 1 – ARTICLE 1.1: THE RIGHT TO SELF-DETERMINATION. Tibet Justice Center considers Article 1, the right to self-determination, to be foundational, as it underlies, enables and enhances all socio-cultural and socio-economic norms, institutions, relations and practices, and thereby establishes conditions such that an individual and a people may act on day-to-day freedoms, choices, and ways that one seeks to lead "the kind of life one has reason to value."²⁴⁶ This right also provides the basis by which all other rights enshrined in the Covenant are made available, accessible, and adaptable. This universal right also enables the possibility for other rights to be indivisible, interdependent, and interrelated. We therefore recommend that China makes concrete provisions to allow the Tibetan people the right to self-determination – in both an overarching sense, and in day to day fulfillment through economic, social and cultural rights.
112. RECOMMENDATION 2 – ARTICLE 15: THE RIGHT TO CULTURAL LIFE. All Tibetans have the right to exercise Article 15: to take part in cultural life, which the Committee has defined as "a broad, inclusive concept encompassing all manifestations of human existence" and which is "an explicit reference to culture as a living process, historical, dynamic and evolving, with a past, a present and a future."²⁴⁷ We consider this right a second foundational right that underlies, enables and enhances all subsequent rights and the practices thereof. We therefore recommend that China immediately take steps to respect, protect, and fulfill Tibetans' right to self-determine essential aspects of their cultural life.
113. RECOMMENDATION 3 – THE PRINCIPLES OF PARTICIPATION AND FREE, PRIOR, AND INFORMED CONSENT. While not an Article explicit in the Covenant, a key dimension to respecting, protecting, and fulfilling Tibetans' ability to practice self-determination and to participate in cultural life involves enhancing and assuring participation in deliberations and decision-making about how their rights are to be respected, protected, and fulfilled in all dimensions of their diverse yet interrelated economic, social and cultural rights. Towards this end, we recommend that China adapt all current policies and practices so that Tibetans, as relevant and affected stakeholders, may deliberate and make decisions about that which may affect their right to self-determination, their right to take part in cultural life, and, *inter alia*, all rights enshrined in the Covenant. In addition, this right of participation includes active

²⁴⁵ "Civil and Political Rights, Including the Question of Religious Intolerance," Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, January 2006, p. 9. Accessible at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/101/40/PDF/G0610140.pdf?OpenElement>

²⁴⁶ Amartya Sen, *Development as Freedom*, 1999, p. 226 and *inter alia*.

²⁴⁷ General Comment No. 21, *supra* note 208, at ¶ 11. This comment also emphasizes that many definitions of culture have been put forth, but there is no single right definition. All definitions refer to the "multifaceted content implicit in the concept of culture."

engagement of the principle of free, prior, and informed consent regarding any State actions that might abridge, suspend or deny Tibetans' rights.

114. RECOMMENDATION IV – ARTICLE 2.2: THE RIGHT TO NON-DISCRIMINATION. Any denial of Tibetan participation and decision-making related to such issues as access to and control in education, health care, cultural life, economic livelihood, as well as any other rights enshrined in the Covenant, stands as a violation of Article 2, the right to non-discrimination. We therefore recommend that the Chinese state take every reasonable step to respect, protect, and fulfill the rights accorded to Tibetan citizens under the Covenant.
115. RECOMMENDATION V – ARTICLE 1.2: NATURAL RESOURCES AND MEANS OF SUBSISTENCE. We support the recommendations of the Special Rapporteur on the Right to Food, who recommends that China “suspend the non-voluntary resettlement of nomadic herders from their traditional lands and the non-voluntary relocation or rehousing programmes of other rural residents, in order to allow for meaningful consultations to take place with the affected communities, permitting parties to examine all available options, including recent strategies of sustainable management of marginal pastures.”²⁴⁸
116. RECOMMENDATION VI – ARTICLE 6: THE RIGHT TO WORK. We recommend that Chinese officials, at the national, provincial, and local levels: 1) cease the policy of population transfer of Han migrants into Tibetan areas; 2) implement and monitor equal opportunities hiring practices to ensure Tibetans are not discriminated against when seeking employment, and enact legislation to ensure that Tibetans receive equal pay to their Han counterparts; 3) establish positive discrimination practices towards Tibetans, which include facilitating access to permits and loans to open businesses; 4) for those nomads who choose to continue to reside at their ancestral grasslands homes and regions, provide “*technical and vocational guidance and training programmes, policies and techniques*” (Article 6.2) that not only enhance their traditional ecosystem knowledge used in land management and animal husbandry, but also provide tools and techniques that make Tibetan nomadic pastoralists equal partners in assessing and restoring grasslands ecosystem services and watershed processes; and 5) abolish the policy and practice of re-education through labor.
117. RECOMMENDATION VII – ARTICLE 11: THE RIGHT TO ADEQUATE STANDARD OF LIVING. We recommend that Chinese officials, at the national, provincial, and local levels: 1) desist from forcibly removing Tibetans from their homes – be they nomadic or other – without consultation, including free, prior and informed consent and due process; and 2) per the recommendation under Article 6.2, respect, protect, and fulfill the right of Tibetan nomadic pastoralists to remain on the grasslands, so that they may seek, per the language of the Article, an “*adequate standard of living... including adequate food, clothing and housing, and to the continuous improvement of living conditions.*”
118. RECOMMENDATION VIII – ARTICLE 12: THE RIGHT TO HEALTH. We recommend that Chinese officials, at the national, provincial, and local levels: 1) establish health clinics across

²⁴⁸ Report of the Special Rapporteur on the Right to Food, Olivier De Schutter: Mission to China, 19th Sess., U.N. Doc. A/HRC/19/59/Add.1 (Jan. 20, 2012), at 15-16, ¶ 35-36, *available at* http://www.srfood.org/images/stories/pdf/officialreports/20120306_china_en.pdf [hereinafter *Right to Food*].

Tibet, in consultation with the local communities, including in remote areas, with the aim that all Tibetans are within reasonable reach of culturally sensitive, nondiscriminatory medical care; 2) cease the practice of forcible sterilization and abortion of Tibetan women; and 3) dismantle quotas and rewards that encourage local officials to commit forced abortions and sterilizations, which are violations of China's own rule of law.

119. RECOMMENDATION IX – ARTICLE 13: THE RIGHT TO EDUCATION. We recommend that Chinese officials, at the national, provincial, and local levels: 1) make primary education available, accessible, acceptable, and adaptable to all Tibetan children²⁴⁹ (this means providing relevant resources, a non-discriminatory environment in a convenient geographical location that is affordable to all, culturally appropriate teachers, teaching methods and materials, including in Tibetan language, and flexible responses to the needs of changing societies and students in diverse social and cultural settings; 2) make secondary education “generally available, meaning that it will be distributed throughout the State in such a way that it is available on the same basis to all; 3) officially protect and respect the Tibetan language as a language of tuition for Tibetans throughout their education – from primary through to further education; and 4) exercise special sensitivity in respecting, protecting, and fulfilling the cultural traditions of Tibetans who enter monasteries and nunneries for educational training in “*all the traditional fields of studies.*”
120. RECOMMENDATION X – ARTICLE 15: THE RIGHT TO PARTAKE IN CULTURAL LIFE. We recommend that Chinese officials, at the national, provincial, and local levels: 1) “suspend the non-voluntary resettlement of nomadic herders from their traditional lands and the non-voluntary relocation or rehousing programmes of other rural residents. Giving nomads the choice to stay or to leave gives them the choice to participate in cultural life of traditions rooted on the grasslands.”²⁵⁰; 2) release immediately all political prisoners who have been arrested on charges related to writing, singing, painting or any other activities that contribute to what amounts to Tibet's cultural canon; 3) ensure that Tibet's cultural icons can no longer be arrested and charged for contributing to the cultural life of the Tibetan people by fully implementing Article 35 of the Constitution of the PRC, which guarantees freedom of expression to all Chinese citizens; 4) fulfill Tibetans' right to freely partake in the religious elements of their culture by ceasing political re-education programs; and 5) respect and protect Tibetans' right to manifest their religion and beliefs, their freedom to worship, their freedom from coercion as they practice their religion, the security of monasteries and nunneries, their right to use religious symbols, and their right to recognize and appoint clergy.

²⁴⁹ General Comment No. 13, *supra* note 186, at ¶ 6.

²⁵⁰ *Right to Food*, *supra* note 248, at 15-16, ¶ 35-36.