



TIBET JUSTICE CENTER



## Tibet's Stateless Nationals II: Tibetan Refugees in India - 2014 Update

## **TIBET'S STATELESS NATIONALS II: AN UPDATE ON TIBETAN REFUGEES IN INDIA**

### **I. Executive Summary**

For more than a quarter century, Tibet Justice Center (TJC) has sought to provide lawyers, immigration officials, judges, and other government decision-makers with clear and accurate information about the legal status and circumstances of Tibetans abroad. Some of these Tibetans eventually petition for asylum, withholding of removal, or other relief in the United States, Canada, Switzerland, Belgium, and elsewhere. In this context, their legal status in a third state may emerge as an issue that potentially affects their eligibility for asylum or other relief.

In 2002, after carrying out an extensive fact-finding mission to Nepal, TJC published *Tibet's Stateless Nationals: Tibetan Refugees in Nepal*,<sup>1</sup> which documented the legal status and circumstances of Tibetans residing in or transiting through Nepal. In 2011, after comparable research in India that extended over a decade, including multiple fact-finding missions and secondary research, TJC published *Tibet's Stateless Nationals II: Tibetan Refugees in India*,<sup>2</sup> which attempts to clarify the analogous - but, as it turns out, even more complex and dynamic - legal issues that frequently arise for Tibetans residing in or transiting through India. The principal objective of TJC's two reports was to explain the legal status of and circumstances of life for Tibetan "refugees"<sup>3</sup> whether in flight from persecution or otherwise.

Given the fluidity and uncertainty of circumstances facing Tibetans residing in India, TJC conducted additional fact-finding subsequent to the publication of its 2011 Report. That research included a June 2014 fact-finding trip to the north of India, including Dharamsala.

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<sup>1</sup> TIBET JUSTICE CENTER, *TIBET'S STATELESS NATIONALS: TIBETAN REFUGEES IN NEPAL* (2002) [hereinafter *TIBET'S STATELESS NATIONALS I*], <http://www.tibetjustice.org/reports/nepal.pdf>.

<sup>2</sup> TIBET JUSTICE CENTER, *TIBET'S STATELESS NATIONALS: TIBETAN REFUGEES IN INDIA* (2011) [hereinafter *TIBET'S STATELESS NATIONALS II*], <http://www.tibetjustice.org/reports/stateless-nationals-ii/stateless-nationals-ii.pdf>.

<sup>3</sup> For purposes of this Report, "Tibetan refugee" refers to any Tibetan residing in India without Indian citizenship or any Tibetan transiting through India. As we explain in *Tibet's Stateless Nationals II*, India does not consider these Tibetans to be refugees in any legal sense - national or international. India is not a party to the Convention Relating to the Status of Refugees, July 28, 1951, 1989 U.N.T.S. 150, or the Protocol Relating to the Status of Refugees, Jan 31, 1967, 606 U.N.T.S. 267. Nor has India enacted national laws that enable Tibetans living in India to petition for legal refugee status. Accordingly, throughout this report, we use the phrase "Tibetan refugee" only in the colloquial sense. Except where otherwise noted, we do not intend by the use of this phrase to express or imply anything about their legal status under either Indian or international law.

The results of that research are described in this Report entitled *Tibet's Stateless Nationals II: An Update on Tibetan Refugees in India*. This report does not repeat the background information contained in our earlier reports. For detailed information regarding the history of Sino-Indian relations; India's policy toward Tibetan refugees from 1959 to 2009; international law relating to refugees and Indian law relating to foreigners; and background information regarding Tibetan settlements in India, see *Tibet's Stateless Nationals II*.

As described in this update to the 2011 report, there have been notable changes in circumstances facing Tibetans in India since the publication of TJC's 2011 report, some of which contribute to and exacerbate the insecurity and vulnerability of Tibetans as described in our earlier report. The most disturbing findings from our recent research is that 1) Tibetans without a valid "Indian Registration Certificate for Tibetans" (RC) have been arrested, fined, imprisoned and threatened with deportation and, in some cases, actually deported and 2) there have been a number of attempts to forcibly evict Tibetan communities that have lived on the land for decades. Also notable is the fact that although two High Courts have rendered decisions holding that Tibetans born between 1950 and 1987 are citizens of India, Tibetans born between those years remain unable to secure citizenship.

Other notable changes include the deletion of the pilgrimage category for Special Entry Permits (although many Tibetans holding pilgrimage permits were permitted to remain); and new difficulties facing Tibetans applying for a Government of India issued "Identity Certificate."

Among the positive developments is the fact that 1) the Indian Election Commission issued an order providing that certain Tibetans are eligible to vote (although some states explicitly resisted implementation and the Ministry of Home Affairs vowed to appeal the order to the Supreme Court); and 2) the renewal period for Registration Certificates for Tibetans born in India or residing in India for more than twenty years has been lengthened from one year to five years.

TJC's recent fact-finding reveals that the vulnerability of Tibetans in India, documented in our 2011 report, remains equally true today. This vulnerability is most dramatically illustrated by recent actual deportations and threats of deportation of Tibetans who do not have valid RCs. The insecurity facing Tibetans in India is also confirmed by multiple attempts to evict Tibetan communities from their homes. These developments, as well as cases brought to prohibit public displays of Tibetan prayer flags and stones and other isolated instances of anti-Tibetan sentiment, contribute to a heightened sense of insecurity and vulnerability facing the Tibetan community in India today.

## **II. Deportations**

As described in *Tibet's Stateless Nationals II*, Tibetans in India are classified as foreigners, not refugees. As foreigners, Tibetans are subject to the Foreigner's Act of 1946 and the Registration of Foreigners Act of 1939, which empower the government to regulate and restrict the freedom of movement of Tibetans in India. Most importantly, Section 14 of the

Foreigners Act provides that any foreigner who enters or stays in India without valid required documents is subject to imprisonment and fines. Tibetans as foreigners are required to possess a Registration Certificate (RC). Without a valid RC, Tibetans' presence in India is illegal which renders them vulnerable and subject to harassment by the police, detention, imprisonment, fines, and deportation. Tibetans without valid RCs live in a constant state of fear and insecurity.

One of the major areas of focus of TJC's June 2014 fact-finding trip to India was to determine whether Tibetans without valid RCs were actually being arrested and/or deported. The research, which included over eighteen in-depth interviews with Tibetan government officials and others and included access to actual court files, confirmed that Tibetans who cannot produce valid, up-to-date RCs are indeed subject to arrest, fines, imprisonment, and deportation.

For reasons of confidentiality and a concern for the security of the parties involved, initials instead of actual names are used in the descriptions of recent incidents involving arrests, fines and threatened or actual deportations.

One such case was T.D. v. State of Himachal Pradesh (2013), involving a 27 year old Tibetan man who was arrested and prosecuted under Section 14A of the Foreigners Act for not renewing his RC in a timely manner. The Magistrate imposed a fine of 5000 rupees<sup>4</sup> and imprisonment for a period of six months and directed the Jail Authorities "to deport the convict to his country of origin" upon completion of his term on imprisonment. Shortly before he was to be deported, he secured the assistance of a High Court advocate who filed a petition in the High Court of the State of Himachal Pradesh. The High Court held that the order of deportation was "appropriate and in accordance with the law" but granted a stay to enable the petitioner to renew his RC.<sup>5</sup>

A second case involving an arrest for failure to renew an R.C. was State v. K.N. (2013). In that case, a Tibetan man was arrested under Section 14 of the Foreigners Act because his R.C. had expired two years earlier and had not been renewed. K.N. was released on bail and was able to renew his R.C. thus avoiding a threatened deportation.<sup>6</sup>

Three other cases involved orders of deportations that were reportedly actually carried out. In State v. V.C. (2012), a Tibetan monk was "found roaming" in the area outside of the Dalai Lama's temple in McLeodganj. The monk was between 50 and 60 years of age and infirm. The court papers indicate that "[o]n interception, he was asked to produce the registration certificate on being found to be a Tibetan, but failed to produce the same." He was arrested

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<sup>4</sup> Approximately \$80.

<sup>5</sup> T.D. v. State of Himachal Pradesh (2013) (on file with TJC). T.D.'s lawyer explained that the order of deportation simply reflected the fact that his client had failed to obey the law by not renewing his RC in a timely manner. As such, "he's treated as a Chinese national." Interview with Dilip Sharma, High Court Advocate, Shimla, June 22, 2014.

<sup>6</sup> State v. K.N. (2013) (on file with TJC).

and ultimately convicted under Section 14 of the Foreigners Act for failure to produce a valid RC. After serving 35 days in jail, he was deported to Tibet. Upon arrival in Tibet, he was reportedly imprisoned in a Chinese jail.<sup>7</sup>

In a companion case heard at the same time, a Tibetan from Amdo was also arrested and ordered deported for not having an RC. He was deported alongside the monk and, like the monk, was reportedly imprisoned in a Chinese jail.<sup>8</sup>

In *M. v. State of Himachal Pradesh (2013)*, a young Tibetan man was arrested and prosecuted under Section 14 of the Foreigners Act for not having a valid RC. He was fined 1000 rupees and imprisoned for seven months and ordered deported. The facts that led up to his arrest are described by the court as follows:

"[The local police] exercising their routine patrol duty...found a Tibetan boy, who, on seeing the police...turned about. He was nabbed on suspicion. He disclosed his identity as [name withheld]. He was asked to produce registration certificate being a Tibetan National, but could not produce same."<sup>9</sup>

On appeal, the Court concluded that because the defendant could not produce an RC as required by the Foreigners Act, he committed an offense punishable under Section 14 of the Foreigners Act. The Court upheld the order of imprisonment for 224 days and the fine of 1000 rupees and further ordered his immediate deportation. The relevant portion of the court judgment follows:

"It has been established that the convict was staying in India without valid registration certificate. He on completion of sentence ultimately has to be deported from India. The convict is a young offender with age 23 years. He came to be arrested in the case on [date withheld] and since then is in custody. Keeping in view these facts and circumstances, the convict is sentenced to undergo simple imprisonment for the period undergone i.e. 224 days up till today and to pay a fine of Rs. 1000/- and in case of default of payment of fine, he shall further undergo simple imprisonment for 15 days. A copy of judgment be supplied to the convict free of costs and ***be also sent to the Superintendent of Police [district withheld] for making arrangement for immediate deportation of the accused after completion of above sentence.***" [emphasis added]<sup>10</sup>

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<sup>7</sup> State v. V.C. (2012) (on file with TJC).

<sup>8</sup> Interview with Tibet Settlement Officer, Dharamsala (on file with TJC).

<sup>9</sup> *M. v. State of Himachal Pradesh (2013)* (on file with TJC).

<sup>10</sup> *Id.*

M. was deported and imprisoned in a Chinese jail.<sup>11</sup> This case is particularly significant because M. was born in India. Despite that, he was ordered deported to Tibet.

The details of how these deportations are carried out are difficult to learn but it appears that the police escort the deportee to an area known as Pooh, in the Kinnaur district of Himachal Pradesh and close to the Tibetan border. The deportee is then reportedly handed over to the Indo-Tibetan border police (ITBP) who inform the deportee that if s/he re-crosses the border back into India, s/he will be subject to a "shoot order," which we understand to mean the police could shoot the Tibetan on sight. Upon arrival in Tibet, the deportee is reportedly arrested and placed in a Chinese jail. The length of the detention, however, may well depend upon whether the deportee was born in Tibet or India. For those born in India, if they have not been politically active, China may be willing to allow them to return to India after a period of detention.<sup>12</sup> Upon return, they face an uneasy and uncertain future because, without documentation or legal status, they remain vulnerable to future arrest, detention, fines and deportation.

The five deportation cases described above are case studies and not intended to be an exhaustive list of deportations that have recently occurred in India. They were discovered during a fact-finding trip to one district in the north of India where TJC factfinders were given access to files. It is likely that similar actual or threatened deportations have taken place in other districts in India.

These cases demonstrate that the vulnerability and fear that Tibetans without valid RCs experience is valid and justified. Tibetans in India who do not possess valid RCs are indeed subject to arrest, imprisonment, fines and deportation.

### **III. Land Cases**

The insecurity facing Tibetans in India today is also confirmed by recent and multiple attempts to use the courts to evict Tibetan communities from their homes. TJC's recent fact-finding mission revealed three cases where large Tibetan communities had received eviction notices.

The "forest land case" involved 210 Tibetan families living in Dharmasala on the road leading to Bhagsu. The community began in the 1960s when many Tibetans followed the Dalai Lama to Dharamsala. They originally built tin and wood shacks but over time those makeshift homes were replaced with concrete and brick houses. Although many of these families had lived on the land for half a century, they had no documents showing ownership. In 2012, the families received eviction notices, ostensibly because the land they were living on had been designated as forest land.<sup>13</sup>

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<sup>11</sup> Interview with Tibet Settlement Officer, Dharamsala (on file with TJC).

<sup>12</sup> Interview with Tibet Settlement Officer, Dharamsala (on file with TJC).

<sup>13</sup> Interviews with Minister of Security, CTA, June 25, 2014; Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.



Tibetan community that received eviction notices in forest land case.

The effort to evict this community began when a civil writ petition was filed by Pawan Kumar, complaining of encroachments on forest land.<sup>14</sup> As the above pictures demonstrate, the Tibetan community consists of homes, shops and offices. State government records show that Tibetans had been living on the land for decades before it was designated as forest land. Revenue records reveal that the government had collected money for water, electricity and taxes for many years.<sup>15</sup> A High Court decision in August of 2012 ordered the eviction of the Tibetan families on or before March 31, 2013. The Central Tibetan Administration has been negotiating since that time to forestall the eviction and although a demolition team arrived

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<sup>14</sup> He also petitioned for the removal of Tibetan prayer flags and *om mane padme* stones, which the petition referred to as land encroachments and rock defacement. Interviews with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014; Sikyong Lobsang Sangay, June 25, 2014.

<sup>15</sup> Interviews with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014; Sikyong Lobsang Sangay, June 25, 2014.

at the scene, no one has yet been evicted. The intervention of the Government of India is likely to lead to a settlement.<sup>16</sup>

The second example of an ongoing effort to evict Tibetans is the "*benami* land case." *Benami*<sup>17</sup> is a term used to describe a land transaction where the real beneficiary is not the one in whose name the property is purchased. Because Tibetans, as foreigners, may not purchase land in their own names, they utilize a common, but unlawful, practice of asking a friend who is an Indian citizen to purchase the land in the citizen's name. *Benami* land transactions are not confined to purchasing land for homes. Some monasteries in and around Dharamsala are *benami* land and even Norbulingka (the center for maintaining and teaching Tibetan art and crafts) is *benami* land.

A lawsuit was brought to evict the holders of *benami* land. Settlement talks between the Central Tibetan Administration and the central and state governments resulted in a proposal dated May 8, 2006 whereby the state government would confiscate the land and lease it to the Central Tibetan Relief Committee ("CTRC") who in turn would sublet it to the individual holders.<sup>18</sup> The settlement has stalled over the amount that the CTRC would be required to pay. As of this writing, the holders of *benami* property remain on the land but their future is uncertain.

The third case involving the attempted eviction of a Tibetan community occurred in Sanjauli, on the outskirts of Shimla, the capital of the state of Himachal Pradesh and approximately 240 kilometers south of Dharamsala. Eviction notices were sent to 125 Tibetan families who have lived in this community for three to four decades.<sup>19</sup> The municipal government decided to build a public parking lot. Unlike the *benami* eviction case described above, the Shimla case does not involve *benami* land because the Tibetans did not purchase the land. Rather, it was state land leased to the Tibetan community by the Government of India for a term of 20-30 years, which term had expired. By order dated August 19, 2010, the order of eviction was affirmed but the Municipal Corporation was directed to propose a relocation of the Tibetan families. Although the Central Tibetan Administration identified land held by the Tibetan Refugee Self Help Handicraft Society, the state government has not, to date, provided the requisite funds for the relocation. Settlement discussions remain ongoing.<sup>20</sup>

The three land cases reveal a pattern of local initiatives to evict longstanding Tibetan communities ostensibly because they lack proper documentation or ownership. In each case, the evictions have been stayed by ongoing efforts by the central government to intercede and propose measures to prevent the demolition of Tibetan homes. These cases, along with an effort to use environmental laws to prohibit public displays of Tibetan prayer flags and stones, contribute to a heightened sense of vulnerability within the Tibetan community as

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<sup>16</sup> Interview with Minister of Security, Dharamsala, June 25, 2014.

<sup>17</sup> *Benami* is derived from a Persian word meaning without name or no name.

<sup>18</sup> A copy of the May 8, 2006 order of the Himachal Pradesh Government is on file with TJC.

<sup>19</sup> Interview with Shimla Tibet Settlement Officer, Shimla and Solan, June 21, 2014.

<sup>20</sup> Interviews with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.



well as a sense of insecurity with respect to their ability to continue to live in homes they have inhabited for decades.

#### **IV. Identity Cards**

As described more fully in *Tibet's Stateless Nationals II*, Identify Certificates (ICs) are travel documents that theoretically enable Tibetans to travel internationally.<sup>21</sup> ICs are issued by the Passport Office of the Ministry of External Affairs. In the last few years, the process for obtaining ICs has become far more difficult with delays of two years increasingly commonplace.<sup>22</sup> The delays result from a process that requires the application for an IC to be transmitted among approximately a half dozen governmental offices. The application first goes to the Bureau of H.H. the Dalai Lama in Delhi, then to the Indian Passport Service, then to the state home department, then to the head officer of the CID (Central Intelligence) in the state, and then back to the passport office. When applicants inquire into the cause of the delay, each office blames the other. This causes severe hardships for Tibetans trying to plan international trips for business or other purposes. One example involved a Tibetan who was awarded a Fulbright but whose application for an I.C. took so long and was impossible to trace that the Fulbright was put at risk.<sup>23</sup>

Even once the IC is issued, Tibetans report difficulties relying on it for international travel since not all countries accept the I.C. in lieu of a passport. Even when traveling to countries that do recognize the I.C., such as the U.S., Canada, and some European states, Tibetans report being harassed and humiliated by custom officials who are unfamiliar with the document.

#### **V. Citizenship**

The Indian Constitution gives to Parliament the power to regulate citizenship and naturalization. Parliament passed the Citizenship Act of 1955, which, as amended in 1986 and 2003, specifies how citizenship can be acquired after the effective date of the Constitution.

Section 3 governs citizenship by birth and provides, *inter alia*, that every person born in India between January 26, 1950 and July 1, 1987 “shall be a citizen of India by birth.” Despite this provision, Tibetans born between those years are routinely denied citizenship and treated as foreigners subject to the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939.<sup>24</sup> These two laws subject Tibetans to a host of restrictions including limitations on freedom of movement, requirements that Tibetans report their presence to prescribed authorities at designated intervals, report their movements within India, provide proof of

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<sup>21</sup> TIBET'S STATELESS NATIONALS II, pp. 48-49.

<sup>22</sup> Interviews with Tibet Settlement Officer, Shimla and Solan, June 21, 2014; Bir Settlement President, June 2014; Tibetan Center for Human Rights and Democracy, June 25, 2014.

<sup>23</sup> Interview with Tibet Settlement Officer, Shimla and Solan, June 21, 2014.

<sup>24</sup> The Foreigner's Act, No. 31 of 1946; The Registration of Foreigner's Act, No. 16 of 1939.

identity to authorities, submit to photographing and fingerprinting at designated times, as well as numerous additional regulations.<sup>25</sup>

The inability of Tibetans, even those born between 1950 and 1987, to secure citizenship has not changed despite two High Court decisions holding that Tibetans born between those years are entitled to citizenship.<sup>26</sup> The first of those two cases was brought by Namgyal Dolkar.<sup>27</sup> In an interview with TJC, Ms. Dolkar explained that she fought for her citizenship because as a foreigner she was denied many opportunities, such as a lectureship in English literature. As a foreigner, she was not eligible to take the exam. When she applied for a passport, she was told that applying for a passport was illegal and she would be put in prison if she persisted. She sought the assistance of a lawyer who filed a petition in the High Court of Delhi, which ruled that she was indeed a citizen under the Constitution of India, which explicitly provides that individuals born in India between January 26, 1950 and July 1, 1987 are citizens of India.<sup>28</sup> The High Court ordered the Government of India to pay her 5000 rupees within one month, although it took five months for the payment to be made. It took several more months for Ms. Dolkar to actually obtain the passport.

Ms. Dolkar reports that she regularly receives calls from Tibetans all over India who were born in India between 1950 and 1987 yet have been unable to secure passports. They report that when they apply for a passport, they are ignored or denied even though they have the proper documents, particularly a birth certificate proving their age and place of birth.<sup>29</sup>

The second High Court decision granting a Tibetan citizenship involved Tenzin Choephag Ling Rinpoche who was born in Dharamsala in 1985. He was denied a passport by the Regional Passport Office, which had consulted the Ministry of Home Affairs before issuing its denial. The Ministry's position was that Tibetans are not eligible for citizenship pursuant to Section 3 of the Citizenship Act despite the fact that they were born in India between 1950 and 1987. In August 2013, the Karnataka High Court ruled in accord with the Dolkar case, holding that anyone born in India between the January 26, 1950 and July 1, 1987 are citizens pursuant to the Citizenship Act.<sup>30</sup>

Despite these two High Court decisions, the on-the-ground reality for Tibetans seeking citizenship has not changed. Tibetans born between the designated years are still routinely denied passports and it appears that the only way to enforce the provisions of the Citizenship

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<sup>25</sup> TIBET'S STATELESS NATIONALS II, pp. 41-42.

<sup>26</sup> Namgyal Dolkar v. Ministry of External Affairs, W.P. (C) 12179/2009 (High Court of Delhi) (India), December 22, 2010; Tenzin Choephag Ling Rinpoche v. Union of India, 15437/2013 (High Court of Karnataka) (India) August 7, 2013.

<sup>27</sup> Namgyal Dolkar v. Ministry of External Affairs.

<sup>28</sup> Namgyal Dolkar v. Ministry of External Affairs.

<sup>29</sup> Interview with Namgyal Dolkar, June 24, 2014.

<sup>30</sup> Tenzin Choephag Ling Rinpoche v. Union of India, 15437/2013 (High Court of Karnataka) (India) August 7, 2013.

Act is to hire a lawyer (for roughly 100,000 rupees) to contest the denial in the High Court.<sup>31</sup> This is not a realistic option for the vast majority of Tibetans.

Even if the Ministry of Home Affairs were to direct the regional offices to issue passports to Tibetans born in India within 1950 and 1987, citizenship would still be unavailable for all other Tibetan refugees - those who were born in Tibet and those who were born in India after 1987 (unless a parent was an Indian citizen).

## **VI. Voting**

As foreigners, Tibetans are ineligible to vote in Indian elections. However, on February 7, 2014, the Election Commission of India issued a directive to the states to enroll Tibetans born between January 26, 1950 and July 1, 1987.<sup>32</sup> This directive followed the Karnataka High Court decision described above which held that, pursuant to Section 3 of the Citizenship Act, Tibetans born between 1950 and 1987 are citizens of India. The directive states:

As per Section 3(1)(a) of the Citizenship Act, 1955, the children born to Tibetan Refugees in India shall be treated as Indian citizens based on their birth in India, on or after 26th January, 1950 and before 1st July, 1987. Hence, notwithstanding anything contained in Union Home Ministry letter number 26027/08/1994 -CS-I dated 26th August, 2011 conveyed to all CEOs vide ECI letter dated 27th September, 2011, the Commission clarifies that the EROs concerned should not deny enrolment to the children of Tibetan refugees where they are satisfied that (1) the applicant was born in India, 2) he/she was born on or after 26th January, 1950 but before 1st July, 1987, and 3) he/she is ordinarily resident in the constituency in which the application for enrolment has been made.<sup>33</sup>

One week after the Election Commission order, the Home Ministry announced that it was challenging the Election Commission's order because Tibetans are foreign nationals and thus are ineligible to vote. The Home Ministry's decision to challenge the order was reportedly based on "very important strategic and security considerations," most notably the impact of the order on diplomatic ties with China.<sup>34</sup>

As a result of the Election Commission order, approximately 200 Tibetans in Kangra district, which encompasses Dharamsala, voted. Far fewer Tibetans voted elsewhere, in part because other states resisted implementing the Election Commission order, relying on the Home

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<sup>31</sup> Interviews with Namgyal Dolkar, June 24, 2014; Tibet Settlement Officer, Shimla and Solan, June 21, 2014; Tibetan Center for Human Rights and Democracy, June 25, 2014.

<sup>32</sup> The February 7, 2014 directive is on file with TJC.

<sup>33</sup> *Id.*

<sup>34</sup> *MHA to Challenge Poll Panel Order on Tibetan Votes*, THE ASIAN AGE, March 27, 2014.

Ministry's pronouncement that the Election Commission lacked the authority to change Indian policy.<sup>35</sup>

## VII. Employment

As described more fully in *Tibet's Stateless Nationals II*, Tibetans, as foreigners, are limited in their employment opportunities.<sup>36</sup> As foreigners, they cannot obtain public sector jobs in India.<sup>37</sup> Difficulties abound in the private sector as well.<sup>38</sup> For example, Hewlett Packer in Bangalore reportedly refused to hire a Tibetan without a work permit but there is no such thing as a work permit in India.<sup>39</sup>

Tibetans cannot own a taxicab, shop, travel agency, hotel, or restaurant. Despite this, some Tibetans operate small hotels or restaurants by paying "*baksheesh*."<sup>40</sup>

Nurses and doctors have experienced difficulties in registering for practice. One dramatic example occurred when the Indian Nursing Council issued a circular prohibiting foreigners, including Tibetans, from working as nurses.<sup>41</sup> There are roughly 1,000 Tibetan nurses in Delhi alone.<sup>42</sup> After repeated appeals by the Central Tibetan Administration and sustained efforts, the Indian Nursing Council reversed its policy and issued a new circular on January 29, 2014 clarifying that Tibetan nurses would be allowed to register and practice in India.<sup>43</sup>

Within Tibetan settlements, there is very little economically viable activity. The settlements are increasingly made up of elderly Tibetans with young people looking for work elsewhere and storefronts shuttered close.<sup>44</sup> By all accounts, the settlements have been unable to provide employment opportunities which has resulted in young people looking elsewhere.<sup>45</sup>

## VIII. New Arrivals; Special Entry Permits; Registration Certificates

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<sup>35</sup> Interview with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014.

<sup>36</sup> TIBET'S STATELESS NATIONALS II, pp. 65-68.

<sup>37</sup> Tibetans can secure employment with the Central Tibetan Administration (CTA), which has 600 employees plus an additional 900 under part-time contracts. The CTA has approximately 100 openings a year but roughly 1200-1500 Tibetans graduate each year from high school. Interview with Sikyong Lobsang Sangay, June 25, 2014.

<sup>38</sup> Interviews with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014; Tibet Settlement Officer, Shimla and Solan, June 21, 2014.

<sup>39</sup> Interview with Tibet Settlement Officer, Shimla and Solan, June 21, 2014.

<sup>40</sup> Interviews with Tibet Settlement Officer, Chauntra; Bir Settlement President, June 26, 2014.

<sup>41</sup> A copy of the circular is on file with TJC.

<sup>42</sup> Interview with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014.

<sup>43</sup> Interviews with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014; Sikyong Lobsang Sangay, June 25, 2014; see <http://tibet.net/2014/31/sikyong-expresses-gratitude-after-inc-decides-tibetan-nurses-can-practice-in-india/>

<sup>44</sup> Interviews with Additional Secretary, Home Office, Dharamsala, June 25, 2014; Bir Settlement President, June 26, 2014; Tempa Tsering, Personal Representative to His Holiness, June 19, 2014.

<sup>45</sup> *Id.*

The number of Tibetans arriving in India each year has dropped markedly. After the protests in Tibet in 2008 and the resulting crackdowns, it became almost impossible for Tibetans to leave.<sup>46</sup> Since that time surveillance at the border has been intensified and Nepalese police have reportedly been trained by the Chinese and paid a bounty for returning Tibetans to Tibet.<sup>47</sup> In 2013, only 100 Tibetans made it to Dharamsala, a dramatic decrease from 2007 when 2,000-3,000 Tibetans were able to escape each year. Of the 100, some came through Nepal but others used alternate routes (through Sikkim or Ladakh) because the reception center in Nepal has become very dangerous. Most attempting to enter through Sikkim are blocked by Indian authorities who refer to them as "push-backs."<sup>48</sup> Since 2009, the Nepalese government demands that the reception center make a list of who is there and that list is turned over to the Chinese Embassy. If they arrive by another route, they do not get a Special Entry Permit, which means they will not be able to get a Registration Certificate, which makes their presence in India unlawful.<sup>49</sup>

As reported in *Tibet's Stateless Nationals II*, the arrival of Tibetan refugees into India was regularized in 2003 through the Special Entry Permit program.<sup>50</sup> Special Entry Permits (SEPs) are issued to Tibetans in Nepal before they depart Katmandu for India. SEPs were granted in three categories: pilgrimage, education, and other.<sup>51</sup> SEPs issued for purposes of pilgrimage were short-term, expiring after 3 months, although the stay could be extended for up to six months. Many Tibetans with pilgrimage SEPs remained after the expiration of their authorized stay, which rendered them ineligible for RCs, which meant that they were in India illegally. In recognition of this problem, the pilgrimage category was recently abolished and an agreement was forged between the Central Tibetan Administration and the Government of India to provide RCs to the approximately 415 Tibetans who had overstayed. Of the 415, only 300 came forward. The others may have obtained RCs illegally and were afraid to come forward.<sup>52</sup>

The SEP category for education is now the primary way for Tibetans to enter and remain lawfully. In order to retain their eligibility, Tibetans must produce documentation from a school attesting to their continued enrolment.<sup>53</sup> The problem confronting many Tibetans now is that they have completed their education, which means that they lack a legal basis for

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<sup>46</sup> Interviews with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014; Tibetan Center for Human Rights and Democracy, June 25, 2014.

<sup>47</sup> Interview with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014.

<sup>48</sup> Interview with Additional Secretary, Department of Home, CTA, Dharamsala, June 25, 2014.

<sup>49</sup> Interview with Tibetan Center for Human Rights and Democracy, Dharamsala, June 25, 2014.

<sup>50</sup> TIBET'S STATELESS NATIONALS II, pp. 49-50.

<sup>51</sup> A fourth category - refugee - was eliminated in 2005.

<sup>52</sup> Interview with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

<sup>53</sup> Interviews with Ministry of Security, June 25, 2014; Tibetan Center for Human Rights & Democracy, June 25, 2014; Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

remaining and renewing their RCs. Many Tibetans become perennial students, registering for a language class an hour a day to maintain their status.<sup>54</sup>

It should be noted that while the SEP regularizes entry into India, it does not substitute for an RC, nor does it provide any independent legal status for Tibetans. It is simply a means by which certain Tibetans (most notably those seeking a Tibetan education) can qualify for entry. It does not substitute for an RC, nor does it confer any status to remain permanently. To the contrary, the entry is limited to the purpose for which the SEP was granted. An SEP provides no formal or enforceable legal protection for Tibetans in India, especially if they cannot depart within the time period specified; and because Nepal has no comparable permissive-entry policy, Tibetans may be effectively “trapped” in India, subject to the penalty for being there unlawfully.

There are still many Tibetans in India without RCs. This includes Tibetans who did not enter through a reception center and those who entered before the SEP program began in 2003. The elderly monk who was deported in April 2012 (see Section II above), was in that latter category. He arrived in India in 1999 when the Government of India was not issuing RCs.<sup>55</sup>

On the other hand, Tibetans who were born in India or have lived in India for over twenty years no longer have to renew their RC every year. As of April 2012, the renewal period for that category is five years.

## **IX. The Tibetan Rehabilitation Policy, 2014**

On October 20, 2014, the Ministry of Home Affairs of the Government of India issued "The Tibetan Rehabilitation Policy, 2014."<sup>56</sup> The policy purports to address the lack of uniformity from state to state in the provision of assistance and facilities to the Tibetan community with the goal of improving "the general satisfaction level of the Tibetan refugees."

The policy addresses two distinct problem areas: one having to do with state governments refusing to provide leases or other land documents to Tibetans and the other having to do with the denial of welfare and other benefits to Tibetans. With respect to welfare programs, the policy does not mandate that benefits be extended to Tibetans. To the contrary, the policy notes that programs such as the National Food Security Act and the Targeted Public Distribution System Act are applicable only to Indian citizens. However, the policy requests state government to consider extending the benefits of these and other programs to Tibetan families. The policy also authorizes state governments to permit Tibetans to pursue

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<sup>54</sup> Interviews with Ministry of Security, CTA, June 25, 2014; Tibetan Center for Human Rights & Democracy, June 25, 2014; Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

<sup>55</sup> Interview with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

<sup>56</sup> The policy, which, as of December 9, 2014, had not been publicly released, is on file with TJC.

economic activities and to issue relevant papers and trade licenses to Tibetans so long as they produce a valid R.C.<sup>57</sup>

It will be important to monitor implementation of this policy and determine whether it results in any actual changes within Tibetan communities. The policy is not written in mandatory terms but, for the most part, requires voluntary action on the part of state governments. Based on the land cases described in Section III above, there is reason to be skeptical about how receptive state government will be in extending benefits to the Tibetan communities.

## **X. Conclusion**

The updates described in this Report support the conclusion reached in *Tibet's Stateless Nationals II* regarding the vulnerability and insecurity of Tibetans in India. There continues to be little question that Tibetans without valid RCs are subject to arrest, imprisonment, fines, and either threatened deportation or even actual deportation. The newly announced Tibetan Rehabilitation Policy in no way changes that reality. Whether the new policy will address other hardships, such as the threatened evictions of Tibetans from their homes, or the lack of employment opportunities, or the inability to participate in government welfare programs, remains to be seen.

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<sup>57</sup> <http://www.tibetanreview.net/india-issues-uniform-guideline-for-tibetan-welfare>.

