

Into Thin Air **An Introduction to Enforced** **Disappearances in Tibet**



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“Enforced disappearance is not only a crime. It is an act that negates the very essence of humanity and is contrary to the deepest values of any society. Such a practice cannot and should not be tolerated nor justified whether it is used to counter terrorism or fight organized crime or suppress legitimate demands concerning issues such as democracy, freedom of expression or freedom of religion.”

- Excerpts from a joint statement by the Working Group on Enforced or Involuntary Disappearances and the Committee on Enforced Disappearances to mark the second United Nations International Day of the Victims of Enforced Disappearances on 30 August 2012

Introduction

This report is an in-depth analysis of the international legal standards that prohibit enforced disappearances, in particular the recent International Convention for the Protection of All Persons from Enforced Disappearance, and the relation between these laws and the People's Republic of China's ("PRC") practice of using enforced disappearance in Tibet. The first part provides an introduction to enforced disappearance, covering its history and current use. The second part lays the foundation for the legal framework, examining the various international legal instruments that protect against enforced disappearance. This section also explores numerous other internationally protected human rights that are violated by enforced disappearances as used by the PRC in Tibet. The third part focuses on the official Chinese argument of "protecting national security" as a justification for forcibly disappearing persons, and the legal argument against this justification. The final part of the report provides recommendations for the PRC, the United Nations Human Rights Council, and the international community to end the practice of enforced disappearance in Tibet.

A. What is Enforced Disappearance?

Enforced disappearance is a serious international crime that violates multiple human rights and fundamental freedoms enshrined in the Universal Declaration of Human Rights and other major international human rights instruments.¹ During an enforced disappearance, the disappeared persons are potentially subjected to arbitrary arrest, extrajudicial detention, torture, inhuman treatment, and illegal executions. From the moment he or she is taken into custody, the victim is held incommunicado for days,

¹ United Nations Working Group on Enforced and Involuntary Disappearances, Fact Sheet No 6 (Rev 2), Enforced or Involuntary Disappearances 11 (2006) <<http://www.ohchr.org/english/about/publications/docs/fs6.htm>> at 5 October 2006 [hereinafter Fact Sheet No 6].

weeks, or even years, without any contact or communication with his or her family members and relatives. The fact that the victim is completely isolated from the outside world and placed “outside the law” during the entire duration of his “disappearance” characterizes the act and process of enforced disappearances as extrajudicial, and thus criminal under international law.

Enforced Disappearance victims are highly vulnerable to physical and psychological torture. Confident that the victim has no contact with the outside world and no recourse to legal remedies or procedural guarantees, their captors receive impunity for this serious crime. Moreover, the disappeared person’s family members, relatives, and friends endure psychological torment as well. Loved ones spend months or even years in uncertainty waiting for news about the disappeared person. As a result, family members of the disappeared undergo stages of grief and mourning. They suffer from symptoms of severe emotional attacks, guilt, or even denial of the effects of loss.² Living in a constant state of distress, many family members refuse to accept that the disappeared is dead, feeling as though such an acknowledgment is in some way “killing” the loved one.³ Those affected find it hard to cope with everyday activities or engage in meaningful relationships, stunting their emotional growth.⁴ In this respect, enforced disappearances have a “doubly paralyzing impact,” not only on the victims, but also on their loved ones who live in a constant state of anxiety and fear about the fate of the disappeared person.⁵

The practice of enforced disappearances has a long history, with the first recorded use stretching back to the Nazi regime in Germany. Under the 1941 “Nacht und Nebel” (Night and Fog) decree declared by the Nazi regime, people presumably linked to resistance

² Margriet Blaauw & Virpi Lähteenmäki, ‘Denial and Silence’ or ‘Acknowledgement and Disclosure,’ 84 (848) IRRC 767-768 (2002).

³ Id. at 770.

⁴ Id. at 767 & 769.

⁵ Fact Sheet No 6, *supra* note 1.

movements in Nazi-occupied territories were arbitrarily arrested and secretly transferred to Germany “in the blackness of night.”⁶ Such people, deemed political threats by the Nazi government, were held incommunicado in cruel and inhuman conditions, prosecuted without due process, and frequently sentenced to death and executed.⁷

Enforced Disappearances were later used extensively in Latin American countries as “a systematic policy of state repression.”⁸ Military governments routinely abducted people, detained them in secret locations, subjected them to torture, and often executed them without trial. In some cases, even the dead bodies were disposed of secretly, erasing any evidence that might suggest the use of torture. While these Latin American countries are now democracies in one form or another and no longer employ this tactic, the number of cases of enforced disappearances around the world has increased as some governments continue to use it as a means to break the conscience and spirit of fearless critics and political activists.⁹

In Tibet, the law enforcement agencies of the Chinese government commonly use intimidating tactics during an act of enforced disappearance to silence peaceful expressions of political opposition and other grievances. Security officers in Tibet, particularly the Public Security Bureau and the People’s Armed Police, use enforced disappearance to terrorize and intimidate the disappeared person, his or her family members, as well as the entire community. In 2011 alone, the Tibetan Centre for Human Rights and Democracy (“TCHRD”) documented 102 known cases of enforced disappearances in Tibet.

⁶ Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No 10: Nuremberg, October 19 October 1946 – April 1949, vol. 3, 75 (1951).

⁷ Id.

⁸ United Nations Commission on Human Rights, Civil and Political Rights, Including Questions of: Disappearances and Summary Executions, UN Doc. E/CN.4/2002/71 (8 January 2002). See also Amnesty International, *Getting Away with Murder: Political Killings and ‘Disappearances’ in the 1990s* (1993).

⁹ Trials of War Criminals before the Nuremberg Military Tribunals under Control Council Law No 10, *supra* note 6.

Among the 213 cases reported in 2008, some 211 were eventually sentenced but there is no reliable information about the location of their detention. In 2009 and 2010, TCHRD reported 16 and 29 cases of enforced disappearance in Tibet, respectively. In September 2008, TCHRD reported a surge in cases of enforced and involuntary disappearances following the outbreak of major protests across the Tibetan plateau beginning 10 March 2008. In 2008, following widespread arrests in Tibet, TCHRD reported that at least one thousand Tibetans had disappeared, their whereabouts and wellbeing unknown to family members and affiliated monasteries at the time.¹⁰

B. The Quintessential Enforced Disappearance: the Case of Chadrel Rinpoche

Chadrel Rinpoche (a.k.a. Chadrel Jampa Trinley Rinpoche) was born in 1940. For many years, he was abbot of Tashi Lhunpo Monastery, the traditional seat of the Panchen Lama, located in Shigatse (Chinese: Xigaze) Prefecture in the Tibet Autonomous Region. Originally respected by the Chinese government, he held important positions such as Director of the Civil Administration Society and Chairman of the Democratic Management Committee of Tashi Lhunpo Monastery. He was a member of the National Chinese People's Political Consultative Conference ("CPPCC"), and Vice-Chairman of the Tibet Autonomous Region ("TAR") CPPCC. Following the death of the 10th Panchen Lama in 1989, the Chinese authorities appointed Rinpoche head of the Official Search Committee to locate the previous 10th Panchen Lama's reincarnation, the 11th Panchen Lama.

On 14 May 1995, His Holiness the Dalai Lama announced the then six-year old Gedhun Choekyi Nyima as the reincarnation of the 10th Panchen Lama. Three days later, the Chinese authorities arrested Chadrel Rinpoche and his assistant, Jampa Chung, from

¹⁰ More than a thousand monks and many civilians have disappeared since the March crackdown, 26 September 2008, available at <http://www.asianews.it/index.php?l=en&art=13322&geo=6&size=A>

Chengdu Airport in Sichuan Province, purportedly for consulting with the Dalai Lama about the reincarnate.

The PRC's government claimed that Chadrel Rinpoche, after leaving Beijing in mid-May 1995 to return to Tibet, had suddenly taken ill and had to be hospitalized, at which point the Managing Committee of the Tashi Lhunpo Monastery "thought it best to relieve him of his function as Administrator." In contrast with the official response, Rinpoche was reported by other sources to be in detention since his arrest on 17 May, accused in the official Chinese newspapers of "manipulating religious rituals and the historical convention," and for his interactions with the Dalai Lama.

In August 1995, Lama Nyandak, the new head of the Democratic Management Committee of Tashi Lunpo Monastery was quoted as saying, "the whereabouts of Chadrel Rinpoche are unknown and he is not welcome to return to Tashi Lhunpo Monastery." Nyandak further commented that, "Chadrel Rinpoche was a separatist who has contravened both national and Buddhist laws. During the search, he should have contacted the central authorities for permission to contact that Dalai Lama. He should have gotten their approval." On 22 May 1996, Chadrel Rinpoche was stripped of his membership of the sixth TAR CPPCC and removed from his post as Vice-Chairman because he "went against the fundamental stand of the nation and lost his political direction." In the Radio Lhasa announcement on 24 May 1996, the Chinese government stated that "in doing this, we have purged the CPPCC of bad elements and have made it clean."

On 21 April 1997 after 2 years of incommunicado detention, the Intermediate People's Court of Shigatse Prefecture, TAR, held a closed-door trial in which it sentenced Rinpoche to a prison sentence of six years and a subsequent three years of deprivation of political rights for "conspiring to split the country" and "leaking state secrets." According to Chinese authorities, Chadrel Rinpoche "confessed" to the charges and refused legal representation.

In September 1997 reports were released regarding Rinpoche's place of detention. Previously detained in Trochu (Chinese: Heishui) County in Ngaba Prefecture (Sichuan Province), Rinpoche was moved to Chuandong No. 3 Prison, Dazhu County, in eastern Sichuan Province, shortly after his sentencing. Chuandong No. 3 Prison is located in a mountainous district more than 180 kilometers from Chongqing and accessible only by bus. As such, it "has traditionally served as a black hole for disposing of highly sensitive political cases."¹¹ Rinpoche was held in the compound that houses the "strict observation brigade," referred to as the "prison within the prison," because of its physical isolation from the rest of the facility by tall electric fencing.¹² Prisoners there are subject to 24-hour observation and severe restrictions on their movements.¹³ Within this compound is an even smaller top-secret section into which "even top officials are forbidden."¹⁴ It was here that Rinpoche was reportedly held, in a cell that once held Hu Feng, a liberal communist intellectual who Mao Tse Tung imprisoned for over 20 years in complete secrecy because Feng argued that culture should not be made to serve political ideology. Reportedly, "only three other people are allowed inside: two commissars who report directly to the Ministry of Justice in Beijing, and a prisoner who acts as cook and guard for Chadrel Rinpoche and is never permitted to leave."¹⁵ Rinpoche was denied all outside contact and even prohibited from leaving his cell for exercise.¹⁶ In July of 1997, Rinpoche reportedly commenced a hunger strike for his false imprisonment, resulting in reports of poor health.

Rinpoche's six-year prison term should have expired in May 2001,

¹¹ Human Rights in China, Tibetan Chadrel Rinpoche Held in a Secret Compound in Chuandong (Eastern Sichuan) No. 3 Prison on Hunger Strike Since July, 9 September 1997, available at: <http://www.hrichina.org/content/2796>

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ Human Rights in China, Human Rights Defenders Case Profiles: Chadrel Rinpoche, available at: <http://www.hrichina.org/content/4599>.

¹⁶ Id.

but no news surfaced as to his release at that time. When asked to respond, Gyaltzen Norbu, the then Chairman of the Tibetan Autonomous Region, told concerned delegates that, “Chadrel Rinpoche is still serving prison term because he disclosed the secrets by giving out the name of the boy who was supposed to be the Panchen Lama before it was approved by the authorities.” Coinciding with a country visit by then U.S. President George Bush, Rinpoche was allegedly released from prison in January 2002. However, he remained under house arrest in an isolated resort (Chinese: dujia cun) south of Dib Military Camp (Tibetan: Drib Mag-khang), Lhasa, in an extended form of detention. Since then, nothing was heard of the senior monk and he was considered “disappeared” by international human rights monitors.

On 24 November 2011, an unnamed Tibetan official of Bhoejong Nangten Thuntsok (English: Tibetan Buddhism Association) in Tibet who was a close associate of Rinpoche reported Rinpoche dead via an audio message. The India-based Central Tibetan Administration released the audio message, in which the official was quoted as saying that some believed Rinpoche was poisoned to death.¹⁷ The report was never confirmed, and the truth about Rinpoche remains a mystery today.

II Legal Framework: International Standards

The use of enforced disappearance has been internationally recognized as a violation of human rights since the Universal Declaration of Human Rights of 1948. Throughout the years, a myriad of other international standards have both directly and indirectly prohibited enforced disappearance and the harmful practices associated with it. The following focuses first on the international standards that prohibit enforced disappearance directly, and second on the intersection between enforced disappearance and other internationally protected human rights as seen in the case of Tibet.

¹⁷ Jadrel Rinpoche Feared Dead, 24 November 2011, Phayul, available at <http://www.phayul.com/news/article.aspx?id=30415&ct=1>

A. General International Standards

Numerous international standards dictate the law against enforced disappearances, beginning with the Universal Declaration of Human Rights, and finally resulting in the International Convention on the Protection of All Persons from Enforced Disappearance. The UN Human Rights Commission established the UN Working Group on Enforced or Involuntary Disappearances (“UNWGEID”) in 1980. Its purpose is to ensure that domestic authorities investigate cases of enforced disappearances. The UNWGEID accepts cases from any country in the world and does not require the applicant to exhaust all domestic procedures before presenting it to the group. Relatives of the disappeared or organizations acting on their behalf are usually the ones to submit cases to the UNWGEID. Since its establishment, the Working Group has transmitted 119 cases to the Chinese government; of those, 12 cases have been clarified on the basis of information provided by the source, 77 cases have been clarified on the basis of information provided by the Chinese government, and 30 remain outstanding.¹⁸

Other international instruments addressing enforced disappearances include the International Covenant on Civil and Political Rights (“ICCPR”), the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”), in addition to various regional legal instruments. Possibly the most influential catalyst is the Declaration on the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly Resolution 47/133 on 18 December 1992.¹⁹

1. The Declaration on the Protection of All Persons from Enforced Disappearance

The Declaration on the Protection of All Persons from Enforced

¹⁸ New impetus to eradicate enforced disappearances, 30 August 2011, available at <http://www.ohchr.org/EN/NewsEvents/Pages/EnforcedDisappearances.aspx>

¹⁹ Declaration on the Protection of All Persons from Enforced Disappearance, G.A. Res. 47/133, UN Doc. E/CN.4/RES/1992/29 (18 February 1992), Art. 2, [hereinafter Declaration].

Disappearance (“the Declaration”) is an early milestone in the global fight against enforced disappearances. The United Nations General Assembly proclaimed the Declaration as a “body of principles” for all UN member-states, without the requirement of ratification, to apply as a minimum standard to prevent and punish the practice of enforced disappearance.²⁰ Article 1 of the Declaration provides that enforced disappearance violates the “rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person, and the right not to be subjected to torture and other cruel, inhuman, or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.”²¹ Articles 2 and 3 require States to employ legislation, administration, judicial, and other measures to prevent and eradicate enforced disappearances. Articles 4 through 6 define the practice as a crime, the perpetrators of which – whether high or low ranking – must be punished. Article 7 adamantly declares that there is no circumstance whatsoever that can justify the use of enforced disappearance. In Article 13, any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to an independent State authority, which in turn, must promptly, thoroughly, and impartially investigate and address the allegations.

The proceeding articles detail the guidelines by which a person deprived of liberty must be held. He or she is to be held in an officially recognized place of detention, and must be brought before a judicial authority promptly after detention.²² Family members and legal counsel are entitled by law to access accurate information about the detainee, and the State must compile an official up-to-date register of that information.²³ Article 12 ensures that each State develops national laws indicating those authorized to order a deprivation of liberty, “establishing the conditions under which

²⁰ Fact Sheet No. 6, *supra* note 1, at 1.

²¹ Declaration, *supra* note 17, art. 1.

²² *Id.* art. 10.

²³ *Id.*

such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.” The Declaration also insists on the proper judicial remedies for perpetrators of enforced disappearance, granting no immunity or amnesty in any way, and redress and compensation for the victims and their families.²⁴

2. The International Convention for the Protection of all Persons from Enforced Disappearances

First adopted in 2006, the International Convention for the Protection of All Persons from Enforced Disappearances (“the Convention”) entered into force on 23 December 2010. The Convention codified the earlier Declaration, addressing the multiple violations of human rights that make up enforced disappearances. To a large degree, the Convention criminalizes per se acts of enforced disappearance perpetrated or supported by state agents, and provides mechanisms to ensure individual criminal responsibility for these acts. It emphasizes the importance of information sharing, timely and legitimate judicial proceedings, proportionate punishment for perpetrators, and reparations for victims.

In Part I, the Convention overtly recognizes the right not to be subjected to forced disappearance under any circumstances, and requires States to prohibit this practice under their national laws.²⁵ Enforced disappearance is defined in the Convention as

The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support, or acquiescence of the State, followed by refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person,

²⁴ Id. at arts. 14-19.

²⁵ International Convention for the Protection of All Persons from Enforced Disappearance, G.A. Res. A/RES/61/177, UN Doc. A/HRC/RES/2006/1, (20 Dec. 2006), arts. 1 & 3, entered into force 23 December 2010, [hereinafter Convention].

which place such a person outside the protection of law.²⁶

In Article 4, enforced disappearance is labeled a crime that must be categorized as such in domestic criminal law, and investigated accordingly.²⁷ The Convention stresses the importance of investigation when someone alleges to the authorities that they have been subject to enforced disappearance, even if there is no formal complaint.²⁸ The proceeding articles elaborate on the procedures for investigating and punishing the crime at the State level, requiring that the appropriate authorities have the training, powers, and resources necessary to conduct an effective investigation.²⁹ Article 6 dictates that State Parties should hold criminally responsible “at least any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance” [emphasis added] in addition to any superiors who might otherwise be subject to command responsibility under international law. The second part of the article states “no order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance,” making it clear that everyone involved in the process of carrying out an enforced disappearance is liable and subject to criminal proceedings.³⁰ Article 8 addresses the concerns of providing a statute of limitation for the crime in criminal law and procedure, requiring States to take into account both the extreme seriousness and the continuing nature of the offense when determining the legal statute of limitations.³¹

Article 17 of the Convention explicitly prohibits the use of secret detention. The provision requires legislative action that, among other things: establishes the conditions under which orders of deprivation may be given; guarantees that those deprived of liberty are held

²⁶ Id. art. 2.

²⁷ Id. arts. 3 & 4.

²⁸ Id. art. 12.

²⁹ Id.

³⁰ Id. art. 6.

³¹ Id. art. 8.

in officially recognized and supervised places; guarantees that those deprived of liberty are allowed to communicate and be visited by counsel, family members, and others subject to conditions prescribed by law; guarantees that the person deprived of liberty (or someone on his behalf if he is disappeared) can challenge the detention and be set free if it is found invalid. Additionally, the article requires States to keep a compilation of basic data that is relevant to the identity, the circumstances, and the place of deprivation, and make it available to any judicial or other competent authority.

Similarly, Article 18 dictates that the same basic information be available “to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their representatives or their counsel,” and that these interested parties and anyone involved in the investigation are proactively protected “from any ill-treatment, intimidation, or sanction as a result of the search for information concerning a person deprived of liberty.” This right to information can only be restricted in exceptional circumstances, where strictly necessary, and where provided by law, and only when the deprived is under the protection of the law. As such, there may be no restrictions to the right to information if it would constitute an enforced disappearance or secret detention. Likewise, persons deprived of liberty should be released with the physical integrity and ability to exercise fully their rights at the time of release and “in a manner permitting reliable verification that they have actually been released.”³²

Recognizing the effects of enforced disappearances on others, Article 24 includes in the definition of “victim” not only the disappeared person, but also any individual who has suffered harm as the direct result of enforced disappearance, such as family members.³³ All of the victims of must be given the legal right to obtain reparation and prompt, fair, and adequate compensation.³⁴ Lastly in the same

³² *Id.* art. 21

³³ *Id.* art. 24.

³⁴ *Id.*

article, State parties “shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.”

At the international level, the convention first classifies the widespread or systematic practice of enforced disappearance as a crime against humanity.³⁵ The immediately proceeding provisions address the responsibilities of each State to investigate and punish, interstate cooperation and compliance when dealing with an individual suspected of carrying out an enforced disappearance, including extradition, fair and equal judicial treatment, and the possibility of involving an international criminal tribunal.³⁶ Additionally, the Convention prohibits the expulsion, return, surrender, or extradition of a person to another State where there are “substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.”³⁷

The Committee on Enforced Disappearances (“Committee”) is a body of independent experts that monitors the implementation of the Convention by States Parties. The Committee receives and examines initial reports from each State Party, and provides the concerned State with suggestions and recommendations. In accordance with article 31 of the Convention, a State Party may declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of the provisions of the Convention.

The Convention provides a comprehensive set of standards to prevent and punish the practice of enforced disappearance at a national and international level. Although it encompasses and expands upon

³⁵ *Id.* art. 5.

³⁶ *Id.* arts. 9, 10, 11, 13, 14, 15.

³⁷ *Id.* art. 16.

various principles in of the UDHR, the ICCPR, and CAT, it should be read in conjunction with these other legal instruments for a more complete understanding of the rights of individuals and duties of the State. Despite consistent statements of intent³⁸, the People's Republic of China has not yet signed the Convention, and is therefore not accountable to the details of its provisions. However, as a member of the UN, the PRC is still bound by the principles embodied in the earlier Declaration.

3. Additional International Legal Instruments

Other international legal instruments also address various aspects of and rights violated by enforced disappearances. In the ICCPR, Article 6 first and foremost guarantees the inherent right to life, while Article 7 protects against torture and other cruel, inhuman, or degrading treatment or punishment. Article 9 applies to the extrajudicial nature of enforced disappearances, guaranteeing everyone the right to liberty and security of person. Article 9 (1) prescribes that “no one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The same article further stipulates: anyone arrested should be informed of the reason for his arrest and the charges against him; brought promptly before a judge “or other officer authorized by law to exercise judicial power” in order to decide without delay the lawfulness of his detention and order his release if the detention is not lawful; and shall be entitled to trial within a reasonable time.³⁹ In Article 10, the ICCPR commands that, “all persons deprived of their liberty be treated with humanity and with the inherent dignity of the human person.” Article 14 guarantees the right to a fair and public hearing by a competent, independent, and impartial tribunal established by law. Anyone charged with committing a crime should

³⁸ See e.g. Permanent Mission of the People's Republic of China to the UN, *Aide Memoire*, 13 April 2006.

³⁹ International Covenant on Civil and Political Rights (16 Dec. 1966) 999 U.N.T.S. 171 *entered into force* 23 March 1976, Art. 9, [hereinafter ICCPR].

be presumed innocent until proven guilty, and be tried with undue delay, but with time to prepare his case, to have legal assistance, to be tried in his presence, to examine the witnesses against him, and not be compelled to testify against himself or confess guilt.⁴⁰ The PRC signed the ICCPR in 1998, but has yet to ratify it. As such, they are bound to follow the principles of the Convention, but are not legally accountable for its specific provisions.

The Convention Against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment speaks to the common practice of torturing the disappeared. In Article 11, the CAT requires each State Party to prevent any cases of torture for “persons subjected to any form of arrest, detention, or imprisonment in any territory under its jurisdiction.”⁴¹ Article 16 prohibits cruel, inhuman, or other degrading treatment that does not amount to torture for persons subjected to any form of arrest, detention, or imprisonment in any territory under its jurisdiction. The PRC signed CAT on 12 December 1986, and ratified it on 4 October 1988.

Additionally, laws created by regional bodies are persuasive evidence of the growing custom against enforced disappearances. The Inter-American Court of Human Rights⁴² and the European Court of Human Rights have both stated that an act of enforced disappearance violates a person’s right to liberty and security, the right to life, the right to humane conditions of detention, and/or the right to freedom from torture, cruel, inhuman, or degrading treatment or

⁴⁰ Convention, *supra* note 23, art. 14.

⁴¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 Dec. 1984) 1465 U.N.T.S. 85, 23 I.L.M. 1027 (1984), as modified by 24 I.L.M. 535 (1985), entered into force 26 June 1987.

⁴² See Velasquez Rodriguez Case [1988] Inter-Am. Court HR (ser c) No 4; Godinez Cruz v. Honduras [1989] Inter-Am. Court HR (ser c) No. 8 (‘Godinez Cruz Case’); Blake v. Guatemala [1998] Inter-Am. Court HR (ser c) No. 36 (‘Blake Case’); Caballero Delgado and Santana v Colombia [1995] Inter-Am. Court HR (ser c) No. 22 (‘Caballero Delgado and Santana Case’); Castillo Páez v. Peru [1997] Inter-Am. Court HR (ser c) No 34 (‘Castillo Páez Case’); Juan Humberto Sanchez v. Honduras [2003] Inter-Am. Court HR (ser c) No 99 (‘Juan Humberto Sanchez Case’).

punishment.⁴³ In the case of Tibet, the PRC is not legally bound by these regional laws, but is bound by the customary international law that is implied by this trend of legal prohibitions.

C. A Breakdown of Internationally Protected Rights that are Violated by Enforced Disappearance

This is the story of Tenzin Namgyal, a monk from Dhargye Monastery, Kardze (Chinese: Ganzi) County, Sichuan Province.⁴⁴ Tenzin Namgyal was born in Dhargye village in Kardze TAP, Sichuan Province, in 1974. At age 16, he left his farm, parents, and village, and escaped to India via Lhasa. In South India, he studied at the Sera Monastery until 1998 when, at age 24, Tenzin returned to Tibet, and joined Dhargye Monastery in Kardze County.

On 14 March 2008, he received a call from friends that Tibetans in Lhasa were protesting against the Chinese government, and that many Tibetans were killed. Outraged, he organized a protest of 27 people to take place on 18 March 2008. In an effort to spread the information to the outside world, he and the other protesters informed people abroad about their plans to protest. But the Chinese intelligence officers tracked his calls and subsequently knew about the plan. On the afternoon of 17 March 2008, three officers from the State Secrets Bureau came to the monastery and, under the pretense of “correcting his residential permit (Tibetan: Themto),” brought Tenzin to the Khagong Township office. There, the officers told him that they had to ask him some questions at the Kardze County office. Tenzin, believing the officers, responded that he needed to receive permission from his monastery and then he would go, but the officers forcibly put him in a small cab and took

⁴³ See *Kaya v. Turkey* (2000) III Eur. Court HR 149; *Cyprus v. Turkey* (2001) III Eur. Court HR 1; *Seker v. Turkey*, Application No. 52390/99 (Unreported, European Court of Human Rights, 21 February 2006); *Çakiai v. Turkey* (1999) IV Eur. Court HR 583; *Ipek v. Turkey* (2004) II Eur. Court HR 1; *Gongadze v. Ukraine*, Application No. 34056/02 (Unreported, European Court of Human Rights, 8 November 2005); *Bazorkina v. Russia*, Application No. 69481/01 (Unreported, European Court of Human Rights, 27 July 2006).

⁴⁴ Collected from an interview with Tenzin Namgyal conducted by TCHRD in April 2012.

him to the Kardze County detention center. Between 7 pm and 12 am, Tenzin was interrogated and severely beaten. The authorities asked if there were any groups or organizations backing him, who he called about his plans, whether they were organizations or individuals, and what the plan was. After that first painful night, Tenzin received a few days respite from the interrogations.

Because he had not asked for permission to leave the monastery and because he did not return home that night, the other monks of his monastery suspected Tenzin had been arrested. The next day, on 18 March 2008, over 500 Tibetans comprising of monks and local Tibetans marched to the Kardze County police station. Although the People's Armed Police and other security personnel tried to stop the marchers on their way, the Tibetans were able to stage a huge protest against the Chinese government, carrying out Tenzin's plans after all.

After the protest, Tenzin's sister and some monks from Dhargye Monastery went to all of the local and county police stations and detention centers to inquire about Tenzin, but were met with obstinate officers who claimed that he was neither in their custody nor did they know where he was. Several months passed without any news about Tenzin. His relatives, monastery, and the monks from Sera Monastery in India all believed he had died and performed traditional funeral prayers and rituals in his memory.

It wasn't until he encountered a detained abbot from an unknown monastery that Tenzin was finally able to communicate with his family. The abbot was ill and released after a short period of time in detention. Tenzin seized the opportunity, placing a telephone number in the abbot's hand, and asking him to please call his family and inform them that he was alive. The abbot kept his promise.

Three months later, after one full year of detention, Tenzin was finally released, but was kept like a prisoner on probation in society. He had no freedoms at all. In July 2010, in an attempt to

escape the oppression, he sought permission from the local police station and the other necessary offices to go to Lhasa for medical treatment. After eye surgery in Lhasa, he set on a journey to cross the border to Nepal. Tenzin reached Nepal in October 2010, and from there made his way to Dharamsala, India, where he lives today.

Tenzin's story is an example of the multiple layers of violations involved in enforced disappearance. Without ever having committed a crime, he was deceitfully abducted by security personnel and brought to an unknown location, where he was interrogated and beaten. Tenzin was never formally arrested, charged, or brought before a court or judge to determine the validity of his detention. His family and other concerned persons were denied any information regarding his whereabouts and wellbeing and subsequently suffered the traumatic symptoms of those who believe a loved one is dead, but have no confirmation. Moreover, they remained uninformed for nine months, at which point they only received information informally through an abbot, and not through the official authorities. Disappearances like this are part of a widespread systematic practice of repressing dissent in China and especially Tibet.

In the first article, the Declaration on the Protection of All Persons from Enforced Disappearance immediately recognizes that enforced disappearances constitute a violation of the laws guaranteeing “the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.”⁴⁵ It is so malevolent that when practiced in a widespread and systematic manner it is actually considered a crime against humanity – an international crime that can be prosecuted at the domestic, regional, and international level. Regardless of the specific facts of any given case, enforced disappearance by its

⁴⁵ Declaration, *supra* note 17, art. 1(2).

very nature violates numerous internationally protected rights. For example, by virtue of its secrecy, enforced disappearances violate laws against extrajudicial proceedings, judgments, and punishments, as well as the rights to truth and liberty. International law further suggests that the practice is inherently tortuous for the disappeared victims. Thus, enforced disappearance, in addition to being its own continuous crime, infringes upon a myriad of human rights, and cannot be tolerated under any circumstances.

Below is a consideration of enforced disappearance as a continuous crime, a crime against humanity, an infringement on the right to truth, a defilement of the right to liberty, a violation of the right to recognition as a person before the law, and a breach of the right against torture, cruel, inhuman or degrading treatment or punishment. Additionally the following provides an analysis of how the PRC, by employing the practice of enforced disappearance in Tibet, is guilty of committing a crime against humanity and of violating the above-mentioned rights.

I Enforced Disappearance is a Continuous Crime

The crime of enforced disappearance is a continuous one, beginning at the time of the “abduction and extend[ing] for the whole period of time that the crime is not complete, that is until the State acknowledges the detention or releases information pertaining to the fate or whereabouts of the individual.”⁴⁶ The Declaration, the Convention, and the UNWGEID all emphasize the lengthy scope of the crime of enforced disappearance. Article 17(1) of the Declaration states “[a]cts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclear.”⁴⁷ Article 11 of the

⁴⁶ General Assembly Resolution 56/83, Responsibility of States for Internationally Wrongful Acts, UN Doc. A/Res/56/83, art. 14 (2) (Jan. 28, 2002), [hereinafter Responsibility of States].

⁴⁷ Declaration, supra note 17, art. 2, (the corresponding article in the Convention, supra note 23, is art. 2).

Declaration similarly requires that “each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released . . .”⁴⁸

UNWGEID in its general comments invokes other international, regional, and domestic tribunals, in concluding that enforced disappearance is a “continuing act” and a “continuing crime” for as long as a person remains disappeared.⁴⁹ Still, UNWGEID said that even short-term secret detentions qualify as enforced disappearance.⁵⁰

In some cases in Tibet, the whereabouts of those arrested during the 2008 protests were known only after their deaths in detention. Phuntsok Lhundup, a 32-yr-old monk was arrested on 10 March 2008 along with dozens of others from Drepung Monastery in Lhasa after taking part in a demonstration against the Chinese government in Tibet. During that time, Phuntsok suffered beatings and torture at the hands of the security officers. A year and a half later, on 9 October 2009, news surfaced of Phuntsok’s death in detention due to torture. He reportedly died in mid-August of 2009, and his body was handed over to his family. Nothing at all has been heard about an unidentified brother of Phuntsok Lhundup, also arrested on 10 March 2008.

II Enforced Disappearance as a Crime Against Humanity – A Crime in and of Itself

The preamble of the 1992 Declaration states that enforced disappearance, when practiced in a systematic way “is of the nature of a crime against humanity.”⁵¹ Articles 5 and 6 of the later adopted Convention criminalize the “widespread and systematic practice” of enforced disappearances, specifically categorizing them as a “crime

⁴⁸ Id. art. 11, (the corresponding article in the Convention, *supra* note 23, is art. 21).

⁴⁹ Responsibility of States, *supra* note 45.

⁵⁰ China: UN expert body concerned about recent wave of enforced disappearance, *supra* note 7.

⁵¹ Declaration, *supra* note 17, preamble.

against humanity.” Under the Rome Statute of the International Criminal Court, the leading authority on international crimes, enforced disappearances are considered a crime against humanity “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”⁵²

Similarly, the General Assembly of the Organization of American States (OAS), even in its early resolutions described any act of enforced disappearances to be a crime against humanity.⁵³ In 1994, the OAS passed the Inter-American Convention on Forced Disappearance of Persons, which, under Article II, officially criminalized the act of enforced disappearance in the regional jurisdiction.⁵⁴

While there is a growing movement to ban enforced disappearances in any form or justification, the Chinese government has for the past many decades used enforced disappearances as a tool to suppress dissent and criticism, by disappearing and detaining incommunicado persons deemed threats to the PRC’s “unity” and “stability.” Cases of enforced disappearance engineered by Chinese law enforcement agencies, particularly the security officers, have become routine in Tibet. The widespread and systematic application of enforced disappearance constitutes a crime against humanity according to international law, and should be dealt with as such.

After the March 2008 protests in Tibet, thousands of Tibetans were detained. To date, the Chinese government has refused to divulge any information on the exact number of arrests and detentions or how many it has sentenced to extrajudicial forms of detention, such as “re-education through labor.”⁵⁵ As such, the PRC to this

⁵² Rome Statute of the International Criminal Court (17 Jul. 1998) 2187 U.N.T.S. 3, *entered into force* 1 July 2002, Art. 7 (1) (i).

⁵³ General Assembly of the Organization of American States, Annual Report of the Inter-American Commission on Human Rights, OAS Doc AG/Res. 666 (XIII-0/83) para. 4 (1983).

⁵⁴ Inter-American Convention on the Forced Disappearance of Persons, adopted 9 June 1994, OAS Doc OEA/Ser.P/AG/Doc 3114/94 *entered into force* 28 March 1996, art. 2.

⁵⁵ Human Rights Watch, China: Enforced Disappearances a Growing Threat, 10 November 2011, available at: www.hrw.org/news/2011/11/09/china-enforced-disappearances-growing-threat.

day is still committing the international crime against humanity of enforced disappearance in regard to those whose whereabouts remain unknown.

III Violations of the Right to Truth

The right to truth, sometimes called the right to know the truth, is now widely recognized in international law in relation to human rights violations. Article 32 of Protocol 1 to the Geneva Conventions – widely believed to be authoritative international customary law – establishes “the right of families to know the fate of their [disappeared] relative.”⁵⁶ In fact, the right to truth was originally referred to in the context of enforced disappearance. Over time it has expanded in scope, covering other gross human rights violations such as extrajudicial killings, torture, and combating impunity. The right to truth is not only a collective and an individual right, but also an “inalienable” right with respect to gross human rights violations.⁵⁷ In its very first report in 1981, the UNWGEID recognized the right to truth as an autonomous right,⁵⁸ meaning that it is a right in and of itself, containing its own legal basis, and its endorsement is not dependent on the existence or endorsement of any other right.

The right to truth is directly relevant in both the definition and the scope of the crime of enforced disappearances. Article 10 (2) of the 1992 Declaration requires that “accurate information on the detention of such [detained] persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel, or to any other persons having a legitimate interest in the information unless a wish to the contrary

⁵⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, art. 32.

⁵⁷ Diane Orentlicher, Updated Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, UN Doc. E/CN.4/2005/102/Add.1, 7 (Feb. 8, 2005), [hereinafter Protection and Promotion].

⁵⁸ The United Nations Working Group on Enforced or Involuntary Disappearances, Question of Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Question of Missing and Disappeared Persons, para. 187 (22 January 1981) UN Doc. E/CN.4/1435.

has been manifested by the persons concerned” (emphasis added).⁵⁹ Furthermore, in its preamble, the Convention affirms “the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person, and the right to seek, receive, and impart information to this end.”⁶⁰ Both the individual victim as well as society at large have “the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation, and the fate of the disappeared person.”⁶¹

Despite these norms, the Law on the Protection of State Secrets of the People’s Republic of China (“State Secrets Law”) protects the authorities from having to disclose information such as: plans for the deployment and movement of large numbers of prisoners being transferred from one region to another;⁶² information on the place of custody or circumstances of prisoners of great influence;⁶³ statistics on the number of new prisoner executions and unusual deaths in prisons, and re-education through labor facilities;⁶⁴ plans on transferring prisoners within provinces, autonomous regions, and directly administered municipalities;⁶⁵ information on the detention and reform of prisoners of influence currently serving sentences;⁶⁶ compiled data on prisoners currently in detention nationwide;⁶⁷ specific information on the corpses or on the use of bodily organs

⁵⁹ Declaration, *supra* note 17, art. 10 (2).

⁶⁰ Convention, *supra* note 23, preamble.

⁶¹ *Id.* art. 24.

⁶² Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Public Security Work, art. 2, sec. A (3) (1995), National Administration for the Protection of State Secrets, ed., Selected Regulations on State Secrets and the Specific Scope of Each Level of Secrets (Revised Edition, Classified as “Highly Secret”), 7-12.

⁶³ *Id.* art. 2 sec. B (8).

⁶⁴ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Judicial Administration Work, art. 2, sec. B (1) (1995), National Administration for the Protection of State Secrets, ed., Selected Regulations on State Secrets and the Specific Scope of Each Level of Secrets (Revised Edition, Classified as “Highly Secret”), 56-58.

⁶⁵ *Id.* art. 2 sec. B (6).

⁶⁶ *Id.* art. 2 sec B (8).

⁶⁷ *Id.* art. 2 sec. C (2).

of prisoners who have been sentenced to death by people's courts;⁶⁸ and plans to carry out the executions of prisoners of relatively high significance who have received the death penalty.⁶⁹ These laws protecting from disclosure allows for the Chinese government to "legally" withhold even basic information about prisoners, especially political prisoners. This attributes to the high numbers of enforced disappearances, and by definition, the prisoners remain disappeared until official information regarding their whereabouts is released.

In Tibet it has become a routine practice to withhold information about a person detained or arrested by both domestic security police (guobao) and state (or "national") security police (guoan). In the former case, police exercise their power to deprive an individual of his or liberty, preceding arrest, but not an arrest "in law."⁷⁰ Criminal detentions (Chinese: xingshi jülü) precede arrest but are not an arrest "in law."⁷¹ In the latter case, a Procuratorate or the prosecutor issues an arrest warrant to the security personnel, who may very well already have the individual "suspect" detained. In the majority of cases of arbitrary arrests, family members and relatives of the detained person are denied their right to information or more specifically, their right to truth, regarding the whereabouts or the medical condition of their loved ones. The fact that many Tibetans are arrested on charges of "endangering state security" ("ESS"), means security officers take extra measures to suppress any information about a detainee and reject any requests for information.

Last year, a large number of monks were forcefully disappeared from Kirti Monastery in Ngaba (Chinese: Aba) County of Ngaba Tibetan and Qiang Autonomous Prefecture, Sichuan Province. On 21 April 2011, following widespread protests in the County

⁶⁸ Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People's Courts, art. 2, sec. B (4) (1995), National Administration for the Protection of State Secrets, ed., Selected Regulations on State Secrets and the Specific Scope of Each Level of Secrets (Revised Edition, Classified as "Highly Secret"), 52-55.

⁶⁹ Id. art. 3, sec. C (5).

⁷⁰ This is discussed more fully below.

⁷¹ Mike McConville, et. al., *Criminal Justice in China: An Empirical Inquiry* 42 (Edward Elgar Publishing Limited 2011), [hereinafter "Criminal Justice in China"].

fuelled by the self-immolation and subsequent death of 21-year-old Phuntsok Jarutsang (a monk of Kirti Monastery), nearly 300 monks were arrested. Security personnel from the People's Armed Police, Public Security Bureau, and People's Liberation Army arrested the men at midnight, and took them to an unknown location in ten military trucks. Despite strong and repeated interventions from the UNWGEID,⁷² the Chinese government maintained that the monks were “undergoing legal education,” a term that has now replaced the regressive and coercive “patriotic re-education” campaign, a highly coercive form of political education. Although some have returned to their homes, it remains unclear whether all 300 monks were released from official detention.

Perhaps the most distressing and commonly known case of enforced disappearance in Tibet is that of the 11th Panchen Lama, Gedhun Choekyi Nyima, one of the most important spiritual leaders of Tibet. The case remains unresolved, 17 years after the then six-year-old boy and his parents were secretly removed from their hometown in Tibet by the Chinese authorities. The boy's only “crime” was his recognition as the reincarnation of the previous 10th Panchen Lama by His Holiness the Dalai Lama. In April 2011, UNWGEID was quoted as saying, “While the Chinese authorities have admitted taking him, they have continually refused to divulge any information about him or his whereabouts, making his case an enforced disappearance.”⁷³ Despite repeated interventions from a number of UN human rights mechanisms and appeals from other governmental and non-governmental organizations, the Chinese authorities continue to maintain that the Panchen Lama is not under house arrest, but have refused to share any substantial information on his whereabouts and condition. The 11th Panchen Lama's 23rd birthday was on 25 April 2012.

⁷² China: UN expert body seriously concerned about Tibetan Monks reportedly subjected to enforced disappearance, 8 June 2011, available at: <http://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=11122&LangID=E>.

⁷³ China: UN expert body concerned about recent wave of enforced disappearances, 8 April 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10928&LangID=E>

IV Violations of the Right to Liberty

The right to life, liberty and security of person is recognized in Article 3 of the Universal Declaration of Human Rights, Article 9 of the ICCPR, and Article 37 of the Constitution of the People's Republic of China.⁷⁴ Any arbitrary detention or arrest is considered a violation of the right to liberty in each of these provisions.

The three pillars – referred to as the “Iron Triangle” – of China's criminal justice system, charged with the duties of assisting, reinforcing, and checking each other to ensure the correct and effective enforcement of law, are comprised of the Public Security Bureau (“PSB”), the People's Procuratorate, and the Courts.⁷⁵ Nonetheless, the dominant force in the iron triangle remains the PSB or the police, which exercises great control over the entire legal process and is given broad and often misused powers.⁷⁶ Its authority derives from the Constitution,⁷⁷ and is expanded upon in the Criminal Procedure Law (“CPL”). When the CPL was first amended in 1996, it appeared that many of the provisions changed for the better. There were some indirect provisions that at least implied that criminal suspects had certain rights, such as the proscription against torture⁷⁸ and the partial recognition of a privilege against self-incrimination.⁷⁹ Police were restricted by time limits to initiate a case, albeit extendable for pre-trial detention, and became subject to prosecutorial supervision.⁸⁰ But in fact, the police powers to detain were extended. For example, the “shelter and investigation” power – under which police could detain people without charge or trial for

⁷⁴ The provision reads: “The freedom of person of citizens of the People's Republic of China is inviolable. No citizen may be arrested except with the approval or by decision of a people's procuratorate or by decision of a people's court, and arrests must be made by a public security organ.”

⁷⁵ Criminal Procedure Law of the People's Republic of China, art. 7 (1996), *Zhonghua Renmin Gongheguo Falu Huibian*, [hereinafter CPL].

⁷⁶ Criminal Justice in China, *supra* note 69, at 423.

⁷⁷ Constitution of the People's Republic of China of 1982, art. 37, *Zhonghua Renmin Gongheguo Xianfa*, 1982 [hereinafter *Xianfa* (1982)].

⁷⁸ CPL, *supra* note 73, art. 43.

⁷⁹ *Id.* art. 93.

⁸⁰ Criminal Justice in China, *supra* note 69, at 11.

up to 3 months – was formally abolished, but effectively restored via other means, such as Article 61 in which police are granted the authority to detain indefinitely those individuals who “do not tell their true name or place of residence or whose ID is unclear,” as well as those who the police “strongly suspect” of wandering around committing crimes or forming bands to commit crimes.⁸¹

Similarly, the 1996 CPL extended the police powers to detain: police can carry out criminal detentions (Chinese: *xingshi juliu*), which precede arrest but are not an arrest “in law.”⁸² The only limitation is that they must produce a detention warrant and inform the suspect’s family or work unit of the fact of and reasons for detention and the place of custody, unless there is no way of notifying them or to do so would hinder the investigation.⁸³ Police have 24 hours to commence investigation and determine whether or not the suspect should be “legally” arrested, in which case they must apply to the procuratorate for authorization within three days, but up to 30 days in certain circumstances.⁸⁴ Once the request is submitted, the procuratorate has seven days to approve or reject the arrest application.⁸⁵

After officially arrested, suspects are detained pending trial subject to investigative detention for two months, a period that may be extended by one month with approval of the procuratorate at a superior level, but in reality is often abused resulting in no time limit.⁸⁶ Moreover, Article 125 of the CPL provides for indefinite detention without trial for “particularly grave and complex” cases subject to application by the Supreme People’s Procuratorate and approval by the Standing Committee of the National People’s Congress.

The police have become very good at creatively using the rules to avoid

⁸¹ Id. at 9.

⁸² CPL, *supra* note 73, art. 61.

⁸³ Id. art. 64.

⁸⁴ Id. art. 69.

⁸⁵ Id.

⁸⁶ Criminal Justice in China, *supra* note 69, at 45.

time limits. For example, they are known to: use the exceptional powers granted under article 69 to detain for the maximum 30 days; apply for arrest for each count separately instead of filing one application for arrest for all counts, consequently receiving a new time period for each application, which, when aggregated, can amount to months; arrest, release, and re-arrest a suspect; and use detention to obtain confessions in time-sensitive cases.⁸⁷

Moreover, the PSB pillar has had a difficult time adjusting to the greater supervisory powers of the procuratorate over the police. The CPL redefined the roles of lawyers, judges, prosecutors, and the police, providing for external review of arrest “after nearly 50 years’ practice of unsupervised arbitrary detention.”⁸⁸ In practice, the procuratorate do not have significant influence of the relatively autonomous police “who may, with impunity, ignore advice or requests from both the prosecutor and the judge.”⁸⁹ Evidence shows that police do not make applications for approval or arrest within a timely manner.⁹⁰ The procuratorate has no means of reprimanding the police for the consistent time lapses between the date of arrest and actual transfer for prosecution.⁹¹ The emphasis is more “on fighting crime and mutual co-operation rather than upon legality, human rights, and mutual supervision. Accordingly, arresting before investigation and using arrest to replace investigation has been abused.”⁹²

On 1 November 2011, a 44-yr-old Tibetan named Lhaten was arrested for suspected connections with Dhondup Wangchen, a documentary filmmaker whose arrest is discussed below. At around 3 pm, he received a telephone call in which a Chinese teacher asked him to retrieve his son from school. When he arrived at Taktse County Primary School, policemen dressed in plain clothes were waiting for him and reportedly took him away in a black car. Lhaten was a

⁸⁷ Id. at 45-47.

⁸⁸ Id. at 13.

⁸⁹ Id. at 386.

⁹⁰ Id. at 49.

⁹¹ Id. at 51.

⁹² Id. at 54.

simple farmer and the sole breadwinner of his family, consisting of his wife Passang Choedon and three children. Nothing has been seen or heard of him since his arbitrary arrest. Some sources say Lhaten was detained because he appeared in the documentary in which he was quoted as saying: “Life is really hard. People don’t see it. Lots of tourists come to Lhasa and the Chinese government sweet talks them, showing them what they want to show.”⁹³

Recent demonstrations of unlawful deprivation of liberty involve two popular Tibetan writers who were detained without warrants and remain disappeared. On 3 February 2012, Dawa Dorjee, a Tibetan writer and advocate of Tibet’s traditional culture and language in his 20’s was arrested by Chinese security personnel at Lhasa Gonggar Airport. Dorjee was returning to Lhasa after participating in a cultural conference at Chengdu city. He was transferred to an unknown destination. Dawa Dorjee published the book “Lahm” (English: “Road”), which discusses democracy, freedom, and human rights⁹⁴.

On 15 February 2012, Gangkye Drubpa Kyab, a 33-yr-old teacher, was arrested at his home in Serta (Chinese: Seda) County, Kardze Tibetan Autonomous Prefecture, Sichuan Province, by about 20 police officers. Months later, no judicial proceedings have taken place, and his whereabouts and fate are unknown.

V Violations of the Right to Recognition as a Person Before the Law

By its very nature enforced disappearance exists outside the realm of proper judicial institutions prescribed by international and domestic law, in violation of the right to recognition as a person before the law. In fact, China’s legal system has contributed to the conditions in which disappearances are able to occur in Tibet by allowing for

⁹³ Tibetan suspected of appearing in short film goes missing, 19 November 2011, Phayul, available at <http://www.phayul.com/news/tools/print.aspx?id=30379&t=0>

⁹⁴ China: Enforced disappearances of two Tibetan writers, 21 February 2012, OMCT Urgent Actions, <http://www.omct.org/urgent-campaigns/urgent-interventions/china/2012/02/d21650/>

prolonged pre-trial detention and administrative detention without trial. The disappeared are routinely denied the right to a judicial proceeding regarding the legitimacy of their arrest or detention. They are further unlawfully held in secret detention, deprived of a trial or hearing, and are arbitrarily “sentenced” to imprisonment, house arrest, re-education through labor, and even extrajudicial killings, all in violation of the rights set forth in the Declaration,⁹⁵ the Convention,⁹⁶ the ICCPR,⁹⁷ and the Universal Declaration of Human Rights.⁹⁸

The main legal authority for extrajudicial treatment in the PRC derives from the distinction between a “crime” and an “administrative offence,” determined rather arbitrarily by the PSB. The police are given almost unfettered discretion to deal with individuals through the administrative system of penalties, and the rights afforded under the CPL are not available to the individuals subject to that system.⁹⁹ According to the CPL¹⁰⁰ and Article 2 of the Regulations of the PRC on Administrative Penalties for Public Security (“APPS”), the difference has to do with severity of the act, and whether or not there is a criminal investigation. Due to poor investigation skills

⁹⁵ Declaration, *supra* note 17, art. 10 (1): “Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.”

⁹⁶ Convention, *supra* note 23, art. 17: “1. No one shall be held in secret detention; 2. Each State Party shall: (f) guarantee that any person deprived of liberty shall . . . in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person’s release if such deprivation of liberty is not lawful.”

⁹⁷ ICCPR, *supra* note 37, art. 9 (3): “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

⁹⁸ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, art. 6 (1948): “Everyone has the right to recognition everywhere as a person before the law.”

⁹⁹ Criminal Justice in China, *supra* note 69, at 15.

¹⁰⁰ CPL, *supra* note 73, art. 15, sec. 1.

and failure to appreciate the importance of evidence requirements, police often fail at collecting relevant or quality evidence through a proper, i.e. legal, means.¹⁰¹ “Accordingly, for reasons of expediency, administrative punishments may be imposed by the police in cases in which they do not have sufficient evidence to initiate a prosecution.”¹⁰² It appears that the Chinese police choose to impose the APPS frequently, accepting more APPS cases than criminal cases filed.¹⁰³ The reasons for this vary, but tend to center around a general reluctance of the PSB to relinquish control over cases – since such a transfer is seen as compromising their control over their administrative punishment powers – retention of budgetary control, and the lack of professional skills in the PSB, mentioned above.¹⁰⁴

The penalties under APPS claim to combine education with punishment.¹⁰⁵ Articles 10 and 11 of the law enumerate the possible punishments, including a warning, fine, administrative detention, revocation of licenses issued by public security organs, confiscation of tools of the crime, and confiscation of proceeds of the crime. The APPS gives no clear guidelines as to which punishment is appropriate in each particular situation. Rather, the decision is vested solely in the PSB.

Under the “National People’s Congress Standing Committee: Resolution on Approving the Supplementary Decision of the State Council on the Issue of Re-education through Labor,” the law promulgating the punishment of Re-education through Labor (Chinese: Laojiao)¹⁰⁶, the police send a suspected perpetrator to a labor camp for a term between 1-3 years with the possibility of a

¹⁰¹ Criminal Justice in China, *supra* note 70, at 505.

¹⁰² *Id.*

¹⁰³ *Id.* at 500.

¹⁰⁴ *Id.* at 501-503.

¹⁰⁵ Law of the People’s Republic of China on Penalties for Administration of Public Security, art. 4 (2005), *Zhonghua Renmin Gongheguo Fagui Huibian*, [hereinafter APPS].

¹⁰⁶ Re-education Through Labor Reform Hits Critical Point, 28 August 2012, *Caijing*, available at <http://english.caijing.com.cn/2012-08-28/112087206.html>

one-year extension in cases of “necessity.”¹⁰⁷ The requirements for administering re-education through labor (“RTL”) are particularly applicable to Tibetan dissidents. Among the possible conditions for RTL are the cases of: those suspected of endangering state security, anti-Party and anti-socialism elements; persons who disrupted social order by acts such as gathering others to engage in affray, causing nuisance, inciting troubles and disturbances; and persons who instigated others to commit crimes.¹⁰⁸ As such, RTL has been and continues to be widely used to oppress political dissent.¹⁰⁹ Although the UN Working Group on Arbitrary Detention has determined that the practice of “re-education through labor is inherently arbitrary” when intended for “political and cultural rehabilitation,”¹¹⁰ many Tibetans continue to be detained in RTL camps for engaging in political protests.

The most blatant extrajudicial tactic employed by the Chinese government is the use of “black jails,” for this purpose, though it is in direct contravention to Article 10 of the Declaration and Article 17 of the Convention, each dictating that all persons deprived of liberty must be held in officially recognized places of detention. Without bothering with the judicial system, government officials hire thugs, commonly referred to as “retrievers” (Chinese: jiefang renyuan) to locate and abduct “threatening” petitioners, and detain them in government ministry buildings, hotels, hostels, nursing homes, mental hospitals, drug rehabilitation centers, residential buildings, and other secret locations.¹¹¹ Despite the relative normalcy of these locations, the detainees are kept in prisonlike conditions, with no freedom of movement, association, or expression. They are secretly

¹⁰⁷ NPC Standing Committee: Resolution on Approving the Supplementary Decision of the State Council on the Issue of Re-education through Labor (quanguo renmin daibiao dahui changwu weiyuanhui pizhun guowuyuan guanyu laodong jiaoyang de buchong guiding), November 29, 1979. See further: Human Rights in China, Reeducation Through Labor (RTL): A Summary of Regulatory Issues and Concerns (2001), available at: <http://www.hrichina.org/content/4691#pt12>.

¹⁰⁸ Criminal Justice in China, *supra* note 69, at 499-500.

¹⁰⁹ *Id.* at 500.

¹¹⁰ Robert F. Kennedy Memorial Center for Human Rights, China Human Rights Fact Sheet, March 1995.

¹¹¹ Human Rights Watch, *An Alleyway in Hell*, 14 & 16 (2009).

confined behind “locked doors, locked and barred windows . . . and 24-hour surveillance by guards armed with weapons, including clubs and guns.”¹¹² The government provides substantial financial rewards for black jail operators who offer their facilities.¹¹³ In some cases, detainees are actually required to pay for their own detention and/or their release.¹¹⁴

Besides being detained illegally according to both international and Chinese law, the victims imprisoned in “black jails” often encounter further human rights abuses. They are subject to both physical and psychological abuses, deprived of food, sleep, and medical care, and interrogated and extorted by their guards.¹¹⁵ As in other forms of enforced disappearance, they have access to neither family members nor legal counsel.¹¹⁶ Deprived of communication with the outside world, assistance from local police, and access to the legal system, these illegal detainees are at the complete mercy of their ruthless captors. Research documents show that detainees often seek escape or commit suicide, since the period in administrative detention is “not simply a form of restraint: it also represent[s] an opportunity for the police to use torture on detainees with a view to extracting confessions.”¹¹⁷

After his arrest on 28 March 2008, the Tibetan documentary filmmaker, Dhondup Wangchen, was detained incommunicado for about one year and four months. He was partly detained at Gongshan hotel, an extrajudicial detention facility or “black jail” in Xining city.¹¹⁸ Police tied him to a chair, beat and punched him in the head, and frequently deprived him of food and sleep during interrogations. Dhondup Wangchen suffers from Hepatitis B, for

¹¹²Id. at 16.

¹¹³Id. at 15.

¹¹⁴Id. at 16.

¹¹⁵Id. at 21.

¹¹⁶Id.

¹¹⁷Criminal Justice in China, *supra* note 69, at 498.

¹¹⁸China must release Tibetan filmmaker, 7 January 2012, Amnesty International, available at <https://www.amnesty.org/en/news-and-updates/china-must-release-tibetan-filmmaker-20100107>

which he did not receive any medical treatment during his time in detention. On 28 Dec 2009, he was finally charged with “inciting splittism” for his documentary entitled “Leaving Fear Behind,” and sentenced to six years imprisonment during a secret trial in Xining.

In February 2012, hundreds of Tibetan pilgrims returning from religious teachings in India were arbitrarily detained at the Nepal-Tibet border and placed in ad hoc detention centers to undergo intense political re-education.¹¹⁹ Although various buildings have been identified as being used as ad hoc detention centers, in many cases relatives have not been given any official notification of the detentions and do not know where the detainees are being held.¹²⁰ All of these examples constitute unlawful violations to the right to be recognized as an individual before the law, since none of them were ever given the opportunity to appear before a judge or other legal authority, to determine the validity of their detention. In this respect, the practices described do not meet the standards of international law.

VI Enforced Disappearances as a Violation of the Prohibition Against Torture

In addition to numerous reports of physical torture and mistreatment specifically prohibited by multiple international legal instruments, in particular CAT, current scholarship suggests that enforced disappearance constitutes torture in and of itself. Experts like the former UN Special Rapporteur on Torture, Sir Nigel Rodley, have noted that “prolonged incommunicado detention” amounts to torture as defined in Article 1 of the CAT.¹²¹ The UNWGEID has also suggested that acts of enforced disappearance might constitute

¹¹⁹ Human Rights Watch, *China: End Crackdown on Tibetans Who Visited India*, 16 February, 2012, available at: <http://www.hrw.org/news/2012/02/16/china-end-crackdown-tibetans-who-visited-india>.

¹²⁰ ID

¹²¹ See Sir Nigel Rodley, Report of the Special Rapporteur on the Question of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN GAOR, 56th sess., Agenda Item 132(a), UN Doc A/56/156 at para. 14 (3 July 2011).

torture: “[t]he very fact of being detained as a disappeared person, isolated from one’s family for a long period is certainly a violation of the right to humane conditions of detention and has been presented to the Group as torture.”¹²² It is noteworthy that after visiting Drapchi and Chushur prisons in Tibet Autonomous Region (TAR) in 2005, the then-UN Special Rapporteur on Torture, Dr. Manfred Nowak concluded in his report that the practice of torture remains “widespread” in China.¹²³

The following is the first hand testimony to TCHRD on 18 April 2012. Wotso Dolma became a nun at Puruna Nunnery in Kardze Tibetan Autonomous Prefecture, Sichuan Province, when she was 19 years old. On 14 May 2008, she and 53 other nuns from Puruna staged a protest, walking from the nunnery to the police station in Kardze County. The nuns shouted slogans such as “Free Tibet,” “Freedom of Religion in Tibet,” and “Let His Holiness the Dalai Lama return to Tibet,” as they threw pamphlets in the air. It was only a few minutes before officers from the Public Security Bureau and the People’s Armed Police rushed towards them with electric batons and steel chains in their hands, and began hitting the nuns on the head until they lost consciousness. Wotso and the other nuns were then shoved into police vehicles like cattle and brought to a detention center in Kardze, where they were interrogated at gunpoint and beaten. She was tortured by electric batons, made to kneel for hours on long iron rods, with the real threat of beating if she made a movement. For three days she and the other nuns were deprived of food and water while continuously interrogated. After 8 days, she was transferred to Dartsedo (Chinese: Kanding) Detention Centre, where she was held between 10 and 15 days. On the 16th day at around 10 p.m., the guards covered the nuns’

¹²²The United Nations Working Group on Enforced or Involuntary Disappearance, Question of Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Question of Enforced or Involuntary Disappearances, para. 131, 21 January 1983, UN Doc. E/CN.4/1983/14.

¹²³Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr. Manfred Nowak, Mission to China, Commission on Human Rights, 62nd Sess. 10 March 2006, UN Doc. E/CN.4/2006/6/Add.6, [hereinafter Manfred Nowak].

mouths with thick tape and then their heads with black hoods. One of the nuns asked where they were going, to which a policeman replied, “to slaughter you all.” At gunpoint, Wotso and the nuns were loaded into a bus where they were not allowed to move, and brought to a smaller detention center in Dartsedo. Two months later, her elder brother got word of where she was and went to visit her. The reunion was brief as the officers took him away, and they were never allowed to meet again. Finally after four months of detention, Wotso was released to her family, but she was not allowed to return to the nunnery. It was then that she learned that her family thought she was dead after the protest. Her brother had seen the place of the protest and said the road was red with blood. Her brothers inquired about her at all of the prisons and detention centers in Kardze, but could not find her. One brother even checked the local police station, but the police officer pushed him, beat him, and refused him entry, without disclosing any information about Wotso and her whereabouts. Her mother was especially affected, suffering terrible anxiety wondering about Wotso’s wellbeing. She feared Wotso was dead, but was even more worried that she was alive and suffering at the hands of the Chinese officers. “She nearly went mad, they say.” Wotso is the youngest and only daughter out of seven children.

Wotso herself had a hard time recovering as well. She often had nightmares about her time in prison, and had to visit many lamas to perform rituals before she improved. Although she was released 4 years ago, she recoils when she sees foreigners wearing shoes that resemble the one worn by the officer who would stamp on her foot if she lost her balance while she was kneeling. The nightmares of her time in prison still haunt her.¹²⁴

¹²⁴ Testimony by Wotso Dolma to TCHRD on 18 April 2012.

D. China's Argument of "National Security"

The Chinese government justifies the practices implicated in enforced disappearances as a necessary means for the government to ensure "social stability" and "national unity." Since the Chinese government views Tibetan discontent and protests as acts aimed at "splitting the Chinese Motherland," many Tibetans are charged with endangering state security, a charge that excludes them from most other means of judicial redress available to criminal suspects, or even contacts with their family members and relatives. Thus, they are at the total mercy of their captors, the law enforcement agencies of the Chinese government.

In Tibet, majority of documented enforced disappearance cases involve suspects charged with "endangering state security" ("ESS") and "disclosing state secrets." This argument of national security to excuse forcibly disappearing people, is in contravention to China's responsibilities under international law, which does not allow for any derogation from the protection of all persons against enforced or involuntary disappearances.

A. International Standards Regarding Derogation

Many international human rights mechanisms allow for some sort of derogation in the name of National Security. However, international human rights instruments bar any kind of special situations and circumstances to validate enforced disappearances. The UN Office of the High Commissioner for Human Rights stated that, "enforced disappearance is a terrible practice that must not be permitted to occur anywhere and no exceptional circumstances whatsoever may be invoked to justify an enforced disappearance."¹²⁵

Article 7 of the above mentioned Declaration, to which China is liable, explicitly bans justification on grounds of national security, stating

¹²⁵China: UN Experts Warn of Severe Human Rights Restrictions on Tibetan Buddhist Monasteries, 1 November 2011, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11555&LangID=E>.

that “no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency may be invoked to justify enforced disappearances.” Article 1(2) of the Convention also provides that “no exceptional circumstances whatsoever” can be used to justify enforced disappearances.

Furthermore, UNWGEID has stressed that there can never be an excuse to disappear people, especially when those persons are peacefully expressing their dissent with the government of their country.¹²⁶ On 1 November 2011, Mr. Jeremy Sarkin the Chair-Rapporteur of the UNWGEID stressed in a press release that, “no exceptional circumstances whatsoever may be invoked to justify an enforced disappearance.” Mr. Sarkin was speaking in the context of the enforced disappearances of 300 Tibetan monks from Kirti Monastery in Ngaba County.¹²⁷

Directly relevant to the situation in Tibet, the 1995 Johannesburg Principles on National Security, Freedom of Expression and Access to Information (“the Johannesburg Principles”) state that, “the peaceful exercise of the right to freedom of expression shall not be considered a threat to national security or subjected to any restriction or penalties.”¹²⁸ Principle 7 further elaborates on specific expression does not constitute a threat to national security including, but not limited to expression that: advocates non-violent change of government policy or the government itself; constitutes criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials, or a foreign nation, state or its symbols, government, agencies or public officials; constitutes objection, or advocacy of objection, on grounds of religion, conscience or belief; is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.¹²⁹

¹²⁶ Id.

¹²⁷ Id.

¹²⁸ Principle 7, The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995.

¹²⁹ Id.

The Johannesburg Principles have gained widespread acceptance and are arguably considered norms of customary international law. Therefore, calls for religious freedom, a free Tibet, and the return of His Holiness the Dalai Lama to Tibet, are not considered threats to the PRC's national security by international law.

B. Chinese Law

Despite the overwhelming international law to the contrary, the Chinese Constitution renders powerless all provisions granting fundamental rights and freedoms to the Chinese citizen when read against provisions regarding national security. In fact, the Chinese law puts the onus of safeguarding “the security, honor, and interests of the motherland” on the average citizen.¹³⁰ Chinese leaders publicly proclaim the “overriding importance of unity and stability,” highlighting the existing contradictions in Chinese law.¹³¹

The State Secrets Law is an entire body of law dedicated to national security that contributes to the legality of enforced disappearance in China. Article 8 (7) of the State Secrets Law defines state secrets arbitrarily as “matters that are classified as state secrets by the National State Secrets Bureau (“NAPSS”).”¹³² The opaque and overbroad legal provisions on “national security” in Chinese law give the government enormous powers to interpret the legal provisions in its favor. Any criticisms to the Chinese government and its policies by the Tibetans are considered threats to “national security.” Non-violent acts of protests staged by Tibetans, whether through unfurling the Tibetan flags or shouting slogans for human rights and freedom are considered threats to national unity, national security, and social stability.

¹³⁰ Xianfa art. 54 (1982).

¹³¹ Edward Cody, China Amends Constitution to Guarantee Human Rights, *The Washington Post*, Mar. 14, 2004, available at: <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A57447-2004Mar14>.

¹³² The Law of the People's Republic of China on Protection of State Secrets (2010), *Zhonghua Renmin Gongheguo Falu Huibian*.

The bulk of “national security” provisions in the Criminal Procedure Law (“CPL”) demonstrate the Chinese authorities’ battle against separatist forces in places like Tibet, Xinjiang, and Inner Mongolia. The first article of the 1996 CPL underscores the importance of the law in “safeguarding State and public security and maintaining socialist public order,” a notion that is further emphasized in the second article, which expresses the need to “fight vigorously against criminal acts in order to safeguard the socialist legal system . . . and to guarantee the smooth progress of the cause of socialist development.”¹³³ As such, crime in China is seen as a political challenge to the role of the CPC and the socialist system.¹³⁴ This argument of state security is applied overly broad to include an incalculable number of situations that do not actually pose a threat to the security of the nation.

The CPL was revised in 1996 from its original 1979 (enacted in 1980) version, and the amendments first appeared as a true progress for the protection of human rights. In reality however, it made little to no difference, sometimes even expanding upon the powers of the police to suppress individual rights on the justification of protecting state security. During the March 2012 annual session, China’s parliament, the National People’s Congress (“NPC”), approved proposed amendments to its CPL. While the latest amendments include for the first time the encouraging words “respect and safeguard human rights,”¹³⁵ they fail to outlaw the persistent use of enforced disappearance as a tool to crack down on critics of official policies. Perhaps the most disturbing revision is embodied in Article 73, which essentially legalizes the secret detention of persons charged with perceived political crimes. The revised law referred to as the

¹³³ CPL, *supra* note 73, arts. 1 & 2.

¹³⁴ Criminal Justice in China, *supra* note 70, at 15-16.

¹³⁵ Criminal Procedure Law of the People’s Republic of China, art. 2 (2012), taken from: Li Changshuan, Working translation of Amendments to the Criminal Procedure Law of the People’s Republic of China, March 14, 2012 1 (The Danish Institute for Human Rights, 2012), available at: http://lawprofessors.typepad.com/files/120320-cpl-amendments_en_final.pdf, [hereinafter 2012 CPL]. The Chinese version of the new law is available at: http://www.law-lib.com/law/law_view.asp?id=378480.

“residential surveillance clause,” allows authorities to detain suspects charged with “endangering state security,” crimes of terrorism, or large-scale bribery in an undisclosed location for up to six months without contact with the outside world or communications with family.¹³⁶ The law is supposed to apply when “residential surveillance at the domicile may impede investigation.”¹³⁷ Many fear that the terms “national security threats,” and “terrorism,” as well as the situations in which in home surveillance might “impede investigation,” will be loosely defined to further exploit the law to carry out repressive practices.¹³⁸ Human rights activists and analysts expressed the very real concern that “Article 73 may lead to increased instances of miscarriages of justice against Tibetans and Chinese citizens in general.”¹³⁹

Directly contradicting international standards, Article 83 provides a further impediment in the revised CPL, requiring that authorities must notify the relatives of a detained suspect within 24 hours, unless the suspect is allegedly involved in endangering state security or terrorism and notifying the family may impede the investigation.¹⁴⁰

The revised CPL therefore offers no protection for the human rights of those suspected of “breaching national security,” and further supports forcefully disappearing persons. For over a decade, TCHRD has reported and documented the cases of enforced disappearances of monks nuns, artists, intellectuals, writers, nomads, farmers and students the majority of whom were labeled as “national security”

¹³⁶ Id. art. 73.

¹³⁷ Yaxue Cao, *Criminal Procedure Law: What are they Amending?*, Seeing Red in China, 13 March 2012, available at: <http://seeingredinchina.com/2012/03/13/criminal-procedure-law-what-are-they-amending>.

¹³⁸ Benjamin Cost, *China Passes ‘Secret Detention’ law despite criticism from Netizens*, Shanghaiist, 15 March 2012, available at: http://shanghaiist.com/2012/03/15/china-passes_secret_detention_law_d.php.

¹³⁹ Irene Chan, *Legal Reform in China: Quelling Tibetan Unrest?*, 45 S. Rajaratnam School of International Studies Commentaries, 2, (2012).

¹⁴⁰ 2012 CPL, *supra* note 135, art. 83.

suspects, either for “disclosing state secrets” or “endangering state security.”

The truth remains that the ruling party of the PRC continues to control every aspect of law making, enforcement, and judgment. There exists a Party organ called the Committee of Politics and Law (Chinese: zhengawei), which consists primarily of the President of the People’s Court, the Chief-Procurator of the People’s Procuratorate, the Director of the Public Security Bureau, and the Director of the Justice Bureau at the county level and above.¹⁴¹ The main responsibility of this body is to ensure that all judicial organs, including the people’s courts, are subject to the leadership of the Party.¹⁴² In fact, apart from the collegial panel (like a jury), the Committee is vested with the power to make final decisions on cases.¹⁴³ Accordingly, the police, the procuratorate, and the courts are not in existence simply to enforce the law, “theoretically, they also are the institutions of the dictatorship.”¹⁴⁴ The judicial organ is the tool through which the Party rules and manages the country to “realize social stability.”¹⁴⁵

It is this reasoning that created the laws and policies by which police can forcibly disappear persons. The Strike Hard campaigns (Chinese: yanda) for example are intensified crime control programs launched during important social or political periods, serving “to underline for state officials their own responsibility for delivering law and order.”¹⁴⁶ For example, Vice-Minister for Public Security, Yang Huanning told security officials across the country that they must “strike hard against the destructive work of hostile forces inside and outside the country” that pose a threat to the government. He further encouraged police to target “ethnic separatists,” “terrorist

¹⁴¹Chinese Culture and “the Rule of Law” in China, Zhang Haiting, *Culture, Law, and Order*, 2 (1) Chinese Cross Currents 63 (2005).

¹⁴²Id.

¹⁴³Criminal Justice in China, *supra* note 69, at 461.

¹⁴⁴Id. at 396.

¹⁴⁵Id. at 400.

¹⁴⁶Id. at 377.

forces,” and “religious extremists.”¹⁴⁷ Therefore the People’s Police Law¹⁴⁸ allows the police to forcibly remove and subsequently detain persons seriously endangering public order or constituting a threat to public security, in Tibet and elsewhere.

The criminalization and politicization of peaceful expressions of Tibetan grievances leaves no space for popular participation in the official policy-making process. The public space is stifled by the political prerogatives of the Chinese government, or more specifically, the CPC. For instance, even peaceful protests staged by the Tibetans against environmental destruction caused by flawed development policies are construed as political, an evil design hatched on foreign shores by overseas separatists. The fact that rivers are poisoned, grasslands are drying up, and glaciers are melting is not enough to make the Chinese government realize its policy mistakes.¹⁴⁹ Regardless, even if the CPC defined state security in appropriately narrow limited terms, and even if the Tibetans actually posed a threat to this hypothetically legal conception of state security, the Chinese government still could not derogate from the right to be free from enforced or involuntary disappearances.

E. Conclusion and Recommendations

After his visit to Tibet in 2005, Dr. Nowak noted the “lack of independent, fair, and accessible courts and prosecutors, as well as the ambiguity of the domestic law regarding political crimes, policies of re-education, and sanctions of freedom of religion, expression, and association.”¹⁵⁰ The Special Rapporteur also added that, “the situation in Tibet is aggravated by discriminatory treatment of

¹⁴⁷ Verna Yu, Warning Police will “Strike Hard at Hostile Forces,” South China Morning Post, 29 December 2009.

¹⁴⁸ Police Law of PRC, Unofficial Translation, available at <http://www.unhcr.org/refworld/country,,NATLEGBOD,,CHN,,4c3200692,0.html>

¹⁴⁹ Central Tibetan Administration, Rampant Gold Mining Threatens Human Lives and Ecology in Rebkong Tibet, 29 April 2009, available at: <http://tibet.net/2011/04/29/rampant-gold-mining-threatens-human-lives-and-ecology-in-rebkong-tibet>.

¹⁵⁰ Dr. Manfred Nowak, *supra* note 119, at para. 74.

Tibetans and the targeting of political prisoners.”¹⁵¹

Principle 3 of the Set of Principles for the Protection and Promotion of Human Rights states that providing accurate knowledge about human rights violations is important for preserving collective history and memory of the victims as well as their extended community and guarding against the development of revisionist and negationist arguments.¹⁵²

Thus it is important not only to understand the legal framework that prohibits harmful political practices such as enforced disappearance and the prohibition of other correlating human rights, but also to document and disseminate information regarding specific instances of violations of these laws. As noted by Jerome Cohen in his article entitled Sage Advice, “Beijing wants the world to admire a ‘rising China’ . . . for the quality of its civilization . . . but the PRC will not win international respect for its political and social progress until it ceases locking up political dissidents and treats those currently detained in a more human level.”¹⁵³

The following is a set of recommendations to the People’s Republic of China, the United Nations, and the international community at large:

A. To the Government of the People’s Republic of China:

1. Release the political dissidents that remain formally and informally held in detention. Notify the families on the whereabouts and conditions of those missing.
2. Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.

¹⁵¹Special Rapporteur on Torture Highlights Challenges at End of Visit to China, 2 December 2005, available at: <http://www.unhchr.ch/hurricane/hurricane.nsf/0/677C1943FAA14D67C12570CB0034966D>.

¹⁵²Protection and Promotion, *supra* note 45.

¹⁵³Jerome Cohen, Sage Advice, South China Morning Post, 14 April 2010.

3. Ratify the International Convention on Civil and Political Rights, as promised in the response to the recommendations set forth in the 2009 Universal Periodic Review.
4. Clarify and restrict the State Security Laws to be transparent, fair and legitimate protections of National Security.
5. Seriously and effectively fulfill the goals of the National Human Rights Action Plan of 2012-2015.
6. Strengthen the protection of the Tibetan people's religious, civil, socio-economic and political rights. In accordance with the Constitution, allow Tibetan people to fully exercise their human rights, to preserve their cultural identity, and to ensure their participation in decision-making.
7. Make public the changes made to the Criminal Procedure Law, approved by the National Peoples' Congress during the March 2012 session.
8. Retract Article 73, the "Disappearance Clause," and Article 83 of the revised Criminal Procedure Law, and replace them instead with internationally acceptable procedural safeguards for suspects of endangering state security and terrorism.

**B. To the UNWGEID and the Special Rapporteur
on Enforced Disappearances:**

1. Conduct an in-country visit of China, focusing on Tibet and publish a report of the findings.
2. Encourage the PRC to adhere to the international conventions to which China is already party, and sign and ratify those to which it is not.

C. To the International Community :

1. Encourage China to fulfill its human rights obligations and

abandon the practice of enforced disappearance.

2. Refrain from extraditing individuals to the PRC who are likely to be subjected to enforced disappearance.

Appendix 1

Declaration on the Protection of all Persons from Enforced Disappearance

Adopted by General Assembly resolution 47/133 of 18 December 1992

The General Assembly ,

Considering that , in accordance with the principles proclaimed in the Charter of the United Nations and other international instruments, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Deeply concerned that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law,

Considering that enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity,

Recalling its resolution 33/173 of 22 December 1978, in which it expressed concern about the reports from various parts of the world relating to enforced or involuntary disappearances, as well as about the anguish and sorrows caused by those disappearances, and called upon Governments to hold law enforcement and security forces legally responsible for excesses which might lead to enforced or involuntary disappearances of persons,

Recalling also the protection afforded to victims of armed conflicts by the Geneva Conventions of 12 August 1949 and the Additional Protocols thereto, of 1977,

Having regard in particular to the relevant articles of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right to life, the right to liberty and security of the person, the right not to be subjected to torture and the right to recognition as a person before the law,

Having regard also to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which provides that States parties shall take effective measures to prevent and punish acts of torture,

Bearing in mind the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Standard Minimum Rules for the Treatment of Prisoners,

Affirming that , in order to prevent enforced disappearances, it is necessary to ensure strict compliance with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment contained in the annex to its resolution 43/173 of 9 December 1988, and with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, set forth in the annex to Economic and Social Council resolution

1989/65 of 24 May 1989 and endorsed by the General Assembly in its resolution 44/162 of 15 December 1989,

Bearing in mind that, while the acts which comprise enforced disappearance constitute a violation of the prohibition found in the aforementioned international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offences and sets forth standards designed to punish and prevent their commission,

1. Proclaims the present Declaration on the Protection of All Persons from Enforced Disappearance, as a body of principles for all States;
2. Urges that all efforts be made so that the Declaration becomes generally known and respected.

Article 1

1. Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.
2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

Article 2

1. No State shall practise, permit or tolerate enforced disappearances.
2. States shall act at the national and regional levels and in cooperation with the United Nations to contribute by all means to the prevention and eradication of enforced disappearance.

Article 3

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

Article 4

1. All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness.
2. Mitigating circumstances may be established in national legislation for persons who, having participated in enforced disappearances, are instrumental in bringing the victims forward alive or in providing voluntarily information which would contribute to clarifying cases of enforced disappearance.

Article 5

In addition to such criminal penalties as are applicable, enforced disappearances render their perpetrators and the State or State authorities which organize, acquiesce in or tolerate such disappearances liable under civil law, without prejudice to the international responsibility of the State concerned in accordance with the principles of international law.

Article 6

1. No order or instruction of any public authority, civilian, military

or other, may be invoked to justify an enforced disappearance. Any person receiving such an order or instruction shall have the right and duty not to obey it.

2. Each State shall ensure that orders or instructions directing, authorizing or encouraging any enforced disappearance are prohibited.
3. Training of law enforcement officials shall emphasize the provisions in paragraphs 1 and 2 of the present article.

Article 7

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

Article 8

1. No State shall expel, return (refouler) or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 9

1. The right to a prompt and effective judicial remedy as a means of determining the whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances, including those referred to in article 7 above.

2. In such proceedings, competent national authorities shall have access to all places where persons deprived of their liberty are being held and to each part of those places, as well as to any place in which there are grounds to believe that such persons may be found.
3. Any other competent authority entitled under the law of the State or by any international legal instrument to which the State is a party may also have access to such places.

Article 10

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.
2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.
3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.

Article 11

All persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured.

Article 12

1. Each State shall establish rules under its national law indicating those officials authorized to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.
2. Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorized by law to use force and firearms.

Article 13

1. Each State shall ensure that any person having knowledge or a legitimate interest who alleges that a person has been subjected to enforced disappearance has the right to complain to a competent and independent State authority and to have that complaint promptly, thoroughly and impartially investigated by that authority. Whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.
2. Each State shall ensure that the competent authority shall have the necessary powers and resources to conduct the investigation

- effectively, including powers to compel attendance of witnesses and production of relevant documents and to make immediate on-site visits.
3. Steps shall be taken to ensure that all involved in the investigation, including the complainant, counsel, witnesses and those conducting the investigation, are protected against ill-treatment, intimidation or reprisal.
 4. The findings of such an investigation shall be made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation.
 5. Steps shall be taken to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished.
 6. An investigation, in accordance with the procedures described above, should be able to be conducted for as long as the fate of the victim of enforced disappearance remains unclarified.

Article 14

Any person alleged to have perpetrated an act of enforced disappearance in a particular State shall, when the facts disclosed by an official investigation so warrant, be brought before the competent civil authorities of that State for the purpose of prosecution and trial unless he has been extradited to another State wishing to exercise jurisdiction in accordance with the relevant international agreements in force. All States should take any lawful and appropriate action available to them to bring to justice all persons presumed responsible for an act of enforced disappearance, who are found to be within their jurisdiction or under their control.

Article 15

The fact that there are grounds to believe that a person has participated in acts of an extremely serious nature such as those referred to in article 4, paragraph 1, above, regardless of the motives, shall be taken into account when the competent authorities of the State decide whether or not to grant asylum.

Article 16

1. Persons alleged to have committed any of the acts referred to in article 4, paragraph 1, above, shall be suspended from any official duties during the investigation referred to in article 13 above.
2. They shall be tried only by the competent ordinary courts in each State, and not by any other special tribunal, in particular military courts.
3. No privileges, immunities or special exemptions shall be admitted in such trials, without prejudice to the provisions contained in the Vienna Convention on Diplomatic Relations.
4. The persons presumed responsible for such acts shall be guaranteed fair treatment in accordance with the relevant provisions of the Universal Declaration of Human Rights and other relevant international agreements in force at all stages of the investigation and eventual prosecution and trial.

Article 17

1. Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified.
2. When the remedies provided for in article 2 of the International

Covenant on Civil and Political Rights are no longer effective, the statute of limitations relating to acts of enforced disappearance shall be suspended until these remedies are re-established.

3. Statutes of limitations, where they exist, relating to acts of enforced disappearance shall be substantial and commensurate with the extreme seriousness of the offence.

Article 18

1. Persons who have or are alleged to have committed offences referred to in article 4, paragraph 1, above, shall not benefit from any special amnesty law or similar measures that might have the effect of exempting them from any criminal proceedings or sanction.
2. In the exercise of the right of pardon, the extreme seriousness of acts of enforced disappearance shall be taken into account.

Article 19

The victims of acts of enforced disappearance and their family shall obtain redress and shall have the right to adequate compensation, including the means for as complete a rehabilitation as possible. In the event of the death of the victim as a result of an act of enforced disappearance, their dependents shall also be entitled to compensation.

Article 20

1. States shall prevent and suppress the abduction of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, and shall devote their efforts to the search for and identification of such children and to the restitution of the children to their families of origin.

2. Considering the need to protect the best interests of children referred to in the preceding paragraph, there shall be an opportunity, in States which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of the review, by the child's closest relatives.
3. The abduction of children of parents subjected to enforced disappearance or of children born during their mother's enforced disappearance, and the act of altering or suppressing documents attesting to their true identity, shall constitute an extremely serious offence, which shall be punished as such.
4. For these purposes, States shall, where appropriate, conclude bilateral and multilateral agreements.

Article 21

The provisions of the present Declaration are without prejudice to the provisions enunciated in the Universal Declaration of Human Rights or in any other international instrument, and shall not be construed as restricting or derogating from any of those provisions.

Appendix 2

International Convention for the Protection of All Persons from Enforced Disappearance

Preamble

The States Parties to this Convention,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to the Universal Declaration of Human Rights,

Recalling the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the other relevant international instruments in the fields of human rights, humanitarian law and international criminal law,

Also recalling the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992,

Aware of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity,

Determined to prevent enforced disappearances and to combat impunity for the crime of enforced disappearance,

Considering the right of any person not to be subjected to enforced disappearance, the right of victims to justice and to reparation,

Affirming the right of any victim to know the truth about the circumstances of an enforced disappearance and the fate of the

disappeared person, and the right to freedom to seek, receive and impart information to this end,

Have agreed on the following articles:

Part I

Article 1

1. No one shall be subjected to enforced disappearance.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.

Article 2

For the purposes of this Convention, “enforced disappearance” is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

Article 3

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

Article 4

Each State Party shall take the necessary measures to ensure

that enforced disappearance constitutes an offence under its criminal law.

Article 5

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

Article 6

1. Each State Party shall take the necessary measures to hold criminally responsible at least:
 - (a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;
 - (b) A superior who:
 - (i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;
 - (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
 - (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;
 - (c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person

effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offence of enforced disappearance.

Article 7

1. Each State Party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.
2. Each State Party may establish:
 - (a) Mitigating circumstances, in particular for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;
 - (b) Without prejudice to other criminal procedures, aggravating circumstances, in particular in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.

Article 8

Without prejudice to article 5,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:
 - (a) Is of long duration and is proportionate to the extreme seriousness of this offence;

- (b) Commences from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature.
- 2. Each State Party shall guarantee the right of victims of enforced disappearance to an effective remedy during the term of limitation.

Article 9

- 1. Each State Party shall take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance:
 - (a) When the offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is one of its nationals;
 - (c) When the disappeared person is one of its nationals and the State Party considers it appropriate.
- 2. Each State Party shall likewise take such measures as may be necessary to establish its competence to exercise jurisdiction over the offence of enforced disappearance when the alleged offender is present in any territory under its jurisdiction, unless it extradites or surrenders him or her to another State in accordance with its international obligations or surrenders him or her to an international criminal tribunal whose jurisdiction it has recognized.
- 3. This Convention does not exclude any additional criminal jurisdiction exercised in accordance with national law.

Article 10

- 1. Upon being satisfied, after an examination of the information

available to it, that the circumstances so warrant, any State Party in whose territory a person suspected of having committed an offence of enforced disappearance is present shall take him or her into custody or take such other legal measures as are necessary to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be maintained only for such time as is necessary to ensure the person's presence at criminal, surrender or extradition proceedings.

2. A State Party which has taken the measures referred to in paragraph 1 of this article shall immediately carry out a preliminary inquiry or investigations to establish the facts. It shall notify the States Parties referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention, and of the findings of its preliminary inquiry or its investigations, indicating whether it intends to exercise its jurisdiction.
3. Any person in custody pursuant to paragraph 1 of this article may communicate immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides.

Article 11

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an offence of enforced disappearance is found shall, if it does not extradite that person or surrender him or her to another State in accordance with its international obligations or surrender him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.
3. Any person against whom proceedings are brought in connection with an offence of enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings. Any person tried for an offence of enforced disappearance shall benefit from a fair trial before a competent, independent and impartial court or tribunal established by law.

Article 12

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, where necessary, undertake without delay a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defence counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, the authorities referred to in paragraph 1 of this article shall undertake an investigation, even if there has been no formal complaint.
3. Each State Party shall ensure that the authorities referred to in paragraph 1 of this article:

- (a) Have the necessary powers and resources to conduct the investigation effectively, including access to the documentation and other information relevant to their investigation;
 - (b) Have access, if necessary with the prior authorization of a judicial authority, which shall rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.
4. Each State Party shall take the necessary measures to prevent and sanction acts that hinder the conduct of an investigation. It shall ensure in particular that persons suspected of having committed an offence of enforced disappearance are not in a position to influence the progress of an investigation by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defence counsel, or at persons participating in the investigation.

Article 13

1. For the purposes of extradition between States Parties, the offence of enforced disappearance shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds alone.
2. The offence of enforced disappearance shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of this Convention.
3. States Parties undertake to include the offence of enforced disappearance as an extraditable offence in any extradition

treaty subsequently to be concluded between them.

4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the necessary legal basis for extradition in respect of the offence of enforced disappearance.
5. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offence of enforced disappearance as an extraditable offence between themselves.
6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, in particular, conditions relating to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.
7. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin, political opinions or membership of a particular social group, or that compliance with the request would cause harm to that person for any one of these reasons.

Article 14

1. States Parties shall afford one another the greatest measure of mutual legal assistance in connection with criminal proceedings brought in respect of an offence of enforced disappearance, including the supply of all evidence at their disposal that is

necessary for the proceedings.

2. Such mutual legal assistance shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable treaties on mutual legal assistance, including, in particular, the conditions in relation to the grounds upon which the requested State Party may refuse to grant mutual legal assistance or may make it subject to conditions.

Article 15

States Parties shall cooperate with each other and shall afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.

Article 16

1. No State Party shall expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of serious violations of international humanitarian law.

Article 17

1. No one shall be held in secret detention.
2. Without prejudice to other international obligations of the State Party with regard to the deprivation of liberty, each State

Party shall, in its legislation:

- (a) Establish the conditions under which orders of deprivation of liberty may be given;
 - (b) Indicate those authorities authorized to order the deprivation of liberty;
 - (c) Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty;
 - (d) Guarantee that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law;
 - (e) Guarantee access by the competent and legally authorized authorities and institutions to the places where persons are deprived of liberty, if necessary with prior authorization from a judicial authority;
 - (f) Guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, since the person deprived of liberty is not able to exercise this right, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful.
3. Each State Party shall assure the compilation and maintenance of one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly

available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. The information contained therein shall include, as a minimum:

- (a) The identity of the person deprived of liberty;
- (b) The date, time and place where the person was deprived of liberty and the identity of the authority that deprived the person of liberty;
- (c) The authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty;
- (d) The authority responsible for supervising the deprivation of liberty;
- (e) The place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty;
- (f) Elements relating to the state of health of the person deprived of liberty;
- (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains;
- (h) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.

Article 18

1. Subject to articles 19 and 20, each State Party shall guarantee to any person with a legitimate interest in this information, such as relatives of the person deprived of liberty, their

representatives or their counsel, access to at least the following information:

- (a) The authority that ordered the deprivation of liberty;
 - (b) The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty;
 - (c) The authority responsible for supervising the deprivation of liberty;
 - (d) The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
 - (e) The date, time and place of release;
 - (f) Elements relating to the state of health of the person deprived of liberty;
 - (g) In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.
2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1 of this article, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

Article 19

1. Personal information, including medical and genetic data, which is collected and/or transmitted within the framework of the search for a disappeared person shall not be used or made available for purposes other than the search for the disappeared person. This is without prejudice to the use of such

information in criminal proceedings relating to an offence of enforced disappearance or the exercise of the right to obtain reparation.

2. The collection, processing, use and storage of personal information, including medical and genetic data, shall not infringe or have the effect of infringing the human rights, fundamental freedoms or human dignity of an individual.

Article 20

1. Only where a person is under the protection of the law and the deprivation of liberty is subject to judicial control may the right to information referred to in article 18 be restricted, on an exceptional basis, where strictly necessary and where provided for by law, and if the transmission of the information would adversely affect the privacy or safety of the person, hinder a criminal investigation, or for other equivalent reasons in accordance with the law, and in conformity with applicable international law and with the objectives of this Convention. In no case shall there be restrictions on the right to information referred to in article 18 that could constitute conduct defined in article 2 or be in violation of article 17, paragraph 1.
2. Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the persons referred to in article 18, paragraph 1, the right to a prompt and effective judicial remedy as a means of obtaining without delay the information referred to in article 18, paragraph 1. This right to a remedy may not be suspended or restricted in any circumstances.

Article 21

Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting

reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

Article 22

Without prejudice to article 6, each State Party shall take the necessary measures to prevent and impose sanctions for the following conduct:

- (a) Delaying or obstructing the remedies referred to in article 17, paragraph 2 (f), and article 20, paragraph 2;
- (b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knew or should have known to be inaccurate;
- (c) Refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

Article 23

1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:
 - (a) Prevent the involvement of such officials in enforced disappearances;

- (b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;
 - (c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.
2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.
 3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.

Article 24

1. For the purposes of this Convention, “victim” means the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.
2. Each victim has the right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. Each State Party shall take appropriate measures in this regard.
3. Each State Party shall take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains.
4. Each State Party shall ensure in its legal system that the victims of enforced disappearance have the right to obtain reparation and prompt, fair and adequate compensation.

5. The right to obtain reparation referred to in paragraph 4 of this article covers material and moral damages and, where appropriate, other forms of reparation such as:
 - (a) Restitution;
 - (b) Rehabilitation;
 - (c) Satisfaction, including restoration of dignity and reputation;
 - (d) Guarantees of non-repetition.
6. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights.
7. Each State Party shall guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons, and to assist victims of enforced disappearance.

Article 25

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:
 - (a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;
 - (b) The falsification, concealment or destruction of documents

attesting to the true identity of the children referred to in subparagraph (a) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.
3. States Parties shall assist one another in searching for, identifying and locating the children referred to in paragraph 1 (a) of this article.
4. Given the need to protect the best interests of the children referred to in paragraph 1 (a) of this article and their right to preserve, or to have re-established, their identity, including their nationality, name and family relations as recognized by law, States Parties which recognize a system of adoption or other form of placement of children shall have legal procedures in place to review the adoption or placement procedure, and, where appropriate, to annul any adoption or placement of children that originated in an enforced disappearance.
5. In all cases, and in particular in all matters relating to this article, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.

Part II

Article 26

1. A Committee on Enforced Disappearances (hereinafter referred to as “the Committee”) shall be established to carry out the functions provided for under this Convention. The

Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial. The members of the Committee shall be elected by the States Parties according to equitable geographical distribution. Due account shall be taken of the usefulness of the participation in the work of the Committee of persons having relevant legal experience and of balanced gender representation.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties from among their nationals, at biennial meetings of the States Parties convened by the Secretary-General of the United Nations for this purpose. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
3. The initial election shall be held no later than six months after the date of entry into force of this Convention. Four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Party which nominated each candidate, and shall submit this list to all States Parties.
4. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election once. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by

lot by the chairman of the meeting referred to in paragraph 2 of this article.

5. If a member of the Committee dies or resigns or for any other reason can no longer perform his or her Committee duties, the State Party which nominated him or her shall, in accordance with the criteria set out in paragraph 1 of this article, appoint another candidate from among its nationals to serve out his or her term, subject to the approval of the majority of the States Parties. Such approval shall be considered to have been obtained unless half or more of the States Parties respond negatively within six weeks of having been informed by the Secretary-General of the United Nations of the proposed appointment.
6. The Committee shall establish its own rules of procedure.
7. The Secretary-General of the United Nations shall provide the Committee with the necessary means, staff and facilities for the effective performance of its functions. The Secretary-General of the United Nations shall convene the initial meeting of the Committee.
8. The members of the Committee shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations, as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.
9. Each State Party shall cooperate with the Committee and assist its members in the fulfilment of their mandate, to the extent of the Committee's functions that the State Party has accepted.

Article 27

A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the

Committee and to decide, in accordance with the procedure described in article 44, paragraph 2, whether it is appropriate to transfer to another body - without excluding any possibility - the monitoring of this Convention, in accordance with the functions defined in articles 28 to 36.

Article 28

1. In the framework of the competencies granted by this Convention, the Committee shall cooperate with all relevant organs, offices and specialized agencies and funds of the United Nations, with the treaty bodies instituted by international instruments, with the special procedures of the United Nations and with the relevant regional intergovernmental organizations or bodies, as well as with all relevant State institutions, agencies or offices working towards the protection of all persons against enforced disappearances.
2. As it discharges its mandate, the Committee shall consult other treaty bodies instituted by relevant international human rights instruments, in particular the Human Rights Committee instituted by the International Covenant on Civil and Political Rights, with a view to ensuring the consistency of their respective observations and recommendations.

Article 29

1. Each State Party shall submit to the Committee, through the Secretary-General of the United Nations, a report on the measures taken to give effect to its obligations under this Convention, within two years after the entry into force of this Convention for the State Party concerned.
2. The Secretary-General of the United Nations shall make this report available to all States Parties.
3. Each report shall be considered by the Committee, which

shall issue such comments, observations or recommendations as it may deem appropriate. The comments, observations or recommendations shall be communicated to the State Party concerned, which may respond to them, on its own initiative or at the request of the Committee.

4. The Committee may also request States Parties to provide additional information on the implementation of this Convention.

Article 30

1. A request that a disappeared person should be sought and found may be submitted to the Committee, as a matter of urgency, by relatives of the disappeared person or their legal representatives, their counsel or any person authorized by them, as well as by any other person having a legitimate interest.
2. If the Committee considers that a request for urgent action submitted in pursuance of paragraph 1 of this article:
 - (a) Is not manifestly unfounded;
 - (b) Does not constitute an abuse of the right of submission of such requests;
 - (c) Has already been duly presented to the competent bodies of the State Party concerned, such as those authorized to undertake investigations, where such a possibility exists;
 - (d) Is not incompatible with the provisions of this Convention; and
 - (e) The same matter is not being examined under another procedure of international investigation or settlement of the same nature;

it shall request the State Party concerned to provide it with information on the situation of the persons sought, within a time limit set by the Committee.

3. In the light of the information provided by the State Party concerned in accordance with paragraph 2 of this article, the Committee may transmit recommendations to the State Party, including a request that the State Party should take all the necessary measures, including interim measures, to locate and protect the person concerned in accordance with this Convention and to inform the Committee, within a specified period of time, of measures taken, taking into account the urgency of the situation. The Committee shall inform the person submitting the urgent action request of its recommendations and of the information provided to it by the State as it becomes available.
4. The Committee shall continue its efforts to work with the State Party concerned for as long as the fate of the person sought remains unresolved. The person presenting the request shall be kept informed.

Article 31

1. A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.
2. The Committee shall consider a communication inadmissible where:

- (a) The communication is anonymous;
 - (b) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;
 - (c) The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where
 - (d) All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.
3. If the Committee considers that the communication meets the requirements set out in paragraph 2 of this article, it shall transmit the communication to the State Party concerned, requesting it to provide observations and comments within a time limit set by the Committee.
 4. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation. Where the Committee exercises its discretion, this does not imply a determination on admissibility or on the merits of the communication.
 5. The Committee shall hold closed meetings when examining communications under the present article. It shall inform the author of a communication of the responses provided by the State Party concerned. When the Committee decides to finalize the procedure, it shall communicate its views to the State Party and to the author of the communication.

Article 32

A State Party to this Convention may at any time declare that it recognizes the competence of the Committee to receive and consider communications in which a State Party claims that another State Party is not fulfilling its obligations under this Convention. The Committee shall not receive communications concerning a State Party which has not made such a declaration, nor communications from a State Party which has not made such a declaration.

Article 33

1. If the Committee receives reliable information indicating that a State Party is seriously violating the provisions of this Convention, it may, after consultation with the State Party concerned, request one or more of its members to undertake a visit and report back to it without delay.
2. The Committee shall notify the State Party concerned, in writing, of its intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The State Party shall answer the Committee within a reasonable time.
3. Upon a substantiated request by the State Party, the Committee may decide to postpone or cancel its visit.
4. If the State Party agrees to the visit, the Committee and the State Party concerned shall work together to define the modalities of the visit and the State Party shall provide the Committee with all the facilities needed for the successful completion of the visit.
5. Following its visit, the Committee shall communicate to the State Party concerned its observations and recommendations.

Article 34

If the Committee receives information which appears to it to contain well-founded indications that enforced disappearance is being practised on a widespread or systematic basis in the territory under the jurisdiction of a State Party, it may, after seeking from the State Party concerned all relevant information on the situation, urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.

Article 35

1. The Committee shall have competence solely in respect of enforced disappearances which commenced after the entry into force of this Convention.
2. If a State becomes a party to this Convention after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to enforced disappearances which commenced after the entry into force of this Convention for the State concerned.

Article 36

1. The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.
2. Before an observation on a State Party is published in the annual report, the State Party concerned shall be informed in advance and shall be given reasonable time to answer. This State Party may request the publication of its comments or observations in the report.

Part III

Article 37

Nothing in this Convention shall affect any provisions which are more conducive to the protection of all persons from enforced disappearance and which may be contained in:

- (a) The law of a State Party;
- (b) International law in force for that State.

Article 38

1. This Convention is open for signature by all Member States of the United Nations.
2. This Convention is subject to ratification by all Member States of the United Nations. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. This Convention is open to accession by all Member States of the United Nations. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 39

1. This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying or acceding to this Convention after the deposit of the twentieth instrument of ratification or accession, this Convention shall enter into force on the thirtieth day after the date of the deposit of that State's instrument of ratification or accession.

Article 40

The Secretary-General of the United Nations shall notify all States Members of the United Nations and all States which have signed or acceded to this Convention of the following:

- (a) Signatures, ratifications and accessions under article 38;
- (b) The date of entry into force of this Convention under article 39.

Article 41

The provisions of this Convention shall apply to all parts of federal States without any limitations or exceptions.

Article 42

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation or by the procedures expressly provided for in this Convention shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. A State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party having made such a declaration.
3. Any State Party having made a declaration in accordance with the provisions of paragraph 2 of this article may at any time

withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 43

This Convention is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the two Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 44

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.
2. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all the States Parties for acceptance.
3. An amendment adopted in accordance with paragraph 2 of this article shall enter into force when two thirds of the States Parties to this Convention have accepted it in accordance with

their respective constitutional processes.

4. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendment which they have accepted.

Article 45

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States referred to in article 38.