

Universal Periodic Review
and
China's Human Rights Record in Tibet



Tibetan Centre for Human Rights and Democracy
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Contents

Introduction1

China and the 2009 Universal
Periodic Review4

Failed Obligations: Rights Situation
in Tibet since 200910

Religious and Cultural Repression11

Arbitrary Detention and Torture19

Unequal Access to Development30

Policy Recommendations46

Appendix

Introduction

The Universal Periodic Review process is a unique mechanism by which the human rights records of all member states of the United Nations (UN) are reviewed by other states. The UPR was created in March 2006 by the UN General Assembly through Resolution 60/251, which also created the Human Rights Council. Operating under the auspices of the Human Rights Council, the UPR provides an opportunity for each member state to report on its own progress on meeting its human rights obligations, and, in the interactive dialogue, to respond to criticisms and recommendations from other states. As a state-led process, no other universal human rights review mechanism of this sort exists. As the Office of the High Commissioner for Human Rights states:

The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur. ¹

The first UPR round was completed by October 2011, by which time the human rights records of all 193 UN mem-

¹ Office of the High Commissioner for Human Rights, “Universal Periodic Review,” <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>. Accessed on 6 May 2013.

ber states had been reviewed. The second UPR round began in March 2012, and is scheduled to continue until late 2016.

Since the last Universal Periodic Review (UPR) was conducted on China in October 2009, human rights conditions in the Tibet Autonomous Region (TAR) and other Tibetan areas in Sichuan, Qinghai, and Gansu province have significantly deteriorated, rather than improved as would have been hoped. One of the most important signifiers of this deterioration has been the shocking number of self-immolations that have taken place in Tibet: a total of 118 self-immolations,² with 111 of those occurring since the release of the last UPR report. The self-immolation protests have been conducted by Tibetans from all walks of life: monks, nuns, laypersons, mothers, and fathers, young and old. Self-immolation is a protest of last resort: those who have chosen to sacrifice themselves in this way do so in order to bring attention to the lack of fundamental freedoms for Tibetans and hold the Chinese government accountable for its crimes against human rights in Tibet.

In May 2013, China released a White Paper on “Progress in China’s Human Rights in 2012.”³ The White Paper cites

² As of 31 May 2013

³ Information Office of the State Council, “White Paper: Progress in China’s Human Rights in 2012,” 14 May 2013. http://news.xinhuanet.com/english/china/2013-05/14/c_132380706_2.htm. Accessed on 25 May 2013.

detailed statistics about the number of schools opened and roads built, but it fails to address the underlying reasons for the self-immolations. In this regard, the self-immolations should be regarded as an indicator of the continuing deterioration of conditions in Tibet: the lack of religious freedom, the prevalence of arbitrary detention and torture, and Tibetans' unequal access to development. As evidenced by the White Paper, China treats human rights as divisible; furthermore, it regards proclamations of progress as evidence of success rather than addressing the troubling gap between rhetoric and practice.⁴ In short, there is strong evidence that little progress has been made with regards to human rights conditions in Tibet since 2009, and much evidence to suggest that conditions have actually deteriorated.

On 22 July 2013, China will be submitting its national report for its second UPR, which will be reviewed by the 17th session of the UN Human Rights Council in October/November 2013. As such, this is an opportune moment to assess China's progress on the commitments it agreed to during the first UPR, as well as to identify areas where further improvement is required.

This report provides an analysis of the previous commitments that China has made under its first UPR. The report

⁴ Tibetan Centre for Human Rights and Democracy (hereafter TCHRD), "China rejects universality of human rights in latest white paper," 21 May 2013. <http://www.tchrd.org/2013/05/china-rejects-universality-of-human-rights-in-latest-white-paper-2/>. Accessed on 25 May 2013.

will examine the ways in which China has failed to meet its own declared commitments, failed to satisfactorily respond to criticisms of its performance, as well as provide an assessment of ongoing human rights violations that should be considered as its second UPR gets underway. Specifically, the report focuses on patterns of religious and cultural repression, arbitrary detention and torture, and unequal access to development.

China and the 2009 Universal Periodic Review

China submitted its National Report for its first UPR in November 2008, and which was reviewed by the UPR Working Group in February 2009. In its National Report, China expressed its support for the universality of human rights as follows:

China respects the principle of the universality of human rights and considers that all countries have an obligation to adopt measures continuously to promote and protect human rights in accordance with the purposes and principles of the Charter of the United Nations and the relevant provisions of international human rights instruments, and in the light of their national realities. The international community should respect the principle of the

indivisibility of human rights and attach equal importance to civil and political rights and economic, social and cultural rights as well as the right to development.⁵

The report outlined the legal and institutional framework in China that is intended to safeguard rights, including provisions in the Constitution related to civil and political rights, national legislation on specific rights-related issues, and acceptance of international human rights instruments (including its ratification of the ICESCR following its signature of the ICCPR in 1998). It also identified specific areas of policy and practice that are intended to safeguard rights, including civil and political rights such as the right to life, right to freedom of the person, right to a fair trial, freedom of religious belief, freedom of speech and media freedom, and ethnic minority rights.⁶

During the interactive dialogue, China received widespread praise for its efforts at poverty reduction and ongoing economic transformation. However, a number of countries offered criticisms, particularly in regards to gaps in the enforcement of civil and political rights. Specifically, these criticisms were offered in relation to:

⁵ National Report Submitted in Accordance with Paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1. (10 November, 2008). A/HRC/WG.6/CHN/1.

⁶ Ibid., 12-18.

- failure to ratify the International Covenant on Civil and Political Rights (Australia; Netherlands; France; Japan; New Zealand; Argentina; Portugal; Sweden; Thailand; Brazil; Hungary)

In the time period since the 2009 UPR, China has neither met the commitments to which it already agreed, nor has it adequately demonstrated that the criticisms about its human rights performance are unwarranted.

- religious and cultural repression (Australia; Britain; Germany; Czech Republic; Italy; Hungary)
- unlawful arrest and detention (Australia; Canada; France)
- the use of Re-Education Through Labour programs or Laojiao (Canada; Germany; Czech Republic; New Zealand)
- the use of torture in the penal system (Canada; New Zealand)
- unequal rights for ethnic minorities (Netherlands; Switzerland; Austria; Italy).

In its response, China categorically rejected these criticisms as “politicized statements.”⁷ On the issue of torture, the Chinese delegation noted that “it would never allow torture be used [sic] on ethnic groups, religious believers or other groups.”⁸ Similarly, on the question of unlawful

⁷ Report of the Working Group on the Universal Periodic Review: China. (5 October 2009). A/HRC/11/25. Article 60. [Hereafter Report of the Working Group.]

⁸ Ibid., Article 69.

arrest and detention, the delegation claimed that “there are no black jails in the country.”⁹ Responding to criticism of “Re-Education Through Labour” (RTL) programs, the delegation claimed that such centres are only used in cases where people have committed crimes that do not merit a criminal offense, and that, in any case, it envisages a reform of the RTL program. Finally,¹⁰ on the issue of freedom of speech and expression, the delegation responded that there is no censorship in the country,¹¹ and that “no individual or press has been penalized for voicing their opinions or view.”¹¹

While the Chinese delegation rejected the criticisms above, it nevertheless supported a number of recommendations. On its failure to ratify the ICCPR, the Chinese delegation responded that “ratification is due when condition is right,”¹² yet agreed to “create conditions for an early ratification.”¹³ Nevertheless, the delegation neglected to specify in greater detail what appropriate conditions for ratification might entail or provide a concrete commitment or deadline. The delegation also agreed that China would continue its efforts to promote human rights, judicial reform, and the rule of law.¹⁴ Similarly, China

⁹ Ibid., Article 69.

¹⁰ Ibid., Article 66.

¹¹ Ibid., Article 71.

¹² Ibid., Article 63.

¹³ Ibid., Article 114(1)

¹⁴ Ibid., Article 114(2)

committed to strengthening “the positive engagement with civil society, non-governmental organizations, and academic institutions,” with a view to promoting human rights and fundamental freedoms.¹⁵ On the subject of minority rights, the delegation agreed that China would continue its efforts to “ensure ethnic minorities the full range of human rights including cultural rights.”¹⁶ In line with this, the delegation committed to pursuing “people-centered development” that would promote economic, social, and cultural rights.¹⁷ Finally, the delegation agreed to continue ongoing efforts to provide detainees with a “decent standard and treatment,” regardless of their crimes.¹⁸

The significance of China’s first UPR cannot be underestimated. This process was a major test of China’s commitments to its human rights obligations, and, furthermore, a test of the credibility of the UN Human Rights Council.¹⁹ As a permanent member of the Security Council, a recent member of the Human Rights Council (2009-2012), and a signatory to 25 international human rights trea-

¹⁵ Ibid., Article 114(6)

¹⁶ Ibid., Article 114(37); Also Article 114(20); Article 115(3).

¹⁷ Ibid., Article 114(24); Also Article 114(3)

¹⁸ Ibid, Article 115(1).

¹⁹ “Human Rights Watch statement on UPR Outcome Report of China,” 11 June 2009. <http://www.hrw.org/news/2009/06/10/human-rights-watch-statement-upr-outcome-report-china>. Accessed on 7 May 2013.

ties (including six core conventions ²⁰), the international community holds China to the highest standards in the promotion and protection of human rights. ²¹ Furthermore, China's public statements and signature of ICCPR expressed its consent to be bound by its provisions, according to Article 12 of the Vienna Convention on the Law of Treaties. In the first UPR, China both affirmed its human rights commitments (in Articles 114 and 115 of the Report of the Working Group), as well as rejected any criticism that it was not meeting its obligations to ensure civil and political rights.

Despite these assurances, there is strong evidence to suggest that, in the time period since the 2009 UPR, China has neither met the commitments to which it already agreed nor has it adequately demonstrated that the criticisms about its human rights performance are unwarranted. To the contrary, since 2009, human rights conditions in Tibet have markedly deteriorated. As China's second UPR gets underway, beginning with the submission of its National Report on 22 July 2013, it is imperative for

²⁰ International Covenant on Economic, Social, and Cultural Rights (ICESCR); Convention on the Elimination of all Forms of Discrimination against Women (CEDAW); International Convention on the Elimination of All Forms of Racial Discrimination (CERD); Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); Convention on the Rights of Persons with Disabilities (CRPD).

²¹ UN General Assembly Resolution. (April 3, 2006). A/RES/60/251. Article 9.

the international community to hold China to account for its failure to meet its human rights commitments and obligations.

Failed Obligations: Rights Situation Tibet since 2009

"How can we trust a government that does not allow us to believe in our religion? When I think of the suffering that the entire Tibetan region and our Karma Monastery have gone through this year, I cannot wait and keep on living."

Tenzin Phuntsok, Died on 6 December 2011 five days after his self-immolation

Despite China's efforts to project its image as a promoter and protector of human rights obligations, its record in Tibet since the 2009 UPR has been consistently poor. A pattern of repressive policies has undermined the Chinese government's assurances, and contributed to immense

hardship and suffering on the part of Tibetan people. In particular, the deterioration of human rights conditions has been demonstrated by the lack of religious and cultural freedom; the prevalence of arbitrary detention and torture; and Tibetans' unequal access to development.

Religious and Cultural Repression

The 2013 Annual Report of the United States Commission on International Freedom recently concluded, “The religious freedom conditions in Tibetan Buddhist areas of China are worse now than at any time over the past decade.”²² Since February 2009, a total of 118 confirmed self-immolation protests in Tibet, with many of the protestors calling for human rights and freedom particularly religious freedom, language freedom, return of the Dalai Lama, release of the Panchen Lama and other Tibetan political prisoners.²³ In many cases, the Chinese authorities take custody of the bodies of self-immolation protestors, and prevent their family and monks from carrying out religious cremation rites.²⁴ Since 1994, Beijing has banned pictures of the Dalai Lama in Tibetan monasteries,

²² Annual Report of the U.S. Commission on International Religious Freedom. (April 2013): 32. [http://www.uscirf.gov/images/2013%20US-CIRF%20Annual%20Report%20\(2\).pdf](http://www.uscirf.gov/images/2013%20US-CIRF%20Annual%20Report%20(2).pdf). Accessed on 8 May 2013. [Hereafter USCIRF Annual Report.]. See also United States Department of State, “International Religious Freedom Report 2012.”

²³ TCHRD Annual Report 2012: Human Rights Situation in Tibet,” January 2013:10-12. [Hereafter TCHRD Annual Report 2012.]

²⁴ TCHRD, “Tibetan mother dies of self-immolation, denied proper cremation by Chinese authorities.” 17 April 2013. <http://www.tchrd.org/2013/04/tibetan-mother-dies-of-self-immolation-denied-proper-cremation-by-chinese-authorities/>

but in recent years, this policy has spread to also include laypersons.²⁵ In 2010, two Tibetan environmental activists were imprisoned after a reference to the Dalai Lama as a Nobel Peace Prize winner on their website.²⁶



Ven. Kunchok Nyima, a Buddhist scholar and teacher at Drepung Monastery in Lhasa, who was sentenced to 20 years in prison in 2010 has not been seen or heard by family members and relatives since his detention.

Traditionally, Geshe, the scholars and teachers of Tibetan Buddhism, are required to study for years before earning their degree, often starting their monastic education in childhood. While candidacy for the Geshe degree is traditionally determined by one's achievements in Buddhist studies, it is now determined by an exam on politics arranged by a management committee

at the monastery.²⁷ Furthermore, the policy of banning anyone under the age of 18 from joining a monastery has

²⁵ TCHRD, Religious Repression in Tibet: Special Report 2012. January 2013: 27.

²⁶ Tibetan Environmentalist Karma Samdup to face court trial, 1 June 2010, <http://tibetanplateau.blogspot.in/2010/06/tibetan-environmentalist-karma-samdup.html>, Accessed on 31 May 2013

²⁷ Ibid., 43.

hindered the religious development of practitioners, and discouraged people from pursuing religious study.²⁸ This is a policy of slow attrition that ultimately decreases the number of qualified Buddhist teachers, and diminishes the transmission of Buddhism, culture, and language throughout the region. When the government attempts to control religion by approving certain religions and religious practices, it is little consolation that the restriction was done through the law. China's religious policy in Tibet requires Tibetan Buddhism to 'adapt' to socialism with Chinese characteristics, the idea that cultures and belief systems can be molded or transformed to a dominant political ideology of an atheist regime. In a revealing display into Chinese 'rule of law' in action, these transgressions against Tibetan human rights are codified in dubious laws and regulations to give an appearance of legality and thus provide legitimacy to government actions. What happens in the process is the continuation of a farce in the name of what China misunderstands as rule of law.

In October 2010, China's State Administration for Religious Affairs (SARA) announced a regulation known as 'Regulation on the administration of Tibetan Buddhist

²⁸ TCHRD, "Annual Report 2011: Human Rights Situation in Tibet," January 2012: 53. TCHRD Annual Report 2011; US Department of State, "International Religious Freedom Report for 2012," 33. <http://www.state.gov/documents/organization/208436.pdf>. Accessed on 23 May 2013 [Hereafter International Religious Freedom Report].



The whereabouts and wellbeing of Jinpa Gyatso, 38, a social activist and community educator in Machu (Ch: Maqu) County in Kanlho (Ch: Gannan) Tibetan Autonomous Prefecture, Gansu Province, remain unknown after he was arrested in October 2012 in connection with his efforts at preserving and promoting the use of Tibetan language.

Monasteries' or 'Order No. 8', which went into effect on 1 November 2010.²⁹ This regulation further tightened and expanded existing means of government control and monitoring of Tibetan Buddhist institutions. Particularly, it is a clear attempt to sever religious ties between Tibetans inside and outside Tibet as the regulation specifically says that "Tibetan Buddhist temple affairs must not be subject to the control by any overseas individual or organization."³⁰

While the stated purpose of the regulations was to ensure 'normal' temple functioning and to safeguard religious beliefs, in effect the regulations subjected every aspect of monastic activity to a complex system of bureaucratic oversight that is managed by state officials and party

²⁹ China Daily, China issues rule on Tibetan Buddhist temples, 9 October 2010, http://www.chinadaily.com.cn/china/2010-10/09/content_11390553.htm, Accessed on 30 May 2013

³⁰ Central Tibetan Administration, CTA and Schools of Tibetan Buddhism Reject China's Regulation on Monastic Management, 27 October 2010, <http://tibet.net/2010/10/27/cta-and-schools-of-tibetan-buddhism-reject-chinas-regulation-on-monastic-management/>, Accessed on 31 May 2013

cadres.³¹ The regulations replaced elected Democratic Management Committees (DMC) with the newly created unelected Monastery Management Committees (MMC).³²

*Even if the sad departing
moonface crosses the west-
ern hills
Amid the flood of tears [we]
wait for your reincarnation
The dawn of the new day
is arrested by the enemy's
darkness
The soul of the Snowlanders
has never been colder*

Song about the disappearance of the 11th Panchen Lama. Written by monk Lobsang Jinpa and sung by Lolo. (Both sentenced to 5 and 6 years in prison respectively).

The DMCs consist of elected religious “patriotic monks” and citizens of local village or neighborhood committees. In practice, the DMCs were responsible for overseeing monastery administration and finances, arranging for political education campaigns for monastery residents, and managing the fixed number of monks or nuns who are permitted to reside in each monastery. According to the regulations, all teaching staff within the monasteries must

hold a certificate and are subject to qualifications that are determined by the Buddhist Association of China³³ in conformity with the State Administration for Religious

³¹ Religious Repression in Tibet, 36-37.

³² Ibid.

³³ Buddhist Association of China (BAC) is a Chinese communist party body that monitors and manages Tibetan Buddhism in TAR. See, TCHRD, China uses religious propaganda to counter Tibetan self-immolations, 20 March 2013, <http://www.tchrd.org/2013/03/china-uses-religious-propaganda-to-counter-tibetan-self-immolations/>

Affairs.³⁴ In February 2012, the Chinese government replaced the DMCs with MMCs composed of unelected Chinese cadres.³⁵ A small number of monasteries deemed sufficiently “patriotic” were permitted to maintain their elected DMCs, but were still required to have a government official who oversees the management of religious practices.³⁶ For the government, the focus of monastery education is producing “love of the country and of religion... and in guiding the mutual adaptation of religion and socialism.”³⁷ In 2012, the government launched a Harmonious Model Monasteries and Patriotic Monks and Nuns competition in order to incentivize “patriotic” practices in the monasteries. The winners of the competition receive government subsidies including pensions, medical insurance and a free



Phurbu Tsering Rinpoche, a popular religious figure in Kardze (Ch: Ganzi) County in Sichuan Province was sentenced to eight years in prison in December 2009 on trumped-up charges of ‘illegal possession of ammunition and embezzlement.’ His attorney, Li Fangping, had said that a confession was extorted from Rinpoche after four days of non-stop interrogation and threats to arrest his wife and son.

³⁴ Ibid., 39.

³⁵ USCIRF Annual Report, 32-33.

³⁶ Religious Repression in Tibet, 41-42.

³⁷ Tibet Autonomous Region Implementing Measures for the “Regulation on Religious Affairs, 2006. <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingel=84503>. Accessed on 8 May 2013.

annual health check-up.³⁸ The focus on “patriotic education” within the monasteries has severely disrupted religious education in Tibet, and is part of a larger systemic attempt to stifle Buddhist religious practices.³⁹

Regulations have been enacted to prohibit the display of prayers, flags, or any other symbols that the Chinese authorities construe as “splittist.”⁴⁰ Monks who engage in ‘unpatriotic’ activities, such as shouting slogans, distributing writings, or keeping a picture of the Dalai Lama are subject to ‘patriotic education’ campaigns, expulsion from the monastery, torture or prison.⁴¹ The main objective of ‘patriotic education’ is to force monks and nuns to denounce the Dalai Lama, who is the spiritual leader of Tibetan people. Security officials deface portraits of the Dalai Lama, force monks to step on the portrait, or compel religious teachers to burn the portrait.⁴² In Tibetan Buddhism, it is a major sin to denounce one’s spiritual teacher, so the pressure to do so constitutes an unjustifiable and severe form of religious repression. Finally, Chinese officials have repeatedly denied international requests for access to the “disappeared” 11th Panchen

³⁸ Religious Repression in Tibet, 44-45; TCHRD Annual Report 2011, 55.

³⁹ See TCHRD Annual Report 2011, 54.

⁴⁰ Ibid., 27; Radio Free Asia, “Chinese police remove Tibetan cliff prayer,” 18 March 2013. <http://www.rfa.org/english/news/tibet/prayer-03182013152012.html>. Accessed on 8 May 2013.

⁴¹ Religious Repression in Tibet, 52-53; Amnesty International, “Amnesty International Report 2013: The State of the World’s Human Rights,” 63.

⁴² Ibid., 85-86; International Religious Freedom Report, 33.

Lama, whose whereabouts have been unknown since the government detained him and his family in 1995.⁴³

The right to religious freedom is enshrined both in Chinese domestic law and in international human rights instruments, including the ICCPR to which China is a signatory and customary international law. In a 2011 White Paper entitled “Sixty Years Since Peaceful Liberation in Tibet,” China’s State Council Information Office claimed:

Freedom of religious belief of all ethnic groups is respected and protected in Tibet. All religions, all religious sects are equal in Tibet. The Living Buddha reincarnation system, unique to Tibetan Buddhism, is fully respected. People are free to learn and debate Buddhist doctrines, get ordained as monks and practice Buddhist rites. Academic degrees in Buddhism are also promoted.⁴⁴

However, there is a sharp dichotomy between the government’s outward declaration of allegiance to religious freedom, and its violations in practice. The Chinese Constitution guarantees freedom of religion, but only for those activities it regards as “normal” – a designation that is left

⁴³ TCHRD Annual Report, 59.

⁴⁴ State Council Information Office, “Sixty Years Since Peaceful Liberation in Tibet.” (11 July 2011). <http://www.chinausfocus.com/library/government-resources/chinese-resources/documents/white-paper-sixty-years-since-peaceful-liberation-of-tibet-july-11-2011/>. Accessed on 22 May 2013.

undefined.⁴⁵ Any religious activity that the state regards as outside the parameters of normal or as a threat to state security is closely controlled, thereby undermining any guarantees of religious freedom.⁴⁶ Such policies are in direct conflict with China's obligations under international human rights law, as well as in contradiction to its assurances during the 2009 UPR that it would continue its efforts to "ensure ethnic minorities the full range of human rights including cultural rights."⁴⁷

Arbitrary Detention and Torture

Tibetan filmmaker Dhondup Wangchen was sentenced to six years imprisonment on 28 December 2009 for making the documentary film "Leaving Fear Behind".⁴⁸ Before he was sentenced, he was secretly detained for

⁴⁵ "No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination." Constitution of the People's Republic of China, 1982, Article 36.

⁴⁶ USCIRF Annual Report, 31.

⁴⁷ *Supra* note 13.

⁴⁸ High Peaks Pure Earth, "Where Does the Crime 'Subversion of State Power' Come From?" by Woesser, 20 January 2010, <http://highpeakspureearth.com/2010/where-does-the-crime-subversion-of-state-power-come-from-by-woesser/>. Accessed on 30 May 2013

about 24 months, including in a “black jail”.⁴⁹ Jigme Gyatso aka Golog Jigme, 43, a monk who assisted Dhondup Wangchen has been missing since September 2012.⁵⁰ He had earlier been harassed and detained twice by the police for assisting Dhondup Wangchen. According to the Beijing-based Tibetan writer Woesser who last met him in 2011, Gyatso “suffered from cruel torture, leaving him with a broken body.”⁵¹

On 20 August 2011, Jigme Guri aka Labrang Jigme, a respected Tibetan monk and scholar, was arbitrarily detained for the fourth time.⁵² After release from an earlier detention, Jigme Guri had recorded a video testimony in Tibet of racist treatment and torture in custody. In August 2012, while Jigme Guri lay in a hospital in Lanzhou city, the Chinese authorities prohibited two Chinese lawyers from

⁴⁹ Amnesty International, ‘China must release Tibetan filmmaker’, 7 January 2010, <http://www.amnesty.org/en/news-and-updates/china-must-release-tibetan-filmmaker-20100107>, Accessed on 31 May 2013

⁵⁰ Filming for Tibet. Filming for Tibet Contests Arrest Order for Jigme Gyatso, 30 November 2012, <http://www.filmingfortibet.org/2012/11/30/filming-for-tibet-contests-the-official-arrest-order-for-jigme-gyatso-missing-since-september-2012/>

⁵¹ “Remembering the Missing Monk Golog Jigme”, High Peaks Pure Earth, 11 October 2012, available at <http://highpeakspureearth.com/2012/remembering-the-missing-monk-golog-jigme-by-woesser/>, Accessed on 31 May 2013

⁵² International Campaign for Tibet, Tibetan scholar monk who gave torture testimony detained for fourth time, 2 September 2011 <http://www.savetibet.org/media-center/ict-news-reports/tibetan-scholar-monk-who-gave-torture-testimony-detained-fourth-time>

defending his case. Whether Jigme Guri was sentenced or even the exact charges against him are unknown.

Yonten Gyatso, 37, a respected senior monk from Khashi Gyephel Samtenling Monastery in Ngaba (Ch: Aba) County



Jigme Guri, a Buddhist scholar remains missing since his arbitrary detention for the fourth time in August 2012. In 2008, he recorded a video statement of the torture and mistreatment he underwent during his previous detention.

contemplated taking his own life on many occasions while being tortured by local State Secrets Bureau officers at a detention centre in Chengdu. On 18 June 2012, after about eight months in secret detention, Gyatso was sentenced to seven years for sharing information about protests in Tibet.⁵³

In March 2013, Tsepak, a 29-year-old monk from Kirti Monastery in Amdo region of eastern Tibet was detained for allegedly providing information about the political situation in Tibet to the outside world. His family was not informed of his arrest, charges were not laid, and his whereabouts were unknown at the time of his detainment.⁵⁴ The same month, Lobsang Jinpa, a monk

⁵³ TCHRD, Senior monk sentenced to 7 years for sharing information, 21 August 2012, <http://www.tchrd.org/2012/08/senior-monk-sentenced-to-7-years-for-sharing-information-2/>

⁵⁴ TCHRD, “Kirti monk detained for second time in two years,” 13 March 2013.

from Nyatso Zilkar Monastery at Jyekundo (Ch: Yushu) Tibetan Autonomous Prefecture, Qinghai Province, was sentenced to five years in prison for unknown reasons. The previous year, he had been hospitalized as a result of the severe beatings and torture he endured in Chinese custody.⁵⁵ After the self-immolation of a monk named Phuntsog on 16 March 2011, more than 300 monks from Kirti Monastery in Ngaba (Ch: Aba) Tibetan Autonomous Prefecture, Sichuan Province, were taken into custody, held incommunicado, and tortured. Members of the community who tried to protect the monks by standing vigil at the monastery gates were beaten, including two elderly Tibetans who died from their injuries.⁵⁶ Unfortunately, these instances are not exceptions to the rule, as cases of arbitrary detention and torture occur with alarming frequency in Tibet.

Victims of enforced disappearance are more vulnerable to arbitrary detention and torture. During an enforced disappearance, detainees may be subject to arbitrary arrest, torture, inhuman treatment, and illegal executions.

⁵⁵ TCHRD, “Two Tibetans, monk and singer, sentenced to prison,” 13 March 2013. <http://www.tchrd.org/2013/03/two-tibetans-monk-and-singer-sentenced-to-prison/>

⁵⁶ International Campaign for Tibet, “Two elderly Tibetans killed as hundreds of monks detained from Kirti; crackdown deepens,” 22 April 2011. <http://www.savetibet.org/media-center/ict-news-reports/two-elderly-tibetans-killed-hundreds-monks-detained-kirti-crackdown-deepens>. Accessed on 10 May 2013.

The whereabouts of such detainees is unknown for days, weeks, and, in some cases, years. As of December 2012, the Tibetan Centre for Human Rights and Democracy (TCHRD) has recorded a total of 269 known political prisoners in Tibet, 29 of whom have been sentenced without procedural guarantees; the status of the remaining 240 is still unknown. According to the TCHRD database, the total number of known political prisoners is 988; it has not been possible to verify the current status of the majority of these prisoners.⁵⁷ Despite these statistics, TCHRD believes that there are many more prisoners who remain unaccounted for or imprisoned without any due legal process or knowledge of their family members. Reports indicate that Tibetan political prisoners are at a high risk of mistreatment and torture while in detention.⁵⁸

As China stubbornly classifies any information related to human rights situation in Tibet as 'state secret', TCHRD's attempts to get a comprehensive, detailed picture of the situation in Tibet have proved difficult, if not impossible.

⁵⁷ TCHRD, "Two Tibetans, monk and singer, sentenced to prison," 13 March 2013. <http://www.tchrd.org/2013/03/two-tibetans-monk-and-singer-sentenced-to-prison/>

⁵⁸ International Campaign for Tibet, "Two elderly Tibetans killed as hundreds of monks detained from Kirti; crackdown deepens," 22 April 2011. <http://www.savetibet.org/media-center/ict-news-reports/two-elderly-tibetans-killed-hundreds-monks-detained-kirti-crackdown-deepens>. Accessed on 10 May 2013.

There is a close connection between arbitrary detention and torture, Tibetans who are detained through extrajudicial means have no access to legal remedies or procedural guarantees, thus there is a greater likelihood that they could be mistreated.⁵⁹ The US State Department's "China 2012 Human Rights Report" observed that Tibetans in custody were subject to inhumane treatment and torture, including electric shocks, exposure to the cold, and severe beating.⁶⁰ Despite the existence of domestic and international standards regarding arrest and treatment during detention, victims of arbitrary detention are by definition "outside of the law," and do not enjoy any legal safeguards.

The most common and severe form of arbitrary detention in China is Re-education Through Labour (Ch: Laojiao).⁶¹ Re-education Through Labour (RTL) is a remnant of China's revolutionary period in the 1950s when it was used to imprison "counterrevolutionaries." The essential elements of RTL have not changed. The police may still unilaterally send somebody to a RTL labor camp for three years

⁵⁹ TCHRD, *Into Thin Air: An Introduction to Enforced Disappearances in Tibet*, 2.; TCHRD Annual Report 2012, 34.

⁶⁰ US State Department, "Country Reports on Human Rights Practices for 2012: China." http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=204195&year=2012#wrapper. Accessed on 26 May 2013. [Hereafter US State Department Country Report 2012.]

⁶¹ Albert HY Chen, *An introduction to the Legal System of the People's Republic of China* (3rd ed. 2004) page 215.

with the possibility of a one-year extension.⁶² In 2001, the Office for the High Commissioner for Human Rights described RTL “inherently arbitrary.” Recently Chinese officials including President Xi Jinping have promised to reform or abolish RTL, however these are merely echoes of the promises China made during its 2009 UPR.⁶³ If China is to fulfill its international legal obligations it must fully abolish the RTL system in both name and spirit by fully integrating administrative punishments into the criminal justice system and allowing prisoners a hearing before an independent judicial tribunal.

In practice RTL and other forms of arbitrary detention are used as a means to stifle all forms of political dissent or criticism, and to eliminate perceived threats to state unity or security both in Tibet and in other parts of China. Amnesty International reported that hundreds of people in China were sent to RTL camps in 2012 for peacefully exercising their right to freedom of opinion and expression.⁶⁴

⁶² Congressional Executive Commission on China, “CECC 2012 Annual Report,” 10 Oct. 2012 at 74, available at: <http://www.gpo.gov/fdsys/pkg/CHRG-112shrg76190/pdf/CHRG-112shrg76190.pdf>.

⁶³ Ira Belkin, “Maoists Attitude to Dissent is Blocking China’s Road to the rule of Law,” U.S. - Asia Law Institute, 9 April 2013, originally published “Rule of Flaws,” South China Morning Post, 8 April 2013, available at: <http://www.usasialaw.org/2013/04/maoist-attitude-to-dissent-is-blocking-chinas-road-to-the-rule-of-law/>

⁶⁴ Amnesty International, “Amnesty International Report 2013: The State of the World’s Human Rights,” 61. http://takeaction.amnestyusa.org/atf/cf/%7B4abebe75-41bd-4160-91dd-a9e121f0eb0b%7D/AIR2013_ENGLISH.PDF. Accessed on 26 May 2013.

In Tibet 2012 witnessed a major crackdown on political protests, specifically in response to the high number of self-immolations that took place that year. For instance, from November 2012 to February 2013, Chinese state media admitted that at least 70 people were detained on suspicion of having masterminded or encouraged self-immolation, with twelve of those people officially charged at the time.⁶⁵ In March 2013, Chinese authorities arrested a Tibetan man for murdering his wife after he refused to blame his wife's self-immolation on domestic problems.⁶⁶ In February 2012, several hundred Tibetans who had gotten permission to attend the Kalachakra Buddhist teachings in Bihar, India, were detained upon their return to Tibet, and forced to attend political re-education sessions.⁶⁷ Amongst those who were detained were the elderly and the sick, and families of the detainees were not informed about their loved ones' whereabouts. Some of the detainees were housed in ad hoc detention centres, including hotels in Lhasa, and were later forced to pay hundreds of yuan for the "accommodation."⁶⁸

⁶⁵ The Hindu, "12 Tibetans arrested officially over self-immolations cases," 7 February 2013. <http://www.thehindu.com/news/international/12-tibetans-arrested-officially-over-selfimmolation-cases/article4390308.ece>. Accessed on 12 May 2013.

⁶⁶ The Guardian, "China police accuse Tibetan of killing wife amid latest 'self-immolation protest,'" 19 March 2013. <http://www.guardian.co.uk/world/2013/mar/19/china-accuses-tibetan-self-immolation>. Accessed on 12 May 2013.

⁶⁷ US State Department Country Report 2012, 102.

⁶⁸ TCHRD Annual Report 2012, 47-48.

Likewise, in February 2013, six Tibetans were arrested and brutally beaten after they had gathered in front of a Chinese government office with posters calling for religious freedom and Tibetan independence. Two of the protesters suffered broken bones, and their whereabouts are unknown after their arrest.⁶⁹

Tibetan intellectuals, specifically writers and artists, are particularly at risk of arbitrary detention and torture. In 2010, TCHRD reported over 60 cases of imprisonment of Tibetan intellectuals and artists who have expressed their views through poetry, prose, film, or music.⁷⁰ For instance, according to PEN International, Tashi Rabten aka Theurang, a Tibetan writer and editor of a banned literary magazine, was detained in an unknown location for more than a year before he was given a four-year sentence for his writings. His trial was conducted behind closed doors in June 2011, and the charges laid against him have not been confirmed.⁷¹ Similarly, Paljor Norbu was a printer from a family with a long history of printing and publishing Buddhist texts for monasteries. He was arrested in 2008, tried in secret, and sentenced to

⁶⁹ Phayul, “Six Tibetans arrested, brutally beaten for anti-China protests,” 22 February 2013. <http://www.phayul.com/news/article.aspx?id=33083&t=1>. Accessed on 23 May 2013.

⁷⁰ TCHRD, *Dissenting Voices: Targeting the Intellectuals, Writers and Cultural Figures* (Special Report: 2010), Print.

⁷¹ PEN International, “PEN International Writers in Prison Committee: Case List – July to December 2012,” 31 December 2012, 36-37.

seven years in prison on unknown charges; his current whereabouts remain unknown.⁷²

The widespread use of arbitrary detention and torture in Tibet is evidence of the lack of accountability in the Chinese judicial system, as there is a wide gap between stated legal obligations and actual practice. The resort to these extrajudicial measures is contrary to China's international and domestic human rights obligations. In its 2009 UPR, the Chinese delegation claimed that the use of torture was declining in Chinese prisons, and that "the law on detention facilities prohibits any abuse, physical or oral, of detainees."⁷³



Gyerig Thar, 35, died a slow and painful death in November 2012 almost eight months after he was injured in a violent police crackdown on a protest in March 2012 in Tongde County in Tsolho (Ch: Hainan) Tibetan Autonomous Prefecture, Qinghai Province.

Furthermore, the delegation committed to ensuring the decent treatment of detainees, regardless of their crimes.⁷⁴ In addition to its obligations as a signatory to the ICCPR, China has signed and ratified the Convention Against Torture. Finally, in October 2010, the UN Human Rights Council adopted Resolution 15/21, which affirmed that

⁷² Ibid., 36.

⁷³ Report of the Working Group, Article 69.

⁷⁴ Ibid., Article 115(1).

"everyone has the right to freedom of peaceful assembly and of association," as well as established the mandate of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.⁷⁵ The Special Rapporteur is mandated to gather national information pertaining to rights of peaceful assembly, and to report on violations wherever they may occur. At the time that Resolution 15/21 was passed, China was a member of the Human Rights Council; thus far, however, the Special Rapporteur has not been permitted to visit Tibet to

Due to incessant Chinese oppression,

The Tibetan people have lost the capacity to endure the sufferings.

No matter how much [they] oppress our body,

[We] have conscience and memory.

A protest banner in Labrang, Amdo, Tibet, in 2009

investigate conditions related to freedom of assembly and association.

At the domestic level, recent amendments to the Law on Criminal Procedure explicitly prohibited "the use of torture or extortion to obtain a confession" (although the law does not explicitly prohibit torture as

⁷⁵ United Nations Office of the High Commissioner for Human Rights, "Special rapporteur on the rights to freedom of peaceful assembly and of association," <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/SRFreedomAssemblyAssociationIndex.aspx>. Accessed on 23 May 2013.

a means of discrimination against ethnicity or religious belief).⁷⁶ Chinese Criminal Law contains provisions banning the use of torture, and outlining standards of punishment for judicial officers who violate these standards.⁷⁷ Similarly, China's National Human Rights Action Plan of 2012-2015 guarantees the right to a fair trial, and proposes mechanisms to improve judicial accountability.⁷⁸ Many of these laws implement China's obligations under human rights conventions it is a party to, such as the Convention Against Torture. Unfortunately, China has a poor record of enforcing its own laws, and although these amendments are steps in the right direction, they will remain hollow promises unless words are put into practice. And China's obligations under international law will remain unfulfilled.

Unequal Access to Development

China has enjoyed rapid economic expansion over the past decades as many states recognized in the 2009 Universal Periodic Review. The government's 2011 White Paper on the "peaceful liberation" alleges that prior to the

⁷⁶ TCHRD Annual Report 2012, 40.

⁷⁷ *Ibid.*, 41-42.

⁷⁸ *Ibid.*, 42-43.

Chinese invasion, “the masses lived in dire poverty,” but thanks to Chinese policies, Tibet “has witnessed a historic leap in its economic and social development.”⁷⁹ More recently, China’s White Paper on its human rights progress in 2012 highlights the improvements to living standards as reflected by measures including (among others) growth

“The Chinese government gives us economic development, but that is not enough. The most important thing for Tibetans is our spiritual life. If the Communist Party tries to take away our faith and our culture, we will fight.”

Monk from Kardze,
Kham, Tibet

in per-capita urban and rural income, road construction, mobile phone and car ownership, and access to water.⁸⁰ In 2011, then Vice President Xi Jinping announced that the government would spend 300 billion yuan (\$47 billion) between 2011 and 2015 on development initiatives in Tibet, with 90.5 billion yuan going towards the construction of roads, railway, hydropower

stations, and other infrastructure.⁸¹ In reality, the 12th Five-Year Plan (2011-2015) is aimed at making Tibet “a mining center and a hydropower engine” with small tokenisms added in the name of cultural development and so-called environmentally friendly nature reserves and national

⁷⁹ “Sixty Years Since Peaceful Liberation in Tibet.”

⁸⁰ “White Paper: Progress in China’s Human Rights in 2012.”

⁸¹ Xinhua, Central government to finance 226 key projects in Tibet over next five years, 14 September 2011, http://news.xinhuanet.com/english2010/china/2011-09/14/c_131138612.htm Accessed on 31 May 2013

parks.⁸² These efforts towards “leapfrogging” economic development are closely integrated with China’s goal of maintaining peace and social stability in Tibet.⁸³ The term “social stability” is a euphemism for eradicating all opposition to the state, including “[fighting] separatist activities led by the Dalai Lama group.”⁸⁴ Economic development in Tibet is thus intrinsically connected with the continued marginalization and repression of Tibetan people, and therefore has been achieved only at tremendous human cost. Particularly troubling is the rapid influx of Chinese migrants in ethnically Tibetan regions, the rapid growth of the tourism industry, the



Sonam Choedon, a nun from Puruna Nunnery in Kardze County lost her mental stability after suffering head injuries during torture and beatings in police custody in 2008.

⁸² Tea Leaf Nation, ‘Can Green and Red Coexist? How Tibet’s Environmental Challenges Have Become Untouchable, 6 May 2013, <http://www.tealeafnation.com/2013/05/can-green-and-red-coexist-how-tibets-environmental-challenges-have-become-untouchable/> Accessed on 4 June 2013

⁸³ Ibid.

⁸⁴ Xinhua, “China’s VP vows to speed up Tibet’s development while fighting separatism,” 19 July 2011. http://news.xinhuanet.com/english2010/china/2011-07/19/c_13995866.htm. Accessed on 26 May 2013. In 2007, TAR governor Zhang Qingli similarly stated that “development was also a means in which to counteract the Dalai Lama’s influence.” TCHRD Annual Report 2011, 68. See also TCHRD Annual Report 2012, 60.

forced settlement of nomads and farmers, and the promotion of mining and extractive industries in Tibet.

Despite rapid economic growth in Tibet, Tibetans do not proportionately reap the benefits of this expansion. The construction of the Qinghai-Tibet railway has facilitated a steady stream of Chinese migrants, who are lured to Tibet by promises of employment. Chinese migrants are more likely to receive employment from Chinese or foreign-owned companies, because companies prefer Chinese-speaking workers, or because migrant laborers are more likely to have the right *guanxi* (connections) to get a job with a company.⁸⁵ Many job advertisements explicitly state that hiring is “limited to Han.” Tibetans who can find work or try to start their own business still face discrimination. The US State Department reported that Chinese are likely to receive higher salaries than Tibetans for the same work, and that it is more difficult for Tibetans than Chinese to receive loans and permits to open small businesses.⁸⁶ Accordingly, migrant workers from other parts of China account for more than half of the population of downtown Lhasa.⁸⁷ In ethnically Tibetan cities across the Tibetan Plateau, between 60 to 80 percent of restaurants, retail shops and small businesses are owned

⁸⁵ TCHRD Annual Report 2011, 69.

⁸⁶ *Ibid.*, 107.

⁸⁷ US State Department Country Report 2012, 105.

and managed by Chinese migrants.⁸⁸ The Chinese state's

"During summer, my homeland is filled with swarms of Chinese tourists. The rush of tourists means that elderly Tibetans are having difficulties circumambulating the monasteries. Covering their heads in robes, monks and nuns stand by gaping at the tourists in silence. When I see these images, when I think about them, I suffer from intense pain and despair. Anger and resentment boil in my heart. Today, under the crushing boots of foreigners, my homeland is suffering from degeneration and decay."

Tashi Rabten, Poet and Writer, Currently serving a four-year sentence on unknown charges.

support for Chinese migrants in Tibet not only has contributed to the sinicization of Tibet, whereby Tibetans have become a minority in their homeland, but it also becomes a means for the government to consolidate its control over the region. The Dalai Lama has referred to this process as "demographic aggression."⁸⁹

Along with the influx of migrant workers, the new railways and airports have facilitated a second "invasion of Tibet" by bringing millions of mostly Chinese tourists into the TAR.⁹⁰ In

⁸⁸ US State Department Country Report 2012, 105.

⁸⁹ Phayul, "Dalai Lama accuses China of 'demographic aggression,'" 3 November 2007. <http://www.phayul.com/news/article.aspx?id=18451&t=1>. Accessed on 27 May 2013.

⁹⁰ The Independent, "China unleashes tourism in latest invasion of Tibet," 3 November 2010. <http://www.independent.co.uk/travel/asia/china-unleashes-tourism-in-latest-invasion-of-tibet-2123563.html>. Accessed on 27 May 2013.

2011, Chinese figures put the annual number of tourists at 8.5 million, while the government hopes to raise that number to 15 million visits by 2015.⁹¹ Although the Chinese government frequently bans foreign tourists from entering



the TAR (and strictly enforces travel restrictions when they are allowed to enter), Chinese tourists do not require special permits to enter the TAR, nor are they subject to rules governing the size of their group or means of transportation.⁹² The government promotes a crude, “Disney-fied” version of Tibetan culture to tourists, for instance, in its promotion of Derge (Ch: Deqe) County as the original location of the mythical paradise of Shangri-la,⁹³ or in its plans to construct a \$4.7 billion theme park outside Lhasa about a Chinese princess who married a Tibetan king.⁹⁴ In 2012, the government also announced plans to direct \$63.5 million towards

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⁹¹ Voice of America, “China Pushes Tibet Tourism in Theme Park Project,” 29 August 2012. <http://www.voanews.com/content/china-pushes-tibet-tourism-in-theme-park-project/1498114.html>. Accessed on 27 May 2013.

⁹² US State Department Country Report 2012, 103.

⁹³ TCHRD Annual Report 2012, 63.

⁹⁴ “China Pushes Tibet Tourism in Theme Park Project.”

the construction of 22 “model villages” in Nyingtri (Ch: Nyingchi) Prefecture, in order to turn the region into a major tourist hub.⁹⁵ Such attempts to portray a harmonious, idealized version of Tibetan society distorts the reality that Tibetans continue to engage in varying forms of protest, including self-immolation, as a response to ongoing repression and marginalisation. Moreover, since basic tourist infrastructure, such as hotels and taxis in Lhasa, are owned and run by Chinese, Tibetans are excluded from enjoying the economic benefits of tourism.⁹⁶ Finally, the large numbers of tourists exerts immense pressure on the ecology and landscape of the Tibetan plateau, as mass tourism contributes to high levels of waste, pollution, water shortages, and deforestation.⁹⁷ The Chinese government’s promotion of tourism, like other aspects of its development strategy, is intended to further integrate Tibet into China, both by fashioning a false image of Tibetan culture that fits within the Communist Party’s narrative of social harmony, and by using the tourist economy to further its economic dominance in the region.

⁹⁵ Zeenews.com, “China to develop Tibetan areas close to Arunachal,” 24 June 2012. http://zeenews.india.com/news/world/china-to-develop-tibetan-areas-close-to-arunachal_783585.html. Accessed on 27 May 2013.

⁹⁶ Mandip Singh, “The Turnaround in China’s Tibet Policy: Will Tourism Boost Benefit Tibetans?” Institute for Defense Studies and Analysis Comment, 17 July 2012. http://idsa.in/idsacomment/TheTurnaroundinChinas-TibetPolicyWillTourismBoostBenefitTibetans_msingh_170712. Accessed on 27 May 2013.

⁹⁷ TCHRD Annual Report 2011, 70; TCHRD Annual Report 2012, 63.

Another harmful consequence of China's effort to promote economic development in Tibet has been the forced settlement of nomads and farmers. According to the Chinese government, nomads are responsible for the erosion and desertification of the grasslands through overgrazing.⁹⁸ However, the erosion of the grasslands is more likely the result of climate change, resource extraction, hydropower projects and the government's land management policies.⁹⁹ For instance, the 1985 Grasslands Law imposed a system of private property rights that forced nomads and farmers to permanently attach themselves to a plot of land. As a result, the herders were unable to follow the ecologically sustainable practice of rotating their animals to other pastures, as had been their practice for thousands of years.¹⁰⁰

Under the auspices of environmental protection, the Chinese government has pursued a policy of settling nomads and rural people into concrete homes. The government has reported that a total of 1.4 million farmers and nomads have been moved into these new "socialist villages" since the Comfortable Housing Project was launched in 2006.¹⁰¹ Although the government pledged better op-

⁹⁸ TCHRD Annual Report 2011, 70.

⁹⁹ Report of the Special Rapporteur on the Right to Food, Oliver de Schutter. (20 January 2012). A/HRC/19.59.Add.1. Article 36.

¹⁰⁰ TCHRD Annual Report 2011, 70-71.

¹⁰¹ Xinhua, "Tibetan herdsmen move into new homes," 21 July 2011. http://news.xinhuanet.com/english2010/indepth/2011-07/21/c_13999108.htm. Accessed on 28 May 2013.

portunities for education, health care, and jobs to those herders who agreed to move into the new villages, these promises have not materialized.¹⁰² Residents are unable to earn a living, suffer shortages of food and fuel, and often go into debt in order to pay for their new homes.¹⁰³ Moreover, the dislocation has taken away their traditional way of life, and caused many social problems, such as alcoholism, crime, joblessness, family breakdown, and loss of social cohesion.¹⁰⁴ In this regard, the loss of biodiversity in the Tibetan plateau is also intrinsically connected with cultural loss,¹⁰⁵ and thus fits into broader patterns of the Chinese government's

*"What did the digging and stripping
Do to the ever-flowing stream?
If we need drinking water
We wait day and night in
Long and short lines like
rosary beads
For the miners' water truck."*

Khawa Lhamo, Tibetan woman blogger in Bongtak, Themchen County, Amdo, Tibet

¹⁰² TCHRD Annual Report 2011, 74;

¹⁰³ TCHRD Annual Report 2012, 66.

¹⁰⁴ Gabriel Lafitte, "Eight Chinese myths about Tibetan nomads: A briefing presented at European Parliament Tibet Intergroup, March 30, 2011." <http://rukor.org/eight-chinese-myths-about-tibetan-nomads/>. Accessed on 28 May 2013.

¹⁰⁵ The Tibet Post, "The Fate of Tibet's Nomadic Peoples and the Decline of Global Cultural Diversity," 16 August 2013. <http://www.thetibetpost.com/en/outlook/opinions-and-columns/2777-the-fate-of-tibets-nomadic-peoples-and-the-decline-of-global-cultural-diversity>. Accessed on 28 May 2013; Nomad Rights, "China's Tibetan herders face uncertain future," 1 April 2012. <http://nomadrights.org/2012/04/chinas-tibetan-herders-face-uncertain-future/>. Accessed on 28 May 2013.

marginalization of Tibetan culture. Despite the government's assurances that re-settlement is voluntary, there are documented cases where families have been tricked into moving, or forced to sign contracts that they cannot read.¹⁰⁶ Chinese authorities also force Tibetans off land in order to make way for Chinese migrants, or large infrastructure projects.¹⁰⁷ By settling nomads and farmers into these villages, it is also much easier for Chinese authorities to monitor and control the activities of Tibetans.¹⁰⁸ It is telling that a large number of self-immolations have taken place in nomad communities where forced resettlement policies have been implemented.¹⁰⁹

In an interview with TCHRD, a Tibetan monk in exile who visited his home in Chabcha (Ch: Gonghe) County in 2012 said the nomad relocation policy is the most urgent issue facing Tibetans in Tibet.¹¹⁰ In addition to livelihood issues, there is a marked rise in symptoms of social degeneration such as alcoholism, domestic discord and breaking up of families. The exile monk reported that

¹⁰⁶ TCHRD Annual Report 2011, 73.

¹⁰⁷ TCHRD Annual Report 2012, 69.

¹⁰⁸ TCHRD Annual Report 2011, 74-75.

¹⁰⁹ TCHRD Annual Report 2012, 67; The Guardian, "One Tibetan woman's tragic path to self-immolation," 26 March 2012. <http://www.guardian.co.uk/world/2012/mar/26/nomad-path-self-immolation>. Accessed on 28 May 2013.

¹¹⁰ TCHRD interview with monk from Chabcha, Amdo, Tibet., Dharamsala, 28 April 2013, Monk's name withheld for security reasons

relocation policy caused at least 70 Tibetan families to break-up in Chabcha County.

After his visit to China in December 2010, UN Special Rapporteur on the Right to Food, Olivier de Schutter called on China to suspend the non-voluntary settlement of nomads and farmers on the basis that this policy constitutes a threat to food security and the economic independence of Tibetan herders.¹¹¹ De Schutter pointed out that, as China has signed and ratified both the ICESCR and the Convention on Biodiversity, it is bound to protect Tibetan herders' rights to subsistence, as well as to defend the role of indigenous people as guarantors and protectors of biodiversity.¹¹² Particularly with regards to the settlement of Tibetan nomads, China is failing to meet its international human rights obligations under these two legal instruments. Likewise, during its 2009 UPR, China committed itself to "enhancing the quality of life of its people through the enjoyment of economic, social and cultural rights" (Article 114[3]), as well as to "[ensuring] universal access to health and education and other welfare for rural communities [and] minority regions" (Article 114[16]). The settlement of Tibetan nomads and herders fails to live up to the commitments that China set for itself in this regard.

¹¹¹ Report of the Special Rapporteur on the Right to Food, Oliver de Schutter, Article 36.

¹¹² Report of the Special Rapporteur on the Right to Food, Oliver de Schutter, Article 37.

Another feature of China's development drive in Tibet is the promotion of the mining and extractive sectors in Tibet.¹¹³ Indeed, one of the reasons for the resettlement of nomadic peoples is to make way for these industries.¹¹⁴ For instance, in Qinghai Province, the Chinese government established the controversial San Jiang Yuan Three Rivers Headwaters Nature Reserve (SNNR), which led to the relocation of "tens of thousands of pastoral nomads into camps reminiscent of those built for First Nations people in North America".¹¹⁵ Available information suggests that the boundaries of at least one of the SNNR subareas, Yuegu Zonglie, which covers the uppermost headwaters of the Yellow River and therefore critical to the SNNR project, have been changed to allow gold mining in the region.¹¹⁶

What is especially troubling is that many multinational companies have mining operations in Tibet.¹¹⁷ For in-

¹¹³ Tibetan Plateau blog, Best Data on Tibet's Mineral and Petroleum Deposits, 23 July 2012, <http://tibetanplateau.blogspot.in/2012/07/best-data-on-tibets-mineral-and.html>

¹¹⁴ TCHRD Annual Report 2012, 65.

¹¹⁵ Tibetan Plateau Blog, Mining for Gold After Kicking Out the Nomads, 14 April 2012, <http://tibetanplateau.blogspot.in/2012/04/gold-mining-after-kicking-out-tibetan.html>

¹¹⁶ *ibid.*

¹¹⁷ According to an NGO campaign to stop Canadian companies from mining in Tibet, the five companies are: China Gold International Resources Ltd., Lara Exploration, Sterling Group Ventures Inc., Eldorado Gold, and Inter-Citic Minerals Inc. Stop Mining in Tibet, "Take Action: Stop Mining in Tibet." <http://stopminingtibet.com/take-action/>. Accessed on 29 May 2013.

stance, at least five Canadian companies currently conduct mining operations in Tibet, even though a report commissioned by the government of Canada on corporate social responsibility recommended that Canadian companies designate Tibet a “no-go” zone due to human rights abuses in the region.¹¹⁸ The landslide in Gyama (Ch: Jياما) in Medrogungkar (Ch: Maizhokunggar) County in TAR in March 2013,¹¹⁹ which resulted in 83 fatalities, occurred at a mine operated by China Gold International Resources Corporation, a company based in Vancouver, Canada.¹²⁰ Researchers have long cautioned that the area in Gyama Valley is seismically unstable, vulnerable to earthquakes.¹²¹

In 2011, China announced that it would invest nearly 18 million yuan (\$2.82 billion) over five years to extract coal, iron, gold, salt, copper, lead, and zinc from the Qinghai

¹¹⁸ National Roundtables on Corporate Social Responsibility (CSR) and the Canadian Extractive Industry in Developing Countries, “Advisory Group Report,” 29 March 2007, 51. http://www.tibet.ca/_media/PDF/CSRReportEN.pdf. Accessed on 29 May 2013.

¹¹⁹ Central Tibetan Administration, LANDSLIDE IN GYAMA MINE: natural or man-made?, 30 March 2013, <http://tibet.net/2013/03/30/landslide-in-gyama-mine-natural-or-man-made/>

¹²⁰ New York Times, “Fatal Landslide Draws Attention to the Toll of Mining on Tibet,” 2 April 2013. http://www.nytimes.com/2013/04/03/world/asia/deadly-tibetan-landslide-draws-attention-to-mining.html?pagewanted=all&_r=0. Accessed on 28 May 2013.

¹²¹ Gabriel Lafitte, China Dialogue, Tibet’s mining menace, 5 September 2011, <http://www.chinadialogue.net/article/show/single/en/4509-Tibet-s-mining-menace->

region of eastern Tibet.¹²² However, mining activities are being conducted with little regard for the fragile environment of the Tibetan plateau. Mining activities release toxic heavy metals from the soil into nearby river flows, which can lead to water contamination, illness, and loss of animals.¹²³ As many of Asia's largest rivers have their origin in Tibet, such environmentally destructive practices have negative consequences beyond Tibet's borders. For instance, in one study conducted in the Gyama valley, researchers concluded that the presence of high concentrations of chemicals from acid mine drainage posed a "high risk to the local environment," as well as a significant threat to downstream water users.¹²⁴ These mining activities threaten both the livelihoods and the health of local Tibetans, as well as other water users.

¹²² Sacred Land Film Project, *Tibetan Village Stops Mining on Sacred Mountain*, 26 January 2012, <http://www.sacredland.org/tibetan-village-stops-mining-on-sacred-mountain/>. Accessed on 28 May 2013; Students For a Free Tibet Canada, *SFT Vancouver & Victoria Protest Mining in Tibet at Vancouver Resource Investment Conference*, <http://sftcanada.wordpress.com/2011/01/26/sft-vancouver-victoria-protest-mining-in-tibet-at-vancouver-resource-investment-conference/>. Accessed on 29 May 2013.

¹²³ Radio Free Asia, "Chinese Mines Pollute Tibet's Rivers, Streams," 6 May 2013. <http://www.rfa.org/english/news/tibet/mines-05062013154914.html>. Accessed on 28 May 2013.

¹²⁴ International Campaign for Tibet, "Disaster in Gyama draws attention to impact of mining in Tibet," 5 April 2013. <http://www.savetibet.org/media-center/ict-news-reports/disaster-gyama-draws-attention-impact-mining-tibet>. Accessed on 28 May 2013.

Despite a law banning mining on sacred mountains,¹²⁵ mining operations are frequently conducted in regions that Tibetans consider sacred. The government does not consult with local inhabitants before allowing mining operations to conduct their activities. The Gyama valley, which was the birthplace of the 7th century Tibetan king Songsten Gampo, is a pilgrimage destination, known for its holy mountains, caves, shrines, and rock painting. The area is now inaccessible due to mining operations.¹²⁶ Similarly, in 2011, a Chinese company set up a gold mining operation on the western side of Mount Khawa Karpo, along the path of an 800-year old pilgrimage route that circles the mountain.¹²⁷ Protests and resistance by local villagers resulted in beatings, death threats, and arrests, and many villagers were injured by men armed with wooden sticks studded with nails.¹²⁸ In several other documented cases, Chinese security forces responded to unarmed protesters at mining sites with disproportionate force, including arrests, beatings, and firing on protesters with tear gas and live ammunition.¹²⁹ In May 2013, thousands of Tibetans protested at a mining operation on Naglha

¹²⁵ China.org.cn, Mining Banned After Monks Protest in Sacred Mountains, 24 August 2007, <http://www.china.org.cn/english/China/221912.htm>. Accessed on 4 June 2013

¹²⁶ "Fatal Landslide Draws Attention to the Toll of Mining on Tibet."

¹²⁷ Phayul, "Tibetans halt Khawa Karpo mining project in Tibet," 15 February 2012. <http://www.phayul.com/news/article.aspx?id=30902&t=1>.

¹²⁸ TCHRD Annual Report 2012, 69.

¹²⁹ *Supra* note 122; TCHRD Annual Report 2012, 68.

Dzambha mountain, a site considered to be sacred by local people. Company officials arrived ostensibly to set up cable towers and power lines for a hydroelectric project, but anonymous sources reported that this was only a pretext for the mining operation. Chinese authorities responded to protests by deploying fifty trucks of security forces.¹³⁰

The Chinese government's recent White Paper on its human rights progress in 2012 asserted: "Development is the key to solving all existing problems and facilitating progress of human rights in China."¹³¹ Nevertheless, in practice, there is a massive gap between its efforts to promote economic development in Tibet, and its protections of economic, social, and cultural rights. Tibetans do not have equal access to economic opportunities, and are deprived of their basic rights of subsistence. Moreover, the mode in which China is pursuing economic development in Tibet is both culturally and environmentally destructive. Finally, China regards the pursuit of economic development as divisible from the promotion of civil and political rights. Even while the White Paper argues that development is "key" to human rights progress, it argues that it is "impossible to protect the people's rights

¹³⁰ Radio Free Asia, "Thousands of Tibetans protest against mine," 28 May 2013. <http://www.rfa.org/english/news/tibet/mine-05282013170400.html>. Accessed on 29 May 2013.

¹³¹ "White Paper: Progress in China's Human Rights in 2012."

and interests” without developing the economy first.¹³² This sets up a false dichotomy between civil and political rights on the one hand, and economic rights on the other, which does not reflect international human rights practice or philosophy. It also ignores widely held international norms about rights-based approaches to development: namely, a country cannot achieve significant and sustainable economic progress without recognizing universal human rights as core principles of governance.¹³³ If people are arbitrarily arrested, tortured, or killed - if they experience daily, systemic marginalization and repression - it does not make much difference if their stomachs were empty or full at the time their rights were violated.¹³⁴ China must move its conception of human rights beyond mere empty words towards concrete implementation in policy and practice.

¹³² Ibid.

¹³³ Office of the United Nations High Commissioner for Human Rights, “Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation,” New York/Geneva, 2006: 16. <http://www.ohchr.org/Documents/Publications/FAQen.pdf>. Accessed on 29 May 2013.

¹³⁴ TCHRD, “China rejects universality of human rights in latest white paper,” 21 May 2013. <http://www.tchrd.org/2013/05/china-rejects-universality-of-human-rights-in-latest-white-paper-2/#more-2156>. Accessed on 29 May 2013.

Policy Recommendations

A. To China:

- Ratify the International Covenant on Civil and Political Rights, as was promised in the response to the recommendations set forth in the 2009 UPR;
- Consistently enforce the judicial rights and human rights protections that have already been integrated into the domestic legal framework, particularly laws related to due process and torture;
- Abolish Re-Education Through Labour with immediate effect;
- Require all people are given an impartial judicial hearing, informed of the charges against them and given access to a lawyer before they are sentenced to a criminal or administrative punishment;
- Strengthen the protection of Tibetan people's religious, civil, socio-economic and political rights. In accordance with the Chinese constitution and China's commitments in its 2009 UPR, allow Tibetans to fully exercise their human rights, to preserve their cultural identity, and to ensure their participation in decision-making;
- Seriously and effectively fulfill the goals of the National Human Rights Action Plan of 2012-2015;

- Extend invitations to UN officials who have requested to visit Tibet, including the High Commissioner for Human Rights; the Special Rapporteur on Freedom of Religion; the Special Rapporteur on Freedom of Association and Assembly; the Special Rapporteur on Toxic Waste; the Special Rapporteur on Health; the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions; the Special Rapporteur on Human Rights Defenders; the Independent Expert on Minority Issues; the Working Group on Enforced Disappearances.
- Allow independent human rights monitors and journalists into the TAR and Tibetan regions;
- Release political dissidents, writers, and monks who are formally and informally held in detention. Notify the families on the whereabouts and conditions of those missing;
- Ensure that Tibetans have equal opportunity to access and benefit from new economic development initiatives in Tibet;
- Cease all mining activities in religiously or environmentally sensitive areas,. Conduct meaningful consultations with local Tibetans before initiating new mining operations.

B. To the international community

- Encourage China to adhere to the international conventions to which China is already party, and sign and ratify those to which it is not;
- Encourage China to fulfill the commitments made during its 2009 UPR, particularly those related to religious and cultural rights, torture, and judicial process;
- Encourage China to fulfill its human rights obligations and abandon the practice of enforced disappearances;
- Encourage China to abolish Re-education Through Labor and all other forms of arbitrary detention;
- Refrain from extraditing individuals to China who are likely to be subjected to enforced disappearance;
- Provide asylum for Tibetan victims of human rights violations;
- International mining companies should cease all mining operations until China meaningfully addresses the human rights situation in Tibet. Mining companies should conduct meaningful consultations with Tibetans before initiating operations in religiously sensitive areas;
- Cease creating new economic contracts with China until the Chinese government addresses human rights abuses in Tibet;

- Encourage China to extend invitations to UN officials who have requested visits;
- Encourage China to permit independent human rights monitors and journalists to visit the TAR and Tibetan areas.

Ratification of International Human Rights Treaties - China

International Bill of Human Rights	Signature	Ratification	Accession	Succession	Entry into Force
International Covenant on Economic, Social and Cultural Rights	27 Oct 1997	27 Mar 2001			
International Covenant on Civil and Political Rights	5 Oct 1998				
Optional Protocol to the International Covenant on Civil and Political Rights	Not signed				
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	Not signed				
Prevention of Discrimination on the Basis of Race, Religion, or Belief; and Protection of Minorities	Signature	Ratification	Accession	Succession	Entry into Force
International Convention on the Elimination of All Forms of Racial Discrimination			29 Dec 1981		
Women's Human Rights	Signature	Ratification	Accession	Succession	Entry into Force
Convention on the Elimination of All Forms of Discrimination against Women	17 Jul 1980	4 Nov 1980			
Optional Protocol to the Convention on the Elimination of Discrimination against Women	Not signed				

United Nations Convention against Transnational Organized Crime	12 Dec 2000	23 Sep 2003			
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Preamble, supplementing the United Nations Convention against Transnational Organized Crime	Not signed				
Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime	Not signed				
Slavery and Slavery-Like Practices	Signature	Ratification	Accession	Succession	Entry into Force
Slavery Convention		22 Apr 1927			
Protocol amending the Slavery Convention	Not signed				
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery	Not signed				
Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	Not signed				
Protection from Torture, Ill-Treatment and Disappearance	Signature	Ratification	Accession	Succession	Entry into Force
European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	Not signed				

Protocol No. 1 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	Not signed					
Protocol No. 2 to the European Convention for the Prevention of Torture and inhuman or Degrading Treatment of Punishment	Not signed					
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	12 Dec 1986	4 Oct 1988				
Rights of the Child	Signature	Ratification	Accession	Succession	Entry into Force	
Convention on the Rights of the Child	29 Aug 1990	2 Mar 1992				
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts	15 Mar 2001					
Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour		8 Aug 2002				
Freedom of Association	Signature	Ratification	Accession	Succession	Entry into Force	
Freedom of Association and Protection of the Right to Organise Convention	Not signed					
Right to Organise and Collective Bargaining Convention	Not signed					

Employment and Forced Labour	Signature	Ratification	Accession	Succession	Entry into Force
Convention concerning Forced or Compulsory Labour	Not signed				
Equal Remuneration Convention		2 Nov 1990			
Abolition of Forced Labour Convention	Not signed				
Discrimination (Employment and Occupation) Convention	Not signed				
Employment Policy Convention		17 Dec 1997			
Convention concerning Occupational Safety and Health and the Working Environment	Not signed				
Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Not signed				
Education	Signature	Ratification	Accession	Succession	Entry into Force
Convention against Discrimination in Education		Ratified			
Refugees and Asylum	Signature	Ratification	Accession	Succession	Entry into Force
Convention relating to the Status of Refugees			24 Sep 1982		
Protocol Relating to the Status of Refugees			24 Sep 1982		

Nationality, Statelessness, and the Rights of Aliens	Signature	Ratification	Accession	Succession	Entry into Force
Convention on the Reduction of Statelessness	Not signed				
Convention relating to the Status of Stateless Persons	Not signed				
War Crimes and Crimes Against Humanity, Genocide, and Terrorism	Signature	Ratification	Accession	Succession	Entry into Force
Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity	Not signed				
Convention on the Prevention and Punishment of the Crime of Genocide	20 Jul 1949	18 Apr 1983			
Rome Statute of the International Criminal Court	Not signed				
Law of Armed Conflict	Signature	Ratification	Accession	Succession	Entry into Force
Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field	10 Dec 1949	28 Dec 1956 (rat/acced)			
Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea	10 Dec 1949	28 Dec 1956 (rat/acced)			
Geneva Convention relative to the Treatment of Prisoners of War	10 Dec 1949	28 Dec 1956 (rat/acced)			

Geneva Convention relative to the Protection of Civilian Persons in Time of War	10 Dec 1949	28 Dec 1956 (rat/acced)			
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)		14 Sep 1983 (rat/acced)			
Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims on Non-International Armed Conflicts (Protocol II)		14 Sep 1983 (rat/acced)			
Terrorism and Human Rights	Signature	Ratification	Accession	Succession	Entry into Force
International Convention Against the Taking of Hostages			26 Jan 1993		
International Convention for the Suppression of Terrorist Bombing			13 Nov 2001		
International Convention for the Suppression of the Financing of Terrorism	13 Nov 2001				
International Convention for the Suppression of Unlawful Seizure of Aircraft		10 Sep 1980			
International Convention on the Prevention and Punishment of Crimes Against International Protected Persons			5 Aug 1987		

Source: Human Rights Library, University of Minnesota