

## **Alternative Report for the Committee on the Rights of the Child**

### **Violations of the Convention on the Rights of the Child in Tibetan Autonomous Areas of China**

**Country:** China

**Issued by:** International Campaign for Tibet

#### **Executive Summary**

This Alternative Report (hereinafter, “the Report”) evaluates the compliance of the government of China with the Convention on the Rights of the Child (hereinafter, “the Convention”) with respect to Tibetan children living in the Tibetan Autonomous Region (TAR) and in Tibetan autonomous areas of Sichuan, Qinghai, Yunnan and Gansu provinces<sup>1</sup> (hereinafter, “Tibet”). This Alternative Report is intended to present a comparative perspective to China’s State Party Report that was submitted to the Committee on the Rights of the Child (hereinafter, “the Committee” or “the CRC”) in Geneva on June 26, 2003. As members of an ethnic group toward which the State Party has a troubling record of abuse, the International Campaign for Tibet (ICT) contends that Tibetan children comprise an especially vulnerable population that warrants special attention from the Committee as it reviews the State Party’s report. Due to unique circumstances concerning Tibetans, this report is divided into two distinct segments:

Part I of the report focuses on the case of Gedhun Choekyi Nyima whom the 14th Dalai Lama has recognized as the eleventh reincarnation of the Panchen Lama, and the role of the Chinese state in the 10-year-long disappearance of this boy and his family as well as its carefully orchestrated move to enthrone an alternative Panchen Lama.

The Panchen Lama’s case came before the Committee during its 12<sup>th</sup> Session and despite numerous appeals from the international community, the Chinese government has refused to declare his whereabouts. The Panchen Lama is considered to be the second most important religious leader in the Tibetan Buddhism pantheon after the Dalai Lama. Typically, the Panchen Lama is heavily involved in the selection process for the Dalai Lama and vice versa. The PRC is a state founded on atheist principles and, as such, its motivation for interfering in the identification and training of child reincarnations is to control the political loyalties of these important figures in Tibetan society, weaken the influence of traditional religious authorities, and use the reincarnates’ influence among Tibetans to its own political advantage.

China’s chosen Panchen Lama is overwhelmingly rejected by the Tibetan people and, commonly referred to as the “Panchen Zuma” (literally “fake Panchen”), is considered as a puppet of the Chinese government. Both boys are victims in China’s plan to undermine and control the Tibetan people, religion and nation and China’s actions are seen as a “dress rehearsal” for what happens when the Dalai Lama dies.

Part II of this report provides commentary on the overall situation of Tibetan children living in Tibet. Part II is divided into eight sections, labeled alphabetically:

*Section A: General Measures of Implementation* and *Section B: Definition of the Child*, provide an overview of how the Convention is being implemented by China from a technical perspective and how Tibetan children’s rights are or are not protected by the Convention in general.

*Section C: Guiding Principles* focuses on racial discrimination against Tibetan children, through a discussion of how Tibetan children are affected by discriminatory laws and practices by China authorities in the following sectors that have a direct impact on the development of Tibetan culture: education, employment, and healthcare.

China's education policy in Tibet is in violation of the principles of equity and non-discrimination. The rate of illiteracy or semi-literacy for Tibetans ages six and up is an estimated 49.1 percent, compared with 13.7 percent nationwide. Tibetan children face formal and informal barriers to education, including fewer schools per capita in Tibet than elsewhere in China and the often prohibitive costs of attending school where one exists.

The influx of non-Tibetans to Tibet is having a discriminatory effect on the livelihoods, education and culture of the Tibetan people. The Chinese government creates incentives that appeal to potential Chinese settlers (such as higher salaries, free education for their children, selective tax exemption, etc.) however these incentives are not provided to Tibetans. Tibetans' difficulty of securing employment is exacerbated by the increasing number of businesses owned by Chinese settlers many of whom maintain racial prejudices against Tibetans caused by institutionalized Chinese propaganda begun in school. Chinese authorities have increased rural poverty among Tibetans by placing high taxes on the agricultural and animal husbandry products and then, after assessing the taxes, forcing Tibetan farmers to sell their harvest or animals directly to government agencies far below the market price to meet their tax burden.

Health indicators in Tibetan areas are routinely among the worst in China. While Chinese and Tibetans are charged for all types of medical services, Tibetans are often charged discriminatorily high prices for certain types of medical assistance. In addition to the prohibitive expense of health care, many Tibetans face extreme difficulty in accessing an adequate medical facility. Most hospitals and health care centers are located in urban areas, while 40 percent of the Tibetan population is nomadic or semi-nomadic. Maternal and infant morbidity rates in Tibet are among the worst in China and, possibly, the world.

*Section D: Civil Rights and Freedoms* highlights China's violations of Tibetan children's rights of religious belief and protection against torture.

The part that deals with religion gives special attention to China's current restrictions on religious education, schools and monasteries, and China's unprecedented interference in the process of selecting and training reincarnate religious figures. Section D reports that religious policy in China is shaped by the ideology of the ruling Communist Party and its political imperative of maintaining power. Although China's Constitution states that citizens of China have "freedom of religious belief," the Communist Party defines what is 'acceptable' religious behavior, and religion is only tolerated as long as it does not interfere with or challenge the legitimacy and status of the Party. The measures used to implement state religious policy have been particularly harsh in Tibet because of the close link between the Tibetan Buddhist religion and the distinct Tibetan identity. Tibetan Buddhism continues to be an integral element of Tibetan identity, and is therefore perceived as a threat to the authority of the state and unity of China. China's policy towards religion dramatically affects all children in those regions who are prevented from exercising the right of religious freedom.

The portion of Section D concerning torture and other forms of maltreatment discusses practices which are used against Tibetan children in Chinese prisons and detention facilities. Despite having ratified the Convention against Torture (CAT), China continues to torture prisoners of conscience in Tibet and Tibetan juvenile prisoners are not exempted from this ill-treatment in

prisons. Young prisoners and adults alike are subjected to beatings, electric shocks, solitary confinement and deprivation of sleep, food or drink as punishment.

*Section E: Family Environment and Alternative Care* considers the impact of China's treatment of Tibetan child refugees and their families. It finds that China governs Tibet through a political and economic system that devalues Tibetan religion, culture and language which leads hundreds of Tibetan children to flee China each year for Tibetan exile communities in India and Nepal. Tibetans who are caught fleeing into exile or those educated in exile who later return to Tibet are commonly viewed with suspicion of being involved in political activities, face penalties, mistreated and arrested by Chinese authorities.

*Section F: Basic Health and Welfare* deals with consequences of China's discriminatory implementation of healthcare policies and distribution of resources, and China's failure to honor two basic principles of the Convention: – "best interests of the child" and "promotion of survival and development". Tibetans face obstacles to medical care which have real effects on the population. High prices for medical care combined with extra costs for travel and services place significant burdens on an already economically strained population. The ability of Tibetan families to obtain quality healthcare often depends on their social and economic status. Statistics demonstrate that the infant mortality is higher in Tibet than in any other region in China, that the health of Tibetan children continues to lag behind that of the Chinese and that the rates of developmental disabilities are higher among Tibetan communities than the rest of China.

*Section G: Education, Leisure and Culture Activities* examines the impact of the State Party's education policies and practices on the ability of Tibetan children to receive an education, as well as the inconsistencies between relevant provisions of TAR regulations and the National Autonomy Law and its amendments and the rights provided in the Convention. This section provides specific examples of violations of the Convention thorough propaganda, enforced atheism, and linguistic and financial obstacles to education.

*Section H. Special Protection Measures* highlights how China has failed to honor principles of juvenile justice, how Tibetan children can be imprisoned for prolonged periods of time with – and with adult inmates. It reports how there is evidence of juveniles being detained in almost every Chinese prison in Tibet and are often subjected to severe ill-treatment.

Each section outlined above contains a brief analysis of relevant Articles of the Convention that have been violated by China as well as relevant international covenants and customary law which the preamble of the Convention incorporates by reference.<sup>2</sup> China is a signatory of the ICCPR<sup>3</sup> and State Party of the ICESCR.<sup>4</sup> The report concludes that China is in breach of several articles of the Convention and is failing to uphold its responsibilities to Tibetan children under its jurisdiction. The final pages of the report contain ICT's recommendations regarding actions that the Committee and the State Party should pursue in order to improve the situation for Tibetan children.

## **Part I**

### **The Case of the Eleventh Panchen Lama**

#### **Background**

Gedhun Choekyi Nyima was born on 25 April, 1989 in Lhari in northern Tibet. On 14 May, 1995, the Dalai Lama recognized the then-six-year-old Gedhun Choekyi Nyima as the eleventh reincarnation of the Panchen Lama. Three days later, the boy, his parents and his brother were taken to Nagchu Airport in Nagchu, TAR by police from the Public Security Bureau (PSB). They have not been seen publicly since, and their well-being and whereabouts remain officially unaccounted for by China. Chinese authorities have refused all requests by foreign governments and the international community to verify his safety. His photograph is banned and Tibetans are forbidden from expressing devotion to him.

While the international community expressed concern and criticism over China's actions, Chinese officials attacked the Dalai Lama, saying that his selection of Gedhun Choekyi Nyima "demonstrates the political plot of the Dalai clique in its continuous splittist activities by making use of Panchen Lama's reincarnation..."<sup>5</sup> On December 8, 1995, in a remarkable move by an avowed atheistic state, China officially enthroned another six-year-old boy, Gyaltzen Norbu, as the 11<sup>th</sup> Panchen Lama – a move that was carefully orchestrated. Chinese authorities have embarked on a massive public relations and political education campaign to encourage acceptance of Gyaltzen Norbu. This campaign has met with limited success, as Tibetan Buddhists overwhelmingly reject Gyaltzen Norbu. He is commonly referred to by Tibetan Buddhists throughout Tibet as the "Panchen Zuma" (fake Panchen).

Until the U.N. Committee on the Rights of the Child formally requested information about him, China denied that it held Gedhun Choekyi Nyima and his family. In 1996, in response to the Committee's inquires, Chinese spokesman Wu Jianmin replied that "since separatists were seeking to kidnap the boy, the parents became fearful for his safety and requested Chinese government protection, which has been provided. The boy is living with his parents in good conditions."<sup>6</sup> However, to this date, no government body, concerned organisation or independent observer has been allowed to see the child, and the Chinese government has provided no evidence of either the alleged kidnap plot or the conditions of the family's confinement.

Conflicting reports on his location were provided to government delegations that have expressed concern about Gedhun Choekyi Nyima. An Austrian delegation that went to Tibet in 1997 was told that the boy was being held in his home village of Lhari, about 250 kilometers from Lhasa.<sup>7</sup> The same year, a US delegation and other sources were told that the boy was in Beijing.<sup>8</sup> In September 1998 the former UN High Commissioner for Human Rights, Mary Robinson, was denied access to the Panchen Lama.<sup>9</sup> In November 1999, a Chinese government representative made a statement acknowledging that the Panchen Lama was still under their "protection".<sup>10</sup>

Jampa Tsering, a 28-year-old Tibetan nomad from Lhari reported that in March 1999 the Panchen Lama's parents returned briefly to visit their parents' house, leaving again the same day.<sup>11</sup> People were reportedly prevented from meeting them during this time.

In October 2000, during a round of the UK-PRC bilateral human rights dialogue in London, British officials raised the issue of Gedhun Choekyi Nyima. In a written report to the British Parliament, Foreign Office Minister John Battle stated that:

*“We pressed the Chinese to allow access to the boy by an independent figure acceptable to the Chinese government and Tibetans to verify his health and living conditions. The Chinese stated that the boy was well and attending school. They said that his parents did not want international figures and the media intruding into his life. Two photographs claimed to be of the Panchen Lama were shown to us but not handed over.”<sup>12</sup>*

During the meeting, Chinese officials displayed two photos from across the conference table: one of a boy writing in Chinese on a blackboard, and another of a boy playing table tennis. There was no means to positively identify the child, the photos merely showed a boy of approximately the correct age. There was also no means to determine his location.<sup>13</sup>

### **Analysis**

Traditionally, Tibetan reincarnate lamas are identified as young children through a process involving special religious services, divinations and other practices conducted by senior Tibetan religious leaders who were close to the previous reincarnation. Following the identification of a reincarnate lama, the child undergoes an intensive process of many years of religious training in order to assume their important religious and social role in Tibetan society. The Panchen Lama is considered the second most important reincarnation in the Tibetan Buddhist pantheon, and he has a special relationship with the Dalai Lama. Typically, the Panchen Lama is heavily involved in the selection process for the Dalai Lama’s reincarnation and vice versa. China’s motivation for interfering in the identification and training of significant reincarnations is to control the political loyalties of these important figures in Tibetan society, weaken the influence of the traditional religious authorities, and use the reincarnates’ influence among Tibetans to China’s political advantage.

In the case of the Panchen Lama, China has faced international opprobrium and the rejection of their chosen reincarnate by the Tibetan people. On an individual level, China’s abduction of the Panchen Lama and denial of his religious identity violates basic principles enshrined in the general human rights instruments such as the UDHR, the ICCPR and the ICESCR. While the Children’s Convention does not specifically contemplate a State Party kidnapping a child living within its jurisdiction, an analysis of the case demonstrates that China’s conduct has breached several articles of the Convention.

***The State Party violated the rights and duties of the family and community to provide the Panchen Lama with an appropriate upbringing and education as provided by local custom. (Article 5)***

By abducting the Panchen Lama and his family, and denying him his rightful role in Tibetan society, the Chinese government has supplanted the legitimate role of the family and community in his upbringing. The broad definition of family in the Convention on the Rights of the Child reflects the wide variety of kinship and community arrangements within which children are brought up around the world. Article 5 specifically acknowledges the extended family, referring not only to parents and others legally responsible for the child’s upbringing, but also refers to the extended family or community where they are recognized by local custom. The Panchen Lama traditionally receives years of intensive religious education from senior Tibetan lamas, including the Dalai Lama, in order to practice his traditional religious duties and functions. He cannot receive this education in *incommunicado* detention.

***The State Party has unlawfully interfered with the 11th Panchen Lama’s identity. (Article 8)***

The basic premise of the Convention, as articulated in Article 3, is the application of its provisions with the “best interests of the child” in mind. Under Article 8, the Convention provides the child the right to preserve his or her identity, including nationality, name and family relations, without unlawful interference. Gedhun Choekyi Nyima’s identity as the Panchen Lama is protected from State interference within the scope of Article 8.

***The State Party has violated the right of the Panchen Lama to freedom of thought, conscience and religion.(Article 14 and Article 30)***

This is a non-derogable right, established in not only Articles 14 and 30 of the Convention, but also in the UDHR and the ICCPR. State parties are constrained in their ability to place limitation on these rights, and are only permitted to do so for reasons of public order and safety. Under the circumstances surrounding the Panchen Lama’s disappearance and denial of his religious identity by the atheist Chinese authorities, it is unlikely that the Panchen Lama is permitted to practice his religion.

***The Panchen Lama’s abduction and its circumstances constitute a prima facie unlawful interference with his privacy, family and home or correspondence, and an unlawful attack on his honor and reputation. (Article 16)***

As the perpetrator of these violations, the State Party has also failed to provide the required protection of the law against such interferences. A similar right is established in Article 12 of the UDHR and Article 17 of the ICCPR. According to the UN Human Rights Committee, interference can only take place in ways defined in law, which must not be arbitrary, must comply with the provisions, aims, and objectives of the ICCPR and be reasonable in the particular circumstances.<sup>14</sup> The abduction and detention of the Panchen Lama was not reasonable and is contrary to the spirit and the letter of the ICCPR and other human rights treaties, including the Convention on the Rights of the Child.

***Given the political motivation for the Panchen Lama’s abduction and his continued incommunicado detention, it is unlikely that the State Party is fulfilling its obligation to ensure that Gedhun Choekyi Nyima has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his social, spiritual and moral well-being and physical and mental health. (Article 17)***

Article 17 is focused on the role of the mass media in relation to children’s rights, and includes a general obligation of State Party to ensure that the child has access to information and material from diverse sources – including information aimed at promoting spiritual well-being. This obligation is closely linked to the child’s right to freedom of expression under Article 13 and to maximum development Article 6. In general, access to information is closely monitored and curtailed in China, and the most accessible forms of mass media are state-controlled. Since he is in the custody of the State, it is likely that information flows to the Panchen Lama are tightly controlled by the Chinese authorities responsible for his care.

***China has not only failed in its obligation to take appropriate measures to protect the Panchen Lama from exploitation (Articles 19 and 36), but has itself engaged in exploitation of this child.***

The State Party has used the religious identity of this child as a means to drive a wedge into Tibetan society and to further its own political agenda at the expense of the child’s identity and best interests.

***By forcing the Panchen Lama to live outside his community and requiring him to attend schools outside Tibet where Tibetan culture and values are neither taught nor honored, the State Party has breached its obligation to direct his education to the development of his own cultural identity and values.(Article 29)***

The Convention explicitly preserves the rights of individuals and groups to arrange their own forms of education. China's educational system does not have a curriculum that accurately reflects Tibetan history or genuinely promotes the development of Tibetan as a medium of instruction. It is problematic that the Panchen Lama is being educated under an extremely stressful environment where he is closed off from the outside world and his own community. He has limited opportunities to learn about the Tibetan cultural identity and values, and his role within that community. Article 29 also states that State Party shall ensure that the educational system prepares the child for responsible life in a free society. The continued confinement of this child and his family is contrary to this principle.

***The State Party has denied the Panchen Lama's right to enjoy his own culture, to profess and practice his own religion, to use his own language and to use his own religion in his community. (Article 30)***

This article explicitly protects the rights of children of ethnic and religious minorities to practice their faith and culture without undue interference from the State. Through interference in the Panchen Lama's religious identity and removal of the child from his community, the State Party has blatantly violated this article.

***The State Party has not only failed to prevent the abduction of the Panchen Lama but is actually the perpetrator of this abduction (Article 35). The abduction and long-term incommunicado detention of the Panchen Lama committed by the State Party constitutes an unlawful and arbitrary deprivation of the child's liberty and an unlawful detention. (Article 37)***

Although the Panchen Lama has been deprived of his liberty, he was never given access to legal and other appropriate assistance, or the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action, as required by the Convention. This right is protected also by Article 9(1) of the ICCPR which states that no one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law. There is no provision in Chinese law that could justify or authorize Chinese government authorities to act against the Panchen Lama or his family in the manner presented to the international community during the last 10 years.

## **Part II**

### **Section A: Measures of Implementation**

As specified in Sections B–H (below), China has failed to comply with the fundamental provisions of Article 4 of the Convention, which requires “State Parties to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention....”

Where the rights guaranteed under the Convention are reflected in Chinese law, these rights are not uniformly protected. In the case of Tibetan children, the development of the “rule of law” that some parts of China are beginning to experience has not yet seriously begun in Tibetan areas. Tibetan children remain vulnerable to the arbitrary authority of the state, and lack genuine legal or administrative recourse to enforce the rights provided in this treaty. China has not made efforts to fulfill its obligations under Article 42, to make the provisions and principles of the Convention widely known to Tibetan children or adults either by public campaign or thorough curricula at schools. According to the report of the Special Rapporteur on the Right to Education, China has not provided relevant training to officials regarding this or any other human rights convention.<sup>15</sup> In light of this, it is extremely unlikely that Tibetan language materials regarding this convention have been produced or widely distributed among Tibetan children. China has also failed to meet the requirement in article 44(6), to make its initial and other reports under the Convention widely known. There is no evidence that this report has been translated into Tibetan or distributed to Tibetan children in Tibet, despite the fact that the CRC specifically called on the Chinese government to translate materials related to the Convention into major national minority languages.<sup>16</sup>

### **Section B: Definition of the Child**

The definition of the child is given in Article 1 of the Convention: a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Both the ICCPR and the ICESCR contain provisions that apply specifically to the child, children, young persons or juvenile persons - Articles 10(2)(b)(3), 14(1)(4), and 24 of the ICCPR, and Article 10(3) of the ICESCR. Despite the fact that China formally recognizes this principle, Chinese government authorities may not treat Tibetan children differently from adults or with respect to the fundamental rights protected by the Convention, as will be especially described in sections concerning torture and arbitrary detention.

### **Section C: Guiding Principles**

There are four guiding principles that inform the specific rights found in the Convention: the best interests of the child (Article 3(1)); promotion of the survival and development of the child (Article 6); the principle of participation (Article 12); and non-discrimination (Article 2). While China’s implementation of the Convention on Tibetan children does not appear to be consistent with any of these guiding principles, this section will focus on the principle of non-discrimination, as the failure to incorporate this principle has the most articulated impact on Tibetan children.



### **C.1) Racial Discrimination Against Tibetan Children**

Despite China's obligation to non-discrimination of all kinds under Article 2 of the CRC, Chinese policies and practices interfere in many aspects of the lives of Tibetan children, and are reinforcing racial prejudices among Chinese population. In particular, education, employment, and health care are areas where discriminatory policies and/or practices have a particular impact on Tibetan children.

**C.1.1) Education:** Education policy in Tibet presents clear evidence that China is in violation of the principles of equity and non-discrimination. The rate of illiteracy or semi-literacy for Tibetans ages six and up is an estimated 49.1 percent, compared with 13.7 percent nationwide.<sup>17</sup>

Tibetan children face substantial difficulties in accessing educational opportunities, particularly "mother tongue" instruction. The increasing use of Chinese language in the educational system creates an implicit discrimination against Tibetans within the larger society; upward mobility depends on their fluency in Chinese, but students are proven to perform better when they receive instruction in their mother tongue.<sup>18</sup> While Tibetan language instruction is available, mostly in primary schools in monolingual areas, Tibetan language is only offered above the primary level as an elective language course requiring students to switch to a medium of instruction with which they are uncomfortable.<sup>19</sup> As they struggle in these classes and fall behind their Chinese counterparts, their performance reinforces negative stereotypes among both students and teachers that Tibetans are backwards and cannot be educated, and demoralizes the Tibetan students. Consequently, dropout rates for Tibetans enrolled in secondary education remain high.<sup>20</sup> Unfortunately, China's policy response has been to increase the use of Chinese-medium instruction at ever lower levels.<sup>21</sup>

Tibetan children face other formal and informal barriers to education, including the lack of schools in Tibetan areas and the often prohibitive cost of attending school where one exists. Chinese law provides for free, compulsory education up to grade nine. However, large numbers of Tibetan children, particularly children who live in rural and nomadic areas, do not have access to a school. There are fewer schools per capita in Tibet than anywhere else in China.<sup>22</sup> Where schools exist, Tibetan children have to pay between 10 yuan and 300 yuan per month to attend, and most pay between 100 and 200 yuan.<sup>23</sup> Average per capita income for a Tibetan family was only between 1200 and 1800 yuan in 1999.<sup>24</sup> Tibetan children are often required to buy supplies and services that Chinese pupils are provided free of charge.<sup>25</sup> The Chinese government directs most of the financial assistance for Tibetan schools to its urban centers, and tertiary education in urban areas is dramatically better funded than primary and secondary education, a clear mismatch of needs and resources.<sup>26</sup>

Where Tibetan children have access to schools, they continue to face discriminatory practices. Chinese children often have their studies in classrooms that are of much better quality, and school supplies without charge. In some cases, Tibetan children are forced to perform labor and other tasks from which the Chinese children are exempt, such as cleaning toilets, sweeping, cooking for the teacher or being sent on "work errands."<sup>27</sup>

Schools are used as a mechanism for spreading the official Marxist ideology of atheism among Tibetans. The government provides teachers in Tibetan schools with manuals that explicitly instruct them on how to indoctrinate students toward atheism and away from religious belief and "superstitions."<sup>28</sup> In some cases, the students were shamed in front of the whole school for engaging in "superstitious" activities.<sup>29</sup>

In some cases Tibetan students who show promise, are removed from their communities and sent to special boarding schools in Beijing or Chengdu.<sup>30</sup> This increases the chances of cultural dislocation and assimilation for the individuals, while simultaneously robbing local Tibetan communities of their brightest young people.

***C.1.2) Discriminatory Employment Policies against Tibetans:*** Well-being and welfare of Tibetan children are also affected by discriminatory employment policies and practices applied to their families. Although China adopted an official policy against racial discrimination in employment by passing the 1994 Labour Act of the People's Republic of China, there is ample evidence that China has failed to fulfill its obligations to alleviate the problem of racial discrimination against Tibetans in employment.

Citing the necessity of developing and “opening up” its economically backwards western regions, the Chinese government encourages the in-migration of non-Tibetans to Tibetan areas through both official and informal means. The Chinese government creates incentives that appeal to potential Chinese settlers, such as higher salaries, flexible residence permits, free education for their children, selective tax exemption, improved pension opportunities, and favorable investment climates. These incentives are not provided to Tibetans.<sup>31</sup> By encouraging Chinese population transfer into Tibet and guaranteeing Chinese workers higher pay and positions of authority than they would enjoy in their home province, China has contributed to the marginalization of the Tibetan people in the employment sector. Chinese settlers now control major areas of business and erect formal and informal obstacles to Tibetans who wish to enter those areas to either gain employment or open up businesses of their own. For example, 40 percent of Tibetans in the Barkhor area of Lhasa – the traditional center of Tibetan commerce and the heart of the Tibetan capital – were unemployed as of January 2000.<sup>32</sup> The difficulty of securing employment is exacerbated by the increasing number of businesses owned by Chinese settlers many of whom maintain racial prejudices against Tibetans caused by institutionalized Chinese propaganda begun in school. As of January 6, 1998, there were 1,433 Chinese shops compared with only 159 Tibetan shops in Chamdo, TAR.<sup>33</sup> In Powo Tramo, Nyingtri County, TAR, there were 315 Chinese shops and only nine Tibetan shops.<sup>34</sup> Similar inequalities can be found in towns and cities throughout Tibet. This discrepancy in business ownership exists primarily because it is easier for Chinese immigrants to acquire the requisite business permits and bank loans to open and operate a business. Outside a small minority of well connected, well educated Tibetan elite, most of whom are Communist Party cadre, Tibetans have access to only the least skilled and lowest paid employment opportunities.<sup>35</sup>

Among the policies that have the most discriminatory impacts are those that effect nomadic and semi-nomadic Tibetan families, which comprise approximately 40% of the Tibetan population. Chinese authorities have increased rural poverty among Tibetans by placing high taxes on the agricultural and animal husbandry products and then, after assessing the taxes, forcing Tibetan farmers to sell their harvest or animals directly to government agencies far below the market price to meet their tax burden. The government then sells the harvest or animal products at an inflated price. Access to non-farm income which could subsidize the pastoral lifestyle is limited due to both lack of investment by the Chinese government (compared to what has occurred in other rural areas)<sup>36</sup> and Tibetans' lack of marketable skills and Chinese language abilities. Consequently, rural Tibetan families are in a “poverty trap,” struggling to provide a decent living standard to their children. In most cases, the only option for rural Tibetans is to migrate to urban areas for all or part of the year seeking seasonal employment. Unfortunately, here they come into competition from ethnic Chinese migrants who are better skilled and speak Chinese.

**C.1.3) Healthcare:** Health indicators in Tibetan areas are routinely among the worst in China, and if the TAR were treated as a separate country, its Human Development Index (which measures health and education) would be ranked 148<sup>th</sup>, placing it between Yemen and Madagascar.<sup>37</sup> In 2000, the Chinese government asserted that all citizens enjoy "free medical services and a labour protection medical care system at public expense." In reality Chinese and Tibetans are charged for all types of medical services, but Tibetans are often charged discriminatorily high prices for certain types of medical assistance.<sup>38</sup> Tibetan refugees also report that hospitals in Tibet require Tibetans to pay exorbitantly high security deposits before entry to the hospital is allowed. Hospitals generally do not require such deposits from Chinese patients or Tibetans who work for the Chinese government. The amounts of these deposits are often so high as to prevent Tibetans from receiving medical assistance at all, even in the direst of situations. There are numerous reports by Tibetans that hospitals ask for between 1,500 and 5,000 yuan as a deposit before a doctor will see the patient. Even though these deposits are refundable, most Tibetans do not have enough money to gain initial access to the hospitals since the 1998 average, as net income for Tibetan farmers and herders is approximately 1,158 yuan. Admitted patients report discriminatory treatment, with the Chinese receiving priority access to the best facilities.<sup>39</sup> In addition to prohibitively expensive medical assistance, Tibetans are faced with extremely high costs for necessary medications.<sup>40</sup> Due to the lack of adequate medical supplies at all levels throughout China, Tibetans, particularly nomads, are given expired or incorrect medicine because the doctors know they are illiterate and unable to detect this malpractice.<sup>41</sup>

In addition to the prohibitive expense of health care, many Tibetans face extreme difficulty in accessing an adequate medical facility. Most hospitals and health care centers are located in urban areas, far away from where most Tibetans live. In the nomadic and farming regions of northeastern Tibet, many families face acute medical and health problems. Health facilities are unlikely to exist in their immediate vicinity, and it may take a day's travel or so to reach the nearest town clinic, which is often poorly staffed and equipped. Maternal and infant morbidity rates in Tibet are among the worst in China and, possibly, the world.<sup>42</sup> When a Tibetan mother dies, her surviving children are three to ten times more likely to die within two years, generally are more likely to die young, and are less likely to attend school or complete their education.<sup>43</sup> Such a situation has a clear, negative impact on the healthy development of Tibetan children.

## **Section D: Civil Rights and Freedoms**

This Section focuses on China's violations of Tibetan children's right to freedom of religious belief, and the rights to freedom from torture or other cruel, inhuman or degrading treatment.

### ***D.1) Freedom of Religious Belief***

The right to freedom of religious belief is explicitly protected by Article 14 of the Convention. This right is similarly put forth by Article 27 of the ICCPR. The Human Rights Committee's General Comment on Article 27 of the ICCPR makes the following points: this right is conferred on individuals belonging to minority groups and is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant. The Human Rights Committee also declares that this is not a collective right of self-determination and does not prejudice the sovereignty and territorial integrity of a State Party.

The State Party is obliged to take positive measures both in terms of its own actions and protective actions against the actions of others, in order to protect the minority group's cultural identity, language or religion. China has failed to do so. State-sponsored persecution of religion

and religious education, criminalization of reverence for the Dalai Lama, direct management of monastic institutions by atheist Communist Party officials, interference in the process of identifying and training reincarnate religious leaders, and other strict controls over religious practice in Tibet are described in this Section. China has not made meaningful progress in implementing the CRC's recommendations related to the application of Article 14 of the Convention as presented during its session concerning China's Initial Report:

*The Committee remains concerned about the actual implementation of the civil rights and freedoms of children. The Committee wishes to emphasize that the implementation of the Child's right to freedom of thought, conscience and religion should be ensured in the light of the holistic approach of the Convention and that limitations on the exercise of this right can only be placed in conformity with paragraph 3 of article 14 of the Convention.*<sup>44</sup>

In the case of Tibet, the Committee expressed specific concerns:

*"In the framework of the exercise of the right to freedom of religion by children belonging to minorities, in the light of article 30 of the Convention, the Committee expresses its deep concern in connection with violations of human rights of the Tibetan religious minority. State intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population... The Committee recommends that the State Party seek a constructive response to these concerns."*<sup>45</sup>

The right of Tibetan children to freedom from torture or other cruel, inhuman or degrading treatment is protected by Article 37 (a) of the Covenant. The absolute prohibition on torture and inhumane treatment is also provided for in Article 5 of the UDHR and Article 7 of the ICCPR.

#### ***D.2) Persecution of Religion in Tibet***

Religious policy is shaped by the ideology of the ruling Communist Party and its political imperative of maintaining power. Although China's Constitution states that citizens of China have "freedom of religious belief," the Communist Party defines what is 'acceptable' religious behavior, and religion is only tolerated as long as it does not interfere with or challenge the legitimacy and status of the Party. The measures used to implement State religious policy have been particularly harsh in Tibet because of the close link between the Tibetan Buddhist religion and the distinct Tibetan identity. Tibetan Buddhism continues to be an integral element of Tibetan identity, and is, therefore, perceived as a threat to the authority of the State and unity of China. Hence issues relating to religion are perceived as being highly relevant to political control and the suppression of 'separatism' in Tibet. Both are factors underpinning China's strategic concerns and development aims in Tibetan areas of China.

Since the founding of the People's Republic of China, there has been an article in the Constitution that states that citizens shall have "freedom of religious belief ." According to the CCP's Marxist atheist ideology, however, religion is a superstitious and unscientific product of natural and social oppression that has been exploited and used in backward societies as a tool by ruling classes to suppress the people and preserve social inequality.<sup>46</sup> Practical measures to handle religion have varied from some degree of tolerance to persecution of practitioners.

Tibetan Buddhism is a fundamental and integral element of Tibetan identity and plays a central role in Tibetan society, defining morality and engaging individuals in popular religious practices as well as in profound meditation practices and philosophical erudition. As a result, the clash between Tibet and the modern Chinese state has been acute in the sphere of religion.

China has been confounded by its failure to draw Tibetans away from their religious beliefs, and particularly their loyalty to the Dalai Lama. The Chinese authorities' efforts to exert control over religious expression have been extended to direct control over monastic influence in general. The CCP has publicly ordered a halt to the further spread of religion in Tibet. The methods and the degree of control and persecution vary widely throughout Tibetan areas. This policy dramatically affects all children in those regions who are prevented to exercise the right of religious freedom. There is an explicit prohibition on religious education for children under the age of 18, and an active political campaign by PRC authorities to wipe out religion through indoctrination of the younger generations.<sup>47</sup>

The Third Work Forum on policy in Tibet held in Beijing in 1994 severely curtailed the bounds of what was legally accepted as religious activity. The tightening of restrictions included a crackdown on monasteries and nunneries through a combination of propaganda, re-education campaigns, administrative regulation, punishment and implementation of increasingly sophisticated security measures. The following steps were mandated to be taken in each religious institution:

- replacing the traditional role of abbot with a Democratic Management Committee and appointing only "patriotic monks" to the Committee;
- enforcing a ban on the construction of any religious buildings except with official permission;
- enforcing limits on the numbers of monks or nuns allowed in each institution and setting age limits for entry into monastic institutions;
- obliging each monk and nun to give declarations of their absolute support for the leadership of the Communist Party and integrity of the motherland; and
- requiring monks and nuns to declare opposition to the Dalai Lama and his policies.

Enforcement of these measures was strengthened with the launch of the Patriotic Education Campaign in Tibet two years later, with work teams of Chinese officials visiting even the most remote monasteries and nunneries to oversee political education and the implementation of religious policies.

The extension of restrictions on religious practices to lay Buddhists has varied widely from area to area, but generally appears to have been most strict in major urban centers such as Lhasa and Shigatse in the TAR. During a crackdown on religious practice in Lhasa in 2000, religious scroll paintings (Tib: *thang ka*) and altars were banned from private homes. Homes were checked for photos of the Dalai Lama, and school children in Lhasa were told that they were not allowed to visit monasteries or temples and that they should not wear Buddhist blessing and protection cords (Tib: *srung mdud*) to school. In some instances students had to pay fines if they were known to have visited monasteries. A telephone hotline was set up by the authorities for people to inform on others who were involved in religious practices, and teachers were told to step up education on atheism.<sup>48</sup>

Chinese leaders including the former President and Party Secretary Jiang Zemin have stated that Tibetan culture, which is inseparable from religion in Tibetan society, must be supportive of Chinese ideological and developmental objectives.<sup>49</sup> Religion was identified as a major 'obstacle to development' and to the 'stability of the ethnic regions' in a strategy paper on the development of the western regions, including Tibetan areas, written by Li Dezhu, the Minister of the State Ethnic Affairs Commission.<sup>50</sup> This article, published in June 2000, stated that the religious element in Tibetan society, as a key factor in Tibetans' self-identity and culture, could be a serious impediment to the implementation of China's drive to intensify development in the

western regions. While the Party sees its policies as ‘civilizing’ Tibetan areas, Tibetans themselves support development that is genuinely beneficial to their depressed economic situation, but fear that development driven by Beijing’s interests will result in further degradation of their interests and identity.

### ***D.3) Religious Education in Tibet***

Tibetan Buddhism places great importance on the transmission of Buddhism through teaching or transmission lineages (Tib: *brgyud*). Each teaching lineage is believed to be an unbroken chain of spiritual transmission directly from the Buddha, passed on from teacher to student through to the present day. As such, a teacher’s lineage is what guarantees the authenticity of the teachings. The Chinese government restricts admission to monasteries to individuals who are age 18 or over. Moreover, the official permissions required to enter a monastery are such that the entire family and the monastery must avow to the political reliability of the person applying for admission. The age limitations imposed on admission into monasteries have a negative impact on the time and experience required to pass on sufficient knowledge to sustain the importance of transmission.

Prior to Chinese rule in Tibet, monasteries served as Tibet’s schools and universities. Literary Tibetan was developed and preserved inside these institutions. The restrictions placed on formal religious education pose a direct threat to the survival of traditional Tibetan language.<sup>51</sup> Historically, monasteries are the centers for the preservation and promotion of Tibetan language and culture for the Tibetan nationality; therefore, obstacles to the normal operation and development of these monasteries threaten the development and progress of Tibetan language and culture.<sup>52</sup>

### ***D.4) Reincarnation and an Atheist State***

In Buddhism, as in many Indian philosophical schools of thought, reincarnation is a core belief. In Tibet, the Buddhist doctrine of rebirth took on a distinctive form in recognizing chains of successive rebirths of particular lamas, often referred to as “reincarnate” lamas. Tibetans refer to reincarnate and other senior lamas with the respectful title of *Rinpoche* or “precious one” or sometimes as *tulku* (Tib: *sprul sku*), literally rendered as “manifestation body.” The identification of reincarnate lamas in the Tibetan tradition is carried out according to a range of esoteric rituals and procedures conducted by monks and religious leaders. The Chinese government’s interference in this selection process has caused deep-seated resentment among Tibetans.

In addition to the dispute over the Panchen Lama (see Part 1 of this report), China has established an official policy of involving the State in the selection of reincarnate Tibetan lamas. China’s attempt to assert control over the recognition of Tibetan reincarnate lamas is the most obvious expression of the Party’s attempts to control and utilize religion, in line with the State’s ‘policy of religious freedom.’ Although it is an atheist state, the CCP asserts that reincarnate lamas are an ‘internal affair’ of the State and shall be identified by administrative means controlled by the government. China attaches particular importance to the Panchen Lama issue because of its link to China’s assertion of sovereignty over Tibet and because it sets a precedent for the reincarnation of the Dalai Lama, but this is by no means the only reincarnation where the Chinese government has inserted itself as the final authority.

In 1999, a seven-year-old reincarnate lama in Kardze Tibetan Autonomous Prefecture of Sichuan Province was identified by traditional means; in this case, by the visions of senior monks in the area. Permission was sought from and granted by the local Communist Party leaders and Public Security Bureau for the young boy to be enthroned, as Chinese law dictates. The young lama took his traditional position at the village temple a half-day away from his home. Less than a year after

the enthronement, a Tibetan who had lived in exile returned with a letter from the Private Office of His Holiness the Dalai Lama in Dharamsala, India, approving the enthronement. After local police discovered the letter, the young reincarnate lama was stripped of his official Chinese title as a “Living Buddha” and his right to oversee the monastery, and he was forced to return to his home.<sup>53</sup>

In another case, on 31 December 1999, the Chinese news organ, the *Tibet Daily*, reported on a press conference held by government officials in Lhasa to announce that the search for the 7<sup>th</sup> Reting Rinpoche had been completed according to “relevant central and TAR regulations, the historical system and religious regulations.” A two-year-old Tibetan boy, Sonam Phuntsok, had been named as the 7<sup>th</sup> Reting Rinpoche. To date, the Dalai Lama has not approved the Chinese selection of Sonam Phuntsok as the 7<sup>th</sup> Reting Rinpoche. The 5<sup>th</sup> Reting Rinpoche played a central role in identifying the current Dalai Lama and served as Regent to the Dalai Lama during the period of his minority.<sup>54</sup> Traditionally, recognition of the Reting Rinpoche is carried out by the Dalai Lama. According to a source familiar with the process, “The selection of a reincarnation cannot be an administrative decision; it is a question of people’s beliefs.”

On 13 June 1992, seven-year-old Ugyen Trinley Dorje was taken to Lhasa and, two weeks later, Chinese authorities pronounced him to be the 17<sup>th</sup> reincarnation of the Karmapa, a leading figure in the Kargyu tradition of Tibetan Buddhism. Due to the skillful management of the Kargyu religious leaders involved in his selection, Ugyen Trinley was also recognized as the Karmapa by the Dalai Lama. A few days later the 17<sup>th</sup> Karmapa took his monastic ordination at Tsurphu monastery. For years, the Karmapa was put forward publicly by Chinese authorities as a “patriotic lama” loyal to the Chinese State. Behind the scenes, however, the Karmapa was frustrated by these officials’ repeated denials of his requests that he be given access to important teachers who lived abroad. In 1999, his frustration came to a head and he and his close advisers staged a risky escape into exile in India. While the Chinese government continues to maintain that the Karmapa is in India simply to “collect some religious artifacts”<sup>55</sup>, to the rest of the world his flight has become a potent symbol of the lack of religious freedom in Tibet. When asked why he fled, the Karmapa said, “...I was not given the opportunity to fulfill my duty as a lineage holder by the authorities. I did not have freedom. I tried for many years to secure invitations so my teachers who reside outside of Tibet could come and give Buddhist teachings to me. The authorities did not allow this. Thus my formal religious education was failing. Therefore, I was not able to receive the initiations and teachings I needed. So, I decided to leave Tibet. The supportive environment like religious education systems, religious institutions, and certain forms of popular religious devotion is severely limited in Tibet.”<sup>56</sup>

Pawo Rinpoche, an eight-year old incarnate lama who was recognized by the 17th Karmapa, has been moved from his monastery to Lhasa, prevented from wearing monastic robes and made to attend a normal primary school since the Karmapa's escape into exile. The young Rinpoche, who is one of the most important Karma Kagyu lamas remaining in Tibet and whose recognition was endorsed by the Chinese authorities, has been kept under close surveillance since his removal to Lhasa and is not permitted to undertake religious studies. Two security personnel accompany him to his primary school each day and visits to his residence, where he is living with his mother, are restricted. Several Tibetan monks who are now in exile and who knew Pawo Rinpoche said that the removal of the boy from his monastery is in reprisal for the escape of the Karmapa into exile in January 2000.<sup>57</sup>

Another teenage reincarnate lama who arrived in exile several years ago gave the following account of his studies at a special school for ‘tulkus’ in Tibet, attached to one of the main monasteries in northern Tibet:

*In order to be recognized as a tulku, you have to request the approval of the county (Ch: xian), prefecture and provincial religious departments. We waited to have my recognition as tulku approved by the government for about two years. In the case of the Chinese you have to make connections in whatever you do. We had to present them with butter, yak meat, sheep meat, and so on. We spent a lot of money. If you don't do this you don't get permission to be recognized as the tulku. If the government gives permission [for the recognition], then you go to the lama who will then do the recognition. The government did not ratify some of the older tulkus. It is important for the government and for your future to have the tulku 'certificate' [authorization].*

*The main subject was the Chinese Constitution. The teacher of politics is a layperson. But if you are concerned about religious education this school greatly harms your religious education, simply because we don't have time to look at the work our religious teachers give us. We go to school for about half of the year. We have political education at the monastery as well as the school. For instance, at meetings officials will talk about Falun Gong being very bad. Sometimes they will say that all religion is useless. Some of the officials show respect to the tulkus when they visit, and some do not.<sup>58</sup>*

#### **D.5) Patriotic Education**

The first 'Patriotic Education' campaign was launched in China, initially in schools, in September 1994. It involved the daily raising of the Chinese flag and the singing of the national anthem, as well as a study of approved patriotic books and films. When the campaign was launched in the TAR in May 1996, the focus was on religion, and monks and nuns were its main targets. According to information given to Western governments by Chinese officials, Patriotic Education as a major campaign was concluded in 2000. Even so, work teams remain in many monasteries and nunneries in Tibetan areas, and routine forms of political education continue at monasteries, nunneries, schools and workplaces throughout Tibet. The scale and intensity of Patriotic Education may have diminished in recent years, but policies to promote China's religious policies and its position on the Dalai Lama and Panchen Lama are still in place, and efforts to persuade Tibetans to be patriotic to China and renounce the Dalai Lama are ongoing.<sup>59</sup> Although the level of enforcement has varied, reports and official documents underline the similarities in policy and implementation of Patriotic Education throughout all Tibetan areas.

The main aim of the patriotic education campaign in Tibetan areas, which reached even the most remote monasteries and nunneries, is to tighten Party control over religion and undermine the influence of the Dalai Lama in society and religious institutions. Patriotic education is clearly intended to affect the way religion is perceived by the younger generation. According to a senior lama, Tibetan children are often told that the *dharma* (Tibetan Buddhist teachings) is superstition and practicing religion is unpatriotic.<sup>60</sup> Lhasa City Municipal Government regulations forbid monastics even to speak to children about religion.<sup>61</sup> According to the regulations, because religion may not be used to impede the study of state administration, law and culture, monasteries may not run their own institutes or classes for the study of scripture and "implanting religious ideas in the heads of minors younger than 16 must be stringently prevented...."<sup>62</sup>

As part of a campaign by the authorities in middle schools and some primary schools, Tibetan children in many areas have been discouraged from expressing religious faith and practicing devotional activities. According to reports received by the Tibet Information Network, children between seven and thirteen years of age, in schools targeted by the patriotic education campaign,



have been told that Tibetan Buddhist practice is ‘backward behavior’ and an obstacle to progress.<sup>63</sup>

With the launch of the patriotic education campaign in the TAR in May 1996, work teams began to prevent children from joining a monastery or nunnery until they are 18. Traditionally, monks enter monasteries as novices at a very young age.<sup>64</sup> According to a monk in his twenties from the eastern Tibetan area of Kham, Patriotic Education in both his home monastery in Kham and at Drepung monastery in Lhasa has caused a lack of qualified teachers, and this highly politicized environment and intensity of political education are affecting morale and disrupting religious studies.<sup>65</sup>

*They also told us that if Buddhism spreads it will not be good for the economy and social status of people in China. Their reasoning was that if religion spreads, there will be more monks and fewer men to work for the good of all of China. In Drepung, we spent about 14 hours a week in political education classes that cover a wide range of topics. We sit there and they lecture on and on. Of course there are the usual lectures about not protesting, not to celebrate anniversaries of the Dalai Lama, telling us to speak ill of His Holiness. There is also a lot of history and politics. We have to act as though we are paying attention. If we do not, the committee members hit us with a stick.*

In November 1997, the patriotic education campaign was extended to the lay community in Tibetan areas. Jampa Kelden, head of Nationalities and Religious Affairs Commission in the TAR, announced that steps should be taken to “spread patriotic education in the agricultural communities, towns, cities, government organs and schools.”<sup>66</sup> Further restrictions on Tibetan cadres were seen in 2000 when they were told to withdraw their children from Tibetan schools in India or risk losing their jobs.<sup>67</sup> During the same period, government workers were told that they must withdraw their children from monasteries and nunneries in Lhasa.

During a TAR Party Committee on 15 November 1998, all Party members and officials were encouraged to make ‘bold propaganda’ regarding materialism and atheism so people of the region would “cast off the negative influence of religion which should be also adapted to socialism.”<sup>68</sup> They were also told that only if they propagate Marxist materialism and atheism energetically, can people free themselves from the fetter of religious negative ideology, effectively get rid of disorder in society and the religious field and masses.<sup>69</sup>

#### ***D.6) Torture and Other Illtreatment***

Despite having ratified the Convention against Torture (CAT), China continues to torture prisoners of conscience in Tibet and Tibetan juvenile prisoners are not exempted from this ill-treatment in prisons. Young prisoners and adults alike are subjected to beatings, electric shocks, solitary confinement and deprivation of sleep, food or drink as punishment. Tibetans arrested for political offenses continue to report torture on a scale so systematic as to include virtually every political prisoner – man, woman or child.<sup>70</sup> Testimonies from Tibetan refugee children reporting detention and torture for “political” offenses such as attempting to leave Tibet without permission, or shouting “Free Tibet” in public.<sup>71</sup>

Gelek Jinpa, a 14 year-old monk of Ganden Monastery, was beaten six times by police during his interrogation, following the crackdown on Ganden Monastery in May 1996. This incident of police brutality against a minor occurred even before he was taken to prison. Gelek Jinpa was detained in Gutsa Prison for nearly 4 months without trial after which he was expelled from his monastery.<sup>72</sup>

Gyaltzen Pelsang who escaped into exile and arrived in India on December 18, 1996, walks with a prominent limp. She is living proof of Chinese atrocities against juvenile prisoners. While in Gutsa Detention Centre, Gyaltzen Pelsang, then 13 years old, was made to stand for hours on a cold floor. This, in combination with the beatings she endured during her interrogation, has caused a permanent limp in her right leg.<sup>73</sup>

At the time of her arrest, Sherab Ngawang was only 12 years old. Sherab Ngawang was a novice nun of Michungri Nunnery, on the outskirts of Lhasa, when she participated in a demonstration in 1992 with four other nuns. In spite of her age, she was sentenced to three years of administrative detention as a prisoner of conscience. She was repeatedly tortured and ill-treated while in detention at Trisam Re-education through Labour Camp. Sherab Ngawang was released in February 1995 after completing her term of detention, but died three months later in a police hospital in Lhasa.<sup>74</sup>

Sonam Tsering, a 13 year-old boy from Chamdo, reached Kathmandu in August 1996. He had been detained for four months at the age of 11 for taking part in a pro-independence demonstration in 1994. He was forced to confess that he had stolen something. He was subsequently beaten for two days and put in handcuffs for a week. During his detention he was made to clean toilets and collect garbage.<sup>75</sup>

The definition of torture in Chinese law continues to fall far short of the definition contained in Article 1 of the Convention. Torture is rarely prosecuted in China. While providing impunity for officials who use physical violence, this reality also effectively encourages law enforcement officials to rely on ill-treatment, rather than on proper investigative techniques, to break cases. China's revised Criminal Procedure Law (CPL), along with the revised Criminal Law (CL), has done little to prevent torture. The many persons engaged in law enforcement work who are not categorized as officials are immune from China's legal provisions prohibiting torture. The use of inmates to torture and ill-treat other inmates remains endemic. Moreover, evidence obtained by torture is admissible at trial. While the CL and the CPL prohibit the extraction of confessions through torture, the lack of an exclusionary rule barring the admission of evidence obtained through illegal means renders these provisions mere empty words.<sup>76</sup>

Ngawang Sangdrol, a nun in her mid-twenties, was released in October 2002 and allowed to travel to the US for medical treatment after 11 years of imprisonment. She was only 13 when she was first detained for shouting independence slogans in Lhasa. Her age did not prevent her from being tortured by Chinese interrogators who often used iron pipes or electric wires to beat her. She was detained again two years later and sentenced to 11 years in prison. According to Sangdrol, if she or her fellow inmates did not meet the work targets set by prison officials, they were beaten or their food was withheld. They were also forced to be in cells with huge rats that bit them at night. She describes a "worst period" in prison when in May 1998 prison officials organized a ceremony to raise the Communist Party flag:

*...As all the prisoners assembled, two criminal inmates began shouting freedom slogans and chanting 'Long live the Dalai Lama!' All the monks and nuns joined in. There was immediate chaos. Soldiers and armed police started grabbing prisoners and dragging them away and beating them....Prisoners at the ceremony started chanting freedom slogans, and we joined in, shouting from our cells through the bars, I remember shouting, "Don't raise Chinese flags on Tibetan land!" Prison guards started shooting at the prisoners. We could see prisoners who were shot, lying on the ground bleeding and shaking. Guards rushed into our cells and grabbed us. In the courtyard, a few of us were thrown*

*into the middle of the screaming crowd. The police were beating us savagely with electric batons and rifle butts, and there was so much blood everywhere. I don't know how long the beating lasted, later I heard it went on for two or three hours. At one point several guards were kicking me in the head and beating my body with batons and I fell unconscious. Later, I heard that another nun, Phuntsok Peyang, had thrown herself on top of me to protect me from the beating, thinking that I would be killed. She was then beaten badly herself. Phuntsok probably saved my life. Afterwards we were all confined in tiny solitary cells and at night the police would take various nuns, one by one, to interrogate them. Often they would have to be dragged back to their cells unconscious following torture. Five nuns, all in their twenties, who had all been imprisoned for peaceful protests against the Chinese, died a few weeks later. The authorities said it was suicide, but I believe they died due to torture. I heard that their bodies and faces were so swollen and bruised that people could hardly identify who they were. There has been so much sadness. One of my friends, a nun, who was in prison has lost her mind, another is paralyzed from the waist down after beatings. Three more nuns who were friends of mine died after torture...'<sup>77</sup>*

On November 20, 1998, 15 year-old Yeshi Ngodnup died when local Chinese security police began firing indiscriminately at a group of 47 Tibetan refugees who were trying to escape into Nepal. Yeshi Ngodnup was shot in the back and the bullet penetrated his abdomen. During the same incident, a second escapee, Sonam Tri, was shot in the left knee. Both Yeshi Ngodnup and Sonam Tri were taken to a Chinese hospital. Yeshi Ngodnup died the following day. On January 23, 1999, his family traveled from Lhasa and the body was cremated in Saga County. They were part of a large group of children all fleeing to India in order to obtain an undistorted Tibetan education.<sup>78</sup>

Five uniformed policemen (three Chinese and two Tibetans) raped two Tibetan girls, both in their late teens, after they were caught trying to escape across the border into Nepal. They were arrested in the Tibetan border town of Burang at a guesthouse in late 1998 with three other girls. One of the girls, a 17-year old from Lhasa, was beaten with an electric baton and raped while she was unconscious. The two Tibetan girls escaped into exile with three other Tibetan women whom they had met during their journey. All five were taken to an empty building where two of them were tied to a chair, gagged and forced to witness the rape of two others. The fifth girl was taken upstairs and was also repeatedly raped. The next morning, the police agreed to take the 17-year old and one of her friends who had witnessed the assault to a hospital. They remained in the hospital for three days, and managed to escape on the fourth day. The two girls reached Kathmandu on December 19, 1998. The whereabouts of the other girls are unknown. It is feared that they were transferred to a detention centre.<sup>79</sup>

## **Section E: Family Environment and Alternative Care**

This Section emphasizes the PRC's violations of those provisions of the Convention which acknowledge the primary responsibility of Tibetans parents and communities for upbringing and development of the child, specifically Article 9, which guarantees a child and his parents the right to enter or leave a State Party for the purpose of family reunification, and Article 18. China violates these rights by unlawful punishments, threats or imprisonment of those who seek to cross the border to reunify with their families and communities. Article 13 of the UDHR declares that everyone has the right to leave any country, including his own, and to return to his country.

China governs Tibet through a political and economic system that devalues Tibetan religion, culture and language.<sup>80</sup> Therefore hundreds of Tibetan children seek to flee the PRC each year for exile communities in India and Nepal. More than one third of the asylum seekers who escape into exile from Tibet every year are under the age of 18.<sup>81</sup> A principal motivation for many young people — and the impetus for families sending their children alone into Nepal and India — is the lack of access to decent, affordable Tibetan language education in Tibet. Some critical concerns identified by refugees recently arrived from Tibet are the costs of attending school, their inaccessible locations, the poor educational facilities and low quality of teachers.<sup>82</sup>

In early April 2000, groups of students were returning home from schools in India to see their relatives in Tibet. The Chinese authorities arrested some of the students at the border town of Dram, and others in Lhasa. The Dram group was initially taken to the Nyari Prison in Shigatse, from where some of them were transferred to Lhasa. They were all arrested on suspicion of being involved in political activities, and some were charged with indulging in "dissident activities". The authorities claimed that any citizen associated with schools administered by the Tibetan exile government is in collusion with the "splittist Dalai Clique."<sup>83</sup>

In May 2003, Chinese officials in Kathmandu colluded with Nepalese officials to arrange for the *refoulement* of 18 Tibetan refugees in Nepalese custody, including 10 teenagers. During their return to Tibet, all 18 were subjected to maltreatment by the Chinese officials that escorted them. In three different detention centers in Tibet, the group was subjected to harsh interrogation and ill-treatment and most were later placed in a special detention center in Shigatse, TAR for refugees who are caught trying to escape Tibet, where they were held for periods ranging from six months to over a year. Former prisoners who later escaped to Nepal reported incidents in Shigatse prison where members of the group of 18 were shocked with electric batons, kicked in the genitals, and forced to stand outside in freezing temperatures with minimal clothing.<sup>84</sup> In the same group, there had originally been three young children, ages six and nine, that were released from Nepalese custody prior to the *refoulement*. The father of one of these children was among those *refouled*.<sup>85</sup>

## **Section F: Basic Health and Welfare**

This Section highlights the consequences of China's negligence of Tibetan children in the healthcare sector. While generally China fails to honor the non-discrimination principle established in Article 2 of the Convention (see Section C, above), the consequences of this failure involve other Articles protecting the physical and mental well-being of Tibetan children. First, it is the obligation of a State Party under Article 18 of the Convention to provide appropriate assistance to parents in the performance of their child-rearing responsibilities and to ensure that the development of institutions, facilities and services are for the care of children. More significantly, China as State Party to the Convention should recognize the right of the child to the enjoyment of the highest attainable standard of health and treatment facilities and ensure that no child is deprived of his or her right of access to such health care services.

All of the obstacles to medical care that Tibetans face, as described in Section C of this Report, have real effects on the population. High prices for medical care combined with extra costs for travel and services place significant burdens on an already economically strained population. The ability of Tibetan families to obtain quality healthcare often depends on their social and economic status.<sup>86</sup>

Statistics demonstrate that the infant mortality is higher in Tibet than in other areas in China. A 1998 Chinese Ministry of Health report shows that 63 out of every 100,000 pregnant Chinese

women die, 387 out of every 100,000 similarly situated Tibetan women die.<sup>87</sup> The health of Tibetan children continues to lag behind that of the Chinese. Chronic malnutrition is severely affecting their well-being both before and after birth. Malnutrition as a result of poverty and inadequate healthcare services throughout the country threatens the right of children to good health, threatens their long-term physical and mental development, and inhibits the ability of Tibetan children to learn.

In 1990, the Lhasa Health Bureau conducted a health and nutritional survey, and results indicated a large discrepancy in the height and weight of Tibetan children compared to Chinese children by the age of three to six months, in both urban and rural regions. The results indicated that, by World Health Organisation standards, the "weight-for-age" ratio of Tibetan children was "borderline unacceptable" overall and in certain counties "unacceptably low." The research also concluded that, "many children within the TAR are extremely short for their age, so short that 60% fall drastically below accepted international growth reference values. Data indicates that this shortness is a result of nutritional stunting -- chronic malnutrition during the first three years of life -- rather than a result of genetics or altitude, as previously assumed." <sup>88</sup>

The poor health of Tibetan children has lasting and far reaching effects. Unhealthy children have worse attendance records at school, and retain less when they are present. Adult economic productivity can be severely harmed by poor childhood health. Having to care for a sick or disabled child removes resources from productive uses that could improve the overall financial situation of the family. In rural families where all able-bodied family members are involved in agricultural or pastoral production, a sick or disabled child diminishes the productive capacity of the family and worsens their economic situation.

## **Section G: Education, Leisure and Culture Activities**

This section deals with China's actions and restrictions imposed on Tibetan children that violate Articles of the Convention concerned with education issues. Article 28 of the Convention establishes a framework of education based on equal opportunity. Article 29 of the Convention provides that a child's education be directed with respect for the child's development of its own cultural identity, language and values.

### ***G.1) Tibetan Language vs. TAR Regulations***

According to a report by the official New China News Agency (*Xinhua*), "Regulations on the Study, Use and Development of the Tibetan Language" approved on 22 March 2002 by the 15<sup>th</sup> session of the 7<sup>th</sup> People's Congress of the TAR were developed in order to "carry out China's strategy of developing its west and conserve local cultures."<sup>89</sup> However, while safeguards and promotional measures for the Tibetan language are included in the regulations, in the absence of measures that favour the use of Tibetan in practice, the use of the Chinese language, which is already dominant in business, commerce and administration, is likely to be enhanced. The new regulations replaced regulations that were issued in 1987. Those regulations set out procedures for implementing Tibetan language policy in education and public life, permitting the use of both Tibetan and Chinese, and contained stipulations that sought to ensure the gradual prevalence of the Tibetan language, moving upwards through the education system.<sup>90</sup>

The shift in emphasis of the 2002 regulations on permitting use of either Tibetan or Chinese – quoted by *Xinhua* as the "commonly used languages" – is a significant change. Under the new guidelines, during compulsory education, Tibetan and Chinese will be the basic educational languages (Article 6) and State organs should give employment priority to those who are proficient in the use of both Tibetan and Chinese (Article 10). This replaces the 1987

regulations' emphasis on positive discrimination toward the Tibetan language with a facially neutral but practically discriminatory permissive use of either the Tibetan or Chinese language.

It should be noted that neither the 1987 nor the 2002 Regulations provided significant protection for the Tibetan language. Practical measures arising from the 1987 Regulations prescription to ensure more widespread use of the Tibetan language were unevenly implemented and ultimately withdrawn. For example, a pilot project to extend the Tibetan language as the medium in secondary schooling was abandoned in 1996, and the commencement of Chinese classes in Tibetan schools was subsequently brought forward. Simultaneously, the TAR Guiding Committee on Spoken and Written Tibetan was disbanded.

### ***G.2) The National Autonomy Law and Education***

China has made significant revisions to its law on "national minorities" in order to bring it into line with new policies to accelerate economic development in the western regions of China, including Tibet. According to a *Xinhua* report, then-President Jiang Zemin signed an order to amend the 1984 Regional National Autonomy Law at the National People's Congress on 28 February 2001. The extensive amendments focus on the development of the autonomous regions according to the Party's political and economic priorities, and the further integration of these areas into the rest of China.

China conceded in its most recent report to the Committee on the Rights of the Child that almost one-third of the children in the TAR receive no education at all, whereas the figure for China as a whole is 1.5 percent. The enrollment rate in junior secondary school is 12.5 percent and in primary schools the rate is 67 percent, but is lower than 10 percent in some rural areas. In the new regulations, specific changes were made to the provisions on the education system and its funding in national minority areas. Article 37 now states (in part) that local governments of autonomous areas are to set up "public primary schools and secondary schools, mainly boarding schools and schools providing subsidies, in pastoral areas and underdeveloped, sparsely populated mountainous areas inhabited by minority nationalities, to guarantee that students can complete the compulsory stage of their education".<sup>91</sup> The preceding clause now requires autonomous area governments to spread nine-year compulsory education (previously, the law referred to 'compulsory primary' education). The cost is to be met by the local administration.

While increasing the number of years of required schooling, it is unlikely that local governments in impoverished Tibetan communities, many of which do not have the resources to provide early primary education, will be able to afford this new mandate, and increasing taxation to pay for it would be very unpopular and, in any event, unlikely to raise the necessary funds.

The law does provide that where the local administration is 'experiencing difficulties', the upper level administration 'should' provide subsidies. In addition, according to the new Article 71, the State 'shall increase' investment in education in national autonomous areas, though no parameters or other details for this are specified. The disbursement of the new funds that have come available has raised new concerns. In some areas where no or inadequate schools currently exist, the government has pledged to build new schools over the next ten years, meaning that an entire generation of children will remain uneducated. In other areas, higher level governments are funding school building projects without input from the local community, which leads to buildings that are poorly suited to local conditions because they are constructed from cheap or inappropriate materials. In other cases, schools are built but a lack of coordination of resources means that there are no teachers or materials for the schools and no funds for maintenance or operations.<sup>92</sup>

Further amendments to Article 37 have enabled the introduction of Chinese language classes at the first year and senior grades of primary school. These early introduction classes are intended to popularise *putonghua*, the common ‘national’ speech, and to popularise ‘standard Han characters.’ This requirement is new in the 2000 amendments. At the same time governments at all levels are obliged to provide financial support for minority language teaching materials and translating and editing publications.<sup>93</sup>

The changes that have now been made to the Law on Regional National Autonomy indicate that the system of regional national autonomy is no longer viewed as a means of defining the extent of delegation of powers and the protection of minority rights such as education in the minority’s language, but rather as a means of exercising Central government control and implementing centrally-defined policies in the outlying regions.

### ***G.3) Illiteracy among Tibetan Children***

The illiteracy rate in the TAR is 39.5 %.<sup>94</sup> The structure of the Chinese educational system is problematic for Tibetans.<sup>95</sup> Tibetan children are taught the national curriculum in the Tibetan language in primary school, but they must be literate in Chinese to access higher educational and economic opportunities. Beyond primary education, Tibetan language is typically an elective class, and all other subjects are taught in Mandarin Chinese. Tibetan children, lacking the Chinese language skills to understand their math and science classes in upper grades, often fall behind and lose interest in school. Their poor performance serves to reinforce Chinese stereotypes of Tibetans as backwards.

### ***G.4) Politicized Education***

The Chinese education system imposed on the children of so-called “ethnic nationalities” constrains the religious or linguistic identity of Tibetan children and places a strong emphasis on ideology.<sup>96</sup> In 2001, in response to an inquiry by the Special Rapporteur on Religious Intolerance, Chinese government authorities denied conducting a campaign to promote atheism in Tibet.<sup>97</sup> The facts on the ground are contrary to this assertion. For example on 15 November, 1998, one senior official in Tibet called for cadre to make “bold propaganda about Marxist atheism and insist on indoctrinating the masses of peasantry and herdsmen in the Marxist stand on religion.” Again, at a meeting held of the TAR Party Propaganda Department on 8 January, 1999, a directive was issued stating that “atheism is necessary to promote economic development in the region and to assist the struggle against the infiltration of the Dalai Clique.” This campaign urged Tibetans to stop the age-old custom of relying on divination or oracles or seeking advice from senior religious persons or using prayer beads or even wearing traditional Tibetan garments in offices. Restrictions were placed on hoisting prayer flags, burning incense, circumambulating holy places, and going on pilgrimages. In May 2002 this same Propaganda Department, in cooperation with the TAR Department of Education, produced a new booklet containing guidelines for teachers to use in political education in schools. The primary focus of the book is the need to wipe out religion and superstition in the student population, and instill “scientific materialism” in its place.

Beijing’s overriding political goal in educating Tibetans is to groom political allegiance to China. This is clearly reflected in the speech of Chen Kuiyuan to the 1994 TAR Conference on Education: “The success of our education does not lie in the number of diplomas issued to graduates from universities, colleges... and secondary schools. It lies, in the final analysis, in whether our graduating students are opposed or turn their hearts to the Dalai clique and in whether they are loyal to or do not care about our great motherland and the great socialist cause.”

## **Section H: Special Protection Measures**

This Section discusses China's violations of the rights of the Tibetan children protected by Articles 37 and 40 of the Convention. Among others rights protected by Article 37 of the Convention, special attention is paid to the right to be protected from unlawful or arbitrary deprivation of liberty. This article sets out conditions for any arrest, detention or imprisonment of the child. This right is also protected by Article 9 (1) of ICCPR. The Human Rights Committee stated in its General Comment on this Article that it disapproves of pre-trial detention for juveniles and states that in these cases any person arrested or detained has to be brought promptly before a judge or other office authorized by law to exercise judicial power.

This section highlights several incidents when China failed to honor basic principles of juvenile justice, as set out by Articles 37 and 40 of the Convention. These incidents also violated provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

### ***H.1) Arbitrary Arrest and Detention***

According to a preliminary report released by the International Committee of Lawyers for Tibet in June 2000, "children even as young as six years old may be detained for political offences, held in harsh conditions without charge or access to family, and suffer beatings, electric shocks, and psychological forms of torture."<sup>98</sup> The report also states that they often shared cells with adults, and some were even forced to watch guards torture other prisoners. There were also claims that in incidences of juvenile arrests, police often would not inform the family. Prison officials also would routinely not tell the children how long they would be detained. None of the children had been granted access to a lawyer at any stage, and only two out of the 19 children interviewed for the report attended brief court hearings. The report also states that police abuse children outside of the prison system and, therefore, these incidents do not show up in reports of political imprisonment.

Tibetan children can be imprisoned for prolonged periods of time, with adult inmates.<sup>99</sup> Tibetan children detained in prisons have been denied their rights to challenge the legality of their detention before an appropriate independent and impartial authority. Under the Chinese legal system, the presumption of innocence until proven guilty is not applied. In the majority of cases reported, children detained without trial are simply issued an administrative detention order and sent to "re-education through labour" (Chi: *lao gai*) camps to serve their term. Juveniles released from prison are black-listed and put under strict surveillance. After their release from prison, these children are refused re-admission into their schools.<sup>100</sup> Tibetan children are thereby denied opportunities which have a profound effect on their adult lives.

The treatment of juvenile detainees in Tibet violates both Chinese law and international human rights treaties that China is legally compelled to observe. There is evidence of juveniles being detained in almost every Chinese prison in Tibet. They are detained in adult prisons, denied legal representation and contact with family, and subjected to severe ill-treatment. Individuals accused of political crimes are often denied the right to a fair trial. According to testimonies of former juvenile political prisoners, they are subject to complete separation from their family members until their trial or sentencing. The duration of such separation can sometimes be more than ten months.<sup>101</sup>

Chinese law guarantees the citizens' right to receive legal aid with the administrative statute "*Regulations on Legal Aid*" formulated and promulgated in 2003.<sup>102</sup> In practice, detainees are



often denied access to legal counsel until the prosecution has concluded the investigation and is ready to go to trial. By that time the accused has usually been detained for a long period of time without trial, varying from several months to over a year. Moreover, China's legal system does not provide sufficient safeguards against the use of evidence gathered through illegal means such as through the use of torture.<sup>103</sup>

Phuntsok Legmon (lay name: Tseten Norbu), 16-years-old, was sentenced to three years' imprisonment on July 9 1999 by the TAR People's Intermediate Court for a protest on March 10, 1999.<sup>104</sup>

Gelek Jinpa (layname-Tenzin Dawa), 14-years-old, Gyatso Rinchen (Lobsang Choegyal), 14-years-old, Phuntsok Rabjor (Tsering Thubten), 15-years-old, and Dorje, 17-years-old, were arrested between May 6 and 10, 1996, during a protest by Ganden Monastery monks against the Chinese "Work Team" in residence in Ganden Monastery. Two of the child monks, Gelek Jinpa and Dorje, were shot in the leg by the Chinese police and were reportedly beaten before being taken to prison. Phuntsok Legmon and another monk, Namdrol, reportedly shouted slogans for a few minutes in Lhasa on the anniversary of Tibetan National Uprising Day. They were charged with "plotting or acting to split the country or undermine national unity."

Yeshe Yarphel, 15-years-old, was detained in late February 1999, accused of being a spy for the Tibetan exile government. In 1991, Yeshe's parents sent him to Dharamsala, India to receive a Tibetan education. After studying in India for eight years, he left school in late February 1999 because of family problems. The People's Armed Police arrested Yarphel and he was taken to Nyari Detention Centre in Shigatse. Chinese officials later alleged that Yarphel was carrying out espionage activities for the Tibetan exile government. He was released in late April 1999 after being detained for a total of two months without formal charges. During his detention, his parents were not allowed to visit him.

In 1997, three Tibetan students from Dzoge County School were arrested for pasting alleged publicity materials of the Tibetan exile government on the school notice board. The three implicated students -- Tsering, Kunga and Tenpa -- were interrogated and detained in the County Prison and released after one month. They were expelled from the school upon their release.

Norzin Wangmo, a former nun from Shugseb Nunnery was 16-years-old when she was sentenced to five years in prison on September 13, 1994. Wangmo, along with seven other nuns demonstrated in front of the Jokhang in Lhasa. She was detained in Gutsa Detention Centre for 11 months and during this time, she was denied visits from her parents and relatives. "The prison guards kept all the food and clothes and issued fake receipts to our family members," she stated in an interview upon reaching Dharamsala, India<sup>105</sup>

Tenzin Tsultrim was 17-years-old when he was arrested by Chinese "work team" officials on February 12, 1998 for putting up "Free Tibet" posters. He is a monk at Rabten Monastery in Sog County, Nagchu region. He is currently detained in Sog County Prison.

Tsering Choekyi was 14 years-old when she was arrested for participating in a freedom demonstration on December 12, 1993. A former nun of Shugseb Nunnery, she served three years "re-education-through-labour" in Trisam Prison, Toelung. Despite being a juvenile prisoner, she was housed with other older prisoners and was subjected to the same kind of labour as the others.<sup>106</sup>

## **Recommendations**

Based on the facts put forward in Parts I and II of this report, it is clear that China has failed to uphold its responsibilities as a State Party to the Convention, particularly with regard to Tibetan children. ICT proposes the following recommendations for both the Committee and the State Party. ICT proposes the following recommendations for both the Committee and the State Party.

### **Recommendations for the Committee on the Rights of the Child**

#### ***Part I***

1. Insist that international observers immediately be permitted to verify the well being of Gedhun Choekyi Nyima, the 11<sup>th</sup> Panchen Lama of Tibet, and to ascertain his educational attainment, cultural awareness, mental state and physical development.
2. Condemn China for breaching several Articles of the Convention in its abduction and prolonged detention of Gedhun Choekyi Nyima, the 11<sup>th</sup> Panchen Lama of Tibet, and press that he be released from state custody and restored his rights to a religious education so that he can assume his legitimate position as a religious leader.

#### ***Part II***

1. Condemn China for its failure to comply with recommendations put forward by the CRC during its 12<sup>th</sup> Session and to respect fully the rights of Tibetan children as recognised by the Convention on the Rights of the Child and other relevant provisions of international human rights treaties and customary laws.
2. Urge China to enact immediately comprehensive legislation to implement domestically the full scope of its obligations as a party to the Convention on the Rights of the Child.
3. Encourage China to promptly make significant changes in its policies towards Tibetan children, as outlined directly for the PRC below, and thereby prevent its prolonged violations of the Convention on the Rights of the Child.

### **Recommendations for the Government of the Peoples Republic of China**

#### ***Part I***

1. Release Gedhun Choekyi Nyima, the 11<sup>th</sup> Panchen Lama of Tibet, from state custody and restore his rights to a religious education so that he can assume his legitimate position as a religious leader.

#### ***Part II***

### **Section C: Guiding Principles (Racial Discrimination in the areas of Education; Employment and Healthcare)**

1. Acknowledge and expressly recognise the existence of systemic racism towards, and its harmful effects on, Tibetan children in the PRC. Such acknowledgment should also include the links between China's chauvinism, paternalism, and racism. Mobilize substantial resources to initiate a public education campaign on this issue.
2. Modify all policies and practices that have the purpose or effect of discriminating against Tibetan children, especially with respect to education, healthcare and/or employment.

3. Allocate central government funding for schools equitably between urban and rural areas of Tibet thereby providing Tibetan school children with equal access to quality primary and secondary schools that have adequate facilities, including well-trained instructors, ample school supplies, food and – where necessary – accommodation.
4. Stem the influx of non-Tibetans to Tibet, which is having a discriminatory effect on the livelihoods, education and culture of the Tibetan people.
5. Address the extremely high rate of illiteracy or semi-literacy for Tibetans, by creating more schools in rural areas of Tibet and ensuring the availability of secondary education in the Tibetan language. Ensure that all children in Tibet receive instruction in the Tibetan language throughout their primary and secondary education, including its grammar and written forms. Consistent with this, institute and enforce a general policy to ensure that Tibetan is the primary language used for all occupations and higher education in Tibet.
6. Ensure that all Tibetan children also receive instruction to any second language chosen so that they may enjoy equal access to the full range of academic and employment opportunities in Tibet.
7. Allocate central governments funds to establish and operate quality healthcare facilities in rural regions of Tibet. Ensure that staff at these institutions are well-trained, non-discriminatory, and supplied with all the medicine and equipment necessary to provide the best available healthcare to Tibetan children.
8. Provide Tibetan children with free access to essential medical care, including childhood immunizations and treatment for infectious diseases. Eliminate the requirement for Tibetans to provide “security deposits” before receiving treatment for conditions that require immediate attention. Emergency and other essential medical care should be provided without regard for the child or its family’s ability to pay.
9. Ensure that physicians, nurses and other healthcare workers at hospitals and clinics in Tibet speak the Tibetan language.

#### **Section D: Civil Rights and Freedoms**

1. Immediately cease the practise of fostering atheism. Permit Tibetan children to practice freely their religion, including allowing them to visit monasteries/nunneries, wear blessed protection cords, and carry/display pictures of their religious leader, the Dalai Lama, or other religious leaders.
2. End the official policy of State intervention in the identification and training of Tibetan reincarnate lamas.
3. Release all child prisoners of conscience.
4. Abolish minimum age requirements for entering monasteries or nunneries.
5. Dissolve the existence of Democratic Management Committees in Tibetan regions and halt the use of Work Teams in schools, workplaces, monasteries and nunneries.
6. Amend China’s Criminal Law and Criminal Procedure Law to incorporate explicitly the definition of torture established by the UN Convention Against Torture, to which China is a party, and clearly ban all forms of torture. Pursuant to clear rules and procedures, ensure the prompt and vigorous investigation, prosecution and punishment of any police, soldiers, legal or judicial personnel and any other individuals implicated in the torture of Tibetan children.
7. Immediately cease all acts of torture and other cruel, inhumane or degrading treatment perpetuated against Tibetan children, and investigate all allegations of State torture against minors and make public the findings.

#### **Section E: Family Environment and Alternative Care**

1. Abide by its commitments under the 1951 and 1967 Refugee Conventions; and address the underlying causes of Tibetan refugee flights through more responsible policies, including engaging in a constructive dialogue with the Dalai Lama or his representatives to resolve the situation in Tibet.

#### **Section F: Basic Health and Welfare**

1. Disseminate basic health education, in the Tibetan language, throughout Tibet. All Tibetans should be educated about preventative healthcare, the means to stop the spread of infectious diseases, and sound sanitary practices. A mother-infant nutrition program should additionally be developed to provide adequate nutritional education to pregnant women and mothers of young children.
2. Take immediate steps to combat the causes of pervasive stunted growth among Tibetan children, as identified by recent studies. In particular, take steps to avert malnutrition and common childhood illnesses in Tibetan children from birth to seven years of age.
3. Take steps to ensure that healthcare workers charged with administering China's immunization program travel to all areas of Tibet to carry out their duties.

#### **Section G: Education, Leisure and Cultural Activities**

1. Abolish the practice of charging miscellaneous fees of any kind for a primary school education.
2. Permit Tibetan parents to send their children abroad for education and to visit their children at foreign schools without penalty.
3. Ensure that access to secondary, vocational and higher educational institutions is based strictly on merit and objective standards that do not discriminate between Tibetan and Chinese children. If entrance exams will continue to determine the access of children in Tibet to secondary and higher education, Tibetan children should be permitted to take these exams in the Tibetan language.
4. Respect the Tibetan people's right to control the content of the curriculum and the medium of instruction in their children's schools.
5. Expand the current curriculum at Tibet's primary schools, which appears to be limited in most cases to the Chinese and Tibetan languages and mathematics, to include Tibetan history, culture and traditions, as well as education in science and extracurricular activities such as music and sports.
6. Immediately end all strictures that forbid Tibetan children from expressing their Tibetan identity by, for instance, singing Tibetan songs, wearing Tibetan clothes, celebrating Tibetan holidays and expressing their religious and political beliefs freely. Tibetan children should not be forced to swear loyalty to the Chinese state nor to pledge allegiance to any specific political or national ideology, nor be punished for choosing not to do so.

#### **Section H: Special Protection Measures**

1. Immediately cease detaining Tibetan children for political and arbitrary reasons and release all children so detained, including Gedhun Choekyi Nyima.
2. Uphold international standards of criminal justice by safeguarding the defendant's rights, and make publicly available legal proceedings and evidence upon which convictions have been based.
3. Undertake a comprehensive review of China's criminal law to bring it into conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and other international human rights standards. Ensure that all officials understand and

conform their conduct to the relevant provisions of the Convention on the Rights of the Child and the Beijing Rules. Promptly and vigorously prosecute any violations.

4. Abolish all forms of administrative detention, including 'reeducation through labor,' under which children may be sentenced to labor camps for up to three years without judicial oversight.
5. Develop and enforce specific rules to ensure that any detention of Tibetan children is used solely as a measure of last resort and for the shortest appropriate period of time. The State must provide any Tibetan child detained with immediate access to their parents or legal guardians and to legal counsel, as well as to interpreters where needed. Separate and appropriate facilities that are specifically designed to meet their educational, health and developmental needs should also be provided. In addition, Tibetan children should not be detained with adults other than family members, friends and other close relations or guardians. Under no circumstances should Tibetan children be held with adult strangers and common criminals.

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<sup>1</sup> Tibet was traditionally comprised of three main areas: Amdo (north-eastern Tibet), Kham (eastern Tibet) and U-Tsang (central and western Tibet.) The Tibet Autonomous Region was set up by the Chinese government in 1965 and covers the area of Tibet west of the Yangtse River, including part of Kham. The rest of Amdo and Kham have been incorporated into Chinese provinces, and where Tibetan communities were said to have “compact inhabitancy” in these provinces they were designated Tibetan autonomous prefectures and counties. As a result, most of Qinghai and parts of Gansu, Sichuan and Yunnan provinces are acknowledged by the Chinese authorities to be “Tibetan.” The term “Tibet” in this report is used to refer to all these Tibetan areas currently under the jurisdiction of the People’s Republic of China. (as cited in Tibet Information Network (2002) *Mining Tibet*, TIN: London, UK).

<sup>2</sup> The Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”).

<sup>3</sup> China’s signature October 5, 1998, <http://www.ohchr.org/english/countries/ratification/4.htm>.

<sup>4</sup> China’s ratification March 27, 2001, <http://www.ohchr.org/english/countries/ratification/3.htm>.

<sup>5</sup> “Dalai Lama’s Confirmation of Reincarnation Invalid,” *Xinhua*, May 17, 1995, quoting the spokesman of the Bureau of Religious Affairs.

<sup>6</sup> <http://www.pbs.org/wgbh/pages/frontline/shows/tibet/china/panchen.html>.

<sup>7</sup> TIN News Update, 30 March 1998, [http://www.tibet.ca/en/wtnarchive/1998/3/30\\_1.html](http://www.tibet.ca/en/wtnarchive/1998/3/30_1.html).

<sup>8</sup> Saxena, S. “Sounds of Silence”, [http://www.guchusum.org/TibetanEnvoy/panchen\\_rinpoche.html](http://www.guchusum.org/TibetanEnvoy/panchen_rinpoche.html).

<sup>9</sup> International Tibet Independence Movement, <http://www.rangzen.org/pl/genbio.html>.

<sup>10</sup> “Enforcing Loyalty”, Annual Report, (2000), Chapter 4: Rights of Women and Children, Tibetan Center for Human Rights and Democracy.

<sup>11</sup> *Ibid*, supra note 8.

<sup>12</sup> “TCHRD commemorate the birthday of the XIth Panchen Lama”, World Tibet Network News, October 24, 2001, [http://www.tibet.ca/en/wtnarchive/2001/4/24\\_1.html](http://www.tibet.ca/en/wtnarchive/2001/4/24_1.html).

<sup>13</sup> *Ibid*, supra note 10.

<sup>14</sup> Hodgkin R., Newell P., (2002), “Implementation Handbook for the Convention on the Rights of the Child”, UNICEF.

<sup>15</sup> U.N. Economic and Social Council, Report on the September 2003 Visit of the Special Rapporteur on the Right to Education to the People’s Republic of China, November 2003, UNDOC E/CN.4/2004/45/Add.1

<sup>16</sup> China IRCO, Add 56, para 29, UN Doc. CRC/C/11, August 21, 1995.

<sup>17</sup> Fischer A., (2002), “Poverty by Design: The Economics of Discrimination in Tibet”, p32.

<sup>18</sup> *Ibid* supra note 13.

<sup>19</sup> *Ibid* supra note 13.

<sup>20</sup> *Ibid* supra note 15, p. 34.

<sup>21</sup> “Increase in Chinese medium teaching in Tibetan schools”, TIN report, (2001), <http://www.tibetinfo.net/news-updates/nu271101.htm>.

<sup>22</sup> *Ibid* supra note 15, p. 33.

<sup>23</sup> “Racial Discrimination in Chinese-Occupied Tibet”, (2001), DIIR, Tibetan Government in Exile, , <http://www.tew.org/cerd/cerd.3.html>.

<sup>24</sup> *Ibid* supra note 21.

<sup>25</sup> “The Next Generation: State of Education in Tibet Today”, (1997), Tibetan Centre for Human Rights and Democracy, <http://www.tchrd.org/pubs/nextgen/#B.%20%20DISCRIMINATION%20AGAINST%20TIBETANS>.

<sup>26</sup> *Ibid* supra note 15, p. 34.

<sup>27</sup> *Ibid* supra note 23.

<sup>28</sup> “A Reader for Advocating Science and Technology and Doing Away with Superstitions”, by the Propaganda Department of the Committee of the Communist Party of the Tibet Autonomous Region, <http://www.savetibet.org/documents/pdfs/2004ReligionReport.pdf>.

<sup>29</sup> “Freedom of Religious Belief and Practise”, Annual Report, (2001), Tibetan Centre for Human Rights and Democracy, <http://www.tchrd.org/pubs/2001/chapter2.1.html>.

<sup>30</sup> *Ibid* supra note 15, p.33-34.

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- <sup>31</sup> *Ibid supra* note 15, p. 37.
- <sup>32</sup> Report submitted to the UN Committee on the Elimination of Racial Discrimination by DIIR, Tibetan Government in Exile, 2001.
- <sup>33</sup> *Ibid supra* note 21.
- <sup>34</sup> *Ibid supra* note 21.
- <sup>35</sup> *Ibid supra* note 15, p. 36.
- <sup>36</sup> *Ibid supra* note 15, p. 53.
- <sup>37</sup> *Ibid supra* note 15, p. 17.
- <sup>38</sup> *Ibid supra* note 21.
- <sup>39</sup> *Ibid supra* note 8.
- <sup>40</sup> *Ibid supra* note 30.
- <sup>41</sup> *Ibid supra* note 30.
- <sup>42</sup> Statement of Dr. Arlene Samen, Roundtable on Tibetan Development, Congressional Executive Commission on China, March 19, 2004, <http://www.cecc.gov/pages/roundtables/031904/samen.php>.
- <sup>43</sup> *Ibid supra* note 39.
- <sup>44</sup> *Ibid supra* note 14, add 56, para 17.
- <sup>45</sup> *Ibid supra* note 14, Add. 56, paras. 20 and 41.
- <sup>46</sup> TAR Patriotic Education of Monasteries Propaganda Book number 4 – Handbook for Education in Policy on Religion, published by TAR Bureau of Religious Affairs.
- <sup>47</sup> “When the Sky Fell to Earth: the New Crackdown on Buddhism in Tibet”, (2004), International Campaign for Tibet, p. 1.
- <sup>48</sup> ICT interview, fall 2003.
- <sup>49</sup> Saunders, K., “The pros and cons of a god in exile” <http://www.phayul.com/news/tools/print.aspx?id=7050&t=1>.
- <sup>50</sup> TAR Patriotic Education of Monasteries, Propaganda book no 4 – Handbook for Education in (CCP) Policy on Religion.
- <sup>51</sup> *Ibid supra* note 44, p.25.
- <sup>52</sup> *Ibid supra* note 44, p.25.
- <sup>53</sup> *Ibid supra* note 44, p. 31; ICT Interview, October 2002.
- <sup>54</sup> “Security tightened in Karmapa’s monastery in Tibet; reincarnation of Reting Rinpoche confirmed by TAR authorities”, 14 January, 2000, TIN News Update.
- <sup>55</sup> “Tibet’s Karmapa Makes Dramatic Escape”, 20 January 2000, ICT Press Release, <http://www.savetibet.org/news/pressreleases/pressrelease.php?id=33>.
- <sup>56</sup> *Ibid supra* note 44, p. 43.
- <sup>57</sup> “Child lama forced to leave monastery following Karmapa escape”, TIN News Update, 2 July 2001 <http://www.tibetinfo.co.uk/news-updates/nu020701.htm>
- <sup>58</sup> *Ibid supra* note 44, p. 31.
- <sup>59</sup> *Ibid supra* note 44, p. 48.
- <sup>60</sup> *Ibid supra* note 44, p. 47.
- <sup>61</sup> *Ibid supra* note 44, p. 89.
- <sup>62</sup> “Rules for monks and nuns in monasteries”, 20 July 1997, Lhasa City Municipal Government.
- <sup>63</sup> TIN News Update, 20 February 2001.
- <sup>64</sup> *Ibid supra* note 44, p. 57.
- <sup>65</sup> ICT Interview, Winter 2004.
- <sup>66</sup> Tibet Daily 21 November 1997, AFP, cited in TIN News Review 1997.
- <sup>67</sup> *Ibid supra* note 44, p. 52.
- <sup>68</sup> *Ibid supra* note 44, p. 53.
- <sup>69</sup> *Ibid supra* note 44, p. 54.
- <sup>70</sup> *Ibid supra* note 30.
- <sup>71</sup> “Striking Hard: Torture in Tibet”, (1997, PHR, <http://www.phrusa.org/research/torture/tortib2.html#14>).
- <sup>72</sup> “China in Tibet: Striking Hard Against Human Rights”, Annual Report, (1997), Tibetan Centre for Human Rights and Democracy.
- <sup>73</sup> *Ibid supra* note 68.
- <sup>74</sup> *Ibid supra* note 68.
- <sup>75</sup> *Ibid supra* note 68.

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- <sup>76</sup> “Impunity for torturers continues despite changes in the law”, *Report on Implementation of the Convention Against Torture in the PRC, (2001), Human Rights in China.*
- <sup>77</sup> *Ibid supra* note 44, p. 86.
- <sup>78</sup> “Tibet: Tightening Control”, *Annual Report, (1999), Tibetan Centre for Human Rights and Democracy.*
- <sup>79</sup> *Ibid supra* note 74.
- <sup>80</sup> ICT (2003) “Dangerous Crossings: Conditions Impacting the Flight of Tibetan Refugees”. ICT: Washington D.C, USA., p. 4.
- <sup>81</sup> “Human Rights Situation in Tibet”, *Annual Report, (2001), Tibetan Centre for Human Rights and Democracy*
- <sup>82</sup> *Ibid supra* note 78.
- <sup>83</sup> *Ibid supra* note 8.
- <sup>84</sup> *Ibid supra* note 77, p. 28.
- <sup>85</sup> ICT (2003) “Dangerous Crossings: Conditions Impacting the Flight of Tibetan Refugees”. ICT: Washington D.C, USA, p. 19.
- <sup>86</sup> *Ibid supra* note 30.
- <sup>87</sup> *Ibid supra* note 21.
- <sup>88</sup> “Tibet: Crackdown on Humanity”, *Annual Report, (1998), Tibetan Centre for Human Rights and Democracy.*
- <sup>89</sup> “Policy shift in teaching in Tibet”, *TIN News Update* 6 May 1997.
- <sup>90</sup> *Ibid supra* note 86.
- <sup>91</sup> “National Autonomy Law revised to support Western Development Policy”, *TIN News Review, Reports from Tibet, 2001*
- <sup>92</sup> Confidential ICT interview with representatives of organizations working in Tibetan areas, 2004
- <sup>93</sup> *Ibid supra* note 88.
- <sup>94</sup> *Ibid supra* note 13.
- <sup>95</sup> *Ibid supra* note 13.
- <sup>96</sup> *Ibid supra* note 59.
- <sup>97</sup> UN Doc. A/55/280 submitted to the 57<sup>th</sup> UN Commission on Human Rights
- <sup>98</sup> International Committee of Lawyers for Tibet, “The Fabric of Fear: Children's Rights in Tibet” A Preliminary Report, 27 June 2000.
- <sup>99</sup> *Ibid supra* note 68
- <sup>100</sup> *Ibid supra* note 68.
- <sup>101</sup> *Ibid supra* note 68.
- <sup>102</sup> “Human Rights Situation in Tibet”, *Annual Report, (2004), Tibetan Centre for Human Rights and Democracy.*
- <sup>103</sup> *Ibid supra* note 99.
- <sup>104</sup> *Ibid supra* note 74.
- <sup>105</sup> *Ibid supra* note 85.
- <sup>106</sup> *Ibid supra* note 85.