

Joint Submission by Tibet Advocacy Coalition and International Tibet Network Member Groups on China's 3rd Universal Periodic Review 2018

Preparation and co-authoring of this report has been coordinated by Tibet Advocacy Coalition, a partnership of Tibet Groups working together to engage UN mechanisms, along with 167 International Tibet Network Member Groups from over 50 countries.

Lead Authors are International Tibet Network Secretariat, Tibet Justice Center, Students for a Free Tibet, Tibetan Youth Association Europe, Tibet Initiative Deutschland, and Boston University's International Human Rights Law Clinic. For a full list of all joint submission signatories see <https://tibetnetwork.org/upr-2018-joint-signatories-list/>

International Tibet Network Registered Address:
1310 Fillmore Street #401, San Francisco, CA 94115, USA

W: <http://www.tibetnetwork.org>

E: campaigns@tibetnetwork.org



Joint Submission by Tibet Advocacy Coalition and International Tibet Network Member Groups on China's 3rd Universal Periodic Review 2018

Contents

I.	Executive Summary.....	2
II.	Developments Since Previous Review	3
	Human Rights Defenders	3
	Cultural Rights	5
	Freedom of Religion or Belief	5
	Language Rights of Linguistic Minorities	8
	Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.....	9
	Resettlement of Nomads	10
III.	Foundational Areas of Concern	13
	a. Self-determination.....	13
	b. Racial Discrimination	13
IV.	RECOMMENDATIONS	17

I. Executive Summary

1. Despite widespread condemnation from the international community, China has continued to violate the human rights of the Tibetan people since China's occupation of Tibet by armed forces in 1950.¹ The 4.5 years since China's 2nd cycle UPR have been no exception. The ongoing human rights violations are enabled by China's continued denial of the Tibetan people's right to self-determination. China's recent decision to impose a crackdown on so-called "illegal activity" in Tibet prior to China's 19th Party Congress demonstrates its continuing repressive policies in Tibet.² Despite accepting recommendations in past UPR cycles, China has made no effort to implement these in Tibet, undermining engagement with the international human rights system. During this 3rd cycle UPR, China must heed the will of the international community, as reflected in the numerous recommendations made with regards to Tibet in previous cycles, and pledge to stop implementing failed, unjust policies against the Tibetan people.
2. In this submission, the word 'Tibet' refers to the three Tibetan provinces of Amdo, Kham and U-Tsang. In the 1960s, the Chinese government split Tibet into new administrative divisions: the Tibet Autonomous Region (TAR), and Tibetan Autonomous Prefectures within Qinghai, Gansu, Sichuan and Yunnan Provinces. When the Chinese government references Tibet, it is referring to the TAR. The total Tibetan population in all provinces as per the last Chinese population consensus in 2010 is 6.2 million, with 2.7 million in the TAR.
3. It should also be noted that China exercises extremely tight control over all information entering and exiting Tibet, in a bid to limit international exposure of its human rights violations there. As such, the information we present should be viewed as the tip of the iceberg. Tibet was recently found to be the second most oppressed territory in the world.³ It is paramount that the international community pressures China to open up its actions in Tibet to detailed scrutiny. **The 3rd cycle UPR should focus on pressuring China to immediately cease the surveillance and targeting of human rights defenders, including for communicating about human-rights related information outside of Tibet; honour its accepted recommendations from the second cycle UPR; and allow UN experts urgent and unfettered access to Tibet.**

¹ The term "Tibet" in this report refers to both the Tibet Autonomous Region and Tibetan Autonomous Prefectures under the Provinces of Sichuan, Qinghai, Gansu, and Yunnan. Before the Chinese occupation in 1949, Tibet comprised three provinces known as U-Tsang, Amdo, and Kham. U-Tsang, together with western Kham, is today referred to by China as the Tibet Autonomous Region (TAR), with the rest of Kham largely incorporated in the provinces of Sichuan, Yunnan, and Qinghai, while Amdo has been split to form parts of the Chinese provinces of Qinghai, Gansu, and Sichuan.

² Molly Lortie, Tibet Post International, *Reports indicate crackdown in Tibet leading up to 19th Party Congress*, (Aug. 14, 2017) <http://www.thetibetpost.com/en/news/tibet/5679-reports-indicate-further-crackdown-in-tibet-leading-up-to-19th-party-congress>

³ Freedom House 2018 <https://freedomhouse.org/report/freedom-world-2018-table-country-scores>

II. Developments Since Previous Review

4. Although China might again claim, as it did in its second cycle, that the “recommendations accepted four years ago either have been implemented or are being carried out”,⁴ our close monitoring shows that China has failed to implement any prior recommendations relevant to Tibet, leading to continued and exacerbated human rights violations against Tibetan people. This grievous human rights situation has been further impacted by the Chinese government’s enactment of new policies since the last review that further impinge upon the rights of Tibetans.

Human Rights Defenders

5. In line with its denial of self-determination to Tibetans, and in violation of Article 1 of the International Covenant on Economic, Social and Cultural Rights,⁵ China continued its wholesale attack on Tibetan human rights defenders. Article 5(d)(viii) of the ICERD guarantees the right to freedom of opinion and expression.⁶ China has repeatedly restricted Tibetans from exercising this right. Protests by Tibetans in Tibet for a wide range of rights are “almost systematically labeled as anti-state or inspired by a ‘separatist agenda’ and are “immediately suppressed”.⁷ Defenders have also regularly faced arbitrary detention, torture, violations of their cultural rights, and of their right to freedom of association and assembly.⁸ China has stated that there are “no such things as political prisoners in Tibet.”⁹ The cases below evidence key cases and trends since the 2nd cycle UPR.
6. One of Tibet’s most prominent political prisoners and religious leaders, Tenzin Delek Rinpoche, died in custody in July 2015, while serving a sentence for “inciting separatism”.¹⁰ He was tortured while imprisoned and pleas for medical attention, including medical parole, due to his heart condition were unanswered by authorities before his death.¹¹ Under review by the United Nations Committee against Torture in November 2015, China presented demonstrably false information, saying that Tenzin

⁴ Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China), (Dec. 11, 2013), ¶ 6. <http://www.refworld.org/docid/52e3ba754.html>

⁵ International Covenant on Economic, Social and Cultural Rights, Art 1 (Jan. 3, 1976) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

⁶ International Convention on the Elimination of All Forms of Racial Discrimination, Art 5(d)(viii) (Jan. 4, 1969) <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

⁷ International Convention on Civil and Political Rights, Art. 15, (Dec. 16, 1966), 999 U.N.T.S. 171. <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Although China has not ratified the ICCPR, as a signatory China must act in good faith and not impose policies to defeat the object and purpose of the Covenant. Vienna Convention on the Law of Treaties Art.18, (May 23, 1969), 1155 U.N.T.S. 331, and Human Rights Watch, *They Say We Should Be Grateful: Mass Rehousing and Relocation Programs in Tibetan Areas of China* (2013) https://www.hrw.org/sites/default/files/reports/tibet0613webwcover_0.pdf at 23.

⁸ Tibet Advocacy Coalition Mid-Term UPR Assessment, at 8. https://tibetnetwork.org/freedom2/wp-content/uploads/2016/03/2016_ChinaUPR-Mid-Term_AssessmentReport.pdf

⁹ International Tibet Network *United Nations: China Raises False Information about Tenzin Delek Rinpoche’s Death*, (Nov. 18, 2015), <https://tibetnetwork.org/united-nations-china-raise-false-information-about-tenzin-delek-rinpoches-death/>.

¹⁰ Patrick Boehler, *Tenzin Delek Rinpoche, Tibetan Religious Leader, Dies in Chinese Custody*, New York Times (Jul. 13, 2015), <https://www.nytimes.com/2015/07/14/world/asia/tenzin-delek-rinpoche-tibetan-religious-leader-dies-in-chinese-custody.html>

¹¹ *Id.*

Delek Rinpoche had received medical treatment and that his body had been cremated according to Tibetan customs.¹² Tenzin Delek Rinpoche's niece, Nyima Lhamo, fled Tibet to India in 2016 to testify to the facts of the case, including her visit to Tenzin Delek Rinpoche's body in prison; she and her family members believe from the visit that the Rinpoche was poisoned.¹³ The treatment by Chinese authorities of Tenzin Delek Rinpoche in life and death, as well as of his sister, niece and religious followers in Lighthang following his death, was the subject of an urgent communication by a group of Special Procedures in September 2016.¹⁴

7. Likewise, Tibetan language rights defender Tashi Wangchuk,¹⁵ was arrested without charge on 27 January 2016 after he appeared in a New York Times documentary speaking about his anxiety over the survival of Tibetan culture. In February 2017 Special Procedures wrote an urgent communication on his case,¹⁶ and in November 2017 the Working Group on Arbitrary Detention issued an opinion affirming that his detention was arbitrary, and urging his immediate release. In January 2018 he was tried for "inciting separatism"¹⁷ but had not been sentenced at the time of writing. In February 2018, UN Special Procedures again condemned Tashi Wangchuk's continued detention and the "criminalization" of his exercise of the right to freedom of expression.¹⁸
8. Tibetan writers and singers have been increasingly targeted since 2013, such as Amchok Phuljung who served more than four years in prison for singing songs in praise of exiled Tibetan leaders including the Tibetan spiritual leader His Holiness the Dalai Lama;¹⁹ Tibetan writer and Buddhist monk Lobsang Jamyang [pen-name Lomik] was detained by Chinese authorities in April 2015 from Kirti Monastery²⁰ and sentenced to seven years and 6 months in prison on charges of "leaking state

¹² International Campaign for Tibet, *UN-Committee against Torture underlines urgency of situation in Tibet*, (Nov. 18, 2015), <https://www.savetibet.org/un-committee-against-torture-underlines-urgency-of-situation-in-tibet/>

¹³ Tibetan Centre for Human Rights and Democracy *Niece of Tibetan Reincarnate Lama Says Her Uncle was Poisoned to Death in Prison*, (Mar. 08, 2016), <http://tchrd.org/niece-of-tibetan-reincarnate-lama-says-her-uncle-was-poisoned-to-death-in-prison/>

¹⁴ Communication from Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on freedom of religion or belief, (Dec. 12, 2016) <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=22870>

¹⁵ *A Tibetan's Journey for Justice*, New York Times (Nov. 28, 2015)

<https://www.nytimes.com/video/world/asia/100000004031427/a-tibetans-journey-for-justice.html>

¹⁶ Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on minority issues; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Feb. 10, 2017)

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=22981>

¹⁷ *Tibetan Businessman Battles Separatism Charges in Chinese Court*, New York Times (Jan. 4, 2018), <https://www.nytimes.com/2018/01/04/world/asia/tibet-china-language-separatism-tashi.html>.

¹⁸ China: UN Experts Denounce the Criminalization of Linguistic and Cultural Rights Advocacy, United Nations Human Rights Office of the High Commissioner (Feb. 21, 2018), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22683&LangID=E>.

¹⁹ Amchok Phuljung was arbitrarily detained on 3 August 2012 in Barkham (Ch: Maerkang) County and held in prolonged incommunicado detention and sentenced in secret on unknown charges. He was imprisoned at Mianyang Prison for exactly four years and five months. <http://tchrd.org/tibetan-singer-jailed-for-songs-praising-dalai-lama-released-after-more-than-four-years/>

²⁰ Kirti Monastery is in Ngaba, eastern Tibet (CH: Aba Tibetan and Qiang Autonomous Prefecture, Sichuan Province)

secrets” and “engaging in separatist activities”,²¹ believed to be related to his writings and open discussions involving other Tibetan writers including Druklo (pen-name Shokjang), also sentenced in 2015 to three years for online activities and writing on Tibet-related issues.²² Tsegon Gyal was arrested in December 2016. The Chinese authorities have never stated a public reason for Mr. Gyal’s initial arrest, although the Tibetan Centre for Human Rights and Democracy has linked his arrest to “a blogpost on [Chinese social media application] WeChat” that criticized China for failing to genuinely promote its policy of ‘ethnic unity’. He wasn’t tried until May 2017, and sentenced only in January 2018 to three years’ imprisonment on charges of separatism.²³

9. Another trend has been Tibetans protesting the many policies regarding relocation of Tibetan nomads, for example in January 2015 resettlement conditions led to a protest in Thangkor, Sichuan Province. during which the local government threatened the protesters with imprisonment. Then, in September 2015, 12 Tibetans were arrested for re-occupying and attempting to reclaim their land. Four nomads were consequently sentenced for up to three years in prison.²⁴ Tibetans are afforded no process to oppose or challenge resettlement policies, and without an independent judiciary, they have no legal means to resist.²⁵

Cultural Rights

10. China has ratified the International Covenant on Economic, Social and Cultural rights (ICESCR), and has accepted multiple recommendations on such rights in both of its previous UPR cycles.²⁶ Despite this appearance of compliance with international norms and standards, China continues to violate Tibetans’ cultural rights.

Freedom of Religion or Belief

11. China has violated Article 18 of ICCPR, which states “everyone shall have the right to freedom of thought, conscience and religion”,²⁷ Article 5 of CERD, which requires states to guarantee equality before the law in the enjoyment of “the right to freedom of thought, conscience and religion”²⁸ and Article 14 of CRC, which protects

²¹ Tibetan Centre for Human Rights and Democracy, *Tibetan writer sentenced to 7.5 years after more than a year of secret detention* (May 9, 2016) <http://tchrd.org/tibetan-writer-sentenced-to-7-5-years-after-more-than-a-year-of-secret-detention/>

²² Human Rights Watch, *World report 2017: China*, (2016). <https://www.hrw.org/world-report/2017/country-chapters/china-and-tibet>

²³ Radio Free Asia, *Tibetan Writer Handed Three-Year Prison Term For ‘Inciting Separatism’*, (Feb. 20, 2018), <https://www.rfa.org/english/news/tibet/inciting-02202018150053.html>.

²⁴ Free Tibet, *Land Grab Protesters Sentenced; Torture Victim Gravely Ill*, (Apr. 14, 2016), <https://freetibet.org/news-media/na/land-grab-protesters-sentenced-torture-victim-gravely-ill>.

²⁵ *Id.*

²⁶ UPR Accepted recommendations 2009 Summary Chart, https://www.hrichina.org/sites/default/files/PDFs/Submissions/Summary_Chart_of_Accepted_UPR_Recommendations.pdf; and 2013 Summary Chart https://www.hrichina.org/sites/default/files/upr_2013_recommendations_and_chinas_responses.pdf

²⁷ International Covenant on Civil and Political Rights, Art 18, *supra* note 7.

²⁸ International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5, *supra* note 6.

children's right to freedom of thought, conscience and religion.²⁹ China accepted 14 recommendations related to religious freedom in its 2nd UPR cycle, including seven on taking steps to preserve and protect freedom of religion,³⁰ and one recommendation to specifically protect the religious rights of ethnic minorities.³¹ Rather than implement these recommendations, China has enacted policies and practices that actively violate the right to freedom of religion for Tibetan Buddhists.

12. One of the most egregious violations of Tibetans' religious freedom is taking place in Larung Gar, the largest Tibetan Buddhist institute in the world. In July 2016, Chinese authorities began drastically reducing the settlement's population, requiring residents to be evicted and their houses torn down.³² Since 2016 Chinese authorities have evicted 4,828 monks and nuns from their homes and demolished 4,725 buildings.³³ Far from being a consultative process in which the residents' concerns were heard and their needs addressed, the demolitions and removals relied on coercion, including threats of collective punishment, such as tearing the entire site down. The orders that began the demolitions also included measures designed to give Chinese authorities greater control over religious practices in the area.³⁴ In a joint statement on the demolitions in November 2016, six U.N. Special Rapporteurs noted that China's actions violated articles 11(1) and 15 of the ICESCR, referring to the right to an adequate standard of living and the right to take part in cultural life, respectively.³⁵
13. Tibetan Buddhist leaders are regularly imprisoned for activities closely connected to the practice of their religion. The Chinese authorities detained Tibetan monk Tenzin Lhundrup for alleged disturbances including protesting "against mining at the sacred Ngalha Dzamba Mountain".³⁶ Tibetans face arbitrary detention for the slightest invocation of the Dalai Lama, their spiritual leader. Tibetan monk Thardhod Gyaltsen "was sentenced to an eighteen-year prison sentence in January 2014³⁷ for possessing Dalai Lama images and teachings".³⁸ In December 2016 nine Tibetans were sentenced for between five and 14 years in prison for their involvement in celebrations for the Dalai Lama's 80th birthday in 2015. In the group sentencing, Drugdra, a 50 year old Kirti monk who had served more than a year in prison

²⁹ Convention on the Rights of the Child, Art. 14, Nov. 20, 1989, 1577 U.N.T.S. 3.
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

³⁰ Human Rights Council, Report of the Working Group on the Universal Periodic Review, China (including Hong Kong, China and Macao, China), ¶ 186 U.N. Doc. A/HRC/25/5 (Dec. 4, 2013); 186.136, Australia; 186.138, Poland; 186.140, Austria; 186.143, Italy; 186.144, Namibia; 186.169, Chile.
<http://www.refworld.org/docid/52e3ba754.html>

³¹ *Id.*, 186.224, Australia.

³² Tibet Watch, *Destroying Heaven: China's campaign of destruction at Larung Gar* (Oct. 2017), <https://www.freetibet.org/files/Larung%20Gar%20report-web.pdf> and Edward Wong, *U.N. Human Rights Experts Unite to Condemn China Over Expulsions of Tibetans*, New York Times (Feb. 27, 2017), <https://www.nytimes.com/2017/02/27/world/asia/china-tibet-buddhists-larung-gar.html>.

³³ *Id.*, (Wong)

³⁴ *Id.*

³⁵ U.N. Special Rapporteurs on Cultural Rights, Human Rights and the Environment, the Right to Freedom of Peaceful Assembly, Adequate Housing, Minority Issues, and Freedom of Religion or Belief, Joint Statement concerning severe restrictions of religious freedom in Tibetan Autonomous Prefecture, AL CHN 10/2016 (Nov. 7, 2016), at 2. [*hereinafter* Joint Statement by U.N. Special Rapporteurs]
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=22816>

³⁶ Tibet Advocacy Coalition Mid-Term UPR Assessment, *supra* note 8, at 8.

³⁷ Free Tibet, *Eighteen-year sentence for Tibetan monk accused of "separatism"* (Apr. 1, 2014)
<https://freetibet.org/news-media/pr/eighteen-year-sentence-tibetan-monk-accused-separatism>

³⁸ Tibet Advocacy Coalition Mid-Term UPR Assessment, *supra* note 8, at 8.

following the 2008 protests, was sentenced to 14 years in prison. Monk and scholar Lobsang Khedrub, who had been released from an earlier sentence in 2011 due to severe ill-health linked to maltreatment and torture, was sentenced to 13 years.³⁹ These detentions for purely religious activities are clear violations of Article 15(1)(a) of the ICESCR, which requires parties to “recognize the right of everyone ... To take part in cultural life”.⁴⁰

14. Short of detention, Chinese officials have sought to interfere in Tibetan religious practices in other impermissible ways. Chinese authorities have issued rules that seek to control every aspect of monastic life “including strictly limiting mobility, interaction with practitioners, financial management, and topics addressed in religious services”.⁴¹ Orders such as these can have a chilling effect on Tibetan monks and nuns’ ability to exercise their social, cultural, and civil rights. In September 2017, the Chinese State Council adopted revised rules on religious activity, which “conflate peaceful religious practice with ‘threats’ to China’s security, creating a more dangerous political environment for monks, nuns, and lay Buddhists, isolating them further from their counterparts outside China”.⁴² China’s answer is to “Sinicise” the religion, which “represents a more far-reaching effort to mould and shape Tibetan Buddhism to the diktats of the Chinese Communist Party in line with a more entrenched regulatory framework that has already deepened religious oppression over the last decade”.⁴³ Despite the Chinese government’s official insistence that its laws allow Tibetan “parents to transmit religious knowledge and practices to youngsters”, Tibetan youth are being increasingly blocked from monastic education.⁴⁴ Chinese authorities have gone so far as to directly block Tibetan children from taking part in Buddhist religious activities. In May 2017 “teachers and parents at a school in Lhasa were ordered to prevent children from participating in religious activities during the important Buddhist anniversary month of Saga Dawa”, as “part of a new, tougher phase in the CCP’s broader efforts to control Tibet through replacing loyalty to the Dalai Lama with allegiance to CCP policy”.⁴⁵ On 2 March 2018 there was a strong military presence, with ranks of Chinese troops in riot gear and People’s Armed Police, at Kumbum monastery in eastern Tibet during an important Tibetan prayer festival attended by thousands of devotees.⁴⁶

³⁹ International Campaign for Tibet, *Tibetans sentenced to long prison terms for involvement in Dalai Lama’s 80th birthday celebration* (Dec. 15, 2016) <https://www.savetibet.org/tibetans-sentenced-to-long-prison-terms-for-involvement-in-dalai-lamas-80th-birthday-celebration/>

⁴⁰ International Covenant on Economic, Social and Cultural Rights, Art. 15(1)(a), *supra* note 5.

⁴¹ CHR D Mid-Term Assessment, at 51. https://www.nchrd.org/wp-content/uploads/2016/11/NGO-UPR-Midterm-Assessment-Report_FINAL.pdf

⁴² International Campaign for Tibet, *China’s revised religious regulations threaten survival of Tibetan Buddhism* (Sep. 18, 2017) <https://www.savetibet.org/chinas-revised-religious-regulations-threaten-survival-of-tibetan-buddhism/>

⁴³ *Id.*

⁴⁴ International Campaign for Tibet, *Preliminary observations of the International Campaign for Tibet regarding the People’s Republic of China’s report to the Committee on the Rights of the Child, according to the Convention on the Rights of the Child* at 19: http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/CHN/INT_CRC_NGO_CHN_13778_E.pdf

⁴⁵ International Campaign for Tibet, *Inside Tibet: children banned from prayer during holy month and intensification of border security* (Jun. 12, 2017): <https://www.savetibet.org/ict-inside-tibet-children-banned-from-prayer-during-holy-month-and-intensification-of-border-security>

⁴⁶ International Campaign for Tibet, *Images of repression and resilience from Tibet on ‘Day of Miracles*, (Mar. 3, 2018)

<https://www.savetibet.org/images-of-repression-and-resilience-from-tibet-on-day-of-miracles/>

Language Rights of Linguistic Minorities

15. China is using education policies to undermine the Tibetan language in contravention of international law. Chinese policies on Tibetan schools violate ICESCR Article 13⁴⁷ as well as CRC Article 8.⁴⁸ Despite accepting a recommendation in its UPR second cycle on “ensuring the rights of ethnic minorities' learning, writing and the development of their own languages,”⁴⁹ the primary language used in most schools in Tibet is Mandarin rather than Tibetan.⁵⁰ The continuing effort to impose Mandarin on young Tibetans in so-called “China-centric” schools has been protested by students and teachers in multiple Tibetan areas.⁵¹ These schools make it impossible for Tibetan parents to have their children educated in keeping with their own convictions, a direct violation of ICESCR Article 13. China-centric schools are not merely a symptom of a one-size-fits-all education policy, rather, “Chinese authorities use these institutions as a mechanism for assimilating Tibetans into Chinese culture”, essentially the opposite of respecting the cultural and linguistic rights of an ethnic minority.⁵²
16. China's insistence on Mandarin has practical consequences beyond the education rights of young Tibetans and their parents. “Tibetans are not able to take the civil service exam in the Tibetan language”, thus barring them from highly sought-after government jobs.⁵³ By enacting policies amounting to “de facto discrimination in obtaining government jobs”,⁵⁴ China is violating its obligation to provide equal employment opportunities regardless of ethnicity or religion.⁵⁵
17. Tashi Wangchuk, noted above as a human rights defender, is an advocate for Tibetans' right to receive education in their mother tongue. He was tried on 4 January 2018 for “inciting separatism” and faces a lengthy prison sentence.⁵⁶ The separatism charge against him is spurious; Tashi has been an enthusiastic supporter of spreading the Tibetan language and, in 2015, he “explicitly told [the New York Times] that he was not calling for Tibetan independence”.⁵⁷ Tashi's advocacy was directly

⁴⁷ ICESCR Art. 13, regarding the right to education, including the right of parents “to ensure the religious and moral education of their children in conformity with their own convictions”.

⁴⁸ CRC Art. 8, requiring that parties “respect the right of the child to preserve his or her identity, including nationality” and CRC Art. 30, “In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, *a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language*”.

⁴⁹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, China (including Hong Kong, China and Macao, China), ¶ 186 U.N. Doc. A/HRC/25/5 (Dec. 4, 2013), 186.219, Cambodia [hereinafter UPR Recommendations].

⁵⁰ Tibetan Centre for Human Rights and Democracy, *Human Rights Situation in Tibet: Annual Report 2014*, at 72. <http://tchrd.org/annual-report-2014-human-rights-situation-in-tibet/>

⁵¹ *Id.*, at 73.

⁵² Tibet Advocacy Coalition Mid-Term UPR Assessment, *supra* note 8, at 7.

⁵³ CHR D Mid-Term Assessment, at 114.

⁵⁴ *Id.*

⁵⁵ ICESCR Art. 7(c), *supra* note 5, recognizing the right to “Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence.”

⁵⁶ Edward Wong, *China to Try Tibetan Education Advocate Detained for 2 Years*, New York Times (Dec. 30, 2017), <https://www.nytimes.com/2017/12/30/world/asia/tashi-wangchuck-trial-tibet.html>.

⁵⁷ Working Group on Arbitrary Detention, para. 6.

connected to China's suppression of Tibetan cultural rights. He has specifically decried "the use of Mandarin for most instruction in classrooms where the majority of students are Tibetan".⁵⁸ Tashi's detention for promoting Tibetans' language rights has been widely condemned, from Amnesty International and Human Rights Watch, to the U.S. ambassador to China.⁵⁹ Under the Chinese judicial system, Tashi faces almost certain conviction.⁶⁰

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

18. China claims that its policies prohibit torture, and that it "has been party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (Convention) since 1988."⁶¹ China accepted several recommendations on torture in its 2nd cycle UPR, including "commitments to harmonize the national definition of torture with the CAT definition of torture",⁶² to "ensure enforcement of existing laws prohibiting torture",⁶³ to "dismiss illegally obtained evidence",⁶⁴ and to generally "prevent torture".⁶⁵ However, Chinese officials have continued to systemically use torture against Tibetan human rights defenders as a means of crushing opposition.⁶⁶ China's well-documented use of torture violates numerous provisions of the CAT, to which it is a party including, but not limited to, Articles 2, 10, 12, 13. The Committee against Torture "has received numerous reports from credible sources that document in detail cases of torture, deaths in custody, arbitrary detention and disappearances of Tibetans".⁶⁷ Rather than addressing these reports, China failed to provide information on 24 out of the 26 Tibetan cases mentioned in the list of issues from China's fifth periodic report, despite the Committee specifically raising those cases.⁶⁸ In addition to violating the norms laid out in the CAT, the use of torture violates Chinese domestic law.⁶⁹

⁵⁸ Benjamin Haas, *Tibetan activist put on trial in China for inciting separatism*, The Guardian, (Jan. 4, 2018), <https://www.theguardian.com/world/2018/jan/04/tibetan-activist-trial-china-inciting-separatism-tashi-wangchuk>.

⁵⁹ Wong, *supra* note 56.

⁶⁰ *Id.*

⁶¹ Tibet Advocacy Coalition, *Report for Submission to the UN Committee Against Torture for Consideration of the Sixth Report of the People's Republic of China on its Implementation of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment*, (Oct. 26, 2015), at 34. [hereinafter Tibet Advocacy Coalition Torture Submission]. https://tibetnetwork.org/freedom2/wp-content/uploads/2014/09/Tibet-Advocacy-Coalition-UNCAT_Submission.pdf

⁶² UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: China (including Hong Kong, China and Macao, China), A/HRC/25/5, (Dec. 11, 2013), 186.49, Mexico. <http://www.refworld.org/docid/52e3ba754.html>

⁶³ *Id.*, 186.51, Denmark.

⁶⁴ *Id.*, 186.51, Denmark.

⁶⁵ *Id.*, 186.117, Germany.

⁶⁶ Tibet Advocacy Coalition Torture Submission, *supra* note 61, at 2.

⁶⁷ Committee against Torture, *Concluding observations on the fifth periodic report of China*, U.N. Doc. CAT/C/CHN/CO/5 (Feb. 3, 2016), para 40. <http://www.refworld.org/docid/58bed8be4.html>

⁶⁸ *Id.*, para 40.

⁶⁹ Criminal Procedure Law (Jul. 1, 1979, rev'd Mar. 14, 2012, effective Jan. 1, 2013), Art. 54, P.R.C. Laws (China). Accessed via <https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/PRC%20Criminal%20Procedure%20Law%20Chinese.pdf>

19. Recent notable cases of torture since China's second cycle include Goshul Lobsang, 43, accused of being an organizer of a protest in 2008, who died in March 2014 following severe torture during his imprisonment; Tenzin Choedrak,⁷⁰ a social activist who was released from prison in December 2014 with damaged kidneys, a dislocated jaw, and a serious brain injury, and died 2 days later. The suspicious death in detention of high-profile Tibetan political prisoner and religious leader, Tenzin Delek Rinpoche,⁷¹ following 13 years of imprisonment, allegations of torture and withholding of medical treatment and parole, illustrated that no Tibetans in Chinese detention are safe. Tenzin Delek Rinpoche's case was a central focus of China's CAT review in November 2015, with the Committee's concluding remarks raising concern over his death in custody, "as a result of torture or resulting from lack of prompt medical care".⁷²
20. Tashi Wangchuk, a Tibetan shopkeeper whose case is also discussed in the sections on human rights defenders and language rights, is also a victim of Chinese torture. Sources told the UN that Wangchuk was "tortured and suffered extreme inhuman and degrading treatment," and "was repeatedly beaten by two police officers".⁷³ Despite some denials by the Chinese government, the UN Working Group on Arbitrary Detention found the allegations of torture to be "credible", and noted that China's actions violated articles 2(2) and 16 of the Convention Against Torture.⁷⁴ As of 29 March, 2018, Tashi Wangchuk remains in detention following his trial for "inciting separatism on 4 January 2018; a verdict has still not been given."⁷⁵

Resettlement of Nomads

21. China's forced resettlement policies that target Tibetan nomads and rural residents violate Article 5(e)(iii) and Article 2 of the ICERD, which together guarantee the right to housing⁷⁶ without discrimination.⁷⁷ Discrimination in the right to housing includes forced evictions – the removal of individuals or communities against their will without "appropriate forms of legal or other protection".⁷⁸ Under the Covenant for Economic, Social and Cultural Rights, to which China is also bound, the right to housing also

⁷⁰ Tibetan Centre for Human Rights and Democracy, *Remembering the Fearless 'Ghost' Tenzin Choedrak (1981-2014)*, (Jan. 30, 2015), <http://www.tchrd.org/remembering-the-fearless-ghost-tenzin-choedrak-1981-2014/>.

⁷¹ New York Times, *supra* note 10.

⁷² Committee against Torture, Concluding observations on the fifth periodic report of China (Feb. 3, 2016) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAghKb7yhslEE2YuVt8GA5WKG3GEX%2BZEXqjnsVnWP%2BkQ6f9cmzWcEPJYdFWEXvIFmDTE3WtKbIKZXAKr5OVTwnh86Q4GNZXSmrqMf55xyaMPMcFusW3o2>

⁷³ Working Group on Arbitrary Detention, "Opinions adopted by the Working Group on Arbitrary Detention at its eightieth session, 20-24 November 2017: Opinion No. 69/2017 concerning Tashi Wangchuk (China)," paras. 5-7, referred to in <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22683&LangID=E>

⁷⁴ *Id.*, para. 41.

⁷⁵ The Guardian, *supra* note 58.

⁷⁶ The International Convention on the Elimination of All Forms of Racial Discrimination, Art. 5(e)(iii), *supra* note 6.

⁷⁷ *Id.*, Art. 2.

⁷⁸ UN Committee on Economic, Social and Cultural Rights (UNCESCR), General Comment No. 7 on the Right to Adequate Housing (May. 20, 1997), para. 3, <http://www.refworld.org/docid/47a70799d.html>

requires the provision of adequate housing. Adequate housing comprises “legal security of tenure,” “habitability,” “appropriate location” and “cultural adequacy”.⁷⁹

22. Tibetan nomads have been targeted by China's ‘resettlement programmes’ since the start of the occupation of Tibet in 1949. But in recent years state-driven plans, including the ‘Western Development Plan’, have aggressively pushed nomad resettlement as key components in policy and are rapidly accelerating the forcible displacement of the Tibetan nomad population. Over 2 million people in the TAR have been resettled and in 2014 China claimed to have resettled nearly all of Tibet's nomads, many of whom have been forced into such resettlement without any power or options available to oppose or challenge the relocation.⁸⁰
23. China's resettlement policies are justified by the State in the name of “environmental conservation”, with a secondary stated goal of advancing the economic status of Tibetan nomads, and integration of Tibetans into China's ‘modern’ development. These policies are implemented with the assumption that the nomads are ‘backward’; that they practice ‘inefficient’ methods of land and livestock management, and that they are associated with poverty, and environmental degradation. In reality, the resettlement policies enable the State to extend control,⁸¹ as well as gain access to the land for large economic projects e.g. Made in China 2025,⁸² significant mining operations, and potentially even the Belt and Road Initiative (BRI).⁸³
24. Tibetan nomads are resettled into poorly, purpose-built settlements that sever them from their traditional livelihood and food sources, and render them extremely vulnerable to impoverishment. Their traditional husbandry skills, ecosystem knowledge, risk-management strategies, environmental services, carbon sequestration and biodiversity conservation are hugely threatened. The purpose-built villages where nomads are resettled are usually in isolated areas and lack infrastructure and public services such as hospitals and schools. Houses are reported to be of poor quality, badly designed and using construction materials not appropriate for rural Tibet.⁸⁴ Cultural adequacy is also not taken into account, as there is no space for the livestock from which Tibetan nomads have traditionally made their living and based their food culture on.⁸⁵ The lack of free and prior consent

⁷⁹ The Right to Adequate Housing, OHCHR Fact Sheet 21, http://www.ohchr.org/Documents/Publications/FS21_rev_1_Housing_en.pdf.

⁸⁰ Human Rights Watch, *supra* note 7, at 4.

⁸¹ Former TAR Party Secretary Zhang Qingli described the settlement policy as essential in building a “beautiful, new socialist countryside”, linked to maintaining “stability” and countering the Dalai Lama's influence. A former nomad told the International Campaign for Tibet that mobile peoples were harder to control stating, “[Nomads’] economic self-sufficiency, mobility and traditional and religious outlook on life make them the most difficult people to integrate into the Chinese state”. International Campaign for Tibet, *Tracking the Steel Dragon*, (2008), <http://www.savetibet.org/tracking-the-steel-dragon/>

⁸² Government Portal for ‘Made in China 2025’ launched in May 2015, <http://english.gov.cn/2016special/madeinchina2025/>

⁸³ The BRI is a network of infrastructure plans meant to increase China's trade, economy, and political and social cooperation, the initiative consists of two major components: the Silk Road Economic Belt and the 21st Century Maritime Silk Road. Both are meant to connect China to other countries in Europe and Asia. One of the planned routes, the “Southern Corridor,” is intended to connect the cities of Chengdu and Golmud. As a result, the Southern Corridor will likely affect areas inhabited by Tibetan nomadic populations, and may cause further resettlement programs, see more in: The Diplomat, *Tibet and China's ‘Belt and Road’, Will Tibet become China's bridge to South Asia under the Belt and Road Initiative?* (Aug. 30, 2016) <https://thediplomat.com/2016/08/tibet-and-chinas-belt-and-road/>

⁸⁴ Human Rights Watch, *supra* note 7, at 84 & 85.

⁸⁵ *Id.*, at 82.

in the forced eviction of Tibetan nomads specifically, in contrast to housing policies for the benefit of Chinese, starkly illustrate the discrimination and exploitation of Tibet and the Tibetan people. The inadequate housing in which they are resettled removes Tibetan nomads from their source of food, livelihood, and cultural development. Authorities have not provided resettled Tibetans with promised building material, and Tibetan nomads suffer systematic exploitation by having to pay higher prices for structural materials than are available for Chinese.⁸⁶ As a result, China is violating its obligations to guarantee the core right to adequate housing on a non-discriminatory basis by the forced eviction of the Tibetan nomadic community.

25. The resettlement of nomads and other rural residents is also a violation of their right to food security. In 2012, the UN Special Rapporteur on Food found that the resettlement endangered the nomads' means of subsistence and economic independence, and thus their food security.⁸⁷ He recommended that China "suspend the non-voluntary resettlement of nomadic herders from their traditional lands and the non-voluntary relocation or rehousing programmes of other rural residents, in order to allow for meaningful consultations to take place with the affected communities, permitting parties to examine all available options".⁸⁸ The Committee on Economic Social and Cultural rights reiterated this in its review of China in 2014, urging the State party "to take all necessary measures to immediately halt non-voluntary resettlement of nomadic herders from their traditional lands and non-voluntary relocation or rehousing programmes for other rural residents" and recommending "that the State party carry out meaningful consultations with the affected communities in order to examine and evaluate all available options".⁸⁹
26. China's policies of forced evictions also violate the right to freedom of movement as guaranteed by ICERD Article 5(d)(i).⁹⁰ China has labelled Tibetan pastures as environmental zones of protection and banned nomadic roaming under the claim that it is furthering "environmental protection of ethnic areas".⁹¹ This policy is preventing movement that has been part of Tibetans' historic and traditional practices for centuries, and is prohibiting a way of life crucial to nomadic livelihood. In addition, the government has accelerated relocation policies in the eastern region of the TAR, and similar policies are being implemented in other parts of the plateau.⁹² Tibetans from both farming and herding communities confirm that they were never consulted or offered alternatives to rehousing.⁹³ These entirely involuntary resettlement policies violate the freedom of movement.

⁸⁶ *Id.*, at 74.

⁸⁷ The Special Rapporteur's 2012 report to the HRC on his mission to China, presented at the 19th Session of the United Nations Human Rights Council, (Mar. 6, 2012): <http://www.srfood.org/en/mission-to-china>. The report also noted that "Food security issues for relocated or rehoused rural residents include loss of land, limited ability to keep livestock, relocation in areas unsuitable to agriculture, and generally a disruption of traditional patterns of livelihood."

⁸⁸ *Id.*,

⁸⁹ UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the second periodic report of China, including Hong Kong, China, and Macao, China (Jun. 13, 2014) at 10 [http://www.refworld.org/publisher,CESCR,,CHN,53c77e524,0.html](http://www.refworld.org/publisher/CESCR,,CHN,53c77e524,0.html)

⁹⁰ CERD, *supra* note 6, at Art. 5(d)(i)

⁹¹ Human Rights Watch, *supra* note 7, at 39.

⁹² *Id.*, at 4.

⁹³ *Id.*, at 68.

27. The forced nature of Tibetan nomad resettlement also violates the freedom of residence, as provided for by ICERD Article 5(d)(i). The ICCPR defines this as the “freedom to choose” one’s residence.⁹⁴ Local authorities have used threats, incentives, and bribes to induce nomads to resettle, preventing individuals from choosing to remain where they and their ancestors have lived for centuries.⁹⁵ Policies deliberately inducing fear have also played a role in keeping Tibetan nomads from voicing their concerns about forced resettlement and the types of rehousing in which they are forced to live.⁹⁶ Moreover, resisting forced evictions are treated by the Chinese authorities as breaking the law, which means harsh penalties for resisters.⁹⁷

III. Foundational Areas of Concern

a. Self-determination

28. Article 1 of both the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant of Civil and Political Rights (ICCPR) guarantee all peoples “the right to self-determination” and ensures that all peoples may “Freely determine their political status and freely pursue their economic, social, and cultural development”.⁹⁸ China has denied the Tibetan people that right since 1950.

29. China’s occupation remains illegal as a matter of international law today,⁹⁹ and China’s denial of the Tibetan people’s right to self-determination is the root of many of the discriminatory policies that systematically deprive Tibetans of their human rights. China’s denial of this right prevents Tibetans from enjoying many economic, social, and cultural rights and has prompted political and religious oppression.¹⁰⁰

b. Racial Discrimination

30. Article 2 of both the ICESCR and the ICCPR emphasise the state’s obligation to facilitate the rights in the covenants without discrimination.¹⁰¹ However China’s occupation of Tibet in 1949 and the consequent ongoing denial of the Tibetan people’s right to self-determination engenders racially discriminatory policies that systematically deprive Tibetans of their human rights. After the 2nd cycle UPR, China guaranteed that “all ethnic minorities fully exercise political, economic, cultural,

⁹⁴ International Convention on Civil and Political Rights, Art. 12(1), (Dec. 16, 1966), 999 U.N.T.S. 171. Although China has not ratified the ICCPR, as a signatory China must act in good faith and not impose policies to defeat the object and purpose of the Covenant. Vienna Convention on the Law of Treaties, Art. 18, (May 23, 1969), 1155 U.N.T.S. 331.

⁹⁵ Human Rights Watch, *supra* note 7, at 63.

⁹⁶ *Id.*, at 62.

⁹⁷ *Id.*, at 64.

⁹⁸ International Covenant on Economic, Social and Cultural Rights, Art. 1, *supra* note note 5, and International Covenant on Civil and Political Rights, Art 1. *supra* note 7.

⁹⁹ See for example Tibet Justice Center <http://www.tibetjustice.org/reports/occupied.html>

¹⁰⁰ Tibetan Centre for Human Rights & Democracy, *Resettlement is Displacement: A Rights Based Perspective on the Internally Displaced in Tibet*, (Nov. 2014) at 2, <http://www.tchrd.org/wp-content/uploads/2014/11/Click-here-to-download-TCHRDs-special-report-on-the-right-of-the-internally-displaced-in-Tibet.pdf>.

¹⁰¹ International Covenant on Economic, Social and Cultural Rights, Art. 2, *supra* note note 5, and International Covenant on Civil and Political Rights, Art 2. *supra* note 7.

social, educational, religious, and other basic rights,” and is promoting development in minority areas.¹⁰² However, China has continued to discriminate against Tibetans, as we highlight below.

31. Tibetans have suffered extreme restrictions on their freedom of movement, both internally and externally. China's obligation to protect freedom of movement on a non-discriminatory basis arises from the CERD and the ICCPR. The CERD Article 5 guarantees “the right to freedom of movement”.¹⁰³ Article 12 of the ICCPR also requires every state to guarantee the right of ‘everyone’ to freedom of movement within its territory, and the freedom to leave any country, including his own.¹⁰⁴ As a matter of national policy all Chinese and Tibetans have to obtain a residence permit to move from one village to another, but Tibetans are often denied these permits or forced to wait unreasonably long periods to obtain one, unlike Chinese citizens.¹⁰⁵
32. In November 2016, government officials seized the passports of Tibetans in Qinghai, Yunnan and Sichuan provinces who were authorized to travel abroad, in order to restrict travel to Bodhgaya, India where an annual Kalachakra teaching was to be held by His Holiness the Dalai Lama. Tibetans who were already en route to the pilgrimage were detained by Chinese officials and ordered to return to Tibet. Chinese authorities seized the passports of many Tibetans upon their return from the pilgrimage, and subjected some of them to police investigation and interrogation. Other Tibetans reported that they were summoned in India by Chinese officials from their respective areas and ordered to return to Tibet immediately or risk consequences to their families.¹⁰⁶ In 2012, a Tibetan man was sentenced to two years' hard labour at Toelung detention center for possessing “illegal materials” following his return from a gathering in Bodhgaya. Of the 350 detainees held in Toelung, most are Tibetans who have attended Kalachakra teachings.¹⁰⁷ In light of the massive destruction of Tibetan monasteries and extreme restriction on Tibetans practicing their religion within Tibet, these restrictions threaten the survival of Tibetan Buddhism altogether. Tibetan religious and cultural survival has depended on their ability to flourish in India, but China's policies now make it nearly impossible for Tibetans to travel to India to receive instructions from leading Buddhist teachers in exile, particularly the Dalai Lama.
33. In 2012, the Chinese government instituted a new “ePassport” system for all citizens to be able to travel. Most Chinese citizens were simply given these new passports once their old ones expired. However, the central Chinese government ordered the TAR authorities to confiscate all ordinary passports held by residents of the region in

¹⁰² Human Rights in China https://www.hrichina.org/sites/default/files/upr_2013_recommendations_and_chinas_responses.pdf

¹⁰³ CERD, *supra* note 6, at Art. 5(d)(i).

¹⁰⁴ ICCPR, *supra* note 7, at Art. 12(1) and (2).

¹⁰⁵ Tibetans and Chinese are not permitted to move to another village or town without obtaining a “hukou,” a residence permit from the government authorities. Robert Sloane, *Jampa: The Story of Racism in Tibet*, International Campaign for Tibet 15, 75 (Sep. 2001). <https://www.savetibet.org/jampa-the-story-of-racism-in-tibet/> and Human Rights Watch *One Passport, Two Systems: China's Restrictions on Foreign Travel by Tibetans and Others*, (Jul. 13, 2015), https://www.hrw.org/sites/default/files/supporting_resources/tibet0715_0.pdf

¹⁰⁶ International Campaign for Tibet, *A Policy Alienating Tibetans: The Denial of Passports to Tibetans as China Intensifies Control*, (Jul. 13, 2015), <https://www.savetibet.org/policy-alienating-tibetans-denial-passports-tibetans-china-intensifies-control/>

¹⁰⁷ Richard Finney, *Hard Labor for Kalachakra Returnee*, Radio Free Asia (Jan. 17 2013), <http://www.rfa.org/english/news/tibet/returnee-01172013143623.html>.

order to “implement” China’s new policy, yet most Tibetans were never issued new passports. Passports that were not confiscated were cancelled.¹⁰⁸ The laws also implemented ‘Notice 22’ which created two systems for integration of the new passport system: a fast-track system, mostly available in the ethnically-Chinese majority areas, by which a passport application requires approval from a single office and is issued within 15 days of application; and a ‘regular’ system, which involves a lengthy application process with 10 separate stages, more extensive paperwork, long delays and results in arbitrary denials for the majority of applicants, that has been implemented in Tibetan areas.¹⁰⁹ China and the TAR authorities have denied that there is a ban on the issuance of ordinary passports in the region, simply citing delays in processing.

34. China’s discriminatory policies also directly affect Tibetans’ access to employment. Article 5(e)(i) of the CERD states that everyone, without discrimination, should enjoy the right to “work, to free choice of employment, to just and favorable conditions of work, to protection against unemployment, to equal pay for equal work and favourable remuneration”.¹¹⁰ The ICESCR also guarantees the right to work, including the “right of everyone to the opportunity to gain his living by work, which he freely chooses or accepts”.¹¹¹ The Chinese Constitution not only guarantees its citizens the right to work, but also considers it a “duty”.¹¹² During the concluding observations by the Committee on Economic, Social and Cultural Rights in 2014, the Committee was concerned about reports of the high rate of unemployment among Tibetans, “in part due to Chinese migration into minority areas”.¹¹³ Lack of equal educational opportunities in their native language further affects their access to a job market that provides preferential conditions and special government loans only to Chinese. As a consequence, most investment and development projects in Tibet are run almost exclusively by Chinese entrepreneurs. Special permits are required for entrepreneurs, and these are easier for Chinese than for Tibetan workers to obtain. Job listings commonly require that candidates be limited to “Han” ethnicity, and employers routinely publicize positions for which Tibetan employees will be paid less than Chinese.¹¹⁴
35. Tibetans do not have self-representation in China’s political system, resulting in not being able to change public policy that affects them. After the 2013 UPR, China guaranteed that ethnic minority areas are able to formulate relevant policies according to their local characteristics.¹¹⁵ However Tibetans have never been given the opportunity to decide upon the form of governance that presides over them. In

¹⁰⁸ Human Rights Watch *supra* note 105.

¹⁰⁹ Notice on Printing: *Suggestions on Further Strengthening Our Region’s Passport Handling, Approvals, and Issuance Management*, TAR Party Committee Gen Off Doc. No. 22 (Apr. 29, 2012) found in Human Rights Watch, *supra* note 105.

¹¹⁰ CERD, *supra* note 6, at Art.5(e)(i).

¹¹¹ ICESCR, *supra* note 5, at Art. 6.

¹¹² Chinese Constitution, at Art. 42 (Dec. 4, 1982) <http://en.people.cn/constitution/constitution.html>

¹¹³ Committee on Economic, Social and Cultural Rights, Concluding Observations on the second periodic report of China, including Hong Kong, China, and Macao (Jun. 13, 2014), at 5 <http://www.refworld.org/publisher,CESCR,,CHN,53c77e524,0.html>

¹¹⁴ International Campaign for Tibet, *Evidence of Overt Chinese Discrimination Against Tibetans in the Job Market*, (Jan. 31, 2012) <https://www.savetibet.org/evidence-of-overt-chinese-discrimination-against-tibetans-in-the-job-market-photos/#photo12>

¹¹⁵ Human Rights in China https://www.hrichina.org/sites/default/files/upr_2013_recommendations_and_chinas_responses.pdf

the most recent CEDAW concluding observations for China in 2014, the Committee noted a concern that ethnic minority women, including Tibetans, are under-represented in the decision making process.¹¹⁶ Article 5(c) of the CERD provides that all people, shall have “[p]olitical rights, in particular the right to participate in elections – to vote and to stand for election – on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service”.¹¹⁷ Article 25 of the ICCPR also guarantees access to election and representation and access to public service.¹¹⁸ These rights are also supposed to be ensured by the Chinese Constitution and the Law on the Regional National Autonomy.¹¹⁹ In April 1959, after the 14th Dalai Lama fled to exile, the Tibetan exile administration, better known as the Central Tibetan administration (CTA) of His Holiness the Dalai Lama was established. The CTA currently resides in Dharamsala. Tibetan people inside and outside Tibet consider the CTA as their sole and legitimate representative due to their lack of adequate representation within Tibet under China’s rule.¹²⁰ The upper strata of the Chinese Communist Party (CCP) remains closed to all ethnic minorities, including Tibetans. Little is known about how China’s Tibet policy is formulated and implemented, and the relevant government officials remain unaccountable to the Tibetan people. Many of these members are known to be anti the Dalai Lama, making any form of conciliation between the Chinese government and the exiled government impossible.¹²¹ Almost all senior government, police and military positions in the TAR are held by Chinese and no Tibetan has ever been Party Secretary, the most senior position of the region. Tibetans are allowed to vote in elections, but elections are tightly controlled by the Chinese government. Candidates are vetted to ensure they do not oppose the CCP’s principles or policies, and candidates who are “anti-China,” which includes loyalty to the Dalai Lama, are not tolerated.

¹¹⁶ Accessed via Human Rights in China (2014)

https://www.hrichina.org/sites/default/files/cedaw_concluding_observations_en_2014.pdf

¹¹⁷ CERD, *supra* note 6, at Art 5(c).

¹¹⁸ ICCPR, *supra* note 7, at Art. 25

¹¹⁹ Law of the People’s Republic of China on Regional National Autonomy, Art. 17, (May 31, 1984),

http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1383908.htm

¹²⁰ See <http://tibet.net/about-cta/>

¹²¹ International Campaign for Tibet, *Chinese Leaders in Tibet* <http://www.tibetpolicy.eu/wp-content/uploads/Chinese-Leadership-in-Tibet.pdf>

IV. RECOMMENDATIONS

36. The following actions, if implemented by China, would demonstrate that China is committed to protecting human rights in Tibet and to meaningful engagement with the UPR Process.

i. **Compliance with UNHCR Mechanisms:**¹²²

1. Provide a detailed timeline for the ratification of ICCPR by 2020.¹²³

ii. **Cooperation with Special Procedures and OHCHR:**¹²⁴

2. Confirm and timetable accepted and requested visits by Special Procedures mandate-holders and the UN High Commissioner to China, and ensure their unfettered access to Tibet and East Turkestan (Xinjiang).

iii. **Protection of Civil & Political Rights:**¹²⁵

3. Take immediate steps to end the severely restricted access to information in and on Tibet by ending digital surveillance, ceasing internet censorship, and decriminalising acts of sharing human rights-related information.

4. Cease targeting and criminalising human rights defenders raising concern about Tibetans' rights, and subjecting them to threats, arrest, arbitrary detention, enforced disappearance, and torture; and release all detained Tibetan human rights defenders, including Tashi Wangchuk.

¹²² Compliance with UNHCR Mechanisms: Related Recommendations: Accepted by China: 186.3. Consider ratifying ICCPR [CAPE VERDE]; 186.4. Take steps to an early ratification of the ICCPR [CZECH REPUBLIC]; 186.5. Take steps towards the ratification of ICCPR [BENIN]; 186.6. Continue carrying out administrative and judicial reforms to prepare for the ratification of the ICCPR [EGYPT]; 186.7. Continue the actions undertaken with the view to ratifying the ICCPR [GUATEMALA]; 186.8. Continue its national reforms with an aim to ratify the ICCPR [LATVIA]; 186.9. Continue to take measures towards ratification of the ICCPR [BOTSWANA]; 186.10. Move towards ratification of the ICCPR at the earliest possible date [NEW ZEALAND]; 186.14. Accelerate administrative and legislative reforms with a view of ratifying the ICCPR [TUNISIA]; 186.32. Consider ratifying the ICCPR and establishing a National Human Rights Institution [ZAMBIA]

¹²³ China accepted ten recommendations regarding the ratification of the ICCPR in its second UPR cycle, and 2018 is the 20 year anniversary since China signed the ICCPR (5 October 1998).

¹²⁴ Cooperation with Special Procedure: Related Recommendations: Accepted by China: 186.69. Intensify the cooperation with special rapporteurs mandate holders of the United Nations [BENIN] Step up cooperation with Special Procedures and mandate holders [ALBANIA]; 186.71. Fully cooperate with OHCHR as well as special procedures [FRANCE]; 186.73. Take the necessary concrete steps to facilitate a visit by the UN High Commissioner for Human Rights as soon as possible [AUSTRIA]; Organize a visit of the High Commissioner in the coming future (SLOVAKIA); Organize a visit of the High Commissioner in the coming future [SLOVAKIA]; Facilitate the visits of the UN High Commissioner and the special procedures, including to Tibetan and Uighur areas [SWITZERLAND];

¹²⁵ Protection of Civil & Political Rights: Related Recommendations Accepted by China: 186.155. Reform legislation and law enforcement in order to ensure freedom of opinion and expression, including on the internet [GERMANY]; 186.157. Strengthen the measures aimed at guaranteeing freedom of expression and freedom of the press [CÔTE D'IVOIRE]; 186.162. Further develop and manage internet and communications sectors, ensuring the legitimate rights and interests of ordinary people enjoying safe and secure internet usage [VIETNAM]; 186.163. Strengthen efforts to promote orderly development of Internet and protect the legitimate rights and interests of ordinary people while reinforcing the legislation on Internet information protection and supervision [BANGLADESH]

5. Facilitate an environment in Tibet, in law and in practice, in which civil society and human rights defenders, can operate free from hindrance, discrimination, insecurity and criminalisation.
6. End the implementation of the state security law that significantly affects Tibetans and Uyghurs' freedoms of assembly, expression, and belief, and immediately decrease the level of militarisation and the deployment of security troops in Tibet and East Turkestan.
7. Immediately cease the confiscation, cancellation and denial of passports to Tibetans, and allow them unhindered freedom of movement inside and outside Tibet.¹²⁶

iv. **Protection of Economic, Social & Cultural Rights:**¹²⁷

8. Take all necessary measures to ensure that Tibetans' right to use their own language, including in places of education and in the workplace, is protected and supported.¹²⁸
9. Implement policies ensuring the use of Tibetan language in Tibetan schools.¹²⁹
10. Suspend the non-voluntary resettlement of Tibetan nomads and ensure meaningful consultations with the affected communities in order to examine and evaluate all available options.¹³⁰

v. **Prevention of Torture:**¹³¹

¹²⁶ ICCPR, Art 12.

¹²⁷ Protection of Economic, Social & Cultural Rights: Related Recommendations: Accepted by China: 186.209. Increase the provision of resources for education establishments in remote and rural areas, as well as regions inhabited by ethnic minorities [RUSSIAN FEDERATION]; 186.215. Allocate more educational resources to central and western regions, rural areas, remote and border areas, and in ethnic minority areas [SOUTH SUDAN]; 186.219. Continue pursuing measures and policy aimed at ensuring the rights of ethnic minorities' learning, writing and the development of their own languages according to the relevant laws [CAMBODIA]; 186.220. Exert more efforts to protect cultures, especially those of ethnic minorities, and to promote the protection of cultural relics [IRAQ]; 186.221. Make further efforts for securing all human rights, including cultural rights of minorities [JAPAN]; 186.222. Take further legislative and practical measures to allow ethnic minorities to preserve their cultural identity, to fully exercise their human rights and to ensure their participation in decision-making, in accordance with the Chinese Constitution [AUSTRIA]. Accepted and Already Implemented by China: 186.234. Protect the rights of ethnic minority groups, including Tibetans, Uighurs, and Mongolians, in accordance with China's Constitution and international human rights commitments [UNITED STATES OF AMERICA]. Accepted and Being Implemented by China: 186.224. Strengthen protection of ethnic minorities' religious, socio-economic and political rights, ensuring reports of violations are promptly and transparently investigated AUSTRALIA

¹²⁸ As accepted in the second UPR cycle, and as subsequently detailed by the CESCR.

¹²⁹ As required by the Constitution of China, and in compliance with the CRC's recommendations on the combined third and fourth periodic reports of China, see the Tibet Advocacy Coalition's (TAC) Human Rights Action Plan for Tibet: https://tibetnetwork.org/freedom2/wp-content/uploads/2014/09/ITN_UN_HRAP-T_2017-07_OnlineReading.pdf

¹³⁰ As stated by the Special Rapporteur on Food in 2013 and CESCR in 2014, see the TAC Human Rights Action Plan for Tibet: https://tibetnetwork.org/freedom2/wp-content/uploads/2014/09/ITN_UN_HRAP-T_2017-07_OnlineReading.pdf

¹³¹ Prevention of Torture: Related Recommendations: Accepted and Already Implemented by China: 186.49. Harmonize the definition of torture contained in the national legislation with the requirements of the CAT and ensure that statements obtained under duress are not admitted in court [MEXICO]; Accepted and Being Implemented by China: 186.51. Effectively implement and establish the necessary institutional mechanisms to ensure the enforcement of existing laws prohibiting torture and dismissing illegally obtained evidence [DENMARK]

11. Ensure that policies prohibiting torture are enacted at all levels of government, provide information on unresolved cases of Tibetans subjected to torture and death in custody, and create an independent mechanism to investigate such cases.¹³²

vi. **Self Determination:**

12. Make concrete provisions to allow Tibetans the right to self-determination to enable the fulfillment of their civil, political, economic, social and cultural rights.

vii. **Racial Discrimination:**

13. Guarantee full rights to Tibetans without discrimination, taking every step to facilitate Tibetans' free and full participation and decision-making in policy development including education, health care, cultural life, and economic livelihood.

¹³² Following 2nd cycle commitments and the Committee Against Torture's recommendations, see TAC Human Rights Action Plan for Tibet: https://tibetnetwork.org/freedom2/wp-content/uploads/2014/09/ITN_UN_HRAP-T_2017-07_OnlineReading.pdf