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THE TIBET BUREAU

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**THE CONTINUING USE OF
TORTURE AGAINST THE TIBETAN PEOPLE**

A Report Submitted To The

**UNITED NATIONS
COMMITTEE AGAINST TORTURE**

On

**VIOLATIONS BY THE PEOPLE'S REPUBLIC OF CHINA
AGAINST THE PEOPLE OF TIBET**

Submitted By

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EXECUTIVE SUMMARY

This report evaluates China's compliance with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Torture Convention)¹ with respect to Tibet. It concludes that China continues to engage in widespread and systematic violations of the Torture Convention against the Tibetan people. China has also failed to make genuine progress in the areas of concern noted by this Committee in its 1996 and 2000 Concluding Observations.² This conclusion is supported by the recent findings of the Special Rapporteur on Torture, following his mission to China.

The report first summarizes the significant events in Tibet since 2000, against which the Committee should examine China's compliance with the Torture Convention. Significant measures were implemented to curtail and repress the free practice of religion in Tibet, to deny the Tibetan people any meaningful right of free expression, and to marginalize Tibetans through a concerted effort to support the influx of Chinese settlers. These measures have been enforced through police intimidation, arbitrary arrest and detention, and torture used to punish and terrorize the Tibetan communities. Indeed, across a broad array of economic, social and political rights, the Chinese government has failed the Tibetan people.

Increasing repression and economic marginalization of Tibetans culminated in a sustained and widespread series of protests – almost all peaceful – throughout Tibet beginning on March 10, 2008. Chinese authorities responded by detaining thousands of Tibetans, many of whom were treated with extreme brutality both while being detained and during their detention, shooting and killing unarmed protesters, locking monks and nuns inside their monasteries, imposing a heavy police and military presence in all cities and most towns of any significant size as well as remote nomad encampments, severely restricting travel within Tibet, and instituting “patriotic education” campaigns within the monasteries. All journalists and foreign tourists were expelled from the Tibet Autonomous Region and other Tibetan areas of the PRC shortly after the protest cycle started. Authorities have also cut off communication lines and punished Tibetans who attempted to contact persons outside Tibet. With no outside observers allowed, a situation of complete impunity exists in Tibet.

Our report appraises China's compliance with the central provisions of the Torture Convention. Notwithstanding the entry into force of China's revised Criminal Code and Criminal Procedure Law,³ police, prison guards, and other security officials as well as common prisoners acting on instructions of prison guards or with their tacit encouragement, routinely torture Tibetan detainees, particularly those held for political crimes.⁴ In practice, most of these

¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, entered into force, June 26, 1997, G.A. Res. 39/46 (Annex), U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1985).

² Concluding Observations of the Committee Against Torture, May 19, 2000, paras. 116-122, U.N. Doc. A/55/44 (2000); Concluding Observations of the Committee Against Torture, Sept. 9, 1996, paras. 138-50, U.N. Doc. A/51/44 (1996).

³ China's revisions to its 1979 Criminal Procedure Law and Criminal Code entered into force on, respectively, January 1, 1997 and October 1, 1997. See TIBET INFORMATION NETWORK, HOSTILE ELEMENTS: A STUDY OF POLITICAL IMPRISONMENT IN TIBET: 1987-1998, at 6 (1999) [hereafter TIN].

⁴ China's revised Criminal Procedure Law substitutes the crimes of “endangering state security,” “subversion,” and

perpetrators enjoy impunity for their acts. The widespread use of torture in Tibet is corroborated by numerous reports based on interviews with Tibetan refugees who suffered torture.

China's submission exhaustively sets forth purported legislative improvements enacted by its 1997 revisions to the Chinese Criminal Code and 1996 revisions to the Criminal Procedure Law, and subsequently. These amendments, however, in practice remain inadequate to deter, punish and redress acts of torture. More critically, China's focus on nominal legislative change betrays its tacit recognition that the practical reality in Tibet remains largely unchanged: torture continues to be an instrument of state control in Tibet, and the lack of a genuinely independent judiciary facilitates the ongoing commission of, and impunity for, acts in violation of the Torture Convention. Although China's new criminal laws represent potentially important steps towards fulfilling its obligations under the Torture Convention, these amendments do not yet appear to have had any impact on the arrest, detention and treatment of Tibetan political prisoners.

China's Fourth Periodic Report, like its Third, also fails to address the possibility of withdrawing its reservation to article 20 of the Torture Convention or recognizing this Committee's competence, under articles 21 and 22, to receive communications from, respectively, other states party to the Convention and individuals who claim to be victims of torture. This is consistent with China's persistent attempts to preclude international scrutiny of its human rights record in Tibet. China does not allow independent human rights monitoring in Tibet and prohibits access to prisons even by humanitarian agencies, such as the International Committee of the Red Cross.

The report concludes with recommendations for ameliorating the circumstances that permit the pervasive use of torture in Tibet. In particular, it urges this Committee to recommend that China provide independent human rights monitors with access to all prisons and detention centers in Tibet, enhance the human rights training of its judicial officers and security personnel, and strengthen mechanisms to promote accountability and punishment for officials who perpetrate acts of torture.

"attempts to overthrow the state" for the prior crime of "counter-revolutionary" activity. But in practice, "the underlying content of the law has remained intact and there is little evidence to suggestion that the move is anything more than an attempt to bring criminal definition in line with international norms." Id. at 6 (1999) Most pertinent to Tibet are articles 102 to 106, which redefine and expand the scope of crimes against the security of the state, the new practical equivalent of "counter-revolutionary" crimes. See id. at 7. China forbids formal inquiry into the charges brought against political prisoners, but of the 114 Tibetans about whom TIN managed to obtain legal documentation, 83 were charged with "counter-revolutionary" crimes. See id. at 40. See generally HUMAN RIGHTS IN CHINA & HUMAN RIGHTS WATCH/ASIA, CHINA: WHOSE SECURITY? "STATE SECURITY" IN CHINA'S NEW CRIMINAL CODE (1997). Article 103 of the new Criminal Code is devoted expressly to crimes of "splittism," a provision "clearly aimed at pro-independence movements and activists in restive ethnic minority regions such as Tibet, Xinjiang and Inner Mongolia." Id. at 17.

I. INTRODUCTION

The Central Tibetan Administration (CTA) is honored to submit this report to the Committee Against Torture. Our report provides additional data to facilitate the Committee's appraisal of China's compliance with the Torture Convention relative to Tibet. In it, we emphasize the special circumstances that render Tibetans particularly susceptible to torture. We submit it with the request that the Committee consider it as a supplement to our April 2000 Report submitted in response to China's Third Periodic Report.

Tibet was traditionally comprised of three main regions: U-Tsang, Kham and Amdo. The Chinese Communist authorities subdivided our country in order to break up our country and facilitate control of the Tibetan people. The Tibet Autonomous Region (Chinese: Xizang zizhiqu) was established by the Chinese government in 1965 and covers the area of Tibet west of the Driчу (Chinese: Yangtze) River, including part of Kham, although it is often referred to now as 'central Tibet' in English. The rest of Kham and Amdo have been incorporated into Chinese provinces, and where Tibetan communities were said to have 'compact inhabitancy' in these provinces, they were designated as Tibetan Autonomous Prefectures and Tibetan Autonomous Counties. The term 'Tibet' in this report is used to refer to all of those Tibetan areas as well as the TAR. When China uses the word Tibet, it refers only to TAR.

Central Tibetan Administration urges the Committee to consider the widespread and systematic use of torture in Tibet in the context of China's illegal invasion of Tibet in 1949, its division of historical Tibetan territory, and its failure to accord Tibetans their right to self-determination. Extensive studies by the International Commission of Jurists (ICJ), and a number of preeminent international legal scholars affirm that Tibet was a sovereign nation when the People's Liberation Army of China invaded in 1949.⁵ This act of aggression therefore violated international law, and Tibet currently remains a *de jure* state under illegal foreign occupation.

The people of Tibet have struggled against the illegal occupation of our country since the invasion by the People's Republic of China in 1949. By 1979, more than 1.2 million brave Tibetans had died as a direct result of this occupation. Now, almost sixty years have passed since our people fell under foreign rule.

Torture Convention violations in Tibet almost invariably represent China's continuing use of torture as an instrument of political control. Tibetans throughout Tibet remain at a special risk of torture for expressing views that are not authorized by the Chinese state: loyalty to the Dalai Lama, allegiance to Tibetan cultural identity and, in particular, support for their right as a people to self-determination.⁶ The recent protests in Tibet, and ensuing brutal crackdown, affirm

⁵ See generally International Committee Of Lawyers For Tibet, *Tibet's Sovereignty And The Tibetan People's Right To Self Determination* (1998); International Commission Of Jurists, *Tibet: Human Rights And The Rule Of Law* (1997) [hereafter ICJ]; Warren Smith, *Tibetan Nation* (1996); Dawa Norbu, *Self-determination in the Post-Soviet Era: A Case Study of Tibet*, 34, 3 J. Int'l Stud. 237 (1997). See also *Tibet: The Position in International Law*, Report of the Conference of International Lawyers on Issues Relating to Self-Determination and Independence for Tibet, London, Jan. 6-10, 1993 (McCorquodale, et al., eds. 1994), at 147.

⁶ See International Covenant on Economic, Social, and Cultural Rights, Dec. 16, 1966, entered into force, Jan. 3, 1976, 993 U.N.T.S. 3, art. 1(1); International Covenant on Civil and Political Rights, Dec. 16, 1966, entered into force, Mar. 23, 1976, 993 U.N.T.S. 171, art 1(1).

this. We ask the Committee to recall that the United Nations General Assembly has recognized the Tibetan people's right to self-determination.⁷ Central Tibetan Administration therefore urges the Committee to give full legal weight to the Tibetan people's right to self-determination as it assesses China's compliance with the Torture Convention in occupied Tibet. China's failure to honor this right is a principal cause of the high incidence of torture in Tibet.

Our government is aware of the most important work of this Committee. We, and Tibetan non-governmental organizations, have taken very seriously our obligations to help Tibetan political prisoners and victims of torture and to provide information useful for your work. Please know that these groups and others stand ready to provide any additional information you may request. The Central Tibetan Administration, its Supreme Justice Commission and the Tibetan Parliament in Exile, are also prepared to provide any further information or assistance to you.

Finally, since March 2008 China has been completely closed Tibet from the outside world. No tourist, journalist or diplomats have been allowed into Tibet. There is complete information blackout. Even though China had agreed in April 2008 to receive the High Commissioner for Human Rights at a later date, this still hasn't taken place.

⁷ See, e.g., G.A. Res. 1732 (XVI) of 20 December 1961: "The General Assembly . . . solemnly renews its call for the cessation of practices which deprive the Tibetan people of their fundamental rights and freedoms, including their right to self-determination." We note that the most recent General Assembly resolution (Resolution 2079 (XX) of 1965) "affirms" resolution 1732.

II. NARRATIVE OF EVENTS 2000-2008

This report discusses evidence of torture used against Tibetan people during a period of time – 2000 to the present – in which political and religious repression in Tibet has increased. Measures implemented in particular by TAR Party Secretary Zhang Qingli beginning in 2006 attempted to significantly curtail public religious activity in general and by Tibetan cadres in particular, to tighten controls over monks and nuns, and to publicly vilify the Dalai Lama. Zhang’s tenure, and increased restrictions on religion, coincided with the completion of the railway line to Lhasa in July 2006, designed to increase tourism, strengthen military control, and expand the influence and consolidate the control of the Chinese Communist Party.⁸ The opening of the railway has led to what has been described as a ‘second invasion’ of Tibet by accelerating the influx of Chinese people, and this has been particularly evident in Lhasa. Tibetan resistance to these new efforts to destroy their culture culminated in the widespread and almost entirely nonviolent protests in Lhasa from March 10, 2008 to the present.

Throughout Tibet during this time period, Tibetans suffered under policies and practices that denied Tibetans economic, social and political rights. The Special Rapporteur on the Right to Education, in her 2003 report on her mission to China, reported that Tibet still has unacceptably high illiteracy rates in part because of the Chinese Government’s assimilationist policies. These same policies include efforts to forcibly resettle nomads into pre-built villages and fenced-in lands, depriving them of their livelihoods and contributing to environmental destruction. The Special Rapporteur on Violence Against Women, in 2003, and the Committee on Economic, Social and Cultural Rights, noted the continuing use of forced abortions, sterilizations and coercive birth control practices, against Tibetan women. The Special Rapporteur on Racism has stated that Tibetans suffer systematic and institutional discrimination in the fields of employment, health care, education, housing and public representation. These human rights violations, collectively, are the consequence of the Chinese Government’s failed policies in Tibet traceable to its refusal to permit the Tibetan people to exercise their right to self-determination.

March 10 is the anniversary of the 1959 Lhasa Uprising against China’s rule, which led to the flight into exile of the Dalai Lama. Protests took place this year on March 10 in several locations throughout Tibet: at Labrang Monastery in Tibet’s Amdo Province (Ch: Gansu Province), Lutsang and Ditsa Monasteries in Amdo (Ch: Qinghai), Sera and Drepung Monasteries in Lhasa, and at Soktsang Monastery in Tibet’s Kham Province (Ch: Sichuan). All of these protests were peaceful, but in Lhasa, police beat many of the protesters. More peaceful protests followed in Lhasa on March 11 and 12 (when police again beat protesters) and on March 13. Participants in the Lhasa protests were detained.

On March 14, protests in Lhasa spiraled out of control into rioting. Chinese shops were burned and people were beaten and killed. When the security forces took concerted measures to restore order, scores of unarmed Tibetans were shot or beaten to death. The protests of March 10 spread across the entire geographical plateau, and Central Tibetan Administration has monitored at least 150 separate incidents of protest during this period. Fewer than ten of those included any

⁸ See International Campaign for Tibet report, ‘Tracking the Steel Dragon: How China’s Economic Policies and the Railway are transforming Tibet,’ available at www.savetibet.org.

violence by Tibetans and in those instances – as far as we know - involved only damage to government property. Still, police continued to beat and in some instances shoot unarmed Tibetan protesters. Based on the evidence we have collected as of 31 July 2008, 218 Tibetans were killed by police in response to the protests.

Since March 14, Tibet has been virtually sealed off to all outside observers. All tourists and journalists were compelled to leave. Tens of thousands of additional soldiers and police have been brought in to boost the security presence in all of Tibet's cities and larger towns. Thousands of Tibetans, lay people and monks, have been detained, often as a result of house to house searches in the middle of the night. Little if any information has been given to families of their whereabouts. Though many have since been released, more than one thousand – most of them monks -- remain unaccounted for. They have effectively been “disappeared.” Tibetans' ability to move about even within Lhasa and other cities, and between Tibet's cities and towns, has been severely restricted.

Despite the difficulty of obtaining information under these circumstances, we have gathered credible reports of beatings of peaceful protesters, arbitrary detentions, torture, extra-judicial killings and disappearances. We have received as well as infrequent official reports of people being sentenced through the courts to long prison sentences despite profound concerns that they may have made confessions or given other incriminating evidence under torture – evidence which should be inadmissible in court under the CAT. Prominent members of the Tibetan monastic and lay communities have also disappeared, including senior lamas from key monasteries around Tibet. Several well-known singers and performers have been held in a form of house arrest and have endured through-the-night interrogations with the threat of criminal proceedings against them if they deviate from tight restrictions on their movements. Many Tibetans have taken great risks to their own lives and freedom to gather and deliver information.

We therefore ask the Committee to consider our Report in light of the grave situation that currently exists in Tibet. We specifically urge the Committee to recall Article 2.2. of the Convention: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

III. VIOLATIONS OF THE CONVENTION AGAINST TORTURE

A. Evidence of Torture in Connection with Recent Protests

Since the beginning of mostly peaceful protests against the Chinese government on March 10, 2008, thousands of Tibetans, including monks, have been killed, disappeared or detained.⁹ It is believed that at least 100 Tibetans were killed in Lhasa and its environs from March 14 onwards, and that at least 40 Tibetans were shot dead or died as a result of repression in other Tibetan areas.¹⁰ There is a large and growing body of evidence that those Tibetans being detained are treated with extreme brutality in custody; and that many more unarmed peaceful protestors have been shot dead, or have died following torture in prison or as a result of suicide due to despair over the crackdown or to having been made to denounce the Dalai Lama.¹¹

We believe over 6,705 Tibetans were arrested for protests across Tibet since March 10, 2008.¹² We don't have any information of their whereabouts. There have been reports of prisoners being taken to other parts of Tibet and even to China. For those who have been released, the extreme brutality of their confinement has left many profoundly disturbed mentally, psychologically and physically. Some are unable to walk or speak; others have broken or dislocated bones.¹³

Extreme psychological distress has also been reported from monasteries due to pictures of the Dalai Lama being trampled upon by armed police or work teams; and a number of suicides have been linked to "patriotic education" campaigns.¹⁴ On May 14, 2008, 55 nuns from the Pangri nunnery in Kardze county, Kardze TAP, peacefully demonstrated against the crackdown. According to reports from the Tibetan Centre for Human Rights and Democracy (TCHRD), based in Dharamsala, the nuns vowed not to take part in the "patriotic education" program saying, "It is better to die than to denounce, criticize and attack the Dalai Lama..." According to a Tibetan source, the nuns were arrested on the spot, many severely beaten so that stains of blood were seen on the street and the nun's clothing scattered everywhere. The nuns were taken away in trucks.¹⁵

As a result of the crackdown, there are reports that the main detention facilities in Lhasa were so full that extra centers were improvised in Toelung Dechen County and in a warehouse near the new rail station.¹⁶ As shown below, all reports of conditions in detention describe overcrowding, lack of food and water, denial of medical treatment and torture during interrogation. Accounts also claim that during the crackdown, security forces took possession of all corpses, by force if necessary, to destroy evidence of the manner of death.¹⁷

⁹ Report by the International Campaign for Tibet ("ICT"), August 6, 2008: Tibet at a Turning Point: The Spring Uprising and China's New Crackdown ("ICT: Tibet at a Turning Point") at pp. 5, 7.

¹⁰ ICT: Tibet at a Turning Point at pp. 5-6, 19-23, 25-29, 66, 68, 73. For eyewitness accounts see ICT Tibet at a Turning Point at pp. 50-61.

¹¹ ICT Tibet at a Turning Point at p. 2, 50-61, 70.

¹² <http://www.stoptibetcrisis.net/>

¹³ Id.

¹⁴ Id at pp. 30-32.

¹⁵ Id at pp. 31-32.

¹⁶ Id at p. 46.

¹⁷ Id. at p. 46.

Most of this profound abuse and torture of detainees remains unreported, however. In areas where protests have occurred inside Tibet and neighboring provinces, authorities have confiscated cell phones and computers, turned off cellular transmission facilities or cut land lines, and interfered with internet access, thereby effectively preventing reports of torture and abuse of Tibetans inside Tibet from reaching the outside world.¹⁸ It has been reported that a young Tibetan woman was beaten so severely for taking a call that she had to be hospitalized.¹⁹ Nonetheless, many reports of torture of Tibetan detainees since March 10 have been reported. These include the following:

1. Monks at Labrang Monastery in Xiahe County

In April 2008, during the Chinese government's second media tour after the demonstrations of early March, 2008, Tibetan monks at Labrang (Chinese: Xiahe) monastery in Gansu province who spoke to reporters during the tour were reportedly later "imprisoned, beaten and in some cases subjected to electric shock torture," as punishment for speaking out.²⁰

2. Eyewitness Account Of Torture In Lhasa In March

The following account is from a Tibetan woman who witnessed the events in March in Lhasa and spoke with others who witnessed these events. She gave this account to ICT on her arrival in exile.

I have heard that all major prisons in Lhasa area – Gutsa [Detention Center], Sangyib, Nyithang, Tsalgungthang, and Toelung – were filled to maximum capacity, so other detained Tibetans were kept in the garage of the military station...on South Lingkor road in Lhasa.

Detainees were subjected to harsh beatings and their major body joints – hands and legs – were [often] dislocated as soon as they were brought into custody. Then they were forced into kneeling position for days, as blood dripped from their body...During the interrogation, they were forced to kneel and lower their heads. Beatings, including stomping on their entire body, and electrocution by electric prods. [Sometimes] when detainees fell unconscious, they were woken up by cold water being splashed upon them. Furthermore, detainees were beaten with sacks over their head...Those who have been charged were in for more brutal torture, including inserting bamboo through their nails and fingers tied tight and beaten.

¹⁸ Id. at p. 16.

¹⁹ Id.

²⁰ HRW: China and Tibet: "China's Forbidden Zones": Shutting the Media out of Tibet and Other "Sensitive" Stories (2008) at p. 44, citing Nicholas D. Kristof, "The Terrified Monks," *The New York Times* (New York), May 16, 2008. See also ICT Report at p. 85-86.

Detainees were fed one small and dry steamed bun...and a small mug of water once a day. The lack of sufficient food to eat and water to drink forced them to drink their own urine, even though some were urinating blood... I heard these accounts from a few people who have been released... They were ordered not to tell anybody anything or face arrest. Those released were fined 2000 yuan (US \$293).²¹

3. Nechung

On March 18, 2008, a 38-year old woman name Nechung was arrested after tearing down a signboard at the Ngaba police station two days earlier. After her release on March 26, she could not speak, or eat without vomiting. Her relatives could not obtain permission to admit her to a hospital. She died April 17. Two of her sons were subsequently detained – the eldest had both his legs broken.²²

4. Report of Torture Received by Kirti Monks in Exile

More than 30 people were crammed into small rooms no larger than one pillar (approximately 2 meters square) in size. They had no room to sit and had to stand day and night. They were given one bowl of rice soup each per day, and were obligated to urinate and defecate where they stood. Educated and prominent individuals were singled out for especially harsh beatings... Those who could not be crammed into the prison were detained in other places like private houses, so their relatives could not even discover their whereabouts. Although most were held for only a few days, none were in good health when they returned home.²³

Kirti monks in exile received a transcript of a message from the monks at the Kirti monastery in Ngaba prefecture where at least 10 Tibetans were shot dead during protests. This message included statements by several Tibetans. It is not known whether they were monks or lay people:

Since March 10, in all places covering the three main regions of Tibet, Tibetans protested against the Chinese authorities. The Chinese Communist Party sent in personnel in an organized fashion, and marked every Tibetan, especially monks as criminals. Bloody killings and beating that were completely inhuman took place – too much for our eyes to witness.²⁴

²¹ Id. at p. 60.

²² Id. at p. 75.

²³ Id. at p. 76.

²⁴ Id. at p. 79.

5. Crackdown and Torture in Machu County

Until spring this year, Tibetans in Machu (Chinese: Maqu) County, Kanlho Tibet Autonomous Preecture in Gansu Province, a pastoral area, have not engaged in overt nationalistic protest since 1958. On March 16, thousands of local people joined protest marches carrying the Tibetan national flag and pictures of the Dalai Lama. The crowd attacked government buildings and burned numerous country offices. In response, on March 19, thirty truckloads of soldiers entered the area and detained those involved in the protest, severely beating detainees. Several were taken to the hospital and some have sustained disabilities that may be permanent. An unconfirmed number of deaths were reported along with compulsory blood donations in detention.²⁵

6. Detentions and Disappearances in Tibet

The International Campaign for Tibet has identified over 900 people detained since March 10. This information was obtained from first hand accounts provided to ICT by family member, monks, nuns and lay people now in exile.²⁶ However, because of the harsh and widespread efforts by the Chinese government to prevent information from leaving Tibet, and because of the climate of fear now prevailing in Tibet as a result of the crackdown, a full list of Tibetans still in detention cannot be compiled.²⁷ Nonetheless, state media in March and April confirmed the detention of 4434 people described as “rioters” who were detained or surrendered in connection with the March protests.²⁸

According to a June 21 China Daily article, 1157 people were released who “expressed regret for conducting minor crimes” related to the Lhasa protests. However, we haven’t been able to verify this figure. Moreover, according to the CECC analysis of official information, the status of more than 1200 alleged rioters remains unknown.²⁹

Many Tibetans taken into custody are placed in prisons far from home. In many cases the prisoners’ families have no idea where they are or whether or not they are alive. For example, reliable reports describe the torture of a young monk detained in a local detention center in Lhasa for having no identity card. According to ICT’s source, four men beat him every day for several days, while his wrists were tied together behind his back with one arm behind his neck and the other around and behind his back. His food consisted of one small bread roll and 20 ounces of water shared among four or five people. The young man was taken to Mianyang Prison in Sichuan province and later released due to fears he might die without medical attention. Now he can hardly walk or talk and his breathing is labored.³⁰

²⁵ Id. at p. 81.

²⁶ Id. at p. 119.

²⁷ Id.

²⁸ Id. citing Officials Report Release of More than 3,000 of the More Than 4,400 Detained Tibetan “Rioters,” Congressional-Executive Commission on China (“CECC”), July 9, 2008, www.cecc.org. According to the ICT Report at p. 119, the figure of 4434 detainees covers Lhasa in the TAR, Gannan TAP in Gansu province as well as in Ngaba prefecture in Sichuan province, but not every Tibetan area of the PC.

²⁹ Id.

³⁰ Id. at 122.

Other sources report seeing hundreds of Tibetans, including many monks, herded onto trains headed for remote Qinghai province – the site of gulags during the Cultural Revolution. The report told the ICT that the prisoners seemed to be “hurt badly” and some had blood on their faces. An old lady in the group had shackles on her feet, no shoes and was being beaten by the police.³¹ According to recent reports, hundreds of monks remain in custody in Qinghai province at this time.³²

In sum, the whereabouts of hundreds of detainees remains unknown, amid numerous highly credible reports of abuse and torture. A young Tibetan man sent a friend in exile the following details of torture during his brief period of detention following March 14 in Lhasa:

I was arrested and they took me with them, tied my thumbs behind my back, very tightly, so that this whole area has been numb for the last two or three months... they hit my head a lot. They gave us half a steamed bun a day... They didn't provide any water. Everyone was very thirsty and a lot of people drank their urine. We had no clothes, no blankets, nothing to lie down on, nothing – just cement floors – and it was very cold... Many people had arms or legs broken or gunshot wounds but they weren't taken to hospital... one boy [who] was shot three times... One man was punched in his [right] eye, and it was all swollen and black and blue... People had their teeth broken... One of the problems is that people have no food ... they are just falling over ... one boy fell into the toilet... and he was cut right across his face... I met an old man ... who had ribs broken and he was all bent over and couldn't stand up straight, he was dying, so the police took him to People's Hospital, where one or two people die every day.

There are a lot of high school students ... A 17-year-old who had not participated in the events of the 14th ... they pushed a wagon at him until he fell, there are all kinds of torture methods. This kid was very young and he didn't even do anything. Afterwards he said that he'd done all kinds of things, that happens to a lot of people, they pressure people to admit things they never did.³³

These instances of torture, occurring over the past six months, belie any claims the Chinese Government makes in its Fourth Periodic Report that it has taken measures to implement the Torture Convention.

³¹ Id. at 122.

³² Radio Free Asia (“RFA”) Home, News: “Tibetan Monks Still Held in Qinghai,” August 28, 2008.

³³ ICT Report at pp. 132-134.

B. Even Before the March Demonstrations, Torture Was a Common Practice in Tibet

1. The Special Rapporteur Believes Torture Remains Widespread

Even before the March demonstrations, torture remained widespread in China.³⁴ Since 2000, the Special Rapporteur and his predecessors have reported 314 cases of alleged torture to the government of China. These cases represented well over 1,160 individuals.³⁵ Moreover, after the UN Rapporteur on Torture left Chushur prison in Tibet, one of the Tibetans he had visited was tortured. Jigme Gyatso, who is serving 18 years in prison for 'counter-revolution' and 'inciting splittism', was apparently hospitalized for a period of several weeks and is now unable to walk properly due to a leg injury. The UN Special Rapporteur on Torture, who met him during an official visit to Chushur (Chinese: Qushui) Prison near Lhasa on November 27, 2005 and called for his release, has been informed by ICT about the concerns for Jigme Gyatso's welfare.³⁶

2. Specific Instances of Torture in Tibet

During the past eight years, there have been numerous reported instances of torture being used against Tibetan detainees both to extract confessions and as punishment.³⁷

a. Tenzin Deleg Rinpoche

Tenzin Deleg Rinpoche, along with four other monks, was arrested April 7, 2002, during a police raid on Jamyang Choekhorling monastery in Kardze, and detained on bombing charges that are widely regarded as being trumped-up. Tenzin Deleg Rinpoche was reportedly held incommunicado for eight months at Dartsedo Detention Centre before his trial in November 2002. In connection with that detention, Amnesty International received unconfirmed reports that he was tortured or ill-treated by being shackled by hand and foot and suspended from above.³⁸ Reports indicate that he did not receive a fair trial. While official sources report that he was assigned two lawyers, one relative told foreign journalists that "no lawyers were allowed (at the sentence hearing) since the accused were labeled 'reactionary and anti government.'"³⁹ Moreover, lawyers employed by Tenzin Deleg's brother were not allowed to represent him at his appeal.⁴⁰

³⁴ Commission on Human Rights, Sixty-second Session, Item 11(a) "Civil and political rights, including the question of torture and detention: Summary of Mission Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to China ("Nowak Report") at page 1.

³⁵ Id. at paragraph 41.

³⁶ See <http://savetibet.org/news/newsitem.php?id=1065>.

³⁷ See U.S. Department of State China Country Reports on Human Rights Practices – 2004, 28 February 2005: Tibet ("the security apparatus [in Tibet] employed torture and degrading treatment in dealing with some detainees and prisoners. Detainees released in 2003 reported credibly that officials used electric shocks, prolonged periods of solitary confinement, incommunicado detention beatings and other forms of abuse.").

<http://www.state.gov/g/drl/rls/hrrpt/2004/41640.htm>. See also Tibetan Center for Human Rights & Democracy ("TCHRD"): Kuxing: Torture in Tibet ("TCHRD:Kuxing").

³⁸ Amnesty International ("AI") "People's Republic of China: Miscarriage of Justice? The trial of Tenzin Deleg Rinpoche and related arrests, AI Index: ASA 17/029/2003.

³⁹ Id., citing Radio Free Asia: "Tibetans were denied lawyers in bomb trial – Chinese Judge Says Men Confessed to Bombings", 6 December 2002.

⁴⁰ Id. See also Human Rights Watch ("HRW") Trials of a Tibetan Monk: The Case of Tenzin Delek, February 2004, Vol. 16. no. 1 (C).

According to Amnesty International, Tenzin Deleg was reportedly moved to a secret location in 2003. His current location remains unknown and there is concern that he is at risk of being subjected to further torture.⁴¹ Tenzin Deleg Rinpoche is widely respected in the area for his involvement in providing education to nomad children and welfare for the elderly.

b. Lobsang Dhondrup

Lobsang Dhondrup was charged with the same series of bombings as Tenzin Deleg Rinpoche. Lobsang Dhondrup was reportedly tortured for several months before his trial. The only evidence linking him to the bombings was official documents claiming he “confessed” to his crime. He was sentenced to death on December 2, 2002 and executed on January 26, 2003 immediately following a failed appeal hearing, even though senior Chinese officials had assured United States and European Union diplomats that his case would receive a lengthy review.⁴²

c. Tserang Dondrup

Tserang Dondrup was reportedly charged with “separatist activities” apparently in connection with helping to raise funds for Tenzin Deleg Rinpoche’s defense. While in detention he reportedly lost most movement in his legs, possibly as a result of torture. Reports indicate that at his release he could not see or walk, had lost movement in his hands, and suffered from speech difficulties that made it hard for others to understand him.⁴³

d. Tsultrim Dargye (Tsuldi) and Drime Gyatso

Tsultrim Dargye and Drime Gyatso, associates of Tenzin Deleg were also detained in August of 2002 after attempting to raise money for Tenzin Deleg’s appeal. Both were reported to have been severely beaten while in prison. According to one source Tsultrim Dargye was bedridden with kidney problems after his release.⁴⁴

e. Numerous Associates of Tenzin Deleg Are Detained or Missing

There is fear that numerous others detained or missing in connection with the arrest of Tenzin Deleg Rinpoche have also been tortured. These include Taphel, Didi, Choetsom and Passang, Tsultrim Dargye, and Tamdrin Tsering, Tenpa Rabgyal, Thubten Sherab, and Pasang.⁴⁵

f. Torture in Connection with Relocation of Herders

Instances of torture have also been reported in connection with the forced relocation of Tibetan herders in Gansu, Qinghai, Sichuan, and the Tibet Autonomous Region. In 1999, China

⁴¹ Id.

⁴² AI Index ASA 17/003/2005, 26 January 2005. See also Human Rights Watch (“HRW”): Trials of a Tibetan Monk: The Case of Tenzin Delek, February 2004, Vol. 16, No. 1 (C) (“Trials of a Tibetan Monk”) at pp. 20-21.

⁴³ Id. citing Human Rights Watch, Tibetans Lost in Chinese Legal System: Activist Released, But Others Still Held, 15 July 2003.

⁴⁴ Trials of a Tibetan Monk at p. 24.

⁴⁵ Id. at pp. 24-28, 62-63.

initiated the “Western Development” campaign. As part of this campaign many Tibetan farmers have been dispossessed of their land and herders resettled, with minimal compensation, to make way for mining, infrastructure projects and urban development. This has led to violent conflicts during which three people from Qinghai were killed in April 2004.⁴⁶ In August 2005, five men reported to be “ringleaders” of the Manigango protest by herders against the construction of a slaughterhouse in Derge County, were taken into custody, reportedly in the Public Security detention facility in Derge County. These five detainees reportedly have not had access to relatives, legal counsel, or medical professionals. One of the five men, named Soepa, was released after going blind allegedly as a result of being beaten and not being given access to medical care.⁴⁷

g. Torture of Detained Teenagers

Some forty Tibetan children were detained by police on or around September 7, 2007 in Xiahe (Labrang) County, Gannan prefecture, in Gansu Province for writing pro-Tibetan independence slogans on walls. According to eyewitnesses, among the group of seven boys kept in custody “four of the boys were bruised and dazed, and one was repeatedly taken away at night, returning in the morning appearing battered and unable to speak.”⁴⁸ According to reports, the incident involved fourteen and fifteen year old male students from nomad families. One of the boys was beaten so badly during or after the arrest, he was bleeding profusely. Police reportedly refused permission for the injured boy to receive medical treatment. Officials afterwards refused to reveal the students’ location or even to confirm that they were in custody.⁴⁹

Also according to Amnesty International, teenagers who were detained as part of a group of Tibetans trying to flee from China to Nepal in September 2006, were beaten with rubber batons and electric-shock prods.⁵⁰ The detentions of the children followed the shooting death of a 17 year old nun named Kelsang Namtso by Chinese border guards on September 20, 2006, an incident covered by the world media after it was captured on video by a Romanian cameraman. An unnamed Tibetan boy may also have died when Chinese border control troops at the Nangpa pass shot at the unarmed Tibetans.⁵¹ The official position from Beijing is that the shooting was ‘normal border management’ and that the soldiers had been firing ‘in self-defence’ (Xinhua statement, October 12, 2006) but the latter statement is refuted by the video evidence and testimonies of climbers who witnessed the incident from base camp at Mt Cho Oyu, which overlooks the Nangpa Pass.⁵²

⁴⁶ HRW “No One Has the Liberty to Refuse” vol. 19, No. 8 ©, June 2007 (“Tibetan Herders”) at p. 50.

⁴⁷ Tibetan Herders at p.p. 70-71.

⁴⁸ AI Report 2008 “Tibet Autonomous Region and other ethnic Tibetan areas.” See also <http://savetibet.org/news/newsitem.php?id=1170>.

⁴⁹ HRW: China: Tibetan Schoolboys Detained as Crackdown Worsens, Teenage Students Held Incommunicado for Graffiti, September 20, 2007, <http://hrw.org/english/docs/2007/09/20/china16924.htm>.

⁵⁰ AI Index: ASA 17/003/2007, 06 February 2007

⁵¹ Id.

⁵² International Herald Tribune: Asia-Pacific, Joseph Kahn, “Video contradicts China on shooting of Tibetans,” Sunday, October 15, 2006. See also The New York Times: Asia Pacific, Joseph Kahn, “Video Disputes China’s Claim Shooting was in Self-Defense, October 16, 2006.

h. Numerous Other Instances of Torture

According to sworn testimony submitted July, 2006 by Tenzin Tsundue, “Many prisoners [in Drapchi Tibet Autonomous Region (“TAR”) Prison] have been beaten to death, tortured by use of electric batons, electric shock, mental torture, rape and deprivation of sleep and food. When prisoners become invalid or ill to the point of death, the prison authorities release them on “medical grounds.”⁵³

The Nowak Report also describes the use of torture in TAR Prison in connection with Special Rapporteur Nowak’s visit there on 27 November 2005. During his visit, the Special Rapporteur was informed that virtually all detainees have confessed to their crimes with a strong emphasis on education placed on those who had not yet confessed. The Special Rapporteur was provided with a list of the names of fifteen detainees who have died in custody – one due to suicide and the rest to illness. None of the detainees interviewed at the time of the Special Rapporteur’s visit claimed to have been tortured; however, the Special Rapporteur received reports from former TAR prisoners held in other facilities, claiming that they were bound and beaten with sand-filled plastic sticks, as well as being beaten with electroshock batons.

Most of the prisoners that the Special Rapporteur wished to interview had been moved on 12 April 2005, six months earlier, to the newly established Chushur (Chinese:Qushui) prison, the existence of which had not been mentioned by TAR Prison officials during the Special Rapporteur’s briefing with them.⁵⁴

Reports received by the International Campaign for Tibet suggest that conditions in Chushur (Qushui) Prison are worse than those at the notorious TAR Prison, Drapchi.⁵⁵ Sonam Dorjee, now living in exile, was transferred from TAR Prison to Chushur (Qushui) in February 2005. He was one of a group of five Tibetan farmers who were imprisoned and tortured in 1992 in connection with protests against Chinese policies in the period following the imposition of martial law in the TAR, from March 1989-May1990. In June 1992, because of the impact of Chinese policies and the influx of Chinese people into their local area, he and two other farmers disrupted a town ship meeting by displaying a home-made version of the Tibetan national ‘snow lion’ flag, which is banned in Tibet, and a banner with the wording ‘Independence for Tibet.’

He and other detainees were transferred to Gutsa prison where Sonam Dorjee described being tortured. “Prison guards asked me to stand on the chair placed in the middle of the room, and tied my thumbs to the thin nylon thread that was hanging from the ceiling. Once the chair on which I was standing on was kicked away, I was hanging from the ceiling and was beaten...”⁵⁶ Sonam Rinchen, a young farmer detained along with Sonam Dorjee, who died in 1999, was given electric shocks in prison, with an electric wire attached to the nail of each finger. Sonam Dorjee states: “There is a sensation that every strand of skin is being torn apart from the flesh.”⁵⁷

⁵³ Testimony of a former Tibetan Prisoner at p. 114.

⁵⁴ Nowak Report at Appendix 2, Section V, paragraph 16. See also <http://www.savetibet.org/news/newsitem.php?id=1147>.

⁵⁵ ICT Tibet News: Display of Tibetan flag leads to death of detainee: An account of imprisonment after rare 1990’s rural protest, ICT, 27 June 2007.

⁵⁶ Id.

⁵⁷ Id.

Sonam Dorjee was next taken to TAR Prison where he described one of his fellow prisoners being tortured with electric batons.⁵⁸ In 1998, Sonam Dorjee became serious ill. Concerned that he would die in prison, the authorities sent him home.⁵⁹ In November 2000, however, he was returned to TAR Prison where he was beaten severely and sent to solitary confinement.⁶⁰

Sonam Dorjee was transferred to Chushur (Qushui) Prison in February 2005. He described surveillance at Chushur as more stringent than at TAR Prison, and conditions even more oppressive.⁶¹ “Our cell was equipped with video cameras and a voice-recorder, and the toilet was inside the cell. It is the worst prison I have ever seen.”⁶²

In Chushur, political prisoners who are regarded as particularly resistant to reform are generally not allowed visitors (or are allowed to see visitors for very short periods of time), and are often kept shackled in cells with little or no natural light.⁶³ According to various reports, new prisoners are generally tortured during interrogation and prisoners who are held in solitary confinement are shackled with heavy chains.⁶⁴ Moreover, it is reported that visitors to Chushur are given lists of questions they are not allowed to ask prisoners.⁶⁵

i. Kelsang Gyatso

According to Human Rights Watch, a Tibetan monk in his early twenties died in 2001 following a short detention while he and about twenty other monks attempted to travel to India. Kelsang Gyatso began to suffer from severe headaches, incontinence and vomiting while in detention but was not offered medical treatment.⁶⁶

j. Phuntsog Nyidron

Phuntsog Nyidron was released from prison in February 2004. She was Tibet’s longest-serving female political prisoner, having initially been sentenced at a secret trial for staging a peaceful protest in 1989. While in prison she was beaten and tortured.⁶⁷

k. Numerous other detainees

There are numerous other confirmed reports of torture of Tibetan detainees occurring during the eight years following China’s Third Periodic Report.⁶⁸

⁵⁸ Id.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id..

⁶² Id.

⁶³ Id.

⁶⁴ Id.

⁶⁵ Id.

⁶⁶ Human Rights in China News Update June 15, 2002.

⁶⁷ AI Press Release, “China: Tibet’s longest-serving female prisoner of conscience finally released, 27 February 2004.

C. China's Legal System Has Failed to Ban the Use of Torture

1. Legal reforms fail to implement the Torture Convention

Torture denotes “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”⁶⁹

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “the Torture Convention”) obliges each state party to integrate this definition of torture into its criminal law.⁷⁰ In 1996, the United Nations Committee Against Torture (“Committee”) noted with concern China’s “failure to incorporate the crime of torture into [its] domestic legal system.”⁷¹ In its Third Period Report, China contended that it redressed this deficiency through its revised Criminal Laws of 1997.⁷² As noted in our April 2000 Report, the sole references to torture in the Criminal Laws of 1997 are Article 247 which prohibits judicial officers from extorting confessions by torture, and Article 248 which adds that “supervisory and management personnel of prisons, detention centers, and other guard-houses who beat or physically abuse their inmates, if the case is serious, are to be sentenced to three years or fewer in prison or put under criminal detention.”⁷³

These two provisions are far too limited in scope. Article 247, and virtually every other law or regulation addressing torture, continues to prohibit torture only if used to extract confessions. Torture of course may have other purposes – for example, to punish or to terrorize – and these purposes appear to drive most of the cases of torture in Tibet. Article 247 also only prohibits the perpetration of torture by “judicial officers.” Under Article 248, the penalty of a maximum of three years in prison for “supervisory personnel” who abuse prisoners is only

⁶⁸ See, for example, Jigme Sanngpo, AI Index ASA 17/016/2002; Chadrel Rinpoche HRIC Action April 17, 2001; Ngawang Sangdrol, HRIC News Update February 16, 2003; Lobsang Dhargyal, HRIC News Update February 16, 2003; Ngawang Choephel, AI Index: ASA 17/03/00 “Health Concern”, Ngawang Choephel, China (Tibet); Jigme Gyatso, report to Tibet Information Network (“TIN”) dated 21 December 2006; Geshe Sonam Phuntsok, TIN 15 April 2008; Daw Gyaltzen, Criminal Justices Challenges: Tenzin Tsundue “The Testimony of a Former Tibetan Prisoner” submitted July 2006 for a criminal suit filed in Spain’s High Court against Jiang Zemin and Li Peng for genocide and crimes against humanity in Tibet (“Testimony of a former Tibetan Prisoner”) at pp. 113-114.

⁶⁹ Convention against Torture: Part I, Article 1, paragraph 1.

⁷⁰ Id. at Part I, Article 4.

⁷¹ *Concluding Observation of the Committee Against Torture*, Sept. 9, 1996, paras. 149(a) (hereinafter “1996 concluding Observations”), cited in *Torture in Tibet, A Report Submitted to the United Nations Committee Against Torture by Secretary Department of Information and International Relations, Central Tibetan Secretariat, Dharamsala*, April 2000 at footnote 12 (“April 2000 Report”).

⁷² Third Periodic Report of the People’s Republic of China on Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Sept. 19, 1999, U.N. Doc. CAT/C/39/Add.2 (future), paras. 59-64 (“Third Periodic Report”).

⁷³ April 2000 Report with reference to Criminal Laws of the People’s Republic of China adopted by the Second Session of the Fifth National People’s Congress on July 1, 1997 and amended by the Fifth Session of the Eighth National People’s Congress on March 14, 1997, art. 247 (“Criminal Laws of 1997”).

imposed in “serious” cases the nature of which is not defined. Neither of these articles, therefore, meets China’s obligation to ban all forms of torture.⁷⁴

2. Measures Taken Since the Third Periodic Report Fail to Satisfy the Convention

In its Fourth Periodic Report dated 27 June 2007, for consideration by the United Nations Committee Against Torture (“Fourth Report”), China identifies “measures taken and the progress achieved in regard to implementation of Part 1 of the Convention since the submission of the third report in 1999,” and gives a “detailed introduction of China’s implementation of the Convention in respect of concerns raised by the Committee” during its consideration of the previous report and in its “Conclusions and Recommendations.”⁷⁵ The list of “measures taken” and the “detailed introduction,” however, add little to the inadequate provisions against torture contained in the Criminal Laws of 1997. In fact, none of the legislative, administrative and judicial measures that the Fourth Report describes, taken singly or together, fulfills China’s obligation under the Torture Convention.

Much of the Fourth Report reiterates provisions in the Chinese Constitution and in the Criminal Laws of 1997 that were discussed at length in the Third Periodic Report and which the Committee already determined were not adequate under the Torture Convention.⁷⁶ For example: the Fourth Report continues to reference Articles 247 and 248 of the Criminal Laws of 1997 of the People’s Republic of China with regard to regulations and punishments pertaining to the use of torture to extract confessions. These Articles, however, only proscribe the use of torture by judicial officers, policemen or other officers of institutions of confinement, detention or custody houses. The Convention against Torture clearly prohibits the use of torture by any person acting in an official capacity. This prohibition has still not been incorporated into China’s legal system, as required by the Convention against Torture. As a consequence hundreds of Tibetans have been tortured at the hands of “paramilitary” forces who may not even be punishable under China’s laws as well as by common criminals at the instigation or with the encouragement of prison officials.⁷⁷

Paragraphs 94-109 of the Fourth Report describe efforts the Chinese government has made under the Constitution and under Articles 247 and 248 of the Criminal Laws of 1997 to ensure the “fair and prompt” investigation into acts of torture.⁷⁸ Paragraph 122 of the Fourth Report discusses Article 43 of the 1997 Criminal Procedure Law/ Code providing that “It shall be strictly forbidden to extort confessions by torture and to collect evidence by threat, enticement, deceit or other unlawful means.” Article 265 of the Rules of Criminal Litigation for the People’s Procuratorates states that confessions of suspects and statements of victims and witnesses that are extorted by torture or by the use of threats cannot be used as the basis for “accusations;”⁷⁹ and the Circular on the Strict Prohibition of the Use of Confessions of Suspects Extorted by the Use of Torture as a basis for determining crimes, issued in January 2001,

⁷⁴ April 2000 Report at Section 2. A.

⁷⁵ Fourth Report at p. 3

⁷⁶ Fourth Report at paras. 59-64, 94-109.

⁷⁷ RFA, News, Tibetan Monks Still Held in Qinghai, August 8, 2008.

⁷⁸ Fourth Report at para. 95.

⁷⁹ Id. at para. 124.

requires that “all levels of the people’s procuratorates must strictly follow and implement legal stipulations on the strict prohibition of the use of torture to extract confessions.”⁸⁰ The Fourth Report continues “The Supreme People’s Procuratorate *asks* that all levels of the people’s procuratorates strictly follow the legal stipulations...” (Emphasis added.)⁸¹

As noted in their titles, most of these provisions were in effect prior to the issuance of China’s Third Periodic Report and were found by the Committee to be inadequate in the prevention of torture. Article 265 only prohibits confessions and statements of victims and witnesses that are extorted by torture from serving as the basis for “accusations” – leaving open a wide spectrum of situations and proceedings at which such confessions may be used.⁸² Moreover, China’s Fourth Report offers no indication of whether or how these prohibitions against torture are being implemented in practice. In fact, the evidence of torture in connection with events in Tibet beginning in March 2008, described above, provides clear evidence that these prohibitions against torture contained in the Chinese Criminal Laws of 1997, the Criminal Procedure Code and the Rules of Criminal Litigation, are not implemented in practice in Tibet or in connection with the detention and prosecution of Tibetan suspects and witnesses.

China’s Fourth Report describes numerous additional criminal procedures intended to prohibit the use of torture to obtain confessions from suspects. For example, Paragraph 123 cites Article 181 of the Procedural Provisions for the Handling of Administrative Cases by Public Security Organs which provides: “During interrogations ... the use of torture to extort confessions or the use of threats, enticement, cheating and other illegal means to obtain confessions are strictly prohibited.” Article 26 of the Procedural Provisions for the Handling of Administrative Cases by Public Security Organs provides: “The use of torture to extort confessions or the use of threats, enticement, cheating and other illegal means to obtain evidence are strictly prohibited.”⁸³ Neither of these procedures, however, appears to provide a penalty for failure to comply with the provision. In light of the recent evidence of widespread torture in connection with the crackdown of demonstrations in Tibet, described above, it is clear that these procedures are not being followed.

Paragraph 129 of China’s Fourth Report states that in 2001, the Ministry of Public Security published Regulations on the Behavior of People’s Police on Duty in Custody-houses. These Regulations explicitly require that the people’s police not beat or incite others to beat those in custody, or use torture to extort confessions, or corporal punishment or cruel or degrading treatment upon those in custody. Again, based on reports of the events in Tibet since early March, 2008, these Regulations are not being followed with regard to Tibetan prisoners/detainees.

⁸⁰ Id.

⁸¹ Id.

⁸² See Nowak Report para. 37 (“while such confessions [extracted by torture] shall not form the basis for charges and convictions, the SPC [Supreme People’s Court] decision does not exclude their admissibility in judicial proceedings. Further, the SPC Rules are only binding for judicial organs and do not apply to administrative organs.”) See also, Convention Against Torture: List of issues to be considered during the examination of the Fourth Periodic Report of China, 8 August 2008 at Article 15, para. 25.

⁸³ Fourth Report at para. 123.

3. Most Remaining New Measures Do Not Address Torture

Most of the remaining measures that discuss the use of torture involve general “human rights” protections in connection with the administration of public order. For example, a 2004 amendment to the Constitution, Article 33, provides generally that “the state respects and protects human rights”;⁸⁴ the 2005 Law of the People’s Republic of China on Administrative Penalties for Public Security purports to promote fair and efficient law enforcement by forbidding police to “beat, maltreat, or insult” the offender, and to protect children under the age of 18, persons over 70, and women who are pregnant or breast-feeding infants under one year;⁸⁵ Measures for the Administration of Relief for Vagrants and Beggars without Assured Living Sources in Cities at Article 16 prohibits taking “liberties” with women, as well as banning the beating or maltreatment of those receiving help.⁸⁶ These provisions do nothing to integrate the precise definition of torture into China’s Criminal Code as required under the Torture Convention.

Similarly, at Paragraph 19 the Notice on the Strict Prohibition of the Use of Criminal Suspects’ Confessions Extorted by Torture as Evidence for Deciding Cases issued in 2001 by the Supreme People’s Procuratorate, merely requests “the people’s procuratorates at all levels to firmly establish a culture of just and civilized law-enforcement, and to put a decisive stop to the use of torture to extort confessions.”⁸⁷ Although these requests are phrased in the obligatory (“They must rigorously carry out the relevant legal stipulations regarding the strict prohibition of the use of torture to obtain confessions”),⁸⁸ the Notice contains no apparent penalty for failure to comply.

Other measures promoting the prevention of torture identified in the China’s Fourth Report include: the standardization of documents regarding arrest;⁸⁹ regulations enacted to the effect that the People’s supervisors “may raise objections” to confessions extracted by torture; educational programs, inspection procedures, video-conferencing, model practices and other “rectification work” to “rectify” the (implicitly acknowledged) problem of torture throughout the Chinese penal system;⁹⁰ and the declaration by the Supreme People’s Court that the “guiding theme” for the work of the People’s Court in the 21st Century would be “fairness and efficiency.”⁹¹

“Promoting judicial fairness inevitably... requires the punishment and correction in accordance with the law of the use of torture to extort confessions, the use of violence to extract testimony, and other such acts of torture that seriously harm the human rights of criminal suspects and defendants and that impair judicial fairness.”⁹² Standardization of arrest documentation, the grant of permission to the People’s supervisors to object to torture,

⁸⁴ Fourth Report at para. 6.

⁸⁵ Id. at para. 7.

⁸⁶ Fourth Report at para. 16.

⁸⁷ Id. at para. 19.

⁸⁸ Id. at para. 19.

⁸⁹ Id. at para. 22.

⁹⁰ Id. at paras 22, 39, 40 76-86.

⁹¹ Id. at para. 41.

⁹² Id. at para.41.

educational awareness programs and “guiding themes,” may in part fulfill the Convention against Torture’s mandate to ensure that education and information regarding the prohibition against torture are included in training “law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest”;⁹³ these measures do not, however, in any way meet China’s obligations under the Torture Convention actively and effectively to ban all forms of torture. Moreover, despite implementation of a “rectification drive” and an “inspection activity” “forcefully encouraging all areas to take further their work to rectify the problem of extorting confessions through torture” and an exhortation to promptly deal with such cases of torture “in accordance with the law;” and particularly in cases leading to death or injury of the party involved, to apply “strict punishment” “in accordance with the law”;⁹⁴ none of these purported safeguards fulfills China’s obligations under the Torture Convention. Tellingly, these purported safeguards failed to prevent the widespread torture of Tibetans following the March 11, 2008 demonstrations.

Paragraph 120 of China’s Fourth Report states that Article 5 of the Measures on Administrative Compensation and Criminal Compensation by Judicial and Administrative Bodies provides for compensation to victims of torture. The Fourth Report, however, records no statistics concerning the number of instances since the year 2000 when such compensation was ever received by a victim of torture anywhere in China, much less in Tibet.

4. Statistics Do Not Support Elimination of Torture of Tibetan Detainees

Finally Paragraph 108 of China’s Fourth Report cites statistics purporting to show a decline in the total number of cases where personnel of the state abused their power (including abuse by the use of torture to extort confession and the use of violence to extort testimony from a witness). With regard to those statistics, the number of cases of criminal charges on the use of torture to extort confessions dropped from a high of 143 in 1999 to a low of 52 in 2003, and to 53 in 2004, the last year for which data is recorded.⁹⁵ As previously noted, only “judicial officers” are prohibited from using torture under the Chinese Penal Code. Therefore, it is undeniable that the number of people using torture to extract confessions is much higher than the statistics being reported. Moreover, none of the statistics on the number of criminal charges on the use of torture to extort confessions, or on maltreatment of inmates, is broken down geographically. Hence, it is impossible to know if any criminal charges on the use of torture to extort confessions were brought within Tibet or in connection with Tibetan prisons and/or detainees since 1999.

Similarly, Paragraph 117 of China’s Fourth Report describes a decline since 1999 in the number of criminal cases of human rights violations involving torture by personnel of state organs. The Fourth Report states that the number of people sentenced on account of the use of torture to extort confessions dropped from a high of 178 people in 1999 to a low of 44 in 2002, and up again to 82 in 2004, the last year for which statistics are reported.⁹⁶ Again none of these

⁹³ Convention against Torture at Part I, Article 10.

⁹⁴ Fourth Report at para. 39.

⁹⁵ Fourth Report at para. 108.

⁹⁶ Fourth Report at para. 17.

statistics is reliable because, under the Chinese Criminal Laws of 1997, the use of torture is only prohibited if used to extort confessions, and even then only certain perpetrators are punished and only if cases are “serious,” leaving open numerous instances where torture may be used with impunity. Moreover, none of the statistics is broken down geographically. Hence it is impossible to determine whether any people have ever been sentenced in connection with the use of violence to extort confessions or testimony from Tibetans detainees.

5. No Effective Right To Counsel Exists For Tibetan Detainees

The Fourth Report cites to the following reforms touching on the right to counsel:

a. Paragraphs 13-14 citing the Law of the People’s Republic of China on the Prevention of Juvenile Delinquency purportedly ensuring certain rights to “juvenile delinquents” under the age of 18. These rights include the right to legal counsel; the right “generally” to a non-public trial in a juvenile court; the right to privacy and to incarceration and continuing education separate from adults.⁹⁷ None of the provisions of the Law on the Prevention of Juvenile Delinquency, however, bans or even mentions the use of torture in connection with the detention of juveniles. Instead the Report explains: “These stipulations are of benefit to the prevention of use of torture ... upon juveniles.”⁹⁸ Based on the accounts of juveniles beaten and tortured in Tibet since the beginning of March, 2008, none of these laws and stipulations is being implemented with regard to Tibetan juvenile detainees.

b. Paragraph 15 citing the Regulations on Legal Aid (“the Regulations”) provides, without means of implementation, for the “scope, criteria, and implementation process for legal aid, as well as the rights and obligations of the various parties involved in legal aid and their legal responsibilities.”

c. Paragraph 21 citing the Regulations of People’s Procuratorates to Ensure the Lawful Practice of Lawyers in Criminal Procedures states as its aim the strengthening the role of lawyers in criminal prosecutions so as to protect the rights of criminal suspects including the right not to be tortured.⁹⁹ As noted below, recent action by the Chinese government to bar the renewal of licenses to attorneys seeking to represent Tibetans in connection with political crimes, belies the authenticity of any measures the Chinese government otherwise takes to ensure the right to counsel.

d. Most tellingly, Paragraph 146 describes provisions in China’s Criminal Procedure Code to the effect that, except in cases involving “state secrets,” criminal suspects and defendants in custody do not need to apply for permission in order to get assistance from a lawyer. A 2007 Human Rights in China (“HRIC”) Report describes China’s “state secrets system” in this way:

The state secrets system allows large amounts of information to be classified as state secrets, employs extensive technological, police and

⁹⁷ Fourth Report at para. 14.

⁹⁸ Fourth Report at para 14.

⁹⁹ Fourth Report at para 21.

social controls to monitor the flow of information, and places it all under political reins. In this complex, arbitrary and encompassing system, anything and everything can be determined to be a state secret, especially under the retroactive classification that the system allows.”¹⁰⁰

The failure of provisions in China’s Criminal Procedure Code (and in the Chinese legal system generally) to provide a definition of “state secrets” effectively eviscerates any proposed right to counsel particularly in cases involving political prisoners – as are most Tibetans who are detained.

e. Finally, Paragraph 147 provides that in the case of a “state secret,” the retaining of a lawyer by the criminal suspect should go through the approval of the investigatory organ. The report explains: “This is principally done in consideration of guarantying the smooth passage of criminal litigation, ensuring that the state secrets in question are not divulged, and protecting national security.”¹⁰¹ Once again, the invocation of “state secrets” and the protection of “national security,” without defining those terms, is used effectively to eliminate the right of political prisoners, like most Tibetan prisoners, to legal counsel. Along similar lines, Article 96 of the Code of Criminal Procedure provides that criminal suspects may retain a lawyer only after the first interrogation by the investigatory organ.¹⁰² This one restriction significantly curtails the effectiveness of the any right to counsel that other provisions within the criminal codes may purport to bestow.

6. “Extended Detention” Remains Vulnerable to Abuse and Torture

Paragraphs 24-38 of the Report identify numerous additional measures “to prevent and obviate the occurrence of torture” during periods of “extended detention.”¹⁰³ None of these measures, however, specifically bans the use of torture in connection with the detention of political prisoners. Extended detention, including “Re-education through Labor (“RTL”) is used in China to punish and silence political prisoners, particularly Tibetans, outside of the restrictions imposed by the Constitution and Criminal Codes.¹⁰⁴

By way of reform of the Extended Detention system, the Fourth Report notes, for example, the issuance in 2003 of Certain Provisions Regarding the Prevention and Correction of Extended Detention in Procuratorial Work (“Certain Provisions”). These Certain Provisions include: establishing such systems as notification of the time-limit for detention, reporting the conditions of detention, indicating when the detention time-limit for detention as been reached, regular inspection reports, complaints and rectification procedures for extended detention, and investigation of responsibility for extended detention.¹⁰⁵ Where an investigation of the conditions of Extended Detention discloses actions constituting a crime, criminal responsibility

¹⁰⁰ HRIC - State Secrets: China’s Legal Labyrinth (2007) at p. 3 and generally pp. 5-44.

¹⁰¹ Fourth Report at para. 147.

¹⁰² Fourth Report at para. 146

¹⁰³ Fourth Report at paras. 24-38..

¹⁰⁴ Nowak Report at paras. 33, 35, 60-64. See also, U.N. Convention against Torture: List of issues to be considered during examination of Fourth Periodic Report of China, 8 August 2008 (“CAT-List of Issues”), Article 2. 2. (h) and (i); see also April 2000 Report: Conclusion and Recommendations.

¹⁰⁵ Fourth Report at para. 26.

will be investigated in accordance with the regulations relating to the crimes of misuse of official powers and dereliction of duty under the Penal Code.¹⁰⁶ In connection with these Certain Provisions, it is important to note that the use of extended detention, including Re-education through Labor, in China has been criticized, particularly in connection with the detention of Tibetans.¹⁰⁷ Numerous groups, including the Special Rapporteur, have called for its abolition.¹⁰⁸ Instead of abolishing extended detention, however, China has sought by “Certain Provisions” to legitimize the procedure.¹⁰⁹

Paragraphs 148 and 149 deal with the abolition of “administrative detention” in accordance with the relevant international standards. With regard to administrative detention, the Report explains: “in Chinese criminal law, there is no provision for “police offences.”¹¹⁰ Offences similar to “police offences” in foreign criminal law are regulated in Chinese law as administrative illegal acts, and administrative penalties are given in forms such as warnings, fines, or administrative detention.”¹¹¹

Paragraph 149 states that Chinese law has strict provisions in respect of procedures for administrative penalties. Article 30 stipulates: “Where citizens, legal persons or other organizations violate administrative order and should be given administrative penalty according to the law, administrative organs must ascertain the facts; if the facts about the violations are not clear, no administrative penalty shall be imposed.”¹¹² None of these provisions regarding penalties or detention for “police offences” provides a process to ensure compliance by police with the law.

7. Criterion For “Serious” Crimes Are Vague and Ineffective To Prevent Torture

In addition to China’s failure to meet its obligations under the Torture Convention and to ban all forms of torture, China has also failed to address the concerns raised by the Committee during its considerations of China’s previous periodic reports – particularly with regard to the lack of definition of the term “serious” contained in Article 248 of the Criminal Code which provides penalties for “supervisory personnel” who abuse prisoners.¹¹³

Two judicial interpretations contained in the Fourth Report address this critical failure. The Regulations on Criteria on the Filing Cases Directly Accepted, Filed and Investigated by the People’s Procuratorates (Trial) (“Criteria on the Filing of Cases”) and the Criteria for Serious and Especially Serious Cases Involving Dereliction of Duty and Right-Violations Directly Accepted, Filed, and Investigated by the People’s Procuratorates (Trial) (“Criteria on Serious and Especially Serious Cases”), purport to explain the criteria for filing cases relating to crimes

¹⁰⁶ Id.

¹⁰⁷ Nowak Report at para. 82 Recommendations (s) through (v); See also, CAT-List of Issues Article 2. 2. (g) and (h); HRIC-State Secrets: China’s Legal Labyrinth (2007) at pp. 38-39 (HRIC-State Secrets”).

¹⁰⁸ Nowak Report at Recommendation (u); CAT-List of Issues Article. 2. 2. (h)..

¹⁰⁹ Fourth Report at para. 26, 148-149.

¹¹⁰ Fourth Report at para. 148-149.

¹¹¹ Id. at para. 148.

¹¹² Id. at para. 149.

¹¹³ April 2000 Report at Section II.A.

involving confessions extorted by torture, thereby providing a legal basis for investigating and handling torture cases.¹¹⁴

The Criteria on Serious and Especially Serious Cases, enacted 6 August 1999, addresses the serious deficiencies in the Criminal Laws of 1997 provision (Article 248) regarding the criteria for defining serious and especially serious cases involving crimes of torture “thus providing a legal basis for the investigation and handling of torture cases.”¹¹⁵ As noted above, Article 248 only addresses punishment of “serious” cases, however the Criminal Laws of 1997 never define what is meant by a “serious” case. The Criteria on Serious and Especially Serious Cases defines “serious cases” as follows: “serious and especially large cases are those which: lead to serious injury or mental derangement ... involve the use of torture to extort a confession five or more times ... are unjust, false, or erroneous ... ‘Especially serious cases’ are those which: result in death ... involve the use of torture to extort a confession seven or more times ... cause an innocent person to be sentenced to ten or more years imprisonment...”¹¹⁶ This definition, however, provides little or no meaningful guidance regarding the regulation or punishment of an officer accused of torture.

Paragraph 124 of the Fourth Report states that on January 2, 2001, the Supreme People’s Procuratorate issued the Circular on the Strict Prohibition of the Use of Confessions of Suspects Extorted by the Use of Torture as the Basis for Determining Crimes. The Circular “requires that all levels of people’s procuratorates must strictly follow and implement legal stipulations on the strict prohibition of the use of torture to extort confessions and clarify rules of exclusion of illegal evidence.” It provides that “no leeway” should be allowed with regard to the use of torture to extort confessions and other such illegal means of obtaining evidence.¹¹⁷ Once again, however, the Circular provides no process for enforcement of this broad prohibition.

8. Death Penalty Statistics Continue To Be Regarded As A State Secret

The Chinese government does not publicize figures for its use of the death penalty. It is mandated, however, for 68 crimes; and although the exact number of executions carried out each year is a state secret, it is estimated that as many as 10,000 people are executed in China each year.¹¹⁸ Amnesty International recently estimated in its 2008 Report that, based on *public* reports, 470 people were executed in 2007.¹¹⁹ Death penalty statistics, however, continue to be regarded as a state secret, making it difficult to verify official claims that the reinstatement of Supreme Court review has reduced the number of executions. True figures are believed to be much higher.¹²⁰ Because no regional statistics are ever compiled, no numbers can be verified concerning Tibetans executed since the year 2000.

As far as we know, Tibetans have not been executed for non-violent offences since March 2000, when in Lhasa, TAR, rallies were held attended by some 30,000 people after which

¹¹⁴ Fourth Report at paras. 20, 65 66..

¹¹⁵ Id. at para. 20.

¹¹⁶ Fourth Report at para. 66.

¹¹⁷ Fourth Report at para. 124.

¹¹⁸ HRW July 7, 2008: Human Rights Abuses Shadow Countdown to 2008 Beijing Games

¹¹⁹ AI Report 2008 “Death Penalty”: “Secrecy Surrounds Death Penalty”, 15 April 2008.

¹²⁰ Id.

seven people were executed.¹²¹ Tibetans have, however, been killed in prison by torture and, even before March, 2008, by shooting in connection with peaceful demonstrations.¹²²

In October 2004, Radio Free Asia reported that police in Qinghai's Golog Prefecture shot and killed a Tibetan Buddhist religious leader in Shetsul after he and other monks demanded that police pay for medical treatment for injuries suffered while in custody.¹²³ A 23 year old Tibetan farmer named Jinpa was shot dead by Chinese armed forces during a protest in Phenpo County in March 2008;¹²⁴ and a nomad named Choetop was killed in Ponkor Toema township when Chinese security forces opened fire on protestors.¹²⁵ Also in April 2008, at least eight were shot dead after the People's Armed Police and Public Security Bureau fired into protestors consisting of monks and lay people from Tonglsor Monastery in Zithang Township.

In 2004 Rinzin Wangyal a.k.a. Rinwang, aged 59, died in Pawo Tramo Prison after TCHRD received information that his health had gravely deteriorated due to constant torture in prison.¹²⁶ In 2001 Ngawang Lochoe (also known as Dondrub Drolma), a 28 year old nun at Sandrup Dolma Lhankang Temple, reportedly died in prison after serving 9 years of a 10 year sentence for participating in counter-revolutionary propaganda and incitement.¹²⁷

While many detainees die in custody from torture, many more are released from custody because their condition has become critical as result of torture during their detention. For example, Sonam Dorjee testified in connection with his return to TAR Prison after having been released when he became seriously ill due to torture:

When I arrived at the prison, an official asked me how I felt about the care officials and the state had shown to me when I almost died two years before... I told him that the officials had not done me any favors when I was sent home because I was close to death and the prison did not want to deal with the consequences of a dead inmate. I told them that I had returned to complete my sentence but not to change my views. I refused to write a statement and thanked Buddha for his blessing. For this I was beaten severely and sent to solitary confinement.¹²⁸

¹²¹ Amnesty International: China, The Death Penalty 2000, September 2002, ASA 17/032/2002.

¹²² For the years 1987-2007 see, for example, TCHRD: Human Rights Situation in Tibet, Annual Report 2007, Appendix 3: Known Deaths as a Result of Torture at pp. 127-132; see generally TCHRD: Kuxing: Torture in Tibet: A Special Report (TCHRD: Kuxing", including "List of known Tibetans who were shot dead or committed suicide due to extreme torture" at p. 141.

¹²³ U.S. Department of State Country Reports on Human Rights Practices – 2004, Tibet.

¹²⁴ Id.

¹²⁵ TCHRD Press Release 2 May 2008: "Many Tibetans Shot Dead During Phenpo Crackdown"; <http://www.tchrd.org/press/2008/pr20080502.html>.

¹²⁶ TCHRD Kuxing at pp. 138-139.

¹²⁷ U.S. Department of State: China Country Reports on Human Rights Practices, 31 March 2003, <http://www.state.gov/g/drl/rls/hrrtp/2002/18239.htm>.

¹²⁸ ICT: Tibet News: /Display of Tibetan flag leads to death of detainee: An account of imprisonment after rare 1990's rural protest, <http://www.savetibet.org/news/newsitem.php?=1147>.

D. Absence of Independent Judiciary

Our previous Report in response to China's Third Periodic Report detailed the failure of China's system to provide adequate due process for Tibetan political prisoners. One of the fundamental flaws in China's justice system remains the absence of an independent judiciary. The Chinese Communist Party controls the selection and supervision of all judges. No effective check exists, therefore, on the power of police and prosecutors to detain, torture and punish Tibetans without recourse.

We have reason to believe that, despite some efforts to provide better training for judicial officers, the Government of China is taking steps to increase, not decrease, the Communist Party's control over the judiciary. A recent report details steps taken by the President Hu's administration to declare and enforce Party loyalty as the principle priority for all judicial and security officials.¹²⁹ Training of police, prosecutors and judges appears to include overt challenges to the very idea of judicial independence as either necessary or desirable.¹³⁰ Notably, the Government of China passed over many long-serving legal scholars and experienced prosecutors to appoint as the President of the Supreme People's Court (the equivalent of China's Chief Justice), Wang Shengjun, who has no legal training, nor any experience as a lawyer, prosecutor or judge.

E. Chinese Authorities Threaten Disciplinary Action Against Lawyers

Any purported implementation by China of the Torture Convention is undercut by recently reported official threats against Chinese lawyers offering legal aid to Tibetan detainees. A group of about twenty-one lawyers involved in a project offering legal assistance to Tibetans has been told by Chinese authorities not to involve themselves in what the authorities call the "Tibet incident." According to reports, lawyers involved in the project have been questioned by authorities, put under surveillance, and had their phones tapped.¹³¹

Harassment targeting lawyers has been increasing over the past two years, including personal assault, intimidation and surveillance of lawyers. Procedural obstacles include misuse of the law.¹³² Specifically Article 306 of the Criminal Law along with Article 45 of the Law of the People's Republic of China on Lawyers allows prosecutors to arrest lawyers on grounds of "perjury" or "false testimony."¹³³ In state secrets cases, lawyers are subjected to even greater restrictions in that defendants wishing to obtain and meet with counsel must obtain approval from the investigative organ.¹³⁴ Both the Law on the Protection of State Secrets of the People's Republic of China and the 1995 Notice issued by the Ministry of Public Security and the National Administration for the Protection of State Secrets consider details of any criminal case

¹²⁹ Willy Lam, "The CCP Strengthens Control over the Judiciary," China Brief (Jamestown Foundation), August 4, 2008.

¹³⁰ *Id.*

¹³¹ Human Rights in China ("HRIC") Press Advisory: Chinese Lawyers Offer Legal Help to Detained Tibetans, April 4, 2008

¹³² Human Rights in China ("HRIC") Trends Bulletin, February 2007: Setback for the Rule of Law – Lawyers under Attack in China ("HRIC Setback"); HRIC-State Secrets at pp. 29-31..

¹³³ HRIC Setback.

¹³⁴ *Id.*

currently under investigation to be “state secrets,” leaving criminal defense lawyers – particularly those defending political prisoners like most Tibetan detainees – vulnerable to accusations of leaking state secrets.¹³⁵ These and numerous other restrictive regulations compromise the right to counsel of detainees – particularly in cases involving “state secrets” -- and undermine any existing legal safeguards against the use of torture.

Since the current crackdown beginning in March 2008, trial procedures have reportedly been conducted covertly and Tibetans have been denied access to meaningful defense with lawyers of their choosing.¹³⁶

¹³⁵ Id.. See also Human Rights Watch (“HRW”): Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China; HRW China: Rights Lawyers Face Disbarment Threats, 30 May 2008, <http://hrw.org/english/docs/2008/05/29/China/8970.html>; HRW China: Restrictions on Lawyers Fuel Unrest, 29 April 2008.

¹³⁶ ICT Report at p. 121.

IV. CONCLUSION AND RECOMMENDATIONS

Central Tibetan Administration urges the Committee to scrutinize China's compliance with the Torture Convention with particular attention to Tibet. Torture remains a widespread and systematic instrument of Chinese political repression in Tibet. The "special environment that exists in Tibet," in particular its status as a *de facto* colony of China and the ongoing denial of the Tibetan people's right to self-determination, creates conditions that place Tibetans at grave risk of torture. We have seen in particular since March 10, 2008, the consequences of the failures of the Chinese Government's policies in Tibet, in particular its refusal to permit the Tibetan people the right freely to practice their religion, to speak their aspirations openly, and to make their own economic choices.

Due to the overwhelming number of Tibetan refugees arriving in Nepal and India who have been victims of torture (and continue to suffer its traumatic psychological and physical effects), Central Tibetan Administration in 1995 established a Torture Victim's Rehabilitation Centre in Dharamsala, under the supervision of the CTA Department of Health. The Centre provides medical and psychological treatment and social support for victims of torture. It also trains health personnel in the exile settlements on how to care for torture victims. The Centre will remain at the Committee's disposal to provide further information on Tibetan torture victims.

Central Tibetan Administration therefore strongly requests that the Committee act urgently to address the continuing use of torture against the Tibetan people and submits the following recommendations for its consideration in order to end the use of torture in Tibet:

- China should amend its laws to incorporate explicitly the Convention's definition of torture and clearly ban all forms of torture, for any reason, notwithstanding any other provision of Chinese law.
- China should *immediately* allow independent human rights monitors access to Chinese prisons and detention centers in Tibet, where they can speak privately with detainees to ascertain the conditions and report on the incidence of torture. Follow up is essential after such a visit in order to help ensure that prisoners do not face consequences.
- China should withdraw its reservation to article 20 of the Torture Convention and permit the Committee to investigate the widespread allegations of torture in Tibet, including by a visit to Tibet.
- China should establish strict and clear rules and procedures for the investigation and prosecution of the crime of torture to ensure that all persons who commit torture are prosecuted and punished.
- China should permit outside assistance for training its police, prison, and security officials, as well as for enhancing the legal training and sensitivity of the judiciary.
- China should recognize this Committee's competence, under articles 21 and 22, to

receive communications from other states party and individuals alleging violations of the Torture Convention.

- China should promote the independence of the judiciary by delinking nomination and oversight of judges from the political control of the Chinese Communist Party.
- China should amend its criminal procedure law to ensure that all suspects, particularly those accused of “political” crimes, receive prompt and competent legal representation from the moment of their apprehension.
- China should abolish administrative detention without charge, regardless of evidentiary difficulties or the “complex” nature of certain cases.
- China should abolish the administrative punishment of “re-education through labor,” which permits officials to sentence people to labor camps for up to three years without the possibility of judicial review.
- China should provide detailed information on the use of the death penalty in Tibet, separated from general statistics on the use of the death penalty in China.
- China should contribute funds to the United Nations Voluntary Fund for Torture Victims.
- China should publicize the Convention in Tibet through various education programs.
- China should publish the Committee’s Concluding Observations in Tibet in both the Tibetan and Chinese languages.
- China should enter into direct negotiations without preconditions with His Holiness the Dalai Lama and the Tibetan Government in Exile to reach an amicable and peaceful solution to the Tibetan question and to protect and promote the rights of the Tibetan people.
- China immediately arrange for the High Commissioner for Human Rights to visit Tibet at the earliest.

We also request that the Committee consider undertaking the following initiatives within the United Nations system:

- In light of the unique situation of Tibet and the credible allegations of violations in all areas of human rights protections, the Committee should request the reporting bodies established under treaties to which China is a State Party to organize a special task force on Tibet.
- The Committee should request the reporting bodies of Conventions ratified by China to join it in seeking an advisory opinion of the International Court of Justice regarding the legal status of Tibet in the context of their mandates.
- The Committee should invite the Special Rapporteur on Torture to participate in the Committee’s deliberations on China’s Fourth Periodic Report.