

THE WORKING GROUP ON ARBITRARY DETENTION

Proposed Visit to China
and Tibet -- Fall 1997

ARBITRARY DETENTION AND LABOR CAMPS IN TIBET

Introduction

We wish to bring to the Working Group's attention, in connection with its proposed visit to China and Tibet, issues relating to the arbitrary detention of Tibetans and China's system of labor camps in Tibet.¹ The detention of Tibetans for the peaceful exercise of their right to freedom of speech and opinion is common and has already been acknowledged by this Working Group. The issues, though, go beyond arbitrary detention to include disappearances, torture and inhumane treatment of detainees, and arbitrary executions.

Tibetans sentenced to terms of detention are usually assigned to one of two types of labor camps: (1) "reform through labor" or "laogai," which is the form of imprisonment for most prisoners sentenced by a court; and (2) "re-education through labor" or "laojiao," which is a system of administrative detention carried out without court participation. This paper will discuss briefly the scope of arbitrary detention in Tibet, including the treatment of detainees. This paper will then discuss the international law violations inherent in the system of "re-education through labor." It will also point out the international law issues raised by living conditions and the use of forced labor within both the "reform through labor" and "re-education through labor" camps, with particular reference to Tibet. We hope that this discussion will aid the Working Group in carrying out a thorough and productive visit to China and Tibet.

Arbitrary Detention In Tibet

Today, hundreds of Tibetans are in prison for peacefully exercising their rights to speak freely and to hold opinions, including speaking or demonstrating in support of the Tibetans' right to self-determination or in support of the Dalai Lama, printing or distributing leaflets or posters, or speaking to foreigners. Despite international condemnation, China openly continues to deny Tibetans' the freedom to express and hold opinions.

Article 19 of the Universal Declaration of Human Rights ("UDHR") establishes freedom of opinion and expression as a fundamental human right. It also protects the right to "receive and impart information . . . regardless of frontiers." Article 20

¹ By "Tibet," we mean the Tibet Autonomous Region and the historical areas of Tibet now incorporated into Qinghai, Gansu, Yunnan and Sichuan Provinces.

establishes the right to freedom of peaceful assembly. Article 35 of China's Constitution also guarantees freedom of expression, publication, demonstration and assembly.

China's denial of freedom of speech and opinion in Tibet has existed since 1949, but has intensified since 1987 when Tibetans began publicly demonstrating against the Chinese occupation. In 1991, more than 100 Tibetans were known to be in prison for freely exercising their rights to freedom of expression and opinion.² In August 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities passed Resolution 1991/10 (E/CN.4/Sub.2/1991/L.19), noting its concern at continued reports of violations of Tibetans' fundamental rights and requesting the Secretary General to report to the Commission on Human Rights on the situation in Tibet.

In the year following the Sub-Commission's resolution, arrests and torture of peaceful demonstrators increased rather than decreased.³ In 1993, for example there were almost 300 documented arrests of Tibetans for expressing or holding dissident opinions.⁴

² Amnesty International, People's Republic of China: Amnesty International's Concerns in Tibet (AI Index: ASA 17/71/91, December 1991) at 2.

³ Tibet Information Network and Human Rights Watch/Asia, Cutting Off The Serpent's Head: Tightening Control in Tibet, 1994-1995, at 122 (March 1996) (statistics showing a doubling of political arrests from 1991 to 1992. For example, five nuns from Michungri nunnery and a monk from Sera Monastery were arrested for participating in a demonstration in Lhasa on February 3, 1992. Two of the nuns, Phuntsog Yangkyi, age 20, and Sherab Ngawang, age 15, died as a result of beatings and lack of medical care while in prison. Id. at 148

⁴ Asia Watch, Detained in China and Tibet (1994) at xi. The authors observed that of 250 documented political arrests in China in 1993, "[a]lmost eighty percent of these cases occurred in Tibet, where a continuing Chinese government campaign of repression against peaceful pro-independence activities by Buddhist monks and nuns sharply intensified during the year." Updated information revealed almost 300 political arrests in Tibet in 1993. Cutting off the Serpent's Head, supra note 3, at 122. For example, in June 1993, fourteen Buddhist nuns from the Gari nunnery were arrested: two (Gyaltsen Tsultrim and Ngawang Yangkyi) while attempting to lead a demonstration on the Barkhor in Lhasa, and twelve more, apparently for planning a demonstration (Gyaltsen Kelsang, Ngawang Keldron, Ngawang Dedrol, Ngawang Chendrol, Gyaltsen Sangmo, Rinchen Drolma, Phuntsog Choekyi, Gyaltsen Kunga, Ngawang Chime, Ngawang Choekyi, Ngawang Pemo, and Gyaltsen Pelsang). These nuns were between 25 and 13 years old. Gyaltsen Pelsang, the youngest, was under the age of criminal responsibility in China at the time of her arrest but nevertheless was held for a year and a half without trial or sentence before being released in February 1995. One nun, Gyaltsen Kelsang, died on February 20, 1995, as a result of beatings and maltreatment while in prison. She had been released only shortly before her death.

In May 1993, Gendun Rinchen was arrested for passing information to a foreign fact-finding delegation. He was later released, but another Tibetan who was arrested in May 1993 for passing information to foreigners, Lobsang Yonten, age 65, died in October 1994 after his release from prison as a result of torture and mistreatment while in prison. Yulo Dawa Tsering, age 67, was arrested in 1987 for speaking to two Italian tourists and was released after serving 7 years.

A Tibetan nun, Phuntsok Nyidron, is currently the longest serving known female political prisoner in Tibet. She has been in prison since October 14, 1989, when she peacefully demonstrated against the Chinese occupation of Tibet. Her nine-year sentence was increased by 8 years in 1993 when she and other nuns sang pro-independence songs in Drapchi prison.

China reported that they arrested twice as many Tibetans in 1994 as in 1993 for “counterrevolutionary” activities. Monks and nuns accounted for 87% of those arrested. By the end of 1994, according to Amnesty International, there were at least 628 Tibetans in prison because of their political beliefs, including 182 women and 45 children. This is a six-fold increase over the number of political prisoners reported in 1991.

According to Tibet Information Network, among documented cases since 1989 are 71 Tibetan children under the age of 18 who were detained for peacefully expressing their opinions.⁵

In October 1994, this Working Group determined that China had violated the rights to freedom of expression and opinion of 39 Tibetans, mostly monks and nuns, “in contravention of Articles 19 and 20 of the Universal Declaration of Human Rights. . . . The right of the person concerned to freedom of opinion and expression has not been respected.”⁶ The Working Group made the same ruling as to 18 additional Tibetan prisoners in 1995.⁷

In 1994, China formally outlawed even the display of photographs of the Dalai Lama. Since May 1995, when the Dalai Lama recognized Gedhun Choekyi Nyima as the 11th Panchen Lama, China has detained Chadrel Rinpoche, the abbot of Tashi Lhunpo monastery, and as many as 50 other monks and laypersons, for communicating with the Dalai Lama, or for opposing China’s choice for the Panchen Lama. Chadrel Rinpoche was sentenced in April 1997 to 6 years in prison for having communicated with the Dalai Lama regarding the Panchen Lama search. Two other Tibetans, Chamba Chung and Samdrup, were sentenced to 4 and 2 years, respectively, apparently for assisting Chadrel Rinpoche.

In November 1995, religious leaders in Tibet were ordered to prepare statements criticizing the Dalai Lama and Chadrel Rinpoche and that “reeducation” campaign has intensified and continues, according to reports by Tibet Information Network. Gedhun Choekyi Nyima himself, and his parents, have been held incommunicado since May 1995 at an unknown location.

Arbitrary arrest and detention of Tibetans continued in 1996. For example, Shol Dawa, a Tibetan tailor, and Topgyal, a Tibetan businessman, were sentenced to 9 and 6 years, respectively, for gathering and releasing a list of Tibetan political prisoners. Arbitrary detentions culminated in 1996 with the sentencing in December of Ngawang

⁵ Among these are Ngawang Sangdrol, age 15, who was sentenced to three years in prison for taking part in a demonstration in 1992. Her sentence was increased to 9 years for singing songs in prison. In December 1993, six schoolchildren, ages 13 to 17, were arrested in Lhasa for singing nationalist songs.

⁶ U.N. Doc. No. E/CN.4/1995/Add.1

⁷ U.N. Doc. No. E/CN.4/1997/4/Add.1.

Choephel, a 34 year-old Tibetan musicologist, to 18 years in prison. Ngawang Choephel was arrested while recording and videotaping traditional Tibetan music and dance.⁸

China also limits freedom of opinion and expression through non-judicial means, including “neighborhood committees” and “work units.”⁹ These local administrative structures are used to monitor opinions, to warn Tibetans not to demonstrate or to display pro-independence posters, or to impose sanctions outside the judicial system for pro-independence opinions and speech.¹⁰ Work units established in monasteries and nunneries in recent years have been used to monitor pro-independence activities, with the result that hundreds of monks and nuns have been expelled and others imprisoned because of their opinions.¹¹

Disappearances

The “disappeared” are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed, and whose custody is denied.¹² In Tibet, detention also includes the involuntary disappearance of Tibetans, in particular of political dissidents, by public security forces. In numerous cases, Tibetans have been arrested at (or taken from) home without warrant and taken into police custody without the family of the detained person being informed of his or her whereabouts.

Disappearance encompasses a number of human rights standards regarding arbitrary arrest and detention, denial of due process and, often, ill-treatment and torture. Rule No. 37 of the United Nation’s Standard Minimum Rules for the Treatment of Prisoners (“Minimum Rules”) states:

Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.¹³

⁸ U.S. Dept. of State, 1996 China Report.

⁹ Tibet Information Network and LAWASIA, Extra-Judicial Forms of Political Control in Tibet (A Communication to the 48th Session of the U.N. Commission on Human Rights) (1991), at paras. 4-10.

¹⁰ Id. at paras. 11-19.

¹¹ Id. at paras. 25-34.

¹² Amnesty International Report 1993: “14 Point Program for the Prevention of Disappearances.”

¹³ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the ECOSOC resolution of 31 July 1957 and 13 May 1977.

Disappearance is not, however, just a combination of other human rights abuses. It is set apart by the chilling characteristic of completely cutting a person off from the outside world and its protective mechanisms. Not only are the loved ones of the person subjected to the agonizing uncertainty of not knowing the whereabouts of the individual, or even whether the person is alive, but the individual is also put through the mental torment of isolation and helplessness. The State, by simply denying any knowledge of the person, can act with impunity.

China's legal system has contributed to the conditions in which disappearances are able to occur in Tibet by allowing for prolonged "shelter and investigation" and administrative detention without trial. Despite the conclusion by the United Nations Working Group on Disappearances that "States are under an obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance,"¹⁴ the unwillingness of China to respond in the few cases where disappearances have been exposed has been apparent in 1996.

Seven year-old Gendun Choekyi Nyima and his parents have been missing since May 1995. On 14 May 1995, the Dalai Lama proclaimed the then 6-year old child the reincarnation of the 10th Panchen Lama. By the end of May, Gendun Choekyi Nyima, his father Kunchok Phuntsok, and his mother Dechen Choedon, disappeared and were reported to have been taken to Beijing and put under house arrest. China, in its response to the U.N. Working Group on Enforced or Involuntary Disappearances, denied that the boy or his parents had disappeared.¹⁵ Nevertheless, in May 1996, over a year after the disappearance of Gendun Choekyi Nyima and his parents, Wu Jianmin, China's Ambassador to the U.N., admitted to the U.N. Committee on the Rights of the Child that Gendun Choekyi Nyima "has been put under the protection of the government at the request of his parents." The Committee requested that China allow a U.N. representative to "visit the family and provide reassurance." So far there has been no public response to the request and China has still not revealed his or his parent's whereabouts. Today he remains the world's youngest political prisoner.

Chadrel Rinpoche, head of China, appointed Search Committee for the reincarnation of the Panchen Lama, disappeared on 17 May 1995. In an official response to this Working Group, China stated that Chadrel Rinpoche was "under medical care." In April 1997, however, China announced that it had sentenced Chadrel Rinpoche to 6 years in prison for passing "state secrets."

Dhamchoe Gyatso (27), Jigme Tendar (29), Dhamchoe Kalden (31) and Phuntsog (25) of "Nga-rig Kye-tsel-Ling" school (English translation: Flourishing Garden of Five Knowledges) at Kumbum Monastery in Amdo have been accused of publishing a literary

¹⁴ U.N. Doc. No. E/CN.4/1993/25, para. 74.

¹⁵ U.N. Doc. No. E/CN.4/1996/38, at paras. 134-135. The Working Group noted that of 56 cases presented to it regarding disappearances in China, the majority involved disappearances of Tibetans. *Id.* at para. 133.

magazine which has now been labeled as “counter-revolutionary” and banned. The monks disappeared after their arrest in March 1996 (along with 21 other monks who were later released) and their whereabouts remain unknown.¹⁶

Jangchub Gyaltzen (31), a tailor at Sera Monastery was arrested in April-May 1995; Lungtok (21), a monk of Rongbo Monastery in Amdo was arrested in July 1995; Lobsang Namgyal, a former monk of Nechung Monastery, was arrested in February 1995 and Ngawang Thonglam, a former monk of Ganden Monastery, was arrested in February 1995. All arrests were for political reasons and the whereabouts of these political prisoners remain unknown.¹⁷

In October 1996, over 15 months after Ngawang Choephel was taken into detention, China finally admitted that he was being held. Today he is serving an 18-year prison sentence.¹⁸

Torture

Article 1 of the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”),¹⁹ to which China is a State Party, outlaws any kind of torture. Nonetheless, in 1990, the U.N. Committee Against Torture noted that it had received credible allegations of a persistent practice of torture in Tibet.²⁰ The Committee also made special note of China’s failure to address allegations of torture in Tibet.²¹ In 1993 and again in 1996, the U.N. Committee Against Torture asked China to set up a genuinely independent judiciary and to change its laws to ban all forms of torture.²² Despite this, China’s Criminal Law only specifically prohibits certain kinds of torture.²³

¹⁶ Tibetan Government In Exile 1996 Human Rights Report, “Disappearances.”

¹⁷ Id.

¹⁸ Ngawang Choephel was sentenced on 26 December 1996 to 18 years for engaging in “espionage activities”.

¹⁹ General Assembly Resolution 39/46 of 10 December 1984; entered into force 27 June 1987.

²⁰ Committee Against Torture, Summary Record of the 50th Meeting, 23 May 1990, p. 11 (cited in Amnesty International’s Concerns, supra note 2, at 6).

²¹ Committee Against Torture Considers Report of China, U.N. Information Service press release HR 2582, 27 April 1990 (cited in Amnesty International’s Concerns, supra note 2, at 6).

²² U.N. Doc. No. CAT/C/SR.254 (10 May 1996).

²³ China’s Criminal Law only specifically prohibits “torture to coerce a statement” by “state personnel” against “offenders” (article 136). Other offences for ill-treatment of prisoners included within the Chinese Criminal Law are: “corporal punishment and abuse” by “judicial personnel” when the “circumstances are serious” (article 189) and unlawful detention where “beating or humiliation is involved” (article 143). Article 7 of CAT requires States Parties to prosecute those responsible for torture. However, under the

The use of torture is in fact common in all prisons and detention centers in Tibet. Methods of torture include: inflicting shocks with electric batons; beating with iron bars, rifle butts and nail-studded sticks; branding with red-hot shovels; pouring boiling water over prisoners; hanging prisoners upside down or by the thumbs from the ceiling; shackling; kicking with boots; setting ferocious dogs onto prisoners; exposure to extreme temperatures; deprivation of sleep, food and water; prolonged strenuous “exercise”; long periods of solitary confinement; sexual violence; taunts and threats of torture and death.²⁴

Specific reports of torture in Tibet, mostly from former prisoners who have been released and have fled Tibet, continue unabated. In cases studied through 1995, there were 208 cases of serious physical maltreatment out of 1276 cases studied, or more than 16% of all prisoners.²⁵ In 1996 alone, there were more than 20 cases of torture documented through eyewitness accounts, *not including cases of torture resulting in death*.²⁶ In fact, the torture appears to be becoming more severe, with an increasing number of prisoners who are unable to stand up fully on their own after release.²⁷

In 1996, the U.N. Special Rapporteur for Torture and other Cruel, Inhuman or Degrading Treatment or Punishment made note of continuing reports of torture of Tibetan prisoners.²⁸ Notably, the cases included 6 specific cases of torture of children and numerous reports of maltreatment of juveniles.²⁹ The Special Rapporteur also noted that it had still not received replies to earlier cases brought to China’s attention in 1994,³⁰ and had still not received a reply to his request to visit China.³¹

Chinese Criminal Procedure Law, the standards for determining whether a case of torture under article 136 should be the subject of criminal investigation consider factors such as the perpetrator’s intention and the gravity of the acts. The torturer must have acted for personal revenge or used “very cruel means thus creating a grave impact.” The latter would include the torturing of many people or repeated torture, or where the act results in death, disability, insanity, suicide “or other serious consequences.”

²⁴ Amnesty International’s Concerns, supra note 2 at 5; Amnesty International, People’s Republic of China: Persistent human rights violations in Tibet (AI Index: ASA 17/18/95, May 1995), at 14; Cutting off the Serpent’s Head, supra note 3, at 89-90, 99-106.

²⁵ Cutting off the Serpent’s Head, supra note 3, at 89-90.

²⁶ TGIE, 1996 Human Rights Report, “The Right to be Free from Torture,” supra note 16. For a discussion of torture resulting in death, see discussion infra at p. 8.

²⁷ Cutting off the Serpent’s Head, supra note 3, at 100.

²⁸ U.N. Doc. No. E/CN.4/1996/35/Add. 1, at paras. 102-127.

²⁹ Id. at paras. 110-117.

³⁰ Id. at para. 104.

Extrajudicial And Arbitrary Executions

Most cases of summary or arbitrary execution in Tibet involve torture and maltreatment of Tibetan prisoners of conscience who died as result. Some of these cases involve deaths while in custody, though most involve the deaths of prisoners shortly after their release from prison.

There are at least 16 documented cases of Tibetan prisoners of conscience who have died in prison, or shortly after release from prison, as a result of torture and mistreatment.³² These include six women and one nun, Sherab Ngawang, who was only 12 years old when arrested and only 15 when she died shortly after her release from detention.

The U.N. Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions reported on several of these cases in 1996, but had received no response from China regarding the cases of the Tibetans.³³ He also noted that, despite repeated requests since 1992 to visit China, he had received no response to his request.³⁴

The Re-education Through Labor System

“Re-education through labor” refers to a system of detention and forced labor, administered through civil authorities and police, without the involvement of the judicial system.³⁵ The governing laws provide that special administrative committees, called Labor Re-Education Administrative Committees (comprising members of the civil affairs, public security and labor deployment departments) approve terms of re-education through labor. In practice, however, re-education through labor is administered most often by police alone.

³¹ U.N. Doc. No. E/CN.4/1996/35, at para. 47.

³² Amnesty International’s Concerns, supra note 2, at 7-8; AI, Persistent human rights violations, supra note 24, at 15-18; Cutting Off the Serpent’s Head, supra note 3, at 147-149; TGIE 1996 Human Rights Report, supra note 16. The cases include: Yeshe (died 8/89 after release); Tsamla (died 8/91 after release); Lhakpa Tsering (died 12/90 in prison); Phuntsog Yangkyi (died 6/94 in prison); Gyaltzen Kelsang (died 2/95 after release); Kunsang Choekyi (died 10/92 after release); Sherab Ngawang (died 5/95 after release); Tashi Tsering (died 1/95 after release); Sangye Tenphel, (died 5/96 in prison); Kelsang Thutop (died 7/96 in prison); Tenchok Tenphel (died 9/96 in prison); Dawa Tsering (died 8/95 after release). In addition, Kelsang Nyendrak died 5/96 when he was shot during a protest at Ganden Monastery. Dorjee died on 7/96 after being beaten prior to an arrest. Two other Tibetans, Phurbu and Phurtse, died in 1996 from gunshot wounds and beatings received during demonstrations in 1989.

³³ U.N. Doc. No. E/CN.4/1996/4, at paras. 117-122.

³⁴ Id. at para. 125.

³⁵ For a concise discussion of “re-education through labor,” see Amnesty International, China, Punishment Without Crime: Administrative Detention (AI Index: ASA 17/27/91, Sept. 1991).

Until the passage of the Administrative Punishment Law, effective October 1, 1996, there was no right to a defense or to a public hearing.³⁶ The APL now provides for a right to “make a statement and to defend themselves” and the right to a public hearing, with certain exceptions. It is as yet unclear to what extent these new procedural protections are being implemented in practice, and there are already reports that they are being ignored in some cases. There is still no right to a lawyer.

The Administrative Procedure Law, effective October 1, 1990, provides for limited review of forms of administrative detention. The process can be lengthy and detainees may be forced to remain in jail during review. Review by a court only occurs at the second level of review. Moreover, the courts have only limited authority to overturn an order of re-education through labor; in most cases the matter is simply returned to the original administering body for reconsideration. Thus, although there is now some judicial involvement at the second level of appeal, there is still no judicial involvement prior to sentencing and, on appeal, only takes place if the prisoner has the knowledge and assistance to initiate it.

Re-education through labor is supposed to be applied to certain categories of persons whose offenses are not serious enough to warrant “criminal” penalties. Those categories as restated in the 1982 Regulations are vague and include, for example, “[t]hose counter-revolutionary elements and anti-party, anti-socialist elements whose acts are too minor to be pursued for criminal responsibility.” In practice, re-education through labor is used often for the detention of political dissidents in China and Tibet.

Currently, re-education through labor may be imposed for terms of up to three years, with a possible extension of an additional one year at the end of the original term. In addition, alleged offenders who have completed their terms of re-education through labor may be forced to remain employed at the place of detention for an indefinite period afterwards (“forced job placement”). In practice, “forced job placement” is effectively an extension of the prisoner’s sentence, again without judicial involvement or oversight.

Re-Education Through Labor Violates International Law

The system of “re-education through labor” violates Arts. 9 and 14 of the International Covenant on Civil and Political Rights (“ICCPR”) and numerous Principles of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”)³⁷. The vagueness of the laws describing the offenses for which re-education through labor may be imposed vests too much discretion in local authorities to decide whom to detain and punish, making detention for re-education through labor inherently arbitrary (Universal Declaration of Human Rights (“UDHR”), Art. 9; ICCPR, Art. 9, para. 1; see also Body of Principles, Pr. 2). Moreover, permitting terms of re-education through labor for the peaceful exercise of a person’s

³⁶ See Amnesty International, People’s Republic of China: Law Reform and Human Rights (AI Index: ASA 17/14/97, March 1997).

³⁷ General Assembly resolution 43/173 of 9 December 1988.

freedom of speech, opinion and association violates international law (UDHR, Arts. 18-19; ICCPR, Arts. 18-19) and is also arbitrary.

Chinese law does not require that authorities notify the detained person of the charges against him/her or of their rights. (ICCPR, Art. 9, para. 2, Art. 14, para. 3(a); Body of Principles, Prs. 10, 11, 13.) At no time is the person detained given the opportunity to appear before a judge, or to stand trial before an impartial tribunal. (ICCPR, Art. 9, paras. 3 and 4, Art. 14, paras. 1, 3; Body of Principles, Pr. 11.) As there is no impartial tribunal and no trial, there is effectively no presumption of innocence. (Art. 14, para. 2.) Nor is there any right to have a lawyer or other person assist the detainee in contesting the charges. (ICCPR, Art. 14, para. 3(d); Body of Principles, Prs. 17, 18.)

According to Human Rights Watch, there are more than 1000 political prisoners in Tibet. These prisoners are detained primarily in re-education through labor and reform through labor camps in the Tibet Autonomous Region and in neighboring provinces, such as Qinghai. Approximately one-fourth of these prisoners are held in Drapchi Prison in Lhasa (which may include a reform through labor camp).³⁸ The re-education through labor camp known as Trisam, in Toelung county near Lhasa, also apparently holds a substantial number of political prisoners.³⁹

Conditions In Labor Camps

Sangyip is a complex of prisons outside Lhasa. It formerly included a reform through labor camp but now appears to consist of several re-education through labor camps, as well as a forced job placement center (for prisoners forced to continue work after their sentences have run). The daily routine for prisoners in Sangyip is as follows, and appears to be typical of labor camps in Tibet. Prisoners are housed 15-20 to a cell block. The day begins at 5:30 am with 2 hours of copying and memorizing propaganda. A morning meal of two steamed buns and black tea follows. Then prisoners are forced to work for at least the next eight hours (sometimes longer) without a break at various jobs, including bricklaying, stonelaying, welding, construction, carpentry or auto repair. Prisoners are given an evening meal of two steamed buns, soup or boiled cabbage or rice gruel.

Reports of torture of Tibetan prisoners in Drapchi Prison and in other labor camps are frequent and well-documented. Torture of political prisoners is particularly common but may also take place as punishment for failure to meet a work quota. More obvious forms of torture include beatings, and forcing prisoners to work despite injuries from torture, as reported by one Tibetan prisoner, Sonam Wangdu. Other cruel and degrading treatment includes confinement cells, such as the ones in Sangyip, which are 6-foot by 3-foot boxes with no light or heat or protection from dampness. Prisoners may be left in

³⁸ Cutting Off The Serpent's Head, *supra* note 3, at 77-87.

³⁹ *Id.* at 83.

one of these cells for many days, sometimes without food. In addition, lack of medical treatment for prisoners has led to permanently disabling injuries and even death.

The nature of the work prisoners are required to perform varies from prison to prison. Some camps operate large agricultural fields; others in eastern Tibet carry on logging operations. Others in Amdo province employ prisoners in building roads or mining. In Qinghai, labor camps operate hide, garment and wool factories. Many of these labor camps are in fact significant contributors to the provincial economies.

Labor Camp Conditions Raise Serious Issues Under International Law

The treatment of prisoners in the labor camps in Tibet violates international law in many respects. Every prisoner is entitled to be treated according to basic standards of decency and human dignity. See, e.g., Basic Principles for the Treatment of Prisoners⁴⁰ (“Basic Principles”) and the Minimum Rules. The conditions reported in labor camps in Tibet, as well as the forced labor functions of those camps, however, raise special issues to which the Working Group should pay particular attention. This is not meant to be an exhaustive treatment, but to highlight some of the most serious concerns.

Torture. Torture and inhumane treatment are outlawed by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China has ratified. Article 2 of the Torture Convention provides that there are no exceptional circumstances to justify torture. In addition, the Body of Principles (Pr. 6) and the Minimum Rules (para. 31) also prohibit “corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments.”

Torture is nonetheless common in Tibetan labor camps, as it is in other prisons and detention centers in Tibet.⁴¹ One example is Palden Gyatso, who spent 32 years in Tibetan labor camps and can exhibit torture instruments used on him and other prisoners, such as thumb shackles, self-tightening handcuffs and electric cattle prods. Beatings, withdrawal of food, forcing prisoners to clean human excrement with their hands, placement in dark confinement cells and refusal to provide medical care, are all reported by former prisoners.

Discipline and punishment. The Minimum Rules (paras. 27-30) and the Body of Principles (Pr. 30) provide for certain minimum due process for imposing any permissible punishments, including notice of the offense, and an opportunity for the prisoner to present a defense. There do not appear to be any such rules in place or at least observed in Tibetan labor camps, as punishments such as beatings are inflicted immediately and without recourse.

⁴⁰ General Assembly resolution 45/111, 14 December 1990.

⁴¹ See discussion, supra at pp. 6-8.

Forced Labor. The forced labor required of prisoners in re-education through labor camps (i.e., of prisoners who have been detained and sentenced outside of any judicial process) violates Art. 8, para. 3, of the ICCPR. That Art. provides:

- (a) No one shall be required to perform forced or compulsory labour;
- (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour *in pursuance of a sentence to such punishment by a competent court*;
- (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention *in consequence of a lawful order of a court*, or of a person during conditional release from such detention
(Emphasis added.)

Forced labor of prisoners is thus permitted under the ICCPR only where the prisoner is detained as a result of a lawful court order.

The same is true under the Forced Labour Convention (No. 29)⁴². Article 2 defines “forced or compulsory labour” to mean any labor exacted under threat of a penalty and which is not voluntary. Article 2, para. 2(c) provides an exception for work “exacted from any person as a consequence of a conviction in a court of law.” Because prisoners in re-education through labor camps have not been convicted in a court of law, their forced labour violates the Forced Labour Convention. In addition, such prisoners are “untried prisoners” under the Minimum Rules (para. 89) and may not be required to work.

As noted above, prisoners subject to sentences of re-education through labor have not been granted the right and opportunity to a fair and impartial hearing before a judicial authority before being sentenced. Any labor required of them consequently constitutes “forced or compulsory labour” in violation of the ICCPR, the Forced Labour Convention and the Minimum Rules⁴³.

While the detention in any manner of persons for their political views violates international law (e.g., UDHR, Arts. 18-19; ICCPR, Arts. 18-19), the imposition of forced labor on such political prisoners in both re-education through labor and reform

⁴² General Conference of the International Labour Organisation, adopted 28 June 1930, entered into force 1 May 1932.

⁴³ China has not ratified any of these conventions but they serve together as a set of standards by which to measure China’s conduct.

through labor camps also violates the Abolition of Forced Labour Convention (No. 105).⁴⁴ Article 1 of that Convention prohibits the use of forced labor “as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system.”

Food. Paragraph 20 (1) of the Minimum Rules requires that prisoners be provided with “food of nutritional value adequate for health and strength.” The description of food provided to prisoners in Sangyip (two meals per day of 1 or 2 buns and a bowl of soup or stew) does not appear to meet this requirement. In particular, prisoners forced to work for eight or more hours a day (there are reports of prisoners being forced to work as much as 20 hours on some days) need more food than more sedentary prisoners.

Medical care. The Minimum Rules, at paragraphs 22-26 and 62 require that prisoners be provided adequate medical care when needed, without charge. (See also Body of Principles, Prs. 24-26.) This includes having a competent medical officer available, necessary access to specialists and hospitals, and regular records of medical examinations. Such medical care does not appear to be available to prisoners in Tibet, as there are numerous reports of prisoners suffering, and in some cases dying during imprisonment or just after release, because of inadequate medical care. Indeed, the refusal to provide medical care, often after infliction of beatings or other torture, appears to be an additional method of punishing prisoners, especially those detained on political charges.

Furthermore, forced labor, including heavy physical labor such as farming, lumbering or working in industrial facilities, increases the likelihood of prisoner injuries. Services must be in place to treat such injuries. In addition, reports of prisoners forced to continue work despite injuries implicates the need for a medical officer who will ensure that injured prisoners are not forced to continue working when their injuries should prevent it. (Minimum Rules, paras. 24-25.) Finally, the Minimum Rules (para. 74) also require that safety and health rules that apply to free workmen shall also apply to working prisoners, and that prisoners be indemnified against industrial injury to the same extent as free workmen.

Accommodation. The Minimum Rules (paras. 9-14) require that prisoners be provided clean and safe accommodations with adequate heat, light, ventilation, air and floor space. In labor camps, prisoners are typically housed in large groups in open cell blocks, usually sleeping on mats on the floor. Overcrowding is common and heat is often not provided, a particular problem in Tibet’s climate. Ventilation and sanitary conditions are also often inadequate.

Remuneration. Paragraph 76 of the Minimum Rules requires equitable remuneration for prisoner work. This includes allowing prisoners to send part of their

⁴⁴ General Conference of the International Labour Organisation, adopted 25 June 1957, entered into force 17 January 1959.

earnings to their families and establishing a system for savings set aside for the time of a prisoner's release. It is unclear whether such remuneration exists in Tibetan labor camps.

Contact with the outside world. The Minimum Rules (para. 37) and the Body of Principles (Pr. 19) require that prisoners shall be allowed regular contact with family and friends through correspondence and visits. Tibetan prisoners do not appear to be allowed such contact on any regular basis. In some cases, detainees are held incommunicado for extended periods. In addition, families of convicted prisoners often have great difficulty visiting or corresponding with prisoners. One example is Ngawang Choephel, who was held incommunicado for over a year before being sentenced in December 1996. His mother has appealed both before and after his sentencing to Chinese authorities to be allowed to visit him but has so far not been granted permission. There has been no communication from Ngawang Choephel.

Forced Education. The daily routine in labor camps in Tibet often includes a period of forced study of "re-education" materials. Such forced study violates international law. The Basic Principles (para. 5) provide: "Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights . . ." Arts. 18 and 19 of the UDHR guarantee freedom of thought, conscience and religion, and freedom of opinion and expression. Forcing prisoners to study and recite government propaganda violates these rights. We can think of no demonstrable necessity that would justify limitations on these rights in prison. To the contrary, the fact of incarceration moots virtually any justification (such as to maintain public order) that might otherwise conceivably limit these rights.

Freedom of religion. In Tibet, particular attention must be paid to the right to freedom of religion. Increasingly repressive restrictions on the practice of Tibetan Buddhism are being put into place in Tibet generally. Political prisoners in Tibetan labor camps include monks and nuns who have committed the crime of refusing to denounce their spiritual leader, the Dalai Lama. Thus, we expect that in the labor camps, restrictions on religious worship are even more severe. Moreover, almost all Tibetans who are not monks or nuns nonetheless practice Tibetan Buddhism and may wish to practice their religion in prison.

The UDHR (Art. 18) guarantees freedom of religious belief, teaching, practice, worship and observance. The Basic Principles (paras. 2-3) prohibit discrimination on the grounds of religion and require respect for religious beliefs of prisoners. The Minimum Rules (paras. 6, 41-42) also require that prisoners be allowed to practice their religion, alone or in groups, and to have access to a qualified religious representative.

Conclusion

Arbitrary detention of Tibetans is common as China continues to repress all forms of dissent, including what it perceives as dissent exhibited through the practice of Tibetan

Buddhism. The Working Group has already acknowledged this. The abuse of Tibetans' human rights, however, also includes disappearances, torture and inhumane treatment of Tibetan political prisoners in detention centers, prisons and labor camps, and torture resulting in death. The Working Group should therefore investigate closely the treatment of Tibetans during detention and imprisonment. In particular, we call upon the Working Group to insist upon visiting prisoners who have been held incommunicado for extended periods, including Gedhun Choekyi Nyima and his parents, Chadrel Rinpoche, and Ngawang Choephel.

The system of re-education through labor, to which many Tibetan political prisoners are sentenced, also violates human rights laws. We therefore call upon the Working Group to take the opportunity of its visit to China to impress upon Chinese authorities the need to detain and punish persons only in accordance with minimum requirements of due process and a fair and public trial. Moreover, reports of conditions within the re-education and reform through camps, including reports of torture and inhumane treatment and of harsh conditions exacerbated by the practice of forced labor, warrant special examination of these camps by the Working Group.