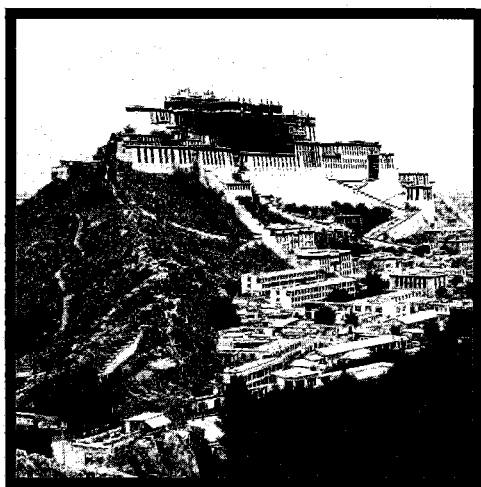




Tibet: Human Rights and the Rule of Law

Summary of the Report



International Commission of Jurists

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Executive Summary

This report examines the situation of the rule of law and human rights in Tibet,¹ including self-determination and other collective rights; economic, social and cultural rights; and civil and political rights. Although the report discusses the entire period since China's invasion of central Tibet in 1950, its focus is on events of recent years.

The report finds that repression in Tibet has increased steadily since the 1994 Third National Forum on Work in Tibet, a key conclave at which senior officials identified the influence of the exiled Dalai Lama, the leading figure in Tibetan Buddhism, as the root of Tibet's instability, and mapped out a new strategy for the region. The Forum endorsed rapid economic development, including the transfer of more Chinese into the Tibet Autonomous Region (TAR), and a campaign to curtail the influence of the Dalai Lama and crack down on dissent. The results of the Forum included: heightened control on religious activity and a denunciation campaign against the Dalai Lama unprecedented since the Cultural Revolution; an increase in political arrests; stepped up surveillance of potential dissidents; and increased repression of even non-political protest.

Since the beginning of 1996, there has been further escalation of repression in Tibet, marked by an intensive re-education drive in the monasteries at which monks were told that they would be required to sign loyalty pledges or face expulsion, a clampdown on information coming from Tibet, the sentencing of a senior religious leader, and a ban on photographs of the Dalai Lama in public places. The eight year old boy designated by the Dalai Lama as the reincarnation of the Panchen Lama, the second-most important figure in Tibet's Buddhist hierarchy, remains in detention. At the same time, Chinese leaders have begun a campaign against certain aspects of traditional Tibetan culture identified

1 "Tibet", as used in this report, refers to "ethnographic" Tibet and encompasses the entire Tibetan plateau, including what is now the Tibet Autonomous Region (TAR) as well as Tibetan-inhabited portions of the neighbouring Chinese provinces of Qinghai, Sichuan, Gansu and Yunnan. In Chinese usage, "Tibet" refers only to that part of ethnographic Tibet now within the TAR.

as both obstacles to development and links to Tibetan nationalism, and in 1997 labelled Buddhism as a "foreign culture."

These abuses of human rights and assaults on Tibetan culture flow from the denial of the Tibetan people's most fundamental right - to exercise self-determination. It is to maintain its alien and unpopular rule that China has sought to suppress Tibetan nationalist dissent and neutralise Tibetan culture. It is to colonise unwilling subjects that China has encouraged and facilitated the movement of Chinese into Tibet, where they dominate politics, security and the economy.

Autonomy

The nominal autonomy accorded to the TAR and other Tibetan autonomous areas by the PRC Constitution and laws is limited, as most local powers are subject to central approval. The actual extent to which Tibetans control their own affairs is even more circumscribed, however, due to the centralized dominance of the Communist Party (CCP), and the exclusion of Tibetans from meaningful participation in regional and local administration. When Tibetans are in positions of nominal authority, they are often shadowed by more powerful Chinese officials. Every local organ is shadowed by a CCP committee or "leading group", which does not function in keeping with concepts of autonomy. The army and the police are dominated by Chinese. While Tibet historically has often been divided, Tibetan self-rule is also undermined by the current partition of Tibetan territory which places most Tibetans outside the TAR and into four Chinese provinces in which Tibetans constitute small minorities.

Threats to Tibetan Identity and Culture

In 1959 the United Nations General Assembly called "for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life." In 1961 and 1965 the Assembly again lamented "the suppression of the distinctive cultural and religious life" of the Tibetan people. In 1991 the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission on Human Rights was still "[c]oncerned at the continuing reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people."

Today certain Chinese policies continue to erode or threaten to erode the distinctive elements of the Tibetan identity and culture. These policies include:

Population Transfer

Since 1950 there has been a large influx of Chinese into Tibet, resulting from several factors: government policy and programmes to transfer Chinese, particularly cadres and professionals, to the TAR and other Tibetan regions; government encouragement of voluntary migration; work units bringing ordinary labourers to Tibet for construction projects; and the market-driven migration of ordinary Chinese. New Chinese towns have been created. Tibetan urban centres have been sinicised. In eastern Tibet, Tibetan lands have also been appropriated for agriculture. Where Chinese have settled, they dominate commerce and are at the centre of development strategies. The 1994 Third Work Forum endorsed and accelerated the movement of Chinese to the TAR. Estimates suggest that Chinese now account for one-third of the total population of all areas with Tibetan autonomous status (compared to 6 to 10% in 1949) and for 12 to 14% of the population of the TAR (compared to 0.1%).

Tibet's Cultural Heritage

A key component of Tibet's unique culture was undermined in the early years of Chinese rule by the destruction of the monastic system. The Cultural Revolution continued that process with the physical destruction of Tibet's unique religious buildings and monuments and an assault on the cultural identity of individual Tibetans. By its end, Tibet's physical and material culture was visibly decimated; few of Tibet's thousands of monasteries survived. Since 1979 the Chinese government has allowed some cultural freedom in Tibet and many monasteries have been partially restored, but permitted cultural activities are restricted and purged of any nationalist content. Chinese modernisation since 1979 has destroyed much of the surviving traditional Tibetan secular architecture in urban areas. In Lhasa, many Tibetan houses have been demolished and entire neighbourhoods razed.

Language

The predominance of the Chinese language in education, commerce, and administration, combined with global modernization, compels Tibetans to master Chinese and is marginalizing the Tibetan language. Virtually all classes in secondary and higher education in the TAR, including such subjects as Tibetan art, are taught in Chinese. Recent measures - apparently following a Communist Party decision linking use of Tibetan language to pro-independence sentiments - include the shutting of experimental middle school classes in Tibetan in the TAR and a further downgrading of the use of Tibetan in education generally.

Development

The pattern of development of Tibet, while materially beneficial in its transfer to Tibet of modern technologies such as health care, transport and communications, has marginalized Tibetans, and excluded them from effective participation, which is an intrinsic aspect of development. The livelihood of most Tibetans, who live in small rural communities, has been neglected, receiving little of the Chinese investment. The relative poverty of Tibetans, the exploitation of Tibetan resources for China's development, and the settlement of considerable numbers of Chinese in new urban centres impact negatively on Tibetan communities.

Environment

In forty years, most Tibetan wildlife has been destroyed and much of the forest has been cut, watersheds and hill slopes eroded and downstream flooding heightened. The most extensive environmental impact of Chinese practice is the widespread degradation of the rangelands, resulting in desertification of large areas until recently capable of sustaining both wild and domestic herds. The extent of grassland deterioration has reached a point where, unless measures are taken soon, the long term viability of nomadic Tibetan civilization could be brought into question.

Individual Rights

The Role of the Judiciary

A primary stated goal of the justice system in the TAR is the

repression of Tibetan opposition to Chinese rule. A judiciary subservient to Communist Party dictates results in abuses of human rights in all of China, but in Tibet the problem is particularly severe due to China's campaign against Tibetan nationalism. The recent "Strike Hard" anti-crime campaign has enlisted the judiciary further in the campaign against "splittism." Many Tibetans, particularly political detainees, are deprived of even elementary safeguards of due process.

Right to Education

The Chinese government has made great strides in providing compulsory primary education to Tibetan children. The education system in Tibet, however, puts Tibetan children at a structural disadvantage compared to Chinese children. The exclusive use of the Chinese language as the medium of instruction in middle and secondary schools in the TAR, the low enrolment and high drop-out rate among Tibetans, the low quality of education facilities and teachers for Tibetans, the difficulties in educational access for Tibetans, as well as a TAR illiteracy rate triple the national average, are indicative of a discriminatory structure. Rather than instilling in Tibetan children respect for their own cultural identity, language and values, education in Tibet serves to convey a sense of inferiority in comparison to the dominant Chinese culture and values.

Right to Housing

The destruction of Tibetan neighbourhoods, the forced evictions of Tibetans and demolition of their homes, as well as preferences shown to Chinese in new housing reveal marked discrimination against Tibetans in the housing sphere.

Right to Health

The general availability of primary health care and the use of preventive medicine have resulted in important improvements in overall health levels in the TAR. Life expectancy of Tibetans has risen significantly, though it is the lowest of all groups in the PRC. The infant mortality rate of Tibetans, however, is three times the PRC national average and a serious problem of child malnutrition exists. The cost and poor quality of primary care and the shortage of trained village-level health professionals contribute to preventing Tibetans from achieving the highest attainable standards of health.

Arbitrary Detention

Tibetans continue to be detained for long periods without charge or sentenced to prison for peacefully advocating Tibetan independence or maintaining links with the Dalai Lama. The number of political prisoners in Tibet appears to have risen in recent years, to over 600. The United Nations Working Group on Arbitrary Detention has criticised China's use of broadly-worded "counterrevolutionary" crimes and called without result for the release of dozens of Tibetans detained in violation of international norms guaranteeing freedom of expression and freedom of religion. Most Tibetan political prisoners were arrested for peacefully demonstrating, writing or distributing leaflets, communicating with foreigners or the Tibetan government-in-exile, or possessing pro-independence material. Nuns account for between one-quarter and one-third of known political prisoners. In 1997 China replaced the "counterrevolutionary" concept with the equally elastic notion of "crimes against state security," adding an article specifically targeting acts "to split the nation."

Torture

Torture and ill-treatment in detention is widespread in Tibet. The use of electric cattle-prods on political detainees appears to be general practice. Torture and other forms of ill-treatment occur in police stations upon arrest, during transport to detention facilities, in detention centres and in prisons. The documented methods of torture against Tibetans include beatings with chains, sticks with protruding nails, and iron bars, shocks applied with electric cattle-prods to sensitive parts of the body, including the genitals and mouth, hanging by the arms twisted behind the back, and exposure to cold water or cold temperatures. Women, particularly nuns, appear to be subjected to some of the harshest, and gender-specific, torture, including rape using electric cattle-prods and ill-treatment of the breasts.

Extrajudicial and Arbitrary Executions

There have been no confirmed reports of shooting of peaceful demonstrators since the demonstrations and disturbances of 1987-89 when scores of Tibetans, including many peaceful demonstrators, were shot and killed. A number of unclarified deaths of political prisoners, including young nuns, have occurred in Tibetan prisons in recent years,

allegedly as a result of torture or negligence. The imposition of the death penalty in Tibet - which was reportedly used 34 times in the TAR in 1996 - is devoid of the guarantees of due process and fair trial.

Freedom of Expression

Tibetans' freedom of expression is severely restricted. Expression of political nationalism is not tolerated. Neighbourhood committees identify dissenters and instil "correct thought." Tibetans are arrested and imprisoned, or sentenced to reeducation through labour, for the peaceful expression of their political views. Information reaching Tibet from the outside as well as the flow of information out of Tibet is tightly controlled. Restrictions have intensified in recent years through the "Strike Hard" anti-crime campaign, the ban on public display of photographs of the Dalai Lama and the monastic re-education campaign.

Freedom of Religion

The Buddhist religion is a significant part of the lives of the Tibetan people. There is, however, pervasive interference with religious freedom and activity in Tibet. Monasteries are under the purview of local government and Party bodies, Party work teams and police branches. Each is governed by a Democratic Management Committee (DMC).

Since the 1994 Forum, when the Party identified the influence of the Dalai Lama and the "Dalai clique" as the root of Tibet's instability, Tibetan Buddhism has been subject to intense scrutiny and control. Party dominance over the DMCs has been strengthened; a ban on religious construction without official permission and limits on the number of monks and nuns per monastery have been more strictly enforced; the screening for admission of monks and nuns has been tightened; and monks and nuns have been asked to denounce the Dalai Lama.

The Chinese government used the search for the reincarnation of the Panchen Lama to intensify its campaign to eradicate the Dalai Lama's religious as well as political influence. The senior monk involved in the selection process was detained and later sentenced, the Panchen Lama's monastery was purged and Tibetan cadres' and religious leaders' loyalty was tested by requiring them to denounce the Dalai Lama's interference in the Panchen Lama's recognition, and to accept the Chinese choice for Panchen Lama. A ban on the public display of photographs of the Dalai

Lama was later followed by a sporadic ban on private possession of his photo.

In 1996 a "patriotic education campaign" in the monasteries was initiated which continues to the present. Strengthened work teams were sent to major monasteries to conduct intensive re-education sessions among the monks, during which the monks were called on to denounce the Dalai Lama. Hundreds of monks were forced to leave their monasteries, while at least 90 others were arrested for disturbing the re-education process. Chinese troops shelled one monastery, killing one and injuring three.

Freedom of Assembly

Peaceful political demonstrations in Tibet are typically broken up in minutes, and their participants arrested and often beaten, as part of a deliberate policy to suppress any manifestation of pro-independence sentiment. In recent years even some economic protests have been violently suppressed.

Population Control

Although the Tibetan population is small and Tibetan territory sparsely inhabited, China limits the number of children which Tibetan women may have, though these limits are not as severe as they are for Chinese women. The limits, which vary from area to area, are enforced through mandatory fines, abortions and sterilizations, in violation of numerous legal rights and sometimes with adverse health consequences for women. "Unauthorised" children commonly suffer discrimination in access to schooling and other benefits and rights.

Tibet's Legal Status

Central Tibet - that part of Tibet ruled from Lhasa - demonstrated from 1913 to 1950 the conditions of statehood as generally accepted under international law. In 1950 there was a people, a territory, and a government which functioned in that territory, conducting its own domestic affairs free from any outside authority. From 1913-1950 the foreign relations of central Tibet were conducted exclusively by the Government of Tibet. Central Tibet was thus at the very least a de facto independent State when in the face of a Chinese invasion it signed the

"17 Point Agreement" in 1951 surrendering its independence to China. Under that Agreement, China gave a number of undertakings, including: promises to maintain the existing political system of Tibet, to maintain the status and functions of the Dalai Lama, to protect freedom of religion and the monasteries and to refrain from compulsory "reforms." These and other undertakings were violated by China. The Government of Tibet was entitled to repudiate the Agreement as it did in 1959.²

Self-Determination

Tibetans are a "people under alien subjugation", entitled under international law to the right of self-determination, by which they freely determine their political status. The Tibetan people have not yet exercised this right, which requires a free and genuine expression of their will.

2 This summary is taken from the two previous ICJ reports, *The Question of Tibet and the Rule of Law*, (Geneva: International Commission of Jurists, 1959), and *Tibet and the Chinese People's Republic, A Report to the International Commission of Jurists by its Legal Inquiry Committee on Tibet* (Geneva: International Commission of Jurists, 1960). The current report does not repeat the analysis in these earlier reports, which the ICJ endorses.

Recommendations

The principal recommendation of this report is for a referendum to be held in Tibet under United Nations supervision to ascertain the wishes of the Tibetan people. Those eligible to vote in such a referendum would be Tibetans and other persons resident in Tibet before 1950 and their descendants, as well as Tibetan refugees and their descendants. The referendum would take place in the contiguous territories in which ethnic Tibetans historically constituted a majority and among the exile community. This exercise of the right to self-determination could result in the establishment of an independent state, a form of genuine internal self-government, continuation of Tibet's current status within China, or any other status freely determined by the Tibetan people.

Most of the other specific recommendations of this report flow from China's violations, spelled out in the report, of its binding obligations under international human rights law, and do not need to be enumerated exhaustively here. Some of the over-arching recommendations, however, include:

Recommendations to the People's Republic of China

- Enter into discussions with the Dalai Lama and the Tibetan government-in-exile on a solution to the question of Tibet based on the will of the Tibetan people;
- Ensure respect for the fundamental human rights of the Tibetan people by ending the violations described in this report;
- End those practices which threaten to erode the distinct cultural, religious and national identity of the Tibetan people. In particular, cease policies which result in the movement of Chinese to Tibetan territory;
- Cooperate with United Nations mechanisms for the protection of human rights. In particular, facilitate meaningful and unrestricted visits to Tibet of the UN mechanisms on torture, summary, arbitrary and extrajudicial executions, violence against women, disappearances, arbitrary detention, and independence of the judiciary. Release those prisoners whose detention has been ruled arbitrary by the Working

Group on Arbitrary Detentions, and prisoners held for similar reasons. Implement the recommendations of the Special Rapporteur on Religious Intolerance and allow him to conduct a meaningful follow-up visit with unrestricted access to the Tibetan people;

- Ratify without reservations the International Covenant on Civil and Political Rights and its optional protocols and the International Covenant on Economic Social and Cultural Rights;
- Allow unrestricted access to Tibet by independent human rights monitors.

To the United Nations General Assembly

- Resume its debate on the question of Tibet based on its resolutions of 1959, 1961 and 1965.

To the United Nations Commission on Human Rights

- Appoint a Special Rapporteur to investigate the situation of human rights in Tibet.

To the United Nations Secretary-General

- Using his good offices, appoint a Special Envoy to promote a peaceful settlement of the question of Tibet and a United Nations-supervised referendum to ascertain the wishes of the Tibetan people.

To the international community

- States and other international actors should refrain from taking a position on the legal status of Tibet until after a referendum is held in accordance with the recommendation made in this report;
- Development assistance to Tibet should benefit the Tibetan people. To this end, it should ensure the participation of Tibetans in all stages of project design and implementation, respect Tibetan choices regarding the environment and development and not encourage the movement of Chinese to Tibetan territory.

To the Tibetan government-in-exile

- Enter into discussions with the Government of China on a solution to the question of Tibet based on the will of the Tibetan people;
- Cooperate in the organization of a United Nations-supervised referendum in Tibet and in the exile community to ascertain the wishes of the Tibetan people.