

Lobsang Nyendel L:
We should follow up
the findings of the visit

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Please find enclosed herewith the Briefing Paper from our side which I submitted this morning during a meeting with Mr. Isaac Bitter, Secretary, UN Working Group on Arbitrary Detention. The original draft of this Paper was prepared by Dennis Cusack (ICLT). I edited the Paper a bit with some additional points and added the enclosures.

During my meeting with Mr. Bitter he made the following issues clear:

1. The Working Group has requested to visit Tibet and if allowed will visit a Prison, most probably Drapchi. From their 11 days trip which begins on 6 October, he felt at maximum they could devote only 48 hours in Tibet (if permitted to visit). So far the WG has not received the okay from Beijing on Tibet. But by Friday I am sure Mr. Bitter will have the information. We are trying to get the detailed programme of the Mission.
2. The WG Mission will not study prison conditions as its not their mandate and will study the issue of human rights of detainees from the legal of point of view. The result of the WG Mission will be reported to the 54th UN Commission on Human Rights.
3. Mr. Bitter supported our views that the WG should raise questions on the status of Tibetan political prisoners (more than 50) whose detention it had decided were "arbitrary" in 1993 and 1995. The WG will also ask for meeting with some political prisoners. Mr. Bitter mentioned that the WG had received requests and appeals on Gedhun Choekyi Nyima, Chadrel Rinpoche and Ngawang Choephel from many sources.
4. Mr. Bitter cautioned me that due to the nature of Visit (controlled and difficult circumstances), we should not expect much from the Mission. He said that the main issue was that a "dialogue" is maintained with the Chinese authorities.

He was informed about the developments of Dr. Völlmer's visit to Drapchi Prison.

Tashi delegs,

Ngawang C. Drakmargyapon

BRIEFING NOTE ON TIBET

Submitted to

UN WORKING GROUP ON ARBITRARY DETENTION

Visit to China and Tibet -- October 1997

by

Tibet Bureau for UN Affairs

Tibetan Government in Exile
Geneva, Switzerland

ARBITRARY DETENTION, PRISONS AND LABOUR CAMPS IN TIBET

Introduction

Tibet Bureau for UN Affairs (on behalf of the Tibetan Government in Exile) wishes 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 labour camps in Tibet. 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 through its decisions of 1993 and 1995. 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 labour camps: (1) reform through labour or laogai, which is the form of imprisonment for most prisoners sentenced by a court; and (2) re-education through labour or lao jiao, 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, and will then discuss the international law violations inherent in the system of re-education through labour. It will also point out the international law issues raised by living conditions and the use of forced labour within both the reform through labour and re-education through labour 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.

Tibet, the roof of the world, lies at the centre of Asia bordering India, Nepal, Bhutan and Burma in the south; China in the east; and Eastern Turkestan and Mongolia in the north. The earth's highest mountains, a vast arid plateau and great river valleys make up the physical homeland of the six million Tibetans. After invading Tibet in 1949-50, the Chinese authorities have now occupied Tibet for the past 47 years.

When we Tibetans refer to Tibet, we refer to the whole country, that is, three provinces of U-Tsang, Kham and Amdo. After occupation, China subdivided Tibet into eight Tibetan "autonomous" region, prefectures and districts in order to break up the country and facilitate control over its population. One unit comprises most of Amdo province, and has been re-named Qinghai. Six are annexed to the Chinese provinces of Gansu, Sichuan and Yunnan. It is only the last, comprising of U-Tsang province

and parts of western Kham province (less than half the country), which is officially known as the so-called "Tibet Autonomous Region (TAR)". When the Chinese authorities refer to Tibet they only refer to "TAR"

region of Tibet. In this paper, the term "Tibet" is used to describe the situation in the entire country as it is known and recognised by the Tibetan people.

According to its own research, the Tibetan Government in Exile has concluded that between 1949 and 1979, 1.2 million Tibetans lost their lives as a direct result of Chinese occupation and brutal repression. From this figure, 92,731 died as a result of torture; 156,758 to summary executions; and; 173,221 lost their lives in prisons and labour camps.

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 Tibetan independence or in support of His Holiness the Dalai Lama and the Panchen Lama, printing or distributing leaflets or posters, monitoring human rights abuses, or communicating 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 establishes the right to freedom of peaceful assembly. Article 35 of China's Constitution also guarantees the 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 once again 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. In August 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities passed Resolution 1991/10, noting its concern at continued reports of violations of fundamental human rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people and requesting the Secretary General to report to the Commission on Human Rights on the situation in Tibet (E/CN.4/1992/37).

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

China reported that they arrested twice as many Tibetans in 1994 as in

1993 for counter-revolutionary activities. Monks and nuns accounted for 87% of those arrested. By the end of 1994, according to Amnesty International, there were at least 628 Tibetan political prisoners 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.

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. The Working Group made the same ruling as to 18 additional Tibetan prisoners in 1995.

In 1994, China formally outlawed even the display of photographs of His Holiness the Dalai Lama. Since May 1995, when His Holiness the Dalai Lama recognised Gedhun Choekyi Nyima as the Eleventh 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 His Holiness 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 His Holiness the Dalai Lama regarding the search for the reincarnation of the Tenth Panchen Lama. Two other Tibetans, Jampa Chung and Samdup, were sentenced to 4 and 2 years, respectively, apparently for assisting Chadrel Rinpoche.

Arbitrary arrest and detention of Tibetans continued in 1996. For example, Sholpa 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 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.

The Tibetan Centre for Human Rights and Democracy based in India documented 204 arrests in 1996 for political reasons. On 3 June 1997, Xizang Ribao, the official newspaper in "TAR" said that 47 cases in 1996 involved "endangering state security", the new phrase preferred by the Chinese authorities for offences formerly described as "counter-revolutionary". These 47 cases involved 98 Tibetans, said the newspaper, the first indication of the number of political arrests in the region during the year.

The Tibetan Centre for Human Rights and Democracy in its report "Tibet-One More Year of Political Repression" released in February 1997,

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identified 1018 (252 female and 50 juveniles) political prisoners as being imprisoned in various prisons and labour camps in Tibet at the end of 1996.

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

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. 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 Nations Standard (Minimum Rules) for the Treatment of Prisoners 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."

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 agonising 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, the unwillingness of China to respond to cases where disappearances have been exposed has been apparent in 1996.

Eight year-old Gedhun Choekyi Nyima and his parents have been missing since May 1995. By the end of May, Gedhun 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. First China, in its response to the UN Working Group on Enforced or Involuntary Disappearances, denied that the boy or his parents had disappeared. Nevertheless, in May 1996, over a year after the disappearance of Gedhun Choekyi Nyima and his parents, China admitted to both the Working Group and the UN Committee on the Rights of the Child that Gedhun Choekyi Nyima has been put under "protection" at the request of his parents. The Committee requested that China allow a UN 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 Chinese-appointed Search Committee for the reincarnation of the Tenth Panchen Lama, disappeared on 17 May 1995 after his arrest in Chengdu. 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 prison term for passing state secrets.

Dhamchoe Gyatso (27), Jigme Tendar (29), Dhamchoe Kalden (31) and Phuntsok (25) of Nga-rig Kye-tsel-Ling school (English translation: Flourishing Garden of Five Knowledge) at Kumbum Monastery in Amdo have been accused of publishing a literary magazine which has now been labelled 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.

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 20, 1995; Lobsang Namgyal, a former monk of Nechung Monastery, was arrested in February 1995 and Ngawang Thonglam, a former monk of Gaden Monastery, was arrested in February 1995. All arrests were for political reasons and the whereabouts of these political prisoners remain unknown.

Dawa (60), Kelsang Tsewang, Lhakpa Tsamchoe, Pema Choedon, Migmar Dolma and Dakpa Wangden, all residents of Lhasa were arrested this year

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according to VOA's Tibetan Service broadcast of 27 August. Their whereabouts remain unknown although one report said that Lhakpa Tsamchoe was released after three days detention.

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. His whereabouts is still unknown. When his case was raised by German parliamentarians during a visit to Lhasa in early September this year, Chinese officials even refused to acknowledge his detention.

The UN Working Group on Enforced or Involuntary Disappearances has already expressed its concern on the increasing number of disappearance cases in Tibet (E/CN.4/1997/34).

Torture

Article 1 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which China is a State Party, outlaws any kind of torture. Nonetheless, in 1990, the UN Committee Against Torture noted that it had received credible allegations of a persistent practice of torture in Tibet. The Committee also made special note of China's failure to address allegations of

torture in Tibet. In 1993 and again in 1996, the UN Committee Against Torture asked China to set up a genuinely independent judiciary and to change its laws to ban all forms of torture. Despite this, China's Criminal Law only specifically prohibits certain kinds of torture.

The use of torture is in fact common in all prisons 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.

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. In 1996 alone, there were more than 20 cases of torture documented through eyewitness accounts, not including cases of torture resulting in death. 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.

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

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 (three known cases in 1996, all monks), though most involve the deaths of prisoners shortly after their release from prison.

Since 1987, there have been 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. 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 in early 1995.

The UN 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. He also noted that, despite repeated requests since 1992 to visit China, he had received no response to his request (E/CN.4/1997/60).

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

Until the passage of the Administrative Punishment Law (APL), effective October 1, 1996, there was no right to a defense or to a public hearing. 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

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are being ignored in some cases. There is still no right to a lawyer.

The APL provides for a 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 labour. 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 labour is supposed to be applied to certain categories of persons whose offences 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 labour is used often for the detention of political activists in China and Tibet.

Currently, re-education through labour 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 labour 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.

Re-education Through Labour Violates International Law

The system of re-education through labour violates Articles 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).

The vagueness of the laws describing the offences for which re-education through labour may be imposed vests too much discretion of the police or the official concerned to decide whom to detain and punish, making detention for re-education through labour inherently arbitrary (Universal Declaration of Human Rights (UDHR), Article 9; ICCPR, Article 9, paragraph 1; also Body of Principles, Paragraph 2). Moreover, permitting terms of re-education through labour for the peaceful exercise of a person's freedom of speech, opinion and association violates international law (UDHR, Articles 18-19; ICCPR, Articles 18-19)

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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, Articles 9, paragraph 2 and 14, paragraph 3(a); Body of Principles, Paragraphs 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, Article 9, paragraphs 3 and 4, Article 14, paragraphs 1,3; Body of Principles, Paragraph 11). As there is no impartial tribunal and no trial, there is effectively no presumption of innocence (Article 14, paragraph 2). Nor is there any right to have a lawyer or other person assist the detainee in contesting the charges (ICCPR, Article 14, paragraph 3(d); and, Body of Principles, Paragraphs 17 and 18).

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

Conditions In Labour Camps

Sangyip is a complex of prisons outside Lhasa, the Tibetan capital. It formerly included a reform through labour camp but consist of several re-education through labour camps, as well as a forced job placement centre (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 labour 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 memorising 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, stone-laying, 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

prisons and labour 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

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or protection from dampness.

Prisoners may be left in one of these cells for many days, sometimes without food. In addition, lack of medical treatment for prisoners has lead 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 or operate hide, garment and wool factories. Many of these labour camps are in fact significant contributors to the provincial economies.

Labour Camp Conditions Raise Serious Issues Under International Law

The treatment of prisoners in the labour 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 Prisoners (Basic Principles) and the Minimum Rules. The conditions reported in labour camps in Tibet, as well as the forced labour 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 this Convention provides that there are no exceptional circumstances to justify torture. In addition, the Body of Principles (paragraph 6) and the Minimum Rules (paragraph 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 labour camps, as it is in other prisons and detention centres in Tibet. One example is Palden Gyatso, who spent 33 years in Tibetan labour 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.

The Minimum Rules (paragraphs 27-30) and the Body of Principles (paragraph 30) provide for certain minimum due process for imposing any

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permissible punishments, including notice of the offence, 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 labour camps, since punishments such as beatings are inflicted immediately and without recourse.

Forced Labour

The forced labour required of prisoners in re-education through labour camps (i.e, of prisoners who have been detained and sentenced outside of any judicial process) violates Article 8, paragraph 3, of the ICCPR.

That Article 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