

TEHRAN -

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Subject: Briefing Paper to UN WGAD Mission to China and Tibet

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(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 labour 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). Article 2 defines forced or compulsory labour to mean any labour exacted under threat of a penalty and which is not voluntary. Article 2, paragraph 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 labour 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 (paragraph 89) and may not be required to work.

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

While the detention in any manner of persons for their political views violates international law (e.g, UDHR, Articles 18-19; ICCPR, Articles 18-19), the imposition of forced labour on such political prisoners in both re-education through labour and reform through labour camps also violates the Abolition of Forced Labour Convention (No.105). Article 1 of that Convention prohibits the use of forced labour 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

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(c) For the purpose of this paragraph, the term forced or compulsory labour shall not include: (1) 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 labour 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. The Convention defines forced or compulsory labour to mean any labour exacted under threat of a penalty and which is not voluntary. Article 2 paragraph 2 provides an exception for work exacted from any person as a consequence of a court order in a court of law. It also provides for re-education through labour camps for persons convicted in a court of law. Thus, forced labour violates the forced labour convention. In addition, such prisoners are entitled prisoners under the Minimum Rules (Article 5) and may not be required to work.

As noted above, prisoners subject to sentences of re-education through labour have not been granted the right and opportunity to a fair and impartial hearing before a judicial authority before being sentenced. Any labour required of them constitutes forced or compulsory labour in violation of the ICCPR. The forced labour convention and the Minimum Rules.

While the detention in any manner of persons for their political views violates international law (e.g. UDHR, Article 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 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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, paragraphs 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 labour, including heavy physical labour 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, paragraphs 24-25)

Finally, the Minimum Rules (paragraph 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 (paragraphs 9-14) require that prisoners be provided clean and safe accommodations with adequate heat, light, ventilation, air and floor space. In labour 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 Tibets climate. Ventilation and sanitary conditions are also often inadequate.

Remuneration

Paragraph 76 of the Minimum Rules requires equitable remuneration for prisoners work. This includes allowing prisoners to send part of their earnings to their families and establishing a system for savings set aside for the time of a prisoners release. It is unclear whether such remuneration exists in Tibetan labour camps.

Contact with the outside world

The Minimum Rules (paragraph 37) and the Body of Principles (Paragraph 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 (through their New Delhi Embassy) 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 labour camps in Tibet often includes a period of forced study of re-education materials. Such forced study violates international law. The Basic Principles (paragraph 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. Articles 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 labour camps include monks and nuns who have committed the crime of refusing to denounce their leader, His Holiness the Dalai Lama. Thus, we expect that in the labour 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 (Article 18) guarantees freedom of religious belief, teaching, practice, worship and observance. The Basic Principles (paragraphs 2-3) prohibit discrimination on the grounds of religion and require respect for religious beliefs of prisoners. The Minimum Rules (paragraphs 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 opposition to its rule in Tibet. The abuses in Tibet includes disappearances, torture and inhumane treatment of Tibetan political prisoners in detention centres, prisons and labour 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 labour, 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 labour, warrant special examination of these camps by the Working Group.

Finally, we appeal to the Working Group to earnestly ensure that in its first official Mission accepted by the Chinese authorities, a visit to Tibet be undertaken so that the Mission benefits a more comprehensive understanding of the situation as it exists today.

30 September, 1997

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Enclosures:

1. Profile of Tibetan Political Prisoners - Selected Cases
2. Prison Code of Conduct of Peoples Republic of China (English translation of Chinese Document in Tibetan), 29 December, 1994
3. Partial List of Tibetan Political Prisoners, released by Tibetan Centre for Human Rights and Democracy, Dharamsala, India
4. Partial List of Arrest in Tibet in 1996, released by Tibetan Centre for Human Rights and Democracy
5. "Seeing is Believing": Says GFA vice-president, Xinhua, 30 August, 1997
6. Press Statement from Dr. Antje Vollmer, vice-president of the German Federal Assembly, 3 September, 1997
7. German human rights delegation to Tibet decries concealment, AFP, 9 September, 1997
8. Terror behind the Bamboo Curtain, The Times-London, Patrick French, 28 September, 1997
9. China grants release to Tibetan prisoners: A Token Gesture, Press Statement by Tibetan Centre for Human Rights and Democracy, Dharamsala, India, 17 September, 1997
10. Chadrel Rinpoche on Hunger Strike, News Release by Human Rights in China, New York, 10 September, 1997
11. Human Rights Update Issues by Tibetan Centre for Human Rights and Democracy

12. Profile - Tanak Jigme Sangpo, Tibets Longest Imprisoned Political Prisoner

13. Profile - Ngawang Sangdol, Tibets Longest Imprisoned Female Political Prisoner

14. 200 Monks and Nuns jailed in Tibet, South China Morning Post, 9 September, 1997

Tashi delegs,

Ngawang C. Drakmargyapon

12. Profile - James Blake, 1907. Political Prisoner.

13. Profile - James Blake, 1907. Political Prisoner.

14. 200 Monks and Nuns killed in Tibet, 1907. Political Prisoner.

James Blake
Political Prisoner

Tempa

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The UDHR (Article 18) guarantees freedom of religious belief, teaching, practice, worship and observance. The Basic Principles (paragraphs 2-3) prohibit discrimination on the grounds of religion and require respect for religious beliefs of prisoners. The Minimum Rules (paragraphs 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 centres, prisons and labour 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 labour, 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 labour, warrant special examination of these camps by the Working Group.

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