



TIBET JUSTICE CENTER



BOSTON
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TIBET'S STATELESS NATIONALS III

The Status of Tibetan Refugees in India

A report by Tibet Justice Center, with
the support of Tibetan Legal Association,
and Boston University School of Law's
International Human Rights Clinic

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TABLE OF CONTENTS

I.	Executive Summary	5
II.	Methodology	10
III.	Background	12
	A. Situation in Tibet – Then and Now	12
	B. Passage of Tibetans from Tibet to India.....	14
	C. Waves of Tibetan Refugees Since 1959, and India’s Policy Towards Them	17
	D. Tibet in Sino-Indian Relations	27
	E. Current Population of Tibetans in India.....	30
	F. Overview of Tibetan Settlements in India.....	30
IV.	Status of Tibetans as Foreigners in India	36
	A. Introduction	36
	B. Legal Overview: Indian and International Legal Framework	36
	C. Documentation	40
	1. Registration Certificates (RCs)	40
	2. Identity Certificates (ICs): International Travel.....	49
	3. Special Entry Permits	53
	4. Birth Certificates	56
	D. Citizenship.....	56
	1. The Formal State of Indian Law	56
	2. Application in Practice to Tibetans	58
	3. Voting.....	66
V.	Consequences of status in India	68
	A. Arrests and Deportations.....	68
	B. Travel Restrictions/Freedom of Movement	73
	C. Property Ownership and Land Issues.....	74
	D. Other Limitations due to Status as Foreigners	82
	1. Employment	82
	2. Freedom of Speech, Expression and Assembly	90
	3. Relations between Tibetan and Indian Communities.....	94
	4. Relationship between Tibetan Communities and Indian Authorities.....	98
	5. Health	98
	6. Education.....	100
VI.	Tibetan Rehabilitation Policy.....	103
VII.	Conclusion.....	107
VIII.	Acknowledgements	107

- IX. Appendix: Table of Contents 110
 - A. Indian Statutes and Policies
 - 1. The Citizenship Act, 1955..... 111
 - 2. The Foreigners Act, 1946..... 130
 - 3. The Registration of Foreigners Act, 1939 140
 - 4. Tibetan Rehabilitation Policy, 2014..... 143
 - B. Documents Issued by the Government of India
 - 1. Registration Certificate 159
 - 2. Identity Certificate..... 162
 - 3. Online Application for Identity Certificate 166
 - C. U.S. State Department Documents
 - 1. Unclassified Cable 004443, April 1996 172
 - D. Central Tibetan Administration Documents
 - 1. Kashag Circular..... 175
 - 2. Tibetan Green Book and Translation 177

I. Executive Summary

India has been host to a sizeable Tibetan refugee population since the Chinese occupation of Tibet in 1949, with the most significant number arriving into India in the aftermath of an uprising in Lhasa in March 1959, when the Dalai Lama fled for his life, and 100,000 Tibetans followed in the ensuing months and years. Despite many qualifying as refugees under international law and many others as citizens of India, all Tibetans in India are viewed in policy and practice as “foreigners.” Being treated as a “foreigner” significantly restricts the lives of Tibetans in India - from property ownership, to employment, to freedom of movement within and outside of India, and to the fear of deportation to China and the consequent imprisonment and torture that would very likely happen to them there. While India has been a generous host in many ways, despite not having signed the UN Refugee Convention, the current situation is that Tibetans in India live in an uncertain position, restricted from exercising the full rights of citizens, and vulnerable to changes in political will.

For centuries before Tibet’s military occupation and subsequent annexation by China in 1951, the peoples of India and Tibet enjoyed mutually beneficial cultural, economic, and religious ties by virtue of extensive commerce, cultural exchange, and diplomatic communication across what is now the Sino-Indian border. This amicable relationship continued during the era of British rule in India and into the first few years of India’s independence. But less than five years later, the Chinese People’s Liberation Army (PLA) of Mao Zedong occupied Tibet and coerced representatives of the Tibetan government to sign the 17-Point Agreement.¹ India did not interfere. But neither did it recognize China’s claim—memorialized in the 17-Point Agreement—that Tibet is (and always has been) “part of” the Chinese “Motherland.”²

In 1959, however, India could no longer remain neutral, because on March 10 of that year the PLA brutally crushed a popular Tibetan uprising against Chinese rule, an event known as the Lhasa Uprising. At that time, fearing for his life, the Fourteenth Dalai Lama and many of his advisers and family members fled Tibet, arriving shortly thereafter in northern India. In part because of its strong historic and religious ties to the Dalai Lama and Tibet, India welcomed the Dalai Lama and generously offered him and his immediate retinue protection and refuge. But contrary to a common misperception, India did not grant the

¹ Agreement of the Central People’s Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet, May 23, 1951, P.R.C.-Tibet [hereinafter 17 Point Agreement], *reprinted in* MICHAEL C. VAN WALT VAN PRAAG, *THE STATUS OF TIBET: HISTORY, RIGHTS AND PROSPECTS IN INTERNATIONAL LAW* 337 (1987).

² *Id.* pmbl. In 2003, India and China signed a “Declaration of Principles of Relation and Comprehensive Cooperation.” In it, India for the first time formally recognized Tibet as a “*part of* the territory of the People’s Republic of China” and prohibited what the Declaration describes as “anti-China political activities” by ethnic Tibetans living in India. Declaration on Principles for Relations and Comprehensive Cooperation Between the People’s Republic of China and the Republic of India, China-India, June 25, 2003 (emphasis added) [hereinafter Cooperation Declaration].

Dalai Lama refugee status or any other type of permanent status. To this day, the Indian government refers to the Dalai Lama simply as an “honored guest” and cultivates a studied ambiguity relative to his legal status in India. Nonetheless, since 1959, thousands of Tibetans have followed the Dalai Lama into exile in India. According to current estimates, somewhere between 94,000 and 130,000 ethnic Tibetans reside in India today.

Until 2008, a steady flow of Tibetans – between 1500 and 3500 every year – continued to make the dangerous journey across the Himalayas into Nepal, where they were processed by the United Nations Refugee Agency and the Nepali and Indian governments, before being sent to India under a special arrangement known as the Gentlemen’s Agreement. Once in India, they were recognized as “foreigners” and allowed to temporarily remain under various conditions (as explained in Parts IV and V below). Since 2008, China has clamped down on the movement of Tibetans escaping Tibet, and consequently only a few make it across to Nepal and then India every year – less than 100 in 2015. The human rights crisis in Tibet continues, so it is likely that those few Tibetans who can manage to evade capture will still escape to India.

The Tibetan community in India has been for the most part incredibly grateful for the refuge that India extended to them in their initial time of need, and continues to extend to them, despite its geopolitical location. India and China’s relationship has often been fractious, leading to outright war in 1962. In recent years, there has been a deliberate warming of the relationship on both sides due to the promise of trade, but India is still at pains to demonstrate its relative strength, and protecting the Tibetan community has so far been non-negotiable in its dealings with China (which is quite different to the situation in Nepal). However, as the decades pass, and the situation in Tibet remains untenable for their return, Tibetans’ continuing status as foreigners in India restricts their ability to live a secure and settled life in India.

For nearly three decades, as part of its immigration work, Tibet Justice Center (TJC) has sought to provide lawyers, immigration officials, judges, and other government decision-makers with clear and accurate information about the legal status and circumstances of Tibetans living in South Asia.³ This information is useful to the Tibetan community in India, including Tibetan lawyers, activists, and the Central Tibetan Administration, as well as to Indian lawyers and policy makers who are working to secure Tibetans’ rights in India. It is also useful in the case of Tibetans from India who petition for asylum, withholding of removal, or other relief in the United States, Canada, Switzerland, and elsewhere. In this context, their legal status in a third state may emerge as an issue that potentially affects their eligibility for asylum or other

³ TJC’s previous reports include: TIBET JUSTICE CENTER, TIBET’S STATELESS NATIONALS: TIBETAN REFUGEES IN NEPAL (2002) [hereinafter TIBET’S STATELESS NATIONALS I]; TIBET JUSTICE CENTER, TIBET’S STATELESS NATIONALS II: TIBETAN REFUGEES IN INDIA (2011) [hereinafter TIBET’S STATELESS NATIONALS II]; TIBET JUSTICE CENTER, TIBET’S STATELESS NATIONALS II: TIBETAN REFUGEES IN INDIA: AN UPDATE (2014) [hereinafter TIBET’S STATELESS NATIONALS II: UPDATE].

relief.

This report - *Tibet's Stateless Nationals III: Tibetan Refugees in India* - was written after TJC conducted research and fact-finding missions from 2014 to 2016 in the majority of Tibetan settlements in India, supported by Boston University School of Law's International Human Rights Clinic, and the India-based Tibetan-run Tibetan Legal Association. This report repeats and updates the background information contained in our 2011 and 2014 reports and provides crucial updates. Like the previous reports, the principal objective of this report is to explain the legal status of and circumstances of life for Tibetan "refugees"⁴ in India, whether in flight from persecution or otherwise.

This report describes the legal status and circumstances of life for these Tibetans, the Indian laws and informal policies that govern them, and, in general, the social, economic, political, and other circumstances facing Tibetan refugees in India.

This report was made possible by a generous grant from Isdell Foundation, supplemented by kind donations from TJC supporters and TJC's own board members.

Significant Findings:

1. Status of Tibetans in India

1.1. In policy and practice, all Tibetans are classed as "foreigners" in India

Two national statutes govern the legal status and rights of Tibetans in India: the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939.⁵ These statutes characterize Tibetans simply as "foreigners," a broad legal rubric that refers to everyone except Indian citizens. The same two statutes allow the national government to regulate the movement of all foreigners both into and within India, as well as to require foreigners to report to Indian authorities. Penalties for violating these laws include imprisonment for two to eight years and fines of between 10,000 and 50,000 rupees. As foreigners, Tibetans are subject to a host of restrictions affecting property ownership, employment rights, freedom of movement and freedom of speech and assembly.

⁴ For purposes of this Report, "Tibetan refugee" refers to any Tibetan residing in India without Indian citizenship or any Tibetan transiting through India. As we explain in Part IV (B) *infra*, India does not consider these Tibetans to be refugees in any legal sense - national or international. India is not a party to the Convention Relating to the Status of Refugees, July 28, 1951, 1989 U.N.T.S. 150, or the Protocol Relating to the Status of Refugees, Jan 31, 1967, 606 U.N.T.S. 267. Nor has India enacted national laws that enable Tibetans living in India to petition for legal refugee status. Accordingly, throughout this report, we use the phrase "Tibetan refugee" only in the colloquial sense. Except where otherwise noted, we do not intend by the use of this phrase to express or imply anything about their legal status under either Indian or international law.

⁵ The Foreigners Act, No. 31 of 1946; The Registration of Foreigners Act, No. 16 of 1939, *codified in India Code (1993), reprinted in Appendix, infra*.

1.2 The majority of Tibetans have identity papers but a small minority do not and are at risk of arrest, detention, fines and deportation

The large majority of Tibetans in India are officially registered with the Indian government and possess registration certificates (RCs). Tibetans born in India receive RCs when they are 16 years old. Tibetans who come to India from Tibet through Nepal are given RCs on the basis of the Special Entry Permits provided since 2003 to certain categories of entrants.

The holes in the net are few, but do exist. Tibetans are not eligible for registration certificates if they come directly from Tibet to India, or through a third country (such as Bhutan), or through Nepal but without having registered at the Refugee Reception Center in Kathmandu.⁶

The initial influx of Tibetan refugees to India in the late 1950s and 1960s were provided registration certificates by the Indian government. However, between approximately 1979 and 2003, Tibetans arriving into India from Tibet through Nepal were not officially provided with any identity papers by the Indian government. They were able to get by at times without papers, and an informal practice emerged whereby they would apply for RCs by pretending to be born in India. India turned a blind eye to this practice for many years, before formalizing the process for documentation of new arrivals from Tibet in 2003 with the Special Entry Permit (SEP) system. Beginning in 2003, Tibetans who came from Tibet were given an SEP in Nepal through which they could officially cross into India, and on which basis they would then be given an RC once they reached the Tibetan Reception Center in Dharamsala, Himachal Pradesh. While most Tibetans who arrived before 2003 managed to procure RCs through fraudulent means, some did not and there are still some Tibetans from Tibet living in India today who do not have RCs.⁷ For a more recent example, the Central Tibetan Administration's Department of Security has noted a number of Tibetan refugees previously settled in Nepal who fled to India after the earthquakes in Nepal in Spring 2015. There is no official way for them to get RCs, and no focus on this by the Indian government.⁸

Tibetans – as with any foreigners in India caught without documentation - are vulnerable to arrest, detention, fines and deportation, as the deportation cases in Part VA shows. For example, a middle-aged monk was arrested for failure to produce an RC and then ordered deported to China. Indeed, TJC's fact-finding trips unearthed several cases of actual or threatened deportations where judges affirmed orders of deportation based merely on the failure to timely renew an RC.

⁶ See Part IV (C)(1) *infra* for an analysis of Tibetans lacking RCs.

⁷ It is impossible to state how many, given that such persons purposefully live under the radar and do not often come into contact with official institutions, whether Indian or Tibetan. The CTA's Department of Security was also unable to suggest a figure.

⁸ Interview with Security Kalon, Department of Security, CTA, Dharamsala, June 1, 2015.

In the current geopolitical climate, where China views the situation in Tibet as a “security” risk to the integrity of the People’s Republic of China, and views the Tibetan government in exile in India and many of the Tibetan NGOs there as enemy entities,⁹ Tibetans from Tibet caught in India without RCs are also at risk of being viewed by the Indian government as spies on China’s payroll. All told, lack of an RC puts Tibetans in a very vulnerable position, and prevents them from safely accessing even basic facilities in India.

1.3 Thousands of Tibetans who qualify as Indian citizens in law are barred from citizenship in practice

As per Section 3(1)(a) of the Citizenship Act, all Tibetans born in India between January 26, 1950 and July 1, 1987 are Indian citizens by birth. However, because the policy of the Government of India is to deny citizenship to Tibetans despite the Citizenship Act, qualifying Tibetans are unable to obtain documents proving their citizenship, and thus de facto remain as foreigners registered in India. When qualifying Tibetans apply for passports, they are rejected wholesale by the passport authority. Some Tibetans have been verbally warned not to try again. Only a handful of Tibetans in India have managed to secure passports as Tibetans, but all had to sue in the High Court, which in each case, directed the passport authority to uphold the petitioner’s right to citizenship by birth. Some Tibetans in India have secured Indian passports by passing themselves off as original inhabitants of mountainous regions of India, rather than of Tibet.

2. Consequences of foreigner status

2.1 Deportations of Tibetans are possible under law and do happen

Under Indian law, Tibetans are liable to be prosecuted and deported for failing to have a registration certificate, or for failing to renew their registration certificate on time. Part V(A) of this Report describes in detail several cases of threatened or actual deportations of Tibetans for failure to produce a valid registration certificate. While India does not maintain a systemic policy to arrest and/or deport Tibetans, the fact that Indian law permits these actions leaves the Tibetan community in India vulnerable to changing political landscapes in the future.

2.2 The quality of life of Tibetans in India is restricted by their status as “foreigners”

Tibetans in India cannot own property, travel freely in India or outside India, have government jobs, or qualify for resident rates at many colleges and universities. In some states, Tibetans also cannot obtain driving licenses, operate large businesses, or secure bank loans. When Chinese dignitaries are visiting, Tibetans’ freedom of speech and assembly is severely curtailed. As described in Parts IV and V below, they remain subject to the

⁹ See e.g. *China Slams Dalai Lama as it Marks 50 Years Ruling Tibet*, Religion News Service, September 8, 2015 available at <http://religionnews.com/2015/09/08/china-dalai-lama-tibet/> (last visited May 26, 2016); *In War on Terror, China Takes Aim at Tibet*, The Diplomat, February 3, 2015, available at <http://thediplomat.com/2015/02/in-war-on-terror-china-takes-aim-at-tibet/> (last visited May 26, 2016).

Foreigners Act, which imposes a host of limitations upon them.

2.3 Tibetan communities and settlements across India are facing a variety of land disputes that render these communities vulnerable to displacement and eviction due to lack of lease or ownership documents

Several large Tibetan communities have received wholesale eviction notices, despite the fact that they have lived on the land for decades. As described in Part V(C) below, the Central Tibetan Administration has thus far intervened and worked with the Government of India to forestall these evictions. Similarly, longstanding Tibetan settlements are facing disputes regarding their right to remain on the land. Many of these disputes result from unclear or missing documentation establishing a right to remain and use the land. The Tibetan Rehabilitation Policy 2014 (TRP) could potentially resolve these disputes, but only if the states agree to implement the lease arrangements described in the TRP. Even then, the Standard Form Lease Document contained in the TRP contains problematic provisions, including paragraph 10 that prohibits all political meetings on settlement land, and paragraph 30 that allows the Indian central government to cancel the lease at any time for any reason, upon only 3 months' notice.

2.4 The Tibetan Rehabilitation Policy 2014 is a positive step but it is not mandatory and depends on implementation by the states and it does not cover all protection gaps

The idea behind the TRP 2014 - that it would bring uniformity in the treatment of Tibetans throughout the country – is positive. The policy authorizes state governments to enter into leases with Tibetan settlements and authorizes the states to provide various welfare benefits to Tibetans. However, the language in the policy is not mandatory, so it is unlikely that all state governments will fully implement the recommendations within the policy. It also does not address Tibetans' inability to own or lease property in their own names, get government jobs (outside of health or education fields), or travel freely in India or outside India – key issues that hamper the ability of Tibetans to fully settle and prosper in India. The TRP 2014 also does not address the status of Tibetans under the Indian constitution or law, leaving them still vulnerable to arrest, detention, fines, and deportation. Even in states that do implement the TRP, Tibetans remain foreigners subject to the myriad restrictions authorized by the Foreigners Act and the Registration of Foreigners Act.

II. Methodology

This report is based chiefly on field research carried out by TJC in India between 2003 and 2016, augmented by secondary literature and legal research.¹⁰ The research was aimed at providing a comprehensive picture of the situation for Tibetans in India, and focused particularly on investigating the following key issues: the issuance of identity papers (RCs)

¹⁰ Secondary sources on which TJC relied include, for example, official reports of the U.S. and Canadian government immigration bureaus, studies by non-governmental organizations (NGOs), and investigative journalism.

and travel documents (ICs) to Tibetans; their legal eligibility for Indian citizenship and their actual ability to obtain citizenship; their ability to purchase and own real property; the legal security of their settlement land; educational and employment opportunities for Tibetans in India; travel restrictions imposed on Tibetans by the Indian government, both within India and internationally; the extent to which India protects the human rights of Tibetans, particularly the principle of *non-refoulement* and freedom of association, assembly, and expression; and the relations between Tibetan exile communities and local Indian communities in different regions of India.

This report, *Tibet's Stateless Nationals III: Tibetan Refugees in India*, follows earlier extensive research in Nepal and India. In 2002, after carrying out fact-finding in Nepal, TJC published a report setting forth the legal status and circumstances of undocumented Tibetans residing in or transiting through Nepal.¹¹ In 2011, after comparable research in India that extended over a decade, including multiple fact-finding missions and secondary research, TJC published *Tibet's Stateless Nationals II: Tibetan Refugees in India*,¹² which attempts to clarify the analogous—but, as it turns out, even more complex and dynamic—legal issues that frequently arise for Tibetans residing in or transiting through India. TJC conducted additional fact-finding subsequent to the publication of its 2011 Report. That research included a June 2014 fact-finding trip to the north of India, including Dharamsala. The results of that research are described in a 2014 report entitled *Tibet's Stateless Nationals II: Tibetan Refugees in India – 2014 Update*.¹³

This 2016 report was written after additional research and fact-finding missions over the last three years to the majority of Tibetan settlements in India. It repeats and updates the background information contained in the 2011 report and provides crucial updates since the publication of that report. TJC conducted more than 115 structured interviews and focus-group discussions in ten of the twelve states that host Tibetan refugees, making this, we believe, the most comprehensive report of its kind. Our aim is to provide a clear, independent picture of the conditions for Tibetans living in India. As such the report contains information from interviews with a wide range of actors, including Tibetan community members across a large number of settlements, Tibetan camp leaders in settlements, Tibetan settlement officers (local government), Tibetan ministry officials, Indian government officials, Tibetan NGOs, Indian NGOs, Tibetan and Indian lawyers, Tibetan and Indian activists, journalists, Indian citizens, Tibetan students, monks, former political prisoners, business people, and lay people.¹⁴

¹¹ TIBET'S STATELESS NATIONALS I, *supra* note 3.

¹² TIBET'S STATELESS NATIONALS II, *supra* note 3.

¹³ TIBET'S STATELESS NATIONALS II: AN UPDATE, *supra* note 3.

¹⁴ There are occasional references in the Report to unnamed knowledgeable sources. These sources requested anonymity due to their official position.

III. Background

A. Situation in Tibet: Then and Now

Tibet was an independent state prior to 1950. When Communist leader Mao Zedong came to power in 1949, one of his first announcements in the newly-formed Peoples Republic of China was a planned “liberation of Tibet,” which he proceeded to carry out that same year. By 1950 the People’s Liberation Army had taken control of Tibet’s capital city, Lhasa, and in 1951, representatives of the Tibetan government were coerced to sign a 17-Point Agreement with China, recognizing China’s sovereignty over Tibet. Over the next 8 years, China proceeded to violate the terms of the agreement. In March 1959, the Fourteenth Dalai Lama was invited to the Chinese Army barracks but was told to come alone. Fearing that their leader might be kidnapped or assassinated, hundreds of thousands of Lhasa residents took to the streets to protest China’s rule of Tibet. They were met by Chinese guns, sparking further resistance and a crackdown, which many sources credibly describe as resulting in 87,000 Tibetans being killed in Central Tibet alone between March 1959 and October 1960.¹⁵ The Fourteenth Dalai Lama fled Lhasa and escaped into exile in India some weeks later. Over the following months and years, over 100,000 Tibetans followed him into exile, and continue to do so.

China’s occupation of Tibet is notable for its high level of oppression and state violence. The 1960s and 1970s witnessed a brutal crackdown on the Tibetan way of life, coupled with the Cultural Revolution. Over 6,000 Tibetan Buddhist monasteries were destroyed and an estimated 1 million Tibetans died from brutal treatment, torture or starvation.¹⁶ Protests against Chinese rule in the late 1980s brought new hardline policies in Tibet. In 2008, a widespread uprising against Chinese rule was met with state violence and a raft of new policies with the apparent aim of suppressing dissent and exerting state control.¹⁷ China continues to violently quash protests, hand out harsh sentences, allow endemic levels of torture in prisons, and target suspected dissident writers and poets,¹⁸ students, religious

¹⁵ N. SUBRAMANYA, HUMAN RIGHTS & REFUGEES, 2004, p. 267,(citing [a secret 1960 PLA Tibet Military District Political Department report](http://www.savetibet.org/policy-center/history-leading-up-to-march-10-1959/) - Xizang Xingshi he Renwu Jiaoyu de Jiben Jiaocai, 1960); <http://www.savetibet.org/policy-center/history-leading-up-to-march-10-1959/>.

¹⁶ <http://thediplomat.com/2015/02/in-war-on-terror-china-takes-aim-at-tibet/> (citing a 7/15/87 Reuters report stating “A House report last month alleged that more than one million Tibetans have died from persecution and hunger since 1949.”)

¹⁷ These include the “Benefit the Masses” campaign, launched in 2011 by the Chinese central government (using [25 percent of the regional government’s](#) revenue). Human Rights Watch refers to this as an “Orwellian campaign” launched “in an effort to prevent a recurrence of the protests that spread across the Tibetan plateau in 2008...The campaign involved sending some 21,000 Communist Party cadres from townships and urban areas to live in teams of four or more in each of the 5,000 villages in the TAR.” *China: No End to Tibet Surveillance Program; 21,000 Officials Stationed Indefinitely in Villages*” Human Rights Watch, January 18, 2016 - <https://www.hrw.org/news/2016/01/18/china-no-end-tibet-surveillance-program>.

¹⁸ See reports including the following: *Dissenting Voices (2010): Targeting the Intellectuals Writers and Cultural Figures*, Tibetan Centre for Human Rights and Democracy - <http://www.tchrd.org/dissenting-voices-2010-targeting-the-intellectuals-writers-and-cultural-figures/>; *A Raging Storm: The Crackdown on*

leaders, and musicians,¹⁹ in an apparent bid to suppress all dissent.

China also attempts to undermine Tibetan cultural identity in order to dismantle Tibetan dissent. The government recently launched a campaign to encourage Tibetans to marry Han Chinese,²⁰ and for a number of years the Chinese state has prioritized Mandarin language in schools.²¹ Tibetan nomads have been specifically targeted because of their freedom of movement, strong adherence to Tibetan cultural traditions and, some argue, to enable Chinese mining companies to gain access to the grasslands.²² Between 2012 and 2015, China forcibly resettled almost 2.5 million Tibetan nomadic herders, resulting in massive upheaval in their way of life and degradation of the grasslands that they can no longer steward.²³ This policy of forced resettlement was condemned in 2012 by the then United Nations Special Rapporteur on Food, Mr. Olivier DeSchutter, who in a special report to the United Nations Human Rights Council urged China to bring it to a halt.²⁴

Outright political dissent is quickly suppressed and Tibetan human rights defenders are

Tibetan Writers and Artists after Tibet's Spring 2008 Protests, International Campaign for Tibet, [https://www.savetibet.org/a-raging-storm-the-crackdown-on-tibetan-writers-and-artists-after-tibets-spring-2008-protests/International Campaign for Tibet](https://www.savetibet.org/a-raging-storm-the-crackdown-on-tibetan-writers-and-artists-after-tibets-spring-2008-protests/International%20Campaign%20for%20Tibet); Woesser, *Documenting 10 Tibetan Writers and Teachers Arrested, Detained or Sentenced By Sichuan Local Authorities*, High Peaks Pure Earth blogpost, <http://highpeakspureearth.com/2011/documenting-10-tibetan-writers-and-teachers-arrested-detained-or-sentenced-by-sichuan-local-authorities-by-woesser/>.

¹⁹ See reports including the following: *Dissenting Voices (2010): Targeting the Intellectuals Writers and Cultural Figures*, Tibetan Centre for Human Rights and Democracy, - <http://www.tchrd.org/dissenting-voices-2010-targeting-the-intellectuals-writers-and-cultural-figures/>; *Unsung Heroes*, Free Tibet, <http://freetibet.org/about/human-rights/case-studies/musicians>; *A Raging Storm: The Crackdown on Tibetan Writers and Artists after Tibet's Spring 2008 Protests*, International Campaign for Tibet, 2010, - [https://www.savetibet.org/a-raging-storm-the-crackdown-on-tibetan-writers-and-artists-after-tibets-spring-2008-protests/International Campaign for Tibet](https://www.savetibet.org/a-raging-storm-the-crackdown-on-tibetan-writers-and-artists-after-tibets-spring-2008-protests/International%20Campaign%20for%20Tibet).

²⁰ *China Promotes Mixed Marriages in Tibet as Way to Achieve 'Unity'*, THE WASHINGTON POST, Aug 16, 2014, https://www.washingtonpost.com/world/asia_pacific/china-promotes-mixed-marriages-in-tibet-as-way-to-achieve-unity/2014/08/16/94409ca6-238e-11e4-86ca-6f03cbd15c1a_story.html.

²¹ As International Campaign for Tibet states in their 2015 Briefing Paper *Education and Language*, "The official language in most classrooms is Mandarin, which is not only difficult for Tibetan children to understand, as about 80% of Tibetans do not speak Mandarin, but also leads to the assimilation of Tibetans in to Chinese culture, whether intentionally or unintentionally. Except in Qinghai, the Tibetan language medium is used only up to the primary level in most of the schools. Almost all the secondary schools use Mandarin as the medium of instruction and Tibetan is either dropped or retained only as a language subject," <http://www.tibetpolicy.eu/wp-content/uploads/2015/04/Education-and-Language.pdf>.

²² Tibet Watch, *Environmental Protests on the Tibetan Plateau: Tibet Watch Thematic Report*, January 2015, p.5

http://www.tibetwatch.org/uploads/2/4/3/4/24348968/environmental_protests_on_the_tibetan_plateau.pdf (last visited June 17, 2016).

²³ <http://www.ibtimes.co.uk/china-tibetan-nomads-way-life-under-threat-government-resettlement-programme-photo-report-1515466>.

²⁴ Report to the UN Human Rights Council by the Special Rapporteur on the right to Food on his China mission - http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-59-Add1_en.pdf

targeted, imprisoned, and tortured in an attempt to silence them.²⁵ In 2015, Freedom House ranked Tibet as among the most oppressed parts of the world, second only to Syria.²⁶

Since 2009, at least 144 Tibetans have burned themselves alive in protest at the conditions under which they are forced to live.²⁷

B. Passage of Tibetans from Tibet to India

The first group of Tibetan refugees who came into India was precipitated by the People's Republic of China's actions in Lhasa in March 1959, where tens of thousands of Tibetan civilians were massacred by Chinese troops. The Dalai Lama was forced to flee Tibet into India, taking the route through Arunachal Pradesh in India's northeast. Thousands of Tibetans followed their spiritual and then political leader into exile in south Asia, some arriving in India, some Bhutan and others Nepal.

Since those early years, a significant number of Tibetans have left Chinese-occupied Tibet. Of those that arrived, most came through Nepal but very occasionally others used alternate routes (e.g. through Sikkim in India's northeast or Ladakh in the far north).

In 1989, the Nepal government ceased allowing Tibetans arriving from Tibet to stay in Nepal, but instead struck up a semi-informal arrangement whereby the Nepali authorities would allow UNHCR to handle new-arrival Tibetans at a purpose-run refugee reception center in Kathmandu, and allow their onward travel to India. This arrangement, known as "The Gentleman's Agreement," by and large remains today, and is the only way that Tibetans from Tibet can enter India lawfully.

Today, Tibetans attempting to enter India directly from Tibet are blocked by Indian border authorities, who refer to the Tibetans as "push-backs;" they must either return to their homes in Tibet, or try to find an escape route into Nepal.²⁸ If Tibetans arrive in India via any route other than the Reception Center in Kathmandu, they do not get a Special Entry Permit, which means they will not be able to get a Registration Certificate, making their presence in India unlawful.²⁹

²⁵ See The U.S. State Department Report on Human Rights in Tibet (2014), <http://www.state.gov/j/drl/rls/hrrpt/2014/eap/236434.htm>; The U.S. State Department Report on Human Rights in Tibet (2013), <http://www.state.gov/documents/organization/220402.pdf> ; The U.S. State Department Report on Human Rights in Tibet (2012), <http://www.state.gov/documents/organization/204405.pdf>; The U.S. State Department Report on Human Rights in Tibet (2011), <http://www.state.gov/j/drl/rls/hrrpt/2011/eap/186268.htm>.

²⁶ <https://freedomhouse.org/report/freedom-world-2016/table-scores> ("aggregate score" tab displays rankings).

²⁷ International Campaign for Tibet, <http://www.savetibet.org/resources/fact-sheets/self-immolations-by-tibetans/> (last visited on May 8, 2016).

²⁸ Interview with Additional Secretary, Department of Home, CTA, Dharamsala, June 25, 2014.

²⁹ Interview with Tibetan Center for Human Rights and Democracy, Dharamsala, June 25, 2014.

The Chinese state views this travel outside of Tibet as unlawful, and has also criminalized other forms of travel. According to a Human Rights Watch report, since 2012, Tibetans living in Tibet under Chinese rule have been denied Chinese passports, preventing them from legally travelling outside Tibet and China.³⁰

The number of Tibetans arriving into Nepal and then India each year has dropped markedly since 2008, after large-scale anti-government protests erupted across Tibet that spring resulting in a far-ranging crackdown by the Chinese government that has made it almost impossible for Tibetans to leave.³¹ Since that time, surveillance at the border has been intensified, with Nepalese police also reportedly having been trained by the Chinese and paid a bounty for returning Tibetans to Tibet.³² In 2015, only 87 Tibetans made it to Dharamsala,³³ a dramatic decrease from earlier years when most sources estimate that between 1,500 and 3,500 Tibetans were arriving each year.³⁴

³⁰ *One Passport, Two Systems: China's Restrictions of Foreign Travel by Tibetans and Others*, Human Rights Watch, July 13, 2015, <https://www.hrw.org/report/2015/07/13/one-passport-two-systems/chinas-restrictions-foreign-travel-tibetans-and-others>.

³¹ Interviews with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014; Tibetan Center for Human Rights and Democracy, June 25, 2014; Human Rights Watch 2014, *Under China's Shadow: Mistreatment of Tibetans in Nepal*, p. 42; <http://www.tibetanreview.net/china-deploys-radars-drones-to-enhance-border-surveillance/>

³² Interview with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014.

³³ Interview with Kalon Ngodup Dongchung, Tibetan Reception Center, Dharamsala, February 3, 2016.

³⁴ Immigration & Refugee Board of Canada, Extended Response to Information Request, IND33125.EX (Dec. 23, 1999) [hereinafter Refugee Board IND33125], available at <https://www.justice.gov/sites/default/files/eoir/legacy/2014/02/04/IND33125.EX.pdf> (last visited on June 2, 2016); U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, WORLD REFUGEE SURVEY 2004 COUNTRY REPORT: INDIA [hereinafter CSRI 2004 Report]. The U.S. Department of State reports that between 1,500 and 3,000 Tibetans transit through Nepal to India each year. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: NEPAL § 2(d) (2007); BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: NEPAL § 2(d) (2008). The U.S. Department of State stated that in 2008 most of the Tibetans that entered Nepal transited to India. After protests in Tibetan areas in China on March 10, China closed the border between China and Nepal. The U.S. Department of State reported that almost no Tibetans entered Nepal between March and July of 2008. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF S., 2008 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: NEPAL § 2(d) (2009). The number of Tibetans arriving in India in 1996, 1997, and 1998 were, respectively, 2,843, 2,000, and 3,100. Refugee Board IND33125. In 2000, 2,900 Tibetans arrived in India. Rama Lakshmi, *Escaping Chinese, Tibetans Join Leader in India*, WASH. POST, Dec. 15, 2000, at A51. In 2001, the State Department reported that 1,268 arrived. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T OF STATE, 2001 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2002). In 2003, the number climbed to 3,500. U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, WORLD REFUGEE SURVEY 2004 COUNTRY REPORT: CHINA. In 2004, it fell again to 2,427. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T. OF STATE, 2004 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2005). In 2005, there were 3,352 new arrivals. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T. OF STATE, 2005 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2006). In 2006, there were 2,946. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T. OF STATE, 2006 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2007). In 2007, there were 2,445. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T. OF

The reasons that Tibetans have made, and continue to make, the hazardous journey across the Himalayas to India remain the same – fleeing from persecution; visiting or reuniting with their families in exile; receiving a Tibetan education; making a pilgrimage to see the Dalai Lama or to visit other lamas, monasteries, and nunneries; and often a combination of these.³⁵

According to Human Rights Watch, Tibetans who are caught by Chinese security forces trying to escape from Tibet by unofficially crossing the border with Nepal:

appear to be uniformly subjected to detention and imprisonment in abusive conditions. From the moment they are arrested, detainees are beaten by the police. When they are in detention, interrogators and guards routinely beat and torture detainees to coerce confessions or obtain information. Physical abuse, ill treatment, and torture are also used on detainees for no other apparent purpose than to terrorize them and break them psychologically.³⁶

Similarly, Tibetans deported or returned to Tibet will almost certainly be arrested and imprisoned, where they will face torture (which is endemic in Chinese prisons – and

STATE, 2007 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2008). In 2008, the number of Tibetans leaving for India dropped to 550. The U.S. Department of State attributes this almost 75% decrease from the prior year to China's military and police measures in Lhasa and elsewhere in Tibet in March 2008, following widespread Tibetan protests. BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T. OF STATE, 2008 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (2009).

³⁵ Refugee Board IND33125, *supra* note 34; *see also* Susan Fowler, *Asia and Pacific Post*, DIRECT RELIEF INT'L, June 2004 (stating that the majority of the 2,500 to 3,000 new arrivals are fleeing persecution or repression).

³⁶ Human Rights Watch interviews with former detainees at Shigatse detention facilities, Kathmandu, June and November 2012, in Human Rights Watch 2014, *Under China's Shadow: Mistreatment of Tibetans in Nepal*, p. 43. The report continues "Those caught crossing in either direction by People's Armed Police border security— sometimes acting on tips given by bounty-earning informants in local communities—are briefly detained and interrogated, and then shipped to Shigatse, either to Nyari prison or to a special purpose facility for Tibetan immigration offenders set up in the early 2000s, called 'Reception Center for Tibetans.' Police typically beat the detainees on arrival, before subjecting them to intense interrogation for several days. Interrogators—many if not most of them Tibetan themselves—systematically torture and beat detainees as a way to elicit information. Those questioned are asked to provide information about their motives for going to India or Nepal, the route they took, and their ties to 'separatist' organizations such as the government-in-exile, the Tibetan Youth Congress, or exile monastic communities. They are also interrogated extensively about the activities of the Tibetan community in Nepal and India, and are required to go through a large collection of computerized pictures of individuals and events—including protests—from these places to identify specific individuals or person that they know or recognize. Unless they are deemed to be of political value or have prior convictions, in which case they may be transferred to the Public Security Bureau (PSB) in Lhasa for further interrogation, detainees are held in these facilities for up to six months, and put to hard labor during their detention. They are then returned to county-level PSBs in their place of origin, processed, and released to relatives, most of the time on payment of a large fine. They are often prohibited from travelling, employment, or rejoining their monastery if they are monks or nuns; put under some form of surveillance; and required to report regularly to the local PSB."

Tibetans statistically suffer higher rates of torture than all other citizens of the PRC),³⁷ re-education programs,³⁸ and state scrutiny.³⁹ Some Tibetans choose to return to family in Tibet - the pain of separation stronger than their fear of the repercussions. The majority of such Tibetans are detained and imprisoned.⁴⁰

C. Waves of Tibetan Refugees Since 1959, and India's Policy Towards Them

India's policy toward Tibetan refugees has changed over time based on political and practical concerns, and in reaction to the number of Tibetans entering the country. In general, it is possible and analytically helpful to identify roughly five approaches taken by India toward five different groups of Tibetans, viz., those who arrived in India between (1) 1959 and 1979; (2) 1980 and 1993; (3) 1994 and 1999; (4) 2000 and 2007; and (5) 2008 and the present.

1. Tibetans Entering India Between 1959 and 1979: The Early Days

The Chinese military's crackdown on the 1959 Lhasa Uprising precipitated the flight of the Dalai Lama and the Tibetan refugee exodus. Popular support among Indians for the Dalai Lama and the strong cultural, ethnic, and religious ties between India and Tibet left Prime Minister Nehru with little choice but to permit the Dalai Lama and his entourage to enter and enjoy safe haven in India. He announced the Dalai Lama's safe arrival to a standing ovation in Parliament.

³⁷See *Torture & Impunity: 29 Cases of Tibetan Political Prisoners 2008-2014*, International Campaign for Tibet, <http://www.savetibet.org/newsroom/torture-and-impunity-29-cases-of-tibetan-political-prisoners/>; *Torture testimonies*, Free Tibet, <http://freetibet.org/about/torture/testimonies>; *A Generation in Peril: The Lives of Tibetan Children Under Chinese Rule*, Tibet Justice Center, <http://www.tibetjustice.org/reports/children/detention/b.html>; *Under China's Shadow*, Human Rights Watch, April 1, 2014, <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>.

³⁸ *China: End Crackdown on Tibetans who Visited India: Detentions, Re-education on a Scale Not Seen Since Late 1970's*, <https://www.hrw.org/news/2012/02/16/china-end-crackdown-tibetans-who-visited-india>.

³⁹ See Human Rights Watch interviews, *supra* note 36.

⁴⁰ *Under China's Shadow: Mistreatment of Tibetans in Nepal*, Human Rights Watch, April 1, 2014, <https://www.hrw.org/report/2014/04/01/under-chinas-shadow/mistreatment-tibetans-nepal>. Since 2012, there have also been cases where such Tibetans are caught by Chinese security forces and forced to return to Nepal and then India. For example, Human Rights Watch reported that, "On August 23, 2012, Chinese police handed a group of five Tibetans, aged 24 to 55, to Nepali Immigration Officials at Kodari border crossing. All the members of the group had been caught by Chinese police after they crossed back clandestinely into China in April and May, and had been detained for several months in a detention facility in Shigatse, Tibet. All of them except one, who had left China to attend the Dalai Lama's Kalachakra teachings in Dharamsala in January 2012, had spent several years living in India. Nepal's DoI [Department of Immigration] fined the five for breaching the immigration laws and sent them to India shortly afterwards." *Id.* at 41. International Campaign for Tibet reports that in July 2008, "the Tibet Autonomous Region Party Committee Discipline Department issued measures which state that children who return [to Tibet] from schools in exile [in India] and parents working for the [Chinese] government or members of the [Chinese] Communist Party who fail to bring children back to Tibet could face unspecified 'disciplinary action.'" International Campaign for Tibet, 2015 Briefing Paper *Education and Language*, <http://www.tibetpolicy.eu/wp-content/uploads/2015/04/Education-and-Language.pdf>

Upon his arrival, the Dalai Lama received a telegram from Prime Minister Nehru, which read:

My colleagues and I welcome you and send greetings on your safe arrival in India. We shall be happy to afford the necessary facilities to you, your family and entourage to reside in India. The people of India, who hold you in great veneration, will no doubt accord their traditional respect to your personage. Kind regards to you. Nehru.⁴¹

Yet Nehru appreciated that China would regard India's conduct as a violation of the 1954 Panchsheel Principles agreement between the two nations.⁴² He therefore stressed, "that his support of the Dalai Lama was humanitarian only, based on a 'tremendous bond' growing out of centuries of spiritual and cultural exchange between India and Tibet."⁴³ He also made clear that India would offer the Dalai Lama and his followers humanitarian assistance but would not allow India to be used as a base from which to pursue Tibetan independence. By isolating the Dalai Lama and his retinue in a remote region of India, Nehru hoped that the Tibetan cause would gradually fade into obscurity. On April 24, 1959, Prime Minister Nehru conferred with the Dalai Lama in Mussoorie. While cordial, he made clear that he intended to protect India's relationship with China by adhering to the 1954 Panchsheel Principles and by not questioning China's authority in Tibet.⁴⁴

Shortly thereafter, thousands of Tibetans followed the Dalai Lama into exile, arriving at a rate of as many as 1,500 per week. Those who managed to survive the perilous journey over the Himalayas arrived in India starving, exhausted, unaccustomed to the much lower altitude and much warmer climate, and desperately in need of medical attention.⁴⁵ Many died in transit or soon after arrival.

To cope with the massive influx of Tibetans and a potential humanitarian crisis, the Indian government set up transit camps for the new arrivals and provided them with basic assistance, such as shelter, medical treatment, and rations. As it became clear that their exile would be long term, India also created programs to provide temporary work for some of the Tibetans. India limited its assistance to humanitarian support. It avoided providing overt political support to the Dalai Lama or to the Tibetan Government-in-Exile (TGIE) that he had established in India soon after his arrival.

⁴¹TENZIN GYATSO, *FREEDOM IN EXILE: THE AUTOBIOGRAPHY OF HIS HOLINESS THE DALAI LAMA OF TIBET*, p. 144.

⁴²The Panchsheel principles refers to the "Five Principles of Peaceful Coexistence," which were a part of the 1954 treaty between India and China. See text accompanying notes 82-85 *infra*.

⁴³JOHN F. AVEDON, *IN EXILE FROM THE LAND OF THE SNOWS* P. 66. (1984)

⁴⁴GYATSO, *supra* note 41, at 146-47.

⁴⁵LOUISE W. HOLBORN, *REFUGEES: A PROBLEM OF OUR TIME: THE WORK OF THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, 1951-1972*, at 718.

By November 1959, approximately 30,000 Tibetans had arrived in India. They were received and sheltered in temporary camps, which had been designed to house far fewer people than those who eventually ended up residing in them. In 1960, India relocated the Dalai Lama and the fledgling Tibetan Government-in-Exile (TGIE) from Mussoorie to McLeod Ganj, Dharamsala. Upon his arrival there, the Dalai Lama established an extensive and comprehensive network of government departments to meet the needs of India's growing Tibetan population.⁴⁶ The TGIE, which later became known as the Central Tibetan Administration (CTA),⁴⁷ remains based in McLeod Ganj to this day. The CTA sought to relocate Tibetan refugees arriving during this early period to agricultural and other settlements on lands that were made available to them by the Indian government. It also sought to preserve, perpetuate, and develop Tibet's language, culture, history, religious traditions, and educational system. Prime Minister Nehru established a range of programs designed to help the new arrivals, including, for example, several Tibetan refugee handicraft centers, and the Society for Tibetan Education within the Indian Ministry of Education, which would establish and fund special schools specifically designed to provide Tibetan children with a Tibetan education. In June 1959, the Dalai Lama met with Prime Minister Nehru to find alternative sites in cooler regions for the Tibetan refugees. Many were ill and some had already died because of the heat and low altitude at the two initial settlements. At this meeting, the two leaders decided that many of the Tibetans would be put to work on Himalayan road construction projects.

After this meeting, the Dalai Lama declared that, "Where I am, accompanied by my government, the Tibetan people recognize us as the government of Tibet. I will return to Lhasa when I obtain the rights and powers which Tibet enjoyed and exercised prior to 1950."⁴⁸ Nehru's government immediately issued a communiqué stating that it did not recognize the Dalai Lama's government-in-exile.⁴⁹

Soon after the 1959 Lhasa Uprising, Chinese authorities strictly curtailed Tibetans' freedom of movement in Tibet, staunching the flow of Tibetans into Nepal and India. The PLA and Chinese border police thus prevented Tibetans from fleeing to India to escape persecution during precisely the period when Chinese authorities perpetrated the most widespread, systematic, and severe human rights abuses against Tibetans, viz., from the early 1960s until the late 1970s, roughly the years of the Cultural Revolution. Because relatively few Tibetans managed to escape during this time, India's policies toward

⁴⁶ AVEDON, *supra* note 43, at 87.

⁴⁷ For many years, the Tibetan government-in-exile referred to itself, as did others, by this name or its common acronym, TGIE. As noted in the text, however, the TGIE subsequently changed its name in English to the Central Tibetan Administration (CTA). For the sake of brevity and consistency, throughout most of this report we will refer to the exile Tibetan administration as the CTA. But it should be clear that these two acronyms, TGIE and CTA, refer to the same political entity, which represents the continuation of the Tibetan government that governed Tibet before China's occupation and military annexation of Tibet.

⁴⁸ AVEDON, *supra* note 43, at 72; *see* GYATSO, *supra* note 41, at 151.

⁴⁹ GYATSO, *supra* note 41, at 151.

undocumented Tibetans remained relatively stable for two decades.

By October 1964, 40,000 Tibetans had arrived in India.⁵⁰ India established additional settlements for the new arrivals, but the government increasingly found it necessary to turn to NGOs for assistance. The Central Relief Committee developed a comprehensive plan, which included more settlements, vocational training, education, and health care,⁵¹ but it was never fully implemented.

To keep track of new arrivals, the Indian government, with the cooperation of the CTA, issued Registration Certificates (RCs) to the majority of Tibetans arriving during this time. While RCs did not—and do not—indicate that their bearers enjoy any formal legal status, the Indian government has, to date, allowed Tibetans holding RCs to reside in designated areas of India as a matter of discretion and executive policy.

This first wave of Tibetan refugees thus benefited from logistical, financial, and other aid programs sponsored by India and various non-governmental organizations (NGOs), at times aided by international assistance. However, despite their informal identification as “refugees,” none of these Tibetans, including the Dalai Lama, received refugee—or any other—legal status. Tibetans who fall within this group, despite being, for the most part, informally resettled in remote regions of India, do not qualify as refugees under Indian law.

Some sources characterize Prime Minister Nehru’s acceptance and welcome of the Dalai Lama and his companions as a formal grant of asylum.⁵² This is inaccurate and misleading, because India has categorically declared that as a matter of national law, it “does not give asylum status to refugees from *any* country.”⁵³ India’s longstanding practice is to deal with its various *de facto* refugee populations on an ad hoc, policy basis. This preserves what the government sees as an indispensable flexibility. To this day, India studiously avoids referring to the Dalai Lama as a refugee; it refers to him as an “honored guest.” He travels with a *sui generis* Indian international travel document, not a passport. Nor does the Dalai Lama possess U.N. refugee papers. He must obtain separate visas authorizing him to depart from and return to India each time he travels.⁵⁴ Other undocumented Tibetans, who fled in the aftermath of the Lhasa

⁵⁰ HOLBORN, *supra* note 45, at 720-21.

⁵¹ For a detailed description of the Master Plan, *see* HOLBORN, *supra* note 45, at 727.

⁵² *See e.g.*, Refugee Board IND33125, *supra* note 34; Rahmatullah Khan, *India: India and Its Refugees*, Roundtable of Asian Experts on Current Problems in the International Protection of Refugees and Displaced Persons 106-10 (Int’l Inst. of Humanitarian L. 1980).

⁵³ Government of India: Ministry of Home Affairs – Lok Sabha, Unstarred Question No. 4544 to be Answered on 22.04.2003, Question “Refugee Problem,” No. 4544, filed by Shri P. Mohan, (emphasis added), cited in Eileen Kaufman, *Shelter from the Storm: An Analysis of U.S. Refugee Law as Applied to Tibetans Formerly Residing in India*, 23 GEO. IMMIGRA. L.J. 497, fn 232 (2009).

⁵⁴ Memorandum of Robert Joseph Barnett, Oct. 20, 1999 ¶ 9 (on file with TJC) [hereinafter Oct. 1999 Barnett Memo]. Dr. Barnett is an Assistant Professor of Contemporary Tibetan Studies and the Director of the Modern Tibetan Studies Program at Columbia University. His research and scholarship

Uprising or later years, reside in India with an even more precarious legal status. They remain wholly subject to the discretion of India's executive branch and the government's shifting policies toward Tibetan refugees. India and others often refer to these Tibetans, informally, as refugees, but they do not qualify as refugees within the meaning of Indian law.

2. Tibetans Entering India Between 1980 and 1993

With the death of Chairman Mao Zedong, the end of the Cultural Revolution, and Deng Xiaoping's subsequent rise to power in 1979, a period of comparative liberalization in China and Tibet began.

For the first time, many Tibetans could acquire travel documents. Many left their homeland to join their families and friends in India, where, although they lacked formal legal status, they could, in practice, enjoy much greater freedom, security, and human rights. In the late 1980s, Tibetan monks, nuns and laypeople protested Chinese rule in Lhasa, leading to the then Tibet Party Secretary, Hu Jintao, imposing martial law on the city and arresting and sentencing hundreds of Tibetan political prisoners. These crackdowns continued into the 1990s.

Due to a combination of initial relative liberalization and the further crackdowns, in the decade between 1986 and 1996, about 25,000 new Tibetan refugees arrived in India, mostly by way of Nepal, increasing India's aggregate ethnic Tibetan population by approximately 25%. For the most part, India tacitly allowed the entry of Tibetans via Nepal. In what amounted to a "Gentlemen's Agreement," border officials allowed buses of Tibetans arriving from the Tibetan Reception Centre in Kathmandu to cross the border for an "entry fee" (a de facto bribe, or form of so-called *baksheesh*) and continue to Delhi, and from there, typically, to Dharamsala.⁵⁵ Tibetans who tried to enter India by way of the Sino-India border, however, were repatriated because of the sensitive security situation at this disputed border. However, apart from the comparatively few Tibetan refugees who sought entry by way of the Sino-Indian border, Indian officials tended to turn a blind eye to Tibetans entering India via Nepal in the 1980s and early 1990s. The Indian government did not offer them any form of legal status. But it also largely ignored common practices by which new arrivals were able to obtain RCs or other documentation fraudulently and thus reside in or near the previously established "formal" Tibetan settlements, blending in with the post-1959

focus on contemporary Tibetan politics, history, and culture. He is the author of numerous books and articles about Tibet, including *TIBETAN MODERNITIES: NOTES FROM THE FIELD ON SOCIAL AND CULTURAL CHANGE* (2008); *LHASA: STREETS WITH MEMORIES* (2006); *CUTTING OFF THE SERPENT'S HEAD: TIGHTENING CONTROL IN TIBET, 1994-1995* (1996). Between 1987 and 1998 he served as the Executive Director of the Tibet Information Network (TIN), a now defunct British NGO, which, while it operated, was widely acknowledged as perhaps the most reliable source of information about political and other contemporary developments within Tibet. It is an indicium of TIN's credibility that the U.S. State Department, which exercises extreme caution in researching and preparing its annual country reports on human rights practices, had routinely cited and relied upon TIN's publications until the NGO ceased operations in late 2005.

⁵⁵ For a description of this process, see *TIBET'S STATELESS NATIONALS I*, *supra* note 3 at 67-68.

population and keeping a low profile. Other Tibetans arriving during this time managed to remain in India without an RC by initially saying that they would only be visiting India temporarily, for example, for a pilgrimage or to visit family—but then remaining in one of India’s Tibetan communities discreetly.

This tacit absorption strategy collapsed in the early 1990s because of strain on the Indian government through both (a) the growth in the size of the Tibetan exile community and (b) periodic tension between local Indian and Tibetan communities. While fewer than 1,000 Tibetans, on average, arrived annually during the 1980s, that number more than doubled by the early 1990s, as a result of crackdowns in Tibet (in 1992, for example, 3,374 Tibetans arrived in northern India).⁵⁶ Latent tensions between proximate Tibetan and Indian communities also flared up during this period because, in some regions, existing land could not accommodate the new arrivals. At times, tensions also developed within the Tibetan community, between the older generation and the newer arrivals. As a result, the Indian government and the CTA began to curtail the illegal but (until then) widespread practice of distributing RCs to new arrivals through informal channels. The CTA also began to encourage new Tibetan arrivals to return to Tibet after receiving an education at one of the Tibetan schools it had established or studying at one of the monasteries or nunneries established by Tibetan Buddhists in India. It should be noted that this practice was based much more on the Tibetans’ legally and politically vulnerable position in India, than on the conditions inside Tibet, which continued to be very oppressive.

3. Tibetans Entering India Between 1994 and 1999

In 1994, the Indian government and the CTA formalized a *de facto* policy of “voluntary repatriation.” New arrivals continued to receive some limited assistance from the Tibetan administration, but only temporarily. The CTA no longer helped them find jobs or acquire RCs and they were strongly encouraged to return voluntarily to Tibet, typically after about three months, although somewhat more lenient policies were applied to children who had come to India to get a Tibetan education and to monks and nuns who had come for religious training that China restricted or prohibited in Tibet.⁵⁷

In January 1995, the CTA issued regulations for the treatment of new arrivals, which, among other things, effectively ended the ability of new arrivals to acquire RCs. Young monks and nuns between the ages of sixteen and twenty-five were allowed to remain for six months. After that, they would be required to sit for and pass certain examinations; if they failed, they would be asked to return to Tibet. Tibetan children between the ages of six and thirteen could remain in India to complete their education, while older children between the ages of fourteen and seventeen would be referred to one of the Tibetan Children’s Village (TCV) transit schools. (Transit schools offer limited, intensive language and skills training to these comparatively older Tibetans.) Finally, new arrivals between

⁵⁶ Kaufman, *supra* note 53 at 536.

⁵⁷ Oct. 1999 Barnett Memo, *supra* note 54, ¶ 21; Interview with Tashi Wangdoo, Rep. of the Dalai Lama, Delhi Office, Sept. 22, 2003.

the ages of eighteen and thirty would be allowed to remain for one year, after which they, too, would be asked to return to Tibet. In 1996, for example, of 2,843 new arrivals, the CTA asked 1,200, about half, to return to Tibet.

As explained above, this policy of voluntary repatriation was based more on the Tibetans' legally and politically vulnerable position in India, than on the conditions inside Tibet, which remained very oppressive. As such, many Tibetans did not want to go back to Tibet, and chose to remain in a very uncertain position in India.

As a result of these policy changes, new arrivals faced an increasingly insecure environment in India. Because new arrivals could no longer depend on assistance from the CTA, few Tibetans entering India during this time were able to acquire RCs or find adequate work and shelter.⁵⁸ TJC heard several credible reports indicating that Tibetans were threatened with deportation to China in violation of the customary international law obligation of *non-refoulement*.⁵⁹ Tibetans without RCs were also detained from time to time, and Indian authorities often held them under threat of deportation until the CTA or Tibetan community paid a "fine" for their release (a *de facto* form of extortion).

For example, in January 1998, Indian officials detained twenty-one new arrivals in Dharamsala for lack of RCs, citing Section 14 of the Foreigners Act. Lobsang Lungtok, one of the twenty-one, spent more than twenty days in detention, and Indian officials threatened to deport him. Only international publicity and diplomatic pressure prevented

⁵⁸ Of the approximately 12,000 Tibetans who arrived in India between 1993 and 1998, few were able to acquire RCs or other documents. Without legal status, they cannot lawfully remain in the Tibetan settlements. They depend on informal assistance from other Tibetans, and many find it difficult to survive. The same is true for the approximately 10,000 Tibetans who arrived before 1979 but did not receive RCs or find a home in one of the settlements. Refugee Board IND33125, *supra* note 34. One member of the Tibetan parliament, who requested anonymity, told TJC, "Once the Tibetan government stopped issuing birth certificates, it became nearly impossible for newly arriving Tibetans to obtain RCs. There are rare cases in which Tibetans are still able to bribe Indian officials in order to get birth certificates." TJC Interview with Member of Tibetan Parliament, (Oct. 2003).

⁵⁹ See, e.g., Gretchen Borchelt, *The Safe Third Country Practice in the European Union: A Misguided Approach to Asylum Law and a Violation of International Human Rights Standards*, 33 COLUM. HUM. RTS. L. REV. 473, 480-90 (2002) (canvassing authorities indicating that *non-refoulement* has acquired the status of a binding norm of customary international law, which therefore binds even those states, India included, that have not ratified the 1951 Refugee Convention or its 1967 Protocol); see also Ministerial Meeting of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, Dec. 12-13, 2001, *Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees*, ¶ 4, U.N. Doc. HCR/MMSP/2001/09 (Jan. 16, 2002), available at <http://www.unhcr.org/refworld/docid/3d60f5557.html> (last accessed on March 8, 2016) (noting "the continuing relevance and resilience of this international regime of rights and principles, including at its core the principle of non-refoulement, whose applicability is embedded in customary international law"); Elihu Lauterpacht & Daniel Bethlehem, *The Scope and Content of the Principle of Non-Refoulement: Opinion*, ¶ 216, at 149 (2003), available at <http://www.unhcr.org/publ/PUBL/419c75ce4.pdf> (last accessed on March 8, 2016) ("[N]on-refoulement must be regarded as a principle of customary international law.").

the threat from being carried out. Reflecting these and similar events, a March 1999 article in an Indian newspaper reported that some Tibetans had been deported and that, since 1994, the Indian authorities had become significantly less tolerant of newly arriving Tibetans.⁶⁰ In a remark indicative of India's waning tolerance for its population of undocumented Tibetans, a CTA Security Officer stated, "The local government will arrest Tibetans and then publish the arrests in the local papers to show they are doing something about refugees."⁶¹ He went on to explain, "When problems arise, such as a suspected spy in the area, police randomly check Tibetans for RCs."⁶² Tibetans without RCs could be arrested and detained, sometimes for as long as a few months. These "spot checks" and periodic sweeps left (and continue to leave) Tibetans without RCs in constant fear of the local police.

At the national level, India did not appear to have formulated a uniform policy. Nonetheless, TJC heard numerous reports of local, and sometimes national, police detaining Tibetans for not possessing RCs and requiring the payment of fines for their release.

4. Tibetans Entering India Between 2000 and 2007

Coinciding with a major effort to improve its relations with China, India increasingly took proactive measures to stem the tide of Tibetan refugees permanently settling in India, and no longer seemed willing to rely on a policy of (encouraged) voluntary repatriation. As the political relationship between India and China improved over these years, India did more both to prevent new arrivals from entering India in the first place and to limit Tibetans' freedom of assembly and speech within India. In June 2003, in a jointly issued "Declaration of Principles of Relation and Comprehensive Cooperation" and annexed memorandum of understanding, India for the first time expressly recognized Tibet as "part of" China.⁶³ China agreed to open an important trading post on its border with India, and India agreed that, among other measures, it would prohibit Tibetans from engaging in "anti-China" activities in India.⁶⁴ In addition to external pressure exerted on India by China, some Indian domestic constituencies also put pressure on the Indian government to slow or halt the influx of undocumented Tibetans into India.⁶⁵ These two forces- internal and external - converged to threaten India's tolerance toward undocumented Tibetans.

⁶⁰ 1999 Barnett Memo, *supra* note 54.

⁶¹ Interview with Karma Rinchen, Sec. Office, Sec. Dep't, Dharamsala, Oct. 12, 2003. An official from the Indian government confirmed that Tibetans may be and have been arrested for not having RCs. According to a District Supervisor of Police in Darjeeling, "Tibetans who are in Darjeeling illegally without RCs are arrested and deported. There is currently a Tibetan being detained for coming to India without the proper paperwork." Interview with Rai, Dist. Supervisor of Police, Government of India, Darjeeling, Oct. 30, 2003. See Part V(A) *infra* for recent cases of arrests and deportations.

⁶² Interview with Karma Rinchen, Sec. Office, Sec. Dep't, Dharamsala, October 12, 2003.

⁶³ Cooperation Declaration, *supra* note 2.

⁶⁴ *Id.*; Brahma Chellaney, *Vajpayee Kowtows to China*, JAPAN TIMES, July 9, 2003; Kaufman, *supra* note 53 at 538.

⁶⁵ Memorandum of Robert Joseph Barnett dated January 2003, ¶ 3-4 (hereinafter Jan. 2003 Barnett memo).

In 2003, India implemented yet another change in its policy toward Tibetans by deciding that it would begin to conduct its own screening of Tibetan refugees in Nepal before they would be allowed to enter India. Until then, UNHCR had interviewed Tibetans arriving in Nepal and, assuming UNHCR staff found them to be “of concern to the High Commissioner,”⁶⁶ as it typically did, India would allow them to enter at the border town of Sonauli—at least for the purpose of traveling as far as Delhi and then to Dharamsala, where they would be screened again by the CTA. In February 2003, however, the CTA and the Indian government agreed to an arrangement intended to address the increasing number of Tibetans who reside in India without RCs, leading to the creation of the Special Entry Permit (SEP) program.⁶⁷

SEPs authorize their bearers to cross from Nepal into India and then to remain in India for a designated period of time, depending on the visit’s purpose. Today, SEPs are primarily issued for education purposes, allowing the bearers to enroll in a Tibetan school or receive religious education at a monastery. Although SEPs allow holders to acquire an RC and stay in the country long enough to receive their education, they do not provide their bearers with a right to either citizenship or permanent residence in India.

Another aspect of the agreement reached in 2003 between the CTA and the Indian government was a one-time offer to provide RCs to unregistered Tibetans who had arrived before the SEP policy.⁶⁸ Accounts vary as to how successful this initiative has been.⁶⁹ From the standpoint of U.S. asylum law, the point of emphasis is that neither the SEP or RC purport to give Tibetans anything approaching permanent legal status and rights that could be deemed tantamount to citizenship.

There were other signs of an increased intolerance on India’s part to the presence of Tibetans in India in this period. In 2006, the Indian government restricted Tibetans’ access to freedom of expression by announcing a ban on Tibetans protesting during Chinese President Hu Jintao’s visit to India.⁷⁰ More than 40 Tibetans were arrested in Delhi in conjunction with his visit, many of whom were arrested pre-emptively, before any protest began.⁷¹ And at the end of 2006, the Indian Government restricted Tibetans from receiving international travel documents (and limited them to those present in India since 1979), although in some instances, it approved specific requests.⁷²

⁶⁶ TIBET’S STATELESS NATIONALS I, *supra* note 3 at 91-93.

⁶⁷ Kashag (Tibetan Parliament) Circular 1069 (61) 2006-2007, *reprinted in* Appendix, *infra* [hereinafter Kashag Circular].

⁶⁸ Interview with Tsering Phuntsok, head of the Tibetan Settlement Office, Central Tibetan Administration, Dharamsala, May 3, 2009; Interview with Ngodup Donchung, Dep’t of Security, Central Tibetan Administration, Dharamsala, May 1, 2009.

⁶⁹ See text accompanying note 181 *infra*.

⁷⁰ <https://www.hrw.org/news/2006/11/17/india-china-tibetans-human-rights-are-not-negotiable>

⁷¹ India and China ‘to double trade’ *BBC News*, November 21, 2006 http://news.bbc.co.uk/2/hi/south_asia/6158824.stm

⁷² US COMMITTEE FOR REFUGEES AND MIGRANTS WORLD REFUGEE SURVEY 2009 – INDIA.

5. 2008 – present (2016)

In March 2008, five months before Beijing was to host the Olympic Games, anti-government protests erupted in Tibet's capital, Lhasa, and spread across the Tibetan plateau. Tibetans from all ages and walks of life took to the streets to demand change. The Chinese government responded with force, opening fire on crowds, arresting protestors, and systematically searching for and detaining suspected protestors in the months and years that followed.⁷³ Over the next few years, the Chinese government successfully enacted a series of measures designed to prevent Tibetans from escaping Tibet through Nepal. These included restrictions on freedom of movement for Tibetans, intensified military presence at the border, and cooperation with Nepali security forces on the Nepal side of the border.⁷⁴ Refugee numbers plummeted. In 2008, the number of refugees arriving into Nepal from Tibet was low: 652 compared to just under 2,600 in 2006.⁷⁵ In 2014, the number was approximately 100.⁷⁶

The Gentlemen's Agreement between Nepal, India and the United Nations Refugee Agency on the safe passage of Tibetans from Nepal to India still largely functions. Tibetans who make it to the relative⁷⁷ safety of the Tibetan Reception Centre in Kathmandu are processed, issued with Special Entry Permits (SEPs) and then allowed to journey onwards to India.⁷⁸

Indian authorities continue to arrest Tibetans who protest near the Chinese embassy in Delhi, and to arrest Tibetans protesting the visits of high Chinese dignitaries.⁷⁹

⁷³ See reports including *Tibet at a Turning Point*, INTERNATIONAL CAMPAIGN FOR TIBET, August 2008 <http://www.savetibet.org/tibet-at-a-turning-point/>; *I Saw It with My Own Eyes Abuses by Chinese Security Forces in Tibet, 2008-2010*, HUMAN RIGHTS WATCH, July 21, 2010 <https://www.hrw.org/report/2010/07/21/i-saw-it-my-own-eyes/abuses-chinese-security-forces-tibet-2008-2010>; *A Great Mountain Burned by Fire: China's Crackdown in Tibet*, INTERNATIONAL CAMPAIGN FOR TIBET, March 9, 2009, <http://www.savetibet.org/great-mountain-burned-by-fire/>

⁷⁴ UNDER CHINA'S SHADOW: MISTREATMENT OF TIBETANS IN NEPAL, 2014, HUMAN RIGHTS WATCH.

⁷⁵ DANGEROUS CROSSINGS: REFUGEE REPORT 2006, INTERNATIONAL CAMPAIGN FOR TIBET, <https://www.savetibet.org/2006-refugee-report-dangerous-crossing-2006-update/>

⁷⁶ Correspondence with UNHCR Kathmandu, November 2015.

⁷⁷ Since 2008, Tibetans in Nepal have come under intense scrutiny from the Chinese government, and particularly those who have recently arrived from Tibet. Research by International Campaign for Tibet reports that in 2009, "prior to the 50th anniversary of March 10, a substantial police deployment was reported at the [Tibetan Refugee] Reception Center [in Kathmandu, Nepal], with plain-clothes officers entering the premises and demanding information about the names and movements of Tibetans staying there." Given the closer relationship that exists now between the Nepal and China governments, and that silencing Tibetans is now a shared aim, there is a strong likelihood that the personal details of escaped Tibetans are regularly taken from the reception center and shared with the Chinese government.

⁷⁸ A June 14, 2016 article appearing in the Nepali Times reported the following numbers of Tibetan refugees in Nepal seeking an exit permit to India: 1,248 in 2010; 521 in 2011; 320 in 2012; 185 in 2013; 92 in 2014; 85 in 2015, and 53 (until mid-June) in 2016. *Fewer Tibetan Refugees*, NEPALI TIMES, June 14, 2016. <http://www.nepalitimes.com/blogs/the-brief/2016/06/14/fewer-tibetan-refugees/> (last visited June 20, 2016).

⁷⁹ See text accompanying notes 507 – 539 *infra* regarding recent crackdowns on political protest.

D. Tibet in Indo-Sino Relations

The following summary of India's historical relationship with China provides the basic context in which the policies and attitudes of India's government and people toward India's Tibetan population should be understood.

In the first decade after India's independence, India and China enjoyed generally warm relations. Prime Minister Nehru felt that the two states shared a "history of problems associated with colonization . . . poverty and underdevelopment."⁸⁰ Hence, on January 1, 1950, India became the first country to recognize the People's Republic of China.⁸¹ Later that year, when the PLA invaded Tibet, India did not expressly condemn China for its aggression and subsequent illegal annexation of Tibet.⁸² Nor, however, did it recognize Tibet as "part of" China in a legal sense.

Nonetheless, in 1954, India and China entered into an eight-year treaty regarding Tibet.⁸³ In it, they agreed to the "Five Principles of Peaceful Coexistence," also known as the Principles of Panchsheel. These included "respect for each other's territorial integrity and sovereignty, non-aggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence."⁸⁴ As relevant here, the Agreement revoked Tibetans' rights to settle in India indefinitely; until 1954, India had authorized the free migration of Tibetans into India and vice versa.⁸⁵

After 1954, consequently, Tibetans who wanted to visit India had to acquire Chinese passports and visas from the Indian consulate in Lhasa or the trade mission in Gyantse. This change did not cause much tension between China and India because few people crossed the Indo-Tibetan border at the time, and in any event, the two states did not treat failures to obtain the proper legal papers as serious infractions. Prime Minister Nehru believed that in the absence of an independent state of Tibet as a geostrategic buffer between India and China, India's security interests would be best served by cultivating stronger ties with China - particularly in view of the relatively weak state of India's military at the time and its inability to defend India's border with China.⁸⁶ The

⁸⁰ BIPAN CHANDRA, MRIDULA MUKHERJEE & ADITYA MUKHERJEE, *INDIA AFTER INDEPENDENCE 1947-2000*, at 164 (2000) [hereinafter CHANDRA].

⁸¹ *Id.* at 163; see also HERMANN KULKE & DIETMAR ROTHERMUND, *A HISTORY OF INDIA* 336 (1986).

⁸² JOHN KEAY, *INDIA: A HISTORY* 515 (2001); CHANDRA, *supra* note 80, at 164.

⁸³ Agreement on Trade and Intercourse Between Tibet Region of China and India, P.R.C.-India, Apr. 29, 1954, 99 U.N.T.S. 57 (1958) [hereinafter Trade & Intercourse Agreement].

⁸⁴ CHANDRA, *supra* note 80, at 150; see STANLEY WOLPERT, *A NEW HISTORY OF INDIA* 364 (2008) [hereinafter WOLPERT]; FED. RESEARCH DIV., LIBRARY OF CONG., *CHINA: A COUNTRY STUDY* 532 (Robert L. Worden et al. eds., 4th ed. 1989) (1970) [hereinafter COUNTRY STUDY, CHINA].

⁸⁵ Affidavit of Tsering Shakya, Feb. 2004 (on file with TJC) [hereinafter Shakya Aff.]. Before Tibet's invasion and occupation by the PLA, many Tibetan aristocrats would send their children to be educated in British schools in India, and merchants traveled freely between the two states.

⁸⁶ COUNTRY STUDY, CHINA, *supra* note 84, at 532.

phrase *Hindi-Chini bhai-bhai* (“India and China are brothers”) is indicative of India’s foreign relations attitude toward China during this period.⁸⁷

This situation changed in 1959. As described above, the Lhasa Uprising and the Chinese military’s response, led the Dalai Lama and his retinue to seek refuge in India. India initially treated the massive influx of Tibetans as temporary. It therefore housed them in makeshift camps located in isolated and under-populated regions of India.⁸⁸ But the Dalai Lama’s arrival in India marked the beginning of a very delicate political and diplomatic balancing act by the Indian government, which continues to this day. For while the Indian government went to great lengths to accommodate the humanitarian needs of the continuing influx of Tibetan refugees, it simultaneously sought to avoid taking an official stance on any issue remotely related to Sino-Tibetan politics.

In 1962, war broke out between China and India, terminating, for all practical purposes, the 1954 Trade and Intercourse Agreement. Chinese troops attacked and easily overran India’s northeastern border, meeting virtually no resistance from Indian forces. On November 9, 1962, Nehru appealed to the United States and Great Britain for help. The next day, China withdrew its forces from the region, although China continues to occupy certain strategic stretches. The incident left India’s military humiliated and its national pride wounded. Nehru reportedly never recovered from the defeat, and he died two years later in 1964.⁸⁹

The Sino-Indian relationship remained tense throughout the 1960s and 1970s, the era of China’s Cultural Revolution. Among other sources of animosity, China accused India of assisting rebels in Tibet and adjacent regions of Nepal, where the CIA clandestinely assisted guerilla forces from 1951 to 1974,⁹⁰ and it supported Pakistan in its 1965 and 1971 wars with India. In August 1971, India signed a Treaty of Peace, Friendship, and Cooperation with the Soviet Union,⁹¹ prompting China’s U.N. representative to denounce India as a “tool of Soviet expansionism.”⁹²

Beginning in December 1979, however, China and India began to take steps to improve their relations. They held eight rounds of border negotiations between 1981 and 1987. In February 1987, both states deployed troops to the border area, but, despite fears of a second border war, no major or prolonged military clashes broke out. Thereafter, Sino-Indian relations thawed. In 1988, Prime Minister Rajiv Gandhi visited China and signed bilateral agreements on cultural ties, civil aviation, and science and technology.

⁸⁷ *Id.*; WOLPERT, *supra* note 84, at 364.

⁸⁸ Shakya Aff., *supra* note 85, ¶ 1.b.

⁸⁹ CHANDRA, *supra* note 80, 165-67; see DOMINIQUE LAPIERRE & LARRY COLLINS, FREEDOM AT MIDNIGHT 584 (2001).

⁹⁰ JOHN KENNETH KRAUS, ORPHANS OF THE COLD WAR (1999).

⁹¹ Indo-Soviet Treaty of Peace, Friendship and Cooperation, India-U.S.S.R., Aug. 9, 1971, 10 I.L.M. 904 (1971).

⁹² COUNTRY STUDY, CHINA, *supra* note 84, at 533.

The two states also agreed to work toward a peaceful settlement of their border dispute.⁹³ In diplomatic exchanges, China continued to insist, as it had since 1950, that Tibet constitutes an inalienable part of China and that China would not tolerate “anti-Chinese” political activities by Tibetans living in India.

A major shift in India’s relationship with China took place on June 23, 2003, when Indian Prime Minister Atal Bihari Vajpayee and Chinese Prime Minister Wen Jiabao signed the Declaration of Principles of Relation and Comprehensive Cooperation. In it, India for the first time formally recognized Tibet as a “part of the territory of the People’s Republic of China,” and also promised to prohibit “anti-China political activities” by Tibetans in India.⁹⁴ In exchange, China agreed to allow trade across the Sino-Indian border in India’s northeastern state of Sikkim, signifying China’s implicit (but not formal) acceptance of India’s claim to Sikkim. On July 6, 2006, China and India re-opened the Nathu La pass on the Sikkim-Tibet border for the first time in decades.

Since that time, however, Sino-Indian tensions surrounding the unsettled border have periodically flared, pointing to the persistence of Tibet’s central role in relations between the two Asian giants. On the eastern end of their border, India and China continue to dispute sovereignty over the Indian state of Arunachal Pradesh, which China calls “South Tibet” and which was ceded by Tibet to British India under the 1914 Simla Convention. In November 2013, Indian president Pranab Mukherjee visited Arunachal Pradesh and called the area an “integral and important part of India,” a statement condemned by the Chinese foreign ministry.⁹⁵

On Tibet’s western border, India and China also continue to dispute the frontier between Tibet and the Indian region of Ladakh, which historically had close political and religious ties to Tibet. Indeed, on the eve of Chinese president Xi Jinping’s historic state visit to India in September 2014, approximately 1,000 Chinese troops crossed into Indian-controlled territory in Ladakh.⁹⁶ According to Brahma Chellaney, an Indian professor of strategic studies, this dramatic incursion led Indian Prime Minister Narendra Modi to permit Tibetan exiles to stage protests during Xi’s visit, “reversing a pattern since the early

⁹³ Additional talks were held between 1988 and 2003 in an effort to resolve the border dispute. Despite progress in achieving troop reductions in the region, China and India reached no final resolution.

⁹⁴ Cooperation Declaration, *supra* note 2. Until the Cooperation Declaration, India studiously avoided recognizing China’s annexation of Tibet.

⁹⁵<http://thediplomat.com/2013/12/chinas-arunachal-pradesh-fixation/>;
<http://timesofindia.indiatimes.com/india/China-reiterates-claim-on-Arunachal-Pradesh-through-mouthpiece/articleshow/26644947.cms?referral=PM>

⁹⁶https://www.washingtonpost.com/world/troops-face-off-at-india-china-border-as-leaders-of-nations-meet/2014/09/18/a86e7b8a-1962-4446-b80c-f038a57527f3_story.html;
<http://timesofindia.indiatimes.com/india/Chinese-incursion-in-Ladakh-A-little-toothache-can-paralyze-entire-body-Modi-tells-Xi-Jinping/articleshow/42940337.cms>

1990s of such protests being foiled by police during the visit of any Chinese leader.”⁹⁷

The Tibetan community in India remains an integral part of the India-China relationship, providing a way for India to show China its strength (for example, by not always acceding to China’s demands that Tibetan protestors be silenced). It is likely that the Tibetan community will continue to play a role, to a greater or lesser extent, in Sino-Indian relations.

E. Current Population of Tibetans in India

Estimates of the number of Tibetans living in exile vary. According to the last census taken by the CTA in 2009,⁹⁸ 127,935 Tibetans live in exile outside Tibet, including 94,203 who live in India.⁹⁹ Most other sources report higher estimates: the U.S. Committee for Refugees and the UNHCR report put the number of Tibetans in India at about 110,000,¹⁰⁰ while the U.S. Department of State reports that more than 125,000 Tibetans live in India, Nepal and Bhutan.¹⁰¹ Many of those are Tibetans who were born in India.

F. Overview of Tibetan Settlements in India

India is a federal republic made up of 29 states and 7 union territories. Each state has its own powers over internal policy. There are official Tibetan settlements or scattered settlements in twelve of India’s states,¹⁰² and informal Tibetan enclaves in cities across the country. Most Tibetans in India live in thirty-nine formal settlements or scattered settlements¹⁰³ and more than fifty other informal Tibetan communities scattered throughout the country. One of these is Dharamsala (or McLeod Ganj), which is the seat of the Central Tibetan Administration, and the location of the Dalai Lama’s residence and monastery, the Tibetan Refugee Reception Centre, and the headquarters of many Tibetan NGOs and institutions, such as the Tibetan Institute of Performing Arts and the Tibetan ex-political prisoners’ association Gu Chu Sum. It is essentially the Tibetan “capital-in-exile.” In total,

⁹⁷ *India has Ignored Tibet for too Long*, LIVEMINT, June 23, 2016, <http://www.livemint.com/Opinion/VJWrNCVowQYNe3u4pPypbN/India-has-ignored-Tibet-for-too-long.htm>

⁹⁸ DEMOGRAPHIC SURVEY OF TIBETANS IN EXILE – 2009, PLANNING COMMISSION, CENTRAL TIBETAN ADMINISTRATION. The CTA will reportedly be releasing census-like data again in 2016.

⁹⁹ TIBET IN EXILE, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/about-cta/tibet-in-exile/> (last accessed March 19, 2016).

¹⁰⁰ U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, WORLD REFUGEE SURVEY 2009 COUNTRY REPORT: INDIA; INDIA: INFORMATION ON TIBETAN REFUGEES AND SETTLEMENTS, U.S. BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES, MAY 30, 2002.

¹⁰¹ BUREAU OF POPULATION, REFUGEES, AND MIGRATION, U.S. DEP’T. OF STATE, FUNDING OPPORTUNITY ANNOUNCEMENT FOR NGO PROGRAMS BENEFITING TIBETAN REFUGEES IN SOUTH ASIA (2009).

¹⁰² Himachal Pradesh, Ladakh, Arunachal Pradesh, Orissa, Meghalaya, Sikkim, West Bengal, Uttarakhand, Karnataka, Maharashtra, Chhattisgarh, and Delhi. For a list of Tibetan Settlements, see <http://tibet.net/home/>

¹⁰³ www.centralethiopianreliefcommittee.org/doh/tibetan-settlements.html (cached version)

approximately 75% of the Tibetan refugees in India reside in the settlements, and 40% of this number live in the southern Indian state of Karnataka.¹⁰⁴ About 15,250 Tibetan monks in India reside in 169 monasteries located in or near 54 of the settlements.¹⁰⁵

¹⁰⁴ Interview with knowledgeable source, Dehradun, June 4, 2015.

¹⁰⁵ Communication with Tenzin Lungtok, Additional Secretary, Department of Religion, CTA, May 2016.



Central Tibetan Relief Committee (CTRC), *Tibetan Settlements in India, Nepal and Bhutan*, 2002

Most settlements are predominantly populated with Tibetans who came to India in the early decades of exile in the 1960s and 1970s, and their offspring. A substantial number of Tibetans who took refuge in Bhutan after 1959 faced a second forced migration in 1981,

when they were forced to move to India as the situation in Bhutan became politically hostile towards “outsiders.” The dominant Drukpa people were imposing cultural orthodoxy, and the position of the Tibetans became unstable. Approximately 3,000 Tibetans left and were dispersed amongst settlements including Deyiling (Uttarakhand), Kollegal and Mundgod (Karnataka), and Darjeeling and Kalimpong (West Bengal).¹⁰⁶

Most of the Tibetan settlements are built on land that was leased in the 1960s and 1970s by the Indian government to the Central Tibetan Relief Committee (CTRC), a subsidiary of the Central Tibetan Administration’s Home Department. India initially leased land in the states of Himachal Pradesh, Ladakh, Arunachal Pradesh, Karnataka, Uttar Pradesh, Madhya Pradesh, South Sikkim, West Bengal, Maharashtra, and Orissa - ostensibly for a term of ninety-nine years.¹⁰⁷

A few Tibetan settlements are built on land that was donated by a private owner – in some cases the owner is Tibetan, and was able to purchase the land decades ago when there was not as much attention paid to such transactions. These cases are rare now. Tibetans on privately owned land fear their rights to the land being contested by the state or Indian citizens in the future.¹⁰⁸ Almost all the settlements face or have faced issues relating to the status of their land and the absence of documents. This is discussed further in Part V(C) below.

The Indian government facilitated the settlement of the first wave of Tibetans by providing land and supporting the construction of settlements. Later arrivals from Tibet did not receive land or housing, and so relied on the Tibetan government, NGOs, and their own family members and friends for assistance. Many Tibetans arriving today reside in or near the CTA’s headquarters in McLeod Ganj, Dharamsala, or settle in scattered Tibetan communities throughout India.¹⁰⁹ Informal Tibetan settlements exist, for example, in and around Kullu and Manali in northern India, areas of northeastern India, including Arunachal Pradesh, Assam, and Meghalaya, and on the outskirts of major cities, including Delhi. The only new arrivals that the original settlements accommodate are Tibetans joining family members already residing in these settlements and certain monks or nuns who live in the monasteries and nunneries within the settlements.¹¹⁰

¹⁰⁶ Interview with camp leaders from Camp 9, Doeguling, Mundgod, Karnataka, February 2016.

¹⁰⁷ Refugee Board IND33125, *supra* note 34.

¹⁰⁸ Interview with camp leaders, Tenzingang, Arunachal Pradesh, October 2015.

¹⁰⁹ *India: Information on Tibetan Refugees and Settlements*, U.S. Bureau of Citizenship and Immigration Serv, May 30, 2003. For example, Shillong Tibetans are scattered throughout Shillong, because there is no official settlement. Interview with Pema Youdon, TSO and Yeshe, Administrative officer, Shillong, October 23, 2015; *see also* ANDREW POWELL, HEIRS TO TIBET: TRAVELS AMONG THE EXILES IN INDIA (1992); Dep’t of Home, *A Short Story on Life in Exile*, CENTRAL TIBETAN ADMINISTRATION.

¹¹⁰ *See* POWELL, *supra* note 109; *A Short Story on Life in Exile*, *supra* note 109; Interview with Karma Dhargyal, TSO of Kham Kathok Tibetan Society, Sataun, HP, June 6, 2015.

Seasonal sweater selling and agriculture are the two most common sources of livelihood within the settlements, with sweater selling being predominant in the north and agriculture in the south.¹¹¹ Nearly 40% of the settlements rely principally on agriculture;¹¹² another 36% of the settlements rely on industry or the manufacture and sale of handicrafts.¹¹³ The remaining quarter of settlements are scattered settlements, where people work in a variety of trades.¹¹⁴ Approximately 52% of Tibetan households contain at least one member involved in the seasonal sweater business, which typically occurs from October to February.¹¹⁵ For this, Tibetans purchase sweaters from manufacturers and then re-sell them for profit in places such as Jodhpur,¹¹⁶ Chandigarh, Jhansi, and West Bengal.¹¹⁷ A more thorough description of employment opportunities, or lack thereof, in the settlements is contained in Part V (D)(1) below.

Settlements vary widely in terms of levels of development, primarily as a result of their geographical location (and thus the economies available to them), and the specific laws and policies of their host state in India. Remote settlements tend to be less well developed and, as a result, smaller in population due to out-migration of residents to cities and other settlements. There have been a few resettlement plans of Tibetans from India to the U.S. and Canada – most recently with the official resettlement of one thousand Tibetans to Canada from remote rural settlements in Arunachal Pradesh state.¹¹⁸

¹¹¹ THE ECONOMIC DEVELOPMENT PROGRAM OF TIBETAN REFUGEES IN INDIA: IMPROVING THE QUALITY OF LIFE THROUGH THE CREATION AND ENHANCEMENT OF LIVELIHOOD OPPORTUNITIES, TECHNOSEV REPORT, May 2010, 1 & 17 [hereinafter TechnoServ Report].

¹¹² These include: Choepheling, Miao, A.P.; Dhargayling Tezu, A.P.; Dhondenling, Kollegal, K.S.; Doeguyougayling, Herbertpur; Doeguling, Mundgod, K.S.; Kunphenling, Ravangla, Kikkim; Lugsung Samdupling, B'kuppe, K.S.; Norgayling, Bandara, Maharashtra; Phendeling, Mainpat, Chattisgarh; Phuntsokling, Gajapati, Orissa; Rabgayling, Hunsur, K.S.; Sonamling, Ladakh, J&K; Tenzingang, Bomdila, A.P.; Tuting, A.P. HOME DEPARTMENT, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/home/> (last visited March 19, 2016).

¹¹³ Bir Dege, Bir, H.P.; Bir Nangchen Chauntra, Bir, H.P.; Bir Tibetan Society, Bir, H.P.; Dalhousie, Chamba, H.P.; Dekyiling, Dehradun, U.A.; Gapa Tibetan Society, H.P.; Kham Khatok, Sataun, H.P.; Paonta Choelsum, Paonta, H.P.; Sakya Tibetan Society, Puruwala; Tashijong, Bir, H.P.; Sakya Tibetan Society, Purwala; Tashijong, Bir, H.P.; Tashilong, Pandoh, H.P.; Tashiling, Sonda, W.B.; Tibetan Bonpo Foundation, Dolanji; Yangchen Gatseling, Shimla, H.P. HOME DEPARTMENT, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/home/> (last visited March 19, 2016).

¹¹⁴ Bomdila, A.P.; Darjeeling, W.B.; Dharamsala, H.P.; Dhondupling, Clementown; Gangtok, Sikkim; Kalimpong, W.B.; Lingtsang, Munduwala; Palrabling, Kullu, H.P.; Samyeling, Delhi, Shillong, Megalaya. HOME DEPARTMENT, CENTRAL TIBETAN ADMINISTRATION, <http://tibet.net/home/> (last visited March 19, 2016).

¹¹⁵ TechnoServ Report, *supra* note 111, 7 & 98.

¹¹⁶ *Id.* at 99.

¹¹⁷ Interview with knowledgeable source, Paonta Choelsum, June 5, 2015.

¹¹⁸ *First batch of Tibetans from Arunachal to Canada likely in July*, TIBET SUN, April 1, 2013

<https://www.tibetsun.com/news/2013/04/01/first-batch-of-tibetans-from-arunachal-to-canada-likely-in-july>

In less developed settlements, some Tibetans still live in the original structures from the 1960s that were designed to be only temporary shelters.¹¹⁹ This is particularly noticeable, for example, in Norgyeling settlement near Bhandara, Maharashtra. Some other settlements, such as Paonta Choelsum, in Himachal Pradesh, have a much higher quality of life, including large houses, covered drainage, a sewer system, a basketball court, and recreational facilities for youth; community center; and street lighting installed with LED bulbs.¹²⁰ Tibetans in Changthang, Ladakh, live a nomadic lifestyle.¹²¹ The size of the various settlements also varies considerably. Some settlements in northeastern India, and parts of Himachal Pradesh for example, have fewer than 100 residents,¹²² while Mundgod, in southern India, has more than 16,000.¹²³ A common theme across the settlements is that the populations are growing older, as younger people are leaving for opportunities in more developed cities or abroad.¹²⁴

In terms of governance, the CTA appoints a settlement officer for each settlement, and the residents themselves usually elect a series of “camp leaders.” India’s government retains plenary authority over the settlements. In practice, however, Indian authorities find it expedient to allow the CTA to manage most of their internal affairs, and India seldom interferes with the internal governance of the settlements.¹²⁵

Each settlement is on leased land that is designated for either housing or agriculture. The lease specifically contains clauses for the number of hectares of agricultural land and the number of hectares for housing.¹²⁶ In practice, most Tibetan settlement officers do not have a copy of the lease, only the belief that one exists. As such, many Tibetans have no knowledge of the specific terms and conditions of the lease, for example the prohibition

¹¹⁹Refugee Board IND33125, *supra* note 34; see Unclassified Cable No. 261108 from Sec’y of S. Wash. D.C. to American Embassy in New Delhi (Dec. 24, 1996) (on file with TJC).

¹²⁰ Interview with knowledgeable source, Lakanwala, June 6, 2015; Interview with Karma Dhargyal, TSO of Kham Kathok Tibetan Society, Sataun, HP, June 6, 2015.

¹²¹ For example, nine settlements in Changthang are nomadic. They have a very poor standard of living. However, the Indian government seems to be responsive to their needs. For example, when the Tibetan and other Indian leaders in Ladakh appealed to the Ministry of Home Affairs of India for support for Tibetan and Ladakhi nomads, they were successful and the region is now expected to receive 600 crore Indian rupees over the next few years for development. This will go into building houses and other infrastructure. Tibetan refugees in Changthang will receive 20% of this fund. Interview with Dhondup Tashi, Chief Representative Officer (CRO), Ladakh, October 15, 2015.

¹²²Interview with Karma Dhargyal, TSO of Kham Kathok Tibetan Society, Sataun, HP, June 6, 2015; Interview with Tibetan business people in Bomdila, Arunachal Pradesh, October 21, 2015.

¹²³ There are 16,414 people in Doeguling, Mundgod, according to a 2015 census. Of these, less than 300 are nuns, and more than 9700 are monks. Interview with TSO, Mundgod, February 2016.

¹²⁴ See, e.g., Interviews with Ngawang Norbu, Tibetan Settlement Office Secretary, Norgyeling, February 18, 2016; Dorjee Tenzin, staff of Dekyiling TSO office, June 4, 2015; Phuntsok Kunga, General Secretary of the Sakya Tibetan Society, Puruwala, June 6, 2015; Tenzin Tsering, Advocate at the Supreme Court of India, Delhi, October 25, 2015; TSO Lekyi Dorjee Tszangla, TSO, & his secretary and accountant, Majnu-katilla, Delhi, June 10, 2015; Jamyang Lodoe, Camp 3 leader, Phuntsokling settlement, January 28, 2016.

¹²⁵ See generally FIONA MCCONNELL, REHEARSING THE STATE: THE POLITICAL PRACTICES OF THE TIBETAN GOVERNMENT-IN-EXILE, First Edition, 2016, chapter four.

¹²⁶ Interview with Tsupten, Agriculture Officer, Department of Home, January 2016.

of building houses on agricultural land.¹²⁷

The settlements today are facing the twin problems of high unemployment and migration of Tibetans out of the settlements.¹²⁸ Unemployment in the settlements is reported to be between 3% and 22%.¹²⁹ Migration out of the settlements is endemic throughout India but particularly in the south and particularly among 19-35 year olds.¹³⁰

IV. Status of Tibetans as Foreigners in India

A. Introduction

India has been extraordinarily generous to the Tibetan people: it has allowed Tibetans to enter India and, with respect to the first wave of arrivals, to develop settlements, schools, and medical facilities. Yet the overwhelming majority of Tibetans residing in India lack a defined legal status. They do not qualify as refugees in any legal sense. India is not a party to the 1951 Convention Relating to the Status of Refugees or its 1967 Protocol. Nor has it adopted national legislation for the protection of refugees. Without a “refugee” designation, Tibetans in India are considered to be foreigners under domestic law, regardless of how long they have resided in India. At the same time, few Tibetans have been able to acquire Indian citizenship and most remain ineligible for naturalization. Tibetan refugees, as foreigners, are subject to a host of limitations affecting their ability to travel freely, either domestically or internationally, to own property in their own names, to qualify for government jobs or seats in educational institutions, and to vote in Indian elections. As foreigners, Tibetan refugees’ ability to demonstrate and express themselves politically is also restricted, particularly when Chinese dignitaries are visiting India. From time to time, India has also expelled Tibetans from its territory, in violation of its international legal obligation of *non-refoulement*.

B. Legal Overview: International Legal Framework and Indian Domestic Law

India has not ratified either of the two principal treaties for the protection of refugees, the 1951 Convention Relating to the Status of Refugees¹³¹ (1951 Convention) and its 1967 Protocol.¹³² Nor has India enacted domestic legislation regarding the protection

¹²⁷ Communication with Tsering Choedon, Tibetan Legal Association member, May 2016.

¹²⁸ TechnoServ Report, *supra* note 111, 1.

¹²⁹ *Id.* at 55.

¹³⁰ *Id.* at 23.

¹³¹ Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S 137 [hereinafter 1951 Convention].

¹³² Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S 267 [hereinafter 1967 Protocol].

of refugees.¹³³ Consequently, Tibetans in India do not enjoy the official status of refugees under either international or Indian law.¹³⁴ The local office of the UNHCR, the U.N. agency charged with the protection of refugees, operates informally on Indian soil with the Indian government's consent, but in the absence of a treaty basis for its activities, it plays only a limited role in assisting Tibetans and other refugees.

India has ratified many international human rights treaties that are relevant to the treatment of Tibetans living in India.¹³⁵ India is a party to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Accordingly, India has specific obligations under those instruments to ensure the realization of certain rights for all people living within its territory, without discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. This would include not only Indians but also Tibetans living in India.¹³⁶

Because India is not a party to the 1951 Convention or its 1967 Protocol, it need not abide by the treaty obligations set forth in these instruments. Nonetheless, the 1951 Convention's principle of *non-refoulement*, which prohibits the return of a refugee "in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion,"¹³⁷ has become a rule of customary international law.¹³⁸ The critical question is therefore whether and, if so, how India's national law recognizes and enforces customary international legal principles. In general, the answer is that

¹³³ BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T. OF STATE, 2008 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: INDIA § 2(d) (2009) [hereinafter 2008 Country Report]; B.S. Chimni, *The Legal Conditions of Refugees in India*, 7 J. REFUGEE STUD. 378, 379 (1994). [hereinafter CHIMNI].

¹³⁴ For a comprehensive overview of the international rights of refugees, see GUY S. GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* (3d ed. 2007).

¹³⁵ These include the International Covenant on Economic, Social and Cultural Rights, Jan. 3, 1976, 993 U.N.T.S. 3 (ICESCR); the International Covenant on Civil and Political Rights (ICCPR), Apr. 10, 1979, 999 U.N.T.S. 171; the International Convention on the Elimination of All Forms Racial Discrimination (CERD), Dec. 3, 1968, 660 U.N.T.S. 195; the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), July 30, 1980, 1249 U.N.T.S. 13; the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, Oct. 14, 1997, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85 (CAT); and the Convention on the Rights of the Child, Dec. 11, 1992, 1577 U.N.T.S. 3 (CRC).

¹³⁶ It should be noted, however, that pursuant to the Indian Constitution, the only fundamental rights applicable to non-citizens are Article 14 (Equal Protection of Law) and Article 21 (Right to Life). INDIA CONST. art. 14 & 21.

¹³⁷ 1951 Convention, *supra* note 59, art. 33(1).

¹³⁸ See sources cited *supra* at note 59. India did not persistently object to the customary rule of *non-refoulement*. Jonathan Charney, *The Persistent Objector Rule and the Development of Customary Int'l Law*, 56 BRIT. Y.B. INT'L L. 1, 1 (1985) ("[M]ost modern theories of international law do not require that express consent be found before a rule of customary international law can be held to be binding on a state. Many authorities argue that a state can be bound by a rule of customary international law even though the state neither expressly nor tacitly consented to the rule."); see also Ted L. Stein, *The Approach of a Different Drummer: The Principle of the Persistent Objector in Int'l Law*, 26 HARV. INT'L L.J. 457, 458 (1985).

national courts of India will enforce only those principles of international custom that do not conflict with national law.¹³⁹ But in a case involving the persecution of members of the Chakma tribe living in Arunachal Pradesh,¹⁴⁰ the Indian Supreme Court, India's national court of last resort, held that *non-refoulement* is more than customary international law; it has *constitutional* status as a component of the Indian Constitution's guarantee of the right to life.¹⁴¹ The High Court of Gujarat has also explicitly held that Article 21 of the Indian Constitution guarantees *non-refoulement*.¹⁴²

In practice, to the best of TJC's knowledge and research, India has adhered to *non-refoulement* at least in relation to the first wave of Tibetan arrivals. Since the 1990s, however, some Tibetans have reported threats of repatriation to China, and in several instances, TJC examined actual case files involving actual orders of forced repatriations (discussed in Part V(A) below).

Domestically, two national statutes govern the legal status and rights of Tibetans in India: the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939.¹⁴³ Pursuant to these statutes, Tibetans are "foreigners," a broad legal rubric that refers to everyone except Indian citizens. The same two statutes allow the national government to regulate the movement of all foreigners both into and within India, as well as to require foreigners to report to Indian authorities.

The Foreigners Act defines foreigners in the negative, that is, as all persons *other than* citizens of India. It also authorizes the central government to "make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner . . ."¹⁴⁴ The Foreigners Act empowers the government (a) to prohibit, regulate, and restrict foreigners' entry into India or their departure from India;¹⁴⁵ (b) to limit their freedom of movement;¹⁴⁶ (c) to require them to reside in a particular place,¹⁴⁷ furnish proof of identity, and report to

¹³⁹ Cf. Jolly George Verghese V. Bank of Cochin (1980) 2 S.C.R 913, 921 ("The positive commitment of the State parties ignites legislative action at home but does not automatically make the covenant an enforceable party of the Corpus juris of India."); Civil Rights Vigilance Comm. v. Union of India, A.I.R 1983 (Kant) 85 at para. 18 ("[T]he government of India's obligations under Gleaneagles Accord and obligations attached to its Membership of United Nations cannot be enforced at the instance of citizens by Courts in India, unless such obligations are made part of the law of this country by means of appropriate legislation.").

¹⁴⁰ Nat'l Human Rights Comm. v. Arunachal Pradesh (1996) (1) S.C.C. 742.

¹⁴¹ "No person shall be deprived of his life or personal liberty except according to procedure established by law." INDIA CONST. art. 21; see CHIMNI, *supra* note 133, at 380.

¹⁴² Ktaer Abbas Habib Al Qutaifi v. Union of India, (1999) (105) C.R.L.J. 919 (Guj. H.C.).

¹⁴³ The Foreigners Act, No. 31 of 1946; The Registration of Foreigners Act, No. 16 of 1939, *codified in* India Code (1993), *reprinted in* Appendix, *infra*.

¹⁴⁴ The Foreigners Act, No. 31 of 1946 § 3(1); India Code (1993), v. 1.

¹⁴⁵ The Foreigners Act, No. 31 of 1946 § 3(1); India Code (1993), v. 1.

¹⁴⁶ *Id.* § 3(2)(a)-(b), (d), (e)(ii).

¹⁴⁷ *Id.* § 3(e)(i).

designated authorities at prescribed intervals;¹⁴⁸ (d) to submit to photographing and fingerprinting at designated times by designated authorities,¹⁴⁹ as well as to medical examinations;¹⁵⁰ and (e) to prohibit them from association with persons of a designated description,¹⁵¹ from engaging in designated activities,¹⁵² and from using or possessing designated articles.¹⁵³ The Foreigners (Amendment) Act prescribes the penalties for violating the Foreigners Act.¹⁵⁴ Section 14A provides that any foreigner who enters or stays in India without valid documentation is subject to imprisonment for a term of two to eight years and to a fine of between 10,000 and 50,000 rupees.¹⁵⁵

The Registration of Foreigners Act defines foreigners in the same way as the Foreigners Act, and authorizes the national government to promulgate regulations governing foreigners' activities.¹⁵⁶ For example, the Act empowers the government to require foreigners to (a) report their presence to prescribed authorities at designated intervals;¹⁵⁷ (b) report their movements within India and internationally;¹⁵⁸ and (c) provide proof of identity to authorities and hotel managers.¹⁵⁹ To this day, Tibetans in India remain "foreigners" within the meaning of the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939.¹⁶⁰ As foreigners, Tibetans generally cannot become citizens (with one exception discussed in Part IV(D) below); travel freely, either within India or internationally; own property in their own name; hold government or other public jobs; or qualify for resident rates at most government- funded schools.

Although in earlier years India had "scrupulously respected the principle of *non-refoulement*," and despite the apparent clarity of the law on this point, reports indicate that some Tibetans have indeed been forcibly repatriated to China.¹⁶¹ Part V(A) below describes actual cases where the courts have issued orders of deportation of Tibetans for failure to produce valid and up-to-date registration certificates.

¹⁴⁸ *Id.* § 3(e)(iii).

¹⁴⁹ *Id.* § 3(e)(iv).

¹⁵⁰ *Id.* § 3(e)(v).

¹⁵¹ *Id.* § 3(e)(vi).

¹⁵² *Id.* § 3(e)(vii).

¹⁵³ *Id.* § 3(e)(viii).

¹⁵⁴ Foreigners (Amendment) Act, 2003.

¹⁵⁵ *Id.* § 14A(b).

¹⁵⁶ The Registration of Foreigners Act, No. 16 of 1939; India Code (1993).

¹⁵⁷ *Id.* § 3(1)(a).

¹⁵⁸ *Id.* § 3(1)(b)-(d).

¹⁵⁹ *Id.* § 3(1)(e).

¹⁶⁰ Immigration and Refugee Board of Canada, *India/China: Whether a Tibetan whose birth in India between 1950 and 1987 was not registered with the authorities would be recognized as a citizen; whether the Indian government accepts birth certificates issued by the Tibetan government-in-exile; whether the Indian government issues birth certificates to Tibetans born in India*, February 6, 2006, ZZZ100699.E, (on file with TJC) [hereinafter Refugee Board ZZZ100699.E].

¹⁶¹ CHIMNI, *supra* note 133, at 381; *see* text accompanying notes 368 - 383 *infra*.

C. Documentation

The types of documents issued to Tibetans residing in India and the privileges those documents confer have evolved over time. Since Tibetans first began arriving in 1959, India has issued three types of documents: Registration Certificates; Identity Certificates; and Special Entry Permits. Each serves a distinct purpose. None of the documents provide any right of citizenship, and all of them must be renewed periodically.¹⁶²

1. Registration Certificates (RCs)

Because Tibetans in India are foreigners, they are required to hold a valid Registration Certificate (RC), which signifies that the bearer has registered as a foreigner in India. “RC” is shorthand for registration certificate, *not* refugee certificate. The RC must be renewed every 6 months to five years.¹⁶³ Although an RC does not provide its holder with a legal right to reside in India, a valid RC provides its bearer with an informal status to live in India. In practice, this informal status amounts to the ability to reside in a particular locality of India, typically connected to a Tibetan settlement camp or locale, and to travel domestically, although subject to the requirement of preapproval and registration by local authorities. As explained in Part IV(C)(2) below, Tibetans also need RCs in order to travel internationally. With an RC, albeit subject to the discretion of Indian officials, Tibetans may be issued a document known as an Identity Certificate (IC), which enables them to travel internationally to the few countries that will accept these documents in lieu of a passport, including the United States, Switzerland, and several other states in Europe.

Whether or not RCs enable Tibetans to apply for bank loans, ration cards or driver’s licenses varies from state to state. In Meghalaya, for example, Tibetans are deemed

¹⁶² In 2009, India announced that it would begin issuing “Unique Identification” cards, known as “Aardhaar cards” to each of India’s residents. These Aardhaar cards contain biometric identification information, such as fingerprint data, and are used for a variety of purposes, from verifying that the bearer has access to a particular bank account to the receipt of state aid. In theory, the Aardhaar cards are issued on the basis of the 2011 India census. Tibetans have been encouraged to participate and obtain Aardhaar cards. A high-level CTA official told TJC that, as the CTA understands it, an Aardhaar card does not establish legal residence in India and that Tibetans in India are still required to obtain RCs to remain there legally. Email from Representative Tempa Tsering, Delhi Bureau, CTA, to Yodon Thonden, TJC (Oct. 8, 2010) (on file with TJC); *see also* Andrew Buncombe, *ID cards planned for India’s 1.1 billion*, THE INDEPENDENT (London), Jun. 27, 2009 at 26; Nirmala Ganapathy, *India’s Biometric ID Project Begins*, THE STRAITS TIMES (Singapore), Sep. 30, 2010; S.N.M. Abdi, *Indian Census Inclusion of Tibetans ‘Overdue’*, SOUTH CHINA MORNING POST, May 10, 2010 at 7; *Resident Tibetans to be Included in Indian Census 2011*, BBC MONITORING ASIA PACIFIC, Apr. 24, 2010; *Dalai Lama “Very Happy” to be Included in 2011 Census of India*, PHAYUL, May 8, 2010, available at <http://www.phayul.com/news/article.aspx?id=27252&t=0> (last accessed on June 4, 2016). As this report goes to press, the practical implications of the Unique ID program and 2011 census for Tibetans remain unclear. To the best of TJC’s knowledge and research, Unique IDs neither confer nor create any new status for Tibetans.

¹⁶³ See text accompanying notes 189-191 *infra*.

ineligible for ration cards and driver's licenses,¹⁶⁴ whereas in Maharashtra, Tibetans can get both. In Uttarakhand, Tibetans can get driver's licenses but not in Sikkim.¹⁶⁵ These variations are most pronounced in India's border states where Tibetans live particularly restricted lives. States that border China and Pakistan are considered to be politically sensitive, warranting tighter policies. As such, Tibetans living in Ladakh in the state of Jammu and Kashmir, and in the various official and informal settlements in Arunachal Pradesh, are more restricted.¹⁶⁶ For example, in Arunachal Pradesh, Tibetans cannot obtain cars, driver's licenses, or Aardhaar cards (unique identification cards issued by the Government of India), even if they have RCs.¹⁶⁷ In the tourist haven of Ladakh, while Tibetans can be trekking and tourist guides, and work in hotels and restaurants,¹⁶⁸ they cannot run travel or trekking agencies, own or operate tourist taxis, run internet cafes or manage large hotels, under Article 370 of the Indian constitution, which grants special autonomous status to the state of Jammu and Kashmir.¹⁶⁹ As one woman put it, "We are being kept out of the tourist industry...we cannot grow our own economy as a community....we are talented and educated, but due to the limitations of being refugees we are working under them [Ladakhis]."¹⁷⁰ In Bir, in Himachal Pradesh, Tibetans cannot own a taxi, restaurant or hotel.¹⁷¹

a. Acquisition of RCs

Whether Tibetan refugees in India can acquire RCs depends, in large part, on when they arrived in India. As noted earlier, India first issued RCs en masse in 1959, following the Lhasa Uprising, to the thousands of Tibetans who followed the Dalai Lama into exile. This policy continued until 1979, when India ceased issuing RCs to new arrivals—in theory, because India no longer considered these Tibetans to be "refugees" even in the colloquial sense.¹⁷² As one CTA officer recounted, India's national government issued strict instructions to provincial and local authorities that RCs were not to be issued to newly arriving Tibetans,¹⁷³ for their presence in India technically violates "the law of the land."¹⁷⁴

Despite Indian law and national policy, in practice, during the 1980s and early 1990s,

¹⁶⁴ Interview with Pema Youdon, Tibetan Settlement Officer, Shillong, October 23, 2015.

¹⁶⁵ Interview with Dorjee Tenzin, Staff at Dekyiling settlement, June 4, 2105.

¹⁶⁶ The Indo-Tibet Border Force monitors Tibetans in Ladakh and the Subsidiary Intelligence Bureau monitors Tibetans in Arunachal Pradesh.

¹⁶⁷ Interview with Tibetan businessmen, Bomdila, Arunachal Pradesh, October 2015.

¹⁶⁸ Interview with Tenzin Norbu (President) and Kunsang Topden (VP), Regional Tibetan Youth Congress (RTYC) Ladakh, Oct 14, 2015.

¹⁶⁹ Interview with Tibetan Chief Representative Officer, Choglamsar, Leh, Ladakh, October 2015.

¹⁷⁰ Interview with Karma Norzin Palmo, President of Tibetan Women's Association, Choglamsar, Leh, Ladakh, Oct 15, 2015.

¹⁷¹ Interview with Tenzin Ragba, Chauntra Tibetan Settlement Officer, and Jamyang Gyaltzen, President of Bir Nangchen Settlement, June 26, 2014.

¹⁷² Refugee Board ZZZ100699, *supra* note 160.

¹⁷³ Interview with Karma Rinchen, Sec. Officer, Sec. Dep't, Dharamsala, Oct. 12, 2003.

¹⁷⁴ Refugee Board IND33125.EX, *supra* note 34.

India tended to turn a blind eye to the absorption of new arrivals into existing Tibetan communities and to the issuance of unauthorized RCs.¹⁷⁵ The CTA, with India's tacit acquiescence, would state that the new arrivals were only temporarily in India on pilgrimage and would be returning to Tibet—or, more frequently, that they were born in India to Tibetan parents of the 1959-1979 generation but had not yet registered. The CTA would issue birth certificates to new arrivals to facilitate their ability to acquire RCs from Indian officials.¹⁷⁶

Beginning in the early 1990s, however, the CTA and the Indian Government abandoned the policy of absorbing the new arrivals into the existing Tibetan communities and instead adopted a policy of voluntary repatriation. Without the CTA's help in producing unverified birth certificates, or India's tacit acquiescence in the practice, most new arrivals thereafter found it exceedingly difficult to acquire RCs.¹⁷⁷ They did not have Indian birth certificates and could not obtain them. De facto bribery became virtually the only way to acquire an RC, and few Tibetans could afford to pay the amount required.

In 2003, the CTA and the Indian Government began a program that would allow some Tibetans to enter India via Nepal.¹⁷⁸ Under the program, so-called Special Entry Permits ("SEPs") are issued to Tibetans in Nepal before they depart the Tibetan Reception Center in Kathmandu for India. Tibetans who come to India from Nepal with a valid SEP are granted RCs within two weeks of their crossing the Nepal-India border, and their arrival at the Refugee Reception Center in Dharamsala, Himachal Pradesh,¹⁷⁹ regardless of their age.¹⁸⁰ The SEPs are described in more detail in Part IV(C)(3) below.

In 2003, coincident with the agreement between the CTA and the Indian Government to issue SEPs, a one-time offer was made to provide RCs to unregistered Tibetans, most notably those who had arrived after 1979 when India stopped issuing RCs to new arrivals. Accounts vary as to how successful that initiative was but it clearly did not result in all unregistered Tibetans coming forward, either because of a fear of admitting to being unregistered or because of lack of awareness of this one-time offer.¹⁸¹ It is impossible to state how many Tibetans in India remain unregistered or have RCs that were issued based on inaccurate information and/or bribes, other than that there are still some and they are

¹⁷⁵ RCs and ICs may not be genuine for one of at least two reasons: on the one hand, they may be literal forgeries, that is, manufactured by someone other than authorized Indian officials; on the other, they may be genuine RCs that were issued to or intended for someone other than their bearers. The latter is by far the more common scenario.

¹⁷⁶Oct. 1999 Barnett Memo, *supra* note 54, ¶ 14.

¹⁷⁷ UNHCR response to query from U.S. Dep't of Homeland Sec'y (May 23, 2003).

¹⁷⁸ Kashag Circular, *supra* note 67.

¹⁷⁹ Interview with Tibetan Settlement Officer, Shillong (who was previously posted at the Refugee Reception Center in Dharamsala), October 23, 2015.

¹⁸⁰ Interview at Tibetan Reception Center, Dharamsala, February 3, 2016.

¹⁸¹ Interview with Tsering Phuntsok, head of the Tibetans Settlement Office, Central Tibetan Administration, Dharamsala, May 3, 2009; Interview with Ngodup Donchung, Dep't of Security, Central Tibetan Administration, Dharamsala, May 1, 2009.

very vulnerable.¹⁸² Among those without RCs are Tibetans who came from Tibet at a young age and without birth certificates, then stayed with family and friends in Nepal, before continuing on to India unofficially, without an SEP.¹⁸³ Others include those who entered directly from Tibet. Yet others include Tibetans who fled Nepal after the earthquake in 2015. Although the Central Tibetan Administration attempted to convince the government of India to secure RCs for them, they were unsuccessful.¹⁸⁴

Tibetans who are born in India receive their initial RCs at the age of sixteen.¹⁸⁵ In general, a birth certificate is required to obtain an RC; however, a child who does not have a birth certificate may also show school documents (their Class 10 certificate) or prove his or her identity through police certification.¹⁸⁶ Some Indian officials will accept bribes when a Tibetan is unable to provide a birth certificate.¹⁸⁷ It is reportedly common for Tibetans to acquire an RC based on false information, most typically a representation that the Tibetan was born in India.¹⁸⁸

b. Renewal of RCs

RCs must be renewed annually or semi-annually, depending on the place of issuance.¹⁸⁹ However, effective in April 2012, Tibetans who were born in India or have lived in India for more than twenty years are only required to renew their RC every five years, assuming the holder has lived in the same district for five years.¹⁹⁰ The procedure to become eligible

¹⁸² Interview with Security Kalon (Minister) Ngodup Dongchung, Central Tibetan Administration, Dharamsala, June 1, 2015.

¹⁸³ Interview with Tashi, Camp 10 Leader and Kunsang Tenzin, Radio Free Asia, Doeguling, Mundgod, Karnataka, February 2016.

¹⁸⁴ Interview with Security Kalon Ngodup Dongchung, Dharamsala, June 1, 2015.

¹⁸⁵ Interview with Sonam Tashi, Hunsur Settlement, May 16, 2015. This, however, can be difficult for some children, as many school children turn 16 and are not at the settlement where their parents live, because they are attending high school elsewhere (likely because there is no high school in their settlement). These children need to obtain a RC, but even the Indian authorities cannot agree on where children should go to do this. For example, the FRO in Delhi says children from Delhi must get their RC in the district where the school is located, while that state's FRO says they must get the RC in Delhi where their parents live. Interview with Lekyi Dorjee Tsangla, Majnu-ka-tilla, Delhi, June 15, 2015.

¹⁸⁶ Interview with Sonam Dorjee, Dharamsala, February 3, 2016; interview with knowledgeable source, Lakhanwala, June 5, 2015.

¹⁸⁷ For example, in Lakhanwala, if Tibetans do not have a birth certificate or any of the other required papers, they just go in person to pay a bribe. Interview with knowledgeable sources in Lakhanwala. The custom of demanding and accepting bribes varies from region to region. For example, in Puruwala, the Sakya Tibetan Society handles all of the RC renewals in Puruwala and they enjoy a very good relationship with the local Foreign Registration Office. Bribes are completely unacceptable, evidenced by the Director of the FRO asking the secretary of the Sakya Tibetan Society to report any demands of bribes directly to him. Interview with Phuntsok Kunga, General Secretary of the Sakya Tibetan Society, Puruwala, June 6, 2015.

¹⁸⁸ Interview with knowledgeable course, Dehradun, June 4, 2015.

¹⁸⁹ In Ladakh, for example, RCs must be renewed every 6 months. Interview with Karma Norzin Palmo, Ladakh, October 15, 2015; Interview with President and Vice President of Regional Tibetan Youth Congress (RTYC) Ladakh, October 14, 2015.

¹⁹⁰ Interview with Reception Center Director Norbu Tashi, Dharamsala, June 1, 2015; *India Nod to Extension of RC for 5 years*, Central Tibetan Administration, April 19, 2012, <http://tibet.net/2012/04/india-nod-to->

for a five-year RC renewal varies, depending on the state government.¹⁹¹

Typically, to renew an RC, a Tibetan must provide an application form, his or her valid RC, and a letter of support.¹⁹² The support letter must come from an institution in India affiliated with the applicant—e.g. monasteries, settlement offices, and schools may provide these letters for the monks, settlers, and students that they oversee.

How Tibetans renew their RCs depends on the rules of the different states. There are no clearly defined, national rules regulating RC renewal—some states have specific laws detailing how to renew RCs, while in other states the process is left to the discretion of the local officers.¹⁹³ Often in the border areas, the security forces are in charge of RCs,¹⁹⁴ while other states have a Foreign Registration Office (“FRO”) that is in charge of RC renewals.¹⁹⁵ In many of the settlements there is no problem with getting and renewing RCs and the 5-year renewal period is in effect.¹⁹⁶ In some places, Tibetans must travel some distance to an office to renew their RC.¹⁹⁷ In other states, the Settlement Officer takes all the RCs to the FRO and then brings them back renewed to the refugees.¹⁹⁸ Sometimes Indian officers

extension-of-rc-for-5-years/; Interview with Lekyi Dorjee Tsangla & Majnu-ka-tilla, Delhi, June 10, 2015; Interview with Tibetans in Dirang Tenzin Chodup; Tenzing Nyima, October 19, 2015. As of the writing of this report, this longer renewal period had not been implemented in all regions of India.

¹⁹¹ Interview with Lobsang Dakpa, Tibetan Legal Association, Feb. 2, 2016. Each state is responsible for implementing its own procedure for the five-year extension, which means that extensions are more or less difficult to obtain, depending on the state and its relations with the Tibetans. *India Nod to Extension of RC for 5 years*, Central Tibetan Administration, April 19, 2012, <http://tibet.net/2012/04/india-nod-to-extension-of-rc-for-5-years/>. In Hunsur settlement, one negative aspect of the new five-year renewal policy is that it is no longer possible to renew the RC on behalf of a family member. Now, the applicant must personally appear or the relative pays a “heavy fine.” Interview with Nyima Tsaamchoe, Hunsur Settlement, May 16, 2015.

¹⁹² Interview with Tibetan leaders in Tenzingang, October 20, 2015: Interviews with Tsering Choedon, President of Tibetan Women’s Association; Phuntsok la – President of the Local Assembly; Gendhun Dhargyal – Camp 1 leader; Tenzin Sangay – Camp 2 leader; Sangpo – Camp 4 leader; Kunsang Tendhar – President of Regional Tibetan Youth Congress (RTYC), October 20, 2015.

¹⁹³ Interview with Tenzing Tsering, Tibetan Supreme Court lawyer, February 6, 2016.

¹⁹⁴ For example, in Ladakh, a border settlement, the Indo-Tibetan Border Force is in charge of renewing the RCs. The ITBF officers come to the camps to do the renewals. Interview with President and Vice President of Regional Tibetan Youth Congress (RTYC), Ladakh, October 14, 2015.

¹⁹⁵ Interview with Tenzing Tsering, February 6, 2016.

¹⁹⁶ This is true in settlements including Delhi, Paonta Choelsum, Dirang, and Norgayling. Interviews in settlements, June and October 2015, and February 2016.

¹⁹⁷ For example, in Paonta Choelsum, everyone knows they need to renew their RC on time and renewal is done at the FRO which is 45 minutes away. Interview with knowledgeable sources in settlement, June 5, 2015.

¹⁹⁸ In Orissa, for example, the Settlement Officer takes all the RCs that require renewal to the FRO and then brings them back to the refugees. Interviews in Phuntsokling settlement, Orissa, January 2006. Similarly, in Kollegal, the TSO staff collects and brings all the paperwork to the FRO to get the RCs renewed for residents of the settlement. Interview with Tibetan leaders in Tenzingang5: Tsering Choedon, President of Tibetan Women’s Association; Phuntsok la, President of the Local Assembly; Gendhun Dhargyal, Camp 1 leader; Tenzin Sangay, Camp 2 leader; Sangpo. Camp 4 leader; Kunsang Tendhar – President of Regional Tibetan Youth Congress (RTYC), October 20, 2015.

come to the settlements to renew the RCs there.¹⁹⁹ In some states, the Indian government has an office within the settlement to provide support with RC renewal. In Karnataka, RC renewals can sometimes get delayed for a few months and a bribe is necessary to speed up the process.²⁰⁰ Kangra district in the northern state of Himachal Pradesh reportedly has the strictest policies for RC renewals.²⁰¹ Some places are attempting to modernize and make the process smoother—though these attempts sometimes unintentionally slow things down.²⁰² Overall, the process of renewing one’s RC depends on the particular state and its relationship with the Tibetans.

Tibetans must usually renew their RC in the state in which it was issued. For some Tibetans, such as college students or monks living in monasteries far from their settlements, this is difficult, as it demands time away from their studies and money to travel long distances. Some Tibetans resort to paying bribes to renew their RC without traveling to the home district.²⁰³ It is however possible for Tibetans to request that their state for registration be changed.²⁰⁴

c. Renewal of RCs after their expiration

There is no clear or standard procedure to follow once an RC has expired (i.e. has not been renewed by the required date).²⁰⁵ In some Indian states, Tibetans attempting to renew an expired RC are able to do so fairly easily.²⁰⁶ In other places, however, late renewal of an

¹⁹⁹ For example, all Tibetans in Tenzingang have RCs, in part, because the Intelligence Bureau officers often come to the settlement to renew the RCs for the Tibetans. Interview with Tibetan leaders in Tenzingang: Tsering Choedon – President of Tibetan Women’s Association; Phuntsok la – President of the Local Assembly; Gendhun Dhargyal – Camp 1 leader; Tenzin Sangay – Camp 2 leader; Sangpo – Camp 4 leader; Kunsang Tendhar – President of Regional Tibetan Youth Congress (RTYC) October 20, 2015.

²⁰⁰ Interview with Lobsang Dakpa, Tibetan Legal Association, Feb. 2, 2016.

²⁰¹ Interview with Security Kalon Ngodup Dongchung, Dharamsala, June 1, 2015

²⁰² In Dharamsala, the process has modernized, and the paperwork now must be filled out online. The Welfare office of Tibet will fill out the form on behalf of people who don’t have Internet. Only 25 RCs are renewed per day, which can considerably slow down the process for renewal. For example, if a Tibetan’s RC is due to expire in a day, it is not possible to just to the office and renew it immediately. Rather, the online form must be completed and then the holder must await his or her turn, which may be 6 or 7 days. Interview with Lobsang Dakpa, Tibetan Legal Association, February 2, 2016.

²⁰³ Interview with knowledgeable source, Lakanwala, June 5, 2015.

²⁰⁴ Interview with Geshe Jangchub Choden, Abbot of Ganden Sharte Monastery, Doeguling settlement, Mundgod, Karnataka, India, February 2016.

²⁰⁵ Interview with Tenzin Namgyal, legal consultant for CTA, Dharamsala, February 1, 2016.

²⁰⁶ For example, in Norgyeling settlement, Bhandara, Maharashtra district, late renewal typically does not result in negative consequences. In Tenzingang settlement, Arunchal Pradesh, if people are late to renew their RCs, they go to the Intelligence Bureau office to pay a fine, but this has always been a straightforward process that does not prevent them from renewing their RCs. This reflects the reportedly good relationship between the Tenzingang settlement officers and the IB officers. In Shillong, there is a small financial penalty for late renewal, but no further consequences. *See* Interview with Phuntsok Wangyal, Camp Leader, Camp 1 Norgyeling, February 19, 2016; Interview with Tibetan Women’s Association (TWA), February 18, 2016; Interview with Tibetan leaders in Tenzingang: Tsering Choedon, President of Tibetan Women’s Association; Phuntsok la, President of the Local Assembly; Gendhun Dhargyal, Camp 1 leader; Tenzin Sangay, Camp 2 leader; Sangpo, Camp 4 leader; Kunsang Tendhar, President of Regional Tibetan Youth Congress (RTYC),

RC can result in large fines²⁰⁷ or necessitate the paying of bribes²⁰⁸ or even prompt inquiry by Indian officials.²⁰⁹ If the Indian RC renewal officer were to choose not to renew the expired RC, the Tibetan would be left with no other options, making Tibetans very vulnerable to exploitation by local authorities.²¹⁰ Under Indian law, police are permitted to stop someone on the street and ask to see his or her RC—this action does not need to be in conjunction with another crime.²¹¹ If a Tibetan is arrested for not having a current RC, he or she could be imprisoned for months or even years, fined, and ordered deported.²¹² The RC itself states that if permission to renew the RC is not obtained, the holder is:

liable for prosecution for a contravention of the Foreigners Act, 1946 punishable with imprisonment for a period of five years with fine and will also be liable to expulsion from India.²¹³

Between 2013 and 2016, there have been several instances of Tibetans being charged with non-renewal of RCs.²¹⁴ Actual case files are described in detail in Part V(A) below.

d. Renewal of expired RCs when overseas

Another problem with renewing an RC after it has expired occurs when the holder is traveling overseas at the time. Before traveling outside of India, Tibetans must relinquish their RC to the Indian authorities in order to secure an exit permit.²¹⁵ There is no mechanism through which to renew an RC while overseas.²¹⁶ This can have serious effects; for example, one Tibetan student who was studying at American University in Washington

October 20, 2015; Interview with Tenzin Chodup and Tenzing Nyima, Dirang, October 19, 2015; Interview with Tibetan Settlement Officer in Shillong, October 23, 2015.

²⁰⁷ In Delhi, late renewals result in fines of 30,000 rupees per month which must be paid in dollars. Interview with Lekyi Dorjee Tsangla, TSO, Majnu-ka-tilla, Delhi, June 10, 2015; Interview with Tempa Tsering, Tibet Bureau, Delhi, June 9, 2015 who reported that he has tried to intervene with the authorities in Delhi who impose heavy fines for late renewal even when the delay is caused by a hospitalization.

²⁰⁸ In Lakhawala, Himachal Pradesh, if a refugee has an expired RC, he or she must pay a fine of 30 US dollars and also pay a bribe to get an extension. Being late by one or two days is usually not an issue, but being late by a week or more results in a fine. Interview with knowledgeable source, Lakhawala, June 5, 2015

²⁰⁹ In Dehradun, late renewal may prompt inquiry by Indian authorities. Interview with knowledgeable source, Dekyiling Settlement, June 3, 2015. In Dharamsala, as described in Part V (A) *infra*, failure to timely renew has resulted in arrests, detentions, fines and even threatened or actual deportation. A case that came to the attention of the Tibetan Legal Association is instructive. A Tibetan woman who was born in India in 1972 went to live in Nepal and her RC expired while she was there. After the earthquake in Nepal, she returned to India and is now afraid to attempt to renew her RC because of the uncertainty of the reaction of the Indian authorities. As a result, she is attempting to secure a new RC by paying a bribe and using forged documents. Correspondence with member of TLA dated May 25, 2016, on file with TJC.

²¹⁰ Interview with Tenzin Namgyal, legal consultant for CTA, Dharamsala, February 1, 2016.

²¹¹ *Id.*

²¹² *Id.*; see text accompanying notes 368-383 *infra*.

²¹³ See p. 6 of Registration Certificate, reprinted in Appendix, *supra*.

²¹⁴ See text accompanying notes 368-383 *infra*.

²¹⁵ Interview with Security Kalon Ngodup Dongchung, Dharamsala, June 1, 2015. Upon return to India, the RC will be returned assuming the travel documents (Identity Card and visa) are up to date. *Id.*

²¹⁶ Interview with knowledgeable source, Dekyiling Settlement, June 3, 2015.

D.C., was unable to renew his RC from abroad, so instead had to return to India to do this, which took him away from his studies for a period of time.²¹⁷

There are conflicting reports as to the ramifications of the RC having expired before the Tibetan returns to India. By some accounts, that person legally cannot get an RC upon his return, even if the holder has a current Identity Certificate and a visa to return to India.²¹⁸ Some Tibetans reported that they were able to re-enter the country without incident,²¹⁹ while others reported that they solved the issue with the payment of a bribe.²²⁰ Thus, it appears that whether an RC can be renewed under these circumstances is a discretionary decision.²²¹

e. Consequences of not having an RC

Although there is no accurate record of how many Tibetans are living in India without an RC, there are undoubtedly a cohort of unregistered Tibetans, who either entered in the years between 1995 and 2003 when RCs were not being given out to Tibetans by the Government of India, or who entered in 2003 or after outside of the official channels and therefore without an SEP.²²² A Dharamsala Settlement Officer describes meeting many Tibetans who came to the Dharamsala office that could not acquire RCs because they had never been given an SEP and were thus ineligible.²²³ These Tibetans sometimes manage to acquire RCs based on false information, which may or may not cause future problems for them.²²⁴

Tibetans who reside in India without RCs have no legal status; they are ineligible for any benefits; they are vulnerable to harassment by the police,²²⁵ and arrest, detention,

²¹⁷ JOINT MEETING of TLA & TJC, Dharamsala, May 31, 2015.

²¹⁸ Interview with Sikyong Dr Lobsang Sangay, Dharamsala, June 1, 2015.

²¹⁹ Interview with knowledgeable source, Dehradun, June 4, 2015.

²²⁰ Interview with Sonam Dorjee, Tibetan Settlement Officer, Dharamsala, May 31, 2015.

²²¹ Interview with Sikyong Dr Lobsang Sangay, Dharamsala, June 1, 2015.

²²² The Tibetan Settlement Officer for Dharamsala reported that approximately 1,000 Tibetans who entered India between 1998 and 2003 still do not have RCs. Interview with Sonam Dorjee, TSO, Dharamsala, June 25 & 27, 2014.

²²³ Interview with Sonam Dorjee, Tibetan Settlement Officer, Dharamsala, February 3, 2016.

²²⁴ For example, three Tibetans in Mundgod were reportedly accused of fraud when they attempted to correct information on their RCs when they were renewing their RCs. Interview with Supreme Court lawyer, Tenzing Tsering, Delhi, February 6, 2016. One Tibetan official noted that many RCs are based on false documents. She noted that unless someone files a complaint against them, which is very unlikely, the authorities accept the false documents as genuine. She notes that it is a very common practice to lie about being born in India to get an RC. Interview with knowledgeable source, Dehradun, June 4, 2015. Many children who came from Tibet reportedly obtained RCs by pretending to have been born in India. Interview with Sonam Dorjee, TSO, Dharamsala, May 31, 2015. A Tibetan settlement officer reported that Tibetans who do not have RCs because they did not enter India through a reception center, typically go to Uttar Pradesh to obtain a false RC. Interview with knowledgeable source, June 2014.

²²⁵ Interviews by TJC with Tibetan refugees; *see also Refugees Charged by Indian Police for Lack of Papers*, TIBET INFORMATION NETWORK, Feb. 4, 1998. A Tibetan settlement officer reported that a Tibetan stopped for not having an RC is less likely to encounter problems with the police if he/she can speak Hindi. Interview with knowledgeable source, June 2014.

extortion, fines and threatened or actual deportation.²²⁶ A stark example of this was the case of an elderly monk from Tibet who was reportedly deported to China in April 2012 for not having an RC. He had arrived in India in 1999 when the Government of India was not issuing RCs.²²⁷ The details of this case and those of others involving Tibetans without valid RCs who have been arrested and ordered deported are described in Part V(A) below.

As a result of their extreme legal vulnerability, Tibetans residing in India without RCs live in a state of fear and insecurity, necessarily keeping a low profile and avoiding contact with the Indian authorities. Tibetans without RCs also find it difficult to secure housing because landlords, guesthouses, and hotels alike tend to require the production of RCs.²²⁸ They are also unable to secure the use of land or housing within the settlements.²²⁹ Many Tibetans without RCs therefore move in with friends or family in what may already be overcrowded accommodations. Tibetans without RCs are also unable to open bank accounts²³⁰ or get bank loans²³¹ and have trouble finding employment because most businesses, including those run by the CTA, make employment conditional on possession of an RC. In some states, Tibetans are able to use their RCs to obtain driver's licenses, which would be more difficult, if not impossible, without a valid RC.²³² Finally, Tibetans without RCs face difficulties obtaining benefits or services that the CTA provides to Tibetans with RCs, including education and medical treatment.²³³

Even those Tibetans who possess RCs have no legal right to renewal of their RCs. Renewal is generally routine, but it remains subject to the discretion of the Indian authorities. Tibetan refugees, thus, do not enjoy a permanent legal status in India. Nor do they have the legal capacity to enforce, in court or elsewhere, the limited "rights" conferred by RCs—which, more accurately, should be described as privileges extended as a matter of executive policy and grace pursuant to the authority vested by the Foreigners Act of 1946 and the Registration of Foreigners Act of 1939. TJC found no evidence to suggest, or reason to believe, that India will change its policies in this regard anytime

²²⁶ See text accompanying notes 368-383 *infra*.

²²⁷ Interview with Sonam Dorjee, Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

²²⁸ See interview with knowledgeable source, Dehradun, June 3, 2015.

²²⁹ Interview with knowledgeable source, Dekyiling Settlement, June 3, 2015; Interview with Tashi, Camp 10 leader, Doeguling Settlement, Mundgod, February 14, 2016.

²³⁰ Interview with Tenzin Tsering, Advocate at the Supreme Court of India, Delhi, October 25, 2015.

²³¹ Interview with Pema Youdon (Settlement Officer) and Yeshe (Admin officer), Shillong, October 23, 2015.

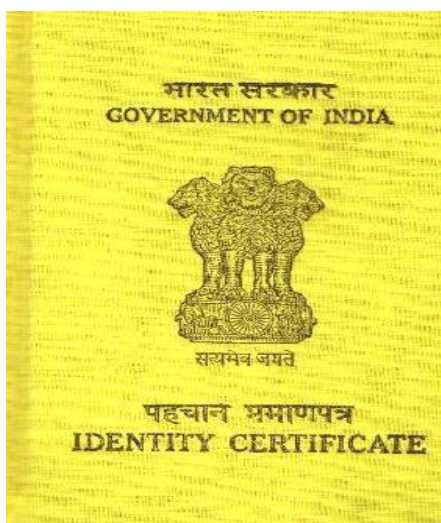
²³² For example, although generally Tibetans have not been allowed to obtain driver's licenses with just their RCs, one Tibetan managed to acquire a license by attaching to his RC a copy of the 2014 Tibetan Rehabilitation Policy along with a supporting letter from the Superintendent of Police and sending to the Department of Transportation. Interview with Pema Youdon (Settlement Officer) and Yeshe (Admin officer), Shillong, October 23, 2015. See text accompanying notes 613-636 *infra* for a discussion of the Tibetan Rehabilitation Policy.

²³³ Kaufman, *supra* note 53, 545-546; Refugee Board, ZZZ100699.E, *supra* note 160. A Green Book is a document issued by the CTA to Tibetans outside of Tibet for the purposes of collecting taxes. Tibetans with Green Books showing up-to-date payments are eligible for a range of CTA services. Tibetans receive their Green Books at age 6. More information about Green Books is available at <http://tibet.net/support-tibet/pay-green-book/>.

in the near future. The point of emphasis is simply that an RC, which essentially confirms the holder's status as a foreigner, is solely a matter of executive policy, not legal mandate. As such, they may be changed at any time if the executive branch sees fit to modify its practices.²³⁴

2. Identity Certificates (ICs): International Travel

Tibetans with RCs are eligible to acquire travel documents known as Identity Certificates (ICs), which allow them to undertake international travel. ICs resemble Indian passports in that the cover is imprinted with the Ashoka pillar, India's national symbol, although the cover is yellow rather than the passport's dark blue.²³⁵



Not all countries accept the IC as valid travel documentation. Even when traveling to

²³⁴ For example, in Ladakh, some people do not have RCs. Previously if a child's father or mother was Tibetan, the child could get an RC; however, since 2013, unless the child can prove that both of his or her parents are Tibetan, the child cannot get an RC. This new policy currently affects six or seven mixed families, in which only one parent is Tibetan. Also affected by this new policy are children who do not have documentation of their father's identity. This affects children whose fathers are unknown and children who are the products of rape (currently 6 children in Ladakh). The Chief Representative Officer of Ladakh is uncertain as to the reason for the change in policy. He posited that there could be a new officer in place who does not have "a good approach," but he is hopeful that the new officer will be educated so that the situation will change and these children can get RCs. Also, in Ladakh, the Chief Representative Officer ("CRO") reported that ex-special frontier forces who left the army dishonorably, unofficially, or who ran away ('defaulted') had their RCs confiscated by the army as punishment. This affects three Tibetans in Ladakh. The CRO believes it will be a challenge to get these people back their documents. Reportedly, he has appealed to the regional HQ about this but thinks that the order to solve this will need to come from the central government. Interview with Chief Representative Officer (CRO) Ladakh – Dhondup Tashi (DT), October 15, 2015.

²³⁵ Canada: Immigration and Refugee Board of Canada, *India: Ability of Tibetan refugees to exit and re-enter India, including the requirements and procedures for Tibetan refugees to obtain and renew an Identity Certificate (IC) and a "No Objection to Return to India" stamp; whether the IC can be renewed from abroad; Visa requirements for Tibetans returning to India*, 12 December 2014, IND105024.E, available at: <http://www.refworld.org/docid/556825a44.html> [last visited June 5, 2016]

countries that do recognize the IC, such as the U.S., Canada, and some European states, Tibetans report being harassed and humiliated by custom officials and airport personnel who are unfamiliar with the document.²³⁶ Nevertheless, the IC is the only way that Tibetans are able to leave India to travel, meet friends and relatives and study in other countries.

a. Acquisition of ICs

Since 2013, Tibetans can apply for an IC online.²³⁷ The supporting documents required to apply for an IC are a recommendation letter from the Bureau of His Holiness the Dalai Lama, a valid RC, proof of date of birth, and proof of address in India.²³⁸ Once the IC application is complete, it is sent to the Passport Office of the Ministry of External Affairs in Delhi and then to the authorities in the applicant's state of residence. There, state officials verify the applicant's identity and check to make sure that the applicant resides at the address stated on the application.²³⁹ The Passport Office of the Ministry of External Affairs is the governmental organ or office that ultimately issues the ICs.²⁴⁰

While the decision to grant an IC is discretionary, TJC has not been informed of arbitrary, outright denials, except when the applicant does not live at the address noted on the application. While denials are infrequent, delays are not.²⁴¹ In the last few years, the process for obtaining ICs has become far more difficult, with delays of two years increasingly commonplace and some taking as long as three years to be processed.²⁴² None

²³⁶ Joint Meeting of TLA & TJC, Dharamsala, India, May 31, 2105; Interview with Sonam Dorjee, Tibetan Settlement Officer, Dharamsala, May 31, 2015.

²³⁷ PASSPORT SEVA, IDENTITY CERTIFICATE, <http://www.passportindia.gov.in/AppOnlineProject/online/procFormIc> (last visited 5/9/2016). Identity Certificates with handwritten entries are no longer valid based on a change in rules issued by the International Civil Aviation Organisation (ICAO) which eliminated all non-machine-readable (handwritten) passports globally as of November 24, 2015. <https://www.tibetsun.com/news/2015/12/01/handwritten-identity-certificate-becomes-invalid-for-travelling>. The online application is reprinted in the Appendix, *infra*.

²³⁸ <http://tibet.net/wp-content/uploads/2013/02/IC-Form-Submission-Instruction1> (last visited May 13, 2016).

²³⁹ *Id.*

²⁴⁰ Unclassified Cable No. 004443 from Am. Embassy in New Delhi to Sec'y of S. D.C. (Apr. 22, 1996) [hereinafter Cable 004443] reprinted in Appendix, *infra*.

²⁴¹ In response to a "Right to Information" request, the Government of India, Ministry of External Affairs, Regional Passport Office reported the following numbers of pending Identity Certificate applications: 698 in 2011; 888 in 2012; 1720 in 2013; and 3980 in 2014. While it is possible that the dramatic increase of pending applications over this four-year period reflects an increase in the number of applications filed, the more likely explanation is that the increase reflects the lengthy delays in processing IC applications which was confirmed by virtually all respondents. (A copy of the March 5, 2015 RTI response is on file with TJC.)

²⁴² Interviews with Tibet Settlement Officer, Shimla and Solan, June 21, 2014; Bir Settlement President, June 2014; Tibetan Center for Human Rights and Democracy, June 25, 2014; President and Vice President of Regional Tibetan Youth Congress (RTYC), Ladakh, October 14, 2105; Dhondup Tashi, Chief Representative Officer (CRO), Ladakh, October 15, 2015; Tenzin Tsering, Advocate at the Supreme Court of India, Delhi, October 25, 2015; Pema Youdon (settlement Officer) and Yeshe (administrative officer), Shillong, October 23, 2105; Tibetan Women's Association (TWA), Norgyeling, February 18, 2016; Tenzin Namgyal, legal consultant for CTA, Dharamsala, February 1, 2016; Penpa, Secretary to settlement officer, Phuntsokling, Orissa, January 25, 2015.

of the government offices that handle the processing of the ICs take responsibility for the delays. In stark contrast, Indian citizens only have to wait between one and four weeks to receive their passports after they apply at the exact same office.²⁴³

Such significant delays – of between 1 and 3 years – in being granted ICs, inevitably causes severe difficulties for Tibetans trying to plan international trips for school or other purposes and opportunities. One respondent told TJC about a gifted Tibetan student who was awarded a scholarship but whose application for an IC took so long that the scholarship was put at risk.²⁴⁴ In another case, a Tibetan high school student with high marks was offered a scholarship to the renowned Pestalozzi school in the U.K.; however, she was unable to acquire an IC in time to enroll and lost the opportunity.²⁴⁵

Some respondents raised the issue of Tibetans sometimes being charged de facto bribes in order to obtain an IC,²⁴⁶ although with the new online procedure, that may no longer be the case.

There are conflicting reports about the ease with which one can obtain an IC based on false documents, such as a falsely obtained RC and birth certificate. One Tibetan official noted that many people have ICs based on false documents, but unless someone files a complaint against them—which is very unlikely—the authorities accept them as genuine. She noted that it is common practice to lie about being born in India in order to get a birth certificate, an RC and then an IC.²⁴⁷ Another Tibetan official reported that phony “one-time only” Identity Certificates can be obtained at the airport through bribery.²⁴⁸

For an IC to be operational, a number of other official approvals and documents need to be sought and obtained:

Exit Permit

Tibetans traveling overseas must relinquish their RCs to the Indian authorities and then secure an exit permit from the local Foreign Registration Office. The exit permit is written both on a letter bearing the FRO letterhead and also directly into the RC.²⁴⁹ Exit permits can be difficult to obtain and many applicants complained of having to pay bribes to

²⁴³Interview with Tenzin Namgyal, legal consultant for CTA, Dharamsala, February 1, 2016.

²⁴⁴ Interview with Tibet Settlement Officer, Shimla and Solan, June 21, 2014.

²⁴⁵Interview with Karma Norzin Palmo (‘Norzin’), teacher at a private school in Shey, and President of the Tibetan Woman’s Association, October 15, 2015.

²⁴⁶ Interview with TYC, Leh, Ladakh, October 2015 (bribes of 3000 Indian rupees); Refugee Board IND33125, *supra* note 34; email from Ted Albers of INS HQRIC to John Shandorf at INS ZNY (Jan. 29, 1998) (on file with TJC).

²⁴⁷Interview with knowledgeable source, June 4, 2015.

²⁴⁸ Interview with knowledgeable source, Bir, June 26, 2014. After these fake ICs are used, they are reportedly returned and re-used. Interviews with attorneys for Tibetan asylum petitioners, 2014, 2015. Apparently, some of these forgeries are used in connection with human trafficking. Interview with Minister of Security, Ngodup Dongchung, Dharamsala, June 25, 2014.

²⁴⁹ Interview with knowledgeable source, Dehradun, June 3, 2015.

acquire them.²⁵⁰ But once obtained, Tibetans are able to use their IC and their exit permit to exit India.

NORI stamp

For a Tibetan to gain reentry into India, the IC must be stamped with a “No Objection to Return to India” or NORI stamp. In order to receive a NORI stamp, which must be obtained before departure, the Ministry of External Affairs and the state government’s Department of Home Affairs must issue clearances.²⁵¹ Indian authorities occasionally decline to issue NORI stamps on ICs, particularly if an applicant is known to have been involved in political activities.²⁵²

Return visa

In addition to having a NORI stamp, Tibetans traveling internationally with an IC must obtain a return visa at the Indian embassy or consulate in the country they are visiting before returning to India.²⁵³ While there is no guarantee that the Indian embassy or consulate will issue such a visa, TJC has heard of very few arbitrary denials and demands for bribes.²⁵⁴

b. Renewal of ICs

ICs are valid for ten years and may be renewed,²⁵⁵ although respondents say that renewal can sometimes take longer than the initial application process, which is on average two years.²⁵⁶ The IC cannot be renewed from abroad, which means that Tibetans must return to India to renew their ICs.²⁵⁷ Indian missions will not renew an IC abroad, apart from two exceptional categories.²⁵⁸ The two categories are staff members of Offices of Tibet (essentially the CTA’s network of “embassies” overseas) and students studying abroad. These exceptions came about as a result of sustained efforts by the CTA.²⁵⁹ Despite attempts to enlarge these categories, no other exceptions are recognized.²⁶⁰

²⁵⁰ JOINT MEETING of TLA & TJC, May 31, 2015, Dharamsala, India; Interview with knowledgeable source, Lakhanwala, June 5, 2015.

²⁵¹ PASSPORT SEVA, IDENTITY CERTIFICATE, <http://www.passportindia.gov.in/AppOnlineProject/online/identityCertificate>

²⁵² Cable 004443, *supra* note 240; Email from Ted Albers, INS HQRIC, to John Shandorf, INS ZNY (Jan. 29, 1998) (on file with TJC).

²⁵³ Interview with Tempa Tsering – Tibet Bureau, Delhi, June 9, 2015.

²⁵⁴ Interview with knowledgeable source, Lakhanwala, June 5, 2015.

²⁵⁵ Bureau of His Holiness the Dalai Lama, Identity Certificate (IC) Information, <http://tibetbureau.in/identity-certificate-ic-information/7/> (last visited March 11, 2016).

²⁵⁶ Interview with Karma Norzin Palmo, President of Tibetan Women’s Association, Choglamsar, Leh, Ladakh, Oct 2015; Interview with CRO Ladkakh, Choglamsar, Leh, Ladakh, Oct 2015.

²⁵⁷ Interview with Tempa Tsering, Tibet Bureau, Delhi, June 9, 2015.

²⁵⁸ *Id.* The Second Secretary of the Indian Embassy in Rome stated in an email to a Tibetan lawyer in India that the “embassy cannot re-issue your IC on expiry of final validity. You can return to India and apply for fresh IC at RPO, New Delhi.” Email dated November 24, 2011 on file with TJC.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

c. Consequences of having an expired IC overseas

An indication of the consequences of the IC expiring while abroad is evident in the declaration that all applicants for an IC must sign: “I am aware of the terms and conditions of issue of Identity Certificate and if I do not return to India before final expiry of the validity of the Certificate of Identity, I shall lose my claim to obtain any Indian travel documents and I shall approach the country of any residence for obtaining travel documents on the grounds that I have shifted my residence from India to that country.”²⁶¹

In summary, India is not obliged to accept the return of Tibetans with expired documents,²⁶² nor is there any legal basis for a Tibetan who has lived in India without documentation to return to India from overseas.²⁶³ According to the most senior officials within the Central Tibetan Administration, Tibetans attempting to return to India without a current IC will not be allowed into India.²⁶⁴

3. Special Entry Permits

Special Entry Permits (SEPs) represent a joint initiative of the Indian government and the CTA, which began in 2003, and regulate Tibetans entering India from Nepal. Tibetans obtain SEPs in Nepal before they depart for India from the Tibetan Reception Center in Kathmandu. SEPs ensure Tibetans safe transit from Nepal to India and then enable them to remain in India for a designated period of time after arrival.²⁶⁵

a. Acquisition of SEPs

When a Tibetan refugee arrives at the Nepal Refugee Reception Center, the Tibetan government asks the Indian Embassy in Nepal for the SEP on behalf of the refugee.²⁶⁶ Before a refugee is given an SEP, the Indian embassy verifies the background and identity documents of the refugee provided by the Nepal Reception Center to make sure the information is accurate. The Refugee Reception Center in Dharamsala, India did not know of any instances where a person who had been processed by the refugee Reception Center in Kathmandu, Nepal was not issued an SEP.²⁶⁷ After acquiring an SEP, the Nepal Department of Immigration gives an exit permit to the Tibetan and then he or she is

²⁶¹ PASSPORT SEVA, IDENTITY CERTIFICATE, <http://www.passportindia.gov.in/AppOnlineProject/online/identityCertificate>, last visited May 13 2016.

²⁶²Refugee Board IND33125, *supra* note 34.

²⁶³ U.S. Embassy in New Delhi Response to Request for Information from Sec’y of S. Wash. D.C. (Apr. 1999)

²⁶⁴ Interview with Sikyong Dr. Lobsang Sangay, Dharamsala, June 1, 2015; Security Kalon, Ngodup Dongchung, Dharamsala, June 1, 2015.

²⁶⁵Kashag Circular, *supra* note 67.

²⁶⁶ Interview with Kalon Ngodup Dongchung, Tibetan Reception Center, Dharamsala, February 3, 2016.

²⁶⁷ *Id.*

escorted to India by Refugee Reception Center staff who ensure that the refugees arrive safely in the Tibetan “capital in exile” – Dharamsala, in Himachal Pradesh, India.²⁶⁸

Once at the Refugee Reception Center in Dharamsala, Tibetan staff there liaise with the local FRO office to issue the new arrivals RCs based on their SEPs. This process is reportedly straightforward and must be undertaken within two weeks of the Tibetans entering India.²⁶⁹

b. Change in categories of SEPs

In 2003, India created four SEP designations: (i) “Refugee,” (ii) “Pilgrimage,” (iii) “Education,” and (iv) “Other,”²⁷⁰ all of which had different implications for how long the bearer would be able to stay in India. In 2016, only the “Education” and “Other” designations remain in use, with “Education” being by far the most common designation.²⁷¹

India eliminated the “Refugee” designation in 2005.²⁷² The “Pilgrimage” category was more recently taken out of usage, as it was thought unhelpful – allowing as it did only a very short-term stay, and expiring after three months with a possible extension of up to six months. Many Tibetans with pilgrimage SEPs remained after the expiration of their authorized stay, which rendered them ineligible for RCs, meaning that they were staying in India illegally. Indeed, a memorandum from the Government of India Ministry of Home Affairs stated that Tibetans with pilgrimage SEPs who had overstayed and not regularized their status by June 30, 2012, “will be dealt with under the Foreigners Act 1946 for deportation.”²⁷³ In recognition of this problem, the pilgrimage category was abolished and an agreement was forged between the CTA and the Government of India to provide RCs to the approximately 415 Tibetans who had overstayed on the pilgrimage-based RC. Of the 415, only 300 came forward. The others may have obtained RCs illegally and were afraid to present themselves.²⁷⁴

The “Other” category SEP is only issued by the Indian government in extremely rare cases because, in practice, it applies only to special situations, such as former political prisoners,²⁷⁵ although one respondent said that elderly Tibetans sometimes get this

²⁶⁸ Because getting to India requires a difficult journey across the mountains from Tibet, many refugees are sick when they arrive. *Id.*

²⁶⁹ Interview with Pema Youdon, former staff officer at the Tibetan Refugee Reception Centre, Dharamsala, and current TSO of Shillong, Meghalaya, October 2015.

²⁷⁰ Kashag Circular, *supra* note 67.

²⁷¹ Interview with Norbu Tashi, Reception Center Director, Dharamsala, June 1, 2015.

²⁷² Interview with N. Norbu, Director, Office of Reception Centres, Dharamsala, May 1, 2009; Interview with Ngodup Dongchung, Dep’t of Security, Central Tibetan Admin., Dharamsala, May 1, 2009.

²⁷³No. 25022/05/2010-F. IV (Part I), Government of India, Ministry of Home Affairs, December 15, 2011 (on file with TJC).

²⁷⁴ Interview with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

²⁷⁵ Interview with N. Norbu, Director, Office of Reception Centres, Dharamsala, May 1, 2009; Interview with Ngodup Dongchung, Dep’t of Security, Central Tibetan Admin., Dharamsala, May 1, 2009; *see* Kashag Circular, *supra* note 67.

categorization, as they cannot be termed students under an educational SEP.²⁷⁶ Use of the “Other” category is therefore diplomatically sensitive. Indeed, research suggests that “Other” SEPs may have been issued as few as five or six times to date.²⁷⁷ The Reception Center in Dharamsala said no “Other” SEPs had been issued in several years.²⁷⁸ Both the “Education” and the “Other” SEPs are stamped “long-term stay permit.”

The SEP category for education is now the primary way for Tibetans to enter and remain lawfully in India. Most Tibetans who come to India are individual males (not families) between 18 to 40 years old, leaving the oppressive situation in Tibet and coming to join a monastery or for other educational purposes.²⁷⁹ Refugees who are given education SEPs and are 18 years old or under are sent to high schools, while those above 18, are sent to a special adult-learners school near Dharamsala, called the Tibetan Transit School, which provides education to newly arrived young Tibetans between the age of 18 and 30.²⁸⁰ In order to renew their RCs, Tibetans must be able to produce documentation from an educational institution attesting to their continued enrollment.²⁸¹ The problem confronting many Tibetans is that they have completed their education, which means that they lack a legal basis for retaining and renewing their RCs. As a result, many Tibetans become perennial students, registering for a language class an hour a day, or similar, in order to maintain their residency status in India.²⁸² Refugees who are 35 years old or older are not able to enroll in the different educational institutions in India, so they often instead go to monasteries for monastic education.²⁸³

While the SEP program means that Tibetans must wait slightly longer in Nepal before entering India than they once did,²⁸⁴ it ensures them safe transit and some measure of protection and documentation while they remain in India—provided, of course, that they agree to return voluntarily after the designated period of time. China, of course, does not recognize the legality or legitimacy of the SEP program, and so Tibetans who leave China to visit relatives in India, obtain a Tibetan education for their children, or make a religious pilgrimage will be deemed to have violated Chinese law. Tibetans who travel to Nepal or India without appropriate authorization from China may, and almost always will, be punished and questioned intensively upon their return.²⁸⁵

²⁷⁶ Interview with Security Kalon Ngodup Dongchung, Security Department, Central Tibetan Administration, June 1, 2015.

²⁷⁷ Interview with N. Norbu, Director, Office of Reception Centres, May 1, 2009.

²⁷⁸ Interview with Kalon Ngodup Dongchung, Tibetan Reception Center, Dharamsala, February 3, 2016.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ Interviews with Ministry of Security, June 25, 2014, Tibetan Center for Human Rights & Democracy, June 25, 2014, Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

²⁸² *Id.*

²⁸³ Interview with Kalon Ngodup Dongchung, Tibetan Reception Center, Dharamsala, February 3, 2016.

²⁸⁴ In 2009, the average wait for an SEP was four to five months because the permit office had only two employees and issued only about seventy-five permits per month. Interview with Tsering Dhondup (Dhondup I); Interview with N. Norbu, Director, Office of Reception Centres, Dharamsala, May 1, 2009; Interview with Ngodup Dongchung, Dep’t of Security, Central Tibetan Admin., Dharamsala, May 1, 2009.

²⁸⁵ See text accompanying notes 30, 36-40 *supra*.

It should be noted that while the SEP regularizes entry into India, it does not substitute for an RC, nor does it provide any independent legal status for Tibetans. It is simply a means by which certain Tibetans (most notably those seeking a Tibetan education) can qualify for entry. It does not confer any status to remain permanently in India. To the contrary, the entry is limited to the purpose for which the SEP was granted. An SEP provides no formal or enforceable legal protection for Tibetans in India, especially if they cannot depart within the time period specified; and because Nepal has no comparable permissive-entry policy, Tibetans may be effectively “trapped” in India, subject to the penalty for being there unlawfully.

4. Birth Certificates

Whether or not Tibetans have access to birth certificates, which are required in order to obtain RCs and Identity Certificates, depends in large part on date of birth. In 2003, an instruction from the Kashag clarified that birth certificates would be issued by the Indian government rather than the CTA.²⁸⁶ Thus, Tibetans born after 2003 typically have birth certificates, whereas many Tibetans born before 2003 do not. In the past, most births occurred at home rather than at a hospital, and those births were not officially registered. Today, births typically occur in hospitals and they are automatically registered.²⁸⁷ For older Tibetans, problems regarding birth certificates persist. For those whose births were not registered, a court proceeding must be commenced which involves police interrogations and is reportedly a difficult process.²⁸⁸

D. Citizenship

1. The Formal State of Indian Law

Part II of India’s Constitution defines which persons qualified as Indian citizens on the date of the Constitution’s entry into force – January 26, 1950. According to Article 5, citizens include everyone who (1) at the time, had his or her domicile in India and had either been born in India or had a parent born in India; or (2) ordinarily resided in India in the five years immediately preceding the Constitution’s entry into force.²⁸⁹ The Constitution does not, however, define citizenship or any process for acquiring citizenship subsequent to its entry into force. Rather, Article 11 of the Constitution gives Parliament the general power to regulate citizenship and naturalization.²⁹⁰ Parliament exercised this power shortly after the Constitution’s entry into force by enacting the Citizenship Act of 1955,²⁹¹ which, as amended by the Citizenship

²⁸⁶ Interview with Karma Shargyal, TSO, Kham Kathok Tibetan Society, Sataun, HP, June 6, 2015.

²⁸⁷ Interview with Tsering Wangchuk, CTA Press Officer, Dharamsala, June 24, 2014; Interview with Security Kalon, Ngodup Dongchung, Dharmasla, June 1, 2015.

²⁸⁸ Interview with knowledgeable source, Dehradun, June 3, 2015; *see* Interview with TSO, Shimla and Solan, June 21, 2014.

²⁸⁹ INDIA CONST. art. 5.

²⁹⁰ INDIA CONST. art. 5.

²⁹¹ The Citizenship Act, No. 57 of 1955; INDIA CODE (2003).

(Amendment) Acts of 1986 and 2003,²⁹² specifies how a person may acquire and lose Indian citizenship subsequent to the effective date of the Constitution.

Section 3 of the Citizenship Act as amended, governs citizenship by birth. It provides that every person born in India (a) between January 26, 1950, and July 1, 1987; or (b) on or after July 1, 1987 but before the entry into force of the Citizenship Act of 2003, if one of that person's parents is a citizen of India at the time of his or her birth; or (c) on or after the entry into force of the Citizenship Act of 2003, if both parents are citizens of India, or if one parent is a citizen of India and the other is not an illegal migrant, "shall be a citizen of India by birth."²⁹³

Section 4, as amended, governs citizenship by descent. It provides that every person born outside of India (a) between January 26, 1950, and December 10, 1992, if their father is an Indian citizen at the time of their birth; or (2) on or after December 10, 1992, if either parent is a citizen of India at the time of their birth, shall be a citizen of India.²⁹⁴ But if the person's parent is a citizen of India by descent only, then that person is not entitled to citizenship unless his or her birth had been registered at an Indian consulate or unless either parent had been in government service at the time of the birth. The Citizenship (Amendment) Act of 2003 provides that after its entry into force, a person cannot acquire citizenship by descent unless the birth is registered at an Indian consulate within one year of its occurrence or within one year from the effective date of the Citizenship (Amendment) Act, whichever is later, or with the federal government's permission.²⁹⁵

Section 5 of the Citizenship Act, as amended, provides for citizenship by registration, which is available to (a) persons of Indian origin,²⁹⁶ (b) persons married to citizens of India, (c) minor children of citizens, (d) adult citizens of India, and (e) persons registered as overseas citizens of India for five years who have resided in India for the previous two years.²⁹⁷

Section 6, as amended, provides for citizenship by naturalization. The qualifications for naturalization are set forth in Schedule III. They require that the applicant (a) not be an illegal migrant, which is defined as a foreigner who has entered into India without valid travel documents or has remained beyond the permitted time; (b) denounce the citizenship of any other country; (c) reside in India for the preceding twelve months; (d) have resided in India for nine of the twelve years preceding that twelve month period;

²⁹² Citizenship (Amended) Act, No. 5 of 1986; INDIA CODE (1986). Citizenship (Amended) Act, No. 6 of 2004; INDIA CODE (2003).

²⁹³ INDIA CODE § 3 (2003).

²⁹⁴ INDIA CODE § 4 (2003).

²⁹⁵ The Citizenship (Amendment) Act, No. 6 of 2004; INDIA CODE (2003).

²⁹⁶ "A person shall be deemed to be of Indian origin if he, or either of his parents, was born in undivided India." The Citizenship Act, No. 57 of 1955 § 5; INDIA CODE (2003).

²⁹⁷ The Citizenship Act, No. 57 of 1955 § 5; INDIA CODE (2003).

(e) have good character; (f) speak one language listed in Schedule 8 of the Constitution;²⁹⁸ and (g) intend to reside in India.²⁹⁹

Finally, the Citizenship Rules of 1956, as amended in 1998, establish further requirements applicable to the registration and naturalization process. Applicants must attach affidavits from “two respectable Indian citizens testifying to the character of the applicant;” supply certificates attesting to the applicant’s language proficiency; and take an oath of allegiance to India.³⁰⁰

2. Application in Practice to Tibetans

The provisions of §§3 and 6 of the Citizenship Act of 1955 appear to offer at least a subset of the population of Tibetans in India access to citizenship. Taking §3 at face value, a substantial number of Tibetans in India are de jure citizens of India. In reality, it has proved virtually impossible for these Tibetans to acquire passports to prove their status as citizens, and thus they remain foreigners in India. For the many Tibetans who don’t qualify as citizens under §3, §6 would seem to provide a potential path to lawful naturalization, yet there too, this avenue has been effectively foreclosed to Tibetans.

a. Birthright citizenship

As to citizenship by birth, §3 states that every person born in India between January 26, 1950 (the date on which India’s Constitution entered into force), and July 1, 1987 (one of the dates on which India’s Parliament amended the Citizenship Act), is an Indian citizen. Despite the plain meaning of this provision, India has always treated Tibetans born in India during this period (roughly, that is, the second generation of Tibetans in India who were born to parents who arrived in the years following the Lhasa Uprising), as foreigners subject to the Foreigners Act - not as citizens.³⁰¹

The inability of Tibetans, even those born between 1950 and 1987, to secure citizenship has not changed despite a number of High Court decisions holding that Tibetans born between those years are entitled to citizenship.³⁰² The first of these cases was brought by Ms. Namgyal Dolkar in 2010.³⁰³ In an interview with TJC, Ms. Dolkar explained that she fought for her citizenship because as a foreigner she was denied many opportunities, such

²⁹⁸ The languages include: Assamese, Bengali, Bodo, Dogri, Gujarati, Hindi, Kannada, Kashmiri, Konkani, Maithili, Malayalam, Manipuri, Marathi, Nepali, Oriya, Punjabi, Sanskrit, Santhali, Sindhi, Tamil, Telugu, Urdu. INDIA CONST. Eighth Schedule, at <http://lawmin.nic.in/coi/contents.htm> (last accessed May 13, 2016).

²⁹⁹ The Citizenship Act, No. 57 of 1955 § 6; INDIA CODE (2003).

³⁰⁰ The Citizenship Rules, 1956 § 17(2). See Kaufman, *supra* note 53, 550 n.343.

³⁰¹ In April 1999, an unclassified cable from the U.S. embassy in New Delhi to the Secretary of State stated, “Tibetans born to Tibetan (non-Indian citizen) refugee parents between 1950 and 1986 do not automatically receive citizenship at birth.” Unclassified Cable No. 002730, from the American embassy in New Delhi to the Sec’y of State in Washington D.C., April 1999 (on file with TJC).

³⁰² Namgyal Dolkar v. Ministry of External Affairs, W.P. (C) 12179/2009 (High Court of Delhi) (India), December 22, 2010; Tenzin Choephag Ling Rinpoche v. Union of India, 15437/2013 (High Court of Karnataka) (India) August 7, 2013.

³⁰³ Namgyal Dolkar v. Ministry of External Affairs, *supra* note 302.

as a lectureship in English literature. As a foreigner, she was not eligible to take the exam. When she applied for a passport, she was told that applying for a passport was illegal and she would be put in prison if she persisted. A lawyer acting on her behalf filed a petition in the High Court of Delhi stating that Ms. Dolkar, an ethnic Tibetan born in April 1986, in Kangra, Himachal Pradesh, India, sought an Indian passport and arguing that she qualifies as an Indian citizen by birth under § 3(1)(a).³⁰⁴ On December 22, 2010, the High Court of Delhi issued a decision in *Namgyal Dolkar v. Ministry of External Affairs*.³⁰⁵ The Court ruled that Ms. Dolkar was indeed a citizen under the Constitution of India, which explicitly provides that individuals born in India between January 26, 1950 and July 1, 1987 are citizens of India.³⁰⁶ In other words, the Court held that Tibetans born in India during the prescribed dates, regardless of their parentage, enjoy birthright citizenship comparable to that guaranteed by the Fourteenth Amendment to the U.S. Constitution.³⁰⁷ The High Court ordered the Government of India to pay Ms. Dolkar 5000 rupees within one month, although it took five months for the payment to be made. It took several more months for Ms. Dolkar to actually obtain the passport.

In its decision, the Court observed that, as of July 1, 1987, Parliament deliberately cut off birthright citizenship, but the relevant amendment to the Citizenship Act did not—and, as a matter of Indian constitutional law, could not—apply retrospectively to deprive those born in India before that date and after the Constitution’s adoption on January 26, 1950, of Indian citizenship.³⁰⁸ The Court stated,

[t]he policy decision of the MHA [the Ministry of Home Affairs] not to grant citizenship *by naturalisation* under Section 6(1) [of the Citizenship Act, as amended] is not relevant in the instant case. Having been born in India after 26th January 1950 and before 1st July 1987, the Petitioner is undoubtedly an Indian citizen by birth in terms of Section 3(1)(a) [of the Act.]³⁰⁹

According to the *Times of India*, “[m]ore than 35,000 Tibetans, born between 1956 and

³⁰⁴ According to Roxna Swamy, Namgyal Dolkar’s attorney, the Ministry of External Affairs (MEA) did not act on her client’s application for a passport for more than a year and a half. At that point, she brought a petition in the High Court of Delhi, which ordered the MEA to make a decision, either granting or denying the passport application, within six weeks. The MEA did nothing for another three months. Ms. Swamy then filed a Contempt Petition on Ms. Dolkar’s behalf, and the MEA finally made a decision rejecting the application on the ground that Ms. Dolkar is not an Indian citizen. The MEA also said that the Ministry of Home Affairs (MHA), not the MEA, establishes policy in this regard and therefore should be the proper respondent. After more than a half dozen adjournments at the request of the Solicitor General, the High Court of Delhi refused to grant any further adjournments and issued a decision in Ms. Dolkar’s favor. Interview with Roxna Swamy, Delhi, June 6, 2011.

³⁰⁵ *Namgyal Dolkar v. Ministry of External Affairs*, *supra* note 302.

³⁰⁶ *Id.*

³⁰⁷ U.S. CONST. amend. XIV, § 1.

³⁰⁸ *Namgyal Dolkar v. Ministry of External Affairs*, *supra* note 302.

³⁰⁹ *Id.* (emphasis added).

1987, could benefit from [this decision].”³¹⁰

According to Roxna Swamy, Ms. Dolkar’s attorney, the judgment technically applies only within Delhi.³¹¹ However, the High Court of Delhi is a respected and significant court, meaning that other High Courts beyond the jurisdiction of the Delhi High Court should find the judgment persuasive (even though it is not technically binding).³¹²

Indeed, the Karnataka High Court did just that when it granted citizenship to Tenzin Choephag Ling Rinpoche who was born in Dharamsala in 1985. He was denied a passport by the Regional Passport Office, which had consulted the Ministry of Home Affairs before issuing its denial. The Ministry's position was that Tibetans are not eligible for citizenship pursuant to Section 3 of the Citizenship Act despite the fact that they were born in India between 1950 and 1987. In August 2013, in *Tenzin Choephag Ling Rinpoche v. Union of India*, the Karnataka High Court ruled in accord with the Dolkar case, holding that anyone born in India between the January 26, 1950 and July 1, 1987 are citizens pursuant to the Citizenship Act.³¹³

At least two additional Delhi High Court decisions have been rendered directing the Government of India to issue passports to Tibetans entitled to birthright citizenship.³¹⁴ As in the previous High Court cases, government officials steadfastly refused to grant passports to Tibetans born within the designated years until directly ordered to do so by the High Court.³¹⁵

Despite these High Court decisions, the policy of the Government of India has not changed. Regardless of the year of their birth, Tibetans are considered ineligible for citizenship as a

³¹⁰ *HC Order May Benefit Over 35,000 Tibetans*, TIMES OF INDIA, Jan. 21, 2011.

³¹¹ Interview with Roxna Swamy, Delhi, June 6, 2011. Ms. Swamy expressed the view that because Delhi is the seat of the Ministry of Home Affairs, the judgment should bind the Ministry wherever it acts. *Id.* However, as described in the text, this has not been the case.

³¹² Namgyal Dolkar’s attorney, Roxna Swamy, told TJC that she does not think there is a sound basis for either a successful appeal or a contrary decision by a court elsewhere in India, viz., one that is not formally bound by the High Court of Delhi’s judgment. On the other hand, she said that she knows that the decision has generated anger in certain government circles and, in particular, among lower-level officials of the MEA and MHA, some of who, she explained, had (prior to the decision) routinely threatened Tibetans with deportation or long-term detention to extort “fines.” Interview with Roxna Swamy, Delhi, June 6, 2011.

³¹³ *Tenzin Choephag Ling Rinpoche v. Union of India*, 15437/2013 (High Court of Karnataka) (India) August 7, 2013.

³¹⁴ *Phuntsok Topden v. Union of India*, W.P.(C) 1890/2013 and *Tenzin Jigme v. Union of India*, W.P.(C) 6137/2014.

³¹⁵ IRB – Immigration and Refugee Board of Canada: India: Citizenship recognition, including voting rights, for children of Tibetan refugees born in India in the context of the December 2010 and December 2014 Delhi High Court rulings; August 2013 Karnataka High Court ruling; and children born to one Tibetan and one Indian parent; whether citizenship rights have become procedural or if they require legal action [IND 105.133.E] 30 April 2015, available at http://www.ecoi.net/local_link/303896/426979_en.html (last visited May 15, 2016).

matter of national policy. In fact, Namgyal Dolkar, the named plaintiff in the Delhi High Court case, reports that she regularly receives calls from Tibetans all over India who were born in India between 1950 and 1987 yet have been unable to secure passports. They report that when they apply for a passport, they are ignored or denied even though they have the proper documents, particularly a birth certificate proving their age and place of birth.³¹⁶

The continued refusal of the Government of India to treat Tibetans born between 1950 and 1987 as citizens was recently challenged in what could turn out to be a landmark case filed on May 13, 2016 – landmark because it directly challenges the Government of India’s policy. The case was brought by Lobsang Wangyal who was born in India in 1970 and thus is eligible for birthright citizenship under the Citizenship Act. Despite that, his application for a passport was denied because he is of Tibetan descent. His lawyer was quoted as saying “We find the Central government and the regional passport officers are not implementing the [Dolkar] decision in letter and spirit.”³¹⁷

Thus, despite the Delhi and Karnataka High Court decisions, the on-the-ground reality for Tibetans seeking birthright citizenship has not changed. Tibetans born between the designated years are still routinely denied passports³¹⁸ and it appears that the only way to enforce the provisions of the Citizenship Act is to hire a lawyer (for roughly 100,000 rupees) to contest the denial in High Court. This is not a realistic option for the vast majority of Tibetans.

Even if the Government of India were to change its policy and direct the regional offices to issue passports to Tibetans born within India between January 26, 1950 and July 1, 1987, citizenship would still be unavailable for all other Tibetan refugees – those who were born in Tibet and those who were born in India after July 1, 1987 (unless both parents were Indian citizens). And, as to those Tibetans born between the designated years, they would still have to establish their date of birth, typically, by producing a birth certificate. That could become an obstacle because not all Tibetans born in India have

³¹⁶ Interview with Namgyal Dolkar, Dharamsala, June 24, 2014. One such case involved a young woman from Dehradun who applied for a passport. The passport office sent her case to the Foreigner Registration Office who then went to her house and questioned her for a whole day. She withdrew her application. *Id.*

³¹⁷ *PIL filed in Delhi High Court seeks Indian passport for Tibetans*, TIBET SUN, May 13, 2016, <http://www.tibet.sun.com/news/2016/05/13/pil-filed-in-delhi-high-court-seeks-indian-passport-for-tibetans> (last visited May 14, 2016).

³¹⁸ Interview with Karma Dhargyal, TSO, Kham Kathok Tibetan Society, Sataun, June 6, 2015; Interview with Namgyal Dolkar, Dharamsala, June 24, 2014. When one man tried to gain an Indian passport, the passport officer told him, “You’re Tibetan, you don’t deserve citizenship!” After trying and failing again, the man eventually gave up. Interview with knowledgeable source, Dehradun, June 3, 2015. More than ten people reportedly applied for passports in Bangalore in 2015, but no one has been successful in acquiring one. Joint Meeting of TLA & TJC, Dharamsala, May 31, 2015; Interview with knowledgeable source, Dehradun, June 4, 2015. A woman in Doeguling, Mundgod told TJC that when she applied for an Indian passport, she was told by authorities “now you must file a case,” suggesting that was the next step in the procedure. She said she was not the only person from Doeguling who had this response, and noted that most people do not want to pursue a legal case because it is too time-consuming and expensive, and “creates a big scene.” Interview with TWA and TYC Presidents, Doeguling, Mundgod, Karnataka, February 2016.

valid Indian birth certificates.³¹⁹

b. Naturalization

As for citizenship by naturalization, the text of the Citizenship Act, as amended, suggests that Tibetans who have resided in India for ten years should be eligible for citizenship under §6 of the Act. But, among other problematic criteria for Tibetans, §6 requires that the applicant not be from a country that denies citizenship to Indians. In theory, China's Nationality Law satisfies this criterion, for it provides generally that foreign nationals "who are willing to abide by China's Constitution and laws" may be naturalized if they are close relatives of Chinese nationals, have settled in China, or have other "legitimate" reasons.³²⁰ But it is not clear that most Tibetans in India are Chinese "nationals;" they are more accurately described as stateless persons.

At any rate, citizenship by naturalization has not, in practice, ever been a realistic option for Tibetans. The U.S. Department of Citizenship and Immigration Services,³²¹ UNHCR,³²² and the Immigration and Refugee Board of Canada,³²³ uniformly confirm that Tibetans cannot become citizens in this way despite their apparent eligibility under §6 of the Citizenship Act, as amended. Ms. Swamy, Namgyal Dolkar's attorney, confirmed this, observing that the Indian Ministry of Home Affairs denies these applications as a matter of central government policy.³²⁴ To date, no one has challenged this practice in court—at least not to the best of TJC's research—and it is unclear whether §6 is susceptible to challenge.

c. Other considerations regarding citizenship

Pursuant to longstanding executive policy of India's national government, for a Tibetan to acquire an Indian passport, he or she must obtain and submit a "no objection" certificate from the CTA, as the custodian and representative of Tibetans in exile.³²⁵ The CTA's

³¹⁹ For about a decade after 1979, it had been a relatively common practice, and one in which the Indian government tacitly acquiesced, for new arrivals to acquire RCs by obtaining birth certificates that purported to show their birth to Tibetan parents who had arrived in India between 1959 and 1979, thus enabling them to claim to be entitled to an RC. *See* text accompanying notes 55 - 56 *supra*. This former policy and practice might open the door for the executive branch to routinely challenge the validity and authenticity of birth certificates purportedly issued within the period covered by the High Court's judgment.

³²⁰ Nationality Law art. 7 (promulgated by Standing Comm. Nat'l People's Cong., Sept. 10, 1980, effective Sept. 10, 1980) (P.R.C.).

³²¹ U.S. Bureau of Citizenship and Immigration Serv., *India: Information on Tibetan Refugees and Settlements* (May 30, 2003), IND03002.ZNY available at <http://www.refworld.org/docid/3f51f90821.html> (last visited June 5, 2016).

³²² Response of UNHCR to query from U.S. Citizenship & Immigration Serv. (May 23, 2003).

³²³ Refugee Board ZZZ100699.E, *supra* note 160; Immigration & Refugee Board of Canada, Response to Information Request IND42508.E (Mar. 26, 2004), available at <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=424802> (last visited on June 5, 2016); Refugee Board IND33125, *supra* note 34.

³²⁴ Interview with Roxna Swamy, Delhi, June 6, 2011.

³²⁵ Interview with Security Kalon Ngodup Donchung, Dharamsala, June 1, 2015.

official position is that it will not withhold its approval if a Tibetan wishes to pursue Indian citizenship.³²⁶ But many Tibetans, both within the CTA and throughout the Tibetan settlements in India, have taken the position that Tibetans in India should remain refugees.³²⁷ All Tibetans, in this view, should eventually be able to return to a genuinely independent, or autonomous, Tibet. Accordingly, they should not relinquish their national identity and loyalties as Tibetans in the interim.³²⁸ This is often articulated as not giving up being “refugees” in India, meaning that Tibetans should remain in an uncertain legal state in India, thus indicating the unresolved nature of their situation and exile, and the need for the international community to address it. This lack of support by the CTA for Indian citizenship makes some Tibetans hesitant to pursue Indian citizenship.

Furthermore, when Tibetans apply for a passport, they must surrender their RCs and any IC to the Indian government.³²⁹ This is because one cannot be both a registered foreigner and a citizen.³³⁰ Some Tibetans fear that if they give up their Tibetan documents, they may potentially lose access to the benefits reserved for Tibetans.³³¹ A more profound risk is that the Tibetan may not get the passport and then be left without any official identity documents.³³²

³²⁶ Interviews with Ngodup Dongchung, Dep’t of Security, Central Tibetan Admin., Dharamsala, May 1, 2009, and with Tsering Dhondup, (Dhondup II), Deputy, Department of Security, Central Tibetan Admin., Dharamsala, May 1, 2009. Indeed, these two officials pointed out that the Tibetan Charter explicitly allows for dual citizenship and rejected the notion that citizenship in India would be inconsistent with the Tibetan struggle.

³²⁷ Interview with knowledgeable source, Lakhanwala, June 5, 2015; Interview with Gelek Jungney and Sonam Tashi, Hunsur Settlement, May 16, 2015; Interview with Phuntsok Kunga, General Secretary of the Sakya Tibetan Society, Puruwala June 6, 2015; Interview with Camp Leaders, Camp 2 Norgyeling, Bhandara, Maharashtra, February 18, 2016.

³²⁸ Some CTA officials and NGOs viewed citizenship as sending a terrible message to those in Tibet: “it would be a huge source of disappointment for those who continue to suffer” in Tibet. Interview with Thupten Samphel, Sec’y, CTA, Dep’t of Info. & Int’l Rel., Dharamsala, Oct. 7, 2003; *see also* Interview with Tsewang Rigzin, President of the Tibetan Youth Congress, Dharamsala, May 1, 2009; Interview with Security Kalon Ngodup Dongchung, Dharamsala, June 1, 2015; Interview with knowledgeable source, Dharamsala, May 11, 2015; JOINT MEETING of TLA & TJC, Dharamsala, May 31, 2015; Interview with Sonam Dorjee, Tibetan Settlement Officer, Dharamsala, February 3, 2016.

³²⁹ Interview with knowledgeable source, Dharamsala, May 11, 2015; Interview with Namgyal Norzom, Hunsur Settlement, May 17, 2015.

³³⁰ A recent example arose in Bylakuppe where a few people had both a passport and an RC. They obtained the passport by using false documents. The Indian police found out and arrested some; others fled. One man acquired an Indian passport by pretending to be from the Northeast. He was arrested for having both a passport and an RC and was in detention for a week. He chose to surrender his passport, because it was based on false documents. The Government of India seemingly tries to maintain a list of Tibetans with passports. Interview with knowledgeable source, Dehradun, June 4, 2015.

³³¹ Interview with Namgyal Norzom, Hunsur Settlement, May 17, 2015. For example, Tibetan children with Indian passports may no longer be eligible for the scholarships that the CTA currently provides because to apply for these scholarships, one must present his or her RC. Interview with Namgyal Norzom, Hunsur Settlement, May 17, 2015. They may also lose access to jobs that are reserved for Tibetans, such as those in the CTA. Interview with knowledgeable sources, Dharamsala, May 11, 2015; Interview with Namgyal Norzom, Hunsur Settlement, May 17, 2015.

³³² Interview with knowledgeable source, Dharamsala, May 11, 2015; Interview with Namgyal Norzom, Hunsur Settlement, May 17, 2015.

There are reportedly approximately 70 cases of Tibetans having applied for both an Indian passport and an Identity Certificate on the basis of being a foreigner in India.³³³ The Government of India claims that this is an illegal practice; that one cannot have both. Given that the procedures are all computerized, the Government of India knows who has applied for what documents. The CTA has been trying to dissuade the Government of India from treating this behavior as criminal.³³⁴

Occasionally, reports claim that Tibetans can obtain citizenship by paying bribes of about 50,000 Indian rupees (\$736).³³⁵ But most Tibetans lack the financial resources to pay that amount and these claims, in any event, have not been sufficiently substantiated to be deemed credible.³³⁶ In 2011, in Meghalaya, some Tibetans reportedly obtained fake passports through the black market. When a monk was caught with a false passport, the government started to crack down on Tibetans.³³⁷ Some say that this practice was more common before 2009, after which the citizenship application was computerized and the Indian government was able to identify easily people who had both passports and RCs.³³⁸

TJC has also heard anecdotally that some Tibetans in India, especially those based in mountainous regions and the north east, were able to acquire genuine Indian passports in the past by passing themselves off as inhabitants of the Himalayan regions of India (whose ethnic groups share similar languages and culture with Tibetans).³³⁹ However, those Tibetans who obtained Indian passports under false pretenses are at risk. In one case in the city of Shillong, Meghalaya state, respondents reported that Tibetans who possess Indian passports have been experiencing harassment from the Indian police. In 2010, the local government started pressuring the Tibetans to turn in these passports and get RCs instead. Plainclothes police reportedly threatened Tibetan holders of passports at their homes.³⁴⁰ As a result, about 10-15 Tibetans in Shillong surrendered their Indian passports for an RC. Now in order to apply for an Identity Certificate, they must produce a letter from the local Indian authorities proving that they did indeed surrender their Indian passports. The

³³³ Interview with Tempa Tsering, Tibet Bureau, Delhi, June 9, 2015

³³⁴ *Id.* One such case involves a Tibetan woman who was detained in the police station for two nights and then released on bail. She applied for an Indian passport in approximately 2010 but was denied. She then applied for and obtained an Identity Certificate. In 2014, when she was attempting to travel to Switzerland, she was detained at the airport in Bangalore on charges of fraud and misrepresentation, for having applied for both a passport and an Identity Certificate. She filed a case in the Karnataka High Court and received a favorable judgment. Interview with Tsering Choedon, May 2016.

³³⁵ Based on conversion rate on June 24, 2016. <http://www.x-rates.com/calculator/?from=INR&to=USD&amount=50,000>

³³⁶ Interviews by TJC with anonymous refugees (on file with TJC). According to one interview, the rate may have dropped to 30,000 rupees. Interview by the TJC with anonymous refugees, Dharamsala, May 2, 2009 (on file with TJC).

³³⁷ Interview with Sonam Dorjee, Tibetan Settlement Officer, Dharamsala, February 3, 2016.

³³⁸ Interview with Tenzin Tsering, Advocate at the Supreme Court of India, Delhi, October 25, 2015.

³³⁹ Interview with Tenzing Choden Sherpa and her sister, Dharamsala, Himachal Pradesh, February 2, 2016; Interview with Sonam Dorjee, Tibetan Settlement Officer, Dharamsala, February 3, 2016.

³⁴⁰ Interview with Tenzing Choden Sherpa and her sister, Dharamsala, Himachal Pradesh, February 2, 2016.

authorities are apparently refusing to produce such letters, leaving many Tibetans unable to travel outside India – having no Indian passport, or the ability to get an IC.³⁴¹ Despite this localized situation, the practice of Tibetans claiming Indian passports by pretending to be Himalayan Indian citizens does not appear to be particularly widespread. And certainly wherever Tibetans apply for Indian passports as Tibetans, they are roundly rejected.

d. Significance of acquiring citizenship

The significance of citizenship for Tibetan communities in India cannot be overstated, as it would affect many areas of their lives. Some constitutional rights, for example, including the rights to freedom of speech and association, vest in all “citizens” as opposed to all “persons.” Consequently, Tibetan *citizens* of India could bring constitutional challenges to the practice of repressing Tibetan demonstrations. No longer would it be obvious that the Indian government’s policy in this regard can be followed without the risk of violating the constitutional rights of Indian citizens. Also, it would appear that the children of Tibetans granted citizenship would themselves qualify for citizenship under § 3 of the Citizenship Act.³⁴²

Without citizenship, Tibetans may not participate in India’s political processes;³⁴³ hold Indian government jobs and obtain the perquisites that accompany such positions;³⁴⁴ or own property absent approval from the Reserve Bank of India, which is reportedly very difficult to obtain.³⁴⁵ They also do not qualify for most of the seats in post-secondary educational institutions and if they do gain admissions, they pay more for their education.³⁴⁶ Tibetans also may not legally own companies or shares in companies. Although in many states Tibetans with RCs can apply for small business licenses, Tibetans cannot obtain the licenses necessary for running substantial businesses, and in some states they are unable to obtain any kind of business license and so must “rent” them from Indian

³⁴¹ Interview with TSO Pema Youdon, and Yeshe, administrative officer, Shillong, October 23, 2015.

³⁴² The Citizenship Act, No. 57 of 1955 § 5; INDIA CODE (2003).

³⁴³ *Tibetan Refugees in India: Declining Sympathies Diminishing Rights*, ASIA PACIFIC HUMAN RIGHTS NETWORK, available at www.hrhc.net/sahrdc/hrfeatures/HRF183.htm (last visited June 5, 2016).

³⁴⁴ Refugee Board IND33125, *supra* note 34; Interview with Tenzin Tashi, Bylakuppe Settlement, May 19, 2015.

³⁴⁵ According to the Foreign Exchange Management Regulations, 2000, citizens of certain countries, including China, are prohibited from acquiring or transferring immovable property. Notification No. FEMA 21/2000-RB dated May 3, 2000, ¶7. A letter dated June 27, 2014 from the Assistant Manager of the Reserve Bank of India to the CTA makes clear that the prohibition on acquiring and transferring land applies to Tibetans in India. That prohibition does not apply to registered corporate bodies. A copy of the regulations and the June 2014 letter are on file with TJC.

³⁴⁶ For example, one woman obtained an LL.M. in Mysore. She had to pay far more (about 34,000 rupees) in tuition and fees, because she is not an Indian citizen. The fee would have been only about 3,000 rupees. JOINT MEETING of TLA & TJC, Dharamsala, May 31, 2015.

citizens.³⁴⁷ Some professionals are unable to get licenses to practice in India.³⁴⁸ Whether any of these restrictions will be altered as a result of the Tibetan Rehabilitation Policy 2014, discussed in Part VI below, remains to be seen.

3. Voting

As foreigners, Tibetans are ineligible to vote in Indian elections. However, on February 7, 2014, the Election Commission of India issued a directive to the states to enroll Tibetans born between January 26, 1950 and July 1, 1987.³⁴⁹ This directive followed the Karnataka High Court decision described above which held that, pursuant to Section 3 of the Citizenship Act, Tibetans born between 1950 and 1987 are citizens of India. The directive states:

As per Section 3(1)(a) of the Citizenship Act, 1955, the children born to Tibetan Refugees in India shall be treated as Indian citizens based on their birth in India, on or after 26th January, 1950 and before 1st July, 1987. Hence, notwithstanding anything contained in Union Home Ministry letter number 26027/08/1994 -CS-I dated 26th August, 2011 conveyed to all CEOs vide ECI letter dated 27th September, 2011, the Commission clarifies that the EROs concerned should not deny enrolment to the children of Tibetan refugees where they are satisfied that (1) the applicant was born in India, 2) he/she was born on or after 26th January, 1950 but before 1st July, 1987, and 3) he/she is ordinarily resident in the constituency in which the application for enrolment has been made.³⁵⁰

One week after the Indian Election Commission order, the Indian Home Ministry announced that it was challenging the Election Commission's order on the ground that Tibetans are foreign nationals and thus are ineligible to vote. The Home Ministry's decision to challenge the order was reportedly based on "very important strategic and security considerations," most notably the impact of the order on diplomatic ties with China.³⁵¹

As a result of the Election Commission order, 296 Tibetans in the state of Himachal Pradesh alone, which encompasses the Tibetan capital-in-exile Dharamsala, voted in the 2014 election.³⁵² Far fewer Tibetans voted elsewhere.³⁵³ This is, in part, because other

³⁴⁷ BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP'T. OF STATE, 1997 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (1998); Interview with Tenzin Tashi, Bylakuppe Settlement, May 19, 2015; Interview with Tibetan businessmen, Bomdila, Arunachal Pradesh, October 2015.

³⁴⁸ For example, technically, a Tibetan lawyer cannot practice in Indian courts. JOINT MEETING of TLA & TJC, Dharamsala, May 31, 2015.

³⁴⁹ The February 7, 2014 directive is on file with TJC.

³⁵⁰ *Id.*

³⁵¹ *MHA to Challenge Poll Panel Order on Tibetan Votes*, THE ASIAN AGE, March 27, 2014.

³⁵² Letter dated July 15, 2014 from Joint Secretary, Home Department, Himachal Pradesh to the Additional Director general of Police, Shimla, Himachal Pradesh (on file with TJC). 30 Tibetans from Chauntra voted and between 120 and 150 Tibetans in Bir voted. Interview with Tenzin Ragba, Chauntra Tibetan Settlement Officer, and Jamyang Gyaltzen, President of Bir Nangchen Settlement, June 26, 2014.

³⁵³ For example, in Dehradun, officials from the district level initially told local officials that Tibetans could vote. But the Home Department subsequently issued new instructions and the process was halted, so no one

states resisted implementing the Election Commission order, relying on the Home Ministry's pronouncement that the Election Commission lacked the authority to change Indian policy.³⁵⁴

In some areas, the Election Commission order prompted vocal local opposition to Tibetans voting. For example, in Shillong, a local and powerful student union protested the order and opposed treating Tibetans as citizens.³⁵⁵ The President of the Student Union was quoted as saying “We strongly oppose the Election Commission’s directive and we will never allow Tibetans or any doubtful citizens to enroll themselves in the state’s electoral rolls.”³⁵⁶

The Election Commission order was followed by considerable confusion as to whether or not Tibetans must give up their RCs in order to be eligible to vote. Although the order given by the Indian Election Commission did not mention a requirement to relinquish RCs in order to obtain a voting card,³⁵⁷ subsequent governmental communications from the Indian Ministry of Home Affairs made clear that Tibetans with voting cards must relinquish their RCs.³⁵⁸

Although the CTA does not take an official position on whether or not Tibetans should register to vote, the CTA has hinted indirectly that if Tibetans registered to vote, there would be future consequences, such as losing their access to the benefits provided by the Tibetan government to Tibetan refugees.³⁵⁹ For many the cost of registering to vote (e.g., relinquishing RCs³⁶⁰ and losing rights bestowed under the Tibetan Rehabilitation Policy

ultimately obtained a voting card. Interview with Settlement Secretary Dorjee Tenzin, Dehradun, June 4, 2015. No one is known to have applied for a voting card in Paonta Choelsum or in Puruwala or Dekyiling. Interview with knowledgeable source, Paonta Choelsum, June 5, 2015; Interview with Phuntsok Kunga, General Secretary of Sakya Tibetan Society, Puruwala, June 6, 2015; Interview with knowledgeable source, Dekyiling, June 3, 2015. For dramatically conflicting reports about the number of Tibetans who actually voted, see IRB – Immigration and Refugee Board of Canada: India: Citizenship recognition, including voting rights, for children of Tibetan refugees born in India in the context of the December 2010 and December 2014 Delhi High Court rulings; August 2013 Karnataka High Court ruling; and children born to one Tibetan and one Indian parent; whether citizenship rights have become procedural or if they require legal action [IND 105.133.E] 30 April 2015, available at http://www.ecoi.net/local_link/303896/426979_en.html (last visited May 15, 2016).

³⁵⁴ Interview with Tempa Tsering, Personal Representative to His Holiness, June 19, 2014.

³⁵⁵ Interview with Tenzing Choden Sherpa, Dharamsala, February 2, 2016.

³⁵⁶ *Meghalaya groups oppose Tibetan refugees enrolment as voters*, TIBET SUN, April 14, 2014.

³⁵⁷ Interview with knowledgeable source, Lakhanwala, June 5, 2015; Interview with Sikyong Dr Lobsang Sangay, Dharamsala, June 1, 2015.

³⁵⁸ Letter dated July 15, 2014 from Joint Secretary, Home Department, Himachal Pradesh to the Additional Director General of Police, Shimla, Himachal Pradesh (on file with TJC); Interview with Sikyong Lobsang Sangay, Dharamsala, June 1, 2015.

³⁵⁹ Interview with Tibetan leaders in Tenzingang: Tsering Choedon, President of Tibetan Women’s Association; Phuntsok la, President of the Local Assembly; Gendhun Dhargyal, Camp 1 leader; Tenzin Sangay, Camp 2 leader; Sangpo, Camp 4 leader; Kunsang Tendhar, President of Regional Tibetan Youth Congress, October 20, 2015.

³⁶⁰ Interview with Karma Dhargyal, TSO of Kham Kathok Tibetan Society, Sataun, HP, June 6, 2015.

2014³⁶¹ or losing their children's rights to go to CTA schools, etc.), is not worth the benefits gained from voting. Furthermore, since the voting card alone does not constitute proof of Indian citizenship, if Tibetans gave up their RCs, they would be in an exceedingly vulnerable position as they would not have the requisite identity documents that would confer on them the status of either citizen or foreigner. Consequently, many Tibetans chose to retain the RC rather than the voting card because it was too dangerous to be without an RC.³⁶² Tibetans understand that despite the High Court rulings regarding birthright citizenship, the Government of India policy has not changed regarding citizenship. Given that reality, and the fact that some states do not recognize the Election Commission's order, the vast majority of Tibetans in India do not possess voting cards.³⁶³

V. Consequences of status in India

A. Arrests and Deportations

As described above, Tibetans in India are classified as foreigners, not refugees. As foreigners, Tibetans are subject to the Foreigner's Act of 1946 and the Registration of Foreigners Act of 1939 and implementing regulations, which empower the government to regulate and restrict the freedom of movement of Tibetans in India. Most importantly, Section 14 of the Foreigners Act provides that any foreigner who enters or stays in India without valid required documents is subject to imprisonment and fines. Tibetans as foreigners are required to possess a Registration Certificate (RC). Without a valid RC, Tibetans' presence in India is illegal which renders them vulnerable to police harassment, detention, imprisonment, fines, and deportation. The Registration Certificate itself states that overstaying can result in "prosecution for a contravention of the provisions of the Foreigners Act, 1946 punishable with imprisonment for a period of five years with fine and [the holder] will also be liable to expulsion from India."³⁶⁴ Tibetans without valid RCs live in a constant state of fear and insecurity.

One of the major areas of focus of TJC's fact-finding trips to India from 2014 -2016 was to determine whether Tibetans without valid RCs were actually being arrested and/or deported. The research, which included over 115 in-depth interviews with Tibetan

³⁶¹ Joint Meeting of TLA & TJC, Dharamsala, India, May 31, 2015.

³⁶² Interview with Sikyong Lobsang Sangay, Dharamsala, June 1, 2015.

³⁶³ Interview with knowledgeable sources in Paonta Choelsum, June 5, 2015, and Dehradun, June 3, 2015; Interview with Tenzin Tsering, Advocate at the Supreme Court of India, Delhi, October 25, 2015; Interview with Karma Norzin Palmo, teacher at a private school in Shey and President of the Tibetan Woman's Association, October 15, 2015; Interviews with camp leaders Gonpo Dorje and Palden Dorje, Camp 2 Norgyeling, Bhandara, Maharashtra, February 2016; Interview with Gompo Tsering, Hunsur Settlement, February 18, 2016; Interview with Phuntsok Wangyal, Camp Leader, Camp 1, Norgyeling, Bhandara Maharashtra, February 19, 2016; Interview with Pema Youdon (Settlement Officer) and Yeshe (Admin officer), Shillong, October 23, 2015; Interview with Lobsang Tenpa, Nawang Pintso, and Tenzin Chodup, Tibetan business people in Bomdila, Arunachal Pradesh, October 21, 2015.

³⁶⁴ Page 7 of Registration Certificate, *reprinted in Appendix, infra*.

government officials and others and included access to actual court files, confirmed that Tibetans who cannot produce valid, up-to-date RCs are indeed subject to arrest, fines, imprisonment, and actual or threatened deportation. The cases reported here do not include instances of Tibetans who attempt to enter India via the Sino-India border - that is, directly from Tibet rather than via Nepal. Virtually all attempting to do so will be repatriated upon being apprehended, without judicial or administrative process to determine, for example, the likelihood that they might face persecution were they returned to China. The Sino-Indian border remains disputed and technically qualifies as a military zone. India thus suspects that Tibetans entering via this region, despite their ethnicity, may be Chinese agents.³⁶⁵

For reasons of confidentiality and a concern for the security of the parties involved, initials instead of actual names are used in the descriptions of cases and incidents involving arrests, detentions, fines and threatened or actual deportations between 2013 and 2015.³⁶⁶

One such case was *T.D. v. State of Himachal Pradesh* (2013), involving a 27 year-old Tibetan man who was arrested and prosecuted under Section 14A of the Foreigners Act for not renewing his RC in a timely manner. The Magistrate imposed a fine of 5000 rupees³⁶⁷ and imprisonment for a period of six months and directed the Jail Authorities "to deport the convict to his country of origin" upon completion of his term of imprisonment. Shortly before he was to be deported, he secured the assistance of a High Court advocate who filed a petition in the High Court of the State of Himachal Pradesh. The High Court held that the order of deportation was "appropriate and in accordance with the law" but granted a stay to enable the petitioner to renew his RC.³⁶⁸

A second case involving an arrest for failure to renew an RC was *State v. K.N.* (2013). In that case, a Tibetan man was arrested under Section 14 of the Foreigners Act because his RC had expired two years earlier and had not been renewed. K.N. was released on bail and was able to renew his RC thus avoiding a threatened deportation.³⁶⁹

³⁶⁵ Oct. 1999 Barnett Memo, *supra* note 54 at ¶ 26.

³⁶⁶ Before the recent spike in arrests of Tibetans for not having a valid RC, there were sporadic earlier accounts of arrests. Beginning in the 1990s, reports emerged of threats of repatriation of unregistered Tibetans in violation of *non-refoulement*. See October 1999 Barnett Memo, Aff., *supra* note 54, ¶¶ 5 & 31. In 1998, Indian authorities detained a well-known, former political prisoner from Tibet, who had sought asylum, for many months simply because he lacked an RC. Officials then threatened to deport him. Only an international campaign on his behalf prevented deportation. *Id.* at ¶ 30. And, on April 1, 2011, the Tribune News Service from Chandigarh reported that the district police had threatened 300 Tibetans with deportation, after they allegedly overstayed the time limit on their Special Entry Permits. <http://www.tribuneindia.com/2011/20110402/himachal.htm#2> (last visited June 5, 2016).

³⁶⁷ Approximately \$80.

³⁶⁸ *T.D. v. State of Himachal Pradesh* (2013) (on file with TJC). T.D.'s lawyer explained that the order of deportation simply reflected the fact that his client had failed to obey the law by not renewing his RC in a timely manner. As such, "he's treated as a Chinese national." Interview with Dilip Sharma, High Court Advocate, Shimla, June 22, 2014.

³⁶⁹ *State v. K.N.* (2013) (on file with TJC).

A third case involved an 18-year-old high school student who was charged in September 2015 with non-renewal of his RC. The boy's RC had expired 6 months earlier while he was at boarding school in another state. He was arrested when he went to the Foreigner Registration Office for the purpose of renewing his RC. At his first bail application, the magistrate denied bail and observed that the boy was subject to deportation because his stay in India was illegal. His attorney filed a second bail hearing before the Sessions Court in Dharamsala. The Session Judge reprimanded the police for misusing his discretionary power by arresting the boy, granted interim bail for one month, and directed the Foreigner Registration Office to renew his RC.³⁷⁰

Other recent cases involving arrests for non-renewal of the RC include:

- In 2014, K.D., age 19, was charged with theft as well as non-renewal of his RC. Although the judge was poised to deport the Tibetan for failure to renew his RC, the Tibetan's attorney convinced the judge to impose a lesser punishment on the basis that if his client were to be sent back to Tibet he would be killed by Chinese authorities. The man was not deported, but was charged for the theft - the original crime for which he was arrested.³⁷¹
- In March 2015, L.G. was arrested for assault and non-renewal of his RC but he was given a lenient sentence because he suffered from mental illness.³⁷²
- In September 2015, T.K. was arrested for non-renewal of her RC but she was granted bail by the magistrate on the strength of the judgment in *Namgyal Dolkar v. Union of India*, concerning birthright citizenship for Tibetans born in India between 1950 and 1987.³⁷³
- A 9th grade student in Orissa was arrested and sent to jail for failure to renew his RC.³⁷⁴

³⁷⁰Interview with Tenzing Tsering, Tibetan Supreme Court lawyer, February 7, 2016; Interview with Tenzin Namgyal, legal consultant for CTA, February 1, 2016. Tenzin Namgyal served as legal counsel to K.D. during his trial.

³⁷¹ *State of Himachal Pradesh v. K.D.* (2015) (on file with TJC). Interview with Tenzin Namgyal, legal consultant for CTA, Dharamsala, February 1, 2016. According to Tenzin Namgyal, in India, criminal sentences are determined based on the gravity of offense and background of the defender. Mitigating circumstances are taken into account at the sentencing stage. Because the power to deport is given to the administration department - not the judges - the administration department can challenge a court's decision and order deportation. Tenzin Namgyal cites his good rapport with the judges as helping him gain favorable sentences for his client; however, he acknowledges that everything depends on the mood of the officer.

³⁷² *State of Himachal Pradesh v. LG* (2015) (on file with TJC). Interview with Tenzin Namgyal, legal consultant for CTA, Dharamsala, February 1, 2016.

³⁷³ Interview with Tenzing Tsering, Tibetan Supreme Court lawyer, February 7, 2016. As of January 13, 2016, the case was still pending. Correspondence with Tenzin Namgyal, legal consultant for CTA, January 13, 2106.

³⁷⁴ Interview with Penpa, Secretary to Settlement Officer, Phuntsokling settlement, Orissa, January 25, 2016.

Three other cases involved orders of deportations that were reportedly actually carried out.

- In *State v. V.C.* (2012), a Tibetan monk was "found roaming" in the area outside of the Dalai Lama's temple in McLeod Ganj. The monk was between 50 and 60 years of age and infirm. The court papers indicate that "[o]n interception, he was asked to produce the registration certificate on being found to be a Tibetan, but failed to produce the same." He was arrested and ultimately convicted under Section 14 of the Foreigners Act for failure to produce a valid RC. After serving 35 days in jail, he was deported to Tibet. Upon arrival in Tibet, he was reportedly imprisoned in a Chinese jail.³⁷⁵
- In a companion case heard at the same time, a Tibetan from Amdo was also arrested and ordered deported for not having an RC. He was deported alongside the monk and, like the monk, was reportedly imprisoned in a Chinese jail.³⁷⁶
- *In *M. v. State of Himachal Pradesh* (2013), a young Tibetan man was arrested and prosecuted under Section 14 of the Foreigners Act for not having a valid RC. He was fined 1000 rupees and imprisoned for seven months and ordered deported. The facts that led up to his arrest are described by the court as follows:

[The local police] exercising their routine patrol duty...found a Tibetan boy, who, on seeing the police...turned about. He was nabbed on suspicion. He disclosed his identity as [name withheld]. He was asked to produce registration certificate being a Tibetan National, but could not produce same.³⁷⁷

On appeal, the Court concluded that because the defendant could not produce an RC as required by the Foreigners Act, he committed an offense punishable under Section 14 of the Foreigners Act. The Court upheld the order of imprisonment for 224 days and the fine of 1000 rupees and further ordered his immediate deportation. The relevant portion of the court judgment follows:

It has been established that the convict was staying in India

³⁷⁵ *State v. V.C.* (2012) (on file with TJC); Interview with Sonam Dorjee, Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

³⁷⁶ Interview with Sonam Dorjee, Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

³⁷⁷ *M. v. State of Himachal Pradesh* (2013) (on file with TJC).

without valid registration certificate. He on completion of sentence ultimately has to be deported from India. The convict is a young offender with age 23 years. He came to be arrested in the case on [date withheld] and since then is in custody. Keeping in view these facts and circumstances, the convict is sentenced to undergo simple imprisonment for the period undergone i.e. 224 days up till today and to pay a fine of Rs. 1000/- and in case of default of payment of fine, he shall further undergo simple imprisonment for 15 days. A copy of judgment be supplied to the convict free of costs and **be also sent to the Superintendent of Police [district withheld] for making arrangement for immediate deportation of the accused after completion of above sentence.** [emphasis added]³⁷⁸

M. was deported and reportedly imprisoned in a Chinese jail.³⁷⁹ This case is particularly significant because M. was born in India. Despite that, he was ordered deported to Tibet.

The details of how these deportations are carried out are difficult to learn but it appears that the police escort the deportee to an area known as Pooh, in the Kinnaur district of Himachal Pradesh and close to the Tibetan border.³⁸⁰ The deportee is then reportedly handed over to the Indo-Tibetan border police (ITBP) who inform the deportee that if s/he re-crosses the border back into India, s/he will be subject to a "shoot order," which means the police could theoretically shoot the Tibetan on sight. Anecdotally, it may be that some Tibetans are able to avoid the Indo-Tibetan border police and return to India, although in an exceedingly vulnerable position, without valid papers and a deportation notice against them. One reliable source indicated that when deportees arrive in Tibet, the deportee is arrested by Chinese security forces and placed in a Chinese jail,³⁸¹ where there is a high likelihood of torture.³⁸² The length of their detention may well depend upon whether the

³⁷⁸ *Id.*

³⁷⁹ Interview with Tibet Settlement Officer, Dharamsala, June 27, 2014.

³⁸⁰ Interview with Security Kalon, Ngodup Dongchung, Dharamsala, June 1, 2015 who reported that the GOI instruction is to deport from one point only— Pooh.

³⁸¹ Interview with Tibetan Settlement Officer, Dharamsala, June 27, 2014.

³⁸² See text accompanying notes 16 - 27 *supra*. In 2003, 18 Tibetans were deported from Nepal to Tibet. ICT reports that "All of them were subjected to severe maltreatment after being placed in Chinese custody, and spent between three months and a year in jail." DANGEROUS CROSSING: CONDITIONS IMPACTING THE FLIGHT OF TIBETAN REFUGEES, 2004 UPDATE, p. 16, INTERNATIONAL CAMPAIGN FOR TIBET. An International Campaign staff member also confirmed that some of these Tibetans had been tortured. Communication with ICT staff member, June 27, 2016. In 2010, three Tibetans were detained and deported to Tibet by Nepalese forces who handed them over to Chinese authorities. Two of the three were reportedly then imprisoned for 6 months. DANGEROUS CROSSING: CONDITIONS IMPACTING THE FLIGHT OF TIBETAN REFUGEES, 2010 UPDATE, pp 23-24, INTERNATIONAL CAMPAIGN FOR TIBET, https://www.savetibet.org/wp-content/uploads/2013/05/refugees2010_web-1.pdf (last visited June 27, 2016).

deportee was born in Tibet or India. For those born in India, if they have not been politically active, China may be willing to allow them to return to India after a period of detention.³⁸³ Upon return, they face an uneasy and uncertain future because, without documentation or legal status, they remain vulnerable to future arrest, detention, fines and deportation.

The occurrence of arrests and deportations of Tibetans for not having valid RCs seems to be confined to the state of Himachal Pradesh.³⁸⁴ While this does not seem to reflect the state actively targeting Tibetans, the phenomenon nevertheless shows that the vulnerability and fear that Tibetans without valid RCs experience is valid and justified. It is notable that this dynamic is in the state that houses the Dalai Lama, the CTA, most of the Tibetan institutions and NGOs in India, and a sizeable Tibetan population, many of whom were born in Tibet. This vulnerability could be exacerbated if India and China improve relations and political winds change.

B. Travel Restrictions/Freedom of Movement

The Foreigners Act of 1946 and the Registration of Foreigners Act of 1939 restrict freedom of movement.³⁸⁵ The Foreigners Act empowers the government to order foreigners to live in a prescribed place³⁸⁶ and to impose any restrictions on foreigners' movements.³⁸⁷ The Registration of Foreigners Act authorizes the government to require foreigners moving from one place to another within India to report their presence to prescribed authorities at designated intervals³⁸⁸ and to require foreigners traveling internationally to report their movements.³⁸⁹

Pursuant to these laws, Tibetans must register with the local authorities whenever they travel outside their home district for more than 14 days.³⁹⁰ This means registering before they leave their home district, when they arrive at their destination, and when they return.³⁹¹ Tibetans must therefore carry their RCs with them whenever they travel within India.³⁹²

³⁸³ *Id.*

³⁸⁴ TJC has not learned of actual or threatened deportations in other Tibetan settlements, including Shillong, Dirang, Tenzingang, Dekyiling, Delhi, Dehradun, Norgyeling, Ladakh and Mundgod.

³⁸⁵ The Foreigners Act, No. 31 of 1946; India Code (1993), v.1; The Registration of Foreigners Act, No. 16 of 1939; (India Code) 1993.

³⁸⁶ The Foreigners Act, §3(e)(i).

³⁸⁷ The Foreigners Act, §3(e)(ii)

³⁸⁸ Registration of Foreigners Act, §3(1)(b).

³⁸⁹ Registration of Foreigners Act, §3(1)(c).

³⁹⁰ See p. 9 of Registration Certificate, *reprinted in Appendix, infra.*

³⁹¹ Registration of Foreigners Act, §3(1)(b); Interviews with virtually all persons interviewed, including TSO Tenzingang/Bomdila, October 2015; TSO Lakanwala, June 5, 2015; Tsering Choeden, May 2016.

³⁹² U.S. Embassy in New Delhi Response to Request for Information from Sec'y of S. Wash. D.C. (April 1999) (on file with TJC). One respondent reported that some Tibetans are unwilling to travel with their RC, preferring to keep it safe at home, and relying on other forms of identification. Interviews with Tibetans in Himachal Pradesh, June 5, 2015.

Many respondents report that compliance with the registration requirements is quite burdensome. Tibetans who sell sweaters to support themselves travel for their livelihood and complain about the hassles associated with the requirement to register whenever they leave one district for another.³⁹³ Many Tibetans report that they simply ignore the requirements, unless they are traveling outside of the state for long periods of time or for business, or both, e.g. for seasonal business, like selling sweaters.³⁹⁴ Tibetans who fail to comply with the reporting requirements are subject to fines and imprisonment.³⁹⁵ The Ministry of Home Affairs circulated a memorandum dated December 15, 2011 to all state governments and all Foreigner Registration Offices reminding them of the need to enforce these restrictions of Tibetans “meticulously.”³⁹⁶ In practice, it seems that this requirement is not uniformly strictly upheld.

C. Property Ownership and Land Issues

Tibetans, as foreigners, may not directly own real property, absent the Reserve Bank of India’s approval or unless they obtain Indian citizenship.³⁹⁷ Tibetans with valid RCs may apply to the Reserve Bank for permission, but the process is time-consuming and burdensome. The majority of Tibetans in India do not, at any rate, have the money to purchase real property. Even those with sufficient funds often find it more expedient to eschew the formal process of applying to the Reserve Bank of India. For a Tibetan who wishes to purchase property, it is far more common and practicable to pay an Indian citizen, who, in turn, buys the property in his own name with the informal understanding that the Tibetan will use it.³⁹⁸ These are known as *benami* transactions,

³⁹³ Interview with knowledgeable source in Dehradun, June 3, 2015; Interview with Passang, Regional Tibetan Youth Congress President, and Dolma Tsering, President of Tibetan Women’s Association, February 15, 2016.

³⁹⁴ Interview with Phuntsok Kunga, General Secretary of Sakya Tibetan Society, Puruwalla, June 6, 2015; Interview with Tibetan Settlement Office, Kham Kathok Tibetan Society, Sataun, June 6, 2015; Interview with TSO Bomdila/Tenzingang, Arunachal Pradesh, October 2015.

³⁹⁵ Interview with knowledgeable source, Lakhanwala, June 5, 2015; Interview with Tibetan Settlement Officer Lekyi Dorjee Tsangla, Majnu-ka-tilla, Delhi, June 10, 2015.

³⁹⁶ No. 25022/05/2010-F. IV (Part I), Government of India, Ministry of Home Affairs, December 15, 2011 (on file with TJC).

³⁹⁷ BUREAU OF DEMOCRACY, HUMAN RIGHTS & LABOR, U.S. DEP’T. OF STATE, 1997 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (1998); *see also* Foreign Exchange Management Act, No. 42 of 1999; India Code (1999); Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000, § 7 (“No person being a citizen of Pakistan, Bangladesh, Sri Lanka, Afghanistan, China, Iran, Nepal or Bhutan without prior permission of the Reserve Bank shall acquire or transfer immovable property in India, other than lease, not exceeding five years.”). A letter dated June 27, 2014 from the Assistant Manager of the Reserve Bank of India to the CTA makes clear that the prohibition on acquiring and transferring land applies to Tibetans in India. That prohibition does not apply to registered corporate bodies. A copy of the regulations and the June 2014 letter are on file with TJC.

³⁹⁸ *Id.* See also Himachal High Court Issues Notices to Tibetan Government-in-Exile, Nov. 16, 2010, at <http://zeenews.india.com/news668553.html> (last accessed on June 5, 2016).

and are illegal.³⁹⁹ Even if not discovered by the authorities, the transaction is based on trust and good faith and thus offers no legal protection to a Tibetan if the holder of record title asserts his ownership interest. Most of the land where Tibetans live and do business in Dharamsala, the Tibetan “capital-in-exile,” is informally “owned” by them in this manner. The Tibetan transit school on the outskirts of Dharamsala is legally owned by an Indian citizen, who holds the formal title, as is Norbulingka, the center of Tibetan crafts, also near Dharamsala. The other option available to Tibetans who cannot purchase their own land is to rent storefronts from Indian citizens.

In addition to federal laws restricting land ownership by foreigners in the absence of approval from the Reserve Bank, individual states may, and sometimes do, impose their own, further restrictions. Himachal Pradesh, for example, which includes Dharamsala and other regions with major Tibetan populations, prohibits ownership of agricultural land by anyone who is not a citizen of India *and* a lawful resident of Himachal Pradesh.⁴⁰⁰ However, by notice dated February 3, 2015, as a part of its implementation of the Tibetan Rehabilitation Policy, the state of Himachal Pradesh has lifted this restriction for those who obtain permission from the Central Tibetan Relief Committee.⁴⁰¹

The land for the 39 Tibetan settlements spread across 12 states in India was mostly leased by the Indian government to an entity called the Central Tibetan Relief Committee (CTRC), which manages the land for the Tibetan households. Land for other settlements, such as Majnu-ka-tilla in Delhi, were the result of negotiations with the Indian government by Tibetans, rather than the Tibet government. A large number of the settlements have problems that relate to their settlement land – from contestation of their right to live there, to outright encroachment. Most administrative officials interviewed in the settlements did not have a copy of the lease documents, or even maps showing the demarcation of the settlement land, which places them in a vulnerable position legally. A few settlements (including Tenzingang in Arunachal Pradesh) are on land that was bought and donated to the Tibetans by private donors. Given that ostensibly Tibetans cannot own land in India, these arrangements are problematic.

Land in the agricultural settlements was divided up among the first Tibetans to be settled there. Subsequent residents of the camps, including the children of the original settlers, were therefore landless.⁴⁰² For example, in Choglamsar, Ladakh, 2,000 Tibetans first

³⁹⁹ The Benami Transactions Act 1988, states that such transactions are illegal across India except for the state of Jammu and Kashmir - http://finmin.nic.in/law/Benami%20Transaction_Prohibition_%20Act1988.pdf. An amendment bill for the Benami Transactions Act 1988 was proposed in 2015, but has not yet been adopted. <http://www.prsindia.org/billtrack/the-benami-transactions-prohibition-amendment-bill-2015-3789/>

⁴⁰⁰ Himachal Pradesh Tenancy & Land Reforms Act, 1972.

⁴⁰¹ Interview with Sonam Khorlatsang, Secretary of Department of Home, CTA, Dharamsala, June 1, 2015; Notification dated February 3, 2015, No. FFE-B-E (3)14/2012-I (on file with TJC).

⁴⁰² Interview with TSO Phuntsok Tsering, Doeguling settlement, Mundgod, Karnataka, Feb 14, 2016. Interestingly, in Doeguling settlement, there is talk of establishing another camp specifically to provide

settled in Sonamling in camps 1-9, and each received 6 kanals of land.⁴⁰³ The later residents of Sonamling, in camps 10-12 do not have any land beyond their housing, so while the population of the settlement is 5,050, only 2,000 residents have access to land.⁴⁰⁴

1. Targeted eviction cases

The insecurity Tibetans face in India today is partly evidenced by multiple efforts to use the courts to evict Tibetan communities from their homes. TJC's recent fact-finding missions revealed at least four cases affecting hundreds of Tibetans where large Tibetan communities had received eviction notices, seemingly as a result of targeted campaigns taking advantage of Tibetans' legal vulnerability.

The "forest land case" involved 218 Tibetan families living in Dharamsala on the road leading to Bhagsu village. The community began in the 1960s when many Tibetans followed the Dalai Lama to Dharamsala. They originally built tin and wood shacks but over time those makeshift homes were replaced with concrete and brick houses. Although many of these families had lived on the land for half a century, they had no documents showing ownership. In 2012, the families received eviction notices, ostensibly because the land they were living on had been designated as forest land.⁴⁰⁵ Forest land usually denotes land that is to be kept free from human settlement. It has a long history of use for controlling populations, dating back to British colonial rule of India.



Tibetan community that received eviction notices in "forest land" case.

The effort to evict this community began when a civil writ petition was filed by a Mr.

housing for the Tibetans who arrived from Tibet as adults from the 1980s onwards and were not given their own land or housing. Interviews with many camp residents, and the TSO, February 2016.

⁴⁰³ One kanal is equivalent to 1/8 acre.

⁴⁰⁴ Interview with Karma Norzin Palmo, Tibetan Women's Association, Choglamsar, Leh, Ladakh, October 2015.

⁴⁰⁵ Interviews with Minister of Security, CTA, June 25, 2014 and Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

Pawan Kumar, an Indian citizen, complaining of encroachments on forest land.⁴⁰⁶ As the above pictures demonstrate, this Tibetan community consists of homes, shops and offices. State government records show that Tibetans had been living on the land for decades before it was designated as forest land. Revenue records reveal that the government had collected money for water, electricity and taxes for many years.⁴⁰⁷ A High Court decision in August of 2012 ordered the eviction of the Tibetan families on or before March 31, 2013.⁴⁰⁸ The Central Tibetan Administration negotiated to forestall the eviction.⁴⁰⁹ In February 2014, the Indian Ministry of Home Affairs advised the state government to hold the eviction proceedings in abeyance. One year later, the state government decided to drop the eviction proceedings because of potential “international ramifications.”⁴¹⁰

The second example of an ongoing effort to evict Tibetans is the "*Benami* land case." *Benami*⁴¹¹ is a term used to describe a land transaction where the real beneficiary is not the one in whose name the property is purchased. Because Tibetans, as foreigners, may not purchase land in their own names, they utilize a common, but unlawful, practice of asking a friend who is an Indian citizen to purchase the land in the citizen's name. *Benami* land transactions are not confined to purchasing land for homes. Some monasteries in and around Dharamsala are *benami* land and, as mentioned above, even Norbulingka (the center for maintaining and teaching Tibetan art and crafts) is *benami* land.⁴¹²

A lawsuit was brought to evict the holders of *benami* land in and around Dharamsala. Settlement talks between the Central Tibetan Administration and the Indian central and state governments resulted in a proposal dated May 8, 2006 whereby the state government would confiscate the land and lease it to the Central Tibetan Relief Committee (“CTRC”) who in turn would sublet it to the individual holders.⁴¹³ The settlement stalled over the amount that the CTRC would be required to pay. As of this writing, the holders of *benami* property remain on the land.

The third case involving the attempted eviction of a Tibetan community occurred in Sanjauli, on the outskirts of Shimla, the capital of the state of Himachal Pradesh. Eviction notices were sent to 125 Tibetan families who have lived in the community for three to four decades because the municipal government had decided to build a public parking lot

⁴⁰⁶ Interviews with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014 and Sikyong Lobsang Sangay, June 25, 2014.

⁴⁰⁷ *Id.*

⁴⁰⁸ Interview with Minister of Security, Dharamsala, June 25, 2014.

⁴⁰⁹ Interview with Sonam Dorjee, Tibetan Settlement Officer, Dharamsala, February 2, 2016.

⁴¹⁰ *Government to drop eviction proceedings against Tibetan refugees*, TRIBUNE NEWS SERVICE, April 1, 2015, http://www.tribuneindia.com/article/news_print.aspx?story_id=61579&catid=94&mid=53 (last visited May 17, 2016).

⁴¹¹ *Benami* is derived from a Persian word meaning without name or no name. *See* text accompanying notes 398-399 *supra*.

⁴¹² Interview with Sonam Dorjee, McLeod Ganj. June 25 & 27, 2014.

⁴¹³ A copy of the May 8, 2006 order of the Himachal Pradesh Government is on file with TJC.

on the land.⁴¹⁴ Unlike the *benami* eviction case described above, the Shimla case does not involve *benami* land because the Tibetans did not purchase the land. Rather, it was state land leased to the Tibetan community by the Government of India for a term of 20-30 years, which term had expired. By order dated August 19, 2010, the order of eviction was affirmed but the Municipal Corporation was directed to propose a relocation of the Tibetan families. Although the Central Tibetan Administration identified land held by the Tibetan Refugee Self Help Handicraft Society, the state government did not provide the requisite funds for the relocation. As of May 2016, settlement discussions remain ongoing.⁴¹⁵

A fourth case is ongoing in Orissa, where Indian Maoist insurgents are reportedly trying to take over land that Tibetans occupy. A case is pending in the courts although it appears that Tibetans will be able to remain on the land.⁴¹⁶

These land cases reveal a pattern of local initiatives to evict longstanding Tibetan communities ostensibly because they lack proper documentation or ownership. In each case, the evictions have been stayed by ongoing efforts by the CTA and the central government to intercede and propose measures to prevent the demolition of Tibetan homes. However, even a favorable resolution fails to strengthen the legal protection of these communities and address their underlying vulnerability. These cases, along with an effort to use environmental laws to prohibit public displays of Tibetan prayer flags and stones,⁴¹⁷ contribute to a heightened sense of vulnerability within the Tibetan community as well as a sense of insecurity with respect to their ability to continue to live in homes they have inhabited for decades.

2. Land disputes and vulnerabilities in the settlements

The cases of wholesale efforts to evict Tibetans from their land are not the only examples of insecurities facing Tibetans with regard to housing and land. Visits to dozens of Tibetan settlements throughout India indicated a trend of complicated lease and ownership agreements that have generated considerable confusion, uncertainty, and litigation. Many of the Tibetan Settlement Officers (the Tibetan government's administrative representatives in the settlements) do not possess a copy of the original lease or ownership documents, making it difficult to repel encroachments or establish a right to remain on the land.

For example, in Majnu-ka-tilla, the large Tibetan settlement in Delhi currently housing 365 families, there is no lease. Some years ago the settlement received eviction notices due to

⁴¹⁴ Interview with Shimla Tibet Settlement Officer, Shimla and Solan, June 21, 2014.

⁴¹⁵ Interview with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014.

⁴¹⁶ Interview with Sikyong Dr. Lobsang Sangay, Dharamsala, June 1, 2015.

⁴¹⁷ The same individual who commenced the forest land case also petitioned for the removal of Tibetan prayer flags and *mani* stones (rocks inscribed with Buddhist mantras that have religious significance to followers of Tibetan Buddhism), which the petition referred to as land encroachments and rock defacement. Interviews with Tibet Settlement Officer, Dharamsala, June 25 & 27, 2014 and Sikyong Lobsang Sangay, June 25, 2014.

the city's plan to develop the area as a tourist destination. Although that was forestalled and the settlement has been "regularized," there is no assurance as to how long this large Tibetan settlement will be permitted to remain on the land.⁴¹⁸

In Sataun and Kumrao, two Tibetan settlements in Himachal Pradesh, the original settlement land was purchased by the Kham Kathok Tibetan Society from private landowners. Later, additional land was bought by the Society but the state Revenue Office has refused to recognize it. Negotiations have reportedly been ongoing for nine years.⁴¹⁹

The land for Tenzingang Tibetan settlement in Arunachal Pradesh was donated to the Dalai Lama in the early 1960s by local Monpa villagers from a nearby village called Dhomko. As a result, there is no lease document. Until now, the Dhomko villagers have never tried to take the land back or claim rights over the land, but the Tibetan Settlement Officer did express concern about the uncertainty of the future, particularly when the people who donated the land die, leaving another generation of villagers who might make claims to the land.⁴²⁰

In Lakhanwala, Himachal Pradesh, a unique Tibetan settlement that houses ex-Special Volunteer Force members who served in the Indian Army in the 1971 Indo-Bangladesh War, a case has been pending for decades challenging the transfer of this land to the Tibetan residents in the 1960s. Eviction notices were served on the settlers on the ground that the deed of sale was illegal because permission had not been obtained by the Government of India. The case has been languishing in the courts which leaves the settlers in a state of uncertainty regarding their right to the land.⁴²¹ For example, they sought permission from the Indian government to cut down 7-8 eucalyptus trees near the main road because of the danger of the trees falling on Tibetan homes due to strong winds. The reply was that, permission to cut down the trees could not be granted because there was no decision on the land ownership case.⁴²²

There is an ongoing court case in Karnataka state, which started in 1996 and is related to encroachment by local Indians on settlement land (regarding 4 acres of land near Camp 5) in Doeguling, Mundgod. The Mundgod court previously ruled that the land is Tibetan. That decision was affirmed by the court in Yellapur, and an appeal is pending in the Karnataka High Court.⁴²³

In Maharashtra, residents of the two camps and 610 acres that make up Norgelying settlement, Bhandara, have formed a Land Committee that is currently searching for a

⁴¹⁸ Interview with TSO Lekyi Dorjee Tsangla, Majnu-ka-tilla, Delhi, June 10, 2015. The TSO advised us that in 2013, Delhi issued a notification that the settlement had been "regularized" but they never received the notification; they read about it in the newspaper.

⁴¹⁹ Interview with TSO of Kham Kathok Tibetan Society, Sataun and Kunrao, Sataun, June 6, 2015.

⁴²⁰ Interview with TSO Tenzingang/Bomdila, Arunachal Pradesh, October 2015.

⁴²¹ Interview with knowledgeable source in Lakhanwala, June 5, 2015.

⁴²² *Id.*

⁴²³ Interview with TSO Phutsok Tsering, Mundgod, Karnataka, February 2016.

document or map dating back to when the settlement started in 1972, describing what land is on lease to the Tibetans and for what duration. They believe a document like this very likely exists and they are worried that the lease might run out without their knowledge. Their goal is to secure their use of the land by requesting the state government to give them a new lease, which they believe would be easier to obtain if they were able to produce an earlier lease document.⁴²⁴

In Leh, Ladakh, the Choglamsar settlement land was originally leased to the Tibetans by the Indian government in 1960, when the settlement started. Approximately 2,000 Tibetans were given land for residence and farming. The Tibetans assume that a lease document exists, but they have been prevented by the Jammu and Kashmir (J&K) State authorities from having their own copy. The J&K authorities justify this under Article 370 of the Indian constitution, which grants special autonomy to Jammu and Kashmir State Authorities due to its being a politically sensitive state located on two international borders.⁴²⁵ Tibetans report that Ladakhis started encroaching on the Tibetan settlement land 30 years ago, but that encroachment has become more serious recently.⁴²⁶ Encroachment is apparently happening across Ladakh, as land prices soar in and around Leh, the capital of Ladakh. Encroachment is not specific to Tibetan areas, but the fact that the Tibetans do not possess a lease renders them more vulnerable and less able to protect their settlement land. In the absence of a lease, and the high demand for land, some Tibetans have apparently also sold some of their apportioned leased land to Ladakhis, thus further complicating the land issues in the settlement.⁴²⁷

In a number of settlements, including Mundgod and Bhandara, local residents expressed their belief that land had been taken from the settlement through previous land surveys by the state government, whereby land that was originally part of the settlements was not included in the survey.

In Shillong, Meghalaya, there is no designated Tibetan settlement, so the 300-400 Tibetans who live there all rent houses. The Central Tibetan Relief Committee apparently owns some land, which was donated by a Tibetan man called Tenzin Bhuchung⁴²⁸ in 1996, but it wasn't until 2014 that the change in ownership of the land was officially recognized. The Tibetans are still unable to use the land, as it appears to come under the auspices of an army

⁴²⁴ Interview with Kalsang Chodak, RTYC President, Norgyeling, Bhandara, Maharashtra, Feb 2016; Interview with TSO Secretary Norgyeling, Bhandara, Maharashtra, Feb 2016.

⁴²⁵ Interview with Chief Representative Officer (the equivalent of TSO), Dhondup Tashi, Choglamsar, Leh, October 2015.

⁴²⁶ One interviewee said she believed that there had been 500 instances of encroachment between 2010 and 2015, and that many of those encroaching are well connected or even related to police and J&K officials, making it difficult to challenge the encroachment. Interview with Karma Norzin Palmo, Tibetan Women's Association, Choglamsar, Leh, Ladakh, October 2015.

⁴²⁷ These transactions are illegal, and there are apparently approximately 100 cases related to illegal selling in the Srinagar High Court. Interview with Tenzin Norbu (President) and Kunsang Topden (VP), Regional Tibetan Youth Congress (RTYC) Ladakh, Oct 14, 2015.

⁴²⁸ Those interviewed believe that he must have bought it at a time when people were less concerned about documentation and identity.

cantonment. The Tibetans have been unable to access it, or even to clearly identify its location, due to a lack of support on the issue from the Indian Army.⁴²⁹

In Orissa, beginning in 2012, local authorities began prohibiting Tibetans from using land in Phuntsokling settlement for cultivation. This was reportedly preceded by harassment of Tibetans by members of the local Communist Party regarding ownership of the settlement land.⁴³⁰

Encroachment of settlement land was raised as an issue in many settlements. Usually, residents said that it was not a huge issue, as it did not relate to large amounts of land. Some residents were at pains to point out that this could happen on land used by Indians too, but most respondents acknowledged that people may think that it is easier to encroach on refugee land than other land inhabited by Indians.⁴³¹

3. Other land issues

Many Tibetans are landless. Those born in India must divide their parents' land between siblings, and some end up with no house or land.⁴³² For Tibetans from Tibet their only choice is to privately rent from Indian landlords.

Another land-related issue facing a number of Tibetan settlements relates to their land being designated as "forest land." One of the largest Tibetan settlements in India – the 16,414 person Tibetan community of Doeguling, near Mundgod in Karnataka state – is built on 4,045 acres that were provided for housing and cultivation for the Tibetans by the Karnataka state government in the late 1960s. Prior to being leased to the Tibetans, the land was designated as forest, and has no natural water source. It still comes under the jurisdiction of the Forest Department of India, which is a national-level entity, so the lease agreement is with the central government of India (and not the state government). Because it is not registered as agricultural land, the settlement does not qualify for drought relief or other forms of state support for agriculture, which are sorely needed given the lack of water in the area.⁴³³ In the official Indian land documents there is no sign of human habitation where the Tibetan camps are located. The state Revenue Department's records show the Tibetan settlement land as forest, which means the Revenue Department does not legally have the responsibility to assist the Tibetans there.⁴³⁴ Discussions are apparently now ongoing between the Forest Department, the Karnataka state government, and the CTA to create a rent tenancy agreement that would demonstrate the right of Tibetans to use the land – both institutionally and individually.⁴³⁵ This is likely a result of the Tibetan

⁴²⁹ Interview with Pema Youdon, Tibetan Settlement Officer, Shillong, October 23, 2015.

⁴³⁰ The local Communist Party reportedly displayed flags and slogans during the 2012/2012 election contesting the Tibetans' right to the settlement land. Interview with Pinzok Solom, camp 5 leader, Phuntsokling Settlement, January 26, 2016.

⁴³¹ Interview with TSO Bomdila/Tenzingang, Arunachal Pradesh, October 2015.

⁴³² Interview with TSO Phuntsok Tsering, Mundgod, Karnataka, February 2016.

⁴³³ Interview with TSO Phuntsok Tsering, Mundgod, Karnataka, February 2016.

⁴³⁴ *Id.*

⁴³⁵ *Id.*

Rehabilitation Policy's recommendation for standardized lease documents for all settlements.

It is unclear whether this will be successful, as Hunsur, Kollegal and Bylakuppe settlements had apparently also made applications for their rent tenancy documents to the state government of Karnataka, before the TRP 2014 was passed, but they have not been able to get the supporting letter from the Forest Department at the central level. If they were able to produce rent tenancy agreements, Tibetan tenants would be able to take out loans on crops, which would allow them to potentially be more successful and long-term in their farming.⁴³⁶

Another issue related to land is that of inheritance. In the few instances where Tibetans have been able to purchase Indian land, their surviving family members have been unable to claim it upon death, as they lack the requisite documentation.⁴³⁷

4. The potential effect of Tibetan Rehabilitation Policy on land issues

The uncertainty facing Tibetan settlements in India without lease documents in hand may be partially addressed by provisions within the Tibetan Rehabilitation Policy, discussed in Part VI below. But, as described there, while the TRP seeks to standardize the lease document used for the settlements, the standard form contains a provision permitting the Government of India to terminate the lease upon three months' notice.⁴³⁸ Thus, even if the TRP is implemented uniformly by the states, it fails to address the underlying insecurity of Tibetan settlements.

D. Other limitations due to status as foreigners

1. Employment

Unemployment is reported to be the single largest problem facing the Tibetan community in India.⁴³⁹ Tibetans are routinely denied jobs because they are not Indian citizens.⁴⁴⁰

⁴³⁶ Interview with CEO Co-operative Society, Norgyeling settlement, Tsering Wangchuk, Feb 2016. Tibetans in Norgyeling, Bhandara, Maharashtra cannot get a crop loan without showing a rent tenancy document, which they do not have. This is the same situation in the southern settlements of Bylakuppe, Hunsur and Kollegal. If they have a rent tenancy document they can get subsidies from the co-op bank, e.g. 13-14,000 rupees, for a crop loan.

⁴³⁷ For example, a Tibetan businessman in Bomdila reported that his grandfather had owned a piece of land in Bomdila (he thinks it must have been acquired before much paperwork or identity cards were used). But his family was unable to inherit the land because they did not have the requisite Domicile Certificate required by the state. Interview with Tibetan businessmen, Bomdila, Arunachal Pradesh, October 2015.

⁴³⁸ Paragraph 30 of the TRP states: "Notwithstanding anything contained above, the Central Government/Lessor may, at any time, cancel the lease, without assigning any reason thereof. However, a prior notice of 3 months shall be given before revoking the lease." The TRP is available at centraltibetanreliefcommittee.org/ctrc/trp-2014/tibetan-rehab-policy-2014-final-copy.pdf (site last visited 5/5/16), reprinted in Appendix, *infra*.

⁴³⁹ Interview with TSO Lekyi Dorjee Tsangla, Majnu-ka-tilla, Delhi, June 10, 2015; Interview with Dorjee Tenzin, Dekyiling, June 4, 2015.

⁴⁴⁰ *Id.*

According to a 2010 study conducted at the request of the Central Tibetan Administration, “work authorization for Tibetans remains an ongoing issue throughout India.”⁴⁴¹

Within the settlements, virtually everyone identifies the lack of economic opportunities to be the most serious and pressing issue. Seasonal sweater selling and agriculture are the two most common sources of livelihood, although neither generates substantial income.⁴⁴² A small number of Tibetans have jobs outside the settlements (7%) or are engaged in individual businesses (9%).⁴⁴³ Tibetans in cities tend to work in the service industry.⁴⁴⁴ Approximately 25-30% of the Tibetan exile population in India exist near the poverty threshold, with conditions even worse for many of those living outside the settlements.⁴⁴⁵ In Ladakh, many Tibetans work as road construction workers, as they did in the first decades of their exile in India.⁴⁴⁶

a. Agriculture

In the decades when Tibetans were arriving in large numbers, Tibetan settlements were overcrowded and relied predominantly on an agricultural economy. At that time, approximately 50% of those living in the formal settlements worked in agriculture or animal husbandry; another 30% were involved in the sweater trade; and others worked in the service industry, making handicrafts, weaving carpets, or serving in the CTA.⁴⁴⁷

Today, agriculture remains one of the two most common sources of livelihood within the settlements (the other being seasonal sweater selling).⁴⁴⁸ Despite the large percentage of Tibetans engaged in farming related activities, agriculture generates an exceedingly small amount of income.⁴⁴⁹ Compounding the problem is the fact that most of the settlements suffer from erratic power and water supplies.⁴⁵⁰ Farmers consider water their single biggest challenge.⁴⁵¹

⁴⁴¹ TechnoServ Report, *supra* note 111, 80.

⁴⁴² *Id.* at p. 1 and 17.

⁴⁴³ *Id.* at p. 120.

⁴⁴⁴ *Id.* at p. 17.

⁴⁴⁵ *Id.* at 11.

⁴⁴⁶ Interview with Tenzin Norbu (President) and Kunsang Topden (VP), Regional Tibetan Youth Congress (RTYC) Ladakh, Oct 14, 2015.

⁴⁴⁷ Refugee Board IND33125, *supra* note 34. One CTA official estimated that 40% are involved in agriculture; 30% in informal sweater selling; and 10-20% in the service sector - while about 10% are monks and nuns. A 2002 demographic study of Tibetan refugees in the settlements concluded that of the settlement population, 27% were attending school, 16% were engaged in farming, 6.4% in sweater-selling, 5.2% were full-time housewives, 5.1% in handicrafts such as carpet making, 5% in military service, 2.4% unemployed, and 16.4% too old or young to be working. Shusham Bhatia et al., *A Social and Demographic Study of Tibetan Refugees in India*, 54 SOC. SCI. & MED. 411, 416 (2002) [hereinafter BHATIA].

⁴⁴⁸ TechnoServ Report, *supra* note 111, 1 & 17.

⁴⁴⁹ *Id.* at p. 11.

⁴⁵⁰ *Id.* at p. 2 & 21.

⁴⁵¹ *Id.* at 30.

Tibetan cooperative societies operate in all of the agricultural settlements. These societies were registered under their respective state's State Co-operative Societies Act with the goal of supporting their members by supplying agricultural loans such as fertilizers and tools, marketing agricultural produce and handicrafts, and, in some settlements, providing direct financial assistance.⁴⁵² The CTA's Department of Home has worked on a detailed plan to streamline the co-operative societies and make them self-reliant. Now many of them come under the auspices of the Federation of Tibetan Cooperatives India (FTCI).⁴⁵³

While the cooperative societies are helpful, they do not provide a lasting solution to the gradual disintegration of the agricultural economies within the settlements. Many of the agricultural difficulties may be ascribed to the fact that the settlements were designed for short-term use, not permanent resettlement.⁴⁵⁴ This led to uses of the land that contributed to poor crop yield and environmental degradation,⁴⁵⁵ such as soil-abusive, mono-cropping practices.⁴⁵⁶ For example, Tibetan farmers initially made excessive use of chemical fertilizers and pesticides, causing the soil to deteriorate over time. Many settlements also report that changing weather patterns were further destabilizing their reliance on agriculture. A distinct lack of rainfall in 2015 resulted in a bad year for crops.⁴⁵⁷

With the migration of young people from the settlements to larger cities, agriculture becomes less and less a viable income option.

b. The “Sweater Business”

Because farming does not provide sufficient income, some Tibetan farmers began supplementing their incomes by traveling to the cities to sell sweaters.⁴⁵⁸ This is now one of the two most common sources of livelihood within the settlements.⁴⁵⁹ The sweater-selling season is over 4-5 months (October-February) and results in a large percentage of a settlement's population leaving home to do business, often far away in another state of India.⁴⁶⁰ Tibetans travel from all across India to the town of Ludhiana in Punjab state,

⁴⁵² Interview with Karma Dhondup, CEO Cooperative Society, Doeguling, Mundgod, Karnataka, February 2016.

⁴⁵³ <http://www.nyamdel.com/>

⁴⁵⁴ Similarly, the long-term leasing structure by which agricultural lands were provided to the Tibetans made the creation of a permanent plan for a sustainable economy impossible. Interview with Karma Dhondup, CEO Cooperative Society, Doeguling, Mundgod, Karnataka, February 2016.

⁴⁵⁵ Interview with CEO, Cooperative Society, Hunsur, May 16, 2015; TechnoServ Report, *supra* note 111, 38. Residents of some settlements pointed out that due to the temporary nature of living as refugees in India, Tibetans had originally chosen to plant quick-growing crops e.g. papaya fruit rather than coconut (which take 6 months and 5 years to grow, respectively). Interview with Camp 1 leaders, Doeguling, Mundgod, Karnataka, February 2016.

⁴⁵⁶ TechnoServ Report, *supra* note 111, 38.

⁴⁵⁷ Interview with TSO Phuntsok Tsering, Doeguling, Mundgod, Karnataka, February 2016.

⁴⁵⁸ Interview with Ngora Dorjee, Honsur Settlement, May 16, 2015; *see* TechnoServ Report, *supra* note 111.

⁴⁵⁹ TechnoServ Report, *supra* note 111, 1 & 17.

⁴⁶⁰ For example, in Norgyeling, Bhandara, around 50% of the camp's inhabitants leave for the sweater business each year. Interview with Camp Leaders, Camp 2 Norgyeling, Bhandara, Maharashtra, Feb 2016.

where they either buy sweaters from the factories (taking out a short-term bank loan to do so), or they take the sweaters on loan. They then sell the sweaters in other parts of India for profit, repaying the loans with that income. Approximately 52% of Tibetan households contain at least one member engaged in this business.⁴⁶¹

The challenges facing those engaged in the seasonal sweater business include inadequate operating capital; the absence of permanent selling locations; weather-related dramatic fluctuations in income; and the lack of alternative livelihood opportunities during the off-season.⁴⁶²

It should be noted that both agriculture and the sweater business are quite unpredictable endeavors, as both are very weather dependent. In 2015 it was too dry and too warm respectively for either venture to be successful, and many respondents spoke with concern about the future of both income sources, some fearing the potential long term negative impacts of climate change.⁴⁶³

c. Handicrafts

Most Tibetan settlements have handicraft centers, focusing on carpet weaving or tailoring. These centers, which primarily employ women, were created by the CTA to preserve Tibetan culture and tradition. Today, these handicraft centers are no longer economically profitable. With few exceptions, carpet-weaving endeavors within the settlements are near collapse.⁴⁶⁴

d. Urban migration

As a result of the disintegration of the settlements' agricultural economies and their failure to establish other industries, younger Tibetans and even some adults have increasingly been leaving the settlements to seek work elsewhere in India, often in urban centers, or in the Tibetan capital in exile, Dharamsala, Himachal Pradesh.⁴⁶⁵ Many Tibetan settlements resemble old-age communities, with shops and other enterprises shuttered and abandoned. When queried, respondents offered the same explanation: the lack of jobs or opportunities

In Paonta Choelsum, 80% reportedly participate in the sweater business. Interview with knowledgeable source, Paonta Choelsum, June 5, 2015.

⁴⁶¹ TechnoServ Report, *supra* note 111, 7; Interview with Penpa, Secretary to the settlement officer, Orissa, January 25, 2016; Interview with Tenzin Tashi, President of Tibetan Dickey Larsoe Primary Agricultural Credit Cooperative Society, Bylakuppe settlement, May 2015; Interview with Phuntsok Kunga, General Secretary of Sakya Tibetan Society, Puruwala, June 6, 2015.

⁴⁶² TechnoServ Report, *supra* note 111, 98.

⁴⁶³ Interview with Camp 3 Leader, Doeguling settlement, Mundgod, Karnataka, February 2016; Interview with Camp 9 Leader, Doeguling settlement, Mundgod, Karnataka, February 2016.

⁴⁶⁴ TechnoServ Report, *supra* note 111, 5 and 66. The report concludes that "the situation of the Tibetan handicraft centers is grim." *Id.* at 67.

⁴⁶⁵ Interview with Penpa, Secretary to the settlement officer, Orissa, January 25, 2016; Interview with Security Kalon Ngodup Dongchung, June 1, 2015; Interview with employee of Tibetan Cooperative Society, Hunsur settlement, May 2015.

within the settlements has driven younger Tibetans away.⁴⁶⁶



Settlement in Bir with shuttered businesses



Community Center in Bir

Respondents pointed out that many in the younger generation of Tibetans are over-qualified for farming, but also are unable to get good stable jobs due to their status as foreigners. They are caught in a limbo. Living costs in the cities are very high, so those young Tibetans able to get jobs in cities cannot afford to take time to come back and help with the farming in the settlements. As such, their farming skills do not develop.⁴⁶⁷

Tibetans who do not reside in the settlements depend on stipends provided by the CTA's welfare office or work in odd jobs, guesthouses, restaurants, or other parts of the service industry.⁴⁶⁸ Common jobs in the service industry include working as chefs or waiters in restaurants or as stylists or beauticians in salons.⁴⁶⁹

An exception to the rule seems to be Doeguling settlement, near Mundgod, which is a large settlement where houses are actually in demand. An enterprising group of residents there,

⁴⁶⁶ Visits to settlements including Sataun Settlement in Himachal Pradesh, June 2015, Norgeyling Settlement, Bhandara, Maharashtra, February 2016, and Tenzingang, Arunachal Pradesh, October 2015; see TechnoServ Report, *supra* note 111, 2 & 17. For example, in Bir, the settlement used to be a tea estate but that was unsuccessful. Subsequent efforts at carpet weaving, dairy farming, and wool mills also failed. The only successful enterprise is growing barley to make tsampa, the staple food in Tibet. Interview with Tenzin Ragba, Chautra Tibetan Settlement Officer, and Jamyang Gyaltsen, President of Bir Nanchen Settlement, June 26, 2014.

⁴⁶⁷ Interview with Camp 3 Leader, Doeguling settlement, Mundgod, Karnataka, February 2016.

⁴⁶⁸ U.S. Bureau of Citizenship and Immigration Serv., *India: Information on Tibetan Refugees and Settlements* (May 30, 2003), available at <http://www.unhcr.org/refworld/docid/3f51f90821.html> (last accessed on September 5, 2011).

⁴⁶⁹ TechnoServ Report, *supra* note 111, 17.

along with an ex-resident now based in the U.S., have formed an organization called “Reimagining Doeguling,”⁴⁷⁰ which looks to establish Doeguling settlement as a tourist attraction, taking advantage of its location halfway between the tourist sites of Goa and Hampi.

e. Small Businesses

In the absence of other options, many Tibetans open small-scale businesses, although they face barriers to their potential success. Tibetans are only granted short-term loans, so it is hard for them to plan long-term sustainable growth in their businesses.⁴⁷¹ Tibetans require licenses for businesses, although in some states, these requirements are not strictly enforced. In some states however, such as Arunachal Pradesh, Tibetans are actually unable to apply for business licenses, as they do not have Permanent Domicile Cards (identity documentation specific to the state). Instead, they must rent a business license from an Indian citizen, which is an additional cost on top of the rental costs for the shop space.⁴⁷² Tibetans in Shillong, Meghalaya face the same issue.⁴⁷³

f. Loans

Tibetans in most states in India can get loans for short-term business ventures or farming. For example, Tibetans in Karnataka can take loans from the District Cooperative Bank (of India) for their farming, and the interest will be covered by the Tibetan co-op.⁴⁷⁴ Approximately 66% of Tibetans engaged in the sweater business take commercial bank loans⁴⁷⁵ although in some northern settlements, including Dekyiling and Shimla, Tibetans have no access to loans at all.⁴⁷⁶

Tibetans cannot get longer-term business loans or educational loans,⁴⁷⁷ because they cannot own property and therefore have no assets with which to secure the loan.⁴⁷⁸

g. Tibetans who arrived from Tibet as adults after the first wave

These Tibetans were further hampered in gaining employment by the fact that they were unlikely to be allotted settlement land to practice agriculture, and so they were not able to grow their own food. Their lack of local Indian language skills and knowledge of how

⁴⁷⁰ <http://www.doeguling.com/>

⁴⁷¹ Interview with TWA and TYC, Doeguling, Mundgod, Karnataka, Feb 2016.

⁴⁷² Interview with Tibetan business people, Bomdila, Arunachal Pradesh, October 2016.

⁴⁷³ Interview with TSO Shillong, Meghalaya, October 2015.

⁴⁷⁴ Interview with TWA and TYC representatives, Doeguling, Mundgod, Karnataka, February 2016.

⁴⁷⁵ For example, Tibetans in Norgyeling, Bhandara, Maharashtra, can take loans for the seasonal sweater business from the local Indian Union Bank. Interview with Camp 2 leaders, Norgyeling, Bhandara, Maharashtra, February 2016; TechnoServ Report, *supra* note 111, 101.

⁴⁷⁶ TechnoServ Report, *supra* note 111, 101.

⁴⁷⁷ Interview with Tibetan Women’s Association members, Norgyeling, Bhandara, Maharashtra, February 2016.

⁴⁷⁸ Interview with Ngora Dorjee, Honsur Settlement, May 16, 2015. This also results in banks offering more favorable interest rates to Indians than Tibetans. *Id.*

things were done meant that they also could not easily participate in the sweater business. They were left with the option of running small businesses like restaurants and shops.⁴⁷⁹

h. Unemployment

The unemployment rate for Tibetans is high and increasing. When students return to their settlements after pursuing degrees in other parts of India, there are very few job opportunities for them.⁴⁸⁰ Most employment opportunities are closed to Tibetans, even those with valid RCs, because they are not citizens.⁴⁸¹ Tibetans are therefore ineligible for public sector jobs, which are highly sought after in India, due to their being perceived as offering job security and a steady income.⁴⁸² These public jobs include work at universities, schools, hospitals, and public works projects.⁴⁸³ However, Tibetans are able to, and many do, find employment with the Indian army. Many Tibetans who served in the Indian army stated that they joined because it was one of the few employment opportunities available to them and because it enabled them to earn a decent living,⁴⁸⁴ and supported their pursuit of further studies.⁴⁸⁵

Tibetans lack opportunities as entrepreneurs because when applying for business documents they are asked to produce an Indian passport⁴⁸⁶ and, as non-citizens, they cannot secure the requisite licenses, such as an official tax license.⁴⁸⁷ Call centers and nursing do not require a passport so many Tibetans gravitate to those jobs.⁴⁸⁸

⁴⁷⁹ Interview with two Tibetans from Tibet, “Camp 10 leadership,” Mundgod, Karnataka, February 2016.

⁴⁸⁰ Interview with Tenzin Norbu (President) and Kunsang Topden (VP), Regional Tibetan Youth Congress (RTYC) Ladakh, Oct 14, 2015.

⁴⁸¹ Interview with knowledgeable source, Lakhanwala, June 5, 2015; *see* CHIMNI, *supra* note 133, at 393. According to the Immigration and Refugee Board of Canada, “Tibetans are free to work in the Indian economy, however, as non-citizens it is often difficult for them to find jobs.” Refugee Board IND33125, *supra* note 34. *See* Canada: Immigration and Refugee Board of Canada, *India: Residency rights of Tibetan refugees, including the requirements and procedures for Tibetan refugees to obtain a Registration Certificate; rights to employment, education, health care, and other social services; consequences for Tibetans without a Registration Certificate, including instances of refoulement*, 2 January 2015, IND105009.E, available at: <http://www.refworld.org/docid/556826c64.html> [accessed 17 May 2016] which says “Open, a weekly current affairs and features magazine available across India (Open n.d.), indicates that Tibetans have limited employment opportunities (ibid. 15 Mar. 2014). Sources indicate that Tibetans are not allowed to start their own large-scale businesses (ANI 21 June 2014; TJC Sept. 2011, 67) and are ineligible for jobs with the government of India (ibid.).”

⁴⁸² *Id.*

⁴⁸³ Interview with Tashi Wangdu, Rep. of the Dalai Lama, Delhi office, Sept. 22, 2003.

⁴⁸⁴ Interview with Dorjee Tsering, Camp 1 leader, Phuntsokling settlement, Orissa, January 25, 2016; Interview with Pema Sangpo, Secretary to Tibetan Justice Commissioner, October 14, 2015; Interview with Tibetan leaders in Tenzingang, October 20, 2015.

⁴⁸⁵ Interview with Pema Youdon, TSO Shillong, Shillong, Meghalaya, October 2015.

⁴⁸⁶ Interview with knowledgeable source, Lakhanwala, June 5, 2015; Interview with TSO of Kham Kathok Tibetan Society, Sataun, June 6, 2015.

⁴⁸⁷ Interview with TSO of Kham Kathok Tibetan Society, Sataun, June 6, 2015; Interview with knowledgeable source, Dehradun, June 3, 2015.

⁴⁸⁸ Interview with knowledgeable source, Lakhanwala, June 5, 2015.

Some states restrict the type of employment Tibetans can engage in. For example, Tibetans in the tourist haven of Ladakh are prohibited from running travel agencies or substantial hotels or tourist taxis. The state government imposed this restriction under Article 370 of the Indian constitution, which is a law that grants special autonomous powers to the state of Jammu and Kashmir. The law was relaxed to allow Tibetans to run businesses such as small trinket stalls, but in effect Tibetans are prevented from engaging in most profitable ventures.⁴⁸⁹ Tibetans, as foreigners, are ineligible for official taxi licenses in Himachal Pradesh and in Uttarkhand.⁴⁹⁰

TJC was unable to locate current statistics regarding the unemployment rate for Tibetans in India. A 2009 demographic survey conducted by the CTA reported that the “workforce participation rate” is below 50%, described in the report as “a worrying picture.”⁴⁹¹ The survey reports that 17% of the total workforce population is unemployed and underemployed.⁴⁹² The unemployment rate within the settlements is estimated between 3% and 22%.⁴⁹³ The U.S. Committee for Refugees emphasized that “[m]any Tibetans in India are self-sufficient, but some, including elderly persons, female-headed families, and recent arrivals, must struggle to survive.”⁴⁹⁴

Underemployment is also a serious problem. The restrictions that prevent Tibetans from owning land or companies, together with the limits on their ability to attain a graduate education, result in limited job opportunities for Tibetans. Consequently, some cannot find jobs that match their educational background, while others cannot secure the education that might enable them to obtain better jobs.⁴⁹⁵

Vocational training programs for young people, in areas such as beautician training or sewing, exist but after completing the training, the young people struggle to find the capital

⁴⁸⁹ Interview with Tibetan Chief Representative Officer (equivalent to TSO), Chogalamsar, Leh, Ladakh, Oct 2015.

⁴⁹⁰ Interview with Karma Dhargyal, TSO, Kham Kathak Tibetan Society, Sataun, June 6, 2015; Interview with knowledgeable source, Dehradun, June 3, 2015.

⁴⁹¹ CTA Planning Commission, *Demographic Survey of Tibetans in Exile – 2009*, August 2010, p. 53.

⁴⁹² *Latest Report on ‘Second Tibetan Demographic Survey’ Released*, THE TIBET POST, December 4, 2010. <http://www.thetibetpost.com/en/news/exile/1289-latest-report-on-qsecond-tibetan-demographic-surveyq-released> (last visited June 14, 2016). A 1999 estimate put the unemployment rate at 18.5% for Tibetans between the ages of sixteen and fifty, with a considerably higher rate for those over fifty, as well as for female-headed households and recent arrivals. Refugee Board IND33125, *supra* note 34. A 1998 demographic study conducted by the CTA showed even more dire conditions, revealing that only 25.1% of Tibetans in India worked more than 183 days of the year and that a staggering 74.1% of the population was unemployed. PLANNING COUNCIL, CENT.TIBETAN ADMIN., *Tibetan Demographic Study: 1999* (2000).

⁴⁹³ TechnoServ Report, *supra* note 111, 55.

⁴⁹⁴ U.S. COMMITTEE FOR REFUGEES AND IMMIGRANTS, *WORLD REFUGEE SURVEY 2002, COUNTRY REPORT: INDIA*.

⁴⁹⁵ Interview with Kelsang Phuntsok, Tibetan Youth Congress, Dharamsala, Oct. 12, 2003.

with which to start a business. This is particularly an issue in states such as Ladakh, where Tibetans are unable to get loans.⁴⁹⁶

i. Tibetan Rehabilitation Policy 2014 and employment

Whether or not the Tibetan Rehabilitation Policy 2014 will improve the employment opportunities for Tibetans remains to be seen. As described in Part VI below, the policy is not written in mandatory terms and thus depends on the states for discretionary implementation. The policy does, however, authorize state governments to allow Tibetans to “undertake such economic activity as they may desire and to that extent such relevant papers/trade licenses/trade permission may be issued to them on the basis of the Registration Certificate (RC) held by them.”⁴⁹⁷ The TRP also authorizes state governments to grant “shop licenses, driving licenses, business permits and other permits on the basis of their RCs”⁴⁹⁸ and encourages the states to provide employment to eligible Tibetans in various state government jobs in the health and education fields.⁴⁹⁹ Finally, the policy authorizes state governments to permit Tibetan professionals to take jobs in the public and private sector, including nursing, teaching, chartered accountancy, medicine, and engineering.⁵⁰⁰ While promising, it is too soon to know whether this policy will translate into tangible employment benefits for Tibetans in India.

2. Freedom of Speech, Expression, and Assembly

Article 19 of India’s Constitution protects freedom of speech and expression and the right to assemble peacefully. Article 19 explicitly qualifies these rights.⁵⁰¹ Freedom of speech and expression may yield to reasonable restrictions imposed by the state “in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offense.”⁵⁰² The government may place similar “reasonable restrictions” on the freedom of assembly “in the interests of the sovereignty and integrity of India or public order.”⁵⁰³ Furthermore, although the Constitution confers most other constitutional rights on “all persons,” Article 19 is limited to “all citizens,”⁵⁰⁴ and “a foreigner, not being a citizen, is not entitled to any of the rights under Article 19 or to remain in the territory of India.”⁵⁰⁵

⁴⁹⁶ Interview with Karma Norzin Palmo, President, Tibetan Women’s Association, Choglamsar, Leh, Ladakh, October 2015.

⁴⁹⁷ Tibetan Rehabilitation Policy 2014, note 428 *infra* at p. 6.

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.* at p. 7.

⁵⁰⁰ *Id.* at p. 7.

⁵⁰¹ INDIA CONST. art. 19(1)-(3).

⁵⁰² *Id.* art. 19(2).

⁵⁰³ *Id.* art. 19(3).

⁵⁰⁴ Compare INDIA CONST. art. 14 (guaranteeing equal protection of the law to all *persons*), and INDIA CONST. art. 21 (guaranteeing due process to all *persons*), with INDIA CONST. art. 19 (protecting freedom of speech, expression and assembly to all *citizens*).

⁵⁰⁵ DURGA DAS BASU, SHORTER CONSTITUTION OF INDIA (12th ed. 1996).

The Indian government's tolerance of Tibetan protests and demonstrations has varied over the years and from one region to another. For example, Tibetans in Dharamsala are generally able to engage in peaceful protests and demonstrations and do so on a regular basis.⁵⁰⁶ However, as described below, in other areas, most notably Delhi, the Indian government has become increasingly intolerant of Tibetan protests and demonstrations.⁵⁰⁷

Tibetans must secure a permit before they legally may protest outside Tibetan settlements. Some Tibetan settlements report no problems securing a permit,⁵⁰⁸ particularly for peace marches and candlelit vigils.⁵⁰⁹ Other areas report it is impossible to secure a permit. For example, in Arunachal Pradesh, Tibetans are unable to obtain permits to protest outside of the settlement due to a state law that prohibits non-citizens from protesting.⁵¹⁰ In areas where protests are allowed with a permit, officials often deny permits for the requested location and instead issue a permit for a remote location to avoid publicity.⁵¹¹ It is relatively common for Tibetans to be arrested for violating the permit guidelines at demonstrations.⁵¹²

India's authorities almost always prevent or suppress protests on the occasions of visits by Chinese dignitaries.⁵¹³ During such visits, the government typically positions police around and in the vicinity of the Tibetan settlements to discourage protests.⁵¹⁴ In Majnu-ka-tilla, the large Tibetan settlement in Delhi, the entire settlement is cordoned off by police during visits to the capital by Chinese officials.⁵¹⁵ For example, in early 2015, police surrounded the settlement for several days during the visit of a Chinese dignitary. Individuals were permitted to leave the settlement but only one at a time and only to go to a local market. This happens every time a Chinese dignitary visits.⁵¹⁶ During these visits,

⁵⁰⁶ Interview with NGOs in Dharamsala, June 2014; Interview with Tsering Tashi, TSO, Shimla, June 21, 2014; Interview with Sikyong Dr. Lobsang Sangay, Dharamsala, June 25, 2014.

⁵⁰⁷ Memorandum of Chris Seeds, July 19, 2005 (on file with TJC) [hereinafter Seeds memo]; Cable 004443, *supra* note 240; Refugee Board IND33125, *supra* note 34.

⁵⁰⁸ Interview with knowledgeable source, Paonta Choelsum, Lakhanwala, June 5, 2015; Interview with Phuntsok Kunga, General Secretary of Sakya Tibetan Society, Puruwala, June 6, 2015; Interview with Karma Dhargyal, TSO of Kham Kathok Tibetan Society, Sataun, June 6, 2015; Interview with knowledgeable source in Dehradun, June 3, 2015; Interview with TWA and TYC Doeguling, Mundgod, Karnataka, February 2016.

⁵⁰⁹ Tibetans from Doeguling, Mundgod, Karnataka report often going to the larger Indian towns of Hubli or Dharwar to demonstrate. They have to get the permission of the police, but that has not posed a problem. Upon request, police provide protection and traffic control.

⁵¹⁰ Interview with Tibetan leaders in Tenzingang, October 20, 2015.

⁵¹¹ Interview with Kelsang Phunsok, Pres. of Tibetan Youth Congress, Dharamsala, October 12, 2003; Interview with Tsering Dhondup, Secretary of Department of Home, CTA, Dharamsala, July 15, 2005.

⁵¹² *Id.*

⁵¹³ Refugee Board IND33125, *supra* note 34. On January 7, 1999, police tried to arrest Tibetans from protesting in New Delhi without first seeking permission to demonstrate. *Id.* Interview with NGOs, Dharamsala, May 11, 2015.

⁵¹⁴ Refugee Board IND33125, *supra* note 34.

⁵¹⁵ Interview with TSO Lekyi Dorjee Tsangla, Majnu-ka-tilla, Delhi, June 10, 2015.

⁵¹⁶ *Id.*

Tibetan residential areas and student residence halls are reportedly barricaded by Indian authorities to prevent students and others from leaving to protest.⁵¹⁷

India's efforts to prevent demonstrations and political expression by Tibetans have intensified as its relationship with China has improved.⁵¹⁸ The U.S. Department of State described India's policy in this regard as follows:

Indian authorities prohibit Tibetans from engaging in overt political agitation, particularly if it is anti-Chinese. The presence of the Dalai Lama and thousands of his supporters in India has long been a neuralgic issue for China and a perennial bone of contention in the Sino-Indian political agenda. As Sino-Indian relations have improved over the last few years, both New Delhi and Beijing have made conscious efforts not to allow the Dalai Lama's presence to cast a shadow over the broader relationship. Nonetheless, the Indian government has circumspectly tried to avoid giving Beijing the impression that the issue is political rather than humanitarian and that the Dalai Lama is a political leader rather than a religious and cultural figure. New Delhi is not always successful in persuading Beijing when, for example, Tibetan exiles assemble in Dharamsala to hear the Dalai Lama's annual March 10th address on the anniversary of his 1959 flight into exile or when Tibetans protest Chinese policies in small street demonstrations. On such occasions, Indian authorities generally cite the 'messiness' of democracies and ignore Chinese protests as best they can. New Delhi can, however, and has in the past, arrested Tibetan demonstrators in order to prevent them from engaging in 'political activities' as a means to placate Beijing and maintain normalcy in its relations with China.⁵¹⁹

Examples of this policy include the following:

In November 1996, during the visit of former President Jiang Zemin, 300 Indian police officers used tear gas and water cannons against Tibetan protesters and detained fifty protesters.⁵²⁰

In 1998, Indian police broke up a protest by hunger strikers in Delhi and forcibly removed the hunger strikers to a hospital.⁵²¹

On January 7, 1999, the police sought to prevent and arrest Tibetans for

⁵¹⁷ Interview with NGOs, Dharamsala, May 11, 2015; *India Cracks Down on Tibetan Protests during Chinese Leader's Visit*, THE GUARDIAN, MARCH 28, 2012, <https://www.theguardian.com/world/2012/mar/28/india-cracks-down-tibetan-protests-china> (last visited June 10, 2016). It also happens regularly at the Rohini youth hostel in Delhi. Interview with TSO Lekyi Dorjee Tsangla, Majnu-ka-tilla, Delhi, June 10, 2015.

⁵¹⁸ Cable 004443, *supra* note 240.

⁵¹⁹ *Id.*

⁵²⁰ Refugee Board IND33125, *supra* note 34.

⁵²¹ Seeds Memo, *supra* note 507.

protesting in New Delhi without first seeking permission.⁵²² This led China to express displeasure with India's failure to prevent Tibetans from demonstrating in front of the Chinese Embassy.⁵²³

On October 20, 1999, riot police prevented Tibetan protesters from marching to the Chinese embassy.⁵²⁴

On October 12, 2007, twenty-two activists were arrested during a Tibetan Youth Congress demonstration at the Chinese Embassy in New Delhi.⁵²⁵

Four of those detained suffered serious injuries after being beaten while in police custody.⁵²⁶

In the months leading up to the 2008 Beijing Olympic Games, Indian intolerance of Tibetan political activity heightened. In March of 2008, on the anniversary of the Dalai Lama's flight into exile, hundreds of monks and nuns organized a protest march from Dharamsala, the seat of the CTA, to the border of Tibet. India responded by issuing a restraining order that prohibited the protesters from leaving Himachal Pradesh, the state where Dharamsala is located.⁵²⁷ When the protesters continued with their march in defiance of the restraining order, Indian police detained more than 100 of them, and an Indian court ordered them to be held for 14 days.⁵²⁸ An Indian Ministry of External Affairs spokesman said, "India does not permit Tibetans to engage in anti-China political activities in India."⁵²⁹

Later in 2008, China used those words in the course of encouraging India to halt the "special meeting" proposed by the Dalai Lama on the future of Tibet. Qin Gang, China's foreign ministry spokesman, said, "The Indian government has made a solemn commitment about not allowing any anti-China activities on its soil. We hope that the commitment will be implemented."⁵³⁰ As protest activities related to the Beijing Olympics continued into April 2008, 680 Tibetan protesters were arrested because of their political activities.⁵³¹ In July, Indian police arrested hunger strikers protesting the Beijing Olympics. Police also arrested 86 other Tibetans who attempted to keep the police officers from reaching the hunger strikers.⁵³²

India's intolerance of political dissent that threatens its relations with China appears

⁵²² *Id.*

⁵²³ Refugee Board IND33125, *supra* note 34.

⁵²⁴ *Id.*

⁵²⁵ *Tibetan Activists in Tihar Jail after Severe Beatings by Delhi Police*, WORLD TIBET NETWORK NEWS (Oct. 12, 2007).

⁵²⁶ *Id.*

⁵²⁷ Heather Timmons, *Tibetan Protest Marchers Vow to Reach Homeland*, N.Y. TIMES, Mar. 12, 2008.

⁵²⁸ Simon Robinson and Madhur Singh, *India Detains Tibet Protestors*, TIME, Mar. 14, 2008.

⁵²⁹ *Id.*

⁵³⁰ Saibal Dasgupta, *China wants India to Block Dalai Lama's Dharamshala Meet*, THE TIMES OF INDIA, Nov. 14, 2008.

⁵³¹ U.S. Comm. For Refugees and Immigr., World Refugee Survey – India, 2008.

⁵³² *Id.*

likely to continue. For example, in 2010, six Tibetans were arrested during the visit of Zhou Yongkang.⁵³³ In December 2010, the Indian authorities detained more than 30 Tibetans demonstrating for independence at the time of Chinese Premier Wen Jiabao's visit to India.⁵³⁴ And, in 2012, India imposed a ban on protests and press conferences by Tibetans in Delhi during the visit of Chinese premier Hu Jintao as part of the BRICS summit.⁵³⁵ During his visit, students were reportedly confined to their dormitories and prevented from meeting with the media.⁵³⁶ "Hundreds of armed security personnel patrolled areas of the Indian capital where Tibetans live ... erecting barricades and refusing to let young people leave."⁵³⁷ Students of Tibetan origin were confined to halls of residence and barred from meeting the media. Hundreds of Tibetans were jailed and many protesters were reportedly beaten as part of an official effort to prevent anti-China demonstrations during the visit.⁵³⁸ As recently as 2015, as previously noted, the major Tibetan settlement in Delhi was cordoned off while Chinese dignitaries were visiting.⁵³⁹

3. Relations Between Tibetan and Indian Communities

Tibetans and Indians generally coexist peacefully. However, violence and hostilities have erupted occasionally, and recently an anti-Tibetan sentiment has appeared as part of a general animus towards immigrant groups.

In the early 1990s, the dramatic increase in the number of Tibetans coming to India exacerbated tensions between Tibetan and Indian communities. Perhaps the most serious clash occurred in Dharamsala in April 1994. The violence erupted after a Tibetan youth stabbed an Indian taxi driver to death during a dispute. Indian mobs looted Tibetan-owned stores and burned Tibetan government offices. India temporarily closed the refugee reception center in Dharamsala. Some Indian politicians and editorialists began criticizing Tibetans for taking advantage of Indian hospitality—and the Indian government for its tolerance of the Tibetan community.⁵⁴⁰

⁵³³ *Six Tibetans Arrested in India During Chinese Official Visit*, THE TIBET POST, <http://www.thetibetpost.com/en/news/international/1225-six-tibetans-arrested-in-india-during-chinese-official-visit>. Zhou Yongkang was then the 9th in the hierarchy of the Politburo of the Communist Party of China Central Committee.

⁵³⁴ *Tibetans Protest Wen's Visit; 34 Detained*, NEW INDIAN EXPRESS, December 16, 2010, <http://www.newindianexpress.com/nation/article170946.ece> (last visited June 10, 2016).

⁵³⁵ *India Cracks Down on Tibetan Protests during Chinese Leader's Visit*, THE GUARDIAN, MARCH 28, 2012, <https://www.theguardian.com/world/2012/mar/28/india-cracks-down-tibetan-protests-china> (last visited June 10, 2016).

⁵³⁶ *Id.* One student reported, "When some students tried to protest...then the police visited each hostel room and told us, 'If you do not listen, then we will put you in jail.'"

⁵³⁷ *India cracks down on Tibetan protests during Chinese leader's visit*, THE GUARDIAN, <http://www.theguardian.com/world/2012/mar/28/india-cracks-down-tibetan-protests-china>

⁵³⁸ *India Tightens New Delhi's Tibetan Districts on Eve of Summit*, NEW YORK TIMES, March 29, 2012, http://www.nytimes.com/2012/03/29/world/asia/india-tightens-new-delhis-tibetan-districts-on-eve-of-summit.html?_r=0 (last visited June 27, 2016); *Hundreds Jailed, Many Severely Beaten in Mass Arrests*, PHAYUL, March 26, 2012, <http://www.phayul.com/news/article.aspx?id=31146> (last visited June 27, 2016).

⁵³⁹ Interview with Lekyi Dorjee Tsangla, Majnu-ka-tilla, June 10, 2015.

⁵⁴⁰ 1999 Barnett memo, *supra* note 54 at ¶20.

The numerous other examples of growing anti-Tibetan sentiment in India include the following:

- In 1986/87, Tibetans in Bomdila were forced to close their shops for 3 months due to looting by members of the All Arunachal Pradesh Students Union (AAPSU). Many Tibetans in the neighboring towns of Kalakhsan and Sherkhang were evicted from their shops by the AAPSU and forced to abandon their goods and return to live in the Tibetan settlement.
- In 1991/1992, Indian students demolished Tibetan houses in Dirang, Arunachal Pradesh, saying that they should not be there.
- In 1995, the state government of Arunachal Pradesh unsuccessfully attempted to expel 12,000 Tibetans.⁵⁴¹ Tibetan houses and businesses were burned and looted, and Tibetan people threatened.
- In July 1999, in the northern Indian city of Manali, approximately 140 Tibetan shops and market stalls were attacked and burned after a Tibetan killed an Indian youth following a disagreement.⁵⁴² The Tibetan market was reportedly “razed to the ground.”⁵⁴³
- In November 1999, the Dalai Lama considered relocating some of the CTA’s offices and his private residence to the Faridabad region “as the growing tension between the locals and the Tibetans [was] becoming a cause of worry.”⁵⁴⁴ He ultimately rejected this plan after local Indian community leaders reached out to him and requested that he not relocate.
- On May 10, 2005, a political party in the southern Indian city of Mysore staged a demonstration calling on Tibetans to “quit India.”⁵⁴⁵ Demonstrators carried placards with anti-Tibetan slogans and urged the Indian government to oust all Tibetans, in part to preserve India’s relationship with China.⁵⁴⁶
- In 2008, escalating tensions between the Tibetan and Indian communities in Dharamsala led to a temporary, unofficial boycott by Tibetans of Indian taxis. (Taxicabs are predominantly owned by Indians, and Tibetans stopped using them as a response to incidents of violence between the two communities.)⁵⁴⁷
- On October 30, 2015, a Tibetan couple was confronted by three locals who sexually harassed the Tibetan woman and then stabbed the Tibetan man to death. The three assailants were charged with murder in the District Court

⁵⁴¹ Refugee Board IND33125, *supra* note 34. The central government of India was apparently “angered” by the state government’s initiatives. <http://www.refworld.org/docid/3ae6a18.html>

⁵⁴² *Id.*

⁵⁴³ *Id.*

⁵⁴⁴ *Id.*

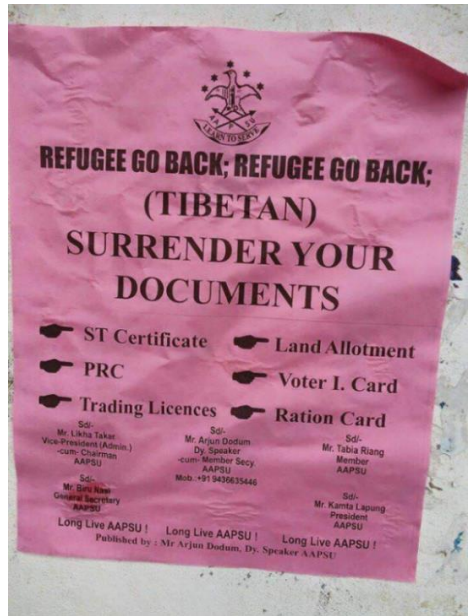
⁵⁴⁵ *Bhagat Singh Samithi Asks Tibetans to ‘Quit India’*, STAR OF MYSORE, May 10, 2005.

⁵⁴⁶ *Id.*

⁵⁴⁷ Interviews by TJC with residents of Dharamsala, May 2, 2009.

in Dharamsala. The community remained calm, with no incidents of retaliation reported.⁵⁴⁸

Also in 2015, trouble reemerged in the state of Arunachal Pradesh, where the All Arunachal Pradesh Students Union (AAPSU) – a strong political body with considerable political influence in the area – adopted an anti-refugee stance. In June 2015, posters were pasted throughout the sizeable market town of Bomdila, which is home to approximately 200 Tibetans, many of whom have shops in the bazaar. The posters urged Tibetans to “go back” and to “give up” a variety of privileges - “Return your ST (Scheduled Tribe status); Return your PRC (Permanent Residency Card); Return your ration card!” None of the Tibetans actually had those privileges as a result of their status as foreigners. Officially, AAPSU justified its stance by claiming that Tibetans were involved in political activities.⁵⁴⁹ Others believe that the actual motivation is economic, not political, reflecting the fact that Tibetans have been improving their businesses and making more money compared to other locals.⁵⁵⁰ The local authorities were supportive of the Tibetan community and the District Commissioner’s office told the Tibetans not to close their shops and vowed to protect the Tibetans.⁵⁵¹



AAPSU Poster

⁵⁴⁸ Interview with Tenzin Namgyal, legal consultant for CTA, June 16, 2016.

⁵⁴⁹ Interview with Tibetan business people Bomdila, Arunachal Pradesh, Oct 21, 2015.

⁵⁵⁰ Interview with Tibetan business-owners, Bomdila, Arunachal Pradesh, October 2015; Interview with TSO for Tawang, Bomdila, Dirang, and Tenzingang, Yangdup la, October 2015. One refugee reported that AAPSU’s “Refugees go back” campaign was aimed originally at Chakma and Bangla refugees from Bangladesh residing in Arunachal Pradesh but then extended to explicitly cover Tibetans. Interview with Tibetan business-owners, Bomdila, Arunachal Pradesh, October 2015.

⁵⁵¹ The Tibetans kept their shops open but remained fearful because many believe that the AAPSU is stronger than the police. Interview with Tibetan business-owners, Bomdila, Arunachal Pradesh, October 2015; Interview with TSO for Tawang, Bomdila, Dirang, and Tenzingang, Yangdup la, October 2015.

Tibetan respondents reported that AAPSU members also ask Tibetans for small “loans” (about 2,000-5,000 rupees) which they never repay. They apparently particularly target Tibetans for such loans, and threaten trouble if they do not get the loans.⁵⁵²

Tibetans have also at times suffered as a result of racist attacks in India. India struggles socially with a racism problem, with people who look different from the plains Hindu and Muslim Indians being viewed as not Indian and thus potentially dangerous or lesser “others.”⁵⁵³ There is particular antagonism towards Indians from the north-east who are sometimes derogatorily named “chinki,” and at times violently attacked.⁵⁵⁴ Non-Hindu women from that region are negatively regarded as being sexually promiscuous. Tibetans have at times been caught up in this negative portrayal of people who look different. They also have been overtly targeted at times for being Tibetan.⁵⁵⁵

Despite the episodic tensions described above, the Tibetan and Indian communities generally coexist peacefully. The local Indians, in fact, benefit from the Tibetan settlements as they can receive medical services from the settlement health clinics and they have access to facilities that were made available due to the presence of a Tibetan settlement.⁵⁵⁶ The relationship between Tibetans and Indians can also be described as a mutually beneficial business exchange, in which Tibetans provide local Indians with the opportunity to work on the Tibetan agricultural lands to assist with farming.⁵⁵⁷

Overall, the Tibetan exile community is immensely grateful to India. In 2009, both the Tibetan and Indian communities took positive steps towards building a more peaceful relationship. In 2009, to commemorate fifty years in exile, the CTA organized a series of events officially thanking the Indian government for its generosity,⁵⁵⁸ and

⁵⁵² Interview with Tibetan business-owners, Bomdila, Arunachal Pradesh, October 2015.

⁵⁵³ [Mari Marcel Thekaekaran, *There's no escaping racism in India*](https://newint.org/blog/majority/2011/06/03/racism-xenophobia-india-migrants/), NEW INTERNATIONALIST blog <https://newint.org/blog/majority/2011/06/03/racism-xenophobia-india-migrants/> (accessed June 9, 2016).

⁵⁵⁴ S. Thounaojam, *A Preface to Racial Discourse in India: North-east and Mainland*, ECONOMIC AND POLITICAL WEEKLY XLVII(32): 10-13.D (2012); McDuie-Ra, *Beyond the 'Exclusionary City': North-east Migrants in Neo-liberal Delhi*, URBAN STUDIES 50(8): 1625-1640 (2013); [Bijoyeta Das, *Anger Rises Over Racism in India*](http://www.ipsnews.net/2014/03/anger-rises-racist-india/), INTERPRESS SERVICE NEWS AGENCY, <http://www.ipsnews.net/2014/03/anger-rises-racist-india/> (accessed June 9, 2016); *Assam Violence: Has Indian Nationhood Failed to Embrace the North Eastern Community?* THE ECONOMIC TIMES, August 19, 2012, http://articles.economictimes.indiatimes.com/2012-08-19/news/33262528_1_ne-students-rumours-attacks (last visited June 16, 2016); Karishma Kuenzang & Kashika Saxena, *Call a Northeastern "Chinki", Be Jailed for 5 Yrs*, THE TIMES OF INDIA, June 6, 2012, <http://timesofindia.indiatimes.com/life-style/people/Call-a-Northeastern-Chinki-be-jailed-for-5-yrs/articleshow/13848316.cms> (last visited June 16, 2016).

⁵⁵⁵ A Tibetan in Ladakh reported an incident involving a car accident that resulted in a verbal altercation between a Ladakhi driver and a Tibetan driver. When the Tibetan replied in fluent Ladakhi, the Ladakhi man reportedly said “Ah, I thought you were Tibetan, and I was going to beat you!” Interview with TYC representatives, Choglamsar, Leh, October 2016.

⁵⁵⁶ Interviews with residents of Phuntsokling settlement, Orissa, January 2016; Interviews with residents of Norgyeling settlement, February 2016.

⁵⁵⁷ Interview with Sonam Tashi, Hunsur Settlement, May 2015.

⁵⁵⁸ One such event was held in Dharamsala on May 3, 2009 and was designed to thank Indian NGOs working with the Tibetan community. At one end of the meeting hall hung a poster that read “Thank

simultaneously, the Indian government designed a community-policing program to improve relations between the two communities.⁵⁵⁹

4. Relationship between Tibetan communities and Indian authorities

In most states, Tibetans' point of contact with the Indian government apparatus is the Foreign Registration Office (FRO). In Ladakh (part of Jammu and Kashmir state), and Arunachal Pradesh, the territory is deemed to be more sensitive, due to being border areas, and so the overseeing authorities are the Indo-Tibet Border Force (ITBF), and the Subsidiary Intelligence Bureau (SIB)⁵⁶⁰ respectively.

Apart from occasional confrontations with some local authorities over expired RCs, Tibetans on the whole report an amicable relationship with local Indian authorities and do not generally face harassment by law enforcement authorities.⁵⁶¹ In some settlements, Tibetans report being actively supported by the local authorities, e.g. in land encroachment cases in Doeguling, Mundgod, Karnataka, and in Bomdila, Arunachal Pradesh.⁵⁶² Communities that do see police infractions with community members state that Tibetans are not the sole targets of such infractions; rather, all vulnerable groups are potential targets.⁵⁶³

5. Health

The CTA provides health services for Tibetans in India and Nepal, including seven hospitals, five primary healthcare centers, thirty-six clinics, and two mobile clinics across the two countries.⁵⁶⁴ It also provides training in traditional Tibetan medicine at the

you India – 50 Years in Exile” and each attendee received miniature Tibetan prayer flags inscribed “Thank you India.” Kaufman *supra* note 53, at 565.

⁵⁵⁹ Interview with Tsering Phuntsok, head of the Tibetan Settlement Office, Central Tibetan Administration, Dharamsala (May 3, 2009); *Self Help for Peace*, Indian Gov't Superintendent of Police Foreign Registration Office, 2009 (on file with TJC). The neighborhood watch, which went into effect in April 2009, has reportedly resolved the problem of rogue local police stopping Tibetans purportedly to check RCs, but actually to obtain a bribe. Interviews by the TJC with residents of Dharamsala, May 2, 2009; Kaufman *supra* note 53, at 565.

⁵⁶⁰ Interview with TSO Bomdila/Tenzingang, October 2015. Subsidiary Intelligence Bureau (“SIB”) functions under its parent agency, the Intelligence Bureau, New Delhi.

⁵⁶¹ Interview with Tibetan residents in Dirang, October 19, 2015; Interview with Gonpo Dorje, Palden Dorje, Kalsang Chodak, and Phuntsok Wangyal, Norgyeling, February 18, 2016; Interview with Karma Norzin Palmo, October 15, 2015; Interview with Settlement Officer, Doeguling, Mundgod, February 14, 2016; Interview with Lekyi Dorjee Tsangla, Delhi, June 10, 2015.

⁵⁶² Locals noted that the Superintendent of Police supported them when the All Arunachal Pradesh Students Union pasted posters around the town in June 2015 calling for the Tibetans to “go home.” He told the Tibetans to stay and not to close their businesses and that he and his men would protect them. Interview with Tibetan businessmen, Bomdila, Arunachal Pradesh, October 2015. The TSO in Bomdila, Arunachal Pradesh reported a good relationship with the Subsidiary Intelligence Bureau (“SIB”) which functions under its parent agency, the Intelligence Bureau, New Delhi. Interview with TSO Bomdila/Tenzingang, October 2015.

⁵⁶³ Interview with TJC and TLA, May 31, 2015.

⁵⁶⁴ Communication with Tashi Yangzom, PA to the Health Secretary, Department of Health, CTA, May 2016; older figures found in CTA, *Administration of Hospitals and Primary Health Care Services*, <http://tibet.net/health/#code0slide0> (last accessed on April 14, 2016).

Tibetan Medical and Astrological Institutes.⁵⁶⁵ Some settlements have their own healthcare clinic although they tend to be very rudimentary.⁵⁶⁶ Tibetans may also seek healthcare from Indian hospitals but Indian healthcare subsidies are not generally available to Tibetans.⁵⁶⁷

In response to a survey finding that a lack of healthcare coverage contributes to a high mortality rate and is a primary cause of poverty within the Tibetan community, the CTA launched the “Tibetan Medicare System” in 2010.⁵⁶⁸ It is designed to offer “financial assistance to poor Tibetan families as well as to provide proper medical care to those in need of urgent medical attention.”⁵⁶⁹ Families of 2-5 members can purchase coverage for 3565 rupees per year with subsidies offered by the CTA to eligible individuals.⁵⁷⁰ As of early 2015, 30,000 Tibetans had enrolled in the program.⁵⁷¹ There are also private insurance companies offering health coverage.⁵⁷²

The Tibetan population in India suffers from a high incidence of tuberculosis. Indeed, researchers report that “overall rates of tuberculosis among Tibetans-in-exile are among the highest in the world.”⁵⁷³ In response to this serious health issue, tuberculosis programs have been implemented in the last few years. In 2011, Johns Hopkins University Center for TB Research joined with the CTA Department of Health to implement a program called TB REACH. The project is designed to send small teams of doctors and nurses to Tibetan communities in Himachal Pradesh and Karnataka, including the settlements in Mundgod and Bylakuppe.⁵⁷⁴ More recently, on April 5, 2016, the Government of India began funding a tuberculosis prevention program carried out by the CTA Department of Health.⁵⁷⁵ The strategies include tuberculosis awareness and community outreach, case detection in remote refugee settlements and institutional settings, and treatment of diagnosed

⁵⁶⁵ Refugee Board IND33125, *supra* note 34.

⁵⁶⁶ Interview with TSO of Kham Kathok Tibetan Society, Sataun, June 6, 2015 (TJC researchers took a tour of the clinic in Sataun which was quite small and had no equipment or health care facilities.); Interview with Tibetan camp leader, Tenzingang settlement, Arunachal Pradesh, Oct 20, 2015. There is a health clinic in Tenzingang, but only for basic ailments. There are no hospitals nearby, so for emergencies and childbirth, residents are forced to drive 2 hours to Bomdila, or 5-7 hours to a better hospital in Tezpur.

⁵⁶⁷ Interview with knowledgeable source, Dehradun, June 3, 2015.

⁵⁶⁸ <http://tibet.net/2015/02/department-of-health-announces-launch-of-revised-guidelines-of-tibetan-medicare-system/> (last visited June 14, 2016).

⁵⁶⁹ <http://tibet.net/2012/04/department-of-health-launches-tibetan-medicare-system/> (last visited June 14, 2016).

⁵⁷⁰ <http://tibet.net/2015/02/department-of-health-announces-launch-of-revised-guidelines-of-tibetan-medicare-system/> (last visited June 14, 2016).

⁵⁷¹ *Id.*

⁵⁷² Interview with knowledgeable source, Paonta Choelsum, June 5, 2015.

⁵⁷³ <http://www.stoptb.org/assets/documents/global/awards/tbreach/India%20JHUCTB.pdf> (last visited May 19, 2016).

⁵⁷⁴ *Id.*

⁵⁷⁵ <http://tibet.ca/en/library/wtn/13415> (last visited May 19, 2016); <http://tibet.net/2016/04/mou-signed-between-ctas-health-department-and-ministry-of-health-family-welfare-govt-of-india/> (last visited May 19, 2016).

tuberculosis patients.⁵⁷⁶

In addition to tuberculosis, Tibetan refugee communities also suffer from a high incidence of Hepatitis B,⁵⁷⁷ and from a host of gastric illnesses, some of which are attributable to inadequate water supplies in the settlements and other Tibetan communities.⁵⁷⁸ In Hunsur, Karnataka, for example, residents must boil water before they can drink it.⁵⁷⁹ Efforts have been unsuccessful to convince the Government of India to extend its guarantee of access to potable water to Tibetan settlements.⁵⁸⁰

A 2002 demographic study of the health status of Tibetans residing in the settlements found that skin conditions, upper and lower respiratory tract infections, fevers, diarrheal diseases, tuberculosis, parasitic and other infectious diseases “abound in the settlements.”⁵⁸¹ At that time, fewer than half of the children residing in the settlements had received vaccinations.⁵⁸² A 2009 demographic study reported that gastric illness is the single major ailment within the Tibetan community followed by high blood pressure, and tuberculosis.⁵⁸³ Malaria currently constitutes 3.3% of reported illnesses⁵⁸⁴ and Tibetans report that in the Phuntsokling settlement in Orissa, where malaria used to be quite prevalent, due to improvements, the incidence of the disease has decreased due to improvements in public health.⁵⁸⁵

With the recent increased effort to address the prevalence of diseases like tuberculosis and Hepatitis B in the Tibetan community, there is reason to believe that some of the most serious health issues facing Tibetans in India will be ameliorated.

6. Education

Shortly after fleeing to India in 1959, the Dalai Lama gave his sister, Tsering Dolma Taklha, authority to establish a nursery for Tibetan children. That nursery eventually evolved into the Tibetan Children’s Village (TCV) schools, a Tibetan school system operated by the CTA, with branches throughout India educating more than 16,726 Tibetan children.⁵⁸⁶

⁵⁷⁶ *Id.*

⁵⁷⁷ *Background on Tibetan Refugees – University of Rochester*, www.rochester.edu/tibetchallenge/.../BACKGROUND-ON-TIBETAN-REFUGEES

⁵⁷⁸ See TechnoServ Report, *supra* note 111, 2 & 21.

⁵⁷⁹ Interview with Gompo Tsering, camp leader in “A” camp, Hunsur, May 16, 2015.

⁵⁸⁰ *Id.* Earlier studies reported that some of the settlements had inadequate drinking water for more than half of their residents. Refugee Board IND33125, *supra* note 34.

⁵⁸¹ BHATIA, *supra* note 447, at 417.

⁵⁸² *Id.*

⁵⁸³ CTA Planning Commission, Demographic Survey of Tibetans in Exile – 2009, August 2010, p. 50.

⁵⁸⁴ *Id.* at 49.

⁵⁸⁵ Interview with Tenzin Tsewang, doctor of the Phuntsokling Menlha Hospital, Orissa, January 27, 2016; Interview with Tsering Phuntsok, Multi-purpose Tibetan Co-op Society Secretary, Phuntsokling, January 25, 2016.

⁵⁸⁶ See Tibetan Children's Village Home Page, <http://www.tcv.org.in/> (last visited May 19, 2016).

Tibetan schools fall into three categories: (1) those administered by the CTA's Department of Education, headquartered in Dharamsala; (2) those run by the Central Tibetan Schools Administration, an independent institution that falls within the jurisdiction of the Indian Ministry of Human Resource Development;⁵⁸⁷ and (3) those established by charitable organizations, including TCV and the Tibetan Homes Foundation.⁵⁸⁸ The CTA has also established "transit schools" for new arrivals who are eighteen years of age or older. Transit schools provide English and Tibetan language instruction and vocational training.

In 2013, the CTA announced that it would oversee all Tibetan schools in India,⁵⁸⁹ with the transfer of control taking place over three years.⁵⁹⁰ This transfer of schools from the Government of India to the CTA was decades in the making with the Dalai Lama taking the initiative and then the Sikyong, Dr. Lobsang Sangay, pursuing it aggressively. A condition of the transfer was that 10% of the students may be Indian.⁵⁹¹ Under this new system, Indian teachers in formerly CTSA schools will be replaced with Tibetan teachers.⁵⁹² It is too soon to evaluate the effect of this transfer of control on the quality of the education system for Tibetans.

Although the Tibetan education system had faced challenges due to the exile community's growth and overcrowding in the settlements,⁵⁹³ that is no longer the case. The number of children in Tibetan schools has been dwindling, primarily because "there's been a screeching halt of Tibetans coming from Tibet."⁵⁹⁴ Tibetans are also marrying later and having fewer children.⁵⁹⁵ As reported in Part III (F), there is currently a real scarcity of children in the settlements and many schools and hostels are under-occupied in the south and in TCV as well.⁵⁹⁶ In some settlements, there is a shortage of teachers, but the transfer of control of the Central School for Tibetans (CST) from the Indian government to the CTA, and the previous restrictions on who may serve as teachers, may help to ameliorate this problem.

⁵⁸⁷ <http://ctsa.nic.in/SchoolsunderCtsa.aspx>

⁵⁸⁸ Refugee Board IND33125, *supra* note 34.

⁵⁸⁹ Central Tibetan Administration, Press Release: Government of India Approves the Transfer of CTSA Schools to the Central Tibetan Administration, Jan 11, 2013 <http://tibet.net/2013/01/goi-approves-the-transfer-of-ctsa-schools-to-the-central-tibetan-administration/> (accessed on June 10, 2016)

⁵⁹⁰ <http://thediplomat.com/2013/05/educating-tibet-government-in-exile-to-oversee-all-schools-in-india/> (last visited May 19, 2016); Interview with Ngodup Tsering, CTA Secretary of Education, June 24, 2014; Interview with Ravindra Tiwari, principal at local school, Phuntsokling settlement, Orissa, January 27, 2016.

⁵⁹¹ Interview with Ngodup Tsering, CTA Secretary of Education, June 24, 2014.

⁵⁹² Interview with Ravindra Tiwari, *supra* note 590.

⁵⁹³ Refugee Board IND33125, *supra* note 34.

⁵⁹⁴ Interview with Ngodup Tsering, CTA Secretary of Education, June 24, 2014. *See* note 78 *supra*.

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.*

Due to the geographical spread of the Tibetan settlements across India, many Tibetan children attend Tibetan boarding schools in distant locations.⁵⁹⁷ For example, the Tibetan school in Shillong, Meghalaya state enrolls Tibetan children from across India's northeast region – most are from Tuting settlement, in Arunachal Pradesh which does not have its own school, while others are from Tawang, Miao, Tezu, Sikkim and Shillong.⁵⁹⁸ After Class 5 in Shillong, all the children must go to another Tibetan school in India to continue their studies. They are expected to go to sister schools in Himachal Pradesh, but their parents often opt to send them to schools in Darjeeling or Kalimpong, which are relatively closer (although still over 550km from home). Some interviewees from remote settlements noted that when children are educated away from the settlement, they do not return.⁵⁹⁹ Children whose parents cannot afford to send them to boarding school are educated at local schools and consequently are not schooled in Tibetan language or culture.⁶⁰⁰

In Ladakh, children who do not achieve 60% or higher in their Class 10 school exams are ineligible to apply for scholarships to continue their education in Class 11 and 12. Boys who pass Class 9 can join the army, but there are fewer options for girls. As such, teachers tend to allow girls who fail to repeat their Class 10 year in the hope that they will pass the exams the second time around.⁶⁰¹

Post-secondary education is difficult to access for many Tibetans, primarily due to cost and a limited number of available scholarships.⁶⁰² Despite this, some Tibetans have received advanced degrees from institutions of higher education throughout India, although according to the 2009 demographic survey conducted by CTA, 78% of the literate population does not have a college or university degree.⁶⁰³ That number jumps to 87% if monastery studies are excluded.⁶⁰⁴ India provides some assistance to the Tibetan exile community in the form of twenty scholarships per year to students graduating from CTA schools and a few scholarships per year to Tibetans for the study of medicine or dentistry.⁶⁰⁵ Some colleges put Tibetans in the “foreigners” category which makes

⁵⁹⁷ Tibetan women in Norgyeling, Bhandara settlement, Maharashtra said that due to the lack of good schools around their remote settlement, they had no option but to send their children to Tibetan boarding schools far away, once they had completed up to Class 5 in the settlement school. Interview with Tibetan Women's Association, Norgyeling, Bhandara, Maharashtra, February 2016. Unlike boarding schools in other countries, Tibetan boarding schools are created out of necessity and do not cater to the wealthy.

⁵⁹⁸ Interview with Migmar Dhondup, Head teacher of Sambhoda Tibetan School, Shillong, October 23, 2015.

⁵⁹⁹ Interview with Tibetan settlement camp leaders, Tenzingang, Arunachal Pradesh, October 2015.

⁶⁰⁰ Interview with Tenzin Chodup and Tenzing Nyima, Dirang, Arunachal Pradesh, October 19, 2015.

⁶⁰¹ Interview with Karma Norzin Palmo, President of Tibetan Woman's Association Ladakh, Leh, Ladakh, Oct 15, 2015.

⁶⁰² Interview with staff member, Department of Education, Central Tibetan Administration, June 20, 2016; Interview with Karma Norzin Palmo, President of Tibetan Woman's Association Ladakh, Leh, Ladakh, Oct 15, 2015; Unclassified Cable No. 261108 from Sec'y of S. Wash. D.C. to American Embassy in New Delhi (Dec. 24, 1996) (on file with TJC).

⁶⁰³ CTA Planning Commission, Demographic Survey of Tibetans in Exile – 2009, August 2010, p. 43.

⁶⁰⁴ *Id.*

⁶⁰⁵ Refugee Board IND33125, *supra* note 34; Interview with staff member, Department of Education, Central Tibetan Administration June 20, 2016.

admission easier but much more expensive - typically twice the cost.⁶⁰⁶ The CTA, Tibetan Children's Village, and Tibetan Homes Foundation all provide additional scholarships but their number is inadequate to meet the needs of the roughly 1,000 to 1,500 students who graduate from the twelfth grade or its equivalent annually.⁶⁰⁷

The institutions of higher education that Tibetans can attend are mostly Indian, but there are also two Tibetan universities, the Dalai Lama Institute for Higher Education in Bangalore, and the Centre for Higher Tibetan Studies, Sarah College, Dharamsala.⁶⁰⁸ Approximately 200 - 300 Tibetans with scholarships provided by the CTA's Department of Education graduate from college each year.⁶⁰⁹ These graduates tend to be eager to continue their post-secondary education, but as non-citizens, they often find it difficult to attend professional or other graduate schools. The Indian government sets aside only a small number of seats annually for Tibetans in engineering, medicine, pharmaceuticals, teacher training and a few diploma courses,⁶¹⁰ but scholarships for these must be worked out separately.

No discussion of education among the Tibetan exile community in India would be complete without reference to the robust tradition of religious education among Tibetans, which continues in India. There are reportedly 15,250 Tibetan monks and nuns in India today,⁶¹¹ representing approximately 16% of the Tibetan exile population in India.⁶¹²

VI. The Tibetan Rehabilitation Policy, 2014

On October 20, 2014, the Ministry of Home Affairs of the Government of India issued "The Tibetan Rehabilitation Policy, 2014 ("TRP"),⁶¹³ which evolved out of negotiations between the CTA and the Government of India.⁶¹⁴ The policy purports to address the lack

⁶⁰⁶ Interview with Dorjee Tenzin, staff at Dekyiling settlement, June 4, 2015. Some colleges, however, make exceptions, and do not charge the higher rate to Tibetans. Candidates seeking admission in the foreigners' category must go through the Tibet Bureau. *Id.* There is no uniformity as to whether Tibetans are placed in the foreigners' category within colleges throughout India. Interview with Sonam Dorjee, TSO, Dharamsala, May 31, 2015.

⁶⁰⁷ According to Department of Education information, 1224 Tibetan students will graduate with a pass from class 12 in 2016. Interview with staff member, and data from Department of Education, Central Tibetan Administration, June 20, 2016, on file with TJC.

⁶⁰⁸ Interview with Dorjee Tseten, Dharamsala, May 2015. Interview with Penpa, Secretary to the settlement officer at Phuntsokling settlement, Orissa, January 2016; <http://sarah.instituteofbuddhistdialectics.org/>

⁶⁰⁹ Interview with staff member, Department of Education, Central Tibetan Administration, June 20, 2016; Seeds Memo, *supra* note 507. This does not include the Tibetan graduates who were given scholarships by other institutions or who paid their own tuition.

⁶¹⁰ There are 7 seats for engineering, 3 for medical, 4 for teacher-training, and a couple for diploma courses. Interview with staff member, Department of Education, Central Tibetan Administration, June 20, 2016.

⁶¹¹ Communication with Tenzin Lungtok, Additional Secretary, Department of Religion, CTA, May 2016.

⁶¹² http://www.tibet-foundation.org/page/tie_monks_and_nuns

⁶¹³ A copy of the policy is available at centraltibetanreliefcommittee.org/ctrc/trp-2014/tibetan-rehab-policy-2014-final-copy.pdf (site last visited 5/5/16), *reprinted in* Appendix, *infra*.

⁶¹⁴ In an interview, the CTA's Secretary of the Department of Home described the TRP as the CTA's greatest achievement. He explained that consultations took place between the CTA Ministry of External Affairs, the

of uniformity from state to state in the provision of assistance and facilities to the Tibetan community with the goal of improving “the general satisfaction level of the Tibetan refugees.”⁶¹⁵ The policy addresses two distinct problem areas: (1) state governments’ refusals to provide leases or other land documents to Tibetans and (2) the denial of welfare and other benefits to Tibetans.

Under the TRP, Tibetans will be able to lease land for 20 years, although land must be leased through the Central Tibetan Relief Committee (CTRC), meaning that Tibetans still cannot lease land in their individual names.⁶¹⁶ The TRP mandates a standard lease form, designed to provide uniformity. However, the standard lease document contains a number of problematic provisions. One provision states that the lease is revocable at will by the Government of India,⁶¹⁷ and another prohibits political meetings within the settlement.⁶¹⁸

With respect to welfare programs, the policy does not mandate that benefits be extended to Tibetans. To the contrary, the policy notes that programs such as the National Food Security Act and the Targeted Public Distribution System Act are applicable only to Indian citizens. However, the policy requests state governments to consider extending the benefits of these and other programs to Tibetan families.⁶¹⁹ For example, the TRP asks states to give Tibetans ration cards.⁶²⁰

The policy also authorizes state governments to permit Tibetans to pursue economic activities and to issue relevant papers and trade licenses to Tibetans so long as they produce

CTA Department of Home, and the Government of India. During the negotiations, CTA proposed fifteen points. The Government of India deleted two, which were about the elimination or simplification of the PAP procedure (where visitors to Tibetan settlements are required to obtain Protected Area Permits). The other thirteen points were formulated into policy. Several rounds of discussions ensued. Finally, the draft was sent out to all the Indian states’ authorities for comments. Interview with Secretary of Department of Home, CTA, Sonam Khorlatsang, June 1, 2015.

⁶¹⁵ TRP, *supra* note 438.

⁶¹⁶ Interview with Tenzin Namgyal, legal consultant for CTA, Dharamsala, February 1, 2016. An exception is the State of Karnataka, which announced in November 2015 that although the land will be leased to the Central Tibetan Relief Committee, it will be allotted to individual Tibetans who will be able to secure a Rights Residency and Crops Record in their own names. “Karnataka to Allow Tibetan Refugees to Lease Land in their own Names,” Bangalore Mirror, November 4, 2015, available at <http://www.bangaloremirror.com/bangaore/others/karnatiaka-allow-tibetan-refugees-lease-land-own-names/articleshow/49651214.cms?prtpage=1> (site last visited 5/6/2016).

⁶¹⁷ Paragraph 30 states: Notwithstanding anything contained above, the Central Government/Lessor may, at any time, cancel the lease, without assigning any reason thereof. However, a prior notice of 3 months shall be given before revoking the lease.” TRP *supra* note 438.

⁶¹⁸ Paragraph 10 states: “The land shall not be used for political meetings.” *Id.* at 567.

⁶¹⁹ For example, after the TRP 2014 was released, the central government of India announced a 2015/16 central government project for Ladakhi and Tibetan nomads in Ladakh. The project will provide a house, food, electricity and a bank account for each family. The government of India will also give each family 4000 rupees per month. Interview with Secretary to Tibetan Justice Commissioner, Leh, Ladakh, October 14, 2105.

⁶²⁰ Interview with Secretary of Department of Home, CTA, Sonam Khorlatsang, June 1, 2015.

a valid RC.⁶²¹ In addition, the TRP may help Tibetans obtain other benefits such as bank loans⁶²² and driving licenses.⁶²³ In order to attain these or other benefits under the TRP, however, Tibetans must have a valid RC. Thus, if a Tibetan does not have an RC and is unable to acquire or renew an expired one, none of the benefits of the TRP would apply. As previously noted, RC acquisition and renewal is dependent on state policies⁶²⁴ and the TRP is vague about renewal of RCs and leaves considerable discretion in the hands of local authorities.⁶²⁵

There is nothing in the TRP that says that Tibetans can buy property.

The TRP is not written in mandatory terms and, for the most part, requires voluntary action on the part of state governments. Because implementing the policy is entirely dependent upon the will of state governments, states that do not have particularly good or close relations with the Tibetans may not implement the TRP.⁶²⁶ Poorer states may also have problems funding benefits now encouraged under the TRP.⁶²⁷

Efforts have been made to organize workshops and provide training materials concerning the policy. On Nov. 17, 2014, the Indian government's Ministry of External Affairs and the Central Tibetan Administration's Department of Home organized a daylong workshop on the new policy. Police officials, civilian officials, and other Indian officers involved

⁶²¹ The TRP, thus, potentially assists Tibetans seeking to be registered for certain professions - something that is widely unobtainable to foreigners. For example, one Tibetan graduate of a dental school could not get registered as a dentist because she was classified as a foreigner. The Tibetan Home Department requested that she be registered and relied on the TRP. She was registered. Interview with Secretary of Department of Home, CTA, Sonam Khorlatsang, June 1, 2015; *see also* <http://www.tibetanreview.net/india-issues-uniform-guideline-for-tibetan-welfare>.

⁶²² For example, one Tibetan managed to get a bank loan by presenting a supporting letter from the TSO office, a letter from the Superintendent of Police's office and a copy of the TRP. Interview with TSO Shillong, Pema Youdon (Settlement Officer) and Yeshe (Admin officer) Meghalaya, October 23, 2015.

⁶²³ Tibetans in some areas are not permitted to obtain driver's licenses with just their RCs; however, one Tibetan managed to get a driver's license by attaching a copy of the TRP along with a supporting letter from the Superintendent of Police and sending it to the Department of Transportation's office. Interview with TSO Shillong, Pema Youdon (Settlement Officer) and Yeshe (Admin officer) Meghalaya, October 23, 2015.

⁶²⁴ Joint Meeting of TLA & TJC, May 31, 2015.

⁶²⁵ Interview with Tibetan Supreme Court lawyer Tenzin Tsering, February 6, 2016.

⁶²⁶ For example, the Jammu and Kashmir State government has not yet implemented the TRP, nor have they made any announcements about future plans. The CRO and community leaders met with the Deputy Commissioner (DC) in Leh in the winter of 2015 and requested implementation of the TRP, but there has been no sign of implementation since. Interview with Pema Sangpo, Secretary to Tibetan Justice Commissioner, Leh, Ladakh, October 14, 2015.

⁶²⁷ For example, in Arunachal Pradesh, the TRP has not been finalized at the state level and is still under consideration by the state secretary. The TSO does not think that the state government will implement all of the suggested provisions. This is, in part, because Arunachal Pradesh is quite poor and thus not in a position to further help the Tibetans. Interview with Yangdup la, TSO Tenzingang, October 19, 2015.

with Tibetan settlements attended the meeting.⁶²⁸ Additionally, the CTA is preparing a booklet on the policy, which will be widely distributed.⁶²⁹

The first state to formulate a policy consistent with the TRP was Himachal Pradesh on February 13, 2015.⁶³⁰ Other states that have formulated policies include Uttarakhand⁶³¹ and Karnataka.⁶³² However, even in states that have formulated policies, without official notification to the separate officers in the various departments, there can be no actual implementation.⁶³³

The reaction to the TRP within the Tibetan community and among Tibetan settlement officers is mixed. While some think that the TRP does not significantly change the status quo,⁶³⁴ others identify the TRP as an opportunity for Tibetans to request the benefits that they have been previously denied.⁶³⁵ While they do not expect the state government to voluntarily implement the policy wholesale, they do believe that some benefits will result.⁶³⁶ Virtually everyone agrees that since the policy requires implementation by the

⁶²⁸ Interview with Secretary of Department of Home, CTA, Sonam Khorlatsang, June 1, 2015. One attendee reportedly raised a question about the repeated usage of the word “maybe” in the document. The answer confirmed that the policy is dependent on state governments for implementation. Interview with Dorjee Tenzin, Dekyiling, June 4, 2015.

⁶²⁹ Interview with Secretary of Department of Home, CTA, Sonam Khorlatsang, June 1, 2015.

⁶³⁰ <http://www.tibet.net/?s=Tibetan+Rehabilitation+Policy> (site last visited 5/7/2016). One Tibetan settlement officer in H.P. described a long-standing problem securing potable drinking water. He had approached the state government many times and was unsuccessful. However, when he went to the Irrigation & Public Health Dep’t with a copy of the TRP in hand, he secured a commitment to fund a drinking water facility. He is hopeful that the TRP will help with electricity, water and land registration problems. Interview with TSO of Kham Kathok Tibetan Society, Sataun, HP, June 6, 2015. However, a settlement officer in another part of H.P. stated that although she was optimistic that the TRP will eventually benefit Tibetans, there had been no implementation yet and the process of implementation was likely to be lengthy. Interview on June 5, 2015.

⁶³¹ *Id.*

⁶³² Joint Meeting of TLA & TJC, May 31, 2015.

⁶³³ *Id.* Presently, some state governments, such as those encompassing settlements in Delhi, Dehradun, Bylakuppe, Himachal Pradesh, Meghalaya, Jammu and Kashmir, have not yet implemented TRP. Interviews with settlement officers and other knowledgeable sources in these settlements.

⁶³⁴ *Id.*

⁶³⁵ For instance, the Meghalaya Settlement Officer and Administration Officer describe the TRP as a tool that Tibetans can use to claim/push for more rights. They think that the onus is on Tibetans to ask, rather than on the Indian government to implement. For example, Tibetans in Meghalaya are not allowed to obtain driver’s licenses on the basis of their RCs. However, one Tibetan managed to attain a driver’s license by attaching a copy of the Tibetan Rehabilitation Policy along with a supporting letter from the Superintendent of Police to the Dept. of Transportation’s office. Similarly, another Tibetan from Shillong managed to get a bank loan by presenting a supporting letter from the TSO office, a letter from the SP’s office (Superintendent of Police) and a copy of the TRP. TSO Shillong, Pema Youdon (Settlement Officer) and Yeshe (Admin officer) Meghalaya, October 23, 2015.

⁶³⁶ The TSO Phuntsok Tsering in Doeguling, Mundgod, Karnataka reported that he had had many meetings with the state authorities about how to apply the policy. So far the Indian authorities have said that the TSO can give them a list of poor Tibetan families who would benefit from rations. Interview with TSO Phuntsok Tsering in Doeguling, Mundgod, Karnataka, Feb 14, 2016.

states, it is simply too soon to know how effective the policy will be and whether and to what extent it will improve Tibetans' lives.

Despite this, many are hopeful that it will improve the conditions for Tibetans in India. It will be important to continue to monitor implementation of this policy and determine whether it results in any actual changes within Tibetan communities.

VII. Conclusion

This report documents the status and circumstances for Tibetans residing in or transiting through India - whether to get a Tibetan education or in flight from persecution. In India, most undocumented Tibetans and their children remain stateless: India does not recognize them, legally speaking, as refugees under either international law or its own national laws, which do not provide for the adjudication of refugee status. Nor does India even recognize as Indian citizens those born in India between January 26, 1950 and July 1, 1987 who are theoretically eligible for birthright citizenship.

Unquestionably, since 1959, India has been tremendously generous to the Tibetan people. It has permitted Tibetans to enter and reside in exile in India, and, in the early years, assisted in developing settlements and schools. Yet because Tibetans in India are legally stateless and treated as foreigners, they can live in India only by the grace of current executive policy. They enjoy no legal right to reside there - certainly not with any permanent status. This limits their socio-economic prospects. Of more concern, Tibetans without an RC are vulnerable and subject to arrest and deportation. Even with an RC, Tibetans cannot travel freely, either in India or internationally; own property in their own names; hold public jobs; or vote in Indian elections. While in practice this is still relatively rare, Tibetans who fail to renew their RC on time are vulnerable to arrest, detention, fines and even deportation. And, when Chinese dignitaries visit, India limits the ability of Tibetans to assemble peacefully and to protest China's continuing human rights violations in Tibet—including, above all, the denial of the right of Tibetans as a people to enjoy genuine self-determination under international law.

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ABOUT TIBET JUSTICE CENTER

Tibet Justice Center is a non-governmental organization comprised of Tibetan and western lawyers, law professors, and advocates who for over twenty-five years have used legal action and education to advocate for human rights and self-determination for the Tibetan people.

TJC's ongoing mission includes legal scholarship and advocacy to improve conditions for Tibetans in Tibet and for Tibetans in exile and to assist Tibetans with immigration and asylum matters. TJC's previous reports include: *TIBET'S STATELESS NATIONALS: TIBETAN REFUGEES IN NEPAL* (2002); *TIBET'S STATELESS NATIONALS II: TIBETAN REFUGEES IN INDIA* (2011); and *TIBET'S STATELESS NATIONALS II: TIBETAN REFUGEES IN INDIA: AN UPDATE* (2014).

TJC continues to contribute a range of reports, submissions to the United Nations, and other initiatives related to Tibetan human rights, democracy, and governance. Please visit www.tibetjustice.org for more information.

IX. APPENDIX: TABLE OF CONTENTS

- A. Indian Statutes and Policies
 - 1. The Citizenship Act, 1955
 - 2. The Foreigners Act, 1946
 - 3. The Registration of Foreigners Act, 1939
 - 4. Tibetan Rehabilitation Policy, 2014
- B. Documents issued by the Government of India
 - 1. Registration Certificate
 - 2. Identity Certificate
 - 3. Online Application for Identity Certificate
- C. U.S. State Department Documents
 - 1. Unclassified Cable 004443, April 1996
- D. Central Tibetan Administration Documents
 - 1. Kashag Circular
 - 2. Tibetan Green Book and Translation

A. Indian Statutes and Policies

1. The Citizenship Act, 1955

(57 of 1955)

30th December, 1955

An Act to provide for the acquisition and determination of Indian citizenship.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

1. Short title —

This Act may be called the Citizenship Act, 1955.

2. Interpretation —

(1) In this Act, unless the context otherwise requires, —

(a) "a Government in India" means the Central Government or a State Government;

(b) "citizen", in relation to a country specified in the First Schedule, means a person who under the citizenship or nationality law for the time being in force in that country, is a citizen or national of that country;

(c) "citizenship or nationality law", in relation to a country specified in the First Schedule, means an enactment of the legislature of that country which, at the request of the Government of that country, the Central Government may, by notification in the Official Gazette, have declared to be an enactment making provision for the citizenship or nationality of that country:

Provided that no such notification shall be issued in relation to the Union of South Africa except with the previous approval of both Houses of Parliament;

(d) "Indian consulate" means the office of any consular officer of the Government of India where a register of births is kept, or where there is no such office, such office as may be prescribed;

(e) "minor" means a person who has not attained the age of eighteen years:

(f) "person" does not include any company or association or body of individuals, whether incorporated or not;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "undivided India" means India as defined in the Government of India Act, 1935, as originally enacted.

(2) For the purposes of this Act, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.

(3) Any reference in this Act to the status or description of the father of a person at the time of that person's birth shall, in relation to a person born after the death of his father, be construed as a reference to the status or description of the father at the time of the father's death; and where that death occurred before, and the birth occurs after, the commencement of this Act, the status or description which would have been applicable to the father had he died after the commencement of this Act shall be deemed to be the status or description applicable to him at the time of his death.

(4) For the purposes of this Act, a person shall be deemed to be of full age if he is not a minor and of full capacity if he is not of unsound mind.

Comments

(i) The Citizenship Act and the Constitution are completely exhaustive of the citizenship of this country and these citizens can only be natural persons, the fact that corporations may be nationals of the country for purposes of International laws will not make them citizens of this country for purposes of Municipal Law or the Constitution; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811: (1964) 45 SCR 99.

(ii) Nationality and Citizenship are not interchangeable terms; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811: (1964) 4 SCR 99.

(iii) "Citizenship" has nothing to do with a juristic person. "Person" means a natural person and not any legal entity; *State Trading Corporation of India v. Commercial Tax Officer*, AIR 1963 SC 1811: (1964) 4 SCR 99.

Acquisition of Citizenship

3. Citizenship by birth –

(1) Except as provided in sub-section (2), every person born in India, –

(a) on or after the 26th day of January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1986;

(b) on or after such commencement and either of whose parents is a citizen of India at the time of his birth, shall be a citizen of India by birth..

(2) A person shall not be such a citizen by virtue of this section if at the time of his birth –

(a) his father possesses such immunity from suits and legal process as is accorded to an envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India; or

(b) his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.

4. Citizenship by descent –

(1) A person born outside India, –

(a) on or after the 26th January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1992, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth; or

(b) on or after such commencement, shall be a citizen of India by descent of either of his parents is a citizen of India at the time of his birth:

Provided that if the father of such a person referred to in clause (a) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless –

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of this Act, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) his father is, at the time of his birth, in service under a Government in India:

Provided further that if either of the parents of such a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section unless –

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 1992, which ever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth in service under a Government in India.

(2) If the Central Government so directs, a birth shall be deemed for the purposes of this section to have been registered with its permission, notwithstanding that its permission was not obtained before the registration.

(3) For the purposes of the proviso to sub-section (1), any person born outside undivided India who was, or was deemed to be, a citizen of India at the commencement of the Constitution shall be deemed to be a citizen of India by descent only.

5. Citizenship by registration –

(1) Subject to the provisions of this section and such conditions and restrictions as may be prescribed, the prescribed authority may, on application made in this behalf, register as a citizen of India any person

who is not already such citizen by virtue of the Constitution or by virtue of any of the other provisions of this Act and belongs to any of the following categories:—

- (a) persons of Indian origin who are ordinarily resident in India and have been resident for five years immediately before making an application for registration;
- (b) persons of Indian origin who are ordinarily resident in any country or place outside undivided India;
- (c) persons who are, or have been, married to citizens of India and are ordinarily resident in India and have been so resident for five years immediately before making an application for registration;
- (d) minor children of persons who are citizens of India; and
- (e) persons of full age and capacity who are citizens of a country specified in the First Schedule:

Provided that in prescribing the conditions and restrictions subject to which persons of any such country may be registered as citizens of India under this clause, the Central Government shall have due regard to the conditions subject to which citizens of India may, by law or practice of that country, become citizens of that country by registration.

Explanation.—For the purposes of this sub-section, a person shall be deemed to be of Indian origin if he, or either of his parents, *** was born in undivided India.

(2) No person being of full age shall be registered as a citizen of India under sub-section (1) until he has taken the oath of allegiance in the form specified in the Second Schedule.

(3) No person who has renounced, or has been deprived of, his Indian citizenship or whose Indian citizenship has terminated, under this Act shall be registered as a citizen of India under sub-section (1) except by order of the Central Government.

(4) The Central Government may, if satisfied that there are special circumstances justifying such registration, cause any minor to be registered as a citizen of India.

(5) A person registered under this section shall be a citizen of India by registration as from the date on which he is so registered; and a person registered under the provisions of clause(b)(ii) of article 6 or article 8 of the Constitution shall be deemed to be a citizen of India by registration as from the commencement of the Constitution or the date on which he was so registered, whichever may be later.

Comments

If a person satisfies the requirements of this section, he/she can be registered as a citizen of India. This section can be invoked by persons who are not citizens of India but are seeking citizenship by registration; *National Human Rights Commission v. State of Arunachal Pradesh*, AIR 1996 SC 1234: (1996) 1 SCC 742.

6. Citizenship by naturalisation –

(1) Where an application is made in the prescribed manner by any person of full age and capacity who is not a citizen of a country specified in the First Schedule for the grant of a certificate of naturalisation to him, the Central Government may, if satisfied that the applicant is qualified for naturalisation under the provisions of the Third Schedule, grant to him a certificate of naturalisation:

Provided that, if in the opinion of the Central Government, the applicant is a person who has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress generally, it may waive all or any of the conditions specified in the Third Schedule.

(2) The person to whom a certificate of naturalisation is granted under sub-section (1) shall, on taking the oath of allegiance in the form specified in the Second Schedule, be a citizen of India by naturalisation as from the date on which that certificate is granted.

6A. Special provisions as to citizenship of persons covered by the Assam Accord. –

(1) For the purposes of this section –

(a) "Assam" means the territories included in the State of Assam immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(b) "detected to be a foreigner" means detected to be a foreigner in accordance with the provisions of the Foreigners Act, 1946 (31 of 1946) and the Foreigners (Tribunals) Order, 1964 by a Tribunal constituted under the said Order;

(c) "specified territory" means the territories included in Bangladesh immediately before the commencement of the Citizenship (Amendment) Act, 1985;

(d) a person shall be deemed to be of Indian origin, if he, or either of his parents for any of his grandparents was born in undivided India;

(e) a person shall be deemed to have been detected to be a foreigner on the date on which a Tribunal constituted under the Foreigners (Tribunals) Order, 1964 submits its opinion to the effect that he is a foreigner to the officer or authority concerned.

(2) Subject to the provisions of sub-sections (6) and (7), all persons of Indian origin who came before the 1st day of January, 1966 to Assam from the specified territory (including such of those whose names were included in the electoral rolls used for the purposes of the General Election to the House of the People held in 1967) and who have been ordinarily resident in Assam since the dates of their entry into Assam shall be deemed to be citizens of India as from the 1st day of January, 1966.

(3) Subject to the provisions of sub-sections (6) and (7), every person of Indian origin who—

(a) came to Assam on or after the 1st day of January, 1966 but before the 25th day of March, 1971 from the specified territory; and

(b) has, since the date of his entry into Assam, been ordinarily resident in Assam; and

(c) has been detected to be a foreigner,

shall register himself in accordance with the rules made by the Central Government in this behalf under section 18 with such authority

(hereafter in this sub-section referred to as the registering authority) as may be specified in such rules and if his name is included in any electoral roll for any Assembly or Parliamentary constituency in force on the date of such detection, his name shall be deleted therefrom.

Explanation. – In the case of every person seeking registration under this sub-section, the opinion of the Tribunal constituted under the Foreigners (Tribunals) Order, 1964 holding such person to be a foreigner, shall be deemed to be sufficient proof of the requirement under clause (c) of this sub-section and if any question arises as to whether such person complies with any other requirement under this sub-section, the registering authority shall, –

(i) if such opinion contains a finding with respect to such other requirement, decide the question in conformity with such finding;

(ii) if such opinion does not contain a finding with respect to such other requirement, refer the question to a Tribunal constituted under the said Order having jurisdiction in accordance with such rules as the Central Government may make in this behalf under section 18 and decide the question in conformity with the opinion received on such reference.

(4) A person registered under sub-section (3) shall have, as from the date on which he has been detected to be a foreigner and till the expiry of a period of ten years from that date, the same rights and obligations as a citizen of India (including the right to obtain a passport under the Passports Act, 1967 (15 of 1967) and the obligations connected therewith), but shall not be entitled to have his name included in any electoral roll for any Assembly or Parliamentary constituency at any time before the expiry of the said period of ten years.

(5) A person registered under sub-section (3) shall be deemed to be a citizen of India for all purposes as from the date of expiry of a period of ten years from the date on which he has been detected to be a foreigner.

(6) Without prejudice to the provisions of section 8, –

(a) if any person referred to in sub-section (2) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement of the Citizenship (Amendment) Act, 1985, for year a declaration that he does not wish to be a citizen of India, such person shall not be deemed to have become a citizen of India under that sub-section;

(b) If any person referred to in sub-section (3) submits in the prescribed manner and form and to the prescribed authority within sixty days from the date of commencement the Citizenship (Amendment) Act, 1985, for year or from the date on which he has been detected to be a foreigner, whichever is later, a declaration that he does not wish to be governed by the provisions of that sub-section and sub-sections (4) and (5), it shall not be necessary for such person to register himself under sub-section (3).

Explanation.—Where a person required to file a declaration under this sub-section does not have the capacity to enter into a contract, such declaration may be filed on his behalf by any person competent under the law for the time being in force to act on his behalf.

(7) Nothing in sub-sections (2) to (6) shall apply in relation to any person—

(a) who, immediately before the commencement of the Citizenship (Amendment) Act, 1985, for year is a citizen of India;

(b) who was expelled from India before the commencement of the Citizenship (Amendment) Act, 1985, for year under the Foreigners Act, 1946 (31 of 1946).

(8) Save as otherwise expressly provided in this section, the provisions of this section shall have effect notwithstanding anything contained in any other law for the time being in force.

Comments

Under sub-section (2) of section 6A two conditions are required to be satisfied—(i) persons who are of Indian origin (undivided India) came before 1-1-1966 to Assam from the specified territory, and (ii) have been "ordinarily resident" in Assam as it existed in 1985 since the date of entry in Assam; *State of Arunachal Pradesh v. Khudiram Chakma*, AIR 1994 SC 1961.

7. Citizenship by incorporation of territory.—

If any territory becomes a part of India, the Central Government may, by order notified in the Official Gazette, specify the persons who shall

be citizens of India by reason of their connection with that territory; and those persons shall be citizens of India as from the date to be specified in the order.

Termination of citizenship

8. Renunciation of citizenship –

(1) If any citizen of India of full age and capacity, who is also a citizen or national of another country, makes in the prescribed manner a declaration renouncing his Indian Citizenship, the declaration shall be registered by the prescribed authority; and, upon such registration, that person shall cease to be a citizen of India:

Provided that if any such declaration is made during any war in which India may be engaged, registration thereof shall be withheld until the Central Government otherwise directs.

(2) Where a person ceases to be a citizen of India under sub-section (1) every minor child of that person shall thereupon cease to be a citizen of India:

Provided that any such child may, within one year after attaining full age, make a declaration that he wishes to resume Indian citizenship and shall thereupon again become a citizen of India.

(3) For the purposes of this section, any woman who is, or has been, married shall be deemed to be of full age.

Comments

A person who gives up his claim to Indian citizenship cannot claim right of residence on the basis of his domicile; *A.H. Magermans v. S. K. Ghose*, AIR 1966 Cal 552.

9. Termination of citizenship –

(1) Any citizen of India who by naturalisation, registration otherwise voluntarily acquires, or has at any time between the 26th January, 1950 and the commencement of this Act, voluntarily acquired the citizenship of another country shall, upon such acquisition or, as the case may be, such commencement, cease to be a citizen of India:

Provided that nothing in this sub-section shall apply to a citizen of India who, during any war in which India may be engaged, voluntarily acquires, the citizenship of another country, until the Central Government otherwise directs.

(2) If any question arises as to whether, when or how any person has acquired the citizenship of another country, it shall be determined by such authority, in such manner, and having regard to such rules of evidence, as may be prescribed in this behalf.

Comments

Section 9 is a complete code as regards the termination of Indian citizenship on the acquisition of the citizenship of a foreign country; *Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi*, AIR 1986 SC 1534.

10. Deprivation of citizenship. –

(1) A citizen of India who is such by naturalisation or by virtue only of clause (c) of article 5 of the Constitution or by registration otherwise than under clause (b) (ii) of article 6 of the Constitution or clause (a) of sub-section (1) of section 5 of this Act, shall cease to be a citizen of India, if he is deprived of that citizenship by an order of the Central Government under this section.

(2) Subject to the provisions of this section, the Central Government may, by order, deprive any such citizen of Indian citizenship, if it is satisfied that –

(a) the registration or certificate of naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or

(b) that citizen has shown himself by act or speech to be disloyal or disaffected towards the Constitution of India as by law established; or

(c) that citizen has, during any war in which India may be engaged unlawfully traded or communicated with an enemy or been engaged in, or associated with, any business that was to his knowledge carried on in such manner as to assist an enemy in that war; or

(d) that citizen has, within five years after registration or naturalisation, been sentenced in any country to imprisonment for a term of not less than two years; or

(e) that citizen has been ordinarily resident out of India for a continuous period of seven years, and during that period, has neither been at any time a student of any educational institution in a country outside India or in the service of a Government in India or of an international organisation of which India is a member, nor registered annually in the prescribed manner at an Indian consulate his intention to retain his citizenship of India.

(3) The Central Government shall not deprive a person of citizenship under this section unless it is satisfied that it is not conducive to the public good that the person should continue to be a citizen of India.

(4) Before making an order under this section, the Central Government shall give the person against whom the order is proposed to be made notice in writing informing him of the ground on which it is proposed to be made and, if the order is proposed to be made on any of the grounds specified in sub-section (2) other than clause (e) thereof, of his right, upon making application therefore in the prescribed manner, to have his case referred to a committee of inquiry under this section.

(5) If the order is proposed to be made against a person on any of the grounds specified in sub-section (2) other than clause (e) thereof and that person so applies in the prescribed manner, the Central Government shall, and in any other case it may, refer the case to a Committee of Inquiry consisting of a chairman (being a person who has for at least ten years held a judicial office) and two other members appointed by the Central Government in this behalf.

(6) The Committee of Inquiry shall, on such reference, hold the inquiry in such manner as may be prescribed and submit its report to the Central Government; and the Central Government shall ordinarily be guided by such report in making an order under this section.

Comments

Certificate of Registration cannot be cancelled unless fraud, false, representation or suppression of material fact exists; *Fazal Dad v. State of Madhya Pradesh*, AIR 1964 MP 272.

Supplemental

11. Commonwealth citizenship.—

Every person who is a citizen of a Commonwealth country specified in the First Schedule shall, by virtue of that citizenship, have the status of a Commonwealth citizen in India.

12. Power to confer rights of Indian citizen or citizens of certain countries.—

(1) The Central Government may, by order notified in the Official Gazette, make provisions on a basis of reciprocity for the conferment of all of any of the rights of citizen of India on the citizens of any country specified in the First Schedule.

(2) Any order made under sub-section (1) shall have effect notwithstanding anything inconsistent therewith contained in any law other than the Constitution of India or this Act.

Comments

A citizen of any Commonwealth country can have only those rights which the Central Government may confer on him; *Fazal Dad v. State of Madhya Pradesh*, AIR 1964 MP 272.

13. Certificate of Citizenship in case of doubt —

The Central Government may, in such cases as it thinks fit, certify that a person, with respect to whose citizenship of India a doubt exists, is a citizen of India; and a certificate issued under this section shall, unless it is proved that it was obtained by means of fraud, false representation or concealment of any material fact, be conclusive evidence that person was such a citizen on the date thereof, but without prejudice to any evidence that he was such a citizen at an earlier date.

14. Disposal of application under sections 5 and 6 —

(1) The prescribed authority or the Central Government may, in its discretion, grant or refuse an application under section 5 or section 6

and shall not be required to assign any reasons for such grant or refusal.

(2) Subject to the provisions of section 15 the decision of the prescribed authority or the Central Government on any such application as aforesaid shall be final and shall not be called in question in any court.

15. Revision –

(1) Any person aggrieved by an order made under this Act by the prescribed authority or any officer or other authority (other than the Central Government) may, within a period of thirty days from the date of the order, make an application to the Central Government for revision of that order:

Provided that the Central Government may entertain the application after the expiry of the said period of thirty days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) On receipt of any such application under sub-section (1), the Central Government shall, after considering the application of the aggrieved person and any report thereon which the officer or authority making the order may submit, make such order in relation to the application as it deems fit, and the decision of the Central Government shall be final.

16. Delegation of power –

The Central Government may, by order, direct that any power which is conferred on it by any of the provisions of this Act other than those of section 10 and section 18 shall, in such circumstances and under such conditions, if any, as may be specified in the order, be exercisable also by such officer or authority as may be so specified.

17. Offences –

Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable with

imprisonment for a term which may extend to six months, or with fine, or with both.

18. Power to make rules.—

(1) The Central Government may, by notification in the Official Gazette make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the registration of anything required or authorized under this Act to be registered, and the conditions and restrictions in regard to such registration;

(b) the forms to be used and the registers to be maintained under this Act;

(c) the administration and taking of oaths of allegiance under this Act and the time within which, and the manner in which, such oaths shall be taken and recorded;

(d) the giving of any notice required or authorized to be given by any person under this Act;

(e) the cancellation of the registration of, and the cancellation and amendment of certificate of naturalisation relating to, persons deprived of citizenship under this Act, and the delivering up of such certificates for those purposes;

(ee) the manner and form in which and the authority to whom declarations referred to in clauses (a) and (b) of sub-section (b) of section 6A shall be submitted and other matters connected with such declarations;

(f) the registration at Indian consulates of the births and deaths of persons of any class or description born or dying outside India;

(g) the levy and collection of fees in respect of applications, registrations, declarations and certificates under this Act, in respect of the taking of

an oath of allegiance, and in respect of the supply of certified or other copies of documents;

(h) the authority to determine the question of acquisition of citizenship of another country, the procedure to be followed by such authority and rules of evidence relating to such cases;

(i) the procedure to be followed by the committees of inquiry appointed under section 10 and the conferment on such committees of any of the powers, rights and privileges of civil court;

(j) the manner in which applications for revision may be made and the procedure to be followed by the Central Government in dealing with such applications; and

(k) any other matter which is to be, or may be, prescribed under this Act.

(3) In making any rule under this section, the Central Government may provide that breach thereof shall be punishable with fine which may extend to one thousand rupees.

(4) Every rule made under this section shall be laid, as soon as may be after it is made before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. Repeals –

Repealed by the Repealing and Amending Act, 1960 (Act 58 of 1960), sec. 2 and the First Schedule (w.e.f. 26-10-1960).

The First Schedule

See sections 2(1)(b) and 5(1)(e)

A. The following Commonwealth countries: –

1. United Kingdom.
2. Canada.
3. Commonwealth of Australia.
4. New Zealand.
5. Union of South Africa.
6. Pakistan.
7. Ceylon.
8. Federation of Rhodesia and Nyasaland
9. Ghana.
10. Federation of Malaya.
11. Singapore.

B. The Republic of Ireland.

Explanation – In this Schedule, "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland, and includes the Channel Islands, the Isle of Man and all Colonies; and "Commonwealth of Australia" includes the territories of Papua and the territory of Norfolk Island.

The Second Schedule *See* sections 5(2) and 6(2) Oath of Allegiance

I, A.B.....do solemnly affirm (or swear) that i will bear true faith and allegiance to the Constitution of India as by law established, and that i will faithfully observe the laws of India and fulfil my duties as a citizen of India.

The Third Schedule

See section 6(1)

Qualifications for naturalisation

The qualifications for naturalisation of a person who is not a citizen of a country specified in the First Schedule are—

(a) that he is not a subject or citizen of any country where citizens of India are prevented by law or practice of that country from becoming subjects or citizens of that country by naturalisation;

(b) that, if he is a citizen of any country, he has renounced the citizenship of that country in accordance with the law therein in force in that behalf and has notified such renunciation to the Central Government;

(c) that he has either resided in India or been in the service of a Government in India or partly the one and partly the other, throughout the period of twelve months immediately preceding the date of the application;

(d) that during the twelve years immediately preceding the said period of twelve months, he has either resided in India or been in the service of a Government in India, or partly the one and partly the other, for periods amounting in the aggregate to not less than nine years;

(e) that he is of good character;

(f) that he has an adequate knowledge of a language specified in the Eighth Schedule to the Constitution; and

(g) that in the event of a certificate of naturalisation being granted to him, he intends to reside in India, or to enter into or continue in, service under a Government in India or under an international organisation of which India is a member or under a society, company or body of persons established in India:

Provided that the Central Government may, if in the special circumstances of any particular case it thinks fit, —

(i) allow a continuous period of twelve months ending not more than six months before the date of the application to be reckoned, for the purposes of clause (c) above, as if it had immediately preceded that date;

(ii) allow periods of residence or service earlier than thirteen years before the date of the application to be reckoned in computing the aggregate mentioned in clause (d) above.

2. The Foreigners Act, 1946:

An Act to confer upon the Central Government certain powers in respect of foreigners.

Whereas it is expedient to provide for the exercise by the Central Government of certain powers in respect of the entry of foreigners into India, their presence therein and their departure therefrom;

It is hereby enacted as follows:

1. Short title and extent. —

(1) This Act may be called the Foreigners Act, 1946.

(2) It extends to the whole of India.

2. Definitions. — In this Act, —

(a) *foreigner* means a person who is not a citizen of India;

(b) *prescribed* means prescribed by orders made under this Act;

(c) *specified* means specified by direction of a prescribed authority.

3. Power to make orders. — (1) The Central Government may by order make provision, either generally or with respect to all foreigners or with respect to any particular foreigner or any prescribed class or description of foreigner, for prohibiting, regulating or restricting the entry of foreigners into India or, their departure therefrom or their presence or continued presence therein.

(2) In particular and without prejudice to the generality of the foregoing powers, orders made under this section may provide that the foreigner

—

(a) shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed;

(b) shall not depart from India or shall depart only at such times and by such route and from such port or place and subject to the observance of such conditions on departure as may be prescribed;

(c) shall not remain in India, or in any prescribed area therein;

(cc) shall, if he has been required by order under this section not to remain in India, meet from any resources at his disposal the cost of his removal from India and of his maintenance therein pending such removal;

(d) shall remove himself to, and remain in, such area in India as may be prescribed;

(e) shall comply with such conditions as may be prescribed or specified

- (i) requiring him to reside in a particular place;
- (ii) imposing any restrictions on his movements;
- (iii) requiring him to furnish such proof of his identify and to report such particulars to such authority in such manner and at such time and place as may be prescribed or specified;
- (iv) requiring him to allow his photograph and finger impressions to be taken and to furnish specimens of his handwriting and signature to such authority and at such time and place as may be prescribed or specified;
- (v) requiring him to submit himself to such medical examination by such authority and at such time and place as may be prescribed or specified;
- (vi) prohibiting him from association with persons of a prescribed or specified description;
- (vii) prohibiting him from engaging in activities of a prescribed or specified description;
- (viii) prohibiting him from using or possessing prescribed or specified articles;
- (ix) otherwise regulating his conduct in any such particular as may be prescribed or specified;

(f) shall enter into a bond with or without sureties for the due observance of, or as an alternative to the enforcement of, any or prescribed or specified restrictions or conditions;

(g) shall be arrested and detained or confined;

and may make provision for any matter which is to be or may be prescribed and for such incidental and supplementary matters as may, in the opinion of the Central Government, be expedient or necessary for giving effect to this Act.

(3) Any authority prescribed in this behalf may with respect to any particular foreigner make orders under Clause (e) for Clause (f) of subsection (2).

3-A. Power to exempt citizens of Commonwealth countries and other persons from application of Act in certain cases. – (1) The Central Government may, by order, declare that all or any of the provisions of this Act or of any order made thereunder shall not apply, or shall apply only in such circumstances or with such exceptions or modifications or subject to such conditions as may be specified in the order, to or in relation to –

(a) the citizens of any such Commonwealth country as may be so specified; or

(b) any other individual foreigner or class or description of foreigner.

(2) A copy of every orders made under this section shall be placed on the table of both Houses of Parliament as soon as may be after it is made.

4. Internees. – (1) Any foreigner (hereinafter referred to as an internee) in respect of whom there is in force any order made under Clause (g) of sub-section (2) of Section 3, directing that he be detained are confined, shall be detained or confined in such place and manner and subject to such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.]

(2) Any foreigner (hereinafter referred to as a person on parole) in respect of whom there is in force an order under Clause (e) of sub- section (2) of Section 3 requiring him to reside at a place set apart for the residence under supervision of number of foreigners, shall while residing therein be subject to such condition as to maintenance, discipline and the punishment of offences and breaches of discipline as the Central Government may from time to time by order determine.

(3) No person shall –

(a) knowingly assist an internee or a person on parole to escape from custody or the place set apart for his accidence, or knowingly harbour an escaped internee or person or parole, or

(b) give an escaped internee or person on parole any assistance with intent thereby to prevent, hinder or interfere with the apprehension of the internee or the person on parole.

(4) The Central Government may, by order, provide for regulating access to, and the conduct of persons in, places in India where internees or persons on parole are detained or restricted, as the case may be, and for prohibiting or regulating the dispatch or conveyance from outside such places to or for internees or persons on parole therein of such articles as may be prescribed.

5. Change of name. – (1) No foreigner who was in India on the date on which this Act came into force shall, while in India after that date, assume or use or purport to assume or use for any purpose any name other than that by which he was ordinarily known immediately before the said date.

(2) Where, after the date on which this Act came into force, any foreigner carries on or purports to carry on (whether alone or in association with any other person) any trade or business under any name or style, other than that under which that trade or business was being carried on immediately before the said date, he shall, for the purposes of sub-section (1), be deemed to be using a name other than that by which he was ordinarily known immediately before the said date.

(3) In relation to any foreigner who, not having been in India on the date on which this Act came into force, thereafter enters India sub-sections (1) and (2) shall have effect as if for any reference in those sub-sections to the date on which the Act came into force there were substituted a reference to the date on which he first enters India thereafter.

(4) For the purposes of this section –

(a) the expression name includes a surname, and

(b) a name shall be deemed to be changed if the spelling thereof is altered.

(5) Nothing in this section shall apply to the assumption or use –

(a) of any name in pursuance of a licence or permission granted by the Central Government; or

(b) by any married woman, of her husband's name,

Comments

Section 5 contemplates that a foreigner while in India shall not change or use any name other than the name by which he was known previously without the permission of the Central Government. If a foreigner has lawfully changed his name and comes to this country it cannot be said he is committing an offence under Section 5(3). (AIR 1968 Madras 349)

6. Obligations of masters of vessels, etc. – (1) The master of any vessel landing or embarking at a port in India passengers coming to or going from that port by sea and the pilot of any aircraft landing or embarking at any place in India passengers coming to or going from that place by air, shall furnish to such person and in such manner as may be prescribed a return giving the prescribed particulars with respect to any passengers or members of the crew, who are foreigners.

(2) Any District Magistrate and any Commissioner of Police or, where there is no Commissioner of Police, any Superintendent of Police may, for any purpose connected with the enforcement of this Act or any order made thereunder, require the master of any such vessel or the pilot of any such aircraft to furnish such information as may be prescribed in respect of passengers or members of the crew on such vessel or aircraft, as the case may be.

(3) Any passenger on such vessel or such aircraft and any member of the crew of such vessel or aircraft shall furnish to the master of the vessel or the pilot of the aircraft, as the case may be, any information required by him for the purpose of furnishing the return referred to in sub-section (1) or for furnishing the information required under sub-section (2).

(4) If any foreigner enters India and contravention of any provision of this Act or any order made thereunder, the prescribed authority may, within two months from the date of such entry, direct the master of the vessel or the pilot of the aircraft on which such entry was effected or the owner or the agent of the owner of such vessel or aircraft, to provide, to the satisfaction of the said authority and otherwise than at the expense of Government, accommodation on a vessel or aircraft for the purpose of removing the said foreigner from India.

(5) The master of any vessel or the pilot of any aircraft which is about to carry passengers from a port or place in India to any destination

outside India, or the owner or the agent of the owner of any such vessel or aircraft shall, if so directed by the Central Government and on tender of payment therefore at the current rates, provide on the vessel or aircraft accommodation to such port or place outside India, being a part or place at which the vessel or aircraft is due to call, as the Central Government may specify, for any foreigner ordered under Section 3 not to remain in India and for his dependents, if any, travelling with him.

(6) For the purposes of this section –

(a) *master of a vessel and pilot of any aircraft* shall include any person authorised by such master or pilot as the case may be, to discharge on his behalf any of the duties imposed on him by this section;

(b) *passenger* means any person not being a bona fide member of the crew, travelling or seeking to travel on a vessel or aircraft.

7. Obligation of hotel keepers and others to furnish particulars. – (1) It shall be the duty of the keeper of any premises whether furnished or unfurnished where lodging or sleeping accommodation is provided for reward, to submit to such person and in such manner such information in respect of foreigners accommodated in such premises, as may be prescribed.

Explanation. – The information referred to in this sub-section may relate to all or any of the foreigners accommodated at such premises and may be required to be submitted periodically or at any specific time or occasion.

(2) Every person accommodated in any such premises shall furnish to the keeper thereof a statement containing such particulars as may be required by the keeper for the purpose of furnishing the information referred to in sub-section (1).

(3) The keeper of every such premises shall maintain a record of the information furnished by him under sub-section (1) and of the information obtained by him under sub-section (2) and such record shall be maintained in such manner and preserved for such period as may be prescribed, and shall at all times be open to inspection by any police officer or by a person authorised in this behalf by the District Magistrate.

(4) If in any area prescribed in this behalf the prescribed authority by notice published in such manner as may in the opinion of the authority be best adapted for informing the persons concerned so directs, it shall be the duty of every person occupying or having under this control any residential premises to submit to such person and in such manner such information in respect of foreigners accommodated in such premises as may be specified; and the provisions of sub-section (2) shall apply to every person accommodated in any such premises.

7-A. Power to control places frequented by foreigners. – (1) The prescribed authority may, subject to such conditions as may be prescribed, direct the owner or person having control of any premises used as a restaurant or as a place of public resort or entertainment or as a club and frequented by foreigners –

(a) to close such premises either entirely or during specified periods, or
(b) to use or permit the use of such premises only under such conditions as may be specified, or

(c) to refuse admission to such premises either to all foreigners or to any specified foreigner or class of foreigner.

(2) A person to whom any direction has been given under sub-section (1) shall not, while such direction remains in force, use or permit to be used any other premises for any of the aforesaid purposes except with the previous permission in writing of the prescribed authority and in accordance with any condition which that authority may think fit to impose.

(3) Any person to whom any direction has been given under sub-section (1) and who is aggrieved thereby may, within thirty days from the date of such direction, appeal to the Central Government; and the decision of the Central Government in the matter shall be final.

8. Determination of nationality. – (1) When a foreigner is recognised as a national by the law of more than one foreign country or where for any reason it is uncertain what nationality, if any, is to be ascribed to a foreigner, that foreigner may be treated as the national of the country with which he appears to the prescribed authority to be most closely connected for the time being in interest or sympathy or if he is of uncertain nationality, of the country with which he was last so connected

Provided that where a foreigner acquired a nationality by birth, he shall, except where the Central Government so directs either generally or in a particular case, be deemed to retain that nationality unless he proves to the satisfaction of the said authority that he has subsequently acquired by naturalization or otherwise some other nationality and still recognised as entitled to protection by the Government of the country whose nationality he has so acquired.

(2) A decision as to nationality given under sub-section (1) shall be final and shall not be called in question in any Court:

Provided that the Central Government, either of its own motion or on an application by the foreigner concerned, may revise any such decision.

Comments

A married woman acquires the domicile of her husband on marriage and capable of acquiring a new domicile by re-marriage after divorce. (State of Bihar v. Amar Singh, AIR 1955 S.C. 282).

9. Burden of proof. — If in any case not falling under Section 8 any question arises with reference to this Act or any order made or direction given thereunder, whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus the proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872, (1 of 1972) lie upon such person.

10. Power to exempt from application of Act. — Repealed by the Foreigners Laws (Amendment) Act, (11 of 1957).

11. Power to give effect to orders, directions, etc. — (1) Any authority empowered by or under or in pursuance of the provisions of this Act to give any direction or to exercise any other power, may, in addition to any other action expressly provided for in this Act, take, or cause to be taken such steps and use, or cause to be used, such force as may, in its opinion, be reasonably necessary for securing compliance with such direction or for preventing or rectifying any breach thereof, or for the effective exercise of such power, as the case may be.

(2) Any police officer may take such steps and use such force as may, in his opinion, be reasonably necessary for securing compliance with any order made or direction given under or in pursuance of the Act or for preventing or rectifying any breach of such order or direction.

(3) The power conferred by this section shall be deemed to confer upon any person acting in exercise thereof a right of access to any land or other property whatsoever.

12. Power to delegate authority. – Any authority upon which any power to make or give any direction, consent or permission or to do any other act is conferred by this Act or by any order made thereunder may, unless express provision is made to the contrary, in writing authorise, conditionally or otherwise, any authority subordinate to it to exercise such power on its behalf, and thereupon the said subordinate authority shall, subject to such conditions as may be contained in the authorisation, be deemed to be the authority upon which such power is conferred by or under this Act.

13. Attempts, etc., to contravene the provisions of this Act, etc. – (1) Any person who attempts to contravene, or abets or attempts to abet, or does any act preparatory to, a contravention of, the provisions of this Act or of any order made or direction given thereunder, or fails to comply with any direction given in pursuance of any such order, shall be deemed to have contravened the provisions of this Act.

(2) Any person who, knowing or having reasonable cause to believe that any other person has contravened the provisions of this Act or of any order made or direction given thereunder, gives that other person any assistance with intent thereby to prevent, hinder or otherwise interfere with his arrest, trial or punishment for the said contravention shall be deemed to have abetted that contravention.

(3) The master of any vessel or the pilot of any aircraft, as the case may be, by means of which any foreigner enters or leaves India in contravention of any order made under, or direction given in pursuance of, Section 3 shall, unless he proves that he exercised all due diligence to prevent the said contravention, be deemed to have contravened this Act.

14. Penalties. – If any person contravenes the provisions of this Act or of any order made thereunder, or any direction given in pursuance of this Act or such, he shall be punished with imprisonment for a term

which may extend to five years and shall also be liable to FINE; and if such person has entered into a bond in pursuance of Clause (f) of subsection (2) of Section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

Comments

Petitioner, a Pakistani national had entered India unauthorisedly via Bangladesh without any valid passport, visa and he had not informed any authority about his entry and stay in India and not got himself registered as a citizen of India. He has clearly contravened cl. 3(1) and cl. 7(2) of Foreigners Act, 1948 and committed offence under Sections 13 and 14 of the Foreigners Act (Mohd. Anwar v. State of Bihar 1992 Cr. L.J. 48).

15. Protection to persons acting under this Act. — No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

16. Application of other laws not barred. — The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Registration of Foreigners Act, 1939 (16 of 1939) the Indian Passport Act, 1920 (34 of 1920) and of any other enactment for the time being in force.

17. Repeals. — [Repealed by the Repealing and Amending Act, 1950 (35 of 1950)]

3. Indian Bare Acts: The Registration of Foreigners Act, 1939

An act to provide for the registration of foreigners in India.

Whereas it is expedient to provide for the registration of foreigners entering, being present in, and departing from, India. It is hereby enacted as follows: -

1. Short title and extent. - (1) This Act may be called the Registration of Foreigners Act, 1939.

(2) It extends to the whole of India.

2. Definitions. - In this Act, -

(a) "*foreigner*" means a person who is not a citizen of India;

(aa) [Omitted].

(b) "*prescribed*" means prescribed by rules made under this Act.

3. Power to make rules. - [(1) The Central Government may, after previous publication, by notification in the Official Gazette, make rules with respect to foreigners for any or all of the following purposes, that is to say -

(a) for requiring any foreigner entering, or being present in, India to report his presence to a prescribed authority within such time and in such manner and within such particulars as may be prescribed;

(b) for requiring any foreigner moving from one place to another place in India to report, or arrival at such other place, his presence to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(c) for requiring any foreigner who is about to leave India to report the date of his intended departure and such other particulars as may be prescribed to such authority and within such period before departure as may be prescribed;

(d) for requiring any foreigner entering, being present in, or departing from, India to produce, on demand by a prescribed authority, such proof of his identity as may be prescribed.

(e) for requiring any person having the management of any hotel, boarding house, sarai or any other premises of like nature to report the name of any foreigner residing therein or whatever duration, to a prescribed authority within such time and in such manner and with such particulars as may be prescribed;

(f) for requiring any person having the management or control of any vessel or aircraft to furnish to a prescribed authority such information as may be prescribed regarding any foreigner entering, or intending to depart from, India, in such vessel or aircraft, and to furnish to such authority such assistance as may be necessary or prescribed for giving effect to this Act;

(g) for providing for such other incidental or supplementary matters as may appear to the Central Government necessary or expedient for giving effect to this Act.

[(2) Every rule made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament, while it is in session, of a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

4. Burden of Proof. - If any question arises with reference to this Act or any rule made thereunder whether any person is or is not a foreigner or is not a foreigner of a particular class or description, the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall, notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.

5. Penalties. - Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made there this Act shall be punished, if a foreigner, with imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both, or if not a foreigner, with fine which may extend to five hundred rupees.

6. Power to exempt from application of Act. - The Central Government may, by order, declare that any or all of the provisions of the rules made under this Act shall not apply, or shall apply only with such modifications or subject to such conditions as may be specified in the said order, to or in relation to any individual foreigner or any class or description of foreigner:

Provided that a copy of every such order shall be placed on the table of Parliament as soon as may be after its promulgation.

7. Protection to persons acting under this Act. - No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act.

8. Application of other laws not barred. - The provisions of this Act shall be in addition to, and not in derogation of, the provisions of the Foreigners Act, 1946 (31 of 1946) and any other law for the time being in force.

9. Application of Act to Part B States. - [Rep. by the Part B States (Laws) Act, 1951 (3 of 1951) Section 3 and Schedule.]

Renumbered as sub-sec. (1) by Act No. 4 of 1986. Ins. by Act No. 4 of 1986.

4. The Tibetan Rehabilitation Policy, 2014

By Speed
Post

No.11/2/2014-RHS/MD
Government of India Ministry of Home Affairs FFR
Division

NDCC-II Building, Jai Singh
Road, New Delhi-110001, Dated the 20th
October, 2014

Office Memorandum

Subject: The Tibetan Rehabilitation Policy, 2014.

The undersigned is directed to forward herewith "The Tibetan Rehabilitation Policy, 2014" for information and implementation by the respective State Governments.

This issues with the approval of the Competent Authority.

(Shyam Sunder)
Deputy Secretary to the Govt. of India
Tel. No. 011-23438075

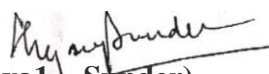
To

1. Secretary, Govt of Maharastra, Mantralaya, Mumbai. The Chief
2. Secretary, Govt. of Himachal Pradesh, Shimla. The Chief
3. The Chief Secretary, Govt. of Karnataka, Vidhan Soudha, Bangalore-56001.
4. The Chief Secretary Govt. of Sikkim, Gangtok-737101.
5. The Chief Secretary Govt. of Odisha, Bhubaneshwar.
6. The Chief Secretary, Govt. of West Bengal, Writers' Building, Kolkata.
7. The Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.

8. The Chief Secretary, Govt. of J & K, Jammu.
9. The Chief Secretary, Govt. of Uttarakhand, Dehradun. 712113
10. The Chief Secretary, Govt. of Chhattisgarh, Raipur.

Copy to:

1. The Secretary, Ministry of Rural Development, Krishi Bhawan, New Delhi.
2. The Secretary, Ministry for Housing & Urban Poverty Alleviation, Nirman Bhawan, New Delhi.
3. The Secretary, Ministry of Health & Family Welfare, Nirman Bhawan, New Delhi.
4. The Secretary, Ministry of Consumer Affairs, Food & Public Distribution, Krishi Bhawan, New Delhi.
5. The Secretary, Department of Banking Services, Ministry of Finance, Jeevan Deep Building, Parliament Street, New Delhi.
6. The Finance Secretary, Ministry of Finance, North Block, New Delhi.
7. The Director, Intelligence Bureau, North Block, New Delhi.
8. The Joint Secretary (East Asia Division), Ministry of External Affairs, South Block, New Delhi.
9. The Joint Secretary, Foreigners Division, Ministry of Home Affairs, NDCC-II Building, Jai Singh Road, New Delhi.
10. The Joint Secretary (IS-I), Ministry of Home Affairs, North Block, New Delhi.
11. The Joint / Secretary, NE Division, Ministry of Home Affairs, North Block, New Delhi.
12. The Registrar General and Census Commissioner of India, 2/A, Man Singh Road, New Delhi-110011.
13. The Secretary, His Holiness The Dalai Lama's, Central Tibetan Relief Committee, Dharamsala, Himachal Pradesh.
14. Bureau of His Holiness The Dalai Lama, 10, Ring Road, Lajpat Nagar-IV, New Delhi-110024.


(Shyam Sunder)

Deputy Secretary to the Govt. of India
Tel. No. 011-23438075

MINISTRY OF HOME AFFAIRS (FFR DIVISION)

Subject: The Tibetan Rehabilitation Policy, 2014.

After the occupation of Tibet by China, many Tibetans, under the leadership of His Holiness The Dalai Lama, came to India along with their families and have been living in India since the past 50 years. The issues relating to Tibetan Refugees are coordinated by His Holiness the Dalai Lama's Central Tibetan Relief Committee (CTRC) located at Dharamshala. The Government of India consults CTRC on a regular basis to find out about the issues relating to Tibetan Refugees and the problems that they are confronted with. The Tibetan Refugees are approximately numbering 1,10,095 as per the 2009 figure. These Tibetan Refugees are located in 45 number of settlements spread out mainly in 10 States of India. Many Tibetans are also living outside these settlements.

2. The Government of India has been having a series of discussions with the representatives of the CTRC to address the problems of the Tibetan Refugees. It was found that the level of assistance/facilities extended by the various State Governments are not uniform. Therefore it was thought appropriate to provide a uniform Guideline clearly demarcating the facilities to be extended to the Tibetan Refugees living within the jurisdiction of each State Government.

3. As such, after due consultations with the concerned State Governments and the inter-Ministerial consultations at the Government of India level, the following Guidelines are laid down in order to bring a uniformity across all the States and to improve the general satisfaction level of the Tibetan Refugees.

4. **Lease Agreement:-**

It was felt that some State Governments are not signing any lease agreement or giving any legal document to the Tibetans making it difficult for them to access various facilities associated with such documentations. Some other State Governments, who are signing the Lease Agreement, are signing in different formats and for different durations. Therefore, the Government of India found it necessary to streamline the process of giving the land documents to the Tibetan Refugees. In this connection, the following is hereby laid down:-

- (a) All State Governments must necessarily sign a lease document for the land occupied by the Tibetan Refugees as per the Standard Lease Document annexed here to as **Annexure-A**. The State Governments may make such changes in the Standard Lease Document as per their Revenue Laws.
- (b) The Lease Document should not be signed with individual Tibetans but with the duly authorized representative of the CTRC. From the State Government's side, the local District Magistrate may sign the lease deed.
- (c) The CTRC should be allowed to decide which portion of the land can be used for residential, agricultural, commercial, religious activity or any such activity so that the Tibetan families can follow their culture and religion unhindered and yet are able to make an economic living out of the land.
- (d) The lease should be signed for a period of 20 years or till it is revoked/ cancelled (by an order of the Government of India or till the rehabilitation facilities provided to Tibetan Refugees are cancelled or withdrawn by the Government of India) whichever is earlier.
- (e) A Rent Tenancy Certificate must be issued by the concerned State Governments as per the applicable law and the State Government shall collect the dues, Revenue, Fees from the Local Settlement Officer/Welfare

Officer of the Tibetan Settlement. The Rent Tenancy Certificate should clearly mention the following:

- Owner Government
- Lessee CTRC
- Cultivated by (name of the Tibetan Refugee who is cultivating the land)

- (f) The land, under occupation by the Tibetan Refugees should not be disturbed. However, in case of any court order by which they need to be dispossessed, then the State Government should relocate them by giving them a fresh piece of land of equal or larger size.
- (g) Proper demarcation, preferably with boundary fencing etc., of land allotted for Tibetan Refugee (TR) use, should be ensured by the District Administration to avoid confrontation/dispute between locals and TRs.
- (h) The Settlement/Welfare Officers of the Tibetan Settlements shall maintain a register and update the same annually, giving the details of individual/family members of the settlements to the Local District Magistrate. The local District Magistrate shall be competent to inspect the register and ensure that it is annually updated.
- (i) The State Government may consider allotting extra land depending upon the need and the population increase of the Tibetan refugees.

5. Extending the benefit of the Central Government Schemes:-

It has been observed that there is no uniformity in extension of benefits of Central/State Developmental Schemes to the Tibetan Refugees. The Government of India categorically wishes to clarify that the Tibetan Refugees may be extended the benefits of various **development schemes of the Government of India.**

More particularly, the benefits of the following Schemes may be extended to the Tibetan Refugees:-

- (a) Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS):- The Scheme is a demand based scheme and is open to all the Tibetan refugees. Efforts may be initiated to sensitize such refugee habitations in different States, and prepare locally appropriate plans.
- (b) Public Distribution System:- The Tibetans in India are considered Refugees and they are staying temporarily in India on humanitarian considerations. For relief and rehabilitation of these Refugees, the Govt. of India has provided land and other facilities with the objective of providing them with means of their survival. Although the National Food Security Act (NFSA) 2013 or the existing Targeted Public Distribution System (TPDS) are applicable to Indian citizens only, the State Government may consider extending the benefits of TPDS and NFSA to the Tibetan Refugee families as a welfare measure on humanitarian basis, subject to the availability of food grains. I
- (c) Indira Awas Yojana (IAY):- This scheme can be extended to Tibetan Refugees also.
- (d) National Rural Livelihood Mission (NRLM):- Those identified through a participatory process are brought into the Self Help Group (SHG) network through women. Special efforts can be made in the Tibetan Refugee areas to organize the women and promote livelihood activities as appropriate to them.
- (e) Rajiv Awas Yojna(RAY).
- (f) National Rural Health Mission(NRHM). I
- (g) Extension of loan facilities by the Nationalized Banks. I

The above is just an illustration. Any developmental scheme in the social sector, whether of the Central Government or of the State

Government, should be considered for extending it to all the Tibetan Refugees on the basis of the Registration Certificate (RC) held by them.

6. Extension of other benefits by the State Governments:-

The State Governments are requested to extend all the benefits of the Government of India Schemes as well as their own Schemes.

The State Governments may particularly undertake the following:-

- (a) The State Governments may extend all the infrastructural facilities and basic amenities like Roads, Electrification, Drinking Water Schemes in or around the Tibetan Settlements. Special projects may be taken specific to these areas.
- (b) The State Government should also consider extending educational subsidies for education of Tibetan children in schools and Universities.
- (c) Special subsidy may be extended for education of Tibetan students, who are pursuing professional courses like Engineering, Medicine etc.
- (d) Special programmes may be undertaken to provide skill upgradation and training to develop local talent among the Tibetan population and encourage their own local handicrafts and such other skills.
- (e) Special permission may be given and separate land be allocated to the Tibetan Refugees to run Tibetan Bazaars where they can trade in Tibetan artefacts, handlooms and handicrafts.
- (f) The local Tibetan Cooperative Societies, wherever they are existing, may be duly registered by the State Government and be extended all the benefits.

The State Government can extend a financial Grant-in-Aid to the Tibetan Cooperative Societies and make them self-sustainable.

- (g) The Tibetans may be allowed to undertake such economic activity as they may desire and to that extent such relevant papers/trade licenses/trade permission may be issued to them on the basis of the Registration Certificate (RC) held by them.
- (h) The State Governments may issue necessary directives to the district authorities/Municipal Authorities to issue such certificates that may enable the Tibetan Refugees to undertake educational/ employment/commercial activities. These may, inter alia, include issuance of Domicile Certificates, shop licenses, driving licenses, business permits, other permits etc. on the basis of their Registration Certificates(RCs).
- (i) The State Governments may also provide ration facilities through PDS channels on the basis of their Registration Certificates (RCs). The Tibetans in India are considered Refugees and they are staying temporarily in India on humanitarian considerations. For relief and rehabilitation of these Refugees, the Govt. of India has provided land and other facilities with the objective of providing them with the means of their survival. Although the National Food Security Act (NFSA) 2013 or the existing Targeted Public Distribution System (TPDS) are applicable to Indian citizens only, the State Governments may consider extending the benefits of TPDS and NFSA to the Tibetan Refugee families as a welfare measure on humanitarian basis, subject to the availability of food grains.
- (j) They may be extended bank loans from the local Cooperative Banks. They may also be provided with the facilities of Crop Loans and Crop Insurance.
- (k) They should be entitled for flood/famine relief as is extended to an Indian Citizen.

- (l) Due efforts should be made by the State Governments to provide employment to the Tibetan Refugees, who are eligible as per their qualifications, for various State Government jobs in the Health and Education fields.
- (m) Qualified professionals from amongst the Tibetan Refugees - may also be permitted to pursue/take jobs in private and non-government sector in any field for which they are professionally qualified. These could be fields like nursing, teaching, Chartered Accountancy, medicine, engineering and such other skill based occupations.
- (n) Tibetan Monasteries, wherever existing, may be given such financial and infrastructural support as possible. Financial support may also be considered for the old age homes being run by the CTRC in their respective States.
- (o) Tibetan youth may be provided all such vocational training as extended to any Indian youth.

(All the above benefits/facilities should be extended to the Tibetan Refugees on the basis of their Registration Certificate (RC)).

7. Census of Tibetan Population:

The CTRC should conduct a Census of the Tibetan Population every 5 years. Such census shall include counting the population living both inside and outside the settlements. The CTRC shall share the census figures with the Government of India and the State Governments concerned.

- 8. This issues with the approval of the Competent Authority.

**Deputy Secretary to the
Government of India,**

STANDARD LEASE DOCUMENT

This lease, made on this day of Two Thousand and, between the Governor of (hereinafter called the Lessor) of the one part and His Holiness The Dalai Lama's Central Tibetan Relief Committee (CTRC) at....., the other part (hereinafter called "The Lessee" which expression shall, unless the context requires another different meaning, includes his heirs, executors, representatives and permitted assigns) ;

Whereas the Lessor has agreed to transfer to the Lessee the land described in the schedule below on lease for 20 years, or till it is revoked/cancelled by an order of the Central Government/Lessor, upon the terms and conditions hereinafter appearing and contained.

Now this deed witnesseth that in consideration of the rent hereinafter reserved and of the covenants by the Lessee hereinafter contained, the LESSOR doth demise unto the LESSEE all that piece of land described in the schedule hereunder for a term of 20 years subject to the following terms and conditions viz.,

1. The lease is liable to cancellation if it is found that it was grossly inequitable or was made under a mistake of fact or owing to misrepresentation or fraud or that there was an irregularity in the procedure. In the event of such cancellation of the lease the Lessee shall not be entitled to any compensation for any loss or damage.

2. The Lessee shall pay a sum of Rs.100/- as security Deposit for the due fulfilment and observance by him of the conditions contained in the lease. The sum so deposited shall be liable to be forfeited by the Lessor in the event of failure by the lessee to fulfil any of the conditions of lease.

3. The Lessee shall, so long as the lease is in force, pay clear of all deductions, a sum of Rs. (to be decided by the Collector) per annum for credit to the general revenues of the State. The first of such payments should be made on the day of and the subsequent annual payments on the corresponding day of the succeeding years.

4. If the Lessee fails to pay the Lessor any sums payable under the lease on the respective dates on which they are made payable, he shall pay interest at 12% *per annum* on such amounts from the dates on which they were so payable until the date of payment or recovery.

5. The Lessee shall use the land for the purpose of agriculture/residential/commercial/religious activity, in keeping with the Tibetan culture, religion and livelihood.

6. The legally authorized resident shall not do any act which is destructive or permanently injurious to the land.

7. The land shall be in possession of the Lessee who in turn may decide the usage as per the Tibetan Rehabilitation Policy notified by the Government of India.

8. The Lessee shall not sub-let mortgage or otherwise transfer his leasehold right. The Lessee may offer such leased lands as security for raising loans from cooperative society/Scheduled Bank for undertaking any agricultural/economic/commercial or social/educational activity.

9. The lease shall be terminated when the rehabilitation facilities provided to the Tibetan Refugees are cancelled or withdrawn by the Government of India.

10. The land shall not be used for political meetings.

11. The Lessee shall permit the Officers of the Lessor with or without workmen at all times to enter upon the lands aforesaid to view the conditions and state thereof.

12. The Lessee shall not assign or sublet the benefits arising under this lease or any part thereof without the previous written permission of the Lessor.

13. (a) The Lessor reserves to themselves the right of all trees including sandalwood trees, their branches and roots which exist at the time of lease (which are described in the schedule attached) as well as those which may grow subsequently on the lands leased and the Lessor shall be at liberty to cut or dig out any such trees or their roots and branches and remove them

from the land in question and dispose them of at their leisure without any compensation/Bonus to the lessee. The Lessee shall not be entitled to cut and remove them without the previous written permission of the Lessor.

(b) The Lessee shall take all reasonable measures to the satisfaction of the Deputy Commissioner/ Administrator/Districts Collector/Forest Authorities for the protection of the trees/Sandalwood trees/any other trees pre-existing from theft or damage and for the careful protection of the immature trees growing on the lands.

(c) The Lessee shall take steps to see that marks made by the officers of the Lessor on the trees/sandalwood trees/any other trees are preserved and are not tampered with.

(d) In the event of the infringement, or failure to observe any of the conditions mentioned in (a), (b) or (c) above, the Lessee shall pay the Lessor such compensation as determined by the Deputy Commissioner/ Administrator/Districts Collector/Forest Authorities. The State Government shall also be at liberty to cancel the lease and enter on the land and the entire land shall thereupon vest absolutely in the State Government. In that case the Lessee shall not be entitled to any compensation whatsoever.

14. The Lessee/ legally authorized resident shall not erect any new buildings, or structures of a permanent character on the lessor land without the previous-written sanction of the Lessor. Upgradation/ improvement of existing structures may be done by the Lessee under information to the Lessor.

15. The Lessee shall not cut any live trees without the previous permission of the Deputy Commissioner/Administrator/District Collector/Forest Authorities. The withered and wind fallen trees shall also be the property of the Lessor and shall be handed over to the nearby forest authority or other authorities appointed by the Lessor to look after the lands leased to the Tibetan Refugees.

16. The sale proceeds of withered and wind fallen trees and those cut under condition (15) shall be credited to the Lessor.

17. The Lessee shall have no rights whatsoever to any trees standing on the land or to their usufruct.

18. The Usufruct of the trees may be leased out in auction by the officers of the Lessor according to the practice in vogue in the district and the Lessee shall allow a right of passage to persons to whom the usufruct of the trees is so granted by the Lessor.

19. The Lessee shall not, without the previous written sanction of the Deputy Commissioner/Administrator/any authorities nominated by the Lessor, permit any person to use the land or any structure thereon or any portion of the land or structure except as provided in conditions (5).

20. The Lessee shall on the termination or revocation of this lease, restore the said land to the Lessor in as good a condition as is consistent with the foregoing conditions.

21. The Lessee shall be answerable to the Lessor for all or any injury or damage done to the said land and other Government property thereon except as is permitted by the foregoing conditions.

22. The Lessor may revoke the lease wholly or partly, if the sums specified in condition (3) above or any part thereof shall remain unpaid for 15 days after they have become payable whether formally demanded or not, OR if the Lessee shall have contravened any of the conditions of the lease herein contained; and assume control or otherwise dispose of all or any part of the land, any buildings, fences and structures thereon and the Lessee shall not be entitled to any compensation therefor.

23. If the amount specified in condition (3) or (4) above or any part thereof is in arrears, it shall also be competent for the Lessor to recover the same from the Lessee as an arrear of land revenue.

24. The Lessor may terminate the lease without prejudice to any right of action or remedy of the Government in respect of any breach of any of the foregoing conditions. The Lessee shall not, in the case of such revocation or termination, be entitled to any compensation in respect of any structures on the land or any improvements effected by him to the land or for the loss caused by the interruption of his occupation.

25. In the event of termination of the lease under condition 22 or 24, the Lessor shall be at liberty to levy proportionate rental up to the date of such termination.

26. The Lessee shall protect and maintain, at all times, the contour Bunds and other structures constructed at the cost of Lessor at the time of leasing the land.

27. The lease includes all rights, easements, appurtenances belonging to the land or reported to belong to it or usually held or enjoyed with it. The existing and customary rights of Lessor and the public, in roads and paths and rivers streams and channels running through or bounding the land and the right of Government to the mines and quarries adjacent to the land are however reserved and are in no way affected by the lease.

28. If the land or any portion of land is required for any public purpose or for any administrative purpose, the Lessor shall, at the expiry of a notice of fifteen days to that effect that the said land is required for such purpose, be at a liberty to take possession of the land with structures.

29. The Lessee, on the determination of the lease, shall handover the demised premises with all structures erected thereon:

30. Notwithstanding anything contained above, the Central Government/ Lessor may, at any time, cancel the lease, without assigning any reason thereof. However, a prior notice of 3 months shall be given before revoking the lease.

31. The lease is subject to the provisions of Land Acts of (of the respective State Government) as amended from time to time.

SCHEDULE

District	Taluk	Town or Village S.No.or	Boundaries			
			Block No.	_____		
			Dry	Wet N.S.E.W.		
1	2	3	4	5	6	7

5'

In witness thereof, Administrator/District Collector acting for the land, on behalf of the Governor of (name of the State) and the Lessee aforesaid have hereunto set their signature on this:.....day of

Signed by Lessee

Signed by the Lessor

In the Presence of

Date
Station

- 1
- 2.

B. Documents issued by the Government of India

1. Registration Certificate

4

TIBETIAN REGESTREE

16. Signature of registree: Aspelo

17. Seal

18. Photo Passport size.

Foreigners Registration Officer
& Superintendent of Police

Note: No alterations should be made on this Form: Corrections should be noted and attested on the reverse.

5

TIBETIAN REGESTREE

R. C. No. _____
RESIDENTIAL PERMIT
(Under paragraph 7 of the Foreigners Order 1948)
Mr/Mrs/Miss _____
of Tibet nationality, holding
R. C. No. _____ Dated 17-5-48
for India is permitted to remain in India till _____.

2. This permit must be surrendered at the time of departure from India to the Registration Office of the place from which Mr/Mrs/Miss _____ Leaves India.

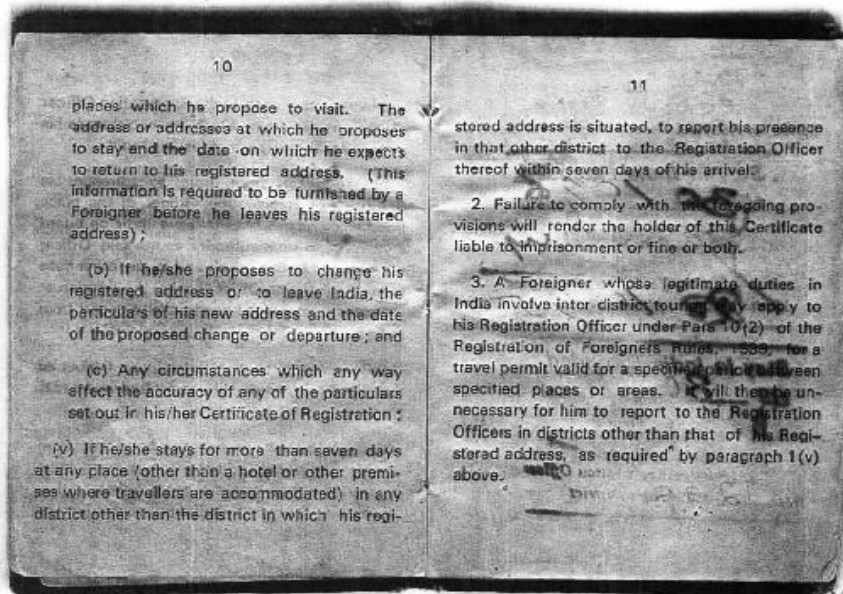
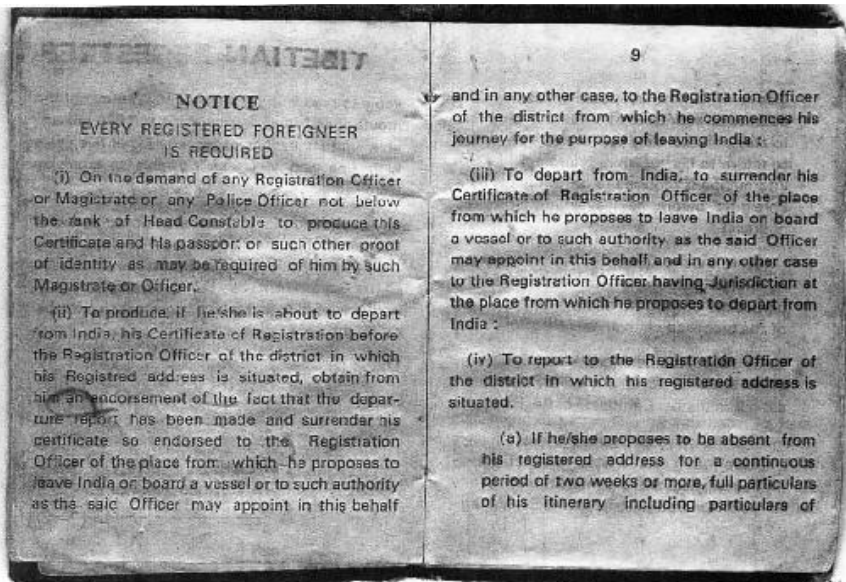
3. In the event of Mr/Mrs/Miss _____ not departing from India before 16-11-48 he/she will unless he/she has obtained the permission of the Central Government to remain for a longer period, be

liable to prosecution for a contravention of the provisions of the Foreigners Act, 1946 punishable with imprisonment for a period of five years with fine and will also be liable to expulsion from India.

4. Application for an extension of the period of this permit must be made at least 15 days before 10-11-48 and must be addressed to the Government has the discretion to withhold any application which does not have adequate grounds for an extension.

Dated: _____
Seal: _____

Foreigners Registration Officer
& Superintendent of Police



Space for Renewal :

Stay in India Extended
till 30-10-96
[Signature]
Foreign Registration Office
Mysore District

Stay in India Extended
till 30-10-97
[Signature]
Foreign Registration Office
Mysore District

Stay in India Extended
till 30-10-98
[Signature]
Foreign Registration Office
Mysore District

Stay in India Extended
till 30-10-99
[Signature]
Foreign Registration Office
Mysore District

Reported Departure
for Bylakuppe 11/11/10
SECURITY OFFICER
Richard Gani, District
Mysore District
[Signature]
11/11/10

Proposed Arrival
from Odeurastala
Karnataka to Byl
akuppe on 21,
Kylaspura, Mysore
Nov-18th 1996
Sub-Inspector of Police
Bylakuppe 18/11/10
Mysore District

2. Identity Certificate

नम्बर NO	नम्बर NO
व्यक्ति का विवरण Personal Description	विशेष चिह्न Distinguishing mark
व्यवसाय Profession	हाल में किया जा रहा कार्य Present occupation
जन्म की तारीख Date of birth	विदेश में पिछला स्थायी पता Last permanent address abroad
जन्म स्थान Place of birth	वर्तमान पता Present address
पिता / पति का नाम Name of father / husband	
माँ का नाम Name of mother	
ऊँचाई Height	
बालों का रंग Colour of hair	
आँसुओं का रंग Colour of eyes	

Handwritten entries on the left side:
व्यक्ति का विवरण: STUDENT
ऊँचाई: 5' 2 1/2"
बालों का रंग: Black
आँसुओं का रंग: Brown

Handwritten entries on the right side:
विशेष चिह्न: Black Mark on the back of neck
हाल में किया जा रहा कार्य: [Redacted]
वर्तमान पता: Mysore KS

नम्बर NO [REDACTED]

आधार पत्रिका के साथ प्रेषित किया गया है।
The holder is accompanied by a child / children
whose particulars are given below.
बच्चों की विवरण
Particulars of Children

क्रमिक S.No.	नाम Name	जन्म की तारीख Date of birth	लिंग / लिंग Sex
1			
2			
3			
4			
5			



आधार पत्रिका के अधिकारी
(Responsible Officer)

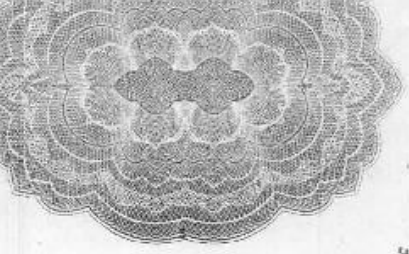
नम्बर NO [REDACTED]

ENDORSEMENTS
**VALID FOR ALL COUNTRIES
NOT A VISA**

No objection to return to India provided
A visa is obtained within Ten Years of
date here of facilities to stay upto one
year from the date of return to India.



Jadu Khanna
एडिशनल सुपरिन्टेंडेंट
क्षेत्रीय पासपोर्ट कार्यालय
Regional Pass. Office
दिल्ली, दिल्ली



3. Online application for Identity Certificate

How to Apply for Identity Certificate

Identity Certificate (IC) is normally issued to Tibetan Refugees residing in India, from the Regional Passport Office, Delhi (RPO Delhi) on recommendation by the Bureau of His Holiness the Dalai Lama (HHDL), New Delhi. In addition to Tibetan refugees, Stateless people residing in India may also apply for Identity Certificate at the Passport Office within whose jurisdiction they are currently residing.

IC issuance is subject to clearance by Ministry of External Affairs (Consular, Passport and Visa (CPV) PV-III division). In addition, clearance by State Government (Department of Home Affairs / Police) / FRRO is also required for grant of No Objection to Return to India (NORI) to be stamped on the Identity Certificate.

Please read the following instructions related to documentary requirements and other details for Identity Certificate applications:

- **Where to Apply**

- Tibetan Refugees residing in India need to apply at RPO Delhi.
- Stateless people residing in India need to apply at the passport office within whose jurisdiction they currently reside in.

- **Photograph**

- Please paste a coloured photograph (4.5 cm X 3.5 cm) with white background in the box provisioned for photograph in the printed application form.

- **Documents Required**

Please submit one copy of each of the following documents, preferably in the same order:

- IC Application Form duly filled and signed in ink
- Recommendation Letter from the Bureau of His Holiness the Dalai Lama (HHDL), New Delhi in case of applicants who are Tibetan Refugees
- Registration Certificate issued by FRRO/ FRO to the applicant
- Registration Certificate issued by FRRO/ FRO to the parents in case of minor applicants
- Proof of Date of Birth
- Proof of Address in India

Note: Passport Office may demand additional documents relevant to your specific case, if required.



File Number (For Office Use Only)

Grid for File Number

GOVERNMENT OF INDIA, MINISTRY OF EXTERNAL AFFAIRS
IDENTITY CERTIFICATE FORM

Please fill this form in CAPITAL LETTERS using blue/black ink ball point pen only. Furnishing of incorrect information/ suppression of information would lead to rejection of the application and would attract penal provisions as prescribed under the Passports Act, 1967. Please produce your original documents at the time of submission of the form.

1. Service Required

1.1 Applying for [] Fresh Identity Certificate [] Re-issue of Identity Certificate

1.2 If re-issue, specify reason(s)

- [] Validity Expired within 3 years/ Due to Expire [] Exhaustion of Pages
[] Validity Expired more than 3 years ago [] Lost Passport
[] Change in Existing Personal Particulars [] Damaged Passport

1.3 If change in existing personal particulars, specify reason(s)

- [] Appearance [] Signature [] Given Name
[] Surname [] Date of Birth [] Spouse Name
[] Address [] Others, Please specify

Please paste your unsigned recent colour photograph with white background of size 4.5cm X 3.5cm

Signature/ Left Hand Thumb Impression of Illiterate Applicant and Minors who cannot sign

Grids for signature/impression

2. Applicant Details

2.1 Applicant's Given Name (Given Name means First name followed by Middle name (if any))(Initials not allowed)

Grid for Given Name

Grid for Surname

Grid for Address

2.2 Are you known by any other name (alias)? [] Yes [] No If Yes, provide details below

Alias Name, Given Name

Alias Name, Surname

2.3 Have you ever changed your name? [] Yes [] No If Yes, provide details below

Previous Name, Given Name

Previous Name, Surname

2.4. Gender [] Male [] Female [] Transgender

2.5. Date of Birth (DD-MM-YYYY) - -

2.6. Place of Birth

Village/Town/City

Country (If born abroad)

District (If born in India)

State/UT (If born in India)

2.7. Height of applicant (in cm)

2.8. Colour of Eyes Black Brown Blue Green Others (Specify)

2.9. Colour of Hair Black Brown Grey White Others (Specify)

2.10. Visible Distinguishing Mark

2.11. Marital Status Single Married Divorced Separated Widow/ Widower

2.12. Place/Country of Origin

2.13. Registration Certificate (RC) Number

Father's/ Legal Guardian's RC Number (For minors only)

Mother's/ Legal Guardian's RC Number (For minors only)

2.14. Aadhaar Number

2.15. Employment Type Self Employed Others Homemaker Private Not Employed Student Retired-Private Service

2.16. Educational Qualification

5th pass or less Between 6th and 9th Standard 10th pass and above Graduate and above

3. Family Details

3.1 Father's Given Name (Given Name means First name followed by Middle name (If any))(Initials not allowed)

Surname

Page 3 of 6

C. U.S. State Department Documents

1. Unclassified Cable 004443, April 1996

P 221217Z Apr. 96
FM Am Embassy New Delhi
TO SecState Wash DC Priority 7162 UNCLAS NEW DELHI 004443

DEPARTMENT ALSO CA/VO/F/P

E.O. 12958: N/A
TAGS: PHUM, PREF, PREL, CUIS, CH, IN SUBJECT: TIBETAN
ASYLEES IN INDIA

REF: State 76030

1. In response to reftel query, poloffs contacted UNHCR and Jampal Chosang, Secretary at the Dalai Lama's New Delhi Bureau and long-time resident of India. The consular section also came up with a sample of the travel documents India provides to Tibetans.

2. According to UNHCR and Chosang, Tibetans resident in India receive from the Indian Ministry of Home Affairs a "Registration Certificate" on a single sheet of paper, which permits them to reside in India. If a Tibetan resident of India travels outside India, he must first obtain an "Identity Certificate," a passport-like book issued by the passport office of the Ministry of External Affairs. The cover of this certificate is imprinted with the Indian National Symbol. The lion capital of the ashoka pillar, like an Indian passport, but is yellow in color instead of dark blue. This identity certificate serves in lieu of a passport for foreign travel and return to India.

3. An essential element of the "Identity Certificate" is a "No Objection of Return to India" (NORI) stamp placed in the certificate by the passport office, probably subject to the approval of the Home Ministry. Chosang had the impression that the Home Ministry issued the certificates and placed the NORI stamps in them but the sample we have seen clearly indicates that the MHA passport office is the issuing agency. The NORI stamp states "Not a Visa (Underline) No Objection To Return to India Provided A Visa Is Obtained Within Two Years of Date Here Of. Permitted to stay up to one year from the date of return

to India.” A Tibetan resident of India may travel outside India without a NORI stamp but will not be able to return to India without it. We do not as a rule place a U.S. Visa in an “Identity Certificate” unless a NORI stamp appears in it.

4. NORI stamps are occasionally withheld by the Indian authorities. According to Chosang, usually in cases where the Tibetan has been convicted of committing unlawful activities. Asked if “unlawful activities” included political activities, Chosang said “yes.” He cited the example of Tibetans who may have demonstrated in front of the Chinese Embassy in New Delhi being arrested and convicted of disturbing the public order.

5. Regarding the statement of Reftel Asylum Seeker. It is not our sense that the “general population” of India resents the presence of the roughly 100,000 Tibetans in their country. The Indian Federal Government and several State governments have provided land for Tibetan refugees fleeing Communist Chinese oppression in 1959 and the Tibetans have resided more or less without incident in India since then. There was a recent incident of communal tension between the Tibetan and Indian communities in the Northern Indian City of Dharamsala, site of the Dalai Lama’s home in exile, in 1994. Tension in this case was occasioned by an isolated incident of violence between individuals. Although local politicians attempted briefly (and ultimately unsuccessfully) to use the incident to stir up passions; most of the populace in both communities quickly allowed the incident to fade and no permanent repercussions were felt.

6. The asylum seeker is correct to assert, however, that Indian authorities prohibit Tibetans from engaging in overt political agitation, particularly if it is anti-Chinese. The presence of the Dalai Lama and thousands of his supporters in India has long been a neuralgic issue for China and a perennial bone of contention in the Sino-Indian political agenda. As Sino-Indian relations have improved over the past few years, both New Delhi and Beijing have made conscious efforts not to allow the Dalai Lama’s presence to cast a shadow over the broader relationship. Nonetheless, the Indian Government has circumspectly tried to avoid giving Beijing the impression that the issue is political rather than humanitarian and that the Dalai Lama is a political leader rather than a religious and cultural figure. New Delhi is not always successful in persuading Beijing when, for example, Tibetan exiles assemble in Dharamsala to hear the Dalai Lama’s annual March 10 address on the anniversary of his 1959 flight into exile, or when

Tibetans protest Chinese policies in small street demonstrations. On such occasions, Indian Authorities generally cite the “messiness” of democracies and ignore Chinese protests as best they can. New Delhi can, however, and has in the past, arrested Tibetan demonstrators in order to prevent them from engaging in “political activities” as a means to placate Beijing and maintain normalcy in its relations with China.

7. If the asylum seeker’s statement that he is well known to Indian authorities for engaging in political activities for Tibetan independence is true, it is credible that he may be barred from reentering India: none of our sources are aware of the practice of placing any endorsement or marking in an Identity Certificate that would invalidate the NORI stamp. It would not be surprising, however, if the names of perceived “trouble makers” were included on watch lists consulted by Indian Embassies in issuing visas or by Immigration Authorities at points of entry.

Wisher

D. Central Tibetan Administration Documents

1

Kashag Circular:

As you are aware, since recently quite a few Tibetans have migrated to the West. Some among them are new arrivals from Tibet and have now settled in the country of their residence and have even started to invite their family members for family unification.

The persons invited for family re-unification have Travel Documents issued either by the host country or from an international organization such as the International Red Cross. They also have immigration visa clearance from the to be host country.

Until recently, the Government of India has been issuing Exit permit to these people who have the above documents. However, as the number of such people kept steadily increasing, the Indian Government found it uncomfortable with this situation. They feel that some Tibetans are using India as a conduit or a passage to travel abroad and therefore, expressed its inability to issue Exit Permit to such people with effective from December 31st, 2006.

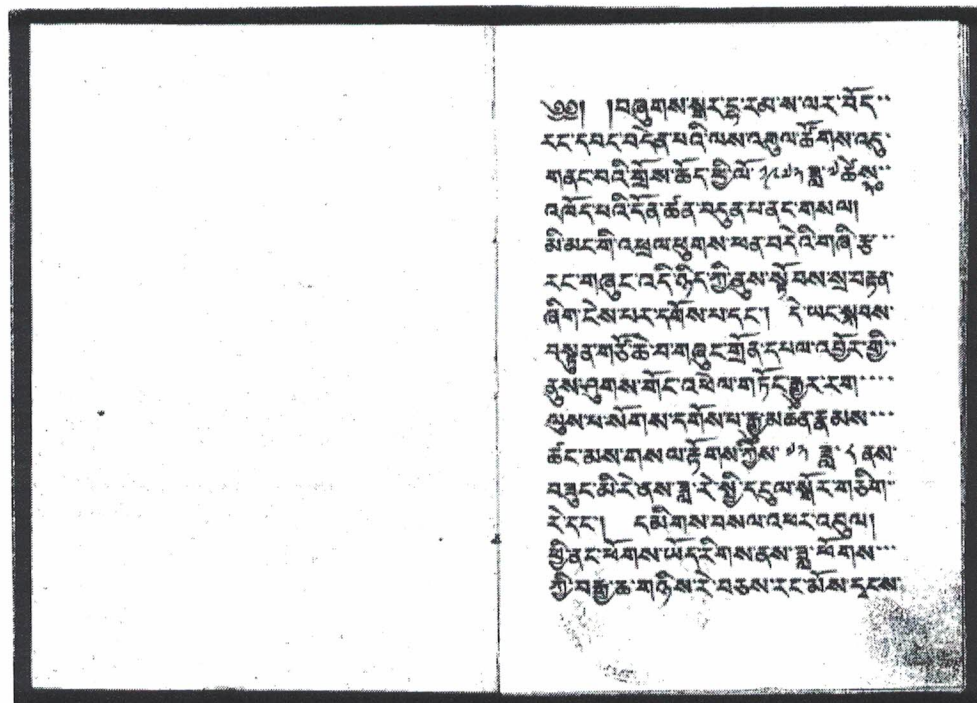
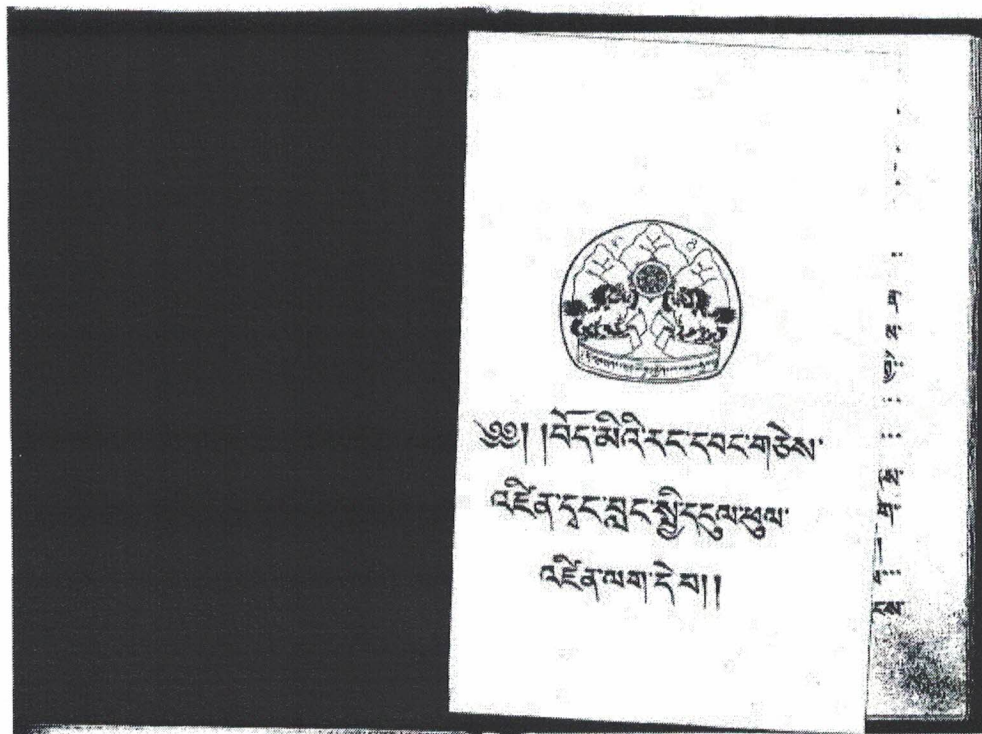
But to all Tibetans who arrive through our Reception Centre in Kathmandu, the Indian Embassy there, issue them with Special Entry Permit (SEP). The SEP is issued under the categories of either for pilgrimage or education or others and the duration of stay for education is normally for a year while the validity for SEP for pilgrimage is normally for one month.

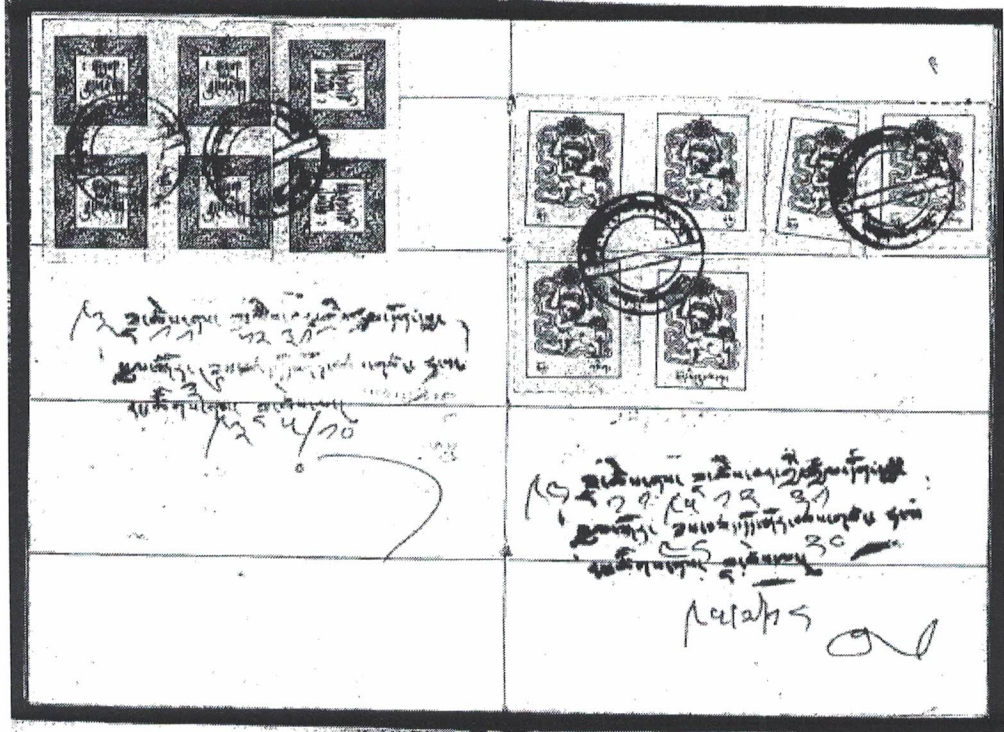
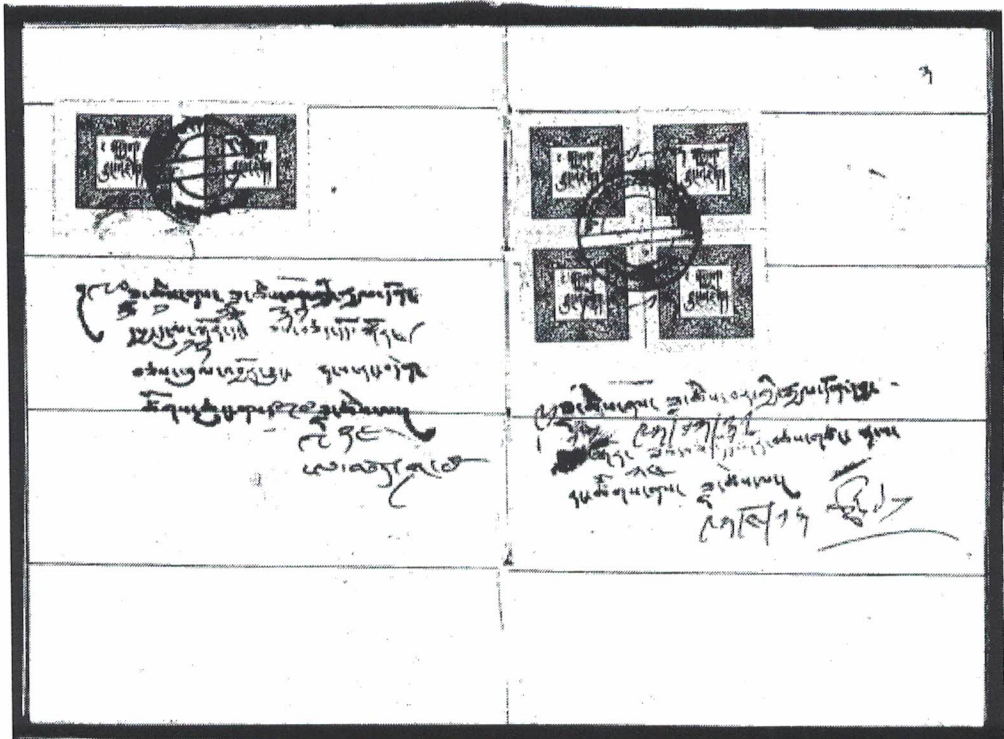
Those who arrive in India with SEP validity of one year will be allowed to apply for Registration Certificate (RC), resident permit in India. Any RC holder can apply for Identity Certificate (IC), which normally take 14-18 months to process. A person with an IC will be allowed to travel abroad without an Exit Permit, provided a visa is obtained, but for those who are migrating to other countries will have to obtain an Exit Permit which normally takes between 7-14 days to process.

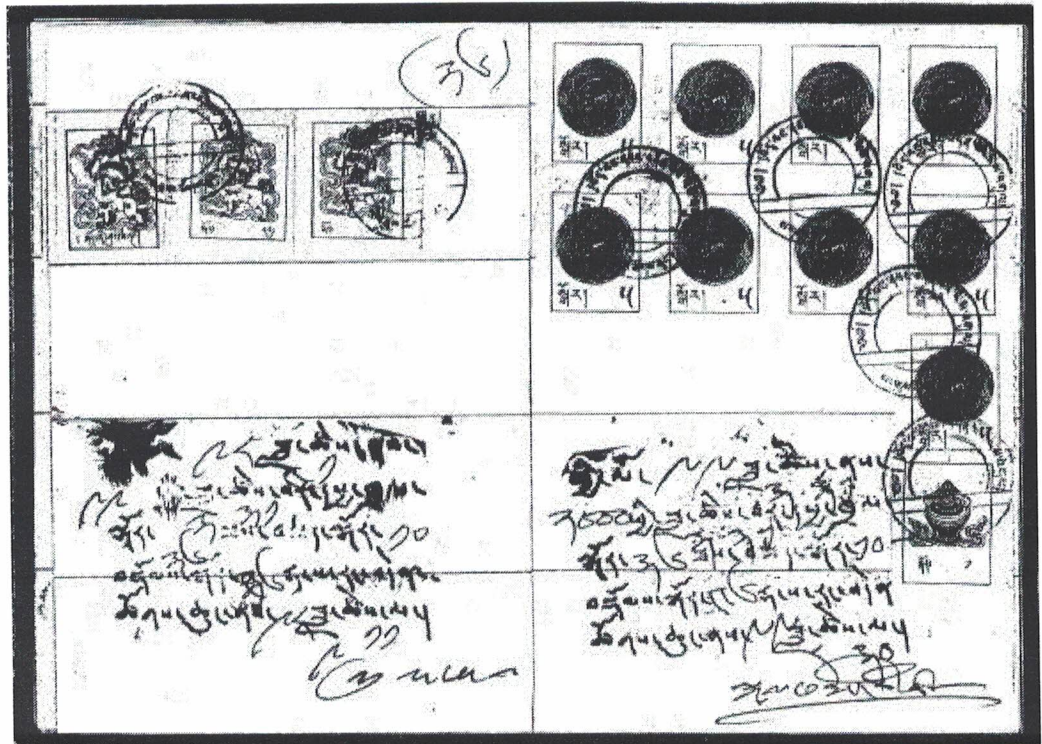
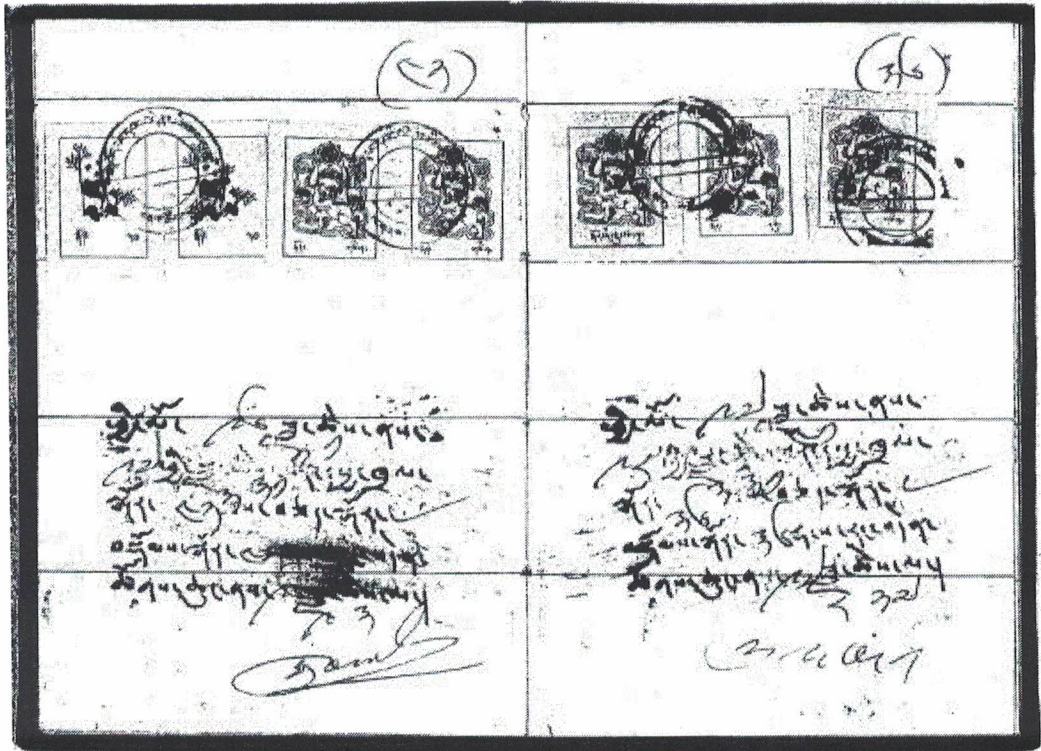
This is to inform that no request for Exit Permit will be entertained by the Government of India after December 31st, 2006 for those who obtained Travel Document on SEP and therefore, we ask all the representatives to make sure that our people under your jurisdiction are informed and kept updated with these developments to avoid

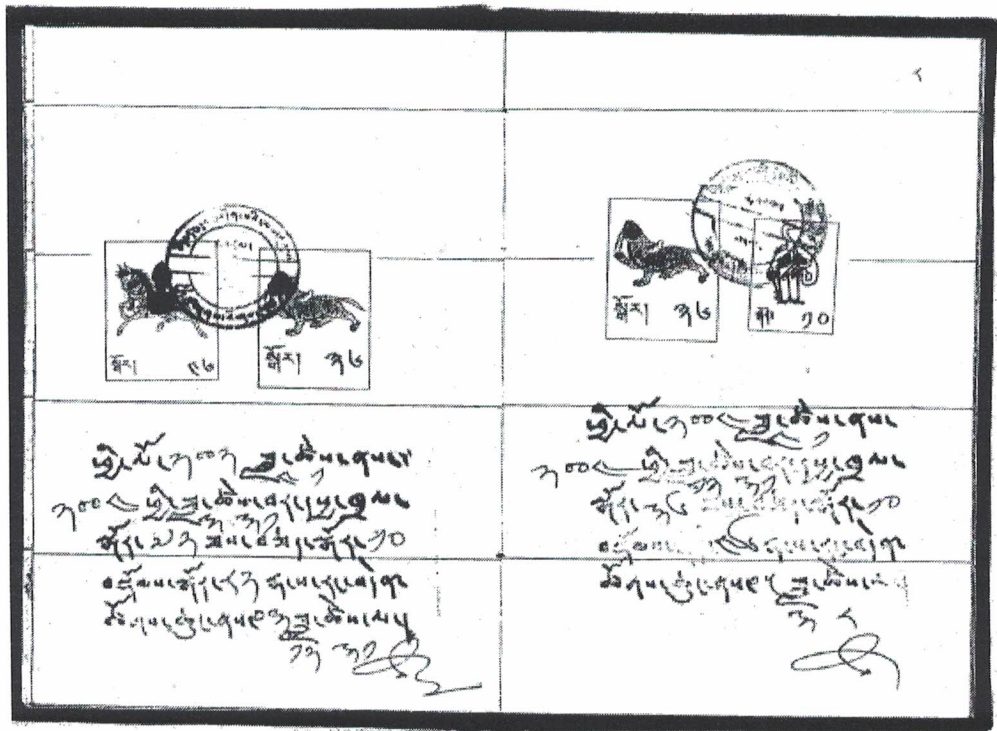
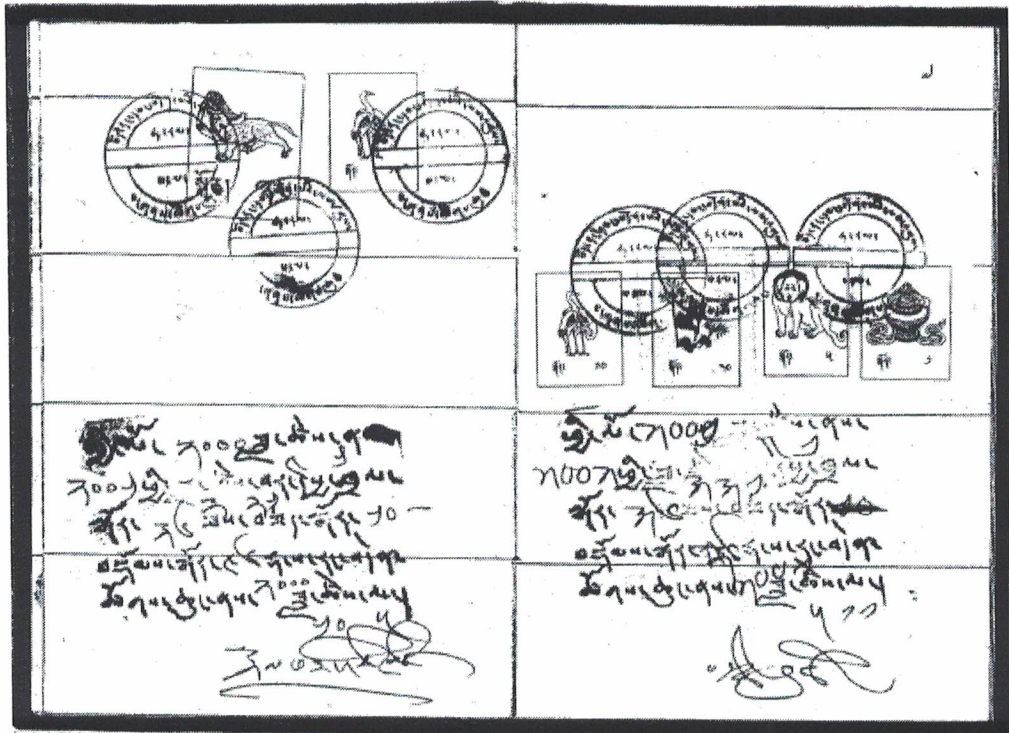
unnecessary complications to all the concerned and to make necessary arrangements accordingly.

2. Tibetan Green Book and Translation





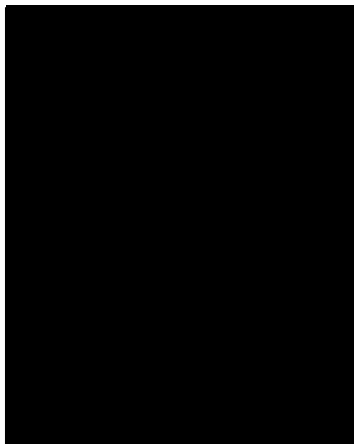




	28

CERTIFICATE OF TRANSLATION

I CERTIFY THAT I AM FLUENT AND PROFICIENT IN BOTH TIBETAN AND ENGLISH. I AM COMPETENT TO TRANSLATE THE ATTACHED DOCUMENT FROM TIBETAN TO ENGLISH AND I HAVE TRANSLATED THE ATTACHED DOCUMENT FROM TIBETAN TO ENGLISH COMPLETELY AND ACCURATELY TO THE BEST OF MY ABILITY.



TRANSLATION FROM TIBETAN INTO ENGLISH LANGUAGE

Cover Page

EMBLEM OF THE TIBETAN GOVERNMENT-IN-EXILE
TIBETAN IDENTIFICATION BOOK
STICKER HANDWRITING: [REDACTED]

Page i.

The bearer of this book is a bona-fide Tibetan citizen in exile. He/she has paid annual contributions to the Tibetan Government in Exile, as per resolution adopted on July 30, 1972 by the Assembly of Tibetan People's Deputies, located in Dharamsala, India. From August 1972, each Tibetan will contribute Rupee 1.00 per month. Special contributions are welcome. All gainfully employed Tibetans will make an extra contribution of 2% from their monthly salary. The Tibetan Government in Exile provides educational and social assistance to the Tibetan refugees throughout India and Nepal and promotes human rights and democratic freedoms in Chinese-occupied region of Tibet.

Page ii.

Note:

One should contact one's local Refugee Community Center in case of loss of this identity document. When you move to another refugee camp your annual contributions should be paid at your new location.

SEAL OF ASSEMBLY OF TIBETAN PEOPLE'S DEPUTIES
Handwriting: incomprehensible

Page iii.

PHOTO OF BEARER
Seal of the Regional Tibetan Freedom Movement
Top right-hand corner: 4439 (in red ink)

Name: [REDACTED]
Date of birth: [REDACTED]
Father's name: [REDACTED]
Place of birth: Dhasa
Occupation: Student
Booklet number: [REDACTED]

SEAL OF THE REGIONAL TIBETAN FREEDOM MOVEMENT
Handwriting: Student of Mussorie Tibetan Homes School (# 3)

Page iv.

Indian permit: -blank-
Previous Booklet No.: -blank-
Previous Issuing Post: -blank-
Current Issuing Post: Dhasa
Date of Issue: April 24, 1989

STAMP OF REGIONAL TIBETAN FREEDOM MOVEMENT

Page 1

(Front):

2 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1989
Signed: Tenzin Choephel

(Back):

2 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1990
Signed: illegible

Page 3

(Front):

4 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1992
Signed: illegible

(Back):

6 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1993
Signed: illegible

Page 4

(Front):

6 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1994
Signed: illegible

(Back):

4 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1996
Signed: illegible

Page 5

(Front):

3 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1997
Signed: illegible

(Back):

3 Payment stamps
2 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1998
Signed: illegible

Page 6

(Front):

10 Payment stamps
5 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 1999
Signed: illegible

(Back):

2 Payment stamps
3 Seals of the Regional Tibetan Freedom Movement

All payment received up to December 31, 2000
Signed: illegible

Page 7

(Front):

4 Payment stamps
3 Seals of the Regional Tibetan Freedom Movement
All payment received up to December 31, 2001
Signed: illegible

(Back):

2 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to March 31, 2004
Signed: illegible

Page 8

(Front):

2 Payment stamps
Seal of the Regional Tibetan Freedom Movement
All payment received up to December 31, 2004
Signed: illegible

(Back):

-blank-

Page 9 - 29

All pages blank

Tibet Justice Center (TJC) is an independent committee of lawyers and other experts with a dedicated mission to advocate for human rights and self-determination for the Tibetan people. Through independent legal research, advocacy, and education, TJC works to promote human rights, positive environmental governance, refugee protection, and self-governance for the people of Tibet.

TIBET'S STATELESS NATIONALS III:

The Status of Tibetan Refugees in India

For further information, please visit our website or contact us:

www.tibetjustice.org

tjc@tibetjustice.org

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