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CHINA'S DENIAL OF TIBETAN WOMEN'S RIGHT TO REPRODUCTIVE FREEDOM†‡

*Eva Herzer** and *Sara B. Levin***

October 10, 1995

When I was pregnant with my third child Chinese officials came to my house many times to convince me to have an abortion. They told me that I was not allowed to have a third child and that I should go to the hospital when I was about 5 months pregnant to have an abortion injection. I became very frightened and decide to leave my home until the baby was due. I was afraid I would be forced to have an abortion if I stayed at home. I went to stay with my mother in another village. During the months I stayed with my mother the officials who had told me to get an abortion came to my home about 10 times. They asked my husband where I was. When he said that he didn't know where I was they slapped him in the face, kicked him and beat him with sticks. They threatened to arrest him if he didn't tell them where I was and if I didn't turn up. They carried pistols and hand cuffs.

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‡ The authors thank Lisa Tracy and John Meier for their assistance and support. Lisa is a board member of the International Committee for Lawyers for Tibet (ICLT) and a Ph.D. candidate at Berkeley's School of Social Welfare. John, a law student at UC Davis, is past executive director and a current board member of the ICLT. ICLT is a non-profit corporation, headquartered in Berkeley, CA. It works in solidarity with the Tibetan people in their struggle to achieve self-determination through non-violent action. This article was drafted as part of ICLT's preparations for the United Nation's Fourth World Conference on Women and was delivered by Eva Herzer at the Symposium on Women's International Human Rights.

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When the baby was due I went home. About one month after the delivery the officials came to my house again and threatened that they would take away all our possessions and arrest my husband They ordered me to come with them to hospital I was given an injection in my spine. It was meant to anesthetize me, but in fact I could feel exactly what the doctors were doing. The operation was very painful. There were four beds in the surgery room. I saw with my own eyes how they injected pregnant women with very long needles. They injected the head of the baby with some kind of poison. Later these women had miscarriages in hospital. I saw many fetuses in the toilets. I saw how they were eaten by dogs. The parents weren't allowed to keep the foetus unless they paid the medical bill for the operation. These bills were so high that nobody could pay them.¹

INTRODUCTION

Although Tibet has always been sparsely populated, the People's Republic of China (PRC) is regulating the timing of childbirth and limiting the number of Tibetan children permitted to be born. The PRC has enforced these limits by a number of means, unofficially since the early 1980's, and officially since 1992.² Severe economic and social sanctions for having a child "out of plan" coerce women to undergo abortions and sterilization operations against their will.³ These sanctions include imposing fines, often exceeding a family's entire yearly income, and denying the "out of plan" child the papers required to attend school and receive medical care.⁴ Reports have confirmed that Tibetan

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1. TIBETAN WOMEN'S ASSOCIATION, *TEARS OF SILENCE: TIBETAN WOMEN AND POPULATION CONTROL* 39 (1994) (interview with "C." a Tibetan woman from Amdo, conducted in India in April 1994) [hereinafter *TEARS OF SILENCE*].
 2. PRC officials admitted in 1992 that family planning has been implemented against Tibetans since the mid-1980's. INFORMATION OFFICE OF THE STATE COUNCIL, *TIBET: IT'S OWNERSHIP AND HUMAN RIGHTS SITUATION* (1992), reprinted in *China on Its Ownership of and Human Rights in Tibet, BBC Summary of World Broadcasts*, Sept. 24, 1992, available in LEXIS, Nexis Library, Arcnws File [hereinafter *China on Human Rights in Tibet*].
 3. ASIA WATCH, *EVADING SCRUTINY: VIOLATIONS OF HUMAN RIGHTS AFTER THE CLOSING OF TIBET* 27 (1988) [hereinafter *EVADING SCRUTINY*].
 4. TIBET INFORMATION NETWORK, *TIN BACKGROUND BRIEF PAPER: SURVEY OF BIRTH CONTROL POLICIES IN TIBET* 21 (1994) [hereinafter *TIN BRIEFING PAPER*].

women are subjected to abortions and sterilization operations without being informed of the procedures' real purpose.⁵ Other reports, like C.'s above, document that women are coerced into submitting to abortions and sterilizations to avoid the arrests and imprisonment of their husbands.⁶

In addition to being coercive, the PRC's family planning policy for Tibetans is unnecessarily intrusive, violent and medically unsound.⁷ There is no evidence that the PRC considered creating a family planning policy for Tibet that is focused on contraception. The PRC considers most contraceptive drugs and IUDs unsafe and too expensive; as a result, abortion is the most common form of birth control.⁸ Late-pregnancy abortion procedures are commonly performed. Tibet Information Network (TIN) reports that women who are more than 45 days pregnant are sent home from hospitals and required to return when they are no less than five months pregnant.⁹ These operations are not only physically dangerous and debilitating for Tibetan women, they also unnecessarily increase the psychological trauma suffered by women who are forced to carry the fetus until it is potentially viable, and then submit to an abortion.

The PRC's family planning policy for Tibet, as implemented, gravely violates international human rights law. In particular, the policy violates the United Nations (U.N.) Universal Declaration of Human Rights,¹⁰ and three U.N. conventions that were signed and ratified by the PRC, namely, the Convention on the Elimination of All Forms of Discrimination Against Women,¹¹ the Convention Against Torture and

5. ASIA WATCH, HUMAN RIGHTS IN TIBET 55 (1988) [hereinafter HUMAN RIGHTS IN TIBET].

6. For a discussion of forced and coerced abortion and sterilization practices in Tibet, see Blake Kerr, *Tibetans under the Knife*, in ANGUISH OF TIBET 96 (Petra K. Kelly et al. eds., 1991).

7. See EVADING SCRUTINY, *supra* note 3, at 26-27. TIN BRIEFING PAPER, *supra* note 4, at 17.

8. TIN BRIEFING PAPER, *supra* note 4, at 2, 17.

9. TIN BRIEFING PAPER, *supra* note 4, at 18.

10. *Universal Declaration of Human Rights*, G.A. Res. 217, U.N. GAOR 3d Comm., 3d Sess., pt. 1, 183d plen. mtg. at 71, U.N. Doc. A/810 (1948) [hereinafter *Universal Declaration of Human Rights*].

11. G.A. Res. 180, U.N. GAOR, 34th Sess., Agenda Item 75, Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979) [hereinafter CEAFDAW].

Other Cruel, Inhuman or Degrading Treatment or Punishment¹² and the Convention on the Prevention and Punishment of the Crime of Genocide.¹³

This Article first provides a historical account of the social and political context of the PRC's family planning policies in Tibet. Part B describes the PRC's official family policies from 1982 to the present. Part C discusses the PRC's actual practices, including its population quota controls, focusing on the forced and coerced abortions and sterilizations performed on Tibetan women. Part D applies international human rights law and concludes that the PRC's family planning policy, as implemented, violates international human rights laws. The Article concludes by recommending points of action for the PRC and international community to address these human rights violations.

*A. "Family Planning" for Tibetans:
Understanding the Context*

Discussion of the imposition of "family planning" measures on the Tibetan people must begin with this first basic truth: Tibet has never had a population problem, and it does not have a population problem today.¹⁴ Tibet is a large country, stretching over 2.5 million square kilometers, roughly equivalent in size to western Europe.¹⁵ Fewer than 6 million Tibetans live in Tibet, as compared to 1.2 billion Chinese living in China. Even under the PRC's policy of population transfer,¹⁶

12. G.A. Res. 39/46, U.N. GAOR, 39th Sess., Agenda Item 99, U.N. Doc. A/RES/39/46 (1984) [hereinafter Torture Convention].
13. G.A. Res. 260, U.N. GAOR, 6th Comm., 3d Sess., pt. 1, 179th plen. mtg. at 174, U.N. Doc. A/260 (1948) [hereinafter Genocide Convention].
14. THE LAW ASSOCIATION FOR ASIA AND THE PACIFIC HUMAN RIGHTS STANDING COMMITTEE (LAWASIA) & TIBET INFORMATION NETWORK (TIN), *DEFYING THE DRAGON: CHINA AND HUMAN RIGHTS IN TIBET* 89 (1991) [hereinafter *DEFYING THE DRAGON*].
15. Tibet, in the context of this report, includes the Tibetan provinces of Kham, Amdo, and U-Tsang, which traditionally have been inhabited and governed by Tibetans. This area has been divided under Chinese occupation into the Tibet Autonomous Region (TAR) and a number of Tibetan prefectures which are part of the Chinese provinces of Sichuan, Qinghai, Yunnan, and Gansu. The TAR covers only about forty percent (40%) of the geographical area of traditional Tibet.
16. Michael van Walt van Praag, *Population Transfer and the Survival of Tibetan Identity*, in *THE ANGUISH OF TIBET*, *supra* note 6, at 148-49. Eric Kolodner, Note, *Population Transfer: The Effects of Settler Infusion Policies On a Host Population's Right to Self-Determination*, 27:1 N.Y.U.J. INT'L L. & POL. 159, 187-88 (1994).

which has resulted in 7.5 million Chinese moving into Tibet, Tibet is still by any definition a sparsely populated country.¹⁷ In the region that the People's Republic of China calls the Tibet Autonomous Region (TAR), the population density is only 1.6 people per square kilometer, one hundredth the average density of the PRC.¹⁸

Traditionally, the size of the Tibetan population was controlled by the large portion of Tibetans who, as Buddhist monks and nuns, took vows of celibacy. Before the occupation in 1949, roughly one fourth of Tibetan men, and one sixth of Tibetan women joined the clergy. This number is smaller today, due to both the PRC's restrictions on the number of Tibetans allowed to join monasteries and nunneries and the small number of Tibetan monasteries and nunneries left standing after the mass destruction during the first thirty years of occupation.¹⁹ Still, a considerable number of Tibetans choose lives as monks and nuns rather than creating families.²⁰

In addition to changing Tibetans' traditional birth control practices, the PRC decimated the Tibetan population as it sought to gain control over Tibet. According to the Tibetan Government in Exile, 1.2 million Tibetans died as a direct result of the 1949 PRC's invasion and illegal occupation of Tibet.²¹ They perished as victims of war, torture, forced labor, suicide and famine.²²

In light of the realities discussed above it appears that family planning policies in Tibet are intended to decrease the size and change the fundamental structure of Tibetan society. The PRC's family planning programs for Tibetans are the policies of one ethnic group imposed upon another. These policies are specifically designed for Tibetans and are different from the policies the PRC implements for the Chinese people.²³

17. INTERNATIONAL CAMPAIGN FOR TIBET, *TIBET TODAY: OVERVIEW 1* (1988).

18. TIN BRIEFING PAPER, *supra* note 4, at 25.

19. Frontline: *Red Flag over Tibet* (PBS television broadcast, Feb. 22, 1994).

20. INTERNATIONAL CAMPAIGN FOR TIBET, *FORBIDDEN FREEDOMS: BEIJING'S CONTROL OF RELIGION IN TIBET*, 33, 63-65 (1990).

21. HUMAN RIGHTS IN TIBET, *supra* note 5, at 8-10; *see also infra* note 22.

22. Petra K. Kelly & Gert Bastian, *We Must Not Be Silent*, in *THE ANGUISH OF TIBET*, *supra* note 6, at xii. Notably, there is no recorded history of famine in Tibet prior to the 1949 invasion. The first famine began a few years after occupation, and lasted until 1963. Then, from 1968 to 1973 another famine followed. Galen Rowell, *The Agony of Tibet*, in *THE ANGUISH OF TIBET*, *supra* note 6, at 207, 210.

23. Needless to say, the methods of implementation of the People's Republic of China's policies for Chinese women are often also in violation of women's reproductive rights.

Under the present family planning restrictions, the size of the Tibetan population will continue to decrease as one or two or even three children per family is not enough to maintain the size of the population. The Chinese policy virtually eliminates traditional kinship relations; there can be no brothers or sisters, aunts, uncles or cousins in families permitted to have only one child. By reducing the size of the already small Tibetan population and by continuing to transfer Chinese settlers into Tibet, the likelihood that the Tibetan people, culture and religion will vanish within the next century increases dramatically.²⁴ As implemented, these policies are a form of ethnic cleansing, and, as will be discussed below, may constitute a violation of international law including the Genocide Convention.

B. The PRC's Official Policies

According to Chinese law, the "one family, one child" family planning policy covers only "nationalities" in the PRC with over ten million members.²⁵ Tibetans, with an estimated population of six million or less, should be exempt from this family planning policy. While Tibetans cannot be subject to the centrally imposed "one family, one child" policy, equally stringent locally imposed restrictions are apparently permissible, as are centrally imposed restrictions that differ from the "one family, one child" policy. Local authorities are "authorized to decide their own specific population policies, according to local conditions."²⁶ Local rules are defined as administrative guidelines rather than official laws, and therefore, are neither distributed to the public at large, nor officially published. For this reason, what is known about these rules comes from the testimony of refugees and a small number of printed rules which were smuggled out of Tibet.

Beginning in the mid 1980's, Chinese authorities at the local level began implementing family planning policies on Tibetans. They promulgated such documents as the 1985 TAR regulations, entitled "Established Guidelines Relevant to Granting Birth Permits."²⁷ Family

24. van Walt van Praag, *supra* note 6, at 148-153.

25. TIN BRIEFING PAPER, *supra* note 4, at 5.

26. Zhu Baoxia, *Birth Rate Control Aids Minority Economies*, CHINA DAILY, March 14, 1990, at A1 (quoting Minister of the State Family Planning Commission Peng Peiyun).

27. TAR PLANNED BIRTH LEADING GROUP, ESTABLISHED GUIDELINES RELEVANT TO GRANTING BIRTH PERMITS (1985), *reprinted in* TIBET INFORMATION NETWORK,

planning policies in the TAR in the 1980's seem to have been mostly for cadres, Tibetans with government jobs.²⁸ The policies limited cadres to two children and permitted a third child in special circumstances.²⁹ It also appears that the policies allowed rural Tibetans to have more children than urban dwellers during this period.³⁰ In 1990, according to the PRC, 3% of Tibetan women in the TAR had been sterilized.³¹ Nevertheless, the family planning policies in the TAR grew increasingly restrictive. By 1992, TAR birth control regulations encouraged late marriage, delayed births, and preferably one child.³² These regulations provided for "rewards and punishment," including fines and other economic sanctions.³³

This increased restrictiveness followed a Chinese census, published in 1990, which indicated that the Tibetan population had increased more rapidly than the Chinese population.³⁴ The increase in the size of the Tibetan population was blamed on the "loose" family planning policy for Tibetans. However, the "growth" in the Tibetan population was the result of five million or more Chinese people changing their national identity to that of an ethnic minority, in part to take advantage of the exemption from the "one-family, one-child" policy.³⁵ This "population explosion" has been used to justify increasing the severity of childbirth restrictions under a centralized plan. Before the census, the PRC denied

DOCUMENTS ON BIRTH CONTROL 1, 1-3 (1994) [hereinafter TIN DOCUMENTS ON BIRTH CONTROL].

28. TIN BRIEFING PAPER, *supra* note 4, at 1, 6. Implementing birth control on cadres first may have been designed to set an example for the general population. *Id.* at 6. The PRC may also have assumed that enforcement on cadres would be easier than on the general population.
29. TIN DOCUMENTS ON BIRTH CONTROL, *supra* note 27, at 1.
30. TIN BRIEFING PAPER, *supra* note 4, at 5.
31. Heather Wardle, *Forced Abortion and Sterilization in Tibet*, TIBETAN BULLETIN, July-Aug. 1991, at 25; TIN BRIEFING PAPER, *supra* note 4, at 19.
32. See TIN DOCUMENTS ON BIRTH CONTROL, *supra* note 27, at 29.
33. TIN Documents on Birth Control, *supra* note 27, at 27.
34. *Population Statistics and Comment, BBC Summary of World Broadcasts*, Nov. 8, 1990 available in LEXIS, Nexis Library, Arcnws File.
35. *Rapid Rise in Ethnic Population Expected, BBC Summary of World Broadcasts*, Nov. 15, 1990, available in LEXIS, Nexis Library, Arcnws File. See also *Tibetan Population Increases, BBC Summary of World Broadcasts*, Nov. 14, 1990, available in LEXIS, Nexis Library, Arcnws File; *Series on China's Nationalities (4) Population of Minority Nationalities, BBC Summary of World Broadcasts*, Jan. 9, 1992, available in LEXIS, Nexis Library, Arcnws File.

that it was enforcing family planning on Tibetans. In 1992, for the first time, the PRC admitted to the international community that a two-child policy has been in force in towns in the TAR since 1984.³⁶

Outside of the TAR in Eastern Tibet, in the areas traditionally called Amdo and Kham, compulsory birth control has been implemented in some areas since 1982.³⁷ In contrast to the TAR, where family planning was first implemented in the larger cities, family planning programs in Eastern Tibet were first implemented in the countryside.³⁸ For example, in Ganze, a Tibetan Prefecture within Sichuan Province, birth control regulations show that Tibetan farmers and nomads have been limited by law to two children, or three children with special permits, since 1989 or earlier.³⁹ Over time, family planning moved from the countryside into the towns. As in the TAR, the family planning policies have gradually increased in restrictiveness since they were first implemented.

According to a recent report, since 1991 all Tibetans in Gonghe County, Qinghai Province, have been restricted to one child, regardless of whether they are cadres or not.⁴⁰ The worst occurrences of forced and coerced abortions and sterilizations have been reported from this region. This includes "blitz" campaigns of mobile family planning teams which have entered remote villages in Tibet to carry out abortions and sterilizations of virtually every woman of child bearing age, regardless of age, health or number of children.⁴¹

A 1991 official document from Qinghai provides clear evidence that there is an official policy of coercive birth control in this region. The document, entitled "Supplementary Regulations for the Implementation of Planned Birth in Gonghe County," requires officials to punish every couple who has had an extra child since 1982. Forced sterilization operations are required for every woman who has had an out-of-plan child, even if the family has already paid a fine for their extra child. The document states:

The birth prevention operation will be carried out before the end of 1991 or, in any case, within the year 1992 and no excuses or

36. See *China on Human Rights in Tibet*, *supra* note 2.

37. TIN BRIEFING PAPER, *supra* note 4, at 10.

38. TIN BRIEFING PAPER, *supra* note 4, at 1-2.

39. TIN BRIEFING PAPER, *supra* note 4, at 10.

40. TIN BRIEFING PAPER, *supra* note 4, at 11.

41. Kerr, *supra* note 6, at 106.

*pretexts will be entertained as any reason for staying or postponing the operation any further.*⁴²

Not only does the PRC limit the size of the Tibetan population, but it may also openly control the "quality" of the population through eugenics laws. These laws prohibit anyone with a "hereditary mental illness, mental disability or physical deformity" from having children.⁴³ For example, in May 1990, Chinese authorities announced, without providing any sources or evidence, that there were 10,000 mentally handicapped people in Tibet. The authorities declared that this was a sign of inferior population quality and that efforts had to be made to improve the "quality" of the Tibetan population.⁴⁴ "The Chinese authorities support a transition from a large quantity of births (particularly in the ethnic population) to a focus on the quality of births."⁴⁵ As a result, under the guise of controlling population quality, Tibetans may be forcibly sterilized under eugenics laws, regardless of the number of children they have already had or intend to have. It is also very possible that these 10,000 "mentally handicapped" Tibetans are those who engage in political protests against the continued occupation of Tibet. Thus, population quality control may add another level of risk for those who continue to protest against the PRC's unlawful occupation of Tibet.

*C. The PRC's Practice: Forced and Coerced
Abortions and Sterilizations*

Despite the PRC's reiterations that family planning must be applied on a voluntary basis, occurrences of force and coercion⁴⁶ are widely

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42. TIN BRIEFING PAPER, *supra* note 4, at 11 (quoting the Supplementary Regulations for the Implementation of Planned Birth in Gonghe County) (emphasis in original).
43. TIN BRIEFING PAPER, *supra* note 4, at 29 (referring to regulations from Ganze Prefecture).
44. Steven Mufson, *China Defends Law for Control of Births*, INT'L HERALD TRIB. (Paris), Dec. 30, 1993, at 6. *See infra* note 45.
45. TIN BRIEFING PAPER, *supra* note 4, at 30. *See also* Nicholas D. Kristof, *Some Chinese Provinces Forcing Sterilization of Retarded Couples*, N.Y. TIMES, Aug. 15, 1991, at A1, A8.
46. Catriona Bass, *Tibet: The Courage of Their Convictions*, AMNESTY, Feb-Mar 1991, at 18; TEARS OF SILENCE, *supra* note 1, at 15-17, 38-49; Kerr, *supra* note 6, at 102-105.

reported⁴⁷ as local authorities enforce population quotas set down by higher authorities to meet quotas for birth control operations.⁴⁸

In this paper, specific definitions of the words "forced" and "coerced" are intended. "Forced" abortions and sterilizations are procedures undergone without prior consent of the woman. Reported forced procedures fall into two categories: (1) situations where women undergo abortions or sterilization surgery by physical force; (2) situations where women are deceived into undergoing abortions or sterilizations without informed consent. "Coerced" abortions and sterilization operations are defined as situations where consent was given, but, due to the stringent economic and social penalties for failing to consent, real choice was absent. Similarly, abortions and sterilizations are coerced where women "consent" under threat or duress as, for example, when women's husbands are held in prison until the women agree to undergo surgery. Operations are also coerced when women have consented to the procedure only after officials have come to their home to "escort" them to the hospital.

There are numerous reports which document that Tibetan women are subjected to abortions without their knowledge.⁴⁹ Women are encouraged to go to clinics for check-ups or for medical purposes unrelated to their pregnancy, and then are given injections to induce abortion, without being told the purpose of the injection. Abortions are often followed by sterilization operations, performed without informed consent.⁵⁰ Further, there are reports of hospitals where, at the time of birth, lethal ethanol is injected into the babies' heads, causing them to be born dead.⁵¹ Tibetan women who have become wise to the trickery now often are highly suspicious of any attempt to encourage them to go to a hospital when they are pregnant.⁵² However, this means that women, to avoid the risk of abortion and sterilization, go through their pregnancy and child birth without any medical attention at all.

Recent interviews of refugees in Dharamsala, India, like C. quoted at the beginning of this report, indicate that when Tibetan women

47. JOHN S. AIRD, *SLAUGHTER OF THE INNOCENTS: COERCIVE BIRTH CONTROL IN CHINA* (1990).

48. TIN BRIEFING PAPER, *supra* note 4, at 13. See also *EVADING SCRUTINY*, *supra* note 3.

49. See *HUMAN RIGHTS IN TIBET*, *supra* note 5.

50. JOHN F. AVEDON, *TIBET TODAY: CURRENT CONDITIONS AND PROJECTS*, 10 (1987).

51. Bao Fu, *Massacre of the Innocents in China*, *CHINA SPRING DIGEST*, Jan.-Feb. 1987, at 44-45.

52. See TIN BRIEFING PAPER, *supra* note 4, at 23.

"consent" to abortions and sterilization operations it is often under duress⁵³ Specifically, they face the threat of their husbands being beaten and arrested and of all of their possessions being confiscated.⁵⁴ Also C. reported that her friend D.C. was arrested and detained for twenty days when his wife, who already had two children, resisted Chinese authority and refused to be sterilized. Only when D.C.'s wife finally consented to be sterilized did they release him from prison. "Consent" given under such conditions is not voluntary.

Most of Tibet's population do not live in cities but in villages too small to support a hospital. To carry out its family planning programs in the villages, the PRC has established mobile birth control teams which go from village to village and operate on a large number of women in a very short period of time.⁵⁵ The use of force during these "mobilizations" or "blitzes" has been reported. Blake Kerr has relayed the story told by two Buddhist monks, Ngawang Smanla and Tsewan Thondon, who witnessed a Chinese mobile birth control team which set up its tent next to the monks' monastery in Amdo in 1987 and reported that

"The villagers were informed that all women had to report to the tent for abortions and sterilizations or there would be grave consequences. Women who went peacefully to the tents and did not resist received medical care. The women who refused to go were taken by force, operated on, and given no medical care. Women nine months pregnant had their babies taken out" During the two weeks the birth control tent stood in their village, the monks claimed that *all* pregnant women had abortions followed by sterilization, and *every* woman of child-bearing age was sterilized. "We saw many girls crying, heard their screams as they waited for their turn to go into the tent, and saw the growing pile of fetuses build outside the tent, which smelled horrible."⁵⁶

Reports of coercion being used to compel women to undergo abortions and sterilizations are pervasive.⁵⁷ In punishment for having a

53. STEVEN W. MOSHER, *BROKEN EARTH: THE RURAL CHINESE* (1983). See also Kerr, *supra* note 6, at 102-105; TIN BRIEFING PAPER, *supra* note 4, at 21-25.

54. See TEARS OF SILENCE, *supra* note 1, at 39; TIN BRIEFING PAPER, *supra* note 4, at 23.

55. Kerr, *supra* note 6, at 105-106.

56. Kerr, *supra* note 6, at 106.

57. See Kerr, *supra* note 6, at 102-105; *Birth of a Nation: China Proposes Eugenics Policy*, FAR E. ECON. REV., Jan. 13, 1994, at 5.

child "out of plan," families must pay large fines, reportedly at times exceeding a family's total yearly income.⁵⁸ "Out of plan" children are punished for being born; the child's name will not be registered. Consequently, the family will not receive a ration card for the additional family member. Also, not being registered means that the child will not be eligible for day care, for school, for medical treatment, and later in life, will possibly not be able to work at any government job.⁵⁹ Tashi Drolma, a Tibetan doctor from Tsholo, described how she was coerced to undergo an abortion when confronted with penalties.

In October 1988, the second child was conceived in my womb. My boss in the office came to know about it after two months: because of my vomiting it became obvious. She would visit me almost everyday and by all means tried to convince me to do an abortion. I did not listen to her at all and made it clear to her that I would certainly give birth to my child. My Chinese boss [. . .] told me, 'Go home and think well. . . . You should soon do the abortion.'

I simply let time pass and after some time I went to see her. I told her that I would like to have the child and would pay any amount of money as penalty. . . .

She became extremely angry and warned me, 'If you do not want to listen and insist on going your way, do it. Paying the fine is just a small matter. . . . You will be given only 30% of your salary for you to live on, and it will never be increased. Your child's name will not be registered, so the child will not be allowed to go to a nursery or to school. Possibly you both could be sacked from your jobs.'

We did not know that it was such a serious matter or that there were as many regulations as my boss pointed out to me. We thought it would be alright to pay the fine and then we could have our child. Initially, I even thought that she was simply frightening me. But later I learned that there were clear

58. TIN BRIEFING PAPER, *supra* note 4, at 19.

59. TIN BRIEFING PAPER, *supra* note 4, at 19-21. See also CAROL DEVINE, DETERMINATION: TIBETAN WOMEN AND THE STRUGGLE FOR AN INDEPENDENT TIBET 71 (1993); Kerr, *supra* note 6, at 100.

cut, finalized documents on such matters which are circulated amongst officials, but which were never announced to the public. Under such pressure, I was helpless. I had no choice but to have an abortion.⁶⁰

These firsthand accounts clearly indicate that family planning, as implemented by the PRC, is not always voluntarily undertaken. However, the full extent to which Tibetans are subjected to forced and coerced family planning is not yet known. Lack of freedom of expression in Tibet and the very limited access to information have made a comprehensive study impossible to date.

D. International Human Rights Law Violations

The PRC's family planning policy, as applied to Tibetan women, violates international human rights law including treaties to which the PRC is a signatory. First, the practice of coercive and forced family planning violates Tibetan women's reproductive rights.

Reproductive freedom and choice are essential elements of individual freedom, autonomy and bodily integrity. The rights to liberty, privacy, and to found a family are protected international human rights.⁶¹ Although no international human rights treaty has yet codified or explicitly defined the term "reproductive rights," there is a growing consensus that reproductive rights are composite rights founded in already recognized international law.⁶² These rights include the right to liberty and security, the right to be free from torture, the right to marry and found a family, the right to private and family life, the right to health care, the right to non-discrimination on the grounds of sex, and the right to freedom of thought, conscience, and religion, among others.⁶³ All these rights are guaranteed in the Universal Declaration of Human Rights and a number of international treaties to which the PRC is a signatory.⁶⁴

60. TIN BRIEFING PAPER, *supra* note 4, at 21 (alteration in original).

61. For a discussion of women's reproductive rights under international law, see Rebecca J. Cook, *International Protection of Women's Reproductive Rights*, 24 N.Y.U. J. INT'L L. & POL. 645 (1992).

62. See generally Cook, *supra* note 61.

63. See, for example, *infra* notes 65-74 and accompanying text.

64. These protections include: (1) the right of women to be free from all forms of discrimination; (2) the right to liberty and security; (3) the right to marriage and to found a family; (4) the right to privacy; (5) the right to have access to health care and the benefits of scientific progress. See Universal Declaration of Human Rights,

For example, the Convention on the Elimination of All Forms of Discrimination Against Women contains language expressing the right of reproductive freedom and self-determination.⁶⁵ Article 16 of the Convention provides for the right of couples to “decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights.”⁶⁶ The “basic right” of couples “to decide freely and responsibly on the number and spacing of their children” has been addressed in numerous international declarations, including the Final Act of the International Human Rights Conference in Teheran.⁶⁷ The Teheran statement was reaffirmed at the 1974 World Population Conference in Bucharest,⁶⁸ the 1974 International Population Conference in Mexico City,⁶⁹ The 1994 International Conference on Population and Development in Cairo,⁷⁰ and the 1995 Fourth World Conference on Women in Beijing.⁷¹

The international community has recently affirmed the right of reproductive freedom. Reproductive rights were included in the Programme of Action adopted by the International Conference on

supra note 12, at art. 12. Although not a treaty, the Universal Declaration is recognized as a normative instrument which creates legal obligations for all United Nations member states. See LOUIS HENKIN et al., INTERNATIONAL LAW: CASES AND MATERIALS 607 (3d ed. 1993).

65. CEAFAW, *supra* note 11.

66. See CEAFAW, *supra* note 11, at art. 16.

67. FINAL ACT OF THE INTERNATIONAL CONFERENCE ON HUMAN RIGHTS, U.N. Doc. A/Conf.32/41, U.N. Sales No. E.68.XIV.2 (1968).

68. REPORT OF THE U.N. WORLD POPULATION CONFERENCE, BUCHAREST, U.N. Doc. E/Conf.60/19, U.N. Sales No. E.75.XIII.3 (1974).

69. U.N. DEP'T OF TECHNICAL CO-OPERATION FOR DEV., REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION at 3, U.N. Doc. E/ Conf.76/19, U.N. Sales No. E.84XIII.8 (1984).

70. REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT, U.N. Doc. A/Conf.171/13 (1994). The Cairo Conference, however, clearly stated that it did not intend to create any new rights, but rather to apply universally recognized human rights standards to population programs. *Id.* at Ch. 1 § 5. These rights include the right to decide freely on the number, timing and spacing of children and the right to make decisions concerning reproduction free from discrimination, coercion, and violence. Mona Zulficars, *From Human Rights to Program Reality: Vienna, Cairo, and Beijing in Perspective*, 44 AM. UNIV. L. REV. 1017, 1026 (1995).

71. REPORT ON THE FOURTH WORLD CONFERENCE ON WOMEN, Beijing Declaration and Platform for Action ¶ 95, U.N. Doc. A/Conf. 177/20 (1995) [hereinafter Beijing Declaration].

Population and Development in Cairo.⁷² The Cairo Conference, however, clearly stated that it did not intend to create any new rights, but rather to apply universally recognized human rights standards to population programs. These rights include the right to decide freely on the number, timing and spacing of children and the right to make decisions concerning reproduction free from discrimination, coercion, and violence.⁷³

In 1995, at the Fourth World Conference on Women in Beijing, the Platform for Action included language stating that the human rights of women include their right to control and freely and responsibly decide matters related to their sexual and reproductive health.⁷⁴ It specifically condemns forced abortion and sterilizations as violence against women.⁷⁵ These recent affirmations confirm that the international community recognizes that reproductive rights are human rights protected under international law. The PRC's policy, because of its use of force and coercion, violates Tibetan women's reproductive rights. The PRC, as a United Nations member state and signatory to the conventions which make up this composite right, is in violation of its obligations under international law.

The PRC's practices also violate the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁷⁶ This Convention defines torture as any act by a person acting in an official capacity, by which severe physical or mental pain or suffering is intentionally inflicted on a person in order to intimidate, coerce or discriminate against the person.⁷⁷ Forced and coerced abortions and

72. Beijing Declaration, ¶ 95, U.N. Doc. A/Conf. 177/20 (1995).

73. See *supra* note 70, at 1026.

74. Beijing Declaration, *supra* note 71, paras. 107(h), 115.

75. Beijing Declaration, *supra* note 71, at para. 115.

76. Torture Convention, *supra* note 12.

77. The Torture Convention, in Article 1, defines torture as follows:

For the Purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Torture Convention, *supra* note 12, at art. 1.

sterilizations violate the Torture Convention when they are performed by doctors who are public employees and when they cause, as indicated by many first hand reports, severe mental and physical pain and suffering.⁷⁸

The PRC's practices discussed in this paper may also violate the Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention), which has been ratified by the PRC.⁷⁹ The Genocide Convention provides that the imposition of measures intended to prevent births of a national, ethnic, racial or religious group is genocide if these measures are imposed with the intent to destroy such a group in whole or in part.⁸⁰ While it denies such intent, the PRC's conduct in Tibet points to a systematic pattern of reducing the Tibetan population, eliminating the Tibetan culture, and relegating Tibetans to a minority in their own country through the transfer of millions of Chinese settlers into Tibet.⁸¹ This factual pattern provides sufficient evidence for a finding of intent on the part of the PRC. Within this context, the PRC's forced and coerced family planning practices in Tibet appear to violate the Genocide Convention.

Government laws and practices, such as those of the PRC, which mandate, encourage or sanction forced and coerced abortions and sterilizations thus violate fundamental customary international legal norms. In the case of the PRC, they constitute treaty violations, in particular of the Convention on the Elimination of All Forms of Discrimination Against Women⁸² and the Torture⁸³ and the Genocide Conventions.⁸⁴

CONCLUSIONS AND RECOMMENDED ACTIONS

The PRC's family planning programs for Tibetans, as implemented, deny Tibetan women reproductive freedom by subjecting Tibetan women to coerced and forced abortions and sterilizations. These programs may

78. Pema Dechen, *The Oppression and Resistance of Tibetan Women*, in *ANGUISH OF TIBET*, *supra* note 6, at 92-95; *TEARS OF SILENCE*, *supra* note 1, 38-49.

79. Genocide Convention, *supra* note 13 (ratified by the PRC August 18, 1983).

80. *See* Genocide Convention, *supra* note 13.

81. TIBET SUPPORT GROUP UK, *NEW MAJORITY: POPULATION TRANSFER INTO TIBET*, 50-71, 84-88 (1995). *See also* van Walt van Praag, *supra* note 16, at 148-53; Kolodner, *supra* note 16, at 187-88.

82. *See* CEAFDAW, *supra* note 11, at 1960.

83. *See* Torture Convention, *supra* note 12, at 30.

84. *See* Genocide Convention, *supra* note 13, at 174.

also be intended to further reduce the already small Tibetan population and to eliminate the Tibetan culture in the long term. These practices violate Tibetan women's human rights under international law and should be condemned by the international community.

It is therefore recommended:

1. That the PRC and its agents immediately cease all forms of forced and coerced family planning policies and practices in Tibet and that Tibetan women be provided with adequate information and education about birth control so as to allow them to exercise their right to reproductive choice.
2. That Tibetan women be provided with access to health care facilities to ensure availability of safe and effective birth control methods, safe abortions and sterilizations, should Tibetan women choose such options, and access to pre-natal care, child birth and post-natal care.
3. That the United Nations mandate the Special Rapporteur on Violence against Women to lead a fact-finding delegation to Tibet to investigate reports of coerced and forced family planning policies and practices in Tibet.
5. That the Special Rapporteur on Violence against Women and other international observers be provided with access to Tibet to monitor the PRC's compliance in Tibet with the U.N. Convention on the Prevention and Punishment of the Crime of Genocide, the U.N. Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment and the U.N. Convention on the Elimination of All Forms of Discrimination Against Women.
6. That the international media, governmental, inter-governmental and nongovernmental organizations, pursuant to Article 19 of the Universal Declaration of Human Rights, be given access to Tibet to report

on family planning and associated health care policies and practices in Tibet.

Recognizing that the current reproductive rights violations in Tibet are the result of the PRC's illegal occupation of Tibet, it is also recommended:

7. That the international community assure that Tibetans be allowed to exercise their right to self-determination without interference from the PRC.⁸⁵ ✽

85. The Tibetan's right to self-determination has been repeatedly recognized by the United Nations in particular in resolutions in 1961 and 1965. G.A. Res. 1723 (XVI), U.N. GAOR, 16th Sess., Agenda Item 83, U.N. Doc. A/L.376 (1961); G.A. Res. 2079 (XX), U.N. GAOR, 20th Sess., Agenda Item 91, U.N. Doc. 4/L.473 (1965).