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Immigration and Refugee Board of Canada

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Responses to Information Requests

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2 January 2015

IND105009.E

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
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Overview

Estimates of the number of Tibetans living in India vary by source, ranging from 100,000 (IANS 22 Oct. 2014) to 150,000 people (US 27 Feb. 2014, 31).

In correspondence with the Research Directorate, a representative of the Department of Home of the Central Tibetan Administration (CTA) [1] explained that after 1959, when Tibetan people followed the Dalai Lama into exile in India, Indian authorities provided Tibetans with settlement land that is leased to them by the Indian government (CTA 8 Dec. 2014). Sources indicate that Tibetans have settlements in 10 Indian states (*The Statesman* 28 Aug. 2014; TJC Sept. 2011, 60): Himachal Pradesh, Ladakh, Arunachal Pradesh, Karnataka, Uttar Pradesh, Madhya Pradesh, South Sikkim, West Bengal, Maharashtra, and Orissa (ibid.). In a 2011 report entitled *Tibet's Stateless Nationals II: Tibetan Refugees in India*, the Oakland, California-based Tibet Justice Center (TJC) [2], states that there are 37 formal settlements as well as 70 informal communities scattered throughout India (ibid.). This source states that approximately 75 percent of Tibetans live in Tibetan settlements and approximately 20,000 Tibetan monks live in approximately 200 monasteries (ibid., 61). The same source notes that 40 percent of Tibetans who live in settlements reside in the southern state of Karnataka. (ibid.).

The 2011 TJC report further explains that many Tibetans live in inadequate shelters in overcrowded settlements, since additional land was not provided by the Indian authorities after the first influx of Tibetan refugees arrived (ibid.). Approximately 16,000-18,000 Tibetans live in Dharamsala and its surrounding area (IANS 22 Oct. 2014), which is the headquarters for the Tibetan Administration in Exile [1] (ibid.; Professor 3 Dec. 2014; *Open* 15 Mar. 2014).

According to the *Times of India*, Tibetans are required to inform local authorities before leaving the settlement area (*The Times of India* 20 Nov. 2012).

The TJC report notes that the CTA appoints a settlement officer for each Tibetan settlement in India, while residents choose a "deputy leader" (TJC Sept. 2011, 62). The Indian government retains authority over the settlements, but according to the TJC report, the government "allow[s] the CTA to manage most of their internal affairs" and "seldom interferes with the internal governance of the settlements" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources indicate that India is not a signatory to the 1951 UN Refugee Convention (*Open* 15 Mar. 2014; TJC Sept. 2011, 59) nor does it have national laws regarding refugee protection (ibid.). The TJC report also notes that Tibetans do not have "permanent legal status in India" (ibid., 47). Sources report that officially, Tibetans do not have refugee status and are classified as "foreigners" (*Open* 15 Mar. 2014; Professor 3 Dec. 2014). The US Department of State's *Country Reports on Human Rights Practices for 2013* notes that India's *Foreigner's Act, 1946* does not contain the term "refugee" and does not distinguish refugees as being treated differently than other foreigners (US 27 Feb. 2014, 30).

2. Residency Rights

Sources indicate that the right to residency in India for Tibetans is contingent on the possession of a Registration Certificate (RC) (BDL 2 Dec. 2014; *The Times of India* 24 Aug. 2012), which is similar to an identity card (ibid.).

In correspondence with the Research Directorate, the Secretary of the Bureau of His Holiness the Dalai Lama (BDL), which is located in New Delhi, functions as "the nodal agent of His Holiness the Dalai Lama and the Central Tibetan Administration," and liaises with Indian government agencies, foreign embassies, NGOs and other bodies on behalf of the CTA (BDL n.d.), explained that with an RC, a Tibetan can work and study in India (BDL 2 Dec. 2014). The Indian English-language daily newspaper the *Statesman* notes that an RC is needed for employment, to open a bank account, to obtain a driver's license and to obtain a travel document (*The Statesman* 22 Apr. 2012).

2.1 Issuance of Registration Certificates (RCs)

The TJC report explains that India began issuing RCs to Tibetans en masse in 1959 when they began arriving in India, following the Dalai Lama into exile, and continued a policy of issuing new RCs to new Tibetan arrivals until 1979 (TJC Sept. 2011, 45). The same source said that in the 1980s and early 1990s, despite a national policy to no longer issue RCs to new arrivals, "India tended to turn a blind eye to the absorption of new arrivals into existing Tibetan communities and to the issuance of unauthorized RCs" (ibid., 46). The TJC report further noted that beginning in the early 1990s, the CTA and the Indian government began a policy of voluntary repatriation of new arrivals and most new arrivals found it "exceedingly difficult" to obtain an RC (ibid.).

According to the Secretary of the BDL, Tibetans born in India can obtain an RC upon graduating from high school (BDL 2 Dec. 2014). Similarly, the representative of the CTA's Department of Home said that Tibetans who are 17 years of age and older can obtain an RC, provided that their parents have an RC (CTA 8 Dec. 2014). The same source said that Tibetans who are orphans must have a recommendation letter from their school administration to obtain an RC (ibid.).

The representative of the CTA's Department of Home explained that, in order to obtain an RC, applicants must fill out a form issued by the Foreign Registration Office (FRO) and submit it at the FRO (ibid.). Similarly, a *Times of India* article indicates that Tibetans must go to the Foreigner Regional Registration Office (FRRO) to be issued or to renew an RC (2 Mar. 2014). The TJC report includes a sample copy of an RC as an appendix to its report, which is an attachment to this Response.

Sources indicate that as of 2012, an RC can be renewed for a maximum of five years (*The Statesman* 22 Apr. 2012; *The Times of India* 24 Aug. 2012). To renew an RC for five years, the person must have lived in India for 20 years (ibid.; *The Statesman* 22 Apr. 2012; Professor 3 Dec. 2014), or must have been born in India (ibid., *The Statesman* 22 Apr. 2012). The *Times of India* explains that all other individuals must continue to renew their RC annually (*The Times of India* 24 Aug. 2012). The CTA Department of Home representative indicated that prior to 2013, RCs needed to be renewed every six or twelve months for all Tibetans (CTA 8 Dec. 2014).

The representative of the CTA's Department of Home said that an RC must be renewed or extended 15 days prior to expiration (ibid.). The same source indicated that those who do not renew their RC before the expiration may be denied renewal of the RC, although the FRO sometimes renews expired RCs "on humanitarian ground" (ibid. 31 Dec. 2014). According to the 2011 TJC report, renewal of RCs is "generally routine, but it remains subject to the discretion of the Indian authorities" (TJC Sept. 2011, 47). The Secretary of the BDL said that he is not aware of any cases in which RCs were not renewed (BDL 26 Dec. 2014). Neither the Secretary of the BDL nor the representative of the CTA's Department of Home had statistics on RC renewals (CTA 31 Dec. 2014; BDL 26 Dec. 2014), but the CTA Department of Home representative estimated that more than 90 percent of Tibetans in India renew their RCs on time (CTA 31 Dec. 2014).

2.2 Special Entry Permits

The Secretary of the BDL said that Tibetans coming to India from Tibet are required to have a Special Entry Permit (SEP) issued by the Indian Embassy in Nepal (BDL 2 Dec. 2014). According to the TJC report, the SEP program began in 2003 (TJC Sept. 2011, 49). TJC notes that RCs issued to the bearers of SEPs must be renewed every six months or one year, depending on the district of issuance (ibid., 50). TJC notes that those with SEPs for the purpose of education are able to obtain RCs, while those who come for the purpose of "pilgrimage" are not eligible for an RC and typically cannot stay past six months (ibid.). In December 2014 correspondence with the Research Directorate, a professor of law at Touro Law Center, Touro College in Central Islip, New York, who specializes in legal issues related to Tibetan refugees in India and conducted field research for the TJC in India in June 2014, the "pilgrimage" category for SEPs has "just been eliminated" [3] (Professor 16 Dec. 2014). She also explained that Tibetans who enter with SEPs for the purpose of education "lack a legal basis for remaining and renewing their RCs" once they have completed their education (ibid.).

According to the Professor, some Tibetans avoid the reception center in Nepal because it "has become very dangerous for Tibetans," and try to find alternative routes to India (ibid.). She explained that if they are successful in reaching India, they do not have a way to receive an RC since they lack the SEP (ibid.).

3. Rights to Employment, Education, Health Care, and Other Services

According to the TJC, Tibetans have high rates of unemployment and underemployment (TJC Sept. 2011, 67). *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.).

The TJC report notes that Tibetans residing in India primarily work in the fields of agriculture, animal husbandry, manufacturing and selling sweaters and other textiles, and in the service industry (ibid., 65-66). Overcrowding in the settlements makes support from agriculture increasingly difficult (ibid., 66). The same source states that the majority of Tibetans who work outside the settlements work as "small shopkeepers, food-stand owners, and peddlers" (ibid., 67).

According to the TJC report, the CTA provides health services to Tibetans as well as an education system for Tibetan children (ibid., 62, 63). According to the same source, Tibetans without RCs "face difficulties obtaining benefits or services, including education and medical treatment that the CTA often supplied to Tibetans with RCs" (ibid., 47).

The CTA's Department of Health, which was established in 1981, states that there are 7 hospitals, 4 "Primary Health Centers" and 43 health clinics in Tibetan refugee settlements in India and Nepal (CTA n.d.a). According to the TJC report, Tibetans can also seek healthcare from village health centres under the jurisdiction of local governments, which provide free healthcare to rural populations (TJC Sept. 2011, 62). However, the TJC notes that these centres are understaffed and lack adequate resources (ibid.).

According to the TJC report, the CTA-operated school system in India for Tibetan children is under "severe stress" from growth and overcrowding in the settlements (TJC Sept. 2011, 63). The TJC indicates that most Tibetans do not attend college due to a lack of funds (ibid., 64).

According to the CTA's website, the CTA's Department of Education oversees 73 Tibetan schools in India and Nepal, providing education to approximately 24,000 Tibetan students (CTA n.d.c). There are different administrative bodies under the umbrella of the CTA's Department of Education (ibid.). One administrative body, the Central Tibetan School Administration (CTSA), operates 28 schools in India for Tibetans, 6 of which are residential schools and 22 of which are day schools (CTA n.d.b). Approximately 10,000 students are enrolled at Tibetan schools operated by the CTSA (ibid.). In addition, there are also 17 Tibetan schools for orphaned and destitute Tibetan children administered by the Tibetan's Children Village and 12 schools in remote locations from the mainstream Tibetan community that are administered by the Sambhota Tibetan Schools Society (ibid. n.d.d).

4. Political Rights

The TJC states that Indian authorities sometimes restrict the right of Tibetans "to demonstrate, associate, and express themselves politically" (TJC Sept. 2011, 59). According to the *New Indian Express*, the government policy of India is to prohibit Tibetans from political activity (6 Jan. 2013). *Open* states that Tibetans "must keep their political voices muffled" (15 Mar. 2014).

CNN reports that 200-300 Tibetans were arrested in March 2012 after 1,000 Tibetans staged a protest in New Delhi against the Chinese President's visit during a BRICS [Brazil, Russia, India, China and South Africa] summit in March 2012 (CNN 28 Mar. 2012).

The Professor indicated that there have been recent court cases to prohibit public displays of Tibetan prayer flags and stones (Professor 3 Dec. 2014).

However, sources indicate that Tibetans who were born in India were allowed to register to vote in India's 2014 elections for the first time (IANS 22 Oct. 2014; *The Times of India* 2 Mar. 2014). According to the *Times of India*, India's Election Commission ordered all states to include Tibetans born in India between 1950 and 1987 in its electoral lists (ibid.).

5. Land Rights

Sources report that Tibetans are not allowed to own land in India (*Open* 15 Mar. 2014; ANI 21 June 2014; Professor 3 Dec. 2014). The Professor noted that because non-citizens are not allowed to own land, the standard procedure is for a Tibetan who wants to purchase land to find an Indian to put the land in his or her name, a practice known as "benami" (ibid.). The Professor reported that there is a land case in Dharamsala to evict Tibetan holders of benami land (ibid.). Further and corroborating information could not be found within the time constraints of this Response.

The Professor reported that there have been several land eviction cases involving Tibetans (ibid.). She provided one example in which 114 Tibetan families in Shimla were being evicted from land that they have been living on for 30-40 years (ibid.). In another example, 218 Tibetan families in Dharamsala were being evicted purportedly because the land was designated as "forest land" after they settled there in the 1960s (ibid.). In both cases, the Professor indicated that the states issued the eviction notices and that settlement talks did not occur until the CTA intervened and got the federal government involved (ibid.). Further and corroborating information could not be found within the time constraints of this Response.

6. Tibetan Rehabilitation Policy 2014

Sources report that on 20 October 2014, the government of India issued the "Tibetan Rehabilitation Policy 2014," which allows Tibetans access to social benefit programs run by the government of India (CTA 8 Dec. 2014; IANS 22 Oct. 2014). According to the *Hindustan Times*, an Indian English-language daily newspaper, the new policy allows Tibetans to access benefits under the National Rural Employment Guarantee Scheme and the Public Distribution System (*The Hindustan Times* 12 Nov. 2014). The same source indicates that the policy also requires state governments to sign lease agreements with the Central Tibetan Relief Committee for the land occupied by Tibetan refugees (ibid.). The Indo-Asian News Service (IANS) reports that the policy allows Tibetans to access jobs in which they are professionally qualified, such as in the fields of nursing, teaching, chartered accountancy, medicine and engineering and allows Tibetans to get a trade license and permit [to start their own enterprises] (IANS 22 Oct. 2014).

However, the representative of the CTA Department of Home explained that the implementation of the "Tibetan Rehabilitation Policy 2014" depends on a decision by state governments to do so (CTA 8 Dec. 2014). Similarly, the Professor said that portions of the policy "are merely suggestions to the state governments" (Professor 3 Dec. 2014). She noted that the implementation of the policy will need to be monitored to determine "what changes are actually made" and "whether it is having any effect on the lives of Tibetans in India" (ibid.).

7. Situation of Tibetans without RCs

The TJC report notes that Tibetans without an RC have difficulty securing housing, since most landlords require proof of legal status, and also have difficulty finding employment because "most businesses, including those run by the CTA, condition employment on possession of an RC" (TJC Sept. 2011, 47).

According to the Secretary of the BDL, Tibetans without valid RCs face arrest and fines, but he said that he was not aware of cases of deportation for not having an RC (BDL 5 Dec. 2014). The Professor indicated that Tibetans without RCs face detention and deportation in addition to arrest and fines (Professor 3 Dec. 2014). The *Times of India* reported cases in which Tibetans were arrested for not having valid documents (*The Times of India* 20 Nov. 2012).

The Professor stated that "[w]ithout a valid RC, Tibetans' presence in India is illegal which renders them vulnerable and subject to harassment by the police, detention, fines and deportation" (Professor 3 Dec. 2014). She conducted eighteen in-depth interviews with government officials and others in Delhi, Shimla and Dharamsala in June 2014, to determine whether Tibetans without valid RCs were being arrested and/or deported (ibid.). She provided the Research Directorate with details of four case files from 2012 and 2013 in which Tibetans were subject to arrest, fines and deportation under Section 14 of the *Foreigners Act, 1946* [4] (ibid.). Prison sentences, which occurred in three of the four cases, ranged from 35 days to seven months (ibid.). In one case from 2012, a Tibetan monk was arrested and prosecuted for not having a valid RC and was sentenced to 35 days imprisonment, followed by deportation (ibid.). The Professor said that, to the best of her knowledge, the deportation was carried out (ibid.). She explained that the defendant had entered India in 1999, at a time when the government of India was not issuing RCs (ibid. 16 Dec. 2014). In two cases from 2013, deportations were ordered, but were not carried out because the defendant renewed his RC in one case and was granted a stay by the High Court in order to renew his RC in the other (ibid. 3 Dec. 2014). However, even though the High Court granted a stay in the one 2013 case, the court found that the deportation order was still "appropriate and in accordance with the law" (ibid.). In the fourth case, from 2013, a Tibetan who could not produce an RC after police stopped him and asked for his ID during a routine patrol, was fined 1,000 rupees [approximately C \$18], sentenced to seven months in prison, and ordered deported (ibid.). The case was appealed, but the court upheld the punishment and deportation upon completion of the defendant's prison sentence (ibid.). According to the Professor, the defendant was deported and is "reportedly in a Chinese jail" (ibid. 16 Dec. 2014). Further and corroborating information about these cases could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The US Department of State's *Country Reports on Human Rights Practices for 2013* states that under the *Foreigner's Act, 1946*, refugees are treated as any other foreigners, and that their presence in India without valid travel documents or residential documents is treated as a "criminal offense, rendering refugees without appropriate documentation vulnerable to refoulement and other abuses" (US 27 Feb. 2014, 30). However, *Country Reports 2013* stated that there "were no reports that the government refouled refugees during the year" (ibid.).

The CTA's Department of Home representative said that Tibetans without RCs are "legally subject to deportation" (CTA 31 Dec. 2014). Regarding the situation of Tibetans who have an expired RC, he cited a case from Himachal Pradesh in which a Tibetans who failed to renew his RC on time was imprisoned for a few months, although the Indian government intervened to stop his deportation (ibid.).

Further information about the deportation of Tibetans from India could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The Central Tibetan Administration was established by His Holiness the Dalai Lama in 1959 as a continuation of the government of an independent Tibet (also referred to as the Tibetan Administration in Exile) (CTA n.d.e). His Holiness the Dalai Lama the 14th retired in 2011 as the political leader of Tibetans in exile, but continues to act as their spiritual leader (Dalai Lama 19 Mar. 2011). He established a democratic system of governance for Tibetans in exile and ended the system of rule by which the Dalai Lama is both the political and spiritual authority for Tibetans (ibid.). According to the CTA's Office of Tibet in Washington, DC, the CTA "functions as a veritable government and has all the departments and attributes of a free democratic government" (CTA n.d.e). However, media sources note that the CTA is not officially recognized by any country (IANS 22 Oct. 2014; *Open* 15 Mar. 2014).

[2] The Tibet Justice Center is a volunteer committee of lawyers and other experts that works on four key areas to promote the self-determination of Tibetans: human rights, environmental governance, refugee protection and self-governance for the people of Tibet (TJC n.d.a). The organization was founded over 20 years ago (ibid.). Its board of directors includes practicing attorneys, an attorney-advisor at the US Department of Justice, professors at Boston University, Oxford University, and Touro College, and other professionals (ibid., n.d.b). Several people contributed to the research, writing and editing of *Tibet's Stateless Nationals II: Tibetan Refugees in India*, including an attorney, a professor of law at Boston University (who is also the president of TJC's board of directors), and a professor of law at Touro College [who was also contacted as a source for this RIR] (TJC Sept. 2011, 73).

[3] The Professor indicated that many Tibetans who had entered India with the pilgrimage category of the SEP remained after the expiration of their authorized stay, rendering them ineligible for RCs and living illegally in India (Professor 16 Dec. 2014). In recognition of the problem, RCs were offered to the Tibetans who had overstayed their duration under the pilgrimage category, and approximately 300 people came forward (ibid.).

[4] The Professor changed the names to initials to ensure confidentiality in the reporting of the cases (Professor 3 Dec. 2014). She also noted that these cases were not exhaustive, but rather represented cases that she had access to while doing research in one district in India, noting that "[i]t is likely that similar actual or threatened deportations have taken place in other districts of India" (ibid.).

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Additional Sources Consulted

Oral sources: Attempts to contact representatives of the following organizations were unsuccessful within the time constraints of this Response: Canada Tibet Committee; Central Tibet Administration – Department of Information and International Relations, Reception Center; International Campaign for Tibet; Office of Tibet in Washington. The following organizations were unable to provide information within the time constraints of this Response: India – Embassy of India in Ottawa.

Internet sites, including: Amnesty International; Asia Human Rights Commission; Canada Tibet Committee; ecoi.net; Factiva; Freedom House; Human Rights Watch; India – Bureau of Immigration, High Commission of India in Ottawa, Ministry of External Affairs, Ministry of Home Affairs; International Campaign for Tibet; Migration Policy Institute; Radio Free Asia; United Nations – Integrated Regional Information Networks, Refworld.

Attachment

Tibet Justice Center (TJC). September 2011. "Registration Certificate: Sample." From *Tibet's Stateless Nationals II: Tibetan Refugees in India*.

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