



**CHINA:
Right to Education
The Rights of Children Affected by AIDS**

**Submission from Human Rights Watch
to the Committee on the Rights of the Child
June 2005**

Human Rights Watch appreciates the opportunity to bring to the attention of the Committee on the Rights of the Child information regarding the right to education and the rights of children affected by HIV/AIDS in China.

1. Articles 28, 29, 30: The right to education and the rights of ethnic, religious, and linguistic minorities

This section will focus on two issues:

- school fees and related costs that prevent some children from ever attending school and force others to drop out at early ages. The problem is endemic in rural areas despite China's promise to provide free and compulsory education for all children in grades 1-9 by 2007.
- exacerbation of dropout rates due to deprivation of the right to schooling in their own languages for ethnic nationalities populations living in concentrated autonomous regions, prefectures, and counties. The correlated deprivation of the right of ethnic nationalities to study their own history, geography, traditions, and cultural heritage will also be examined. Although there is reason to suspect that the deprivation extends to other border areas such as Xinjiang, this submission will examine the Tibetan case.

The insufficiency of central government funding for education and the delegation of funding responsibilities to hard-pressed local governments¹ leads to the imposition of legal and illegal fees. The problem is particularly acute in rural areas which house more than 60 percent of the population but have access to only 23 percent of the money spent on education.² In the mid-1990s, after Beijing directed local governments to stop exacting ad hoc fees and taxes, but failed to make up for lost revenues through central government remittances, funding for education dipped significantly.

In Tibetan areas, the change from Tibetan to Chinese as the language of instruction and a curriculum emphasizing Chinese history, geography, literature, traditions, and political thought alienates Tibetan students and affects their performance in school. The issue has political overtones related to the government's insistence on putting a halt to a peaceful campaign by some Tibetans for a separate state or for greater autonomy than they now enjoy.

Attention to the two problems noted above is not to suggest there are no other educational issues of concern. Others that have been identified include recruitment of a qualified professional teaching staff and provision of transportation or affordable boarding facilities for students in sparsely settled areas where schools are at a considerable remove.

It should be noted, that although access to information from China has increased in the last five years, there is much that is restricted to official channels or is simply unavailable without intensive field-based research. Much of the information from Tibetan areas comes from Human Rights Watch interviews, but documentation relating to local regulation and practice—which is most salient to our submission—has been difficult to access through the Internet, in either English or Chinese, or through Chinese-language academic databases.

School fees

In October 2003, a Radio Free Asia article citing an official Chinese media report stated that 27 million children nationwide, some 10 percent of school-aged children, were unable to attend school.³

¹ "Local refers to any government level other than the central government. The referent may be a province, prefecture, county, township, or village.

² Jane Cai, "Education policy 'closes door on poor,'" *South China Morning Post*, February 3, 2005.

³ "China Struggles to Educate All Children," Radio Free Asia, January 23, 2004. The accuracy of the figure cannot be verified.

As the United Nations Millennium Development Goals 2003 report on China explained, insufficient local government budgets in poor areas preclude proper school financing and administration.⁴ In order to rectify shortfalls, counties, townships, and villages, which are prohibited from exacting tuition payments, have turned to out-of-budget charges, some in the form of fees, some called “apportionment of expenses,” and some in the form of “voluntary” contributions collected door to door by local cadres.⁵

Some fees are legal. In Beijing for example, the Education Committee reportedly has approved fourteen different fees.⁶ Other fees are illegal, but there do not appear to be transparent and consistent national guidelines as to which are which. Justification for the charges comes from article 59 of the “Education Law of the People’s Republic of China” which states that “townships, nationality townships and towns, may, on the basis of voluntariness and according to their own capability, raise funds...for education.”⁷ Article 29 vests the power to collect such fees in the schools themselves, “according to the regulations of the State,”⁸ but further provides that when schools violate State regulations and “collect fees from educatees,” the money must be returned and those involved in the exactions minimally “given administrative sanctions.”⁹

An official Chinese source reveals some dimensions of the problem and at least one attempt to redress it. According to the report, a 2003 twelve-province inspection campaign to root out illegal educational fees found 8,539 such cases totaling 3.02 billion *yuan* (U.S. \$364 million). Of those, 2,824 illegal charges were canceled and 1,316 reduced. Some 630 million yuan (U.S.\$76 million) were returned, apparently to payees.¹⁰

⁴ Millennium Development Goals-China’s Progress, An assessment by the U.N. Country Team 2003, p. 23, [online] <http://www.undp.org/mdg/chinaMDG.pdf>.

⁵ Thomas P. Bernstein and Xiaobo Lü, *Taxation Without Representation in Contemporary Rural China*, (Cambridge: Cambridge University Press, 2003), p. 53.

⁶ United Nations Economic and Social Council, *Economic, Social and Cultural Rights: The right to education*, Report submitted by the Special Rapporteur, Katarina Tomasevski, Addendum, Mission to China, 16E/CN.4/204/45/Add.1. November 21, 2003, p. 8.

⁷ Education Law of the People’s Republic of China,” *adopted at the third session of the eighth National People’s Congress*, 18 March 1995; promulgated by Order No.45 of the President, 18 March 1995; effective as of 1 Sept. 1995, art. 59.

⁸ *Ibid.*, art. 29.

⁹ *Ibid.*, art. 78.

¹⁰ “Chinese Schools Caught Charging 3.02 Billion Yuan Illegally,” *People’s Daily Online*, April 1, 2004, http://english1.peopledaily.com.cn/200404/01/eng/20040401_139106.shtml (retrieved May 4, 2005).

However, information received directly by Human Rights Watch and reports in the literature indicate that fees are still ubiquitous. UNESCO's "Education For All" assessment of China in 2000, noted that "in recent years, two thirds of the expenses on school buildings and other facilities depend [ed] on people's donations."¹¹ Another report stressed the rapid rise in fees—a ten-fold increase between 1991 and 1997—necessitated by the lack of local resources and little central government input.¹²

Fees are high in comparison to income and vary widely from place to place. A Lhasa middle school charges 500-600 yuan (U.S.\$60-72 approximately) a semester and collects 5-10 yuan regularly but at no fixed time. A primary school in a small rural village charges 130 yuan (U.S.\$15 approximately) in first grade, but in another village, the fee is 60 yuan (U.S.\$7 approximately) a semester.¹³

An article in the *Far Eastern Economic Review* on the spending habits of "China's Elite," reported that 58 percent of respondents acknowledged that the bulk of their pay went for school fees.¹⁴ Although educational expenses for elites include tuition payments for high school and college, the problem is far worse for residents in poverty-stricken rural areas.¹⁵

According to some of those interviewed by Human Rights Watch, no special consideration is given to families who cannot afford the fees.¹⁶ A woman from a farm family in Qinghai province complained that "[t]here is probably no one in the village who doesn't have trouble sending their children to school because of the fees."¹⁷ She reported, as did others, that the basic semester charge rises with the grade.¹⁸ The practice may account for the increase in the dropout rate as children age, and for one respondent's relevant observation that in his home county fewer children attended

¹¹ *Final Country Report of China*, Country Reports, Final Country Report of China, Education for All 2000 Assessment, UNESCO, [online] <http://www2.unesco.org/wef/countryreports/china/contents.html>, p. 44.

¹² "Education in China: A Short Introduction," *China Labour Bulletin*, [online] www.china-labour.org.hk/iso/article.adp?article_id=5115 (retrieved May 20, 2005), (citing China Statistics Press, *China Statistical Yearbook*, 1999).

¹³ Human Rights Watch interviews with KJ, July, 2004; TC, August 2004; RW, August 2004 respectively. In order to protect informants and their families, the full dates and the places where interviews took place will not appear in this submission. In addition, the names of persons interviewed for this report have been disguised with initials not derived from their real names.

¹⁴ "Well-Paid By China's Standards," *Far Eastern Economic Review*, Oct. 4, 2001, [online] www.feer.com/articles/2001/0110_04/free/p052.html.

¹⁵ Tang Qixian, "Poor Families Desperately Need Help in Education" (*贫困地区急需教育援助*), *The World of Survey and Research*, vol. 28, (October 2002), p. 28.

¹⁶ See for example, Human Rights Watch interview with KL, September 2004.

¹⁷ Human Rights Watch interview with XN, July 2004.

¹⁸ Human Rights Watch interviews with TC, August 2004; YW, August 2004; RW, August 2004.

middle school than had previously attended primary school.¹⁹ The rise in fees grade by grade may also account for a seeming preference on the part of families with several children to send the younger ones to school at the expense of their older siblings.²⁰ Alternatively, the latter's work might be necessary to support at least a modicum of education for their younger siblings. As one respondent from an agricultural village explained, "[t]here is no one who can afford to send more than one child to school."²¹ Several noted that untoward events such as the death of a parent, a poor harvest, or the loss of a job often triggered school leaving.²²

Miscellaneous fees: the hidden cost of education

Jurisdictions are remarkably creative in exacting charges for electricity, water, heat, desk and bench use, blackboards, exam reading, teachers' "bonuses," writing utensils, paper, books, workbooks and handouts, construction equipment, tree planting, brooms, bicycle parking, athletic participation, hygiene, the right to transfer, and for miscellaneous expenses. In Guangxi province, one school extracted 500-700 yuan (U.S.\$60-\$87 approximately) per student, calling it a "borrowing for education fee" (借读生费).²³ In Hunan province, some schools charged 25 yuan (U.S.\$3.00 approximately) per student to pay the electric bill for computers. Unfortunately, the school did not own a single computer.²⁴ Other schools required the purchase of books that were never used.²⁵ Several respondents mentioned special fees to celebrate holidays such as "Teachers Day, Republic Day and Military Day."²⁶ All such fees were additions to a flat sum collected at the beginning of every semester and to school-related expenses such as uniforms and transportation costs.

One article that divides fees into categories reveals the extent to which school subsidization is hidden in miscellaneous fees.

- Shifting fees: When a local government cannot afford its entire share of compulsory education expenses but has already charged a surtax, it may shift part of the costs to students through new so-called "Raising Education" (以生

¹⁹ Human Rights Watch interview with PY, November 2004.

²⁰ Human Rights Watch interview with TD, November 2004.

²¹ Human Rights Watch interview with AR, December 2004.

²² Human Rights Watch interviews, with CF, August 2004; DM, January 2005; CK August 2004.

²³ Li Huo, "Straight Talk About Guangxi's School Fees" (浅谈广西农村中小学教育收费管理存在的问题和措施, *Guangxi Shi Chang Yu Jia Ge*), (September 9, 2000), p. 13.

²⁴ Tang Qixian, "Poor Families Desperately Need Help..." p. 28.

²⁵ Ibid.

²⁶ Human Rights Watch interviews with FL, September 2004; YW, August 2004.

养教) programs. Examples include “public safety fees” and “campus maintenance fees.”

- Creatively named fees: These include such items as table and chair fees or electricity fees for studying. One school charged electricity fees for classroom televisions.
- Disguised fees: The category includes fees for student services or for developing the school. One rural school stipulated that students were responsible for contributing a specific good particular to the region, but encouraged students to pay in cash rather than in kind.
- Monopoly fees: A school may “license” a local business as the sole distributor for an item students are required to purchase, such as a uniform or supplies like pencils or paper. Students pay extra; the school realizes a profit.
- Shared fees: Schools may force students to share costs of printing handouts or periodicals by mandating that students buy a certain quantity. The system enables the schools to distribute the costs of printing, increase investments in printing, and realize a profit.
- Contributions for textbooks: Schools overcharge.
- Borrowing fees: A new student may be forced to “lend” money to his/her new school. No interest is paid on the loan; and in many cases, the money is not refunded.
- Renewable fees: Fees are charged at the start of the school year. After a given period of time, and possibly under a different name, students are charged the same fee. For example, a school may charge a “school materials fee,” but later in the year charge a “classroom material fee.”²⁷

In addition, in many rural areas where new township and county schools are located too far for a daily commute, families must pay for room and board. The increased cost, as well as the need to purchase necessities such as bedding and wash basins, precludes attendance for many children. Not incidentally, the need for a student to live away from home raises a host of problems that are not addressed in this submission.

In some cases, teachers are held responsible for collecting fees. Should a student not pay in full, the teacher may have the unpaid portion deducted from his/her salary.

²⁷ Dong Maoping and Chen Shangzhong, “Thoughts on the Strict Standards Governing Compulsory Education Fees” (关于“严格规范义务教育收费的思想”), *Journal of Teaching and Management*, (January 1, 2001), p. 14.

Dropouts

The lack of relief for families who cannot afford fees and other exactions is the primary reason children never begin school or drop out at an early age.²⁸ A “Central Committee of China Association for Promoting Democracy” survey reported a rural junior high school dropout rate of 40 percent.²⁹ In You county, Hunan province, 40 percent of children over ten years of age left school due to increasing school fees.³⁰ Over 30 percent of children age 12-17 from Chongqing’s poorer districts dropped out. It is noteworthy that three quarters of them were girls.³¹ An elementary school principal in Yunnan reported that although some thirty students from his school complete sixth grade each year, only about a dozen are able to continue on to lower middle school, grades seven through nine.³²

China has consistently reported enrollment rates in primary and lower middle schools of over 90 percent.³³ The figure for all primary school children in 2004 was 98.95 percent.³⁴ But to our knowledge, the state has not released, and possibly has not been able to collect, reliable statistics on dropout rates. A report from one respondent speaks directly to the issue. He had been sent to a county middle school for ten days at the time an “inspection division from Lhasa” was visiting. “During that time, all the students were not present. Therefore, to cover up the absentees, many students from our school were taken there... some students were ‘on leave’; some had not returned.”³⁵ Another respondent made a similar point about attendance. On the day of an Education Bureau visit, 97 percent of the enrollees were in class. The following day, “as usual,” the classrooms were not full.³⁶

Parental responsibility for non-attendance: the problem of fines

²⁸ Bernstein and Lü, *Taxation Without Representation in Contemporary Rural China*, pp. 56-58.

²⁹ “China Experiences rising school dropout rate,” *People’s Daily Online*, March 4, 2005, http://English.peopledaily.com.cn/200503/04/print20050304_175476.html.

³⁰ Education in China: A Short Introduction,” *China Labour Bulletin*, [online] www.china-labour.org.hk/iso/article.adp?article_id=5115 (retrieved May 20, 2005), (citing China Statistics Press, *China Statistical Yearbook*, 1999).

³¹ “China: Many Rural Girls Left out of School,” *Women’s Information Network News* (November 1, 1999), [online] http://articles.findarticles.com/p/articles/mi_m2872/is_1_26/ai_62795146.

³² “China Struggles to Educate All Children,” Radio Free Asia.

³³ *The Right to Education*, Addendum, Mission to China, p. 6.

³⁴ “China sees progress in six aspects of education,” *People’s Daily Online*, March 2, 2005, http://english.peopledaily.com.cn/200503/02/print20050302_175204.html.

³⁵ Human Rights Watch interview with VJ, December 2004.

³⁶ Human Rights Watch interview with BA, July 2004.

It is noteworthy that parents bear the brunt of China's insistence that its citizens are duty-bound to ensure that their children become educated. Several provisions, one in the Education Law and another in the "Compulsory Education Law of the People's Republic of China," (CEL)³⁷ give the government the legal authority to sanction parents who do not send their children to school. Article 18 of the Education Law states:

Parents or other guardians of school-age children and adolescents as well as social organizations and individuals concerned shall have the obligation to ensure that school-age children and adolescents receive and complete compulsory education for the prescribed number of years.³⁸

Article 15 of the Compulsory Education Law goes a step further:

In cases where school-age children or adolescents do not enroll in school and receive compulsory education . . . the local people's governments shall admonish and criticize the parents or guardians of those children or adolescents, and adopt effective measures to order them to send the children onwards to school.³⁹

The U.N. Special Rapporteur on the Right to Education when observing that "the entire history of the right to education has confirmed that education cannot be made compulsory unless it is free,"⁴⁰ noted that "[l]ocal authorities have often resorted to the law on compulsory education to force parents to enrol (sic) their children, and fines have been imposed by courts for failure to do so."⁴¹

Respondents also told Human Rights Watch that local authorities did collect fines if a child was not enrolled in school or was not in attendance. One noted only that the "Chinese government" announced it would punish parents who didn't send their children to school after they had reached "school-going" age or parents who withdrew their children from primary and secondary schools.⁴² Several added that the amount of

³⁷ "Compulsory Education Law of the People's Republic of China," adopted at the fourth session of the Sixth National People's Congress, promulgated by Order No.38 of the President of the People's Republic of China on April 12, 1986, and effective as of July 1, 1986.

³⁸ Education Law, art. 18.

³⁹ Compulsory Education Law, art. 15.

⁴⁰ *The right to education*, Addendum, Mission to China, p. 9.

⁴¹ *Ibid.*

⁴² Human Rights Watch interview with KJ, July 2004.

the fine escalated with the child's age.⁴³ However, respondents' reports differed widely as to precise amounts. One respondent said that in grades 1-3, the fine amounted to 10 yuan (approximately U.S.\$1.20) a day.⁴⁴ Another reported a one time fine of 2,900 yuan (U.S.\$350) approximately;⁴⁵ another said he was fined 73 yuan (U.S.\$9.00 approximately) for dropping out after 6th grade.⁴⁶ On the other hand, Human Rights Watch has documented numerous cases of children who never attended school or dropped out before completing the compulsory education available in their respective areas, but who never paid fines.⁴⁷ One possible explanation for the variation is that local officials have the right to set policy related to school attendance.

One respondent reported that one could avoid fines by applying for "school leave" through a written submission detailing the difficulty.⁴⁸

Government aid

China's Compulsory Education Law not only requires aid to poor individuals,⁴⁹ it mandates that "[t]he State subsidize those areas that are unable to introduce compulsory education because of financial difficulties."⁵⁰ However, nothing in the law makes clear whether such aid is the responsibility of the national government or of a sub-national unit such as a province, prefecture, county, township, or even a local village. Use of the term "state" rather than "local governments at various levels" suggests at least some input by the central government.

Sporadic reports imply that little has been done to provide the requisite assistance. *China Labour Bulletin* reported one case of a primary school principal from Tongxi County in Ningxia who, having failed in his local attempts to raise funds, traveled to Beijing to petition central authorities for money for text books and for assistance to parents who could not afford fees of 90 yuan (approximately U.S.\$11) per child. He had argued that successive droughts in Ningxia had left farmers "virtually unable to feed themselves and [unable to pay for] the fees or the books."⁵¹ The report does not indicate how the principal fared in Beijing.

⁴³ Human Rights Watch interviews with XN, July 2004; TC, August 2004; RW, August 2004.

⁴⁴ Human Rights Watch interview with QR. May 2004.

⁴⁵ Human Rights Watch interview with WS, November 2004.

⁴⁶ Human Rights Watch interview with GT, December 17, 2004.

⁴⁷ Human Rights Watch interviews with TQ, July 2004; TD, January 2005; NM, January 2005.

⁴⁸ Human Rights Watch interview with WS, November 2004.

⁴⁹ Compulsory Education Law, art. 10.

⁵⁰ Compulsory Education Law, art. 12.

⁵¹ Education in China: A Short Introduction," *China Labour Bulletin*, [online]

The fact that some schools put their children to work in order to raise funds is another indicator that schools cannot expect much help from either central or local governments. In March 2001, some fifty or sixty third and fourth grade schoolchildren and their teachers died in an explosion in a firecracker factory that a school ran to raise money.⁵² One parent reported that from 1998 on children worked half a day and attended classes the other half. Students who refused to work were banned from that school, but few opted to stay away as it was the only school in the village.⁵³ A former Tibetan student reported that, “after ending half the school term, students had to go to work outside.” They had to collect either animal bones or beer bottles, but could substitute cash. Many students, he said, “had trouble”—he did not explain what kind of trouble—because they could not fulfill the requirement.⁵⁴ The Chinese government has pointed out that “no formal prohibition of children being made to work at school” does not imply that work is encouraged.⁵⁵

Why schools charge fees: government funding of education

At issue is central government responsibility for educational financing. It is unclear if use of the term “state” in China’s education laws refers solely to national government responsibilities or only distinguishes governmental from individual responsibility for school funding. Whatever the answer, it is clear that at present, local governments at various levels are responsible for the bulk of school funds. It is also clear that in rural areas those funds are insufficient to support compulsory education programs. A quick look at what figures are available suffices.

In 1993, the State Council, the executive and administrative organ of the Chinese government, promised that by 2000, China would be spending 4 percent of GDP on education. The world average in 2003 was 5.1.⁵⁶ UNESCO recommends a minimum of 6 percent.⁵⁷ However, the Chinese government in its comments on the Special

www.china-labour.org.hk/iso/article.adp?article_id=5115 (retrieved May 20, 2005), (citing China Statistics Press, China Statistical Yearbook, 1999).

⁵² “Student Fireworks Factory Caused China School Blast,” CNN.COM (March 7, 2001), [online] www.cnn.com/2001/WORLD/asiapcf/east/03/07/china.school.blast.02/.

⁵³ John Leicester, “Fireworks: China’s pride and sorrow,” Associated Press, March 24, 2001.

⁵⁴ Human Rights Watch interview with ZL, August 2004.

⁵⁵ U.N. Economic and Social Council, Economic, Social and Cultural Rights, *Note verbale dated December 2003 from the Permanent Mission of China to the United Nations Office at Geneva addressed to the Office of the United Nations High Commissioner for Human Rights*, E/CN.4/2004/G/16, p. 9.

⁵⁶ Jane Cai, “Education policy ‘closes door on poor,’” *South China Morning Post*, February 3, 2005.

⁵⁷ United Nations Economic and Social Council, *Economic, Social and Cultural Rights: The right to education*, Report submitted by the Special Rapporteur, Katarina Tomasevski, E/CN.4/2004/45/ January 15, 2004, p. 5.

Rapporteur's report stated that in 2002 the ratio of educational expenditure to GDP was 3.41 percent.⁵⁸ The *China Youth Daily* reported that the percent slipped to 3.28 in 2003 and that spending was down in more than half the provinces and regions.⁵⁹

Disaggregating the total figure is instructive. Although the available statistics differ slightly, the net result is the same. The central government investment in education is small. The World Bank has estimated that over 90 percent of budgetary expenditures come from sub-national governments and of that over 70 percent come from counties and townships.⁶⁰ In her mission report, the Special Rapporteur noted that official statistics for 2000 revealed that only 53 percent of funding for education was public and only 8 percent of that money came from the central government, with just 2 percent feeding into compulsory education.⁶¹ Local governments, according to her report, fund 87 percent of all public educational expenditures.⁶² Another study reported that townships, the lowest formal level of government funded the largest share of compulsory funding expenditures,⁶³ 78 percent in 2003. Counties provided 9 percent, and provinces 11 percent.⁶⁴

The figures bear out the observation that, as China's education laws do not require any level of government, the central government included, to bear responsibility for a specific proportion of compulsory education expenses, each level of government attempts to pass the financial responsibility for compulsory education down to the next lower level.⁶⁵ Ultimately, that lowest level bears the greatest fiscal burden⁶⁶ and turns to fees and exactions as a solution.

Thus, China's rural educational terrain has become a patchwork of educational arrangements reflective of local taxation policies, the competence and dedication of local

⁵⁸ *The right to education*, Addendum, Mission to China, p. 3.

⁵⁹ "Spending on education slips as provinces skimp," *South China Morning Post*, January 11, 2005.

⁶⁰ World Bank, *China: National Development and Sub-National Finance, a Review of Provincial Expenditure*, Poverty Reduction and Economic Management Unit: East Asia and Pacific Region, Report No. 229-51-CH, April 9, 2002, p. 94.

⁶¹ *The right to education*, Addendum, Mission to China, p. 8.

⁶² *Ibid.*, p. 7.

⁶³ See Gao Qiang, "Rural Education's Awkward Situation – an investigation and analysis of rural compulsory education's funding problems" (农村义务教育陷入尴尬——农村义务教育经费投入问题的探索与分析), *Theory and Practice of Education*, vol. 23, (2003), p. 47.

⁶⁴ *Ibid.*

⁶⁵ He Xiaozhong (何小忠) and Liu Hua Fang (刘华芳) "Current Deficiencies of Compulsory Education and Corrective Measures" (当前义务教育的缺陷及其矫正策略), *Journal of Educational Science of Hunan Normal University*, vol. 3, no. 1 (January 2004), p. 91.

⁶⁶ See Gao Qiang, "Rural Education's Awkward Situation....," pp. 46-47.

officials, and local opportunities for fund raising. Unfortunately, the poorer the county, the more likely it is that parents of school-aged children will be required to pay a greater percentage of their income to support their children's schooling.

The central government requirement that counties and townships consolidate a grab bag of exactions into one overall tax has served only to worsen financing for education. The reform, known as the "tax-for-fees reform,"⁶⁷ was begun in several provinces in 1993-94 on an experimental basis.⁶⁸ It eliminated all educational surtaxes, fees, and fundraising that accrued directly to local governments.⁶⁹ At the same time, it raised the percentage of standardized taxes that were to go directly to the central government.⁷⁰ In turn, the central government was expected to increase allocations to local governments in order to replace lost revenue.⁷¹

Results have been mixed. To some extent, the burden on the rural population has lessened, but at the expense of education. As of April of 2003, areas implementing the reform reduced farmers' fiscal responsibilities by some 30 percent.⁷² For example, the average burden for Anhui province taxpayers in 2002 was 25.7 percent less than it had been in 1997.⁷³ But central government remittances to the province failed to make up the entire difference.⁷⁴ The resultant shortfall weighed most heavily on the schools,⁷⁵ in part because the tax-for-fees reform did not stipulate how much of Anhui's budget had to continue to be allocated to compulsory education,⁷⁶ and in part because the expected reduction in overall local administrative costs, acknowledged as an absolute necessity by the State Council,⁷⁷ did not materialize. In one year, 1999 to 2000, funding for compulsory education dropped 4.64 percent.⁷⁸

⁶⁷ "China Unveils New Tax Policy to Placate Farmers' Anger Over Fees," *Dow Jones Business News*, March 6, 2000.

⁶⁸ "China Launches Inspection of Rural Tax Reform," Xinhua News Agency, Jan. 8, 2004. See also Bernstein and Lü, *Taxation without Representation in Rural China*, p. 199-205.

⁶⁹ Chang Wanxin, "Impact of Tax Reform on Rural Compulsory Education and Solutions" (农村税费改革对义务教育的影响及对策), *Journal of Simao Teachers' College*, vol. 18, no. 2, (June 2002), p. 74.

⁷⁰ "China Risk: Alert – Rural Tax Reform Addresses Key Concerns," Economist Intelligence Unit – *Riskwire*, April 7, 2003.

⁷¹ "Feature – Rural Tax Reform Sweeps East China (2)," Xinhua News Agency, May 27, 2003 [online] <http://www.china.org.cn/english/government/65609.htm> (retrieved May 5, 2005).

⁷² "China Risk: Alert – Rural Tax Reform Addresses Key Concerns," p. 11.

⁷³ *Ibid.*

⁷⁴ Qi Xiemei (戚美) and Ceng Jue (曾珺), "Rural Education and Fees Post-Tax Reform" (农村税费后义务教育投入的思想), *Education and Economy*, (March 2001), pp. 56-57.

⁷⁵ Bernstein and Lü, *Taxation without Representation...*, p. 202.

⁷⁶ Qi and Ceng, "Rural Education and Fees Post-Tax Reform," p. 92.

⁷⁷ "Chinese Government Issues Guidelines on Rural Tax Reform," BBC Monitoring Asia Pacific, May 20, 2003.

⁷⁸ Chang Wanxin, "Impact of Tax Reform..." p. 74.

As Premier Wen Jiabao has repeatedly noted and resolved to change, local governments are inefficiently run with little, if any accountability, to those who pay. Local officials' interests lie in retaining bloated local bureaucracies and "using their power for private gain,"⁷⁹ rather than in apportioning the shrunken budget so as to shore up educational capacities. From all indications, it will be take time before the inefficiencies are redressed and the power of local officials to set priorities curbed.⁸⁰

In the meantime, as fees are eliminated, there is concern that the quality of education will decrease, particularly in poor rural areas.⁸¹ The mandated fee reduction has already forced county and township authorities into debt just to be able to fund teacher salaries.⁸²

As a result, some local governments have ignored the demand to cancel school fees.⁸³ In 2001, fourth graders in a school in Guiping city, Guangxi province, continued to pay an average of 41.5 yuan (U.S.\$5.00 approximately) per semester despite the central government's implementation of the tax reform.⁸⁴ A middle school in Guiping continued to charge students an average of 40 yuan in miscellaneous fees and 106.42 yuan (U.S.\$21 approximately) in textbook fees.⁸⁵

Unkept promises

Chinese scholarship on financing rural education recognizes that rural areas are poorly funded and ill equipped.⁸⁶ In March 2004, the deputy director of the Wuhan (the provincial capital of Hubei) Municipal Bureau of Education, who also represented Hubei in the National People's Congress (NPC), China's legislature, acknowledged that "rural education, especially compulsory education, has been suffering from a huger and huger

⁷⁹ Bernstein and Lü, *Taxation Without Representation in Contemporary Rural China*, p. 109. See also pp. 95-115.

⁸⁰ "Reining in the Runaway Budget Deficit," Column: China Economic Quarterly, *South China Morning Post*, March 29, 2004. See also "Despite Reforms, Rural Schools Still Lag Behind," *South China Morning Post*, September 10, 2003.

⁸¹ "Despite Reforms, Rural Schools Still Lag Behind," *South China Morning Post*, September 10, 2003.

⁸² Owen Brown, "Local Governments Rack Up Debt, Worrying Beijing," *Wall Street Journal*, April 12, 2004.

⁸³ Huo, "Straight Talk About Guangxi's School Fees," p. 13.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ See He Guangwen, Feng Xingyuan & Li Lili (何广文, 冯兴元 & 李莉莉), "A Study of Financing in Rural Education" (农村教育融资问题研究), Beijing, (May 2003), [online] www.wiapp.org/wpapers/wpaper200308.html; and Tan Songhua, "Status Quo, Difficulties and Countermeasures of Rural Education in China" (农村教育: 现状, 困难与对策), *Beijing University Education Review*, vol. 1, no. 1 (Jan. 2003), [on line] www.shgzb.gov.cn.

financial shortfall.”⁸⁷ He estimated that of the 1.1 million children—a much lower figure than that cited by another source⁸⁸—who drop out before completing nine years of compulsory education, most come from rural areas. His remedy is that the central government should contribute 50 percent of total rural education investment rather than the 2 percent it contributed at the time of his statement. He asked for free textbooks, lodging subsidies, and exemption from miscellaneous charges for poor rural families.

Although several concrete initiatives have been announced, repetition of the same proposals several years in a row does little to increase confidence that anything has been or will be accomplished. In addition, some announced plans appear to contradict others.

In January 2004, before the NPC meeting, the Ministry of Education announced its intention of increasing financial assistance to rural families specifically to ensure that their children complete at least nine years of schooling. The plan stated that at least 160 million rural children would be financially assisted, particularly in the rural northwest where some of China’s poorest counties and townships are located.⁸⁹

In February of the same year, the Ministry of Education and the Ministry of Finance issued a circular announcing expansion of a free textbook plan funded by the central government in 2002. Initially, 24 percent of students, primarily in central and western China, had been covered.⁹⁰ A top official in Yunnan province, one of the areas affected, attributed high dropout rates to textbook costs. He cited one county where, on average, children left school after three years.⁹¹ The same circular required regional governments to stop charging poor students for a variety of items and to provide them subsidies. A year later, in January 2005, the Minister of Education reiterated the promises.⁹²

In March 2004, a third *People’s Daily* article reported that the government planned to abolish all school fees beginning with the 2004 fall semester. In what seems a contradiction, students would only be required to pay for text books, stationary and

⁸⁷ “Members urge funding for rural schools,” *People’s Daily Online*, March 12, 2004, http://fpeng.peopledaily.com.cn/200403/12/print20040312_137328.html.

⁸⁸ See “China Struggles to Educate All Children,” Radio Free Asia.

⁸⁹ “Nation to Ensure Compulsory Education for Rural Pupils,” *People’s Daily Online*, Jan. 27, 2004, <http://www.china.org.cn/english/culture/84129.htm> (retrieved May 4, 2005).

⁹⁰ “Govt to offer more free textbooks to students in poverty,” *People’s Daily Online*, February 27, 2004, http://fpeng.peopledaily.com.cn/200402/27/print20040227_135981.html.

⁹¹ *Ibid.*

⁹² “Millions of poor Chinese students to receive free textbooks,” *People’s Daily Online*, February 2, 2005, http://english.peopledaily.com.cn/200502/02/print20050202_172652.html.

“other extras.”⁹³ Obviously, the catch all phrase, “other extras” is open to interpretation. For the poorest of China’s population, any fee is in effect denial of the right to education if it cannot be waived.

In April, at the annual working meeting of the Ministry of Education, the minister announced that the expectation was that in 2004 there would be a 72 percent increase in funding for compulsory schools in rural areas.⁹⁴ Human Rights Watch has no information as to whether the funds have materialized.

In January 2005, the Minister of Education made still another promise, this time pledging to eliminate “extraneous fees charged by individual schools.” What was noteworthy in his announcement was his reference to the clear “line between random charging and necessary fees.”⁹⁵ However, there was no explanation as to what items fall on which side of the line. In March, the state announced relief for poor families in 592 counties and promised that miscellaneous fees and fees for books would be waived.⁹⁶ That same month Premier Wen Jiabao announced that a program to eliminate school fees in all rural areas would begin with fourteen million students in the poorest rural areas.⁹⁷ It is unclear if he was referring to “necessary fees” or just “random charging.”⁹⁸ It is also unclear whether any of the above programs have been initiated.

Relevant Chinese law and policy

The Constitution

A review of Chinese law raises concerns about the right to education. The “Constitution of the People’s Republic of China” confers a “right and duty” to receive education.⁹⁹ However, what the right guarantees and what the obligation requires are unclear. Article 46 of the constitution, stipulates, but only vaguely, that “Citizens...have the right as well as the duty to receive education; (and) the state promotes the all-round development of

⁹³ “Tuition Free of Charge From Autumn,” *People’s Daily Online*, March 3, 2004, http://english.peopledaily.com.cn/200403/03/eng20040303_136399.shtml.

⁹⁴ “China earmarks 10 bil yuan for compulsory education in rural areas,” *People’s Daily Online*, December 20, 2004, http://english.peopledaily.com.cn/200412/20/print20041220_168020.html.

⁹⁵ “China to eliminate extra educational fees: official,” *People’s Daily Online*, January 28, 2005, http://english.peopledaily.com.cn/200501/28/print20050128_172199.html.

⁹⁶ Poor students: no more tears for book and tuition fees, *People’s Daily Online*, March 8, 2005, http://english.peopledaily.com.cn/200503/08/print20050308_176077.html.

⁹⁷ Jim Yardley, “China Plans to Cut School Fees For Its Poorest Rural Students,” *New York Times*, March 13, 2004, p. 14.

⁹⁸ See “China to eliminate extra educational fees: official,” *People’s Daily Online*.

⁹⁹ “Constitution of the People’s Republic of China,” art. 46. The constitution was adopted by the National People’s Congress on December 4, 1982 and amended in 1988, 1993, 1999, and 2004.

children and young people, morally, intellectually and physically.”¹⁰⁰ This notion of right *and* duty is repeated in other laws and regulations that relate to educational policy, most notably in Article 9 of the “Education Law of the People’s Republic of China.”¹⁰¹

Although a Chinese court did establish that a right to education exists it did not create a cause of action for individuals to challenge the state for denying that right; and so far as is known, no citizen has yet sued the government for failure to provide compulsory education. When the issue arose in the case of *Qi Yuling v. Chen Xiaoqi*, the court held only that the right of Qi Yuling, a private individual, had been breached by Chen Xiaoqi, another private individual, because the latter fraudulently used Qi’s name to enter a prestigious school.¹⁰²

The constitution notwithstanding, the state has done little to ensure that the right to education is observed in practice. Its role has been limited to acknowledging the “right” and setting overall policy.

Education Law and Compulsory Education Law: theory and practice

Article 53 of the Education Law speaks directly to the division of responsibility between the central government and local governments at various levels. It states that, “[t]he State practices a system wherein government appropriations constitute the main body of the educational appropriations, supplemented by funds raised from a variety of other sources.”¹⁰³ The article goes on to affirm that “the State gradually increases its educational input so as to ensure a stable source of educational appropriations for State-run schools.”¹⁰⁴ Article 54 adds that “as the national economy develops and financial revenues increase,” educational appropriations will rise gradually.¹⁰⁵ There is no requirement, however, that the central government be the prime source of financial support.

¹⁰⁰ *Ibid.*, art. 46.

¹⁰¹ “Education Law, art. 9.

¹⁰² Shen Kui, “*Is it the Beginning of the Era of the Rule of the Constitution? Reinterpreting China’s ‘First Constitutional Case,’*” *Pacific Rim Law and Policy Journal*, (2003), vol. 12, p.199. The article is in English. For the full Chinese article, see “Qi Yuling v. Chen Xiaoqi, Case of Infringement of Citizen’s Fundamental Rights of Receiving Education Under the Protection of the Constitution by Means of Infringing Right of Name,” *Gazette of the Supreme People’s Court of the People’s Republic of China (Zuigao Renmin Rayuan Gongbao)*, (2001), vol. 5, p. 158.

¹⁰³ Education Law, art. 53.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*, art. 54.

Responsibilities related to compulsory education are spelled out in the constitution and in the Compulsory Education Law. Article 19 of the Constitution mentions the obligation of the state to universalize compulsory primary education.¹⁰⁶ Such education is established through the “Compulsory Education Law of the People’s Republic of China” (CEL). It requires the state to “institute a system of nine-year compulsory education,”¹⁰⁷ starting when children are six years old, but “[i]n areas where that is not possible, the beginning of schooling may be postponed to the age of seven.”¹⁰⁸ The CEL also prohibits discrimination,¹⁰⁹ bans tuition payments,¹¹⁰ and requires that “the state shall establish a system of grants-in-aid to support the school attendance of poor children.”¹¹¹

Failure to provide nine years of free and compulsory education is not a violation of Chinese law or of international law. Article 7 of the CEL says only that “[o]nce primary education has been made universal, junior middle school education shall follow.” The provision, appears to meet China’s obligation to progressively realize, “to the maximum of its available resources,”¹¹² that primary education must be “compulsory and available free to all.”¹¹³

It is the Compulsory Education Law that, at least partially, clarifies the role of the central government *vis a vis* local governments, but only so far as compulsory education is concerned. According to two articles, article 12 and article 8, the major responsibility devolves to local governments. Article 12 states:

The State Council and the local people’s governments at various levels shall be responsible for raising funds for the operating

¹⁰⁶ PRC Constitution, art. 19.

¹⁰⁷ Compulsory Education Law, art. 2.

¹⁰⁸ *Ibid.*, art. 5.

¹⁰⁹ *Ibid.*

¹¹⁰ Compulsory Education Law, art. 10

¹¹¹ *Ibid.*

¹¹² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. *Entry into force* 3 January 1976 in accordance with article 27. China ratified the ICESCR on March 27, 2001 in accordance with article 27, art. 2 1. See also Committee on Economic, Social and Cultural Rights (CESCR), “*The nature of States parties obligations (Art. 2, paragraph.1)*,” (*General Comments*), General Comment 3, December 14, 1990.

¹¹³ International Covenant on Economic, Social and Cultural Rights, art. 13 2.(a); Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. *Entry into force* 2 September 1990 in accordance with article 49. China ratified the CRC on March 2, 1992. art. 28 1(1).

expenses and capital construction investment needed for the implementation of compulsory education, and the funds must be fully guaranteed.

...

In accordance with the provisions of the State Council, the local people's governments at various levels shall levy a surtax for education, which shall be used mainly for compulsory education.

...

The state shall encourage individuals and all segments of society to make donations to help develop education.¹¹⁴

Article 8 is more direct in assigning responsibility: "Local authorities shall assume responsibility for compulsory education, and it shall be administered at different levels."¹¹⁵ In fact, since 1986, the central government has stressed, "[Give] responsibilities locally, distribute school operating powers, distribute management powers" to promote greater local discretion over operations of schools.¹¹⁶ The law also clarifies one aspect, but only one, related to funding responsibilities. Article 9 requires that governments "shall not charge tuition for students receiving compulsory education."¹¹⁷

The problem of overlapping responsibilities, particularly of townships and counties, was supposedly clarified in May 2001, when the State Council decreed that county governments would be responsible for funding and administering education throughout the townships and villages in their immediate jurisdictions.¹¹⁸ Government bodies at higher levels in the administrative hierarchy were to exercise only nominal oversight.¹¹⁹

However, in many areas, the on-the-ground reality contrasts sharply with obligations cited in the law, thus making it difficult to ascertain with any degree of certainty whether

¹¹⁴ Compulsory Education Law, art. 12.

¹¹⁵ Compulsory Education Law, art. 8.

¹¹⁶ He & Liu "Current Deficiencies...", pp. 90-91. See also Education Law, art. 53.

¹¹⁷ Compulsory Education Law, art. 10.

¹¹⁸ Eva Cheng, "China: More Trapped in illiteracy treadmills," *Green Left Weekly*, October 6, 2004. The implementing regulations were promulgated a year later. Before the reform, townships had the responsibility. Lacking sufficient funds, they turned to villages within their jurisdictions.

¹¹⁹ See article 30 of the "Constitution of the People's Republic of China" for an outline of the administrative divisions of China. In brief, provinces, autonomous regions, and free-standing municipalities, (Beijing, Shanghai, Tianjin and Chongqing) divide into autonomous prefectures, counties, and cities. They, in turn, divide into townships and towns. Large cities divide into districts and counties; prefectures divide into counties and cities. The article does not mention that townships divide into villages.

China is meeting its obligation to “move as expeditiously and effectively as possible” towards the full realization of the right to education.¹²⁰ For example, 8 percent of China’s western and central areas have no compulsory education program.¹²¹

Questions

Human Rights Watch urges immediate national attention aimed at relieving school fees and related costs that disproportionately bar poor rural children from attending school.

We suggest that the Committee on the Rights of the Child pose the following questions to the Chinese delegation:

Government Spending

What has prevented China from meeting its own stated goal of spending 4 percent of GDP on education by 2000? What accounts for the drop from 2002 to 2003 in the percent of GDP allocated to education and for the concomitant slippage in more than half of China’s provinces and regions? What percent of GDP did China spend on education in 2004? By what year does China expect to meet average world expenditures for education? By what year does China expect to meet UNESCO’s recommendation that 6 percent of GDP be allocated to education?

Commission to analyze rural/urban disparity

Given income discrepancies among China’s provinces and between rural and urban areas, how does China propose to ensure that such disparities do not affect students’ rights to nine years of free and compulsory education? Would China consider empowering an independent commission made up of prominent educators to survey and recommend measures to alleviate such disparities?

Fee elimination

Is China prepared to increase national expenditures on education and mandate inputs by local levels that will eliminate all fees charged to families whose children are in compulsory education programs? Is China’s Ministry of Education prepared to issue a comprehensive list of all fees that must be eliminated? What is China doing to address

¹²⁰ CESCR, *General Comment 13*, paragraph 44.

¹²¹ “Chinese minister of education vows to promote rural education,” *People’s Daily Online*, January 28, 2005, http://english.peopledaily.com.cn/200501/28/print20050128_172200.html.

the barriers that related costs, such as uniforms and transportation, pose to children attending school?

Dropouts

Is China prepared to survey not only enrollment rates, but dropout rates, and to formulate realistic plans that permit dropouts to continue their education?

Evaluation of funding

According to a December 10, 2003 note from the Permanent Mission of China to the office of the U.N. High Commissioner for Human Rights in response to the Special Rapporteur on Education's report, "the county is the basic level for evaluation" of compliance with educational regulations.¹²² However, "the items and indicators of evaluation," which include such items as the quality of the faculty, school equipment, and education allocation, do not provide for systematic oversight by the central government. Does the government plan to oversee how funds are managed and to design measures for evaluating the data it receives?

Compulsory and dangerous work

How does the State plan to ensure that students will not be required to work at dangerous tasks in order for a school to support itself?

Ethnic Nationalities Areas—Bilingual Education and Access to Cultural Knowledge: the Tibetan case

In the Tibet Autonomous Region (TAR) and autonomous Tibetan prefectures and counties outside the TAR, the use of Chinese as the medium of instruction in primary and lower middle school (grades 1-9) has contributed to the problem of students dropping out before completing a full program of compulsory education where one exists. In most Tibetan areas, free and compulsory education programs have not been established beyond grade 6. In 2004, nineteen counties out of a total of fifty-five still had not been able to establish a full six-year program. Only seventeen counties had a nine-

¹²² U.N. Economic and Social Council, *Note verbale dated December 2003 from the Permanent Mission of China to the United Nations Office at Geneva...*, p. 4.

year program.¹²³ The government has repeatedly stated that it expects to fulfill its obligation to provide the full nine years by 2007.¹²⁴

The institutionalization of a full nine-year program alone will not address the range of problems keeping Tibetan children from dropping out. Neither will the government's promise to increase funding for compulsory education, particularly as it has been stipulated that such funds would be used to improve school infrastructure for boarding schools and to train teachers.¹²⁵

Additional problems which would need to be addressed, particularly in farming and nomadic communities, include the imposition of school fees and related costs as discussed earlier, the lack of transportation to schools that are at a distance from small rural communities, the reluctance of parents to send their young children to boarding schools, and the difficulties children face when classes are taught in Chinese.

It is the last problem Human Rights Watch has chosen to bring to your attention along with the associated neglect of Tibetan traditions, culture, geography and history, all of which are politically sensitive subjects. The on-the-ground reality, as expressed by Tibetan respondents, will be followed by a brief analysis of Chinese law as it relates to the language of instruction in ethnic nationalities communities.

That on-the-ground situation as reported to Human Rights Watch is a reality check on what the law seemingly allows. Information from interviews points to policies systematically designed to suppress and dismantle Tibetan cultural identity and render the Tibetan language obsolete.

The medium of instruction

Human Rights Watch interviewed students, parents, dropouts, and a few Tibetan teachers from the Tibet Autonomous Region (TAR) and from other areas with concentrated Tibetan populations. Many expressed dismay at the conversion to Chinese teaching no matter at what grade level it started in their home communities and, concomitantly, at the virtual disappearance of Tibetan history and culture from curricula.

¹²³ Private communication to Human Rights Watch, December 2004.

¹²⁴ *The Right to Education*, Addendum, Mission to China, p. 7.

¹²⁵ "Huge investment earmarked to boost compulsory education in Tibet," Xinhua, *People's Daily Online*, May 24, 2004, http://english.peopledaily.com.cn/20040524/print20040524_144184.html

It should be noted that it has not been possible to establish from interviews or from a search of the available literature whether there is an overall national policy dictating at what point conversion to Chinese is to begin or what pace of implementation is optimal. The only constant seemed to be that except for one course covering Tibetan language arts, all others are in Chinese. If, as seems likely, decisions about conversion timetables are made at a variety of local levels, it would be important to learn the rationales behind the decisions.

In some cases, there is anecdotal evidence that even in grades where the medium of instruction is Tibetan, the availability of Tibetan texts or of translations of related school materials such as workbooks and handouts is problematic.¹²⁶

Compounding the problem for many, if not most Tibetan students, is the dearth of private educational facilities and a rigid state-mandated curriculum. Until the Chinese government eliminated monastic education for those under eighteen, families could and did send one or more very young children to monasteries where, along with religious studies, they became literate in Tibetan. Several respondents reported that local authorities closed down Tibetan-language classes, some run by local monks, even though they were designed only to supplement state school curricula. Other schools closed because they were required to adhere strictly to a state-mandated curriculum or because, as subjects were added to curriculum, they were forced to hire state-appointed teaching staff. The curriculum and staff changes meant less time for and less commitment to Tibetan language and culture.

As one respondent explained, “[t]here was a monastic school...that taught Tibetan language, culture, and Buddhism to poor local Tibetan children... They also let the children wear traditional Tibetan dress... The local Chinese government didn’t like that and (also) forced the teaching of subjects fixed by the government... In the beginning, all the teachers were well educated monks. After the forced addition of various subjects, the teachers for those subjects were appointed by the local Chinese government.”¹²⁷

Another explained, “[p]eople in the village got ready to send their children to two different monasteries to learn Tibetan. But directors at the County Education Bureau visited the village and lectured and declared a policy restricting them from doing such a thing... Presently, Tibetan is taught in a few primary schools in some nomadic

¹²⁶ See for example, Human Rights Watch interview with ZZ, September 2004.

¹²⁷ Human Rights Watch interview with PS, October 2004.

communities because parents don't send their children to school in the absence of a Tibetan subject. But the Tibetan subject is only taught twice a week."¹²⁸

One teenager, who had attended a private primary school where all instruction was in Tibetan, said the government "destroyed" it despite appeals from the founder, teachers, and parents. After the school closed, students could either go to a government school or drop out. The respondent managed to complete fifth grade because the government waived fees that year. But once his parents had to pay for uniforms, books, notebooks and "health shots," his education was over.¹²⁹

Even if the above pressures from the government had not forced private Tibetan schools to close, a child who "graduated" was not entitled to a school-leaving certificate. Therefore, he or she could not sit for the state examination necessary for admission to advanced secondary education.

Effect on dropout rates

Many of those interviewed by Human Rights Watch agreed with one respondent familiar with the overall situation in a Tibetan district. In his opinion, many students drop out because "With most teaching now in Chinese, the children don't understand it—they are bored."¹³⁰ As in other parts of China, the primary school enrollment figure is high, 92 percent, but in the TAR, the dropout rate is also high, some 30-35 percent.¹³¹ It has been noted that the differential across the region is considerable. For example, the enrollment rate in Lhasa, Tibet's capital, would push the average up for the TAR more generally; at the same time, the dropout rate would tend to be lower in Lhasa, thus pushing overall dropout rates down.

Another respondent reported that in his area, several factors contributed to a high dropout rate, among them: fees, distance to school, and problems with learning Chinese. He calculated the dropout rate to be even higher than the 35 percent cited above. In grades 1-3, he said, children attended a community school approximately a half-hour's walk from his village. Children who went on to the county school, grades 4-6, had to live at school. Most instruction there was in Chinese. Only about half the children enrolled

¹²⁸ Human Rights Watch interview with WW, September 2004.

¹²⁹ Human Rights Watch interview with AQ, December 2003.

¹³⁰ Private communication July 2004.

¹³¹ "Bellamy urges Tibet to reach for new heights for children," UNICEF, News Note, August 30, 2004, [online] http://www.unicef.org/media/media_23413.html. See also Human Rights Watch interview with ZZ, September 2004.

in the community school continued on, and “maybe three out of one hundred went on past 6th grade.”¹³² When asked about children’s Chinese comprehension, he said at the end of sixth grade “a child can copy what is written but cannot write on his own.”¹³³

Several respondents discussed how much they had liked school and how well they had done before the conversion to Chinese. They expressed frustration at their failure to pass examinations that would have allowed them to continue their education into senior middle school and beyond. As one interviewee said, “I am Tibetan and not only is my mother tongue Tibetan but the language used by the people in our area is Tibetan. So when the school curriculum was suddenly changed into Chinese, it was difficult to comprehend the contents. I lacked the vocabulary.” Another said simply, “I couldn’t understand the math” once instruction changed to Chinese.¹³⁴

Tibetan language, history, and geography in the curriculum

Tibetan language, history, and geography are disappearing from school curriculums. One former primary teacher explained, “[n]ot only is Tibetan not taught but it is not allowed to talk in Tibetan inside the school compound. If students talk in Tibetan, the Chinese headmaster scolds them and punishes them by having them memorize the lesson... Teachers humiliate those who do not know Chinese.”¹³⁵

Another reported that “[t]extbooks are in Chinese; the subject matter is China’s geography and history; there is not a single text book on Tibet. In middle school what is taught in the ‘Tibetan subject’ is grammar and poetry, Chinese composition, and to love socialism and the motherland a lot. In primary school, the stories are about the achievement of famous people like Mao Zedong.”¹³⁶ Others complained that the only Tibetan given textbook space was King Songsten Gampo, who was responsible for the establishment of Buddhism in Tibet, but more importantly whose queen was a Chinese woman.

A third added that in lower middle school, part of the compulsory education program, “the history they teach is modern and contemporary history of China. In modern history, it is about the war between the Communist Party and the Guomindang, and the

¹³² Human Rights Watch interview with QR, May 2004.

¹³³ Ibid.

¹³⁴ Human Rights Watch interview with AQ, December 2003.

¹³⁵ Human Rights Watch interview with WW, September 2004.

¹³⁶ Human Rights Watch interview with ZZ, September 2004.

Opium War. Regarding contemporary history, they teach about liberation... There isn't any Tibetan history.¹³⁷

Still others added that although there is an alleged Tibetan course, the text uses translations from Chinese literature.

Relevant Chinese law and policy

Numerous Chinese documents appear to promise that ethnic nationalities populations have the right to administer their own affairs in several important areas including education. The basic premise for independent administration is set forth in the Chinese constitution, stating that, “[t]he organs of self-government of the national autonomous areas independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas, protect and sift through the cultural heritage of the nationalities and work for a vigorous development of their cultures.”¹³⁸

The constitution is backed most importantly by “The Law of the People’s Republic of China on Regional Ethnic Autonomy,” which promises that “minority nationalities... practice regional autonomy in areas where they live in concentrated communities and set up organs of self-government for the exercise of the power of autonomy. Regional national autonomy embodies the state’s full respect for and guarantee of the right of the minority nationalities to administer their internal affairs...”¹³⁹ Although the law seriously circumscribes the power of autonomous areas by subjecting all its decisions over so-called internal affairs to review by higher-level government organs, it does state that autonomous areas (regions, prefectures, and counties) shall “implement the laws and policies of the state in the light of existing local conditions,”¹⁴⁰ and prohibit discrimination.¹⁴¹

Several of the law’s articles apply specifically to education and language usage. They appear to guarantee that within existing guidelines, autonomous areas shall be free to “use and develop their own spoken and written languages”¹⁴² and have the freedom to

¹³⁷ Human Rights Watch interview with MO, August 2004.

¹³⁸ PRC constitution, Art. 119.

¹³⁹ “Law of the People’s Republic of China on Regional National Autonomy was passed by the National People’s Congress and became effective October 1, 1984. October 1, 1984, revised on February 28, 2001, preface,[online] <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=9507>, (retrieved May 11, 2005).

¹⁴⁰ *Ibid.*, [art. 4].

¹⁴¹ *Ibid.*, [art. 9].

¹⁴² *Ibid.*, [art. 10].

develop their own educational plans including “curricula, (and) the language used in instruction.”¹⁴³

It is Article 37, however, that is most explicit about language usage, maintaining that “Schools (classes) where most of the students come from minority nationalities should, whenever possible, use textbooks in their own languages as the media of instruction.”¹⁴⁴ The article goes on to say that it is not until the senior grades of primary schools at the earliest that “Han language and literature courses” should begin. The article further provides that “[e]very local government should provide financial support for the production of teaching materials in the minority scripts for publication and translation work.”¹⁴⁵ In addition, China’s Education Law and its Compulsory Education Law support, though they do not insist on, the use of the local spoken and written language.¹⁴⁶

On February 28, 2005, China’s State Council issued a white paper entitled “Regional Autonomy for Ethnic Minorities in China,” in which language and educational issues were again addressed. It is noteworthy that the phrase, “if possible,” again qualifies the principle that textbooks should be printed and classes taught in the local language.¹⁴⁷ China’s reply to the report by the special rapporteur on education, however, failed to note the qualification, but rather stated that “schools and classes enrolling mainly students of ethnic minorities may use...the oral and written language commonly used throughout China (i.e. Chinese or as it is known in China *putonghua*) as the subordinating method of teaching.”¹⁴⁸

¹⁴³ Ibid., [art. 36].

¹⁴⁴ Ibid., [art. 37].

¹⁴⁵ Ibid.

¹⁴⁶ The Education Law (Article 12) provides that “[t]he spoken and written Chinese language *shall* be the basic spoken and language in teaching in schools... In schools ...in which students of a minority ethnic group constitute the majority, the spoken and written language used by the specific ethnic group *may be* used for instruction (*italics added*). See also Article 6 of the Compulsory Education Law. Article 10 of the Education Law also requires state assistance to “regions inhabited by the minority ethnic groups,” but schools in ethnic nationalities regions are vastly under-funded.

¹⁴⁷ “Regional Autonomy for Ethnic Minorities in China,” issued by the State Council on February 28, 2005. Part III. “The Right of Self-Government of Ethnic Autonomous Areas,” (3) *Using and Developing the Spoken and Written Languages of the Ethnic Groups* (7) “Independently Developing Educational, Scientific, Technological and Cultural Undertakings,” p.5. [online].<http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=7634&PHPSESSID=3610c6475d081648ce2e38fa758dd5d5> (retrieved May 13, 2005).

¹⁴⁸ U.N. Economic and Social Council, *Note verbale dated December 2003 from the Permanent Mission of China to the United Nations Office at Geneva...*, p. 5.

Despite the permissive clause that appears in legal instruments and policy statements, the practical application of the policy makes clear China's aim to dismantle Tibetan language learning and systematically eliminate attention to Tibetan history and culture on the part of a new generation. The unstated policy runs counter to national law and to Article 30 of the Convention on the Rights of the Child to which China is a party.¹⁴⁹

Questions

Human Rights Watch suggests that the Committee on the Rights of the Child pose the following questions to the Chinese delegation:

The medium of instruction

In view of the systematic conversion from the use of Tibetan in schools in the TAR and in other Tibetan areas despite its demonstrated effect on children's ability to learn and retain content, what is the government planning to do to rectify the problem? At what level have policies related to teaching in Chinese, the grade at which such conversion begins, and the rate of conversion been designed and at levels are they to be implemented? Is the policy designed by the national government, by central level Chinese Communist Party authorities, or are programs designed locally by government officials or Party authorities. Who is responsible for implementation? What responsibility does the national government or the Communist Party have for oversight? Is there a national policy mandating that all schools teach in Chinese? If so, at what grade level must it start? If not, are there national guidelines which can be adapted locally? What level of government has the authority to make decisions about adaptation?

Private ethnic nationalities schools

In view of the absence of mother tongue teaching in some locales, the systematic destruction and dismantling of private Tibetan schools and the lack of instruction about Tibetan culture and history even where Tibetan courses are offered, why has China discouraged ethnic nationalities from establishing and maintaining their own schools, and how does it plan to remedy the problem? Will redress come from the central government, the Standing Committee of the Chinese Communist Party, local government officials, or local Party officials?

¹⁴⁹ "In those States in which ethnic, religious or linguistic minorities ...exist, a child belonging to such a minority...shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture...or to use his or her own language," art. 30.

Curriculum

In view of the systematic curtailment of instruction allowing students in ethnic nationalities areas to study their own history, geography, traditions, and cultural heritage, how does China plan to redress the omission? At what level will the reforms be designed and who will be responsible for implementation? If either local officials or local Party officials assume responsibility, will government officials at the national level or Standing Committee members be responsible for oversight?

Language learning

Research indicates that children learning a second language need considerable help if they are to be able to master course content in that language. What is China doing or planning to do to provide the necessary support for bilingual education? Who will design and who will implement programs? Who will be responsible for oversight?

II. The Rights of Children Affected by HIV/AIDS

- **CRC, art. 28 – the right to education**
- **CRC, art. 20(1) – protection and assistance of children deprived of their family environments**

According to official Chinese figures, there are 100,000 children orphaned by AIDS nationwide; activists working in Henan estimate there are in fact 100,000 children orphaned by AIDS in that province alone.¹⁵⁰ In an impoverished region where the epidemic is severely stigmatized, the presence of children orphaned or otherwise affected by the AIDS epidemic poses a significant challenge to local authorities.

International standards generally recommend that institutional care for children be used only as a last resort, and prominent Henan AIDS advocate Gao Yaojie has also recommended establishing a foster care system.¹⁵¹ While this would be a wise long-term policy, the urgency of the current catastrophe in Henan requires swift action. Currently, widespread discrimination against people with HIV/AIDS in China, and the poverty faced by many rural Henan families, make institutions the first and virtually only solution

¹⁵⁰ Beijing Aizhixing Institute of Health Education, "Children/orphans and HIV/AIDS in China," www.aizhi.org, April 2003; Li Dan, "The situation of Chinese AIDS orphans," www.chinaaidsorphans.org/en_version/intro/intro.htm, retrieved June 21, 2003.

¹⁵¹ Gao Yaojie, "Yi wan feng xin: Wo suo jianwende aizhibing, xingbing huanzhe shengcun xianzhuang [Ten thousand letters: What I have seen and heard about the living conditions of people with AIDS and STDs]". (Beijing: Zhongguo shehui kexue chubanshe, 2004), p. 236-7.

for children whose families are unable to care for them. The tens of thousands of Henan children who have lost their parents due to complications related to AIDS, or whose parents are HIV-positive, are often turned away by local schools.¹⁵² While the government has promised free tuition to children orphaned by AIDS, it has made no provisions for those who have lost one parent, even where that parent may be the sole wage-earner. Schools do not uniformly implement the government's free tuition policy, and many children affected by AIDS leave school because their families can no longer afford to pay school fees.¹⁵³

The Convention on the Rights of the Child in article 20(1) provides that "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State."¹⁵⁴ The Convention on the Rights of the Child specifically obliges states parties to take "all appropriate" measures to protect children from trafficking, being separated from parents against their will, and economic exploitation, hazardous labor, involvement in drug trafficking, sexual exploitation and abuse, and any other form of exploitation.¹⁵⁵ Regarding children orphaned by HIV/AIDS, the Committee on the Rights of the Child noted that states must provide assistance "so that, to the maximum extent possible, children can remain within existing family structures," that where this is not possible, states should provide, "as far as possible, for family-type alternative care (e.g. foster care)," and that "any form of institutionalized care for children should only serve as a measure of last resort."¹⁵⁶

China has signed and ratified the Convention on the Rights of the Child. However, China's national laws and regulations on HIV/AIDS lack clear guidelines on the care of

¹⁵² Zhu Jing, "Li Dan: I am a realistic idealist [Li Dan: Wo suan shi xianshide lixiang zhuyizhe]," *Southern Weekend* [Nanfang Zhoumo], February 19, 2004; "Beijing hotels, schools turn away 'AIDS orphans'," Agence France-Presse, August 10, 2004; for more on broader discrimination against people with HIV/AIDS in China, see Human Rights Watch report, *Locked Doors: The human rights of people living with HIV/AIDS in China*, September 3, 2003, <http://www.hrw.org/reports/2003/china0803/>.

¹⁵³ Li Xiaorong, "Social stigma, official indifference: The plight of children orphaned by AIDS in Henan," paper on file at Human Rights Watch.

¹⁵⁴ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990, art. 20.

¹⁵⁵ Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990, arts. 9, 11, 32-35. ILO Convention No. 182 Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (1999) defines the worst forms of child labor.

¹⁵⁶ Committee on the Rights of the Child, General Comment 3: HIV/AIDS and the Rights of the Child, paras. 34-35.

orphans and children affected by AIDS.¹⁵⁷ Doctors and activists note that children affected by AIDS in China are becoming vulnerable to exactly the problems warned of by the Convention. As Gao Yaojie observes,

These orphans are plunged into such difficulties that boys enter easily into child labor while girls are vulnerable to sexual abuse. They are ripe for exploitation and need assistance.¹⁵⁸

While the Henan government has begun initiatives to educate children affected by AIDS, AIDS activists and doctors working in the province say that the small number of government orphanages are “overloaded” and unable to meet the need.¹⁵⁹

Thus, activists began several grass-roots initiatives in Henan to fill the gaps left by the state. The Henan government’s response to these efforts has been mixed at best. Some authorities encourage them, but others are resistant to any initiatives that are not government-controlled.¹⁶⁰ Henan authorities have sometimes dealt harshly with these activists and forcibly closed orphanages run by private individuals.¹⁶¹ (See Human Rights Watch’s report, *China: Restrictions on Aids Activists*, forthcoming June 14, 2005.) Other orphanages run by non-governmental groups have also faced serious official obstacles.¹⁶²

Questions

1. What is the government doing to ensure that children affected by AIDS are not denied the right to education, either because of discrimination or because of the inability to pay school fees and related costs?
2. What is the government doing to provide protection and assistance for AIDS affected children whose families are unable to care for them, taking into account international standards that institutionalization should be used only as a measure of last resort?

¹⁵⁷ “Assisting Children Orphaned by HIV/AIDS in Rural Henan, China: A Concept Paper,” Beijing Aizhixing Institute of Health Education, www.aizhi.org. Regulations on the registration of private orphanages are also lacking. While some existing laws and regulations on the management of charities may be applicable, they do not clearly address the issue of private not-for-profit charities.

¹⁵⁸ “Focus: Seeking help for AIDS orphans,” *China Daily*, September 26, 2003.

¹⁵⁹ “Focus: Seeking help for AIDS orphans.”

¹⁶⁰ For instance, Xinmi district in Henan specifies that charities caring for children “can only be initiated by the government.” Human Rights Watch e-mail communication with Wang, Chinese AIDS activist, 2005.

¹⁶¹ One emblematic case that highlights the use of institutional barriers occurred in early 2004, when Henan province authorities closed the Loving Care Home, a privately-run not-for-profit orphanage, and appropriated the donations in order to establish a new state facility.