

**IMPLEMENTATION OF THE INTERNATIONAL COVENANT
ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS
IN THE PEOPLE'S REPUBLIC OF CHINA**

A PARALLEL NGO REPORT BY HUMAN RIGHTS IN CHINA

APRIL 14, 2005

Submitted to the Committee on Economic, Social and Cultural Rights in advance of its review of the First Periodic Report of the People's Republic of China on Implementation of the International Covenant on Economic, Social and Cultural Rights.



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Executive Summary

In this report, Human Rights in China (HRIC) looks primarily at the People's Republic of China's (PRC) implementation of its obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) specifically as they relate to “worse-off regions or areas” and “specific groups or subgroups which appear to be particularly vulnerable or disadvantaged,” a focus mandated by the Covenant. The PRC Report relies primarily on national aggregated data and focuses on urban areas—thereby focusing on just 37.7 percent of the population (2002). Furthermore, the pervasive control and regulation of information by the PRC government through State Secrets, State Security, and other laws, social and police controls, and censorship technology, not only undermines effective monitoring and review of The PRC government's compliance with the Covenant, but also impedes its ability to formulate properly designed policies and programs that facilitate public scrutiny and participation.

HRIC's report addresses the hidden costs of China's inequitable economic growth and the unbalanced burden it has imposed on vulnerable and marginalized groups, and concludes that the PRC government needs to report, monitor and evaluate more systematically and concretely the extensive formal legislation to implementation. Despite extensive promulgation of reform legislation and policies that have generated economic growth of nearly ten percent per annum during the past 20 years in China, vulnerable populations—rural inhabitants, ethnic minorities, women and migrant workers, and their families—are still largely excluded from the benefits of China's economic growth due to both the preferential development of urban areas and to mechanisms such as the *hukou* registration system.

Despite past and present official announcements regarding reforms or dismantling of the *hukou* system, the restrictive *hukou* registration system still in place prevents those migrants from having equal access to housing, healthcare and work benefits. The actual implementation of any reforms, including an administrative licensing system for urban residency, will need to be carefully monitored. The growing social and economic gap is also fueling increasing social unrest and instability. According to official police data for 2003, there were at least 58,000 “mass incidents” involving more than three million people protesting a range of issues including corruption, forced relocations and evictions, lay-offs and unpaid back-pay.

In short, four years after ratifying the ICESCR, the PRC government has yet to use “all available means” to take deliberate, concrete and targeted steps towards realizing the rights recognized in the Covenant, and has not effectively complied with its immediate obligation of non-discrimination. It has also failed to adhere to the principles enumerated in the Declaration on the Right to Development explicitly adopted by the Committee, to adopt national policies that promote fair distribution of the benefits of development and equal opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

❖ **Article 2: Measures Taken to Guarantee the Full Realization of Rights**

The PRC's report emphasizes both the hard data of economic growth and the promulgation of extensive legislation to demonstrate the steps it has taken to implement the rights under the

Covenant. However, as the General Comments outline, legislative measures are important but are not exhaustive of the obligations of a State Party which include both obligations of conduct and result. Therefore, the full range of measures adopted, the basis on which they are considered most appropriate, and the identification of benchmarks and goals are relevant to the monitoring and review of a State Party's record.

Although the government's report acknowledges that there exists a poverty gap in China, it fails to acknowledge and detail the extent to which vulnerable populations specifically are increasingly disadvantaged despite economic growth. Whereas the PRC Report largely uses national, aggregate data to show overall economic growth, that data cannot provide a complete assessment of its progressive implementation of the rights under the Covenant insofar as worse-off regions and vulnerable populations are concerned. Not only does the PRC Report present an incomplete picture, it also fails to provide proper description and analysis of the current situation. As HRIC's report demonstrates by using available data and international standards to analyze the situation of particular groups and regions, serious inequality exists between China's urban and rural residents, between its Han and ethnic minority groups, and between its settled and migrant population.

The PRC government is also under an obligation to give effect to the Covenant in its domestic legal order. However, the legislation it has passed does not clearly and adequately set forth avenues to redress for individuals and groups to vindicate wrongs or to protect rights. In addition to the formal legal system, the right to criticize and appeal the government (petitions and visits system) is guaranteed under Chinese law, and is used by increasingly large numbers of individuals. Yet the use of Public Security measures and detentions to clamp down on petitioners raises questions regarding violations and abuses of the rights of these petitioners, as well as undercuts the petition system as an effective means of grievance and redress.

❖ **Articles 6 and 7: The Right to Work and to Favorable Working Conditions**

The unequal economic opportunities and income resulting from development policies that favor urban areas has led to increased rural-urban migration as rural inhabitants move to urban areas to seek better employment opportunities. The *hukou* system still in place also leads to institutionalized discrimination where migrant workers bear the disproportionate impact of unfavorable and unjust working conditions, including non-payment of wages, unsafe working environments and working hours that exceed the maximum in the labor law. These problems are compounded by the fact that access to information about workplace health and safety and industrial accidents is impeded by the State secrets regulatory framework. The lack of transparency impacts particularly on those vulnerable groups—migrant workers and rural residents—who make up a large proportion of those working in factories and mines.

❖ **Article 8: The Right to Join a Trade Union**

The PRC's declaration regarding Article 8.1(a) states that the application of Article 8.1(a) shall be consistent with the relevant provisions of the *Constitution of the People's Republic of China*, *Trade Union Law of the People's Republic of China* and *Labor Law of the People's Republic of China*. However, this declaration sidesteps the government's obligation to modify its domestic

legal order to conform and implement its obligations under the Covenant. The right to join a trade union of one's choice is a necessary precondition that enables workers to seek remedies where the government may have violated their rights as guaranteed by the Covenant. The PRC Report maintains that Chinese domestic legislation protects the right to freedom of association and characterizes the All China Federation of Trade Unions (ACFTU) as a voluntary mass organization by the government. However, the fact that it is the only officially recognized union, undercuts the right to join a trade union of one's choice.

❖ **Article 9: The Right to Social Security**

For the migrant workers that make up a majority of those working in factories and in mines, the lack of a *hukou* means that their access to social security, medical, health and unemployment benefits is severely limited or non-existent. Despite some reforms to the system announced in the 1990s, migrants are in practice still excluded from access to social security. As a result, despite the overwhelming number of industrial and mining accidents that take place annually, migrant workers often have to forgo medical treatment for illness or work place injuries in the face of prohibitive cost.

❖ **Article 11: The Right to an Adequate Standard of Living**

While the PRC government's report recognizes a poverty gap between the rural and urban areas, it emphasizes that standards of living have overall improved, and asserts that no discrimination exists. The report details the size of housing and the urban infrastructure and notes the inadequacy of housing for rural inhabitants. Yet, the report does not give any account of the depth of the divide between the rural and urban areas; it also does not describe concrete measures, monitoring, and evaluation mechanisms for how the government will now counter its own reform era development strategy and preferential policies that created this social and economic gap.

In addition, the right to housing in particular, in both urban and rural areas continues to be violated by arbitrary evictions, land grabbing, corruption, major infrastructure development and urban renewal. Migrants who face limited housing options under the *hukou* system are often consigned to extremely poor housing through the factories where they work, which is overcrowded, unsafe, unhygienic, and lacking in basic heating and electric facilities. Migrants who are not housed through their factories can often live only on the outskirts of cities in overcrowded homes that also fall short of adequate housing. In the rural areas, through development schemes such as the Three Gorges Project, nearly one million people have been forcibly relocated, without adequate consultation or compensation. Finally, the development policies and decades of migration of Han settlers into Xinjiang, Inner Mongolia, Tibet and other autonomous regions have irreversibly changed the demographics and damaged the habitat of many of China's ethnic minorities.

❖ **Article 12: The Right to the Highest Attainable Standard of Physical and Mental Health**

Despite China's rapid economic growth and an increase in total healthcare expenditure from 1994 to 2004, the GDP percentage share of funds allocated to public health has shrunk. The inadequate and reduced financing of health services, particularly for poor regions, has resulted in a growing health gap between poor rural and wealthier urban areas. Migrants remain excluded from healthcare in urban areas due to the *hukou* system, but the situation for them in their home villages is often no better. The healthcare system that had in the past delivered basic healthcare to the majority of rural residents has been drastically reduced without the support of the central government. While 90 percent of villages were covered in the 1970s, by 1989 only 4.8 percent were covered, causing many to forgo medical attention even when they are ill, creating a vicious cycle of illness breeding poverty and vice versa. Compounded by increased privatization and high user fees, inadequate preventative care programs and the resulting spread of infectious diseases including HIV/AIDS, there is now a growing health crisis in China's rural areas. All suggest that the PRC government falls far short of providing the minimum core content of its obligations under Article 12.

❖ **Articles 13 and 14: The Right to Education**

The disparity in the implementation of rights in the urban and rural regions is particularly telling in the area of the right to education in large part because the central government has, since the 1980s, shifted the burden of providing education to the local level without corresponding transfer of funding, and in 1994 announced that township governments would be responsible for implementing compulsory education. Local governments therefore make up for the funding shortfall through extra-budgetary resources derived from school fees, tuition fees, book fees and other direct and indirect fees, resulting in a system that has widely varying levels of education quality and access across China's provinces. Despite abolition of many fees in 2000, eighty percent of all education funds go to urban schools. Statistics also indicate that because of the one-child policy and traditional preference for boys, an out-of-plan girl child may not be registered in the *hukou* system, and therefore will be excluded from public education.

Likewise, the *hukou* system has created serious problems for rural to urban migrants in educating their children. Migrant children cannot attend urban public schools without paying more than they can afford. Private schools set up by migrants are unregistered, lack adequate resources, and will not qualify those students to sit for exams for admission to the public school system. Thus, migrants are denied equal access to education enjoyed by their settled urban counterparts.

❖ **Article 15: The Right to Cultural Life and the Benefits of Science**

Chinese citizens continue to face significant restrictions in their access to uncensored information, and in the expression of any opinions critical of the government in print, other media, or on the Internet, as reflected in detentions of journalists, internet activists, intellectuals, and grassroots activists. The PRC government has also not adequately protected and respected the right of minority groups to practice their religions and engage in cultural activity. In

Xinjiang and Tibet in particular, the PRC government has increasingly invoked national security and the threat of separatism to curtail cultural and religious practices that extend to education and publications. This is in addition to government-sponsored migration policies bringing an influx of Han settlers that shift the local demographics and irreversibly alter the traditional lifestyles of the minority populations.

❖ **Recommendations**

HRIC's report concludes with two sets of recommendations, one directed at the Committee and the second at the government of the PRC. The recommendations track the articles of the Covenant and are submitted as a constructive contribution to the full review of the PRC report. They also serve as a contribution to advancing the development of concrete steps to monitor and inform legislative and other measures, and provide benchmarks for assessing ongoing compliance.

Recommendations

A. To the Committee on Economic, Social and Cultural Rights

1. HRIC urges the Committee in its review and consideration of the PRC country report to clarify the following issues in its dialogue and exchange with the government of the PRC:
 - 1.1 Identification of public consultation processes and all civic or NGO organizations consulted, including the process of consultation reporting and obstacles encountered in preparing the Government's report.
 - 1.2 Clarification of the legal definition of discrimination and relevant provisions under Chinese non-discrimination legislation (cited in the PRC country report), regarding specific protections for migrants or individuals with rural *hukou* registration.
 - 1.3 Clarification of whether the Chinese laws cited in the PRC country report create a right of action for aggrieved individuals to directly invoke provisions of the Covenant in Chinese courts; if not, clarification of what substantive and procedural rights are available; and statistics on the number of cases in which non-discrimination claims have been asserted, the bases for these claims, the dispositions and the available remedies.
 - 1.4 Clarification of budgetary allocations to meet the Government's immediate obligations of non-discrimination, its obligation to take deliberate, concrete and targeted steps towards meeting its core minimum obligations, and its obligations to progressively implement all the rights under the Covenant; the information should include the percentage of GDP allotted for primary education, health and housing measures, disaggregated by rural and urban areas, and percentage targeted for the migrant population.
2. With a view towards ensuring comprehensive review, monitoring and reporting of the PRC government's compliance with its obligations under the Covenant, the PRC government should in its next periodic report to the Committee be directed to provide the following information in addition to any areas that remain outstanding following the dialogue and exchange with the Committee:
 - 2.1 To provide a proper diagnosis and knowledge of the current situation, to properly monitor and report on its obligations under the Covenant and to more effectively inform legislative and other measures, the Chinese government should revise its data collection and revamp its poverty analysis by using population census figures rather than relying on its outdated and inaccurate data from its household registration system.
 - 2.2 To provide data regarding poverty reduction, per capita income, occupational injuries, healthcare attainment, and school attendance that are disaggregated geographically (by province, rural versus urban areas, ethnic minority areas) and demographically

(by vulnerable populations, including migrants, those with rural *hukou* status, and ethnic minorities.)

- 2.3 Report on and evaluate enforcement efforts relating to existing provisions in the Labor Law that govern minimum wage, overtime pay, maximum work hours, health and safety conditions to protect workers, with specific attention to migrant workers.

B. To the Government of the People's Republic of China

1. To fulfill its obligation under the Covenant as outlined in **Article 2**, the PRC government must develop a domestic legal order that respects and protects the people's economic, social and cultural rights by doing the following:
 - 1.1 Adopt legislation to incorporate the provisions of the Covenant in domestic law to provide a basis for the direct invocation of the Covenant rights by individuals in national courts.
 - 1.2 Develop administrative remedies, including an effective complaint process, which are accessible, affordable, timely and effective to allow individuals to seek redress of violations of their rights and to address their grievances.
 - 1.3 Develop monitoring and transparent reporting processes that do not merely focus on formal promulgation of legislation, including guidelines and mechanisms for the identification and analysis of implementation obstacles and the effectiveness of specific legislative measures in providing for the promotion, respect, and fulfillment of economic, social and cultural rights. In addition to government policy think tanks, this process should involve other national and international stakeholders and actors.
2. To fulfill its obligation under **Articles 6 and 7** of the Covenant, the PRC government needs to protect migrant workers' right to favorable work conditions, including fair remuneration for their labor, by adopting the following:
 - 2.1 Monitor the dismantling of the *hukou* system that has been announced once again by the authorities to ensure that in the transition process and in any system that replaces it, migrant workers, will be able to enjoy the same social services, housing, education and health benefits as their urban counterparts.
 - 2.2 Amend and clarify current national labor laws to explicitly recognize the special status of migrant workers and to validate the equal application of the laws that confer minimum wage and maximum work hour protections to migrant workers.
 - 2.3 Establish explicit wage enforcement mechanism that allows migrant workers to expeditiously redress wage claims, and that sets up penalties against employers who owe wages and overtime, who impose arbitrary fines and penalties, and who violate occupational safety laws.

- 2.4 Establish measures to improve the implementation and enforcement of labor law and workplace safety measures, by improving the management of local officials charged with enforcing these laws and publicizing these measures and enforcement cases.
3. To comply with its obligations under **Article 8** of the Covenant, the PRC government should respect and protect its citizens' right to form independent labor organizations by doing the following:
 - 3.1 Immediately withdraw the written declaration regarding Article 8 of the Covenant.
 - 3.2 Amend the Trade Union Act to allow workers to form independent unions outside of the structure of the All China Federation of Trade Unions.
 - 3.3 Provide greater financial resources to support public education and training on workers' rights that allow for greater worker autonomy.
4. To fulfill its obligation under **Article 9** of the Covenant, the PRC government should adopt deliberate, concrete, and targeted measures that respect its citizens' right to social security including the following:
 - 4.1 Monitor the dismantling of the *hukou* system that has been announced by the authorities to ensure that the transition process and any system that replaces it will not result in violations of the fundamental right to freedom of movement and that will not create new discriminatory barriers based on social origin against the migrant population.
 - 4.2 Establish a centralized agency to oversee the implementation of measures that make social security universal, including worker compensation coverage, regardless of place of residence or social origin.
5. To comply with its obligations under **Article 11** of the Covenant to respect and protect all its citizens' right to an adequate standard of living, which includes housing and livelihood, the PRC government should adopt the following measures and reforms:
 - 5.1 Implement and enforce laws and regulations prohibiting forcible eviction of residents.
 - 5.2 Improve transparency and oversight of all economic development that allows open, effective and meaningful consultation prior to implementing major development projects to respect the rights of local residents, including establishing a central government agency to oversee local redevelopment plans and developing guidelines to protect historic neighborhoods and vulnerable populations from displacement.
 - 5.3 Require local government and developers to set aside economic benefits derived from the displaced residents and minority community to significantly improve the lives of the community displaced by these developments, including improved housing,

schools, and other public facilities that are of good conditions, accessible and affordable to the displaced people and community.

5.4 Develop guidelines for fair compensation to consenting residents displaced by redevelopment projects based on fair market value proportionate to the value of proposed development.

5.5 Address corruption problems related to economic development and forced relocations, through:

5.5.1 Criminal prosecution of individuals and entities, including government officials who use violence, or siphon off money and resources directed for compensating dispossessed peasants and displaced residents;

5.5.2 Decouple the relationship between the promotional opportunities for local officials and measurable indicators of economic growth to create disincentives for corruption by local officials; and

5.5.3 Establish strict standards regarding conflict of interest, and implement guidelines and penalties to regulate local officials' financial stakes in redevelopment projects.

5.6 Adopt a reward system that equally values the improvement of local farmers' livelihood and measurable economic development.

6. To fulfill its obligation under **Article 12** of the Covenant, to protect its citizens' rights to the highest attainable standard of health, the PRC government must adopt measures that guarantee her citizens' equal access to a variety of facilities, goods, and services through the following:

6.1 Develop a national healthcare plan that focuses on equitable distribution of healthcare services and resources to improve access to the highest attainable standard of health by disadvantaged groups, such as the migrants, the rural dwellers, the ethnic minority groups, the urban poor, women, children and the elderly.

6.2 Allocate adequate funding to local health facilities and increase appropriation from the central government that corresponds to the increases in annual GDP.

6.3.1 To enable a balance among health education, health maintenance, epidemic prevention, preventive care and curative care;

6.3.2 To eliminate the need to overcharge patients for prescription drugs, to prescribe unnecessary drugs and undertake unnecessary procedures; and

6.3.3 To provide free vaccinations that are critical to prevent childhood diseases.

6.4 To adopt national policies to reorient the focus of the healthcare delivery system by the following:

6.4.1 Establish an effective centralized administration to oversee HIV/AIDS

education, prevention, treatment and assistance to eliminate manipulation, corruption and interference by local officials that violates individuals' human rights;

6.4.2 Encourage transparency of healthcare administration on all levels to enable early discovery, prevention and treatment of any epidemic; and

6.4.3 Promote coordination and communication between the World Health Organization and affected individuals, and to enable the health experts and policy-makers to accurately assess local health and healthcare conditions.

6.5 Augment the training of medical personnel to increase the availability of experts who can diagnose and treat HIV/AIDS and other communicable diseases.

6.6 Implement a more stringent code of professional ethics to govern the use of experimental drugs or modes of treatments.

7 To comply with its obligation under **Articles 13 and 14** of the Covenant to take deliberate, concrete and targeted measures towards the progressive realization of primary, secondary, higher and fundamental education to the more vulnerable segment of the population, including girls, migrant children, rural children and low income urban children, the PRC government should adopt the following measures and reforms:

7.1 Reform current education financing policies to allocate sufficient funds from the central government that are indexed to the annual GDP growth to support the provision of free and compulsory nine-year education to all on national, state and local levels.

7.1.1 Examine and adjust its funding allocation to appropriate money proportionate to the student population and to provide the same nine-year compulsory education of equal quality to both rural and urban students without shortening the duration or lowering the standard for rural students;

7.1.2 Allocate funds to improve the learning conditions of migrant children by upgrading school facilities, training teachers, lowering teacher-to-student ratio, and providing room and board facilities for migrant children;

7.1.3 Pay teachers on time, so as to recruit and retain qualified and committed teachers for rural students to fulfill its obligation under Article 13(2)(e) of the Covenant to continuously improve the material conditions of teaching staff;

7.1.4 Allocate resources to improve the physical conditions and academic standards of privately-run schools for migrant children and to develop an action plan to progressively integrate these schools into the public school system; and

7.1.5 Eliminate all school-related fees to make compulsory education truly free to all children.

7.2 Target economic policies to eradicate rural poverty, to improve the economic situation of China's rural areas, to ensure that rural communities and families are not

dependent on child labor, and to develop education policies that support girls' access to quality education and advancement through the education system.

- 7.3 Abolish any remaining status-based discriminatory *hukou* practices and eliminate other institutional barriers such as unattainable registration and transfer documents that denies migrant children and “out-of-plan” girls equal access to free, compulsory nine-year education.
 - 7.4 Adopt policies that require state-run public schools to enroll migrant children on the same basis as urban children and to subsidize all school-related costs for all low-income families, and to actively recruit and register school-aged migrant children and girls for appropriate level of schooling.
 - 7.5 Adopt strict oversight to ensure that funding to implement the “two waivers and one supplement” policy (exempting students from poor rural areas from paying tuition and book fees) will reach the targeted student population, i.e. those attending high school away from their hometowns.
 - 7.6 Monitor family planning policy abuses that has reinforced gender preference resulting in further discrimination against girl children, impeding girls' access to education.
- 8 To comply with its obligations under Article 15 of the Covenant, the government of the PRC should properly recognize its obligation to protect the cultural, linguistic and historic identity of the ethnic minorities by adopting and implementing laws that allow the free exercise of religion, the use and teaching of minority languages, history and culture, and the use and quiet enjoyment of their land without undue interference from the government. The government of the PRC should adopt the following measures and reforms:
- 8.1 Implement laws and regulations that recognize the Chinese people's right to practice religion in community with others, without scrutiny or prior approval from the government.
 - 8.2 Adopt practices that support academic freedom and freedom of the press, and repeal laws and regulations that penalize individuals' right to freely disseminate, publish or write academic literature or other articles.
 - 8.3 Respect its citizens' freedom to exercise their religion, by removing all references barring religious education in schools, or minors' participation in religious activities.
 - 8.4 Stop censorship of the Internet to allow its citizens to freely receive information, engage in discussion and exchange information.

I. INTRODUCTION

1. The initial country report of the People's Republic of China (PRC) under the International Covenant on Economic, Social and Cultural Rights (ICESCR) outlines formal legislative initiatives and official policies that have been adopted relating to economic, social and cultural rights, including steps to strengthen the normative framework, listing 23 such legislative enactments. Relying primarily on national aggregated data, and focusing on urban areas, the PRC government reports that there has been a dramatic improvement in people's living standards, and improvements in health, housing and education sectors, since "Open and Reform" promulgated in 1978.
2. The PRC Report acknowledges that although the Covenant has come into force in China, not all of its articles have been fully realized and many implementation challenges remain. These include the growing gap between the wealthy and the poor, the complete realization of equality for women in the political, economic, social and family spheres, work safety, HIV/AIDS and public health, with a disparate impact on rural inhabitants, especially in the Western provinces. However, the PRC Report concludes that there is no discrimination in China.¹
3. The assessment of the actual implementation of the rights under the Covenant cannot be accomplished by focusing on aggregate national data or estimates. States parties are required to pay special attention to any worse-off regions or areas and to any specific groups or subgroups that appear to be particularly vulnerable or disadvantaged.² The data provided in the PRC Report is primarily based upon overall national figures which are generally not disaggregated to provide the necessary insight into the actual situation of poverty or income disparity in rural areas or among migrants in the cities.
4. This submission by Human Rights in China (HRIC), focuses on the economic, social and cultural rights of rural inhabitants and migrants, and addresses the hidden costs of China's inequitable economic growth and the unbalanced burden it has imposed on vulnerable and marginalized groups. HRIC's report analyzes the extent to which the economic growth that has been heralded at a national level has not benefited millions of farmers living in rural areas, and documents the discriminatory effect that China's *hukou* system has had on migrant workers, limiting access to education, housing or healthcare for large numbers of migrants. In light of the extensive documentation by organizations such as Amnesty International, Human Rights Watch, the Tibet Information Network, the Tibetan Center for Human Rights and Democracy, and in other reports by HRIC, this report will not focus in detail on the extent to which ethnic minorities such as Uighurs, Tibetans, Mongolians, and others have failed to benefit from China's economic growth.
5. The industrialization policies adopted by the PRC government soon after 1949 prioritized urban over rural development and industry over agriculture, commerce and services, by extracting surpluses from agriculture to pay for urban construction and development. This policy

¹ Implementation of the International Covenant of Economic, Social and Cultural Rights, initial reports submitted by States parties under articles 16 and 17 of the Covenant, Addendum, People's Republic of China, E/1990/5/Add.59, ¶¶14–16 (June 27, 2003).

² CESCR General Comment, No. 1, ¶3, E/1989/22 (3rd Sess, 1989).

not only disadvantaged populations in the rural areas, but also prevented rural migrants from seeking benefits in the cities through the *hukou*, or residence registration system, under which individuals and families are tied to a particular place. This system of population control was enacted to support urban growth, and to keep the urban population down. Bolstered by urban food rationing, state-owned housing and controls on employment and travel, the system brought self-initiated labor migration within China to a virtual halt until the early 1980s.

6. The *hukou* system created a rigid social hierarchy that was transmitted across generations, dividing the entire population into urban and rural categories.³ Despite past and present official announcements regarding reforms or the dismantling of the *hukou* system, the system still in place prevents migrants from having equal access to housing, healthcare and work benefits. The actual implementation of any reforms, including an administrative licensing system for urban residency will need to be carefully monitored. The growing social and economic gap is also fueling increasing social unrest and instability. According to official police data for 2003,⁴ there were at least 58,000 “mass incidents” involving more than 3 million people protesting a range of issues including corruption, forced relocations and evictions, lay-offs, unpaid back-pay.

7. HRIC’s report identifies 10 articles under the ICESCR where the PRC government has failed to take appropriate and effective steps to progressively implement economic, social and cultural rights, and in particular where the government has failed in its immediate obligation to implement all aspects of the Convention without discrimination. The report examines not only the implementation of the substantive rights contained in the Convention, but also describes the problems that impede that analysis, including the control of information through the state secrets and state security regulatory framework. HRIC’s report draws extensively from a variety of sources: official PRC materials, media, academic literature, NGO reports, government reports, and studies by multilateral institutions, including the World Bank and the UNDP.

8. HRIC’s report concludes that the PRC government has not, to the maximum of its available resources, undertaken “all appropriate means” to progressively achieve the full realization of the rights recognized in the Covenant. This contributes to rising income inequality between China’s urban and rural population, between the Han and ethnic minority populations, and between its urban and migrant populations.⁵

9. As recently noted by Kofi Annan, “the world must move from an era of legislation to implementation.”⁶ Despite extensive promulgation of reform legislation and policies by the PRC government that have generated rapid economic growth, HRIC’s report concludes that the PRC government needs to report, monitor and evaluate more systematically and concretely the extensive formal legislation’s progress towards implementation. That legislation and implementation must be evaluated in light of substantive steps taken to respect, protect, promote

³ Human Rights in China, *Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China’s Major Cities*, (HRIC: November 6, 2002), 7; Hein Mallee, “China’s Household Registration System under Reform,” *Development and Change* 26, No. 1, (1995).

⁴ “A Chronology of Unrest,” *China Rights Forum* No. 1, (2005), 20.

⁵ See paragraph 14 below.

⁶ United Nations, *In Larger Freedom: Towards Development, Security, and Human Rights for All; Report of the Secretary General*, (United Nations General Assembly 59th Session, March 21, 2005).

and fulfill the rights enshrined in the Covenant and their impact on all of the PRC's citizens, especially vulnerable groups.

II. PROGRESS UNDER SPECIFIC ARTICLES OF THE ICESCR

ARTICLE 2: MEASURES TAKEN TO GUARANTEE THE FULL REALIZATION OF RIGHTS

A. Immediate Obligation of Non-Discrimination

10. Although the Covenant provides for progressive realization of rights, and acknowledges that developing countries face resource constraints, some obligations are of immediate effect. First, each State party must implement the rights under the Covenant without discrimination, which includes non-discrimination based on “national or social origin” and “other status,” which would encompass migrant populations. Second, there is a positive obligation to “take steps” which should be deliberate, concrete and targeted towards realizing the rights recognized in the Covenant.⁷ In addition, States are required to pay particular attention to “any worse-off regions or areas” and “any specific groups or subgroups which appear to be particularly vulnerable or disadvantaged.”⁸ Further, States are required to “ensure the satisfaction of, at the very least, [a] minimum essential level[] of each of the rights.”⁹

11. While the PRC's report focuses on economic development and progress in urban areas, and while it acknowledges that problems remain, it fails to acknowledge and detail the extent to which vulnerable populations have failed to benefit from the economic progress that China has indeed gained since launching “Open and Reform” in 1978. China has been moving constructively forward, and has, for example, enabled some 270 to 290 million people to emerge from absolute poverty between 1981 and 2001,¹⁰ but that growth and progress has not been achieved without discrimination.

12. Despite the reported dramatic annual economic growth averaging 9.5 from 1983–1993 and 7.7 since 2003,¹¹ China is also facing unprecedented inequality between its urban and rural residents and between its settled and migrant population.

13. Although this unequal growth is not analyzed in the PRC Report, overall inequality in disposable income has steadily increased since 1981, with the Gini index rising from 28.8 in 1981, to 41.6 in 1999.¹² Income disparity continues to increase at an annual index of 2.71

⁷ CESCR General Comment 3, The Nature of States parties obligations (Art. 2, par.1), ¶1, E/1991/23 (5th Sess. Dec. 14, 1990).

⁸ General Comment No. 1, Reporting by States Parties, ¶3, E/1989/22 (3rd Sess. 1989).

⁹ General Comment No. 3, The Nature of States parties Obligations, ¶10, E/1991/23 (5th Sess. Dec. 14, 1990).

¹⁰ Shaohua Chen and Yan Wang, “China's Growth and Poverty Reduction: Recent Trends Between 1990 and 1999,” World Bank Policy Research Working Paper, No. 2651 (July 18, 2001), 2, <http://ssrn.com/abstract=285259>.

¹¹ World Bank, “China at a Glance,” September 21, 2004, http://www.worldbank.org/data/countrydata/aag/chn_aag.pdf.

¹² *China: An Evaluation of World Bank Assistance*, (Washington, D.C.: World Bank Operations Evaluations Department, 2004), Annex R, Table R-8. With cost of living adjustment, the Gini coefficient that denotes income disparity is 27.98 in 1981 and 36.37 in 1999; Martin Ravallion & Shaohua Chen, “China's (Uneven) Progress Against Poverty,” World Bank Policy Research Working Paper, No. 3408 (September 2004), 46, Table 10.

between 1999 and 2001, with the rural regions lagging far behind.¹³ China's income disparity between the rich and the poor is worse than that of both India and Indonesia, at 34.3 and 32.5 respectively.¹⁴ This disparity in income is reflected in China's overall economic growth, which has been "uneven, with widening regional income inequalities and the emergence of vulnerable urban groups,"¹⁵ and has also begun to slow, and in some cases has stalled.¹⁶

14. Further, despite the fact that overall poverty levels have been declining, in 2003, for the first time in more than two decades, by China's own calculation, the number of people living below the poverty line increased by more than 800,000 after a steady decline for 25 years.¹⁷ That poverty disproportionately impacts vulnerable populations, including migrants, rural inhabitants, ethnic minorities, and women.

15. Following "Open and Reform," the PRC government made policy choices that focused on economic growth in urban areas that contributed to inequalities between and among its urban and rural residents. These resulting inequalities, documented in the submission below, have undermined the PRC's obligations under the Covenant, and suggest that there have not been proportional deliberate, concrete and targeted steps taken towards meeting its obligations. Specifically—notwithstanding legislative protection of non-discrimination—this submission suggests that the PRC government's policies have not led to an enjoyment of economic growth by all equally. Indeed, while policies have favored growth in the secondary (manufacturing and construction) and tertiary (services and trade) sectors to induce rapid growth, the impact has contributed to the already widening income disparity between and within the rural and urban populations during the past two decades.¹⁸ Furthermore, as this report will demonstrate, specific programs have not been implemented that seek to protect and fulfill the substantive rights under the Covenant.

B. Obligation to Report on Worse-Off Areas and Particular Disadvantaged Groups

16. The PRC Report under the ICESCR largely uses national, aggregate data that cannot provide a complete assessment of its progressive implementation of the rights under the Covenant, particularly insofar as worse-off regions and vulnerable populations are concerned. The overall national figures on poverty reduction do not provide the necessary insight into the actual situation of standard of living, education or health. Aggregated data simply cannot convey an accurate picture of living standards and other rights for migrants, for example, in a country that has experienced such large-scale rural-to-urban migration. Many migrants are rural

¹³ Ravallion and Chen, 46, Table 11. "Investigators indicate the income distribution gap between the 10 per cent richest and poorest families was more than eight fold in 2004, . . . adding that the Gini index which measures the degree of income inequality was approaching 0.47, higher than the international alert line of 0.4." Jiang Xuezhou, "Steps to Narrow Rich-poor Gap Needed," *China Daily*, March 11, 2005, http://www.chinadaily.com.cn/english/doc/2005-03/11/content_423789.htm.

¹⁴ United Nations Development Programme, *Human Development Report 2004: Cultural Liberty in Today's Diverse World*, (New York: UNDP, 2004), Table 14, 190.

¹⁵ World Bank, "China Brief: Economic Achievements and Current Challenges," (Washington, DC: 2005), 1.

¹⁶ "In the 20 year period after 1981, the proportion of the population living below our new poverty lines fell from 53 percent to eight percent. However, there were many setbacks for the poor. Poverty reduction stalled in the late 1980s and early 1990s, recovered pace in the mid-1990s, but stalled again in the late 1990s. Half of the decline in poverty came in the first few years of the 1980s. Some provinces saw far more rapid progress against poverty than others." "China's (Uneven) Progress," 2.

¹⁷ "Why the Increase Instead of Decrease of Poverty Population?," *People's Daily*, July 21, 2004, http://english.people.com.cn/200407/21/eng20040721_150336.html.

¹⁸ See generally, "China's (Uneven) Progress."

residents that move to urban areas temporarily or seasonally to work and send money home to support their rural families. Yet, the population and income statistics of urban and rural households gathered by the China's National Bureau of Statistics are samples based on China's registration system rather than on the population census,¹⁹ meaning that "someone from rural registration who has moved to an urban area is effectively missing from the sample frame."²⁰ Thus, rural families who receive money from migrants earning higher income are captured in the rural household surveys, but the migrants who earn less than their urban counterparts are missing in the urban household surveys. In effect, the poverty figures produced by the government tend to have an upward bias in both its urban and rural surveys.

17. In addition, the PRC Report does not consistently use international standards in its determination of the extent to which living standards and other rights have been implemented. For example, the Chinese government establishes the poverty level at 637 *yuan* per year,²¹ which is less than the "dollar a day" standard established by the World Bank.²² By the PRC's standard, 4.6 percent of the population lives in abject poverty, but the figure rises to 16.6 percent of the population if the international standard is applied.²³

18. By using aggregate data in an analysis of the implementation of rights under the Covenant to the entire population, vulnerable populations in effect become invisible. As such, the Covenant's directives on non-discrimination and attention to disadvantaged groups cannot be accurately determined. In the sections below on the implementation of substantive rights, HRIC will draw attention to those groups, and the extent to which they have or have not been able to benefit from China's overall economic progress.

19. In addition to using largely aggregated data, the general system of information control in place in China through the state secrets regulatory framework impedes giving effect to the rights under the Covenant because accurate and complete information does not inform the policy choices the government makes. The state secrets legislation is broad and vague in scope, and includes a number of catch-all clauses. State secrets are defined as "matters that affect the security and interests of the state,"²⁴ including matters as vague as those that are classified as state secrets by the state secrets bureaus. The fact that information can also be classified retroactively on the basis of "consequences" and that there is no way to challenge that classification has serious implications for access to information of overriding public concern. Furthermore, the pervasive control and regulation of information by the PRC government through state secrets, state security, and other laws, social and police controls, and censorship technology, not only undermines effective monitoring and review of China's compliance with

¹⁹ Ravallion and Chen, 4–5.

²⁰ *Ibid.*

²¹ "Current poverty line gives false picture," *China Daily*, January 13, 2005, http://news.xinhuanet.com/english/2005-01/13/content_2454326.htm.

²² The World Bank established the "dollar a day" standard to measure poverty in 1985. By this standard, more than 200 million Chinese still live in poverty, and many of them live in remote and resource-poor areas in the western and interior regions. The World Bank, "Economic Achievement and Current Challenges," *World Bank in China*, March 2005, http://www.worldbank.org.cn/English/Overview/overview_brief.htm#L1_0.

²³ World Bank, *2004 World Development Indicators*, (Washington, D.C.: Development Data Center, 2004), 54.

²⁴ Law on the Protection of State Secrets of the People's Republic of China (中华人民共和国保守国家秘密法), Art. 2, adopted on September 5, 1988, in effect on May 1, 1989.

the Covenant, but also impedes its ability to formulate properly designed policies and programs that facilitate public scrutiny and participation.

C. Obligation to Provide Appropriate Means of Redress

20. In addition to requiring non-discriminatory implementation of the Convention, all States parties are under the obligation to give effect to the Covenant in the domestic legal order, applied flexibly, but coexisting with the obligation to use “all appropriate means” to progressively realize the rights in the ICESCR.²⁵ Thus, “appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place.”²⁶

21. Since “Open and Reform,” the PRC government has gone a long way to establish a strong normative legal framework in a number of areas. This building of the legal system was “shaped by the views of Deng Xiaoping that there must be laws for people to follow, the laws must be observed, law enforcement must be strict, and law breakers must be dealt with accordingly.”²⁷ The commitment to strengthening the rule of law is reflected in the vast volumes of laws passed and adopted by the central and local governments during the past 25 years. However, the legal system continues to pose the challenges of vague legislation, lack of an independent judiciary, and trained legal personnel.²⁸ The Administrative Litigation Law, adopted on April 4, 1989, provides for citizens to sue officials for abuse of authority or malfeasance. As of 2002, of the total 913,091 cases accepted by the court, less than 20 percent of the cases were found in favor of the plaintiff.²⁹ In addition, there is a shortage of legal aid for indigent clients who need representation. As a result, petitioning the government often remains the last resort for ordinary people to redress wrongs within the legal framework.

22. Petitioning the central government in Beijing is a centuries-old practice for peasants who exhausted all local avenues for redress. A report made at the Tenth National People’s Congress (NPC) held in Beijing in March 2005 indicates that the Supreme People’s Court handled nearly 150,000 petition cases in 2004; petition cases at local courts stood at 4.22 million.³⁰ While petitioning remains an important outlet for citizens to complain on issues such as unpaid wages, loss of land to corruption, forced evictions and other economic, social and cultural rights, the central government has grown increasingly impatient towards petitioners. During the Tenth NPC, hundreds of thousands of people sought to petition the government; not only were their grievances not addressed, many were also harassed, beaten, detained and fined by the public security. The use of Public Security and detentions to clamp down on petitioners raises questions regarding violations and abuses of the rights of these petitioners, and also undercuts the petition system as an effective means of grievance and redress.

²⁵ General comment 9, Domestic Application of the Covenant, ¶1, E/1999/22 (19th Sess. 1998).

²⁶ *Ibid.*

²⁷ Yuwen Li, “Judicial Independence: Applying International Minimum Standards to Chinese Law and Practice,” *China Information* XV, no. 1, (2001), 67.

²⁸ See e.g. Yuwen Li, “Court reform in China: problems, progress and prospects,” in: Chen, Jianfu, Li, Yuwen, Otto, Jan Michiel, (eds.), *Implementation of law in the People’s Republic of China*, (The Hague: Kluwer Law International, 2002), 55–83.

²⁹ Songnian Ying, “The Revision of the Administrative Procedure Law Unavoidable,” 2002, mimeo in Chinese available for download at <http://www.procedurallaw.com.cn/article.html?id=2541>.

³⁰ “Increasing Number of Petitions Reported in 2004,” *Xinhua News Agency*, March 9, 2005, http://news.xinhuanewsnet.com/english/2005-03/09/content_2671719.htm.

23. As the below sections on the implementation of the substantive rights of the Charter demonstrate, while there is no effective or judicial avenue for the redress of wrongs, there remains a *de facto* judicially-implicated system of exclusion for millions of migrant populations. In addition to curtailing workers' rights to freedom to form independent unions, the maintenance of the *hukou* household registration system denies millions of migrants health care, social security, social services, shelter and education. Furthermore, an unequal land ownership system outside the urban areas continues to disadvantage the hundreds of millions of China's rural residents. Without viable avenues for redressing violations under the Convention, the substantive rights embodied therein remain out of reach for millions of China's citizens, particularly its vulnerable populations that already face these legally-perpetuated inequalities.



ARTICLES 6 AND 7: THE RIGHT TO WORK AND THE RIGHT TO JUST AND FAVORABLE WORKING CONDITIONS

A. Overview of the Situation of Migrant Workers

24. Articles 6 and 7 of the Covenant comprise the right to work and the right to just, favorable, safe working conditions. States parties are under an immediate obligation to take steps to implement these articles of the Covenant without discrimination. The restrictions that China's migrant population faces, however, suggest that the PRC government has failed to use all available resources to ensure non-discrimination.

25. Since the 1980s, with growing rural to urban migration, migrant workers have provided essential labor in developing China's urban centers and industrial areas. Indeed, migrants "not only help build skyscrapers in cities, but also speed up the development of their hometown."³¹ They make huge sacrifices individually³² and as family units.³³ Yet, the government has been slow to implement deliberate, concrete and targeted policies to protect migrant workers' lives or livelihood. Despite their near-permanent presence in the urban areas, they have no right to settle in the cities, and face exclusion from basic services there, such as education and healthcare, through the *hukou* system that remains operational throughout China, and that impacts on migrants' right to work and right to safe working conditions.

26. The size of China's migrant population today is now estimated at 210 million,³⁴ and the number of migrant workers is projected to grow at a speed of five million every year.³⁵ Because

³¹ "Moving Millions Rebuild a Nation," *China Daily*, October 2, 2004, <http://www.china.org.cn/english/China/108570.htm>.

³² See discussion about migrant children's lack of access to equitable education opportunity above. Women are often the first to be laid off when enterprise downsized; industries such as textile have seen the largest downsizing, which is also where a lot of female migrant workers work. "Labor Rules Give Workers More Security," *China Internet Information Center*, December 1, 2004, <http://www.china.org.cn/english/2004/Dec/113685.htm>. See also: "Survey: Migrants' Unsatisfactory Sex Life," *China Daily*, November 11, 2004, http://www.chinadaily.com.cn/english/doc/2004-11/11/content_390635.htm.

³³ Millions of China's rural families are split up in various parts of the country with few opportunities to live as a family unit. Jim Yardley, "Rural Exodus for Work Fractures Chinese Family," *New York Times*, December 21, 2004.

³⁴ "Let's protect migrant workers," *Xinhua News Agency*, April 5, 2005, http://news.xinhuanet.com/english/2005-04/04/content_2783301.htm.

³⁵ "Moving Millions Rebuild a Nation," *China Daily*, October 2, 2004, <http://www.china.org.cn/english/China/108570.htm>.

of the lack of investment in developing agriculture and the rural areas resulting in limited employment opportunities, migrants move to the cities, willing to take jobs that are considered too dirty, dangerous or ill-paid for urban residents. Roughly one in seven migrants is under eighteen years of age;³⁶ more than 60 percent are men,³⁷ but few remain in the migrant job market beyond the age of forty because of exhaustion and deteriorating health resulting from hard labor.³⁸ Most migrant workers do menial jobs; some male migrant workers work in construction, while female migrant workers are employed in factories producing garment, footwear, electronics or sports equipment.

27. Despite the fact that the rapid development and “economic miracle” that China has gained was to a great extent built on migrant worker labor, migrants are regarded as transients³⁹ in cities and have not shared equally in the social, economic⁴⁰ and cultural benefits associated with economic growth. Specifically, as will be detailed below, migrants face: (1) Unpaid wages and unreasonable wage-withholding and deductions by employers; (2) unsafe working conditions, and (3) lack of social security protection and other benefits. Despite numerous attempts at reform aimed at improving the situation of migrant workers, few have come to fruition due to a lack of political will. Local governments continue to vacillate between recognizing the presence of the migrant workers and regulating their existence,⁴¹ meaning that the rights under the Covenant, including the right to work, remain out of reach for China’s migrant population.

B. The Right to Fair Wages

28. Despite the hardships that migrants face in the cities, work in the urban areas remains a vital source of their livelihood. In 2003, annual migrants sent 370 billion *yuan* (US \$45 billion) back to family members, representing 40 percent of all rural incomes, contributing to the increase in per capita GDP in rural China.⁴² A survey of 20,089 rural households across China’s

³⁶ *Ibid*; “Some Ten Percent Migrant Children Drop out of School,” *People’s Daily*, November 6, 2004, http://english.peopledaily.com.cn/200411/06/eng20041106_163015.html.

³⁷ See e.g. Weiping Wu, “Migrant Housing in Urban China: Choices and Constraints,” *Urban Affairs Review* 38, no.1 (Sept 2002), 90, 92, Table 1.

³⁸ “Moving Millions Rebuild a Nation,” October 2, 2004. As noted by Jim Yardley, “For the Yang family and millions of others in the Chinese countryside, the only way to survive as a family is not to live as one. Migrant workers . . . are the mules driving the country’s stunning economic growth. And the money they send home has become essential for jobless rural China.” Yardley, December 21, 2004.

³⁹ Perception of migrant workers has gone through three stages. During the 1980s, migrant workers were called *mangliu*, translated literally as “blind streams,” an unplanned rural-urban migration that was considered negative influence. In the 1990s, migrant workers are called the “three have-nots,” a group who did not have *hukou* registration in the city, employment permit or proper identification. By the turn of the century, they were finally grudgingly recognized as *mingong*—migrant workers. See “Moving Millions Rebuild a Nation,” October 2, 2004.

⁴⁰ A recent news account reports that monthly wages for migrant workers in the Pearl Delta area has only increased 68 *yuan* per month compared to 12 years ago. “Labor Officials Analyze the Cause of Migrant Worker Shortage,” *Wen Wui Bao*, March 15, 2005, http://www.wenweipo.com/news.phtml?cat=001YO&news_id=YO0503150010&PHPSESSID=16d4fc6e74677266b95e99e1aed1a959&PHPSESSID=dadddad745ceee5ff754ba21a6e6340c.

⁴¹ “Beijing Debates Barring Migrants from Rest of China,” *Agence France-Presse*, January 26, 2005; “New Law to Guarantee Free Migration,” *Xinhua News Agency*, March 3, 2005, http://news.xinhuanet.com/english/2005-03/03/content_2642793.htm.

⁴² John Chan, “New Year for China’s Rural Migrant Workers,” World Socialist Web Site, February 22, 2005, <http://www.wsws.org/articles/2005/feb2005/chin-f22.shtml>; James Kynge, “China’s Urban Workforce Fuels Rural Economy,” *Financial Times*, Feb. 25, 2004, www.ft.com; The National Bureau of Statistics stated that average incomes for China’s farmers rose 6.8 percent in 2004, which is the largest increase in seven years. “China Offers More Jobs to Migrant Millions,” *Xinhua News Agency*, March 3, 2005, http://news.xinhuanet.com/english/2005-03/03/content_2642200.htm.

31 provinces shows that the net average annual income of migrant workers was 3,768 *yuan* in 2003,⁴³ wages that have not increased much since the late 1980s.⁴⁴ Compounding the problem of low wages, millions of migrant workers have no assurance that the wages that they should be making on paper actually ends up in their pockets. In 2004, the All-China Federation of Trade Unions (ACFTU) reported that up to 100 billion *yuan* (US\$12.1 billion) in unpaid wages is owed to migrant laborers,⁴⁵ with a nationwide investigation indicating that a total of 360 billion *yuan* (US \$43 billion) related to 124,000 projects is owed to workers in various sectors.⁴⁶ This is on top of various deductions and fines that employers regularly levy on those workers.⁴⁷ Migrants who work on construction projects customarily receive only a below-subsistence stipend during the course of the construction, and generally do not receive their wages until the project is completed. Often, they receive no pay at all if the project is suspended.⁴⁸ Migrant workers are also routinely assigned back-breaking work loads, are made to work excessive hours and are not paid overtime.⁴⁹

29. Recent legislative proposals to punish employers who owe wages to workers are a good start. Although China's 2005 White Paper on Human Rights reported that 33.2 billion *yuan* owed to workers had been paid by the end of 2004,⁵⁰ new unpaid wages continue to stack up. The situation is especially serious in the construction industry, where there are multiple levels of contractors and subcontractors and where the default rate is the highest.⁵¹ Under the scheme proposed by the Ministry of Construction, construction companies that delay paying wages to their workers can be fined up to 300,000 *yuan* (US \$36,300).⁵² Such measures, if passed, remain piecemeal, and will still leave behind millions of migrant workers who labor in other unprotected sectors, with serious implications for article 7 of the Covenant, which covers just working conditions, including fair remuneration. The chronic situation of unpaid wages and harsh working conditions have convinced many migrant workers to return to their hometown, resulting in a recent labor shortage in many urban centers.⁵³

C: The Right to Just and Favorable Conditions of Work

⁴³ Kyngé, February 25, 2004.

⁴⁴ "Moving Millions Rebuild a Nation," October 2, 2004.

⁴⁵ Guo Zi, "Protecting migrant workers' rights," *China Daily*, December 4, 2004, www.factiva.com.

⁴⁶ "Vice Premier Demands Pay for Migrant Workers," *China Daily*, August 24, 2004, <http://www.china.org.cn/english/2004/Aug/104941.htm>.

⁴⁷ One woman who worked in a factory making metal received a US \$72 pay cut for leaving work without having worked a full year. Her husband receives just half of the \$12 monthly spending money because he had to miss work due to sickness. Jim Yardley, Dec. 21, 2004. Workers in factories in other parts of China often have to pay for overcrowded dormitory space, inedible cafeteria food, or fines for forgetting to wear identification badge, forgot to turn off electricity, being late or sick. See "The Other Toy Story: Workers' Rights in China," *China Rights Forum*, no. 1 (2005), 93.

⁴⁸ Yardley, Dec. 21, 2004.

⁴⁹ John J. Sweeney, "China's Workers and the World," *China Rights Forum*, no. 3 (2004).

⁵⁰ "China White Paper," April 2005.

⁵¹ A team leader of a defunct luxury development in Beijing found insurmountable obstacles in trying to claim back wages. Josephine Ma, "Unpaid Workers Have a Score to Settle," *South China Morning Post*, February 8, 2005.

⁵² Wu Chong, "Unpaid Migrant Workers Soon See Pay," *China Daily*, November 11, 2004, http://www.chinadaily.com.cn/english/doc/2004-11/11/content_390692.htm.

⁵³ Zhao Xiaojian, "'Mingong Huang' Migrant Worker Shortage: Silent Warning Sign Sign [民工荒：无言的警示]," *Caijing* [财经], 123 (December 12, 2004), 7; Leu Siew Ying, "Guangdong to Suspend Migrant Hiring Ban," *South China Morning Post*, January 13, 2005; "'Our boss offered us 100 *yuan* for each worker we introduce, but working conditions are so bad I won't ask my relatives to come here,' he said." Leu Siew Ying, "Officials Refuse to Admit Labour Crisis," *South China Morning Post*, February 26, 2005.

30. Article 7 of the Covenant covers the right of everyone to “the enjoyment of just and favorable conditions of work,” which includes safe and healthy working conditions and reasonable limitations on working hours. In addition, the right to a safe working environment must be viewed in light of the international right to health, which comprises the right to a safe working environment and hygienic working conditions. The Covenant therefore imposes upon the government an obligation to safeguard against occupational accidents and diseases by preventing and reducing the population’s exposure to harmful substances or other detrimental environmental conditions that directly or indirectly impact upon human health. It also requires the government to minimize causes of health hazards inherent in the working environment, and to take measures to ensure adequate housing and safe and hygienic working conditions.⁵⁴ Governments must also take all necessary steps to safeguard against third party infringement, which can arise from the government’s failure to regulate activities of individuals, groups or corporations so as to prevent them from violating the right to health of others, or from failing to protect workers from practices detrimental to health.⁵⁵

31. Further, migrant workers are also often forced to put in 15-hour work days, seven days a week, without adequate rest-time, a direct violation of Article 7 of the Covenant, which states that work conditions should ensure “rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.” The long hours are also often not accompanied by overtime wages. This practice, which is prevalent in all sectors employing migrants, is in clear violation of the Chinese Labor Law. The Law specifies that there be a maximum work week of 40 hours, with maximum overtime of not more than 36 hours per month. Employers are required to pay one and a half to three times overtime pay if workers work overtime during normal work days, days off or public holidays.⁵⁶ The law also requires that workers be paid monthly, but employers often ignore that provision. Migrant workers who attempt to seek fair payment of wages or improvement of working conditions are often met with violence themselves.⁵⁷ Others who have attempted to defend workers’ rights have been detained and sentenced.⁵⁸

⁵⁴ CESCR General Comment, No. 14, ¶15, E/C.12/2000/4 (22nd Sess. Nov. 8, 2000).

⁵⁵ CESCR General Comment, No. 14, ¶51, E/C.12/2000/4 (22nd Sess. Nov. 8, 2000).

⁵⁶ Labor Law of the People’s Republic of China (中华人民共和国劳动法), Articles 36, 41 & 44, adopted July 5, 1994, in effect on January 1, 1995.

⁵⁷ Seven migrant workers in Shenyang attempted suicide by swallowing sleeping pills after failing to reclaim back wages, four remained in critical condition. “Seven Migrant Workers Attempted Suicide after Failed Back Wage Claim Claim [七农民工讨薪失败一起自杀],” *The Beijing News*, October 27, 2004, <http://www.thebeijingnews.com/news/2004-10-27/2004102740305.htm>. In a Zhuhai construction site, employer confined twenty-five workers coming to claim back wages and sent thugs to beat them up. “Premier Wen Jiabao Reviewed Guangzhou Migrant Worker Incident [温家宝批示广州民工讨薪遭殴打事件],” *East Day*, November 11, 2004, <http://news.eastday.com/eastday/news/news/node4938/node39569/userobject1ai643158.html>. In Shenzhen, several thousand workers attempted to demonstrate against unfair deduction of their wages clashed with police sent to maintain order. “Thousands from Taiwanese-Owned Shenzhen Factory Clashed with Police,” *Dajiyuan*, February 3, 2005, <http://epotimes.com/gb/5/2/3/n802708.htm>. In Nanjing, workers staged sit-in for ten days because of wage dispute; in Wenzhou, 100 workers blocked highway for hours over back-pay. Shi Jiangtao, “Nanjing Adds to Growing Protest Tally,” *South China Morning Post*, November 5, 2004.

⁵⁸ “Shanxi Police Arrested About Twenty Labor Activists,” *Radio Free Asia* November 3, 2004; “Workers Jailed Over Pay Protest Released,” *Agence France-Presse*, January 3, 2005. See also, *Institutionalized Exclusion: The Tenuous Legal Status of Internal Migrants in China’s Major Cities*, Human Rights in China, November 6, 2002, 76-113.

32. Workplace safety remains a serious issue throughout China, and impacts on the many migrant workers who labor in factories in China's urban and peri-urban areas. A recent report from the central government bureau overseeing work safety showed that 700,000 workers became disabled annually due to industrial accidents, a vast majority of whom are migrants.⁵⁹ Eighty-three percent of enterprises in the surveyed urban areas had varying degree of occupational hazards; in one city, Hefei, less than one percent of its 600,000 migrants are covered by insurance.⁶⁰ Another report also shows that as the country's GDP rises, so does the incidence of industrial accidents. Relevant research suggests that every percentage point increase in China's GDP beyond five percent brings about a 2.2 percent increase in fatalities caused by industrial accidents. The rate of increase in fatalities will rise further when China's GDP growth is beyond seven percent.⁶¹ These figures suggest that despite China's economic development, there has not been similar progressive implementation of the right to safe working conditions.

33. A survey of industrial accidents in Shenzhen estimated that there were 15,000 industrial accidents in 1998, ninety percent of which involved the loss of limbs, palms or finger-parts,⁶² the high incidence of accidents did not improve in 2004—a factory that specializes in reconnecting broken fingers has carried out an average of one surgery per day over the past decade.⁶³ The Pearl River Delta study documenting these cases only touches that region, showing the precarious conditions that millions of China's workers live in. The poor working conditions have prompted many to return to the countryside,⁶⁴ causing an unprecedented migrant worker shortage in the magnitude of one to two million.⁶⁵

34. The right to safe working conditions is also impacted by the lack of adequate safeguards against materials used in production. The Ministry of Health recently reported that about 200 million Chinese are threatened by occupational diseases, and there are currently a total of 580,000 pneumoconiosis cases, possibly more than a million if unreported cases are included, and 10,000 new cases every year.⁶⁶ Pneumoconiosis is a occupational respiratory disease caused by long-term inhalation of dust, especially mineral or metallic dust. In addition, there are 30,000 cases of poisoning on production lines annually, and another 1500 deaths caused by similar

⁵⁹ This number is probably only a fraction of what actually happened, since industrial accidents are generally guarded as secrets internal to relevant government bureaus or are classified as state secrets, the reported numbers are far below the reality. See "Labor and State Secrets," *China Rights Forum*, no. 3 (2004), 23.

⁶⁰ "Survey Finds Migrant Workers' Conditions Worrisome, Experts Urge to Extend Same Treatment as Local Residents [调查显示民工境遇堪忧 专家称应让其享市民待遇]," Chinese Newsnet, October 12, 2004, http://www1.chinesenewsnet.com/gb/MainNews/SinoNews/Mainland/zxs_2004-10-12_493148.shtml.

⁶¹ "Rise in Industrial Accidents and Fatalities Correlates with Rise in GDP," *Mingpao Daily*, March 15, 2005, http://full.mingpaonews.com/20050315/t_cae1.htm.

⁶² "A Survey of the Living Conditions of Migrant Workers in the Pearl River Delta, When will Machine Stop Eating Human"? [珠三角农民工生存状况调查:机器吃人何时了?], *East Day*, January 2, 2005, <http://china.eastday.com/eastday/news/node37955/node37957/node37979/node45365/userobject1ai767129.html>.

⁶³ "A Survey of the Living Conditions of Migrant...", January 2, 2005.

⁶⁴ Kathleen E. McLaughlin, "It's Chinese New Year, Will Workers Get Paid?," *Christian Science Monitor*, February 1, 2005.

⁶⁵ "South China Faces Acute Labor Shortage," *Xinhua News Agency*, Mar. 3, 2005, <http://china.org.cn/english/2005/Mar/121578.htm>

⁶⁶ "Conference on Occupational Respiratory Diseases to be Held," *Xinhua News Agency*, January 7, 2005, http://news.xinhuanet.com/english/2005-01/07/content_2429347.htm.

poisoning.⁶⁷ Many workers fall below the poverty line because of occupational diseases⁶⁸ and lack of access to insurance. Rural farmers in some parts of China have borne the brunt of these occupational diseases, leading to the emergence of “pneumoconiosis villages” or “poison villages.”

35. The failure to protect the right to a safe working environment, especially in the mining industry, has caused an average of 18 deaths per day. While China produces 35 percent of the world’s coal, it accounts for 80 percent of the global deaths in the industry.⁶⁹ In one particularly serious mining accident in February 2005, in Fuxin, Liaoning Province, 214 miners died and 20 others were injured. Indeed, coal production, metallurgy, building materials, machinery and chemicals are the most dangerous industries for workers. The piecemeal information available reflects an alarming situation: a joint study by the Chinese ministries of health and agriculture, covering some 30,000 town and village enterprises employing 120 million workers across China, found that approximately 15 percent of all employees suffered from confirmed or suspected occupational illnesses; 40 percent of work sites “were not in compliance with national occupational health standards,” and 83 percent of the workplaces surveyed featured at least one occupational hazard.⁷⁰

36. The information available suggests already serious implications for progressive realization of the right to safe working conditions, yet it is difficult to ascertain the complete picture of occupational accidents and deaths because the data are generally classified as state secrets.⁷¹ Transparent official information about the root causes and human cost of accidents is unavailable across industries and injuries, which range in seriousness from the undefined “major heinous accidents” to minor workplace accidents, disfigurements and dismemberments of workers. For example, in the recent Fuxin mining accident, paramilitary police immediately closed off the accident scene, barring access to news reporters and families of the victims. The State Publicity Bureau also ordered Liaoning media to refrain from reporting on the accident.⁷² This official reaction is the norm rather than the exception. A striking example of the potential scope and depth of official collusion in covering up catastrophic accidents is the case of the Fanglin village school firework factory, where in March 2001, an explosion at the school in Wanzhai, Jiangxi Province in March 2001 killed at least 41 children and three teachers. Government officials initially characterized the explosion as an attack by a “madman,” while central authorities, including then-Premier Zhu Rongji, denied reports that it was caused by the production of fireworks by child laborers.⁷³ Reporters trying to investigate the case were prevented from reaching the school by roadblocks, local residents were reportedly not allowed to gather in the village, and the bodies of victims were quickly cremated or buried before further

⁶⁷ “Occupational Diseases Taking Serious Toll [我国职业病危害严重],” *China Youth Daily*, Mar. 17, 2005, http://zqb.cyol.com/gb/zqb/2005-03/17/content_1050585.htm.

⁶⁸ *Ibid.*

⁶⁹ Shi Ting, “First Victims Cremated under Tight Security,” *South China Morning Post*, Feb. 19, 2005.

⁷⁰ “Occupational Health Hazards Facing China’s Workers and Possible Remedies,” *World Bank Transition Newsletter* 13(2002), no. 4-5.

⁷¹ “Labor and State Secrets,” 23.

⁷² “Officials Barred Media Coverage of the most Serious Mining Accident of the Last Half Century,” *Apple Daily*, February 16, 2005.

⁷³ “Labor and State Secrets,” 23, 27-28, n.15.

investigations could take place.⁷⁴ Fanglin villagers alleged that teachers had been forcing the children to make fireworks for the past three years in order to pay for their tuition. The incident attracted widespread media coverage, but negative commentary was cleared from Chinese Internet chat rooms, including Sina.com.⁷⁵ Ultimately, the authorities apologized and acknowledged that the explosion had occurred because children were producing fireworks at their local school.⁷⁶

37. The lack of adequate protection for workers in factories, mines and elsewhere is particularly serious when access to information is impeded by the state secrets regulatory framework, and suggests that an adequate review of the PRC government's compliance under these articles of the Covenant is impeded by the State's unwillingness to make such information publicly available. The effect of this lack of transparency particularly impacts on vulnerable groups—migrant workers and rural residents—who make up such a large population of those working in the factories and mines.



ARTICLE 8: THE RIGHT TO JOIN A TRADE UNION OF ONE'S CHOICE

38. The PRC's declaration regarding Article 8.1(a) states that the application of Article 8.1(a) shall be consistent with the relevant provisions of the *Constitution of the People's Republic of China*, *Trade Union Law of the People's Republic of China* and *Labor Law of the People's Republic of China*.⁷⁷ However, this declaration sidesteps the government's obligation to modify its domestic legal order to conform and implement its obligations under the Covenant. The right to join a trade union of one's choice is a necessary precondition for workers' ability to seek remedies when the government may have violated other rights guaranteed by the Covenant.

⁷⁴ Zhu Rongji was quoted as stating in a televised interview that the blast was set off by a recently divorced deranged suicide bomber and it is not the case that the primary school was attempting to make profits by renting out space to store fireworks. "Chinese Leader and Parents in Dispute Over School Explosion," *New York Times*, March 9, 2001, 8.

⁷⁵ "Chinese Chatrooms Cleared of School Blast Critics," *CNN*, March 10, 2001.

⁷⁶ There are many instances of government suppression of information on industrial accidents. For example, at the Hebei Xinguang Chemical Industry Limited Company, an explosion at the factory on February 22, 2004, resulted in nine deaths, one injury and four missing persons. Several local hospital staff reported that they had been told no one could talk to the injured workers without the prior approval of the "accident aftercare" supervisory unit's approval. In Luling Coalmine of Huaibei Mineral Group, Anhui Province, a gas explosion on May 14, 2003, killed at least 81 miners. A Luling miner working in the shaft reported that many workers in the miners' housing estates were dissatisfied with conditions at the mine and the reaction to the accident, but with armed police guarding the mine against the victims' families and other outsiders, such as reporters, they were too scared to comment. ACFTU was present simply to "comfort the relatives," and they did not have details of other aspects of the investigation or rescue work. In Mengnanzhuang coal mine, Shanxi province, another massive gas explosion broke out on March 22, 2003, killing 53 miners by the following day, with 19 others missing. Some of the dead were miners who had tried to return to the surface when the power went off, but who were forced back down into the mine by the mine manager. Miners and their families (most of whom were migrants or peasants whose farm land had been sold or transferred to development projects) recounted how the coal mine had cut off all communication between local families, the mine and the outside world in an effort to prevent the families of victims from outside the immediate area from coming in and causing "trouble" at the mine. "Labor and State Secrets," 23, 28–29.

⁷⁷ "The application of Article 8.1(a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labor law of the People's Republic of China....," United Nations, "Declarations and Reservations," UN Treaty Collections, http://www.unhchr.ch/html/menu3/b/treaty4_esp.htm, made upon ratification, 2001.

Indeed, while the PRC Report maintains that Chinese domestic legislation protects the right to freedom of association, the fact that the ACFTU is the only officially recognized union, and that it is organized by and tied to the state, in fact undercuts the right in article 8(1)(a).

39. While article 8.1(a) provides the right to join a trade union of one's choice, the Chinese domestic law allows only one official trade union. Article 2 of the *Trade Union Law* states that "trade unions are mass organizations of the working class formed by workers on a voluntary basis. The ACFTU and all the trade union organizations under it represent workers' interests and uphold their legitimate rights according to law."⁷⁸ The *Trade Union Law* explicitly states that there is only one union in China, which serves as the umbrella entity for all other trade organizations. Article 27 of the *Trade Union Law* carves out the role of the ACFTU as the negotiator between workers and employers.

40. While the ACFTU is considered the voluntary choice for hundreds of millions of workers, yet it is in fact the only worker's federation allowed to operate in China. It represents 135 million workers in 31 regions and 10 national industrial trade unions, and any unions established must be registered under it. The ACFTU remains essentially an arm of the government and a subsidiary organ of the Chinese Communist Party, designed to facilitate and support government policies within enterprises and to ensure the continued control of the working population. When workers organize "work stoppages," strikes or demonstrations, the ACFTU is at best an observer and at worst a collaborator in putting down labor unrest. In some cases, the ACFTU is known to have directly restrained or detained worker representatives. As the co-drafter and co-enforcer of the *State Secrets Law*,⁷⁹ which in effect cloaks the true dangers of the industrial workplace and curtails the potential for increased awareness and information that would benefit workers, the ACFTU's stance is fundamentally contrary to the very purpose of a trade union, let alone its mandate.⁸⁰

41. The PRC Report maintains that Chinese domestic legislation protects the right to freedom of association. Yet while the declaration made by the PRC upon ratification of the ICESCR states that article 8(1)(a) must be read in conformity with domestic law, the Chinese domestic law in this instance—which provides for only one official union and that ties the role of the union closely to that of the state—in fact prevents the right in article 8(1)(a) from being realized at all.



ARTICLE 9: THE RIGHT TO SOCIAL SECURITY

42. Article 9 recognizes the right of everyone to social security, a term that covers all the risks involved in the loss of means of subsistence for reasons beyond a person's control.⁸¹ States parties to the Covenant must take appropriate measures to establish general regimes of compulsory old-age insurance prescribed under national law, and must guarantee the provision

⁷⁸ People's Republic of China Trade Union Law (中华人民共和国工会法), Article 2, adopted and in effect June 28, 1950.

⁷⁹ "Labor and State Secrets," 31.

⁸⁰ "Labor and State Secrets," 31.

⁸¹ CESCR General Comment, No.6, ¶26, E/1996/22 (13th Sess. 1995).

of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension.⁸²

43. Migrant workers, who make up a majority of those impacted by industrial health and safety accidents in China's mines and factories, can rarely secure *hukou* in the urban areas where they work. Despite reforms to the system introduced in the 1990s, migrants are in practice still excluded from access to social security such as worker compensation, health insurance, or unemployment benefits. They are not eligible for the free health care in the urban area that is enjoyed by the local residents. Lack of access to social security or medical insurance often means that migrant workers specifically often forgo medical treatment for illness or work-place injuries in the face of prohibitive cost. Although the 2005 China White Paper notes that there is an unemployment figure of 4.2 percent in China, it is estimated that in fact the figure is likely 12 to 15 percent if all unemployment peoples and rural surplus laborers who have not transferred from the agricultural sector to other sectors are included.⁸³ The lack of unemployment benefits therefore has a heavy impact on migrants and rural residents.

44. In addition to a lack of worker compensation, unemployment benefits or medical insurance, migrant workers are also unlikely to enjoy any pension benefits when they reach retirement age. In areas where migrant workers can be covered under the existing social security system, they benefit only if their employers contribute to the system.⁸⁴ Proposals in various provinces that call for extending the social security system to cover migrant workers are welcomed news, and would eliminate a great deal of the discrimination against migrant workers and their children, but implementation of the reforms must be closely monitored, and a national overhaul of the *hukou* system is necessary before migrants can have full access to the social security benefits that should be provided under the PRC government's obligations under the Covenant.



ARTICLE 11: THE RIGHT TO AN ADEQUATE STANDARD OF LIVING

A. The Right of Everyone to an Adequate Standard of Living

45. Article 11 of the ICESCR provides the right to an adequate standard of living, including “the continuous improvement of living conditions.” China has achieved rapid economic development and modernization since “Open and Reform” in 1978 and between 1981 and 2001, and some 270 to 290 million people were lifted out of absolute poverty.⁸⁵ Yet economic development and the improvement in standards of living has been unevenly distributed. China's poor remain concentrated in the rural areas despite more than two decades of poverty reduction initiatives. Income data for 2004 indicates that the average farmer's per capita income was 2,936

⁸² CESCR General Comment, No.6, ¶¶27, 29, E/1996/22 (13th Sess. 1995).

⁸³ Interview with Wang Jian, a research fellow of the State Development and Reform Commission, “Urbanization: A Long-Term Solution to Unemployment,” at <http://bjreview.com.cn>.

⁸⁴ “Residents, Migrants Face Different Retirement,” *China Daily*, March 28, 2005, http://www.chinadaily.com.cn/english/doc/2005-03/28/content_428774.htm

⁸⁵ Chen and Wang, 2; World Bank, *China: An Evaluation of World Bank Assistance*, World Bank, 2004, <http://www.worldbank.org/oed>

yuan (US\$ 353.7), while urban residents' per capital income was 9,422 yuan (US\$ 1135), 3.21 times higher than the typical rural dweller.⁸⁶ From 1996 to 2003, per capita annual income for urban households increased 75 percent from 4839.9 yuan to 8472.2 yuan.⁸⁷ Rural households saw just a 36 percent increase during the same period, from 1926.1 yuan to 2622.2 yuan.⁸⁸

46. While the PRC Report recognizes a poverty gap between the rural and urban areas, it emphasizes that standards of living have improved overall, and asserts that no discrimination exists. Further, the report asserts that the government has taken steps to narrow the gap, but that such action has been impeded by the geographical expanse of the country.⁸⁹ China's own data suggests that although the net income of both urban and rural residents increased between 1996 and 2000, urban residents' income increased at almost twice the rate as that of rural residents, with a resulting net income that is more than two and a half times that of the rural residents.⁹⁰ Yet income disparities between the urban and rural populations are not merely due to accidents of geography and differing natural resources, but are also a reflection of the government's policy choices, which have historically encouraged the extraction of resources from the countryside to benefit urban areas. The government's development strategy during the reform era has also focused on promoting rapid economic growth in some areas over others through preferential policies. These preferential policies are now reflected in the vast increase in wealth enjoyed by the urban coastal areas over the past two decades.⁹¹

47. A recent World Trade Organization (WTO) Report indicates that China's accession in 2001 produced an estimated US\$40 billion in annual economic gains. A survey concluded in 2004 suggests that rural residents are lagging behind in the economic boom with the disposable income of rural residents growing 6.8 percent in 2004, compared with a 7.7 percent increase for residents living in towns where earnings are already three times higher.⁹² At the same time, the urban to rural income ratio has also steadily increased from a low of 1.9 in 1985 to 2.7 in 1999.⁹³ Indeed, since more than 60 percent of China's population resides in rural areas where the incidence of poverty is higher than urban areas, improving the economic situation of the rural population not only reduces the poverty level of the rural areas, but also the entire country, though there is no similar effect if it is only the urban population that improves economic growth. In fact, when the urban population's income increases, there is no corresponding increase in income overall, and income inequality actually worsens.⁹⁴ These figures all suggest that throughout the period of economic growth, the PRC government's policies have favored economic development in some areas, resulting in lower standards of living elsewhere and impacting the right to an adequate standard of living that should be implemented progressively

⁸⁶ Note that the average rural per capital income still places a vast portion of the rural population below the international poverty level of one (U.S.) dollar a day. "Closing Farm-urban Income Gap 'Top' Goal," *Xinhua News Agency*, February 1, 2005, http://news.xinhuanet.com/english/2005-02/01/content_2533283.htm. See also China State Council Information Office, "China's Progress in Human Rights in 2004," April 13, 2005.

⁸⁷ National Bureau of Statistics of China, *China Statistical Yearbook 2004*, (Beijing: China Statistics Press, 2004), 357.

⁸⁸ National Bureau of Statistics of China, *China Statistical Yearbook 2004*, (Beijing: China Statistics Press, 2004), 357.

⁸⁹ Implementation of the International Covenant on Economic, Social and Cultural Rights, March 4, 2004, Addendum, 109, 115, 116, 135, and 136.

⁹⁰ *Ibid.*, 135, 136, Tables 6 & 7.

⁹¹ Ravallion and Chen, 23–25, Table 15 at 48.

⁹² Mure Dickie, "China's Wen Spells out Action to Beat Inequality," *Financial Times*, March 8, 2005, <http://news.ft.com/s/738ec89a-8ecc-11d9-bb12-00000e2511c8.html>

⁹³ *Ibid.*

⁹⁴ Ravallion and Chen, 23–25.

without discrimination. The PRC Report also does not address how the government will now counter its own reform era development strategy and preferential policies that created this social and economic gap.

B. The Right to Adequate Housing

48. The right to an adequate standard of living includes the right to adequate housing, which comprises “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.”⁹⁵ It also provides a right to “adequate basic infrastructure and adequate location with regard to work and basic facilities,”⁹⁶ which is a right for everyone, irrespective of income or access to economic resources. The right entails that all persons should possess a degree of security in tenure that guarantees legal protection against harassment, threats and forced evictions,⁹⁷ which “are prima facie incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law.”⁹⁸

49. States parties must refrain from forced eviction, which is not conditioned upon the availability of resources. Further, States should consider mass relocation only when conservation and rehabilitation are not feasible, and only when adequate legal protections are made available to affected parties.⁹⁹ These protections include an opportunity for genuine consultation, adequate prior notice, timely information of proposed eviction and reuse of property, no eviction at night or during bad weather, and provision of legal remedies and legal aid for needy parties seeking redress from court.¹⁰⁰

50. States parties are obligated to provide the Committee with information regarding measures taken during programs of urban renewal, redevelopment, site upgrading, preparation for international events (including, for example, the Olympics), or city beautification to ensure that protection from eviction or guaranteed re-housing based on mutual consent is provided.¹⁰¹ Finally, States parties have the obligation under this article to give due priority in its policies to social groups living in unfavorable conditions, such that “[p]olicies and legislation should . . . not be designed to benefit already advantaged social groups at the expense of others,”¹⁰² suggesting that particular attention must be paid to groups such as China’s migrants that have traditionally been disadvantaged in the urban areas where they seek housing.

51. Migrants that move to the cities to work have limited housing options in particular because of the *hukou* registration system; housing, if provided, consists of dormitories attached to their factories. Workers are often consigned to dilapidated sheds where they share a tight

⁹⁵ CESCR General Comment No.4, The right to adequate housing (Art. 11(1), E/1992/23, ¶7 (6th Sess. 1991) (quoting Commission on Human Settlements and Global Strategy for Shelter for the year 2000.)

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*, ¶17.

⁹⁸ *Ibid.*, ¶18.

⁹⁹ CESCR General Comment No.7, The right to adequate housing (Art. 11(1) of the Covenant): forced eviction, E/1998/22, annex IV, ¶2 (16th Sess. 1997).

¹⁰⁰ *Ibid.*, ¶15.

¹⁰¹ *Ibid.*, ¶20.

¹⁰² CESCR General Comment No.4: The right to adequate housing (Art. 11(1), E/1992/23, ¶11 (6th Sess. 1991).

space with ten or a dozen other workers, with no heat in freezing temperatures.¹⁰³ Dormitory food that workers are fed is of poor quality, but they must pay for it out of pocket.¹⁰⁴ In big cities such as Beijing and Shanghai, migrant workers tend to live in overcrowded dwellings that are not equipped with functional kitchen or bathroom facilities, or are used for working or other purposes in addition to serving as residences. Construction workers, meanwhile, are often housed in temporary structures erected in construction sites.¹⁰⁵ A female migrant who worked in a major Shanghai hospital slept on a hospital bench for three years until the hospital banned the practice.¹⁰⁶

52. Urban residents in China have lost homes during this period of rapid economic development and in the quest to create a “modern city,” without consultation or fair compensation, contravening the Covenant. Human Rights Watch reports that hundreds of thousands of tenants and homeowners had been evicted forcibly as of March 2004.¹⁰⁷ In Beijing, for example, a hundred police officers forcibly removed residents in the old neighborhood of Nanyingfang in Chaoyang district in mid-November 2004, to prepare the area for the development of a shopping district. Security guards assisting the police beat a woman with a brick, and police hosed down onlookers whose homes were slated for demolition that same week.¹⁰⁸ The neighborhood of over 1,000 households was built in the Qing Dynasty to house soldiers, and families had owned those homes for generations.¹⁰⁹ Evictions such as this occur despite a new law that is supposed to protect residents from forcible eviction and that give them the right to negotiate with developers. In another part of Beijing, an opulent development modeled after a French chateau was built on property where “800 now landless peasants” used to grow wheat.¹¹⁰ In that case, the company that now owns the development agreed to pay the village’s elderly a monthly stipend of USD \$45. The young and able bodied, however, can apply for lawn-work at USD \$2 a day.

53. De facto evictions have also been documented. In Shanghai, for example, in a gentrifying neighborhood that used to be the French Concession, elderly residents who refused to move were threatened with repeated utility cut-offs and nighttime harassments.¹¹¹ Residents were offered compensation of less than six percent of fair market value to move for the development of a high-rise, and were simply told they had to leave before a deadline a couple of months later.¹¹² Others evictees who have sought legal redress within the court system have typically been unsuccessful, and one lawyer, Zheng Enchong, who represented hundreds of Shanghai evictees, was jailed on state secrets charges in October 2003, though he was widely considered to have been jailed because of his involvement in those politically unpopular cases.¹¹³

¹⁰³ Li Yong-Yan, “The New Underclass,” *South China Morning Post*, January 21, 2004.

¹⁰⁴ “The Other Toy Story: Workers’ Rights in China,” *China Rights Forum*, No.4 (2004), 93–94.

¹⁰⁵ Weiping Wu, “Migrant Housing in Urban China: Choices and Constraints,” *Urban Affairs Review*, vol. 38, No.1, (September 2002): 90, 105-108.

¹⁰⁶ *Ibid*, 90, 109.

¹⁰⁷ *Demolished: Forced Evictions and The Tenants’ Rights Movement In China*, Human Rights Watch, Vol. 16, No. 4 (C), (New York, March 2004): <http://hrw.org/reports/2004/china0304/>.

¹⁰⁸ “Eviction Law No Protection for Beijing Neighborhood,” *Agence France-Presse*, November 16, 2004.

¹⁰⁹ *Ibid*.

¹¹⁰ Joseph Kahn, “China’s Elite Learn to Flaunt it While the New Landless Weep,” *The New York Times*, December 25, 2004.

¹¹¹ James Meek, “Lives in Ruins,” *The Guardian*, November 12, 2004.

¹¹² *Ibid*.

¹¹³ *Ibid*. For more information on Zheng Enchong’s case, see “China: Tenant Rights Advocate Arbitrarily Jailed: Lawyer Accused of Circulating Secrets to Rights Group,” Human Rights Watch, December 19, 2003,

In the meantime, while the links that exist between developers and local officials ensure that residents facing eviction will continue to lose out in their attempts to seek redress, those who protest their evictions have been detained,¹¹⁴ raising serious concerns over adequate protection of the rights under the Covenant.

C. The Right to Legal Security of Tenure

54. The right to an adequate standard of living includes the right to legal security of tenure of a variety of forms, including the occupation of land and property.¹¹⁵ The past decades of intense industrialization in China have generated pollution that contaminates the land and has brought sicknesses, diseases and deaths to the rural areas. At the same time, economic development has also induced land grabs, destroying the livelihood of millions of farmers. Experts estimate that during the past decade, seventy million farmers have lost their land.¹¹⁶ Land that has belonged to farmers for generations has suddenly become a valuable commodity because of the discovery of new natural resources.

55. Another example of economic development-induced forced peasant displacement is the case of the Three Gorges Project. The Project was planned for decades and was finally approved by the NPC in 1992. It covers an area of 56,000 square kilometers that is home to 16 million people,¹¹⁷ and the project aims to control flooding and to generate hydroelectric power. In the process, thousands of acres of farmland will be submerged under water; 1.13 million people, including 405,000 farmers, will lose their homes, and for some, a way of life that they have known for 1,400 years.¹¹⁸ To date, approximately 85 percent, or 965,500 people, have been relocated.¹¹⁹ This relocation has been enacted in contravention of Article 11 of the Covenant, that requires adequate timing, negotiation with communities and the option to seek remedies, none of which have been provided in the Three Gorges case. The South-North Water Diversion Project, as the second largest dam project in China, will affect more than 100 counties in seven provinces and municipalities. Zhang Jiyao, office director of the project construction committee, announced on April 5, 2005, that 300,000 to 400,000 people would be relocated in this scheme.¹²⁰ Farmers in the Dashu Township, site of the proposed Pubugou dam on the Dadu River in Sichuan, “have been forced to move to ramshackle houses in a remote township and

http://hrw.org/english/docs/2003/12/18/china6762_txt.htm; Francis Markus, “Chinese Eviction Lawyer Jailed,” *BBC News*, October 28, 2003, <http://news.bbc.co.uk/1/low/world/asia-pacific/3220643.stm>.

¹¹⁴ Bill Savadove, “Police Detain Housing Protesters,” *South China Morning Post*, January 18, 2005; Residents are not the only victims of the bulldozer of China’s urban redevelopment engine, workers of shops located in desirable urban districts also fall victim to such drives. In January 2005, approximately one thousand workers from massage parlors, beauty salons and restaurants launched a stand-off when local officials came to the building and ordered them to evacuate. Chow Chung-Yan, “Workers Riot over Plan to Demolish Building,” *South China Morning Post*, January 6, 2005.

¹¹⁵ “Effective monitoring of the situation with respect to housing is another obligation of immediate effect. . . . [the revised general guidelines] emphasize the need to ‘provide detailed information about those groups within ... society that are vulnerable and disadvantaged with regard to housing.’” CESCR General Comment No.4: The right to adequate housing (Art. 11(1), E/1992/23, ¶13 (6th Sess. 1991).

¹¹⁶ Jim Yardley, “Farmers Being Moved Aside by China’s Real Estate Boom,” *The New York Times*, December 8, 2004.

¹¹⁷ For general information on the Three Gorges Project, see official website:

http://english.peopledaily.com.cn/zhuanti/Zhuanti_48.shtml

¹¹⁸ “China to take stern supervisory measures for a ‘clean’ Three Gorges Dam,” *Xinhua’s China Economic Information Service*, March 30, 2005, www.factiva.com.

¹¹⁹ *Ibid.*

¹²⁰ “China exclusive: China pledges ‘good relocation’ for 400,000 giving way to water diversion project,” *Xinhua News Agency*, April 5, 2005, www.factiva.com.

farm higher, drier land, where irrigation is necessary but too expensive for the poor.”¹²¹ For those who live further upstream in a minority area, the dam-building, that has been undertaken without consultation with the community, “will devastate local cultures, robbing people of their farms and livelihood, and leave tens of thousands of mostly Tibetans, Miao, Yi, Bai, Lisu and Naxi minorities homeless.”¹²² The same lack of consultation was seen in the process of planning the Tiger Leaping Gorge dam, where local officials “adopted a strategy of stealth to get the dams built with as little resistance as possible,” and who only published the plans in a short announcement in “an obscure provincial newspaper.”¹²³ Lack of compensation is also a serious issue in the Three Gorges Project, where displaced residents have lost compensation due to local corruption. Recent reports show that part of the money earmarked for compensating residents displaced by the Three Gorges project was siphoned off by local officials; at the end of 2003, there were 310 cases of embezzlement involving 58.67 million *yuan* of relocation funds.¹²⁴

56. In October 2004, Premier Wen Jiabao announced reforms that would insure fairer compensation for farmers losing their land and increase local government accountability to the central government on land transactions.¹²⁵ This, coupled with the elimination of farm taxes should bring some relief for China’s millions of farmers. But the serious concern is that most, if not all of these projects, have been undertaken without consultation with the local communities and the provision of information and relocation assistance has been sparse, raising serious concerns over what steps, if any have been taken to progressively implement article 11 of the covenant.

57. In addition to prevalent poverty, China’s economic development, large infrastructure projects, and decades of migration of Han settlers into Xinjiang, Inner Mongolia, Tibet and other autonomous regions have irreversibly changed the demographics and damaged the habitat of many of China’s ethnic minorities¹²⁶.

58. As many as 2 million Han Chinese settlers have moved into Xinjiang since the 1990s through government programs, to develop the remote region that contains 30 percent of the country’s oil reserves. At the same time, the central government conducts repeated military exercises under the guise of worldwide anti-terrorism measures.¹²⁷

59. In Inner Mongolia, up to 650,000 nomadic Mongols have been forced to relocate in order to allow the government to rehabilitate the ecosystems in Beijing and its surrounding areas.¹²⁸

¹²¹ Shi Jiangtao, “Peasants in Upstream Fight to Halt Dam,” *South China Morning Post*, January 4, 2005.

¹²² Jasper Becker and Daniel Howden, “The Secret Dam: China Begins Huge Project in World Heritage Site, Displacing up to 100,000 People and Devastating Unique Tribal Societies,” *Independent*, October 16, 2004, <http://news.independent.co.uk/world/asia/story.jsp?story=572670>; “Environmental concerns over Yunnan’s HuTiaoXia Dam project,” *Voice of America*, October 19, 2004, at <http://www.voanews.com>.

¹²³ Ray Cheung, “Waves of Ethnic Discontent Rise up against Tiger Leaping Gorge Dam,” *South China Morning Post*, March 22, 2005, p.A6, col.1.

¹²⁴ “China to Take Stern Supervisory Measures. . .,” March 30, 2005.

¹²⁵ Yardley, December 8, 2004.

¹²⁶ Habitat International Coalition – Housing and Land Rights Network and Centre on Housing Rights and Evictions, *Draft Parallel Report on Article 11*, April 14, 2005.

¹²⁷ “China Rules out Terrorism in Muslim Region Blasts,” *Muzi News*, March 13, 2005, <http://latenews.com/ll/english/1353495.shtml>

¹²⁸ “500,000 to be Moved in Bid to Quell Sandstorms,” *China Daily*, March 12, 2005, http://www.chinadaily.com.cn/english/doc/2005-03/12/content_424113.htm

The depletion of grassland in southeastern Inner Mongolia has been caused, in large part, by the migration of Han Chinese people into the area under government-sponsored policies that have irreversibly undermined the natural environment in Inner Mongolia.¹²⁹ Mongols forced to relocate under the government initiatives “were resettled to agricultural or urban areas with a dominant Han Chinese population, with no suitable social, cultural, and language environment for ethnic Mongolians, and are being forced to engage in business and agriculture lifestyles instead of their traditional nomadic way of life.”¹³⁰

60. In Tibet, the government’s new investment in expanding mineral mining business will not benefit the local population since the highland is not suitable for mineral processing. The real benefactors of the program will be the middle people who extract the ore and transport it inland for further processing. Many experts suggest that Tibetans will derive no benefits from this program.¹³¹

61. Certain development schemes that the government has engaged in, therefore, have not only not benefited ethnic minority groups, but have in fact impacted on them detrimentally. Falling under article 11, ethnic minorities particularly have lost their home, their culture, their habitat and their traditional ways of life.



ARTICLE 12: THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL HEALTH

A. The Obligation to Provide a Minimum Core Content of the Right to Health

62. The right to health comprises the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health. To fulfill their obligation under the Covenant, States Parties must make healthcare facilities, goods, services and programs available to all, without discrimination.¹³² These facilities, goods and services must be physically accessible, affordable, culturally and medically appropriate and of appropriate quality.¹³³ Individuals also have the right to seek, receive and impart information and ideas about health issues. States parties to the Covenant must take deliberate, concrete and targeted steps toward the full realization of the right to health. The constituent obligations to respect, protect and fulfill the right to health include the requirement that states should refrain from limiting or denying equal access to healthcare facilities, programs, services or goods based on arbitrary social classification.¹³⁴ States parties are obliged to adopt legislative, and other measures toward the full realization of the right to health and provide those who do not have sufficient means with the necessary health-insurance and health-care facilities. In addition,

¹²⁹ “Inner Mongolian Environment Threatened, Nomads Forced to Move,” *Radio Free Asia*, March 22, 2005; “Gardi Borjigin, Inner Mongolian Environment Threatened, Nomads Forced to Move,” *Radio Free Asia*, February 13, 2005.

¹³⁰ Gardi Borjigin, “Inner Mongolian Environment Threatened, Nomads Forced to Move,” *Radio Free Asia*, February 13, 2005.

¹³¹ “Controversy over Increased Government Investments in Tibet,” *Voice of America*, February 15, 2005.

¹³² The guarantee that the right to health will be exercised without discrimination of any kind is an immediate obligation under the Covenant.

¹³³ CESCR General Comment 4, The Right to the Highest Attainable Standard of Health, ¶13, E/C.12/2000/4 (22nd Sess., 2000).

¹³⁴ *Ibid*, ¶18

States have a minimum core obligation to ensure the provision of essential primary health care, the equitable distribution of all health facilities, goods and services, the provision of essential drugs and implementation of a national action plans with clear benchmarks and deadlines.¹³⁵

63. Economic growth in China has resulted in a reduction of the number of people living in poverty and improvement in life expectancy and mortality rates. The overall progress in key health indicators was largely a result of targeted government spending on public health before 1980. Nonetheless, despite this economic growth and increase in total health care expenditure, the percentage share of government funds allocated to public health as a share of the gross domestic product (GDP) shrank to 1.3 percent over the last ten years.¹³⁶ Although the total expenditure on health as a percentage of the GDP has increased from 4.8 percent in 1998 to 5.7 percent in 2001,¹³⁷ only 2 percent of the GDP was allocated to health from public funds in 2001.¹³⁸ External funding from the international community remains an important means to finance improved public health conditions in China. The overall improvement in health indicators masks the serious underlying inequality. As noted in a recent WHO report:

Inadequate financing of health services in poor areas and limited access in remote areas, particularly in western China, have resulted in widening disparities in health conditions. Since 1980, the share of villages with Rural Cooperative Medical Systems (RCMS)¹³⁹ has declined from about 90 percent to just 14–15 percent. Even in urban areas, community health services are under-supplied, while there has been a proliferation of high-cost hospital services.¹⁴⁰

64. Inadequate allocation of resources from the central government and the decentralized administration of health care imposes heavy burdens on local government and results in a regional and urban/rural inequity in health conditions and access to healthcare.¹⁴¹ According to a report released by the Ministry of Health, 48.9 percent of Chinese cannot afford to see the doctor when they are sick and 29.6 percent cannot afford hospital stay.¹⁴² “Medical fees had outpaced growth in personal income over the past eight years, with outpatient charges growing by 13 percent.”¹⁴³ More than 44.8 percent of urban residents and 79.1 percent of the rural population are not included in the medical insurance system, as demonstrated by a recent survey by China’s Ministry of Health.¹⁴⁴ Despite a population that resides predominantly in the rural areas, 80

¹³⁵ *Ibid.*, ¶43

¹³⁶ World Health Organization, “Status Report on Macroeconomics and Health: China,” (Geneva: World Health Organization, 2004), www.who.int/entity/macrohealth/action/en/rep04_china.pdf

¹³⁷ World Health Organization, *The World Health Report 2005: Make Every Mother and Child Count*, (Geneva: World Health Organization, 2005), 192.

¹³⁸ United Nations Development Programme, *Human Development Report 2004*, (New York: UNDP, 2004), 157.

¹³⁹ See also paragraph 62, below.

¹⁴⁰ WHO, “Status Report,” 2004.

¹⁴¹ This disparity is recognized in the PRC Report, at paragraph 167.

¹⁴² “Chinese Pay More for Medical Services in Recent Years,” *People’s Daily*, January 16, 2005, http://English.people.com.cn/200501/16/print20050116_170790.html

¹⁴³ Irene Wang, “Only Half of Nation Able to See Doctors,” *South China Morning Post*, January 11, 2005, <http://china.scmp.com/chimain/ZZZ32OBHJ3E.html>

¹⁴⁴ “Public Health System Needs Overhaul,” *China Daily*, April 2, 2005, <http://www.chinadaily.com.cn>.

percent of the country's medical institutions are in the urban area.¹⁴⁵ Nobel Laureate Amartya Sen warned that China would face rising poverty unless health reforms are implemented, and that the dropping of free health care after the introduction of economic reforms in 1979 had been a mistake.¹⁴⁶

B. Obligation to Implement the Right to Health Without Discrimination

65. The RCMS was a critical institution created by the Chinese Communist Party (CCP) after it established the PRC in 1949. It was once a successful system that delivered healthcare to the majority of rural residents. During its peak in the 1970s, the RCMS covered 90 percent of the rural populations.¹⁴⁷ Financed by contributions from individuals, communities and upper-level governments, this system guaranteed the reimbursement of peasants' medical expenses for a fixed premium.

66. With the implementation of the economic reform that began in 1978, the central government substantially withdrew spending on health care, requiring local and provincial governments to become self-sufficient. In 1987, provincial governments reduced their health subsidies by 18 percent. The Ministry of Health reduced the finances on village doctors by 45 percent between 1979 and 1987.¹⁴⁸ Without support from the central government, the RCMS gradually dissolved. Although China's 2005 White Paper on Human Rights notes that the RCMS covers 80.4 million farmers,¹⁴⁹ rural residents actually number 768 million and make up 70 percent of the population, but consume just 33 percent of total health spending.¹⁵⁰

67. As a result of the dismantling of the RCMS, a pattern of increasing inequality in access to adequate healthcare and essential drugs has emerged. In 2000, China was listed by the World Health Organization (WHO) among countries with the least fair financing of health systems, alongside Sierra Leone, Myanmar, Brazil, Vietnam, Nepal, Russian Federation, Peru and Cambodia.¹⁵¹ China ranked 188th out of 191 countries, only slightly ahead of Brazil, Myanmar, and Sierra Leone.¹⁵² For example, 38.89 percent of Tibet's population is without health units, compared to Shanghai, with just 0.49 percent without health units.¹⁵³ The current decentralized rural healthcare system has created the following problems that exacerbate the rural dwellers' access to healthcare.

¹⁴⁵ "Chinese Pay More for Medical Services in Recent Years," *People's Daily*, January 16, 2005,

http://English.people.com.cn/200501/16/print20050116_170790.html

¹⁴⁶ Peter Kammerer, "Health Reforms 'Crucial to Erasing Poverty'," *South China Morning Post*, February 18, 2005,

<http://china.scmp.com/chimain/ZZZTVOI985E.html>

¹⁴⁷ PRC Ministry of Health, *National Health Services Survey in Rural Areas* (1985), quoted in Asian Development Bank, *People's Republic of China: Towards Establishing a Rural Health Protection System* (September 2002), 7.

¹⁴⁸ Bogg, Dong, Wang, Cai and Diwan, *Health Policy and Planning, the Cost of Coverage: Rural Health Insurance in China*, (Oxford University Press, 1996), quoted in Cailliez, Charlotte, "Rural China Entering the 21st Century: The Rural Health System," *China Perspectives*, No. 18 (July/August 1998), 36-43, http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=1601 (hereinafter "Rural Health System.")

¹⁴⁹ "China White Paper," April 2005.

¹⁵⁰ "Healthcare for Children, Women," *China Daily*, April 7, 2005, www.chinadaily.com.cn.

¹⁵¹ World Health Organization, "World Health Organization Assesses the World's Health Systems," Press Release WHO/44, June 21, 2000, <http://www.who.int/inf-pr-2000/en/pr2000-44.html>.

¹⁵² World Health Organization, *The World Health Report 2000 - Health Systems: Improving Performance*, (Geneva: World Health Organization, 2000), 191.

¹⁵³ United Nations Development Programme, *China Human Development Report 2002*, (Oxford: OUP, Stockholm Environment Institute, 2002), A44.

68. The decentralization of healthcare spending and privatization of services has led to several specific problems documented below: the imposition of high user fees, leading many to go without healthcare; the lack of preventive care by favoring curative treatment for greater revenue; and the spread of infectious disease owing to rural poverty and individuals selling blood as a means of making money. The growing health crisis in China's rural areas suggests that the government falls far short of providing the minimum core content of its obligations under article 12.

69. Rural hospitals to invent ways to make money to generate sufficient revenue. Since consultancy fees are still fixed by the state, and profits are made mainly from the sale of medicines; in order to increase revenues local hospitals regularly overcharge patients on prescriptions.¹⁵⁴ From 1999 to 2003, the cost for government-sponsored outpatient and inpatient services increased by 8.2 percent and 7.8 percent respectively on an annual basis.¹⁵⁵ Without adequate public reimbursement, there is a lack of incentive for medical professionals to deliver services to the poor; and in particular to rural residents and urban floating populations. The medical costs have prevented many of those who could not afford to pay from obtaining medical services. According to a government survey released in December 2004, nearly 49 percent of Chinese cannot afford to see doctors, while 29.6 percent are not hospitalized when necessary.¹⁵⁶ Studies have shown that medical costs are the leading cause of rural poverty. In its failure to provide affordable and accessible health care to rural residents, the government is not meeting its minimum core obligation to ensure equitable distribution of health care facilities. Deliberate, concrete and targeted steps must be taken to improve rural health care.

70. The increasing reliance on service fees to generate revenue for rural healthcare facilities has also prompted health care providers to focus on providing services that maximize revenues but that may have little public health benefit. Clinics are charging fees for injections, antibiotics and intravenous drips, disregarding less costly treatment or non-revenue generating services, such as health monitoring, regular health maintenance, outbreak response capacity, and epidemiologic research¹⁵⁷. The neglect of preventive care in favor of more profitable curative treatments has led to a precipitous rise in infectious diseases and epidemics, such as HIV/AIDS and SARS.

71. In addition to lack of free healthcare, poverty has driven many in China's poor rural areas to sell blood to support their families. Unscrupulous blood-selling practices and ignorance about AIDS have led to the spread of AIDS villages in parts of China, with the highest incidence in Henan Province.¹⁵⁸ Because of lack of public information and awareness about AIDS, blood

¹⁵⁴ "Officials Call for Medicine Price Cut," *China Daily*, June 10, 2004, <http://www.chinadaily.com.cn>.

¹⁵⁵ "Chinese Pay More for Medical Services," *People's Daily*, January 17, 2005, <http://www.chinadaily.com.cn>.

¹⁵⁶ *Ibid.*

¹⁵⁷ "Officials Call for Medicine Price Cut," *China Daily*, June 10, 2004, <http://www.chinadaily.com.cn>.

¹⁵⁸ In the village of Wenlou in the Henan County of Shangchai, where blood donation was a major source of income, an estimated 65 percent of its villagers had been infected with HIV. In the nearby Donghu Village, the infection rate was estimated at 80 percent. Villagers began to die of AIDS in the late 1990s as a result of disastrous blood collection practices. In some blood stations, some set up by the health provincial health council, and others illegally, blood was collected from a number of people sharing the same blood type, then pooled together, from which the plasma and needed components were extracted. The blood was then infused back to the blood donors. Under such practice, a blood donor was exposed to the blood of six to twelve people at a time, facilitating the spread of AIDS and other infectious diseases transmittable through body fluids. See "HIV/AIDS

donors infected with the HIV virus in the early to mid-1990s went on to transmit the virus through sexual contacts to their partners and through breast feeding to their children¹⁵⁹. By the time the Central government passed the 1998 Blood Donation Law banning the blood selling practices, it was already too late.¹⁶⁰ Many who sold blood in the early 90s were already dying of full-blown AIDS, with no access to antiretroviral treatment, or money to pay for sub-standard medical care.¹⁶¹ By the end of 2003, the Chinese government estimated that there are over 840,000 HIV cases, which represents 0.07 percent of the total population.¹⁶² The joint assessment conducted by the State Council and UN Theme Group estimated that nearly a quarter of the HIV/AIDS cases have resulted from blood donation.¹⁶³ However, it remains unclear as to what the actual numbers of HIV and AIDS cases are since local officials continue to underreport the number of occurrences.¹⁶⁴ Those trying to follow the central government policy regarding HIV/AIDS cases have suffered persecution.¹⁶⁵

72. In October 2004, the PRC central government launched a nationwide study to learn the extent of the AIDS epidemic that resulted from blood selling after years of denial and victim-blaming. The Ministry of Health issued an order directing the local government to find and test every person who sold blood plasma.¹⁶⁶ In the meantime, many who contracted the HIV virus through selling blood in the mid-1990s, and those who contracted the disease through these individuals, are dying because the funds from the central government allocated to help them did not reach them.¹⁶⁷ According to WHO statistics, as of June 2004, 7,400 adults (aged 15–49) with advanced HIV infection were receiving antiretroviral drugs (ARV) therapy.¹⁶⁸ International aid agencies, UNAIDS, UNICEF and WHO estimated that 100,000 adults were in need of treatment in 2003.¹⁶⁹

73. The plight of Chinese HIV/AIDS patients is further exacerbated by the scarcity of trained doctors with expertise in the disease. Based on government statistics, China has fewer than 150 doctors qualified to diagnose and treat AIDS patients. Zhang Fujie, director for treatment and

Epidemic in Rural China,” World Socialist Web Site, http://www.wsws.org/articles/2001/aug2001/aids-a06_prn.shtml (August 6, 2001); Adam Brookes, “Bad Blood Spreads AIDS in China,” *BBC News*, May, 30, 2001, <http://news.bbc.co.uk/1/hi/world/asia-pacific/135970.stm>.

¹⁵⁹ “Few Chinese Well-Informed About AIDS Survey,” *Xinhua News Agency*, August 10, 2004, <http://service.china.org.cn>.

¹⁶⁰ See generally Human Rights in China, “Compassionate Determination: One Women’s Struggle to Help the Victims of Henan’s HIV Epidemic,” April 22, 2001, <http://www.hrchina.org>.

¹⁶¹ See Brookes, May 30, 2001.

¹⁶² A Joint Assessment of HIV/AIDS Prevention, Treatment and Care in China (2004), p.1, (State Council AIDS working Committee Office & UN Theme Group on HIV/AIDS in China, December 1, 2004).

¹⁶³ The estimated proportion of HIV/AIDS cases is 24.1 percent, with another 0.6 percent a result from receiving blood or blood products. Another 0.5 percent was result from mother-to-child transmission, a portion of which could be related to blood donor mothers who transmit the HIV virus through breast feeding. 2004 Joint HIV/AIDS Assessment, Figure 5, at 4.

¹⁶⁴ “The tendency in Henan Province has been to not provide accurate statistics on AIDS. . . . [o]ne official instructed health workers in Houyang to report only 450 cases rather than the actual 670. Likewise Wenlou Village was told to report 306 cases rather than the local estimates of more than 700.” Hu Jia, “A Tale of Two Crisis: SARS Vs. AIDS,” *China Rights Forum*, No. 3, (2003), 57, 58–59.

¹⁶⁵ See Albert Chen, “The Limits of Official Tolerance: The Case of Aizhixing,” *China Rights Forum*, No.3, (2003), 51; “Chinese AIDS Campaigner Faces Defamation Trial in Central Henan,” *Agence France Presse*, September 15, 2003,

<http://www.terradaily.com/2003/030915122237.6mxi538z.html>; Hu Jia, 57, 59.

¹⁶⁶ “China Vows to Find and Test All Blood Plasma Sellers to Control AIDS,” *Agence France Presse*, October 15, 2004, http://news.yahoo.com/news?tmpl=story&u=/afp/20041015/wl_asia_afp/china_aids_041015020440.

¹⁶⁷ Hu Jia, 57, 58–59.

¹⁶⁸ UNAIDS, UNICEF, WHO, *China: Epidemiological Fact Sheets on HIV/AIDS and Sexually Transmitted Infections*, September, 1, 2004, 9.

¹⁶⁹ *Ibid.*

care of the National Centre of AIDS/STD Control and Prevention, said that the shortage of trained medical staff in the villages has led as many as 25 percent of the 7,000 AIDS patients who had started taking free drugs to stop treatment.¹⁷⁰ AIDS activist Hu Jia told the *South China Morning Post* that the true drop-out rate could be higher because of the combination of ARV drugs given to HIV/AIDS patients that have serious side effects, and because AIDS patients in China are simply given the pills without medical consultation and directions from medical professionals.¹⁷¹



ARTICLES 13 AND 14: THE RIGHT TO EDUCATION

74. The right to education encompasses the four key elements of availability, accessibility, acceptability and adaptability. States parties must guarantee that the right to education will be exercised without discrimination of any kind and are obliged to take deliberate, concrete and targeted steps towards the full realization of the right to education. Because “[p]rimary education is the most important component of basic education” it must be made compulsory and available free to all.¹⁷² States must eliminate fees and address other direct and indirect costs for primary education and are under a duty to present the Committee with a plan of action for the achievement of compulsory free education within two years of the Covenants’ entry into force.

75. Secondary education, though not compulsory, must still include the elements of availability, accessibility, acceptability and adaptability.¹⁷³ It must be made “generally available,” meaning that it is “not dependent on a student’s apparent capacity or ability” and is “distributed throughout the State in such a way that it is available on the same basis to all.”¹⁷⁴

76. The right and duty to receive education is enshrined in the 1982 Chinese Constitution¹⁷⁵ and has been affirmed in many laws including the 1986 Compulsory Education Law, the 1985 Education Law and the PRC Protection of Minors Law. Municipalities have also promulgated legislation addressing children’s fundamental right to education.¹⁷⁶ According to the 1986 Compulsory Education Law, each child has the right and duty to go through nine years of compulsory education, including 6 years (sometimes 5) of primary education and three years (sometimes 4) of junior secondary education. The goal of the 1986 law was to allow all children to have nine years of compulsory education by the year 2000. This deadline was extended by ten more years to 2010 under the 1996 Development Plan.¹⁷⁷

¹⁷⁰ “More AIDS patients stop taking free drugs,” *South China Morning Post*, April 1, 2004.

¹⁷¹ *Ibid.*

¹⁷² Article 13(2) (a); General Comment, No. 13: The right to education Article 13, ¶ 8–9 (21st Sess. 1999); International Covenant on Economic, Social and Cultural Rights, Article 14.

¹⁷³ Article 13(2)(b); General Comment, No. 13: The right to education Article 13, ¶ 11 (21st Sess. 1999)

¹⁷⁴ General Comment, No. 13: The right to education, Article 13, ¶ 13 (21st Sess. 1999)

¹⁷⁵ Article 46 of the Chinese Constitution states that citizens of the People’s Republic of China have the right and duty to receive education (“中华人民共和国公民有受教育的权利和义务”).

¹⁷⁶ Human Rights in China, “Shutting Out the Poorest: Discrimination against Migrant Children in City Schools,” *China Rights Forum* No. 2, (2002).

¹⁷⁷ Christine Wong, “Providing Education in China,” May 13-15, 2002, presentation “Workshop on Decentralization and Intergovernmental Fiscal Reform (The World Bank, Washington, DC), <http://www1.worldbank.org/publicsector/decentralization/decourse/WongA.pdf>.

A. Obligation to Implement the Right to Education Without Discrimination: Rural Access

77. Government statistics for 2004 show that 93.6 percent of Chinese children are receiving nine years of compulsory education and 98.95 percent are enrolled in primary schools.¹⁷⁸ However, as highlighted by UN Special Rapporteur Katarina Tomesevski in her 2003 report on her mission to China, education statistics are collected at the beginning of the year and reflect enrollment rather than actual attendance.¹⁷⁹ Annual government appropriation in education was 2.2 percent of the annual GDP in 2001/02, and is more than two percentage point below the global average of 4.4 percent.¹⁸⁰ Recent laws that legalize private education have created education choice for those with means. In 2004, 1.77 million students attended 78,500 schools and another 1.4 million students studied at private universities and colleges.¹⁸¹ However, this freedom of choice remains unavailable to the vast majority of China's school age population.

78. The disparity in the implementation of rights in the urban and rural regions is particularly telling in the area of the right to education in large part because the central government has, since the 1980s, shifted the burden of education provision to the local level without corresponding transfer of funding. Thus, "the lowest levels of government, county and township, shoulder the biggest burden by providing 87 percent of public expenditure for education."¹⁸² County or township governments are asked to make up for the shortfall in education funding through "extra-budgetary resources" derived from school fees, tuition fees, book fees and other direct and indirect fees.¹⁸³ Over time, these extra-budgetary resources, borne by the rural poor, accounted for 46.3 percent of total education funding, resulting in growing disparities among provinces. By 2000, the per-student expenditures of the top-spending provinces were 10.6 times those of the lower-spending provinces in primary schools, and 6.6 times higher in junior secondary schools.¹⁸⁴ "Direct charges in the form of many different types of fees are notorious and huge, estimated at 200 billion *yuan* (US \$24 billion) in the past decade."¹⁸⁵ These charges contradict any claim that compulsory, free primary education has been achieved.

79. The extra financial burden born by the local levels was made worse by the central policy announced in 1994 by the State Council that township government would bear the responsibilities of implementing compulsory education for all school age children and adolescents. To implement this policy, the central government gave local governments the autonomy to determine tax rates under the new Budget Law, resulting in an unreasonable level of taxation of the rural population.¹⁸⁶ Official statistics suggest that rural areas received just 23 percent of the funds in 2002, while up to 77 percent of the country's education funding went to

¹⁷⁸ "China Sees Progress in Education," *China Daily*, March 2, 2005, http://www.chinadaily.com.cn/english/doc/2005-03/02/content_420781.htm

¹⁷⁹ Report Submitted by the Special Rapporteur, Katarina Tomesevski, Addendum, Mission to China, Economic and Social Council, E/CN.4/2004/45/Add.1 (Nov. 21, 2003).

¹⁸⁰ The World Bank, *2004 World Development Indicators*, (Washington, D.C.: Development Data Center, 2004), 68.

¹⁸¹ "China Sees Progress in Education," *China Daily*, March 2, 2005, http://www.chinadaily.com.cn/english/doc/2005-03/02/content_420781.htm

¹⁸² Tomesevski Report, ¶10.

¹⁸³ Mun C. Tsang, "Education and National Development in China since 1949: Oscillating Policies and Enduring Dilemmas," *China Review*, (HK: Chinese University Press, 2000).

¹⁸⁴ "China's Education System: Reading between the Lines," *China Rights Forum*, No. 1 (2004), 47, 48.

¹⁸⁵ Tomesevski Report, ¶17 (citing *People's Daily*, September 3, 2003).

¹⁸⁶ "China's Education System: Reading between the Lines," *China Rights Forum*, No. 1 (2004), 47, 48.

cities.¹⁸⁷ The uneven distribution of funds means that compulsory education in the more affluent urban areas is free, but must be paid for in the poorer rural areas.

80. Overall statistics issued by the government only present one side of the picture. Access to education is uneven across China, with poor rural areas lagging behind. A survey conducted by the “Research into Equity Issues in Chinese Higher Education” shows that rural residents are three times more likely than urban residents to have only basic primary education.¹⁸⁸ Slightly more than 40 percent of rural residents have only a junior middle school education. This education attainment gap increases significantly in higher levels of education. Urban residents are 3.5 times more likely than rural residents to have attained senior high school, 281.55 times more likely to have a college degree, and 323 times more likely to have graduate level college education.¹⁸⁹ This is despite the fact that rural students made up more than half of those sitting for the national college entrance examinations.¹⁹⁰ At the same time, the drop-out rate in rural schools continues to increase. A survey conducted by the Central Committee of China Association for Promoting Democracy shows that nearly 40 percent of rural junior high students drop out of school; about half of the drop-outs stayed home to farm.¹⁹¹ The rising dropout rate in rural areas means that fewer rural residents will have acquired the “basic learning skills” “to lift themselves out of poverty and obtain the means to participate fully in their communities.”¹⁹² The odds against a rural student’s entry to college also led many youngsters to weigh against continuing with education.¹⁹³

81. A recent survey in China showed that 64 percent of the respondents indicate that local government’s charging of outrageous school fees is their top concern among forty other social issues.¹⁹⁴ The cost of education has become increasingly unaffordable to many of China’s rural families. One analysis of an Anhui farming family budget shows that 86 percent of the annual household income goes to the education budget of three children.¹⁹⁵ For the 26 million Chinese farming households whose net per capita annual income is only 600 *yuan*, the annual school fees of 450 to 500 *yuan* per child is a huge financial burden.¹⁹⁶ A college education for China’s rural areas is even more out of reach. An average annual cost of ,7000 *yuan* for one year of college education in China’s rural west is nine times the typical farmer’s net annual income, which means that a farmer will have to save everything he makes for 35 years in order for his child to attain a four-year college education.¹⁹⁷ The plight of Zheng Qingming, who ended his life in front of an express train because his dream for a college education had been dashed by the

¹⁸⁷ “Education Void Expands Wealth Gap,” *China Daily*, March 10, 2005, <http://www.chinadaily.com.cn>.

¹⁸⁸ “51.5 percent of rural residents and 16.3 percent of urban residents have only achieved an elementary education.” “Serious Gap in Higher Education Opportunities,” *China Daily*, February 14, 2005, <http://www.chinadaily.com.cn>.

¹⁸⁹ “Serious Gap in Higher Education Opportunities,” *China Daily*, February 14, 2005, <http://www.chinadaily.com.cn>.

¹⁹⁰ “More Rural than Urban Test Takers,” *Xinhua News Agency*, June 8, 2004, <http://www.china.org.cn>.

¹⁹¹ “China Experiences Rising School Dropout Rate,” *China Daily*, March 4, 2005, <http://www.chinadaily.com.cn>.

¹⁹² General Comment No. 13, The Right to Education, ¶1 (21st Sess. 1999).

¹⁹³ See Shi An, “The Tickle that Plaques China’s Equal Educational Opportunity,” *Nanfang Daily*, March 10, 2005, <http://www.nanfangdaily.com.cn/zm/20050310/wh/whxw/200503100044.asp>

¹⁹⁴ Jiang Xin, “Who Educate China’s Future Generation? Who Rescue China’s Future? [江迅, 誰教育中國? 誰搶救中國未來?]” *Yazhou Zhoukan*, March 27, 2005, p. 24, 25.

¹⁹⁵ The household analyzed has a net annual income of 4000 *yuan* from farming, another 3000 *yuan* in earning from migrant work. The cost for the three children’s education (one in high school, two in junior high) totaled 6000 *yuan*, with the remaining 1000 *yuan* to cover utilities and other household expenses. *Ibid.*, 24, 26–27.

¹⁹⁶ *Ibid.*, 24, 27.

¹⁹⁷ *Ibid.*, 24, 28.

unaffordable US \$ 80 college entrance examination fee, has been repeated across rural China.¹⁹⁸ It is an alarming bell of the tragedy behind China's growing urban-rural divide. The disproportionate funding of education in rural areas results in the unavailability and inaccessibility of education on all levels for a large number of rural residents.

82. The lack of adequate finances to support rural education also results in teachers remaining unpaid for lengthy periods. A recent report indicates that just in 2004, teachers were owed a total of 1 billion *yuan*, in addition to cumulated unpaid back wages of 16 billion *yuan*.¹⁹⁹ Wages owed to rural teachers account for an overwhelming proportion of the unpaid wages. By the end of 2003, rural teachers had been owed a total of 15.4 billion *yuan*. Teachers in some rural areas whose monthly salary is only 200 *yuan* a month, had not been paid for sixteen months, and some of them threatened to go on strike.²⁰⁰ The material condition of teaching staff, especially those in the rural areas, must be continually improved in order to comply with the right to education and its availability.

83. The failure of the government to provide its promised nine-year compulsory education for rural children has created an anomaly along its southwestern border where parents had been sending their children to the schools in border towns in Burma, Laos and Vietnam since 1996.²⁰¹ Privately run Burmese schools cost less than half what parents must pay in Chinese schools; in Vietnam, schools are free for the first three grades in primary schools, and from fourth grade and beyond, the government pays for all living expenses.²⁰² These countries are all considerably poorer than China.²⁰³

84. The recent pronouncement by Premier Wen Jiabao to eliminate fees for 14 million students in the country's poorest counties and to extend this policy until 2007 to enable all rural students to attain nine-year compulsory education is a good start.²⁰⁴ However, to truly attain equity between urban and rural education, the government needs to do more.

B. Obligation to Implement the Right to Education Without Discrimination: Access for Migrant Children

85. The emergence of the migrant population in China has created two stark phenomena: fractured rural families with members split into various locales, and invisible households living in desperate poverty in China's urban areas. Rural children left behind by their parents working in China's urban areas attend substandard schools in the rural areas and endure lives without

¹⁹⁸ Joseph Kahn, Jim Yardley, Amid China's Boom, "No Helping Hand for Young Qingming," *The New York Times*, August 1, 2004, col. 1, 1.

¹⁹⁹ Jiang Xin, 24, 28-29.

²⁰⁰ In the rural area near Hohhot, Inner Mongolia, the local government had started not timely paying teachers' wages since July 2002. The situation has deteriorated since. Thirty teachers who have more than a decade of teaching experience have now not been paid for 16 months. Jiang Xin, 24, 27.

²⁰¹ Guo, Zongxian, "The Sad Spectacle of Yunnan's Youngest Foreign Students," *Yazhou Zhoukan*, Marcy 27, 2005, 30.

²⁰² *Ibid.*, 30, 32-34.

²⁰³ Vietnam ranks 112 in the UNDP 2004 human development index, with a per capita GDP of US \$2300 in 2002; Laos ranks 135 in UNDP's 2004 human development index, with a per capita GDP of US \$1720; Burma (Myanmar) ranks 132 in UNDP's 2004 human development index with a per capita GDP of US \$1027. In comparison, China ranks 94 in UNDP's 2004 human development index, with a per capita GDP of US\$4580, more than twice the GDP of Vietnam and Laos, and almost 4.5 times that of Burma. *Human Development Report 2004*.

²⁰⁴ Jim Yardley, "China Plans to Cut School Fees for Its Poorest Rural Students," *The New York Times*, March 13, 2005.

seeing their parents for months or years at a time.²⁰⁵ Children who are able to accompany their parents in the urban areas, however, may have to, due to the *hukou* system, trade away their opportunity to have an education for family unity.

86. By the end of 2003, there were an estimated 114 million migrant workers and 6.43 million migrant children under fourteen in various urban areas of China.²⁰⁶ The education conditions of migrant children's education fall into five categories: (1) attending school in private schools set up by migrants, (2) "borrowing" placement at local schools, (3) attending private or boarding schools, (4) staying behind in their home villages and attending rural schools, and (5) not attending school at all.²⁰⁷

87. Among the children of migrants who follow their parents to urban areas, few can attend local schools because of various barriers. The "*hukou*" system means that the local government has no obligation to provide any service, including education, to individuals not registered in that locality. Migrant children fall within this unregistered category. For many local districts, in order for migrant children to enroll in local schools, their parents must at least possess three kinds of permits (temporary residence permit, employment permit and identification cards),²⁰⁸ as required under the 1998 Provisional Measures for the Schooling of Migrant Children and Young People.²⁰⁹ Few can acquire all the required permits, and even for those who can, few can afford the "temporary schooling fees" charged of migrant children that amount to thousands of *yuan*.²¹⁰ Indeed, the 1998 Provisional Measures have legitimized local policies of using high school fees to create a disincentive for migrants to settle in their localities.²¹¹ In contrast, private schools run by migrants charge substantially lower fees. Tuition for these schools runs from between 80 *yuan* to 1,000 *yuan*.²¹²

88. Migrant children who enroll in state-run schools suffer from institutionalized discrimination. For example, as "temporary students," they are often not eligible to have their grades recorded and cannot join in various school activities.²¹³ Without school records, many cannot advance to junior high or high school. Some attend private schools run by migrants, but a vast majority of these schools are unlicensed and unregistered and are in poor physical conditions. Despite the poor quality of education, migrant parents are eager to send their

²⁰⁵ Parents who choose to regularly visit their rural family are penalized with hefty fines that amount to weeks of wages. The demands of paying school tuitions, footing medical bills, buying needed fertilizer, paying debts and other incidentals have forced many migrants forgo visiting their rural families. Yardley, December 21, 2004.

²⁰⁶ The exact number of migrants and migrant children is unknown. Other estimates place the number of migrants at 100–160 million. "Migrant Children's Education Issue attracted attention from CPPCC delegates and NPC representatives," *East Day*, March 9, 2005, <http://china.eastday.com>.

²⁰⁷ *Ibid.*

²⁰⁸ "Shutting the Poorest: Discrimination against Migrant Children in City Schools," *China Rights Forum*, No. 2, (2002), 4, 11.

²⁰⁹ Provisional Regulations on the School Attendance of Migrant Children (流动儿童少年就学暂行办法), Promulgated and adopted on March 2, 1998.

²¹⁰ Tomasevski Report, ¶27. The state-run schools usually charge three types of fees: a 480 *yuan* per semester temporary student fee, a 1000 *yuan* school-choosing fee, and a required donation of 1,000 to 30,000 *yuan*. The fees required to enter the most basic schools in China's urban centers are at least 7,500 *yuan*s. Human Rights in China, "Shutting the Poorest: Discrimination against Migrant Children in City Schools," *China Rights Forum*, No. 2, (Human Rights in China, 2002): 4, 8; For example, book fees for migrant children in Zhaoqing Railroad Junior School run from 618 *yuan* to 868 *yuan* per semester in the 2003-2004 academic year, which is generally more than twice charged of local students, http://www.china8.org/areas/migrant_ed.htm

²¹¹ "Shutting the Poorest: Discrimination against Migrant Children in City Schools," *China Rights Forum*, No. 2, (2002): 4, 5–6.

²¹² *Ibid.*, 4, 8.

²¹³ *Ibid.*, 4, 9.

children to these privately-run schools in the urban areas because having some schooling is still better than no education at all.²¹⁴ “Graduates” from these schools, however, cannot advance to upper level schools as these schools do not have the necessary connections with government high schools or colleges.²¹⁵ As a result, almost one in ten migrant children are not receiving any education, 6.85 percent have never been to school and another 2.45 percent have dropped out of school.²¹⁶ Pervasive ostracism, ridicule and discrimination have also hindered the educational progress of migrant children.²¹⁷ These systematic difficulties faced in the attainment of the right to education by migrant children, perpetuated by the *hukou* system and State policy, are undeniably discriminatory. Additionally, States parties have an immediate obligation to effectively monitor the situation pertaining to vulnerable groups²¹⁸ and provide low-cost targeted program to alleviate the condition of the most vulnerable, with migrant children clearly falling into this category.

89. In addition to structural and bureaucratic factors, continuing rapid economic growth and China’s hosting of the 2008 Olympics pose another threat to migrant children’s access to available and acceptable education. Urban construction for the Olympics in Beijing and in large cities around the country is generally taking place in the outskirts of cities, often the location of major migrant enclaves. Olympic-related construction threatens to dismantle these informal migrant enclaves overnight, including the private schools set up for the migrant children.²¹⁹

C. Obligation to Implement the Right to Education Without Discrimination: Access for Girls

90. Statistics released by the Chinese government in early January of 2005 indicate that the country is facing unprecedented sex ratio imbalance: there are 100 girls born to every 119 boys. The government imposed a one-child policy in the late 1970s that compounded the traditional favor for boys, contributing to lop-sided statistics. Favoritism for boys also means that when a girl baby is born, she may not be registered in the *hukou* system: she is not entitled to any service, including education. When resources are limited, girls’ education is often sacrificed because of the traditional belief that a woman who is ignorant is virtuous, or that educating a girl who would marry out of the family is wasteful. Female literacy stood at 86.5 percent, compared to 95.1 percent for males in 2002;²²⁰ girls also may account for 80 percent of the new illiterates.²²¹ In

²¹⁴ “Migrant Children’s Education Issue . . .,” March 9, 2005.

²¹⁵ “Shutting the Poorest: Discrimination . . .,” 2, 4, 8.

²¹⁶ “Some Ten Percent Migrant Children Drop out of School,” *People’s Daily*, November 6, 2004, http://english.peopledaily.com.cn/200411/06/eng20041106_163015.html.

²¹⁷ “UNICEF China representative Christian Voumrad said migrant people ‘face prejudice and marginalization where they live and work. The same applies to the millions of children who accompany their migrating parents for they face problems and constraints in obtaining equal access to basic services such as education and health care as well as participating in social life in their new communities.’” “Some Ten Percent Migrant Children . . .,” November 6, 2004.

²¹⁸ “Effective monitoring of the situation with respect to housing is another obligation of immediate effect. . . [the revised general guidelines] emphasize the need to ‘provide detailed information about those groups within . . . society that are vulnerable and disadvantaged with regard to housing.’”; CESCR General Comment 4, The Right to the Highest Attainable Standard of Health, ¶13, E/C.12/2000/4 (22nd Sess., 2000).

²¹⁹ “Shutting the Poorest . . .,” 4, 12.

²²⁰ *Human Development Report 2004*, 218.

²²¹ The EFA Assessment: Country Reports: China, Table 3.2 (UNESCO, 2000), <http://www2.unesco.org/wef/countryreports/china/contents.html>

addition to higher illiteracy rates, girls also are lagging in education attainment. A recent study of gender equity in basic education revealed that many girls are not given the opportunity for basic education, particularly in rural areas in western China, because of parental priority on educating sons.²²² The All-China Women's Federation reports that rate of girls' school enrollment is lower than that of boys and the rate drops further at the higher education level. The education level for rural women remains low: 58.8 percent of rural women have only completed primary education, compared to 36.9 percent for men. The same report also shows that 42.3 percent of rural women have completed only junior high, compared to 21.5 percent for men.²²³ Overall statistics show that girls make up slightly more than half of all primary school pupils, but only slightly more than a third of China's college student population.²²⁴



ARTICLE 15: THE RIGHT TO CULTURAL LIFE AND THE BENEFITS OF SCIENCE

91. As with all rights under the Covenant, cultural rights must be guaranteed without discrimination, but the PRC government has also not adequately protected and respected the right of minority groups to practice their religions and engage in cultural activity. In particular, in Tibet and Xinjiang,²²⁵ in addition to the influx of Han settlers shifting the local demographics, the PRC government has increasingly invoked national security and the threat of separatism to curtail cultural and religious practices, to education and publications. Chinese citizens also continue to face significant restrictions in their access to uncensored information, and the expression of any opinions critical of the government in print, other media, or on the Internet, as reflected in detentions of journalists, Internet activists, intellectuals, and grassroots activists.

92. Implicit in the right to take part in cultural life is the right to free exercise of the religion of one's choice.²²⁶ The Chinese Constitution provides that “[c]itizens . . . enjoy freedom of religious belief.”²²⁷ However, the freedom to practice one's religion “in community with others” is not a right granted by the State. At the core of the PRC government's religious policy is the toleration of only those beliefs and practices that do not threaten the Party-State. As such, during the past year, the government has not relaxed its repression of religious practitioners and activists. A cursory review shows that hundreds of them are still behind bars.²²⁸

²²² “PRC official says birthrate disparity ‘serious’ threat to well-off society,” *China Daily*, July 8, 2004, www.chinadaily.com.cn, quoted in Congressional-Executive Commission on China, *Annual Report*, 2004, (Washington, DC: GPO), 56.

²²³ “Fewer women attain higher education level?” All-China Women's Federation Press Release, March 9, 2005, <http://www.women.org.cn/allnews/04/166.html>.

²²⁴ Tomasevski Report, ¶26.

²²⁵ See, e.g., Human Rights Watch and Human Rights in China, *Devastating Blows: Religious Repression of Uighur Muslims in Xinjiang*, (New York: HRIC/HRW, April 2005).

²²⁶ See e.g. under Article 11 of the Covenant, the enjoyment of the right to housing should not be subject to any form of discrimination, including discrimination based on religion. CESCR General Comment No.4, The Right to Adequate Housing ¶7, E/1992/23 (6th Sess. Dec. 13, 1991). The rights to food, health care and education are all contain the core contents of accessibility and availability that take into consideration of religious, cultural and ethnic preferences. See CESCR General Comment, No. 12, ¶¶ 7–13, E/C.12/1999/5 (12th Sess. 1999); CESCR General Comment, No. 13: The Right to Education, ¶¶4–7, (21st Sess. 1999); CESCR General Comment, No. 14, The Right to Highest Attainable Standard of Health (Art. 12), ¶¶12–14, 27, E/C.12/2000/4 (22nd Sess. Aug. 11, 2000). See also, CESCR List of Issues: China, E/C.12/Q/CHN/1, ¶¶ 43–46 (June 7, 2004).

²²⁷ Constitution of the People's Republic of China, Article 36.

²²⁸ See e.g., Congressional Executive Commission on China, *2004 Annual Report*, (Washington DC: GPO, 2004), 2.

93. Of particular concern is the system of law, regulation and policy instituted in areas where ethnic minorities are concentrated, such as Tibet or Xinjiang. In Xinjiang, Uighur Muslims are denied religious, cultural and educational freedom. Intrusive religious control extends to organized religious activities, religious practitioners, cultural institutions and even to personal appearance and behavior of Uighur individuals. Celebrating religious holidays, studying religious texts, or wearing religious dress are strictly forbidden at state institutions, including schools. Any expression of dissatisfaction with Beijing's policies are equated with "separatism"—a State security crime under Chinese law that can draw the death penalty. Repression of Xinjiang Uighurs has increased as the Chinese government has used the rhetoric of the "war on terror" as a cover for targeting Muslims. The government has gone so far as to claim that Xinjiang separatists are using arts and literature to "distort historical facts," a purported justification for clamping down on cultural rights.²²⁹ Not only do these laws and policies deny the right to religious and cultural freedom of the Uighur minority but they also deny the component of the right to education that allows parents to choose schools that ensure the religious and moral education of their children in conformity with their own convictions.²³⁰

94. Explicitly provided in Article 15 is the freedom to publish and to engage in creative activity which is further buttressed in the academic setting by interconnected right to academic freedom and institutional autonomy in Article 13 whereby, "the right to education can only be enjoyed if accompanied by the academic freedom of staff and students."²³¹ "Academic freedom" includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfill their functions without discrimination or fear of repression by the State or any other actor, to participate in professional or representative academic bodies, and to enjoy all the internationally recognized human rights applicable to other individuals in the same jurisdiction."²³² As such, members of the academic community should be "free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation of writing."²³³

95. Despite the mandate in Article 15, Chinese citizens continue to face significant restrictions in access to uncensored information, and in the expression of any opinions critical of the government in print, other media, or on the Internet. The PRC government has heightened its control over publishing and citizens' use of the Internet. In early December of 2004, Beijing police arrested and detained for several days three dissident writers associated with the global writers' association PEN International. The authorities accused them of violating the *State Secrets Law*. Another among the group was recently charged with subverting state power for writing articles for publication and Websites overseas.²³⁴ In February 2005, Chinese authorities in western China sentenced five Tibetan monks to jail for publishing a newsletter in 1995 that contained poems and articles that the authorities believed to contain political messages.²³⁵ In the weeks after former Party chief Zhao Ziyang's death on January 17, 2005 "[w]estern media

²²⁹ See *Devastating Blows*, April 2005.

²³⁰ *Ibid.*

²³¹ CESCR General Comment 13, The right to education ¶38 (21st Sess. 1999).

²³² *Ibid.*, ¶39.

²³³ *Ibid.*, ¶39.

²³⁴ "Journalist and Cyber-dissident Zheng Yichun Held on Subversion Charge," *Reporters Without Borders*, March 25, 2005, http://www.rsf.org/article.php3?id_article=12997.

²³⁵ "Five Tibetan Monks Jailed in Western China," *Radio Free Asia*, February 13, 2005, http://www.rfa.org/english/news/politics/2005/02/13/tibetan_jail/

coverage on CNN and the BBC was blacked out in China. Click on anything with the words “Zhao Ziyang” on the Internet here, and the page probably will not be available for display.”²³⁶

96. In addition to controlling the traditional print and broadcast media, the government has also stepped up its control over cyberspace. In 2004, the Chinese government shut down more than 12,000 cyber cafes, in an apparent attempt to limit access to the Internet.²³⁷ Scores have ended in jail or have otherwise lost their freedom for using the Internet to disseminate information or express their opinion.²³⁸ In March 2005, university campuses across China tightened their censorship over Internet chat rooms. A popular Website run by Tsinghua University was ordered to close to non-student visitors.²³⁹ This is following the shut-down of Peking University’s Website, Yitahutu, in September of 2004.²⁴⁰

97. Individuals who sought to express their opinion continue to face repression and repercussions. For example, 73-year-old doctor, Jiang Yanyong was detained for seven weeks in July of 2004 for exposing the government’s cover-up of the SARS outbreak. He was only recently released from eight months of house arrest.²⁴¹ Others such as Rebiya Kadeer, a Uighur activist had been jailed for 5 and a half years for carrying documents containing human rights issues and a list of political prisoners on her way to meet with a staff member of the U.S. Congressional Research office in 1999. She was released only days before U.S. Secretary of State’s visit to China in March 2005.²⁴² However, her physical freedom has not been accompanied by political freedom: the Chinese authorities had warned her not to reveal any sensitive information concerning Xinjiang by using the safety of her children in China as the pawn.²⁴³ Others, such as Jiao Guobiao, faced suspension of duty, and ultimate dismissal for writing articles critical of the government. For Jiao, his crime was writing articles critical of the Communist Party’s propaganda machine that controls the media; he accused the apparatus for covering up famines and corruption and for continuing to ban any mention of these parts of China’s history.²⁴⁴

²³⁶ Ching-Ching Ni, “China Plays down Death of Ex-leader,” *Los Angeles Times*, January 19, 2005.

²³⁷ “Chinese government says it shut down 12,575 Internet cafes in 2004,” *Associated Press*, February 14, 2005, www.factiva.com; “China Steps up Effort in Closing Cyber Café,” *Dajiyuan*, February 15, 2005.

²³⁸ Bobson Wong, “The Tug-of-War for Control of China’s Internet,” *China Rights Forum*, No.1 (2004), 32; Xu Jianxin, “Tough Times for China’s Internet Human Rights Activists,” *China Rights Forum*, No. 1 (2005), 67; “In Custody: People Imprisoned in Connection with Journalism or the Internet,” *China Rights Forum*, No. 1 (2005).

²³⁹ Nailene Chou Wiest, “Non-students Barred from Chat Room,” *South China Morning Post*, March 18, 2005, www.factiva.com; Nailene Chou Wiest, “Students Protest over Chat-room Restrictions,” *South China Morning Post*, March 19, 2005, www.factiva.com; Philip P. Pan, “Chinese Crack Down on Student Web Sites,” *Washington Post*, March 24, 2005, A13, www.factiva.com.

²⁴⁰ *Ibid.*

²⁴¹ Siu-Sin Chan, “SARS Whistle-blower Wins Freedom,” *South China Morning Post*, March 24, 2005, www.factiva.com. See also, Jim Yardley, “Chinese SARS Hero Urges Party to Admit Error for ‘89 massacre,” *The New York Times*, March 8, 2004, www.factiva.com; Philip P. Pan, “Chinese Pressure Dissident Physician,” *Washington Post*, July 5, 2004, A1; Philip P. Pan, “China Frees Dissident Physician” *Washington Post*, July 21, 2004, A1; Joseph Kahn, “China Releases the SARS Whistle-blower,” *The New York Times*, July 21, 2004, www.factiva.com.

²⁴² William C. Mann, “Freed China Prisoner Details 1999 Arrest,” *Associated Press*, March 24, 2005, www.factiva.com.

²⁴³ “‘Your Children will be Finished,’ Chinese Guards Warned Uyghur Activist Rebiya Kadeer,” *Radio Free Asia*, March 31, 2005, http://www.rfa.org/english/news/politics/2005/03/28/China_Kadeer/

²⁴⁴ “Top Chinese Academic Fired for Leveling Criticism at Government,” *Agence France-Presse* March 30, 2005, www.factiva.com; Louisa Lim, “Outspoken Chinese Professor Fired,” *BBC News*, March 30, 2005, <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/asia-pacific/4392705.stm>

III. CONCLUSION

98. The policy emphasis that the PRC has put on development projects, urbanization, and the decentralization of financial support for core human services has attracted foreign investment and induced economic growth and modernization. However, the result has been persistent poverty in the rural areas, rising illiteracy among rural residents, and the loss of free education, health care and social security for scores of rural children, peasants and migrant workers. Industrialization in many parts of China also brought in pollution that has caused serious health problems for its people. By adopting a top-down approach, the Chinese government has pre-empted its citizens' ability to exercise their rights as guaranteed by the Covenant. The PRC government has not taken steps with a view to achieving progressively the full realization of the rights recognized in the Covenant. It has also failed to meet its minimum core obligation to ensure the minimum essential levels of each of the rights as significant number of individuals are deprived of essential foodstuffs, essential primary health care, basic shelter and housing, or the most basic form of education. In sum, the PRC government has neither adequately nor effectively fulfilled its obligations through as assessed through its conduct or results of its policies.²⁴⁵

²⁴⁵ CESCR General Comment, No.3, E/1991/23, ¶1 (5th Sess. 1990).

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