

Suggested questions and issues to be raised with the Chinese government in advance of the review of its third report on the implementation of the Convention on the Rights of the Child

Submitted to the Committee on the Rights of the Child for its pre-sessional working group

NOVEMBER 2012



HRIC Head Office: 350 Fifth Avenue, Suite 3311, New York, NY 10118
TEL (212) 239-4495 | FAX (212) 239-2561 | hrichina@hrichina.org
HRIC Hong Kong Branch Office: GPO P.O. Box 1778, Hong Kong
TEL (852) 2710-8021 | FAX (852) 2710-8027 | hrichk@hrichina.org

Table of Contents

	Page	Paras.
INTRODUCTION	3	1-4
OVERARCHING ISSUES		
Availability of Relevant Data and Information.....	3	5-8
Opportunities for Civil Society Participation.....	5	9-12
SPECIFIC AREAS OF CONCERN		
Uniform Implementation and Non-Discrimination	6	14-17
Public Awareness and Advocacy Campaigns to Disseminate Information about the CRC and Implementation Measures.....	7	18-22
Economic Exploitation	8	23-31
Child Refugees from the Democratic People’s Republic of Korea	10	32-34
SUMMARY	10	35-40

ANNEXES

- A: Outline of the State Secrets Legal Framework in the People’s Republic of China
- B: Selected State Secrets Regulations and Relevant Data [Chart]
- C: HRIC Translation: Law of the People’s Republic of China on Guarding State Secrets (2010)
- D: List of Relevant Provisions of Chinese Law

Introduction

1. Human Rights in China ("HRIC") appreciates this opportunity to contribute to the Committee on the Rights of the Child's ("Committee") pre-sessional working group for its upcoming review of China's ("the State Party") combined third and fourth periodic reports on the implementation of the Convention on the Rights of the Child ("CRC").
2. HRIC's 2005 parallel report to the Committee in advance of the State Party's second periodic review focused on China's most vulnerable children, including: children caught in the juvenile justice system, trafficked or sexually exploited children, AIDS orphans, and migrant or rural children. We also highlighted several systemic issues including: (1) the disparity between legislative efforts and implementation policies, particularly for rural inhabitants; (2) the inadequacy of measures to protect children in difficult conditions; and, (3) the impact on freedom of expression and access to information posed by the silencing or undermining of children's voices and participation in society.
3. The State Party's third submission to the Committee reports progress in several important areas, predominantly legislative and policy changes (see e.g., 6-7 paras. 6-7). The State Party reports increased financial assistance for impoverished girls (11 paras. 28-29), for AIDS prevention and treatment (12 para. 36), and a heightened investment in hygiene and healthcare for infants and young children (14 para. 46). The State Party also reports that children who have lost one parent to AIDS are also now eligible to receive state benefits in Henan province. (13 para. 38). While this reported progress is a positive step, challenges remain facing the State Party's effective implementation of the CRC. In particular, additional reporting on measures to track and evaluate the effectiveness of its legislative and policy reforms is needed, as well as, a dedicated effort to address systemic challenges.
4. This submission highlights two overarching issues that impact the reporting and monitoring of the State Party's obligations under the CRC, and outlines several specific concerns and recommendations.

Overarching Issues

Availability of Relevant Data and Information

5. Comprehensive, accurate, and transparent data and information are critical to assessing progress, understanding the surrounding issues, and developing effective solutions to complex challenges. However, the State Party's current legal framework and policies limit the availability of information, directly impacting the Committee's effective assessment of its progress and challenges in implementing the CRC.
6. The primary source of limitation is the State Party's elaborate States Secrets System, a legal framework composed of laws, regulations and specific classifications which designates a wide

variety of information as secret or internal and establishes punishments for the improper handling of such information. This comprehensive and non-transparent framework sweeps a vast universe of information into an ambiguous, vague and discretionary system that permits retroactive classification of information. The broad reach of this system presents challenges to obtaining the information that is relevant to the State Party's implementation of the Convention. (Additional description of the States Secrets framework is provided in Annex A of this submission).

7. Information, data, or statistics relevant to assessing progress under specific articles of the CRC and to questions or areas of concern raised by the Committee in the past, which may be classified under the State Secrets Law include:
- “Compiled information and statistics that have not yet been made public on criminals that have been arrested, captured, sent for **reeducation through labor or juvenile rehabilitation**, or taken in for shelter and investigation in any directly-administered-municipality, autonomous region or province throughout the country,” is **classified as “secret”**¹
 - “Compiled data regarding major cases that involve the **killing or injuring of women and children** or at the provincial level and higher regarding the **trafficking of women and children**” is **classified as “secret”**²
 - “Figures on cases of kidnapping and trafficking in humans and figures on those kidnapped or sold; cases involving the **kidnapping and trafficking of women belonging to ethnic minorities** or women from outside the country; cases of kidnapping and trafficking inhuman that seriously threaten the safety of the public...” should be **handled as internal** (“neibu”) matters, dissemination of which is prohibited without first obtaining permission from relevant regulatory organs.³
 - “Strategies and measures for handling **major public order emergencies involving religious matters**” are classified as **“top secret”**.⁴ Strategies pursued in Tibetan communities, including children's access to religious and cultural events, may fall within this restriction.

(Additional restrictions on information that is potentially relevant to the Committee's review of the State Party's report are provided in Annex B of this submission.)

¹Article 2.C.2 of *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Public Security Work* [公安工作中国家秘密秘密及其密级具体范围的规定]. Jointly issued by Ministry of Public Security and National Administration for the Protection of State Secrets [公安部、国家保密局], March 28, 1995.

² Article 3.2.3. and 3.2.4. of *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Women's Work*. Jointly issued by All-China Women's Federation and National Administration for the Protection of State Secrets [中华妇女联合会、国家保密局], April 24, 1991.

³. Article 3.5 of *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Public Security Work* [妇女工作中国家秘密及其密级具体范围的规定]. Jointly issued by All-China Women's Federation and National Administration for the Protection of State Secrets [中华妇女联合会、国家保密局], April 24, 1991.

⁴ Article 3.1.1 of *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Religious Work* [宗教工作中国家秘密及其密级具体范围的规定]. Jointly issued by Ministry of Religious Affairs and National Administration for the Protection of State Secrets [宗教事务局、国家保密局], October 12, 1995.

8. In light of the need for transparent and accurate data for an informed review of the State Party's progress and implementation of the CRC, the Committee may find it helpful to request the following additional information:
- The **current classification**, if still classified, and availability **of the above information** (listed in para. 7 above) following the 2010 revision of the States Secrets law
 - Regarding the "**statistical systems**," referenced in the State Party report, and put in place to gather information for the monitoring and implementation of the CRC (10 para. 23; 11 para. 28):
 - Whether these systems include **benchmarks and indicators to monitor and assess progress**
 - **Whether** the information gathered by these "statistical systems" is **publically accessible**, and if so, how
 - Whether there is a **relationship between** the statistics collected under **these systems** and the disclosure limitations imposed by **the States Secrets framework**.

Opportunities for Civil Society Participation

9. As reflected in the Committee's 2005 concluding observations regarding the State Party's second review, the participation of non-governmental and civil society organizations ("NGOs" and "CSOs" respectively) in the preparation of the State Party's report and ongoing monitoring is critical to advance effective implementation of the CRC.⁵ However, the State Party's restrictive regulatory framework for CSOs and severe policies of social control present significant challenges for the involvement of CSOs in the Committee's review process.
10. The State Party requests that "[i]n the course of drafting and revising the report, opinions have been sought from a wide range of sources, including legislative, administrative, and judicial bodies, *relevant NGOs* and specialists in related fields" (6 para. 4, emphasis added). However, it does not identify which specific organizations were consulted in the process.⁶
11. Additionally, the State Party's use of the term "NGO" in its report requires clarification. Under relevant Chinese regulations, "Non-Governmental Organization" (*feizhengfuzuzhi* 非政府组织) does not exist as a legal category although the term may be used in official discourse. The

⁵ Specifically, paragraph 27 of the Committee's 2005 concluding observations presses China to "facilitate and encourage the independence and expansion of activities by non-governmental organizations, in particular those working for the promotion and protection of child rights inter alia by ensure their free and active involvement in the implementation of the Convention, including in the preparation of reports and the implementation of the Committee's concluding observations and recommendations." (CRC/C/15/Add.271 para. 27)

⁶ Note: paragraph 18 of the State Party's report refers to the Beijing Children's Legal Aid and Research Centre, but as only in relation to its efforts to promote the protection of children's rights, not as a consulted partner in the drafting process. (9 para. 18).

overarching official term for civil society groups is either “Civil Organization” (*minjianzuzhi* 民间组织)⁷ or “Social Organization” (*shehuizuzhi* 社会组织)⁸. The Chinese report uses these and other related terms interchangeably, at times translated in English as CSOs and at others as NGOs.⁹ The inconsistent use of these terms is not only a potential source of confusion in either language, but also masks the fundamental difference between many of these organizations and their Western counterparts. Though translated as NGO, under current national law, Chinese civil society organizations require sponsorship from an authorized department in order to legally register, and are thus generally under the supervision of a government or quasi-government agency.¹⁰ It is consequently inaccurate to refer to them as non-governmental organizations.

12. In light of the failure to identify specific CSOs consulted in the drafting of the State Party’s report, and the difficulty of establishing a CSO under the restrictive Chinese regulatory system, the Committee may wish to request the following information:

- **A list of CSOs** operating independent of government or quasi-government supervision that were consulted in the preparation of the State Party’s report
- Clarification regarding the **consultation process** and any resulting outputs from the consultation

Specific Areas of Concern

13. In addition to the above overarching issues, HRIC would like to call the Committee’s attention to several specific areas arising out of the State Party’s 2010 periodic report that would benefit from additional clarification.

Uniform implementation and non-discrimination

14. In response to the Committee’s recommendation that the State Party establish a national human rights institution, the State Party reports that it has numerous departments that bear similar responsibilities, and it is “willing to study this issue further.” (9 para. 16) The State Party’s report provides no further details, however, as to the specific responsibilities of these departments, their procedures or their effectiveness in protecting the rights enshrined in the CRC.

15. More generally, HRIC is concerned that the State Party’s political and legal landscape present significant challenges for the creation of an independent national human rights institution. The

⁷ <http://mjj.mca.gov.cn/article/page/index.html>

⁸ <http://www.chinanpo.gov.cn/index.html>

⁹ See, e.g., *minjianzuzhi* (民间组织 “civil organization”) used in para. 240, *shehuizuzhi* (社会组织 “social organization”) used in para. 237; *shehuituanti* (社会团体 “social organizations/ groups”) used in para. 11 and 12, *minjiantuanti* (民间团体 “civil organizations”) used in para. 18, and *feizhengfuzuzhi* (非政府组织 “non-governmental organization”), used in para. 4.

¹⁰ Article 3 of the *Regulations for Registration and Management of Social Organisations*, promulgated by the State Council and effective as of October 25, 1998, in Chinese, see http://www.law-lib.com/law/law_view.asp?id=399; for an unofficial English translation, see <http://www.unhcr.org/refworld/docid/48a9818f2.html>

presence of *zhengfawei* (政法委) (political-legal committees) throughout the court system result in a judiciary which is not fully independent from the Chinese Communist Party, especially in deciding any cases deemed sensitive. In addition, cases such as that of Chen Guangcheng, the blind, self-trained legal activist who helped village women resist forced abortions, illustrate that harassment and intimidation of those who attempt to protect the rights of children via the legal system remain a significant issue in the State Party.

16. The lack of a rule of law independent of the Chinese Communist Party; intimidation of petitioners and rights defenders including those advocating for issues affecting children, and the legal and extra-legal constraints on civil society groups, all raise serious questions as to the ability of an independent institution to credibly and safely function in the State Party at this time.
17. In assessing the effectiveness of the “departments that bear similar responsibilities” to a national human rights institution cited in the State Party’s report (9 para. 16), the Committee should seek additional information regarding:
 - The **procedures for investigating** reported human rights abuses reported to the departments cited;
 - **Statistics and outcomes** of the complaints handled by these departments; and
 - Specific **measures planned** or in place **for supervising the behavior of government bodies** and officials charged with accepting and investigating complaints of human rights abuses

Public awareness and advocacy campaigns to disseminate information about the CRC and the State Party’s implementation measures

18. Under Article 42 of the CRC, States Parties must “undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.” (Article 42, CRC).
19. HRIC notes the State Party’s efforts with regard to this obligation, including that it “has printed and distributed copies of the text of the Convention,” and that, “[f]rom 2007 to 2009, the State Council Working Committee on Women and Children and the Ministry of Foreign Affairs respectively printed off and distributed *Children’s Rights* and a booklet containing the Convention and its Protocols.” (9 para. 15) However, despite the expanding government informatization policy, the Convention and the Protocols do not appear to be available on the Ministry’s website at this time.
20. With more than 500 million Chinese citizens online, the Internet offers an effective way to disseminate information. The State Party’s informatization efforts are reflected in its report. For instance, the following implementation materials are all available online:
 - The Opinions on Further Improving Compulsory Education for Children of Rural Workers who have Migrated to Cities for Employment (38 para. 175)

- The Circular on Issues Relating to Integrating Expenditure on Management of Rural Workers in the Scope of Fiscal Budgetary Expenses (38 para. 175)
- The publicity handouts distributed during the crackdown on illegal employment from July to August 2007 (46 para. 216).

21. HRIC urges the Committee to encourage the State Party to exploit online dissemination as an effective means of increasing public awareness of advocacy campaigns and the Convention and associated Protocols.

22. In addition, the Committee may find it useful, in evaluating the State Party's efforts to publicize the Convention and its implementation efforts, to request information regarding:

- What **benchmarks and indicators** are in **place to evaluate the effectiveness** of dissemination efforts reporting measures taken to implement the CRC ; and
- What **steps or policies** are in place or under consideration **to ensure the dissemination of all future materials and information via the Internet, traditional and new media**

Economic exploitation

Re-education through Labor System ("RTL")

23. The State Party's RTL program is an administrative punishment system which permits public security bureau officers to order individuals suspected of misdemeanor violations to up to four years of detention without any formal legal procedure or representation.¹¹ During this detention individuals face extreme risks including: torture, malnutrition, and forced labor.¹²

24. In response to the Committee's recommendation that the State Party "ensure that re-education through labor does not result in children working in violation of the principles and provisions of ILO Conventions nos. 138 and 182" (CRC/C/15/Add.271 para. 27), the State Party reports that the use of re-education through labor for juveniles who have reached the age of 16 complies with the ILO Conventions. (47 para 219). However, the effect of this interpretation of the ILO Conventions is that minors of 16 years and older can be detained for up to four years without any legal procedure and placed in questionable conditions.

25. It is unclear how the current RTL system meets the minimum age requirements set out in ILO Convention no. 138, which states that: "[t]he minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to

¹¹ Ministry of Public Security [公安部]. Regulations on the Handling of Reeducation Through Labor Cases by Public Security Organs[公安机关办理劳动教养案件规定]. Promulgated April 12, 2002 and effective June 1, 2002. Unofficial English translation, see <http://www.duihuaresearch.org/2012/10/rtl-regulations-police-authority-in.html>; In Chinese see <http://www.mps.gov.cn/n16/n1996048/n2283084/2288628.html>

¹² See HRIC's press releases on human rights defender Mao Hengfeng for details on RTL conditions, available at: <http://www.hrichina.org/content/5501> and <http://www.hrichina.org/content/4897>

jeopardise the health, safety or morals of young persons shall not be less than 18 years.” (ILO Convention no. 138, Article 3.1). National laws or regulations are permitted to lower this age to 16 years “**on condition that the health, safety and morals of the young persons concerned are fully protected** and that the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.” (ILO Convention no. 138, Article 3.3, emphasis added).

26. To clarify whether the State Party’s current child labor practices comply with its CRC obligations, and with the ILO Conventions no. 138 and 182, the Committee may wish to request further clarification on:

- **Measures in place to protect** the health, safety and morals of the **young persons detained in RTL facilities**
- **Measures in place for monitoring the behavior of officials** supervising RTL facilities

Restrictions on Independent Labor Unions

27. A broader concern regarding the State Party’s labor practices is presented by current Chinese law and policy, which permits only the officially approved national trade union.

28. The All-China Federation of Trade Unions (hereinafter “ACFTU”) was established in 1925. Currently the ACFTU is the only workers’ federation allowed to operate in the State Party, representing 135 million workers in 31 provincial, autonomous regional and municipal federations and 10 national industrial trade unions. According to *the Constitution of the Chinese Trade Unions (2008)*, the ACFTU is a “mass organization of the Chinese working class under the leadership of the Communist Party of China (CPC) and formed by the workers of their own free will.”¹³ **Any union established must be registered under the ACFTU**, and it is considered **a bridge connecting the party with the masses**, with its supreme organ of power being the National Congress along with the ACFTU Executive Committee it elects.¹⁴

29. The ACFTU is therefore directly under the administration of various official government ministries or councils, and is thus subject to the supervision of the Communist Party of China.

30. The lack of independent trade unions was also noted in the Committee on Economic, Cultural and Social Rights’s 2005 Concluding Observations on the State Party’s initial report before that body. It expressed concern that independent trade unions are not permitted under Chinese law, and further recommended that the State Party “amend the *Trade Union Act* to allow workers to form independent trade unions outside the structure of the All-China Federation of Trade Unions.” (E/C.12/1/Add.107 paras. 26, 55).

¹³ Constitution of the Chinese Trade Unions, see General Principles
<http://english.acftu.org/template/10002/file.jsp?cid=141&aid=470>

¹⁴ For additional information about the ACFTU, see: <http://english.acftu.org/template/10002/file.jsp?cid=63&aid=1>.

31. HRIC urges the Committee to request further information regarding:

- Whether the State Party is taking **steps to implement the Committee on Economic, Cultural and Social Rights’ recommendation to amend the Trade Union Act**, and if so, what those steps are

Child Refugees from the Democratic People’s Republic of Korea

32. The determination of refugee status and the risk of irreparable harm to a child if returned to his or her country of origin is a factual, legal and individual determination.

33. In its 2005 concluding observations, the Committee called for the State Party to “[e]nsure that no unaccompanied child, including from the DPRK, is returned to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child...” (CRC/C/15/Add.271 para. 82(a)). The State Party’s current report states that “[t]he ‘children from the Democratic People’s Republic of Korea’ referred to in the Committee’s concluding remarks, have illegally entered China’s borders for economic reasons, and are not refugees.” (41 para. 187).

34. HRIC urges the Committee to request further information regarding:

- Specific **procedural measures in place to ensure that the rights of refugee children** are protected, in accordance with international standards, in any determination of status
- **Statistics and information on children from the Democratic People’s Republic of Korea who sought refugee status** in the State Party during the reporting period, what process those applications received, and how many were granted asylum

Summary: List of items for additional clarification

35. Availability of Relevant Data and Information

- The **current classification**, if still classified, and availability of **the above information** (listed in para. 7 above) following the 2010 revision of the States Secrets law
- Regarding the “**statistical systems**,” referenced in the State Party report, and put in place to gather information for the monitoring and implementation of the CRC (10 para. 23; 11 para. 28):
 - Whether these systems include **benchmarks and indicators to monitor and assess progress**
 - **Whether** the information gathered by these “statistical systems” is **publicly accessible**, and if so, how
 - Whether there is a **relationship between** the statistics collected under **these systems** and the disclosure limitations imposed by **the States Secrets framework**.

36. Opportunities for Civil Society Participation

- **A list of CSOs** operating independent of government or quasi-government supervision that were consulted in the preparation of the State Party's report
- Clarification regarding the **consultation process** and any resulting outputs from the consultation

37. Uniform implementation and non-discrimination

- The **procedures for investigating** reported human rights abuses reported to the departments cited in the State Party report (9 para. 16)
- **Statistics and outcomes** of the complaints handled by these departments;
- Specific **measures planned** or in place **for supervising the behavior of government bodies** and officials charged with accepting and investigating complaints of human rights abuses

38. Public awareness and advocacy campaigns to disseminate information about the CRC and the State Party's implementation measures

- What **benchmarks and indicators** are in **place to evaluate the effectiveness** of dissemination efforts reporting measures taken to implement the CRC ; and
- What **steps or policies** are in place or under consideration **to ensure the dissemination of all future materials and information via the Internet, traditional and new media**

39. Economic exploitation

- **Measures in place to protect** the health, safety and morals of the **young persons detained in RTL facilities**
- **Measures in place for monitoring the behavior of officials** supervising RTL facilities
- Whether the State Party is taking **steps to implement the Committee on Economic, Cultural and Social Rights' recommendation to amend the Trade Union Act**, and if so, what those steps are

40. Child Refugees from the Democratic People's Republic of Korea

- Specific **procedural measures in place to ensure that the rights of refugee children** are protected, in accordance with international standards, in any determination of status
- **Statistics and information on children from the Democratic People's Republic of Korea who sought refugee status** in the State Party during the reporting period, what process those applications received, and how many were granted asylum