

**Suggested questions and issues to be raised with the government of
the People's Republic of China in advance of the review of its
second report on the implementation of the International Covenant
on Economic, Social and Cultural Rights**

*Submitted to the Committee on Economic, Social and Cultural Rights for its pre-
sessional working group*

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Executive Summary

Covering the period between 2005 and 2009, the People's Republic of China's ("the State party") second periodic report on its implementation of the International Covenant on Economic, Social and Cultural Rights (Covenant) both points to progress made and recognizes existing challenges. In this submission, Human Rights in China (HRIC) highlights three overarching issues that the Committee on Economic, Social and Cultural Rights ("the Committee") should consider when drawing up a list of issues at its upcoming pre-session working group:

- Transparency and availability of relevant data and information;
- Civil society participation and freedom of expression; and
- International cooperation.

HRIC notes that the State party report is not fully responsive to the Committee's prior recommendation on providing quality data. As a result, the second periodic report still requires additional **comparative and disaggregated data** accompanied by further **contextual explanation** in order to enable the Committee to conduct a thorough and informed review. The availability of data may be limited by the State party's elaborate **information control** legal framework, including its **State Secrets System**, under which much of the relevant data and information may still be classified as state secrets.

HRIC additionally notes that the State party's current **restrictive civil society regulatory framework** and social control policies have presented obstacles to broader civil society participation. **State censorship and criminalization of speech**, including on the Internet, further undermine constructive civil society participation in implementing the Covenant's provisions and contributing to the Committee's review process.

Finally, HRIC stresses the need for **greater transparency** in assessing the effectiveness and impact of the State party's international cooperation -- including the **technical assistance provided by the United Nations**, its **development aid** and **trade agreements** – on advancing progress in implementing the Covenant.

To assist the Committee in its review of the progress and challenges in implementing the Covenant in China, HRIC respectfully puts forth the following recommendations.

Transparency and Availability of Relevant Data and Information

The Committee may wish to request the State party:

- Provide, where insufficient, **additional comparative data disaggregated by sex, age, rural/urban regions, ethnicity, and other relevant criteria**, paying due attention to disadvantaged and marginalized groups, including ethnic groups and migrant workers and their families;

- Provide **contextual explanation** to supplement data and statistics, including **factors and causes of challenges as well as any benchmarks and indicators used to monitor and assess** the actual impact of activities taken to address these challenges.
- Provide information regarding the **current status of the existing State Secrets Regulations** and related efforts to revise rules regarding specific classifications;
- Clarify the **current classification**, if still classified, and availability **of the above information** following the 2010 revision of the States Secrets law, as well as other relevant information under the provisions provided in Annex B;
- Provide the latest **statistics concerning the number of instances citizens have invoked the Regulations on Open Government Information**, the percentage of disclosure and non-disclosure disaggregated by categories of information, and the leading explanations for non-disclosure, especially on state secrets grounds.

Civil Society Participation

The Committee may wish to request the State party:

- Indicate whether and **which CSOs other than the 16 listed organizations were consulted**; if no other CSOs were consulted, the State party should identify the challenges that prevented more broad-based consultation;
- Clarify what **state or party supervision, if any, the consulted CSOs receive**;
- Describe in **detail the consultation process**, including how many consultations were held, whether they were open to all interested organizations and how information was disseminated, where the consultations were held and for how long, and whether a draft of the state report was made available and accessible in advance of consultations;
- Provide additional information regarding the **public's and CSOs' awareness of the Covenant's provisions** and prior Committee recommendations, including whether these are available and widely disseminated in national language(s) to both the public and government officials on all levels;
- Provide any resulting outputs from the consultation process.

Freedom of Expression

The Committee should:

- Request information regarding what measures are being taken to **release individuals determined by independent expert bodies to be arbitrarily detained for peaceful expression** and to provide compensation or other remedial measures.

Development Aid and Trade Agreements

The Committee may wish to request the State party:

- Clarify the current **process for identifying and assessing potential human rights impacts of development aid** given and its policy and mechanisms for addressing human rights abuses in recipient countries.

UN Technical Assistance and Capacity Building

The Committee should request the State party to provide additional information on:

- The **current existence of, or plans for, a new Memorandum of Understanding** between China and the Office of the High Commissioner for Human Rights (OHCHR), as well as the terms of any such agreement;
- The 2008 “**International Symposium on the Justiciability of Economic, Social and Cultural Rights**” including a list of participants, substantive issues covered and any background documents; any outcomes and follow-up to the symposium, including action plans to put knowledge learned at the event into practice;
- In addition, further details, including objectives, methodology, outcome reports and evaluation, regarding any **on-going human rights cooperation between the State party and other UN agencies** would be useful.

HRIC looks forward to making a full parallel submission in advance of the Committee's review of the State party and an opportunity to engage in a civil society exchange with the Committee.

Introduction

1. Human Rights in China (HRIC) appreciates the opportunity to contribute this submission to the Committee on Economic, Social and Cultural Rights' ("the Committee") pre-sessional working group on the upcoming review of China's ("the State party") second periodic report on its implementation of the International Covenant on Economic, Social and Cultural Rights ("the Covenant").
2. The State party's second submission¹ to the Committee reports progress in several important areas including economic growth, development aid cooperation, and improved Internet access. The State party also describes new and amended legislation and policies to improve protection of women's rights, labor rights, healthcare, social security, employment promotion, and work safety.
3. In addition to progress, the State party's report recognizes on-going challenges in its implementation of the Covenant, including persistent discrimination against disadvantaged and marginalized groups², a significant number of people still living in poverty³, and a growing urban-rural gap.⁴
4. In 2005, HRIC's parallel report to the initial review of the State Party addressed the human rights impact of China's inequitable economic growth and the unbalanced burden it has imposed on vulnerable and marginalized groups. It raised concerns and made recommendations regarding the *hukou* (household registration) system, social and economic inequities, redress for rights violations, housing rights, affordable health care, freedom of expression and information, and ethnic rights, among other issues. Since 2005, HRIC notes that the State party has initiated measures to address these complex challenges including launching local *hukou* reform experiments, reviewing the reeducation-through-labor system, and issuing policy statements that affirm the priority of addressing *minsheng* [民生] daily livelihood problems.
5. HRIC's current submission aims to assist the Committee in developing a helpful and productive review to support the State party's continued efforts to implement the Covenant. Comprehensive, accurate, and transparent data and information from a variety of perspectives are critical to assessing progress, understanding the surrounding issues, and developing effective solutions to complex challenges. HRIC highlights three overarching issues that impact the effective monitoring, assessment and advancement of the State party's implementation of its obligations under the Covenant:

¹ All references to the State party's report in this submission will utilize the paragraph numbers added in the HRIC English translation of the report, which is provided as Annex A.

² HRIC Translation of the Second Periodic Report on the Implementation of the Covenant on Economic, Social and Cultural Rights by the People's Republic of China, attached, paras. 139, 219.

³ Supra note 2, para. 147.

⁴ Supra note 2, paras. 14, 147, 194.

- The State party's legal framework, policies and practices regarding information controls;
- Limits on civil society participation; and
- Insufficient transparency regarding its international cooperation.

6. In addition, our submission identifies related areas where the State party report was not sufficiently responsive to the Committee's recommendations or requests for information.

Transparency and Availability of Relevant Data and Information

7. Implementation of the Covenant is a complex and challenging process for all states, requiring not only sustainable legal, policy and social reforms, but also effective monitoring and evaluation of measures taken. Periodic reviews of the State party offer an opportunity to identify which implementation measures are succeeding and which areas may require new or different efforts to fully ensure protected rights. The reliability and transparency of data is therefore of paramount importance to the review process.

8. In its concluding observations on China's initial periodic report, the Committee requested that, going forward, the State party provide "updated annually collected comparative data disaggregated by sex, age and rural/urban regions in the fields of all the provisions in the Covenant, paying particular attention to the disadvantaged and marginalized groups."⁵ The Committee further requested that the State party provide the percentage of gross domestic product allocated for education, health and housing programs, in particular in the ethnic minority regions.⁶ Other United Nations treaty bodies have made similar recommendations stressing the importance of quality data.⁷ The State party's second periodic report did not consistently provide disaggregated, annual data in all fields relevant to its obligations under the Covenant.

Disaggregated Data and Context

9. The State party's second periodic report provided general data and reported progress in its implementation of the Covenant's provisions. HRIC notes several concerns:

⁵ Committee on Economic, Social and Cultural Rights, Concluding Observations on the Initial Report of China on the Implementation of ICESCR, May 13, 2005 (E/C.12/1/Add.107), para. 40

⁶ Id.

⁷ See paragraphs 23, 49, 60, 61(a), 66, 83, 84(a) and 87 in the concluding observations of the Committee on the Rights of the Child, November 24, 2005 (CRC/C/CHN/CO/2); paragraphs 13, 14, 19, 20, 21, 22, 28, and 48 of the concluding comments of the Committee on the Elimination of Discrimination against Women, August 25, 2006 (CEDAW/C/CHN/CO/6); paragraphs 2, 12, 15(a), 15(b), and 25 in the concluding observations of the Committee against Torture, November 21, 2008 (CAT/C/CHN/CO/4); paragraphs 9, 15, and 22 in the concluding observations of the Committee on the Elimination of Racial Discrimination, September 15, 2009 (CERD/C/CHN/CO/10-13); paragraphs 30, 47, and 48 in the concluding observations of the Committee on the Rights of Persons with Disabilities, October 15, 2012 (CRPD/C/CHN/CO/1).

- Data and statistics are not consistently and sufficiently disaggregated;⁸
- Much of the data, statistics and information are neither comparable nor accompanied by a contextual framework to enable useful analysis;
- Some requested data and statistics are not provided at all; and
- Additional substantive description and supporting data on actual impacts of the implementation measures taken is needed.

10. Annex B sets out a list of relevant specific clarifications the Committee may wish to seek, including in areas related to the right to work, adequate living standards, the right to food, and the right to mental and physical health.

11. In light of the above, the Committee may wish to request the State party:

- Provide, where insufficient, **additional comparative data disaggregated by sex, age, rural/urban regions, ethnicity, and other relevant criteria**, paying due attention to disadvantaged and marginalized groups, including ethnic groups and migrant workers and their families;
- Provide **contextual explanation** to supplement data and statistics, including **factors and causes of challenges as well as any benchmarks and indicators used to monitor and assess** the actual impact of activities taken to address these challenges.

China's States Secrets Framework

12. China's elaborate States Secrets System may have impacted the availability or lack of information provided in the State party report. This legal framework sets out a specific classification hierarchy for a wide variety of information; proper handling of classified information; and punishments for the improper handling of such information. This far-reaching and non-transparent framework sweeps a vast universe of information into an ambiguous, vague and discretionary system that permits retroactive classification of information. This system not only conflicts with efforts toward greater government transparency through the national Regulations on Open Government Information, which took effect in May 2008,⁹ but further presents challenges to obtaining information that is relevant to the State party's implementation of the Covenant.

⁸ For instance, the State party recognized there is an imbalance between supply of and demand for jobs (para. 57), and stated that 24 million people are seeking employment in urban areas but did not provide comparable figures for the rural population, nor disaggregation by other relevant sub-groups (e.g., sex or age).

⁹ James Horsley, Update on China's Open Government Information Regulations: Surprising Public Demand Yielding Some Positive Results, China Rights Forum No. 2 (2010), www.hrichina.org/content/3247.

Legal Structure of the States Secrets System

13. At the highest level, the Law of the People's Republic of China on Guarding States Secrets sets out the overarching legal framework for the states secrets system. The current State Secrets Law (revised in 2010) reflects the government's ongoing policy to expand and tighten information control in the digital age. It specifically expands the scope of the law to include all public information networks, e.g. the Internet, traditional media, and the full range of sectors (hardware, software, service providers, etc.).¹⁰

14. Relevant provisions of the State Security Law of the People's Republic of China (1993)¹¹ and the Criminal Law of the People's Republic of China ("Criminal Law")(1996)¹² stipulate specific criminal and administrative sanctions for violations of state secrets law and regulations.

15. The next level of the States Secrets framework is the implementing regulations, the Measures for Implementing the Law on the Protection of State Secrets of the PRC ("1990 Measures")¹³. This regulatory level is currently up for review. In May, 2012, the State Council published for comment the draft Regulations on the Implementation of the Law on Guarding State Secrets ("2012 draft regulations").¹⁴ If passed, the final regulations would replace the 1990 measures. At the time of submission, there is no publicly available information indicating the status of the 2012 draft regulations, or the number and content of public comments received.

16. The next level is comprised of specific policies and classifications developed by the National Administration for the Protection of State Secrets (NAPSS) along with other relevant central organs, including the mass organizations focused on specific areas of work, such as: trade union work, women's work, family planning, and the environment. The rules developed at this level implement the Regulations defined above. This is the level at which specific information is classified as "top secret", "highly secret", "secret", or designated "neibu."

¹⁰ See articles 24, 26, 27, 28, 48, and 50 of the Law of the People's Republic of China on Guarding States Secrets (2010) [中华人民共和国保守国家秘密法], <http://www.hrichina.org/sites/default/files/oldsite/PDFs/PressReleases/20101001-StateSecretsLaw-EN.pdf>; HRIC's English translation of the revised law is provided as Annex D)

¹¹ See articles 4, 28, 29 of the State Security Law of the People's Republic of China (1993) [中华人民共和国国家安全法], <http://www.china.org.cn/english/government/207480.htm>.

¹² See articles 109, 111, 282, 287, 398, and 432 of the Criminal Law of the People's Republic of China (2011) [中华人民共和国刑法].

¹³ [中华人民共和国保守国家秘密法实施办法], http://www.stats.gov.cn/tjgl/swdcg/gg/xgfg/t20041118_402209111.htm (in Chinese).

¹⁴ Legislative Affairs Office of the State Council, Notice on public solicitation of comments on the Regulations on the Implementation of the Law on Guarding State Secrets(Draft for Solicitation of Comments) [国务院法制办公室关于《中华人民共和国保守国家秘密法实施条例(征求意见稿)》公开征求意见的通知], May 15, 2012, www.chinalaw.gov.cn/article/cazjgg/201205/20120500367762.shtml (in Chinese).

Relevant Information that May be Classified as Secret

17. Specific data and information relevant to the Committee's review and prior recommendations potentially remain classified as states secrets. The legal impact of current classifications for specific areas of work is unclear pending new implementation regulations and future rules.¹⁵

18. The following data, which was classified as states secrets under the Implementation Measures derived from the now superseded 1989 States Secrets Law, are presumably still classified until the new Implementation Regulations are issued or other steps are taken to declassify the information:

- "Countermeasures that [China] plans to adopt to deal with **international human rights issues** including prisoner reform, reform of reeducation-through-labor inmates, and crime prevention," are **classified as "highly secret."**¹⁶
- "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"**¹⁷
- "Undisclosed information and data on the handling of **child labor** cases nation-wide," is **classified as "highly secret"**¹⁸
- "Compiled information **on major incidents involving workers** in enterprises nationwide, such as collective petitioning or strikes," is **classified as "highly secret"**¹⁹

¹⁵ Some specific classifications have been issued recently, suggesting that revision of the 2012 Implementation Regulations and specific classifications under the 2010 State Secrets Law is underway (e.g., recent draft Measures for the Management of Qualifications for Information System Integration Involving State Secrets, Legislative Affairs Office of the State Council, the National Administration for the Protection of State Secrets' notice on public solicitation of comments on the Measures for the Management of Qualifications for Information System Integration Involving State Secrets [国家保密局关于《涉密信息系统集成资质管理办法(征求意见稿)》公开征求意见的通知], February 25, 2013, www.chinalaw.gov.cn/article/cazigg/201302/20130200384093.shtml.)

¹⁶ Article 2 B.5 of *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Judicial Administration Work* [司法行政工作中国家秘密及其密级具体范围的规定]. Jointly issued by the Ministry of Justice and the National Administration for the Protection of States Secrets [劳动和社会保障局、国家保密局] August 31, 1995.

¹⁷ Article 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及其密级具体范围的规定]. Jointly issued by the Ministry of Public Security and the National Administration for the Protection of State Secrets [公安部、国家保密局], March 28, 1995.

¹⁸ Article 3.1.4 of *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Labor and Social Security Work*. Jointly issued by the Ministry of Labor and Social Security and National Administration for the Protection of State Secrets [劳动和社会保障局、国家保密局], January 27, 2000.

¹⁹ Article 3.1.1 of *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Trade Union Work*. Jointly issued by the All-China Federation of Trade Unions and the National Administration for the Protection of State Secrets [中华全国总工会、国家保密局], May 27, 1996.

- “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 “**secret**”²⁰
- “Strategies and measures for handling **major public order emergencies involving religious matters**” are classified as “**top secret**”.²¹ Strategies pursued in Tibetan and Uyghur communities, including 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 C of this submission.

19. In May 2008, the State party passed the *Regulations on Open Government Information* (OGI Regulations), its first access to information statute.²² The OGI Regulations enable citizens to make requests for government information and require the government to indicate whether or not it will provide the information within a specified period.²³ There are a variety of grounds on which the government may refuse to grant the request including that the information is classified as secret under the State Secrets framework.²⁴ Given the breadth and opacity of the State Secrets classifications, this exception could be invoked to justify withholding a wide variety of information.

20. In light of the above, the Committee may wish to request the State party:

- Provide information regarding the **current status of the existing State Secrets Regulations** and related efforts to revise rules regarding specific classifications;
- Clarify the **current classification**, if still classified, and availability **of the above information** following the 2010 revision of the States Secrets law, as well as other relevant information under the provisions provided in Annex B;
- Provide the latest **statistics concerning the number of instances citizens have invoked the**

²⁰ Article 3.2.3 of *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Women’s Work*. Jointly issued by the All-China Women’s Federation and the National Administration for the Protection of States Secrets [劳动和社会保障局、国家保密局].

²¹ 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 the Ministry of Religious Affairs and the National Administration for the Protection of State Secrets [宗教事务局、国家保密局], October 12, 1995.

²² Jaime Horsley, “Update on China’s Open Government Information Regulations: Surprising Public Demand Yielding Some Positive Results,” *China Rights Forum*, 2010 no. 2, available at <http://www.hrichina.org/crf/article/3247>

²³ *Regulations of the People’s Republic of China on Open Government Information*. Adopted by the State Council on April 5, 2007; Effective May 1, 2008 (hereinafter “*Regulations on Open Government Information*”). Available in English at: http://www.law.yale.edu/documents/pdf/Intellectual_Life/Ch_OGI_Regualtions_Eng_Final_051607.pdf

²⁴ Supra note 24.

Regulations on Open Government Information, the percentage of disclosure and non-disclosure disaggregated by categories of information, and the leading explanations for non-disclosure, especially on state secrets grounds.

Civil Society Participation

21. Civil society – both organizations and individuals – have an important role to play in monitoring, assessing, and advancing the implementation of the Covenant. Recognizing this important role, the Committee requested in 2005 that the State party provide “information on the public consultation process in the preparation of the report, including a listing of all civic organizations...consulted.”²⁵ Further, the Committee asked the State party to “inform the general public and ...generate interest and debate on the steps the State party has undertaken in fulfilling its treaty obligations under the Covenant.”²⁶

Civil Society Input to the Second Periodic Report

22. Civil society organizations (CSOs) in China have grown in number and diversity in the last decade. They play an increasingly important role in promoting and protecting the rights enshrined in the Covenant. However, the State party’s restrictive regulatory framework for CSOs and severe policies of social control continue to present significant challenges for the involvement of independent CSOs in both the State party’s implementation and the Committee’s review process.

23. The State party report provided limited information regarding the extent and the manner of its consultation with civil society in its preparation of the second periodic report. Annex I of the report indicates that 16 civil organizations and academic research institutions were consulted. The State party’s overall discussion of civil society organizations presents several concerns including the following:

- the nature of the organizations identified in the report, as many of them are mass organizations created by or closely affiliated with the government;
- the extent of public education awareness measures;
- the need for clarification of terminology used to refer to civil society organizations.²⁷

24. The Chinese report uses four different Chinese terms to refer to civil society: *minjianzuzhi* (民间组织 “civil organization”), *shehuituanti* (社会团体 “social organizations/ groups”), *minjiantuanti* (民间团体), *feizhengfuzuzhi* (非政府组织 “non-governmental organization”).²⁸ However, the State party’s use

²⁵ Supra note 5, para. 43.

²⁶ Id.

²⁷ Supra note 2, Annex 1.

²⁸ See, e.g., *minjianzuzhi* (民间组织 “civil organization”) used in para. 216 and Annex 1, *shehuituanti* (社会团体 “social organizations/ groups”) used in paras. 12, 38, 216 and 271, *minjiantuanti* (民间团体 “civil

of the term “NGO”²⁹ 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.³⁰ The use of these different Chinese terms and their respective English translations can be a source of confusion and can also mask the fundamental difference between many of these organizations and their Western counterparts. 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.³¹

25. In light of the difficulty of establishing a non-governmental organization under the restrictive regulatory system and the lack of specific information regarding the CSOs consulted and the consultation process, the Committee may wish to request the State party:

- Indicate **whether and which CSOs other than the 16 listed organizations were consulted**; if no other CSOs were consulted, the State party should identify the challenges that prevented more broad-based consultation;
- Clarify **what state or party supervision, if any, the consulted CSOs receive**;
- Describe in **detail the consultation process**, including how many consultations were held, whether they were open to all interested organizations and how they were advertised, where the consultations were held and for how long, and whether a draft of the state report was made available and accessible in advance of consultations;
- Provide additional **information regarding the public's and CSOs' awareness of the Covenant's provisions and prior Committee recommendations**, including whether these are available and widely disseminated in national language(s) to both the public and government officials on all levels;
- Provide any resulting **outputs from the consultation process**.

organizations”) used in para. 262, and “*feizhengfuzuzhi*” (非政府组织 “non-governmental organization”), used in paras. 5, 12 and Annex 1

²⁹ Supra note 2, paras. 5, 12.

³⁰ The overarching official term for civil society groups is either “Civil Organization” (*minjianzuzhi* 民间组织) or “Social Organization” (*shehuizuzhi* 社会组织); see the State Bureau for the Administration of Civil Organizations under the Ministry of Civil Affairs: <http://mjj.mca.gov.cn/>.

³¹ For instance, the Chinese Academy of Social Sciences [中国社会科学院], one of the 16 organizations consulted, is officially a “directly-affiliated institution” [直属事业单位] under the State Council, the highest executive organ of the Chinese government. 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>

Freedom of Expression and Internet Policy

26. HRIC welcomes the State party's recognition in its second periodic report that the public has a "right to information and to supervise" the government.³² According to the China Internet Network Information Center, in early 2013 the number of Internet users in China exceeded 500 million, making this an increasingly important venue through which citizens exchange information and views.³³ In light of this, HRIC remains concerned about the impact of China's expansive regulation of the Internet on the enjoyment and implementation of the rights enshrined in the Covenant, including the on-going practice of criminalizing expression.

27. In response to the Committee's 2005 recommendation that State party "remove restrictions on freedom of information and expression,"³⁴ China reports progress on improving Internet access through its continued economic growth and expansion of technological infrastructure.³⁵ The State party further reports that Chinese citizens enjoy the right to free expression, including the right to criticize any level of government.³⁶ However, it clarifies that where publications are used to, among other things, "spread rumors," "incite subversion," "incite splittism," or "undermine national unity," the authors will be punished according to the law.³⁷

28. While international standards³⁸ permit narrowly defined and proportionate limitations on expression in the interest of public health and national security, the State party's politicized use of terms such as "splittism" and "subversion" exceed the bounds of these exceptions and impermissibly impose criminal and administrative punishment on peaceful expression or human rights activities.

29. The State party's policy on regulation and management of the Internet is evident in a 2010 report made by the Deputy Director of the Propaganda Department of the Communist Party of China to the National People's Congress. The report lays out the official strategic vision for the "scientific, healthy,

³² Supra note 2, paras. 94 and 161.

³³ China Internet Network Information Center (CNNIC), *31st Statistical Report on Internet Development in China* [第31次中国互联网络发展状况统计报告], January 2013, available at: <http://www1.cnnic.cn/IDR/ReportDownloads/201302/P020130312536825920279.pdf>; see also CNNIC press release, "CNNIC Released the 31st Statistical Report on Internet Development," January 16, 2013, http://www1.cnnic.cn/AU/MediaC/rdxw/hotnews/201302/t20130222_38848.htm.

³⁴ Supra note 5, para. 68.

³⁵ Supra note 2, paras. 71 and 212.

³⁶ See section 1(g) on page 28 in Core document accompanying the second report of the People's Republic of China on its implementation of the International Covenant on Economic, Social and Cultural Rights (HRI/CORE/CHN/2010), June 30, 2011.

³⁷ Supra note 2, para. 280.

³⁸ See ARTICLE 19, Johannesburg Principles on National Security, Freedom of Expression and Access to Information, November 1996, <http://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>; see also See UN Human Rights Committee, General Comment No. 34 on Article 19 of the International Covenant on Civil and Political Rights (CCPR/C/GC/34), September 12, 2011.

and orderly development of the Internet” in China and also stresses the value of the Internet as a crucial propaganda tool for guiding correct public opinion and “unifying thinking.”³⁹ This policy raises concerns regarding censorship of diverse cultural information and debate regarding current political and social issues. (HRIC’s translation of the full report is provided as Annex E).

30. In practice, Chinese citizens are regularly harassed and punished for public, and often online, expression that raises issues related to economic, social and cultural rights. A few recent cases exemplifying this issue are provided below:

- **Liu Xiaobo** (刘晓波), a prominent independent intellectual and long-time democracy advocate, was convicted in December 2009 of “inciting subversion of state power” and sentenced to eleven years in prison for his role in drafting the *Charter 08*,⁴⁰ a public appeal for sweeping political reform, and for articles which he previously had published online.⁴¹ He was awarded the 2010 Nobel Peace Prize.⁴² In 2011, the UN Working Group on Arbitrary Detention declared Liu's imprisonment arbitrary and called for his release.⁴³
- **Chen Guangcheng** (陈光诚),⁴⁴ a blind, self-trained lawyer and activist who advocated for the rights of the disabled, farmers, victims of forced abortions and sterilizations, and other disadvantaged groups, was convicted in August 2006 to four years and three months in prison on trumped-up charges of “intentional damage of property and organizing people to block traffic.” Following his release upon serving his full prison sentence, Chen, along with his family, was subjected to illegal house arrest and round-the-clock surveillance at their home in Shandong, until his dramatic escape in April 2012. The UN Working Group on Arbitrary Detention declared Chen's imprisonment arbitrary in 2006.⁴⁵

³⁹ Wang Chen, Deputy Director, Propaganda Department, Communist Party of China, “Concerning the Development and Administration of Our Country’s Internet,” speech delivered before the Standing Committee of the National People’s Congress on April 29, 2010. Human Rights in China Translation provided as Annex E.

⁴⁰ HRIC Translation, *Charter 08*, December 9, 2008, <http://www.hrichina.org/crf/article/3203>.

⁴¹ See for example Liu's essay “Further Questions about Child Slavery in China’s Kilns,” 2007, translated by J. Latourelle, www.hrichina.org/crf/article/3201.

⁴² Human Rights in China, “HRIC Urges Release of Liu Xiaobo, Presents Translation to Mark Peace Prize Anniversary,” December 8, 2012, www.hrichina.org/content/6441

⁴³ The United Nations Working Group on Arbitrary Detention, U.N. Doc. A/HRC/WGAD/2011/15, Opinion No. 15/2011 (2012), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WGAD/2011/15.

⁴⁴ Sharon Hom, “Examination into the Abuse and Extralegal Detention of Legal Advocate Chen Guangcheng and His Family,” Written testimony before CECC Hearing, November 1, 2011, available at: <http://www.hrichina.org/content/5611>

⁴⁵ The United Nations Working Group on Arbitrary Detention, “Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Opinions Adopted by the Working Group on Arbitrary Detention,” U.N. Doc. A/HRC/7/4/Add.1, Opinion No. 47/2006 (2008), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/7/4/Add.1

- **Guo Feixiong** (郭飞雄),⁴⁶ a writer, activist and self-taught legal defender, has published a number of articles and books on China's history, leadership, and social issues. He was sentenced in November 2007 to five years in prison on charges of "illegal business activity", and fined 40,000 *yuan*, for articles he wrote in support of the well-known rights defense lawyer Gao Zhisheng. His wife and two young children also faced harassment and subsequently sought asylum abroad.
- **Ni Yulan** (倪玉兰),⁴⁷ a disabled housing rights activist, was convicted on April 10, 2012 to two-years and eight-months in prison and a fine, for "fraud" and "picking quarrels and provoking troubles." She was previously imprisoned twice, in 2002 and 2008, for her rights defense work and became permanently disabled after being severely beaten in prison. It is widely believed her conviction is a reprisal against her human rights work in defense of victims of urban forced evictions, including those affected by the construction of facilities for the 2008 Beijing Olympic Games.
- **Zheng Yichun** (郑贻春)⁴⁸, a prolific online writer, poet, English professor and well-known political commentator, was sentenced in September 2005 to seven years in prison on the charge of "inciting subversion of state power," for penning articles that were distributed on overseas websites critical of the Communist Party.

31. The Committee should request information regarding what measures are being taken to **release individuals determined by independent expert bodies to be arbitrarily detained for peaceful expression**, and to provide compensation or other remedial measures.

International Cooperation

32. The terms of the Covenant extend its obligations beyond the State party's domestic governance to its international relationships as well. While the State party's report references various efforts related to these obligations -- specifically its cooperation with the Office of the High Commissioner for Human Rights (OHCHR), international donors, and foreign governments -- additional information regarding the impacts and incorporation of human rights concerns in these efforts is needed.

⁴⁶ Human Rights in China, "Rights Defender Guo Feixiong Released from Prison; Remains Committed to Rights Work," September 13, 2011, <http://www.hrichina.org/content/5571>. See also "Rights Activist Guo Feixiong Released Tuesday," Radio Free Asia, September 13, 2011, <http://www.rfa.org/mandarin/yataibaodao/gfq-09132011080502.html>.

⁴⁷ Human Rights in China, "Court Overturns "Fraud" Conviction in Ni Yulan Appeal, Cuts Jail Sentence by Two Months," July 27, 2012, available at: <http://www.hrichina.org/content/6212>

⁴⁸ Human Rights in China, "Wang Lihong, Zheng Yichun, Bo Xiaomao Released," December 20, 2011, www.hrichina.org/content/5724.

Development Aid and Trade Agreements

33. The State party's report notes that, during the reporting period, it both gave and received international aid and expanded its global trade agreements. It remains unclear from the report whether these international agreements undergo human rights impact assessment before they are concluded.

34. Though the Committee previously recommended that the State party ensure its international human rights obligations are taken fully into account when entering into such agreements,⁴⁹ the State party asserts that it does not attach any "political conditions" to its foreign aid.⁵⁰ Without human rights safeguards or exercise of due diligence in lending or development policies, the State party will be less capable of ensuring that its development aid and loans do not inadvertently contribute to human rights abuses in recipient countries where human rights protection is weak.⁵¹

35. In light of the above, the Committee may wish to request the State party to:

- Clarify the current **process for identifying and assessing potential human rights impacts of development aid** given and its policy and mechanisms for responding to human rights abuses in recipient countries;

UN Technical Assistance and Capacity Building

36. HRIC also urges the Committee to consider issues related to China's other international cooperation efforts. Since 1998, the State party has entered into three memoranda of intent/understanding (MOU) with the United Nations OHCHR.⁵² According to publicly available information, the most recent MOU, signed by then High Commissioner Louise Arbor in 2005, was designed to "help [China] implement recommendations on economic, social and cultural rights and at facilitating its ratification of the International Covenant on Civil and Political Rights."⁵³ However, beyond this high level description of intent, the full nature of the 2005 MOU, as well as evaluation of the previous agreements, has never been made public. The lack of transparency into OHCHR-China agreements makes it challenging to monitor, evaluate and support these efforts. Furthermore, it is unclear whether the State party has entered into any additional MOUs with the OHCHR following the expiration of the 2005 agreement.

⁴⁹ Supra note 5, para. 70.

⁵⁰ Supra note 2, para. 15.

⁵¹ See e.g., Council on Foreign Relations, "Backgrounder: The China-North Korea Relationship," February 21, 2013, www.cfr.org/china/china-north-korea-relationship/p11097#p5; paragraph 5 in Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman, February 1, 2013, www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.57_English.pdf.

⁵² U.N. News Centre, "UN, China agree to cooperate on civil and political rights program," August 31, 2005, available at <http://www.un.org/apps/news/story.asp?NewsID=15621&Cr=China&Cr1=OHCHR#.UVNjDBeG3To>

⁵³ Id.

37. The State party's second periodic report describes at least one activity that is likely a measure advanced under the MOU relationship, a 2008 "International Symposium on the Justiciability of Economic, Social and Cultural Rights" organized jointly with the OHCHR in Beijing. (para. 18). Platforms such as the symposium help enhance state organs' awareness of China's legal obligations under the Covenant and best practices to implement them. However, in order to concretely assess the impact of this symposium, and others like it, the Committee should request the State party to provide additional information on:

- The current existence of **or plans for a new MOU between China and the OHCHR**, as well as the terms of any such agreement
- The "**International Symposium on the Justiciability of Economic, Social and Cultural Rights**" including a list of participants, substantive issues covered and any background documents; any outcomes and follow-up to the symposium, including action plans to put knowledge learned at the event into practice;
- In addition, further details, including objectives, methodology, outcome reports, and evaluation, regarding any **on-going human rights cooperation between the State party and other UN agencies** would be useful.

Conclusion

38. As the Committee evaluates the State party's report on its implementation of the Covenant, HRIC underscores the impact of China's legal framework, policies, and practices on information control, civil society participation and free expression. To advance a robust and productive review, HRIC urges the Committee to consider requesting the clarifications and additional information identified in this submission. China's second review also presents a further opportunity to both commend the State party for its expanded international cooperation and to press for additional transparency and human rights awareness in these relations going forward.

39. HRIC looks forward to making a full parallel submission in advance of the Committee's review of the State party and an opportunity to engage in a civil society exchange with the Committee.