

IMPLEMENTATION AND PROTECTION OF HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA

**A PARALLEL NGO REPORT BY HUMAN RIGHTS IN CHINA
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ABOUT HUMAN RIGHTS IN CHINA. Founded by Chinese students and scholars in March 1989, HRIC is an international, Chinese, non-governmental organization with a mission to promote international human rights and advance the institutional protection of these rights in the People's Republic of China.

EXECUTIVE SUMMARY

Despite recent domestic reform efforts and the PRC's increasingly sophisticated use of human rights language and processes, substantial gaps remain between the international legal framework, and Chinese laws and practices. Persistent inequalities deprive vulnerable groups of basic human rights. Ongoing crackdowns on Chinese rights defenders and independent civil society voices, one of the world's highest execution rates in a system that lacks fundamental safeguards, and the prevalence of torture all undermine the right to life, liberty and security of the person. Major obstacles to the administration of justice and the rule of law persist, including a lack of transparency and accountability, the sweeping information control of the state secrets system, and the deplorable practice of administrative detention.

Human Rights in China's (HRIC) submission for the Universal Periodic Review of the PRC focuses on several pressing concerns summarized below with relevant recommendations.

KEY AREAS OF CONCERN AND RECOMMENDATIONS

- Close the gap between international and domestic law, and between the **scope of international obligations** and actual practice.
- Reform the State Secrets system, which undercuts the Chinese **constitutional and legislative framework** for protecting human rights.
- Review **policy measures** like the household registration system (*hukou*), the one child policy and administrative detention that exacerbate deprivations of basic rights.
- Remove obstacles to **cooperation with international human rights mechanisms**, and allow the participation of **independent Chinese voices** in international human rights mechanisms.
- Address the lack of **equality** for vulnerable groups, including women., ethnic minority groups (Tibetans, Uyghurs, and Mongols), and migrants:
- Ensure that primary **education** attains the constitutionally guaranteed universal, compulsory status.
- Cease ongoing crackdowns, narrow the scope of the death penalty, prevent the continuing practice of torture, and abolish the "legal black hole" that is administrative detention, in order to protect the **right to life, liberty and security of the person**.
- To promote the **administration of justice and the rule of law**, abolish administrative detention such as Reeducation-Through-Labor, reform the State Secrets Law, and end crackdowns on rights defense lawyers.
- Cease Internet censorship and crackdowns on press freedom that violate **freedom of expression**, and undermine the **right to meaningfully participate in public and political life**.

I. BACKGROUND AND FRAMEWORK

A. SCOPE OF INTERNATIONAL OBLIGATIONS

1. The PRC's integration into the international human rights system brings with it diverse and broad obligations. However, despite the PRC's increasingly sophisticated use of human rights language and processes, there remain significant gaps between these obligations, and implementation as reported by UN bodies and civil society groups.
2. The PRC has repeatedly made assurances that it will ratify signed instruments. It must, at a minimum, **ratify the *International Covenant on Civil and Political Rights (ICCPR)***, and the ***International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families***. Notwithstanding official justifications for delaying ratification, the Chinese government has the **resources and capacity** to ratify these treaties, and to successfully mobilize institutional efforts towards compliance. The substantial reforms undertaken to comply with World Trade Organization membership requirements, and the construction, financial, and mass mobilization for the Beijing Olympics, are examples of what the authorities can do given sufficient political will.
3. The PRC should also **remove its various treaty reservations** restricting the power of treaty bodies to review concerns or allegations raised by individuals or other State Parties. Like its failure to make declarations recognizing specific competencies of these bodies or of the ICJ, these reservations narrow the scope of its international obligations precisely where more commitments to external, independent monitoring processes are needed.

B. CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

4. The PRC's Constitution recognizes the equality of, and prohibits discrimination against ethnic groups; universalizes compulsory primary education; respects and protects human rights; recognizes the inviolability of citizens' personal freedom and human dignity, and their right to enjoy freedom of speech, of the press, of association, of demonstration and of religious belief; and states that women enjoy equal rights with men. Other laws and regulations also support human rights.
5. This evolving constitutional and legal framework for the promotion and protection of human rights is, however, **undercut by the state secrets system** (which includes the State Secrets Law, related provisions of the State Security Law, Criminal and Criminal Procedure Laws, and various regulations). This sweeping system of information control imposes serious criminal sanctions, strips procedural protections otherwise afforded by Chinese law, undermines public interest in increasing transparency and accountability, and by controlling information diminishes the capacity of policy-makers to address social problems.
6. The PRC's focus on formal legal and regulatory reforms needs to be **supplemented by ongoing training and education on human rights** for citizens, legal professionals, and state officials. These efforts would contribute to the cultural shifts already underway that are necessary for greater rights awareness and implementation.

C. INSTITUTIONAL AND HUMAN RIGHTS INFRASTRUCTURE

7. The PRC has **no independent institutional and human rights infrastructure**, and no National Human Rights Institution (NHRI) accredited with the NHRI Forum's International

Coordinating Committee. The **absence of political pluralism, lack of an independent legal system,** and the Government's **tight control over civil society and the media** prevent the development of any legitimate and accountable infrastructure. Restrictions on the dissemination and discussion of information on issues deemed sensitive or censored like Tibet, the Tiananmen 1989 crackdown or Falun Gong, would also make it difficult for any such infrastructure to be comprehensive or effective.

D. POLICY MEASURES

8. **Policies like the household registration system (*hukou*), the one child policy and administrative detention exacerbate deprivations of human rights.** Despite limited reforms, *hukou* still creates obstacles for rural-to-urban migrants in accessing social services like education and health benefits. Lauded by some international experts as effective in controlling population growth, the implementation of the **one child policy** has been marked by coerced and abusive enforcement, including forced sterilizations and abortions. It has also contributed to a sex-ratio disparity, abandonment of baby girls, and gender-selective abortions.

9. **A fundamental tension exists between official pronouncements** that proclaim key objectives like “building political democracy”, and “respecting and protecting human rights”¹; **and the Communist Party’s imperative to maintain political control.** In pursuing this latter imperative, the authorities tightly controls the flow of information necessary for more balanced, independent analysis of policy decisions. The failure to resolve this tension through political reform, and to overhaul the state secrets system, inhibits the full realization of policies for improving governance, building political democracy, and protecting human rights. Even the recent Open Government Information (OGI) Regulations, which seek to increase transparency and accountability, are undercut by state secrets exceptions that compromise their very purpose.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. COOPERATION WITH HUMAN RIGHTS MECHANISMS

10. **The Chinese Government has not extended a standing invitation to visit the PRC to all Human Rights Council thematic special procedures.** The UN Special Rapporteur on torture reported in 2006 that officials sought to obstruct or restrict fact-finding.² Restrictions on travel into and out of mainland China, and on sharing information about issues classified as state secrets with anyone outside the country, undermine broad-based cooperation. By preventing Chinese activists and human rights lawyers from traveling overseas to interact with the international community, and by prosecuting them, PRC officials **inhibit the inclusion of independent Chinese voices in human rights mechanisms.**

¹ PRC White Paper, *Building of Political Democracy in China*, October 19, 2005, <http://www.china.org.cn/english/2005/Oct/145718.htm>; and Constitution of the PRC, Art. 33, respectively.

² UN, *Report of the Special Rapporteur on torture, cruel, inhuman or degrading treatment – Mission to China*, E/CN.4/2006/6/Add.6, 10 March 2006, paras. 10–11 [*hereinafter* Report on Mission to China].

B. IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

i. *Equality and non-discrimination*

11. **Women.** Women in the PRC have not made economic or social gains at the same level or pace as men; and rural, migrant, and ethnic minority women and girls are doubly vulnerable. Up to 70 percent of the rural landless are women,³ and adult illiteracy for women is 2.7 times that of men.⁴

12. **Definitional issues.** The vulnerability of women to discrimination is exacerbated by the absence of any **legal definition** of “discrimination”. A narrow definition of human trafficking as exploitation for the purpose of prostitution also deprives women and children (the majority of those trafficked) of the broader protections afforded by international prohibitions against trafficking for forced labor, debt bondage and domestic servitude.

13. **Non-compliance with UN recommendations.** Despite various UN human rights mechanisms’ recommendations on issues like ratification, incorporating legal definitions that reflect international law, criminal justice reforms, improving access to housing and living standards for vulnerable groups, and providing **data disaggregated** by factors like gender, ethnicity, and locality, most recommendations and observations have not been implemented or acted upon. Although there is some improvement in official reporting, the lack of much disaggregated data and the secrecy surrounding sensitive issues undermine opportunities for review, monitoring, and more effective dialogue on solutions.

14. **Ethnic minorities** face persistent inequalities in access to social services like education and healthcare, and employment discrimination. A lack of social infrastructure in ethnic autonomous and poorer western regions where many minority groups live is partly to blame, as are language barriers, and public policies. The Government’s failure to effectively tackle these inequalities, and its identification of Tibetans, Uyghurs, and Mongols’ assertions of cultural, religious, or ethnic identity, as separatist or splittist, compounds the discrimination against, and disenfranchisement of, these ethnic groups.⁵

15. The PRC is still a long way from realizing **universal, compulsory primary education** guaranteed in its Constitution. The education system is also implemented in a way that deprives ethnic minority children of the right to an education that reflects their religious or cultural traditions.⁶ The Government recently signaled its intention to make universal compulsory education more accessible by undertaking efforts to support it in rural areas, and offering free nine-year compulsory education to all urban students, including children of migrant workers.⁷ **The implementation of these initiatives must be closely monitored.**

³ Xiong Kunxin, Li Xiuying, “The Economic Status of Minority Women in the Course of the Development of Middle Class”, *Journal of Qinghai Nationalities Institute (Social Science)* (2005) 31:3, 95-99.

⁴ World Bank, *GenderStats*, 2004,

<http://genderstats.worldbank.org/genderRpt.asp?rpt=profile&cty=CHN,China&hm=home>; UN Development Program, *China Human Development Report 2005: Towards Human Development with Equity*, (New York: UNDP, 2005), http://hdr.undp.org/docs/reports/national/CPR_China/China_2005_en.pdf, 49 [*hereinafter* China Human Development Report 2005].

⁵ For an in depth discussion of these issues and documented cases, see: Human Rights in China and Minority Rights Group, *China: Minority Exclusion, Marginalization and Rising Tensions* (Minority Rights Group, February 2007) 7, <http://hrichina.org/public/contents/36055> [*hereinafter* HRIC Minority Report].

⁶ See, HRIC Minority Report, 2, 29.

⁷ “Chinese urban students will be free from tuition and other fees,” Xinhua, July 30, 2008, http://news.xinhuanet.com/english/2008-07/30/content_8862983.htm.

ii. Right to life, liberty and security of the person

16. **Crackdowns.** Ongoing crackdowns against ethnic minorities, members of non-state-sanctioned religious groups, petitioners and human rights defenders violate fundamental rights to life, liberty and security of the person. Crackdowns are often characterized by the **excessive use of force**, (as in the Tibetan autonomous region in March); and **arbitrary deprivation of liberty**, including round-ups, surveillance, and house arrests. The intensification of these abuses, especially in the lead-up to and during the Olympics, was widely documented by HRIC and other human rights organizations.

17. **Death penalty.** Despite international pressure and domestic reforms, the PRC's 1,770 *known* executions still accounted for more than 80 percent of the 2,148 executions worldwide in 2005.⁸ The high number of executions raises **serious concerns given the prevalence of torture and coerced confessions**, the **lack of independence in the legal system**, and the **classification of death penalty related information as state secrets** under no less than eight provisions.⁹ The resulting lack of transparency in the application of this "extreme exception" to the right to life¹⁰ prevents any real assessment of reforms or the scope of this problem.

18. **Torture.** Notwithstanding international and domestic prohibitions, torture continues to be a pervasive problem amongst police, state security officers, prison officials, and other government agencies. Government reforms must **eliminate the use of torture to extract confessions** and prohibit the **use of coerced confessions as evidence**, and address the **law enforcement culture** supporting such practices.

iii. Administration of justice and the rule of law

19. **State secrets system.** The involvement of state secrets in criminal prosecutions deprives suspects and defendants of **due process rights**. Due to the vague definition of what constitutes a case involving state secrets, authorities have **extraordinary discretion** to invoke these provisions.¹¹ Authorities may also detain anyone suspected of intentionally or negligently divulging state secrets related to state security for 15 days prior to initiating a criminal investigation.¹² The capacity to delay the appointment of legal counsel, to approve counsel, to restrict a suspect's access to evidence, and to deny an open trial (if state security crimes are alleged) gives authorities wide discretionary powers that are not balanced by strong constraints and transparency, which in turn undermine the rule of law.

20. **Defense lawyers.** Defense lawyers in cases involving **state secrets** face additional obstacles, including limited access to clients in detention, and restricted ability to review evidence and cross-examine witnesses. In the lead up to the Beijing Olympics there were

⁸ The figure of 1,770 known executions that took place in China in 2005 is taken from Amnesty International. Mark Magnier, "China's High Court to Review Death Sentences", *L.A. Times*, November 1, 2006, <http://www.latimes.com/news/nationworld/world/la-fg-death1nov01,1,3315103.story?coll=la-headlines-world>.

⁹ See, for example: *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in Judicial Administration Work*, 1995, Article 2 (B)(1), Article 2 (C)(3); *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People's Court's*, 1995, Article 3 (B)(3), Article 3 (C)(3-5); and *Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People's Courts*, 1995, Art. 3 (A)(3).

¹⁰ UN 2006 *Annual Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, UN Doc. E/CN.4/2006/53, March 8, 2006, para. 3.

¹¹ *Joint Regulation Concerning Several Issues in the Implementation of the Criminal Procedure Law*, January 19, 1998, Art. 9.

¹² *State Security Law of the People's Republic of China*, effective on February 22, 1993, Art. 28.

ongoing **infringements of the rights of defense lawyers**, including delayed license renewals, limitations on their ability to meet with clients, and a group of prominent lawyers were prevented from meeting with two visiting U.S. Congressmen. According to a prominent Beijing lawyer, prosecutors have also used provisions like Article 306 of the Criminal Law to **charge more than 100 criminal defense lawyers** with “fabricating evidence” and “perjury”,¹³ and reports of lawyers being violently harassed in detention are not uncommon.

21. **Administrative detention.** The PRC has yet to respond to widespread international pressure, including from treaty bodies, to abolish administrative detention—including RTL—or to establish judicial control over, and due process rights in, administrative proceedings. The use of administrative detention to deal with cases “not deemed serious enough” to warrant criminal prosecution creates a legal black hole, into which many petitioners, activists, human rights defenders, and practitioners of non-state sanctioned religions disappear. To date, there have only been minimal reforms to this system like those prohibiting officials in these facilities from using torture and ill-treatment; and even these are **ineffective without independent oversight, and real avenues for detainees to enforce their rights** without fear of retribution.

iv. Freedom of expression, and the right to participate in public and political life

22. Despite constitutional guarantees for freedom of expression and promises for a “free and open” Olympics, there has been increasing **Internet censorship**, surveillance, and restrictions on **domestic press freedoms**. Even though authorities promised uncensored Internet access during the Games, the Government blocked access to scores of websites, including Human Rights in China, Amnesty International, the Tibetan Government-in-exile, and Radio Free Asia. Crackdowns also extended to Chinese **journalists and online activists**. For example, people who published information online linking the collapse of schools during the Sichuan earthquake with official corruption were detained, and even sentenced to RTL.

23. The implementation of **new surveillance mechanisms and the vast collection of biometric data** on foreign tourists, journalists and government officials for the Olympics should have raised privacy and human rights alarms. It did not, and Chinese citizens and civil society will now be the main targets of these enhanced surveillance and security systems. **Intensifying surveillance** is also exacerbating the fear of reprisal that results from crackdowns. This fear feeds a culture of **self-censorship** that creates a **chilling effect** on the development of human rights in the PRC. The open dissemination and publication of information is a critical tool for spreading awareness, educating the public and advocating on issues that affect them. The development of independent **civil society, real political democracy and more open and transparent governance** are undermined by the pervasive culture of secrecy and information control.

¹³ “Chinese Article Claims That Research on the Difficulties Faced by Criminal Defense Lawyers Restricted After Revealing ‘Shocking’ Initial Results,” Congressional – Executive Commission on China Web site, January 13, 2005, <http://www.cecc.gov/pages/virtualAcad/index.php?showsingle=5472>.

ANNEX: RELEVANT RECOMMENDATIONS

The following recommendations, if implemented, would contribute to closing gaps between international laws and obligations, and Chinese laws and practice; remedying inequalities, and particularly those suffered by vulnerable groups; enhancing cooperation with human rights mechanisms; increasing access to education; tackling practices like torture that violate the right to life, liberty and security of the person; eliminating obstacles to the administration of justice and the rule of law; and promoting freedom of expression and access to information in the PRC. The Council's Universal Periodic Review of the PRC's human rights record should address the implementation of these recommendations.

AREA OF CONCERN	RECOMMENDATIONS
The Government has the capacity to close the gap between international and domestic law, and between the scope of its international obligations and actual practices.	<ul style="list-style-type: none"> ▪ <u>Ratify</u> all signed human rights treaties, and in particular the International Covenant on Civil and Political Rights (ICCPR). ▪ <u>Remove reservations</u> and commit to external, independent monitoring processes.
Constitutional and legislative framework for protecting human rights is undercut by the state secrets system .	<ul style="list-style-type: none"> ▪ Within the official review of the State Secrets Law currently underway, <u>comprehensively review state secrets provisions</u>, and <u>adopt necessary changes</u> to conform these laws to international norms and to constitutional provisions guaranteeing rights protections. Reforms should include: <ul style="list-style-type: none"> - Eliminate <u>retroactive determinations</u> of what constitutes a state secret. - Revise laws and regulations so that <u>criminal punishment and administrative penalties</u> are only levied in compliance with international norms, including factors such as actual harm to a legitimate national security interest. ▪ Institute <u>more effective and expanded targeted training, education and measures</u> to increase authorities' understanding of rights and obligations at every level, and that engender shifts towards more rights-respecting legal and institutional cultures.
Lack of legitimate and accountable institutional & human rights infrastructure .	<ul style="list-style-type: none"> ▪ To create the necessary environment for effective institutional and human rights infrastructure, <u>reduce legal, financial, and political restrictions on civil society</u>, including media control and access to information.
Specific policy measures are exacerbating deprivations of basic rights.	<ul style="list-style-type: none"> ▪ Abolish or reform policies that negatively impact on human rights and entrench discrimination, including <u>the one child policy and hukou</u>; and ensure that <u>local reforms are expanded to create consistent, national policy reforms</u>.

Significant obstacles to **cooperation with international human rights mechanisms** exist, including official actions that inhibit the inclusion of independent Chinese voices in these forums.

- Extend a standing invitation to all of the Council's thematic special procedures to visit the PRC, and ensure that visits are held under standing terms of reference.
- Cease actions, including travel restrictions and persecution of activists and human rights lawyers, which inhibit the peaceful participation of independent Chinese voices in international human rights mechanisms.

Inadequate implementation of international law, and specific public policies, exacerbate the lack of **equality** for vulnerable groups, including women., ethnic minority groups (Tibetans, Uyghurs, and Mongols), and migrants

- Define “discrimination” in accordance with international standards.
- Define “trafficking” to include trafficking for the purposes of forced labor, debt bondage and domestic servitude.
- As requested by numerous UN review bodies and processes, provide more detailed information and statistics disaggregated, *inter alia*, by locality, gender and ethnicity.
- Remove state secrets provisions that limit the dissemination and discussion of information necessary to effectively address problems like family planning, health, gender issues, criminal justice policies and practices, and religious and ethnic minority affairs.

Primary **education** has not attained the universal, compulsory status guaranteed by the Constitution.

- Monitor and report on outcomes from recent government initiatives that aim to make universal compulsory education more accessible, and include data on the impact of these reforms on children of ethnic minorities and migrants.
- Ensure that education for all children is adaptable to ethnic minority languages and cultures.

Crackdowns, the application of the death penalty, the pervasiveness of torture, and the “legal black hole” that is administrative detention all undermine the **right to life, liberty and security of the person.**

- End ongoing crackdowns against ethnic minorities, prohibited religious groups, protesters, petitioners and human rights defenders who are targeted as a result of their ethnicity, dissenting opinions or efforts to secure greater rights protection.
- Reduce the scope of the death penalty, e.g. by abolishing it for economic and non-violent crimes; and declassify information about the crimes, number and identity of individuals executed.
- Define the crime of torture in accordance with Article 1 of the *Convention against Torture and Cruel, Inhuman or Degrading Treatment*, and implement other preceding recommendations of the Committee Against Torture.

The **administration of justice and the rule of law** are undermined by the states secrets system (which

- Ensure that suspects in cases involving state secrets enjoy full access to due process rights (and particularly to those otherwise protected under Chinese law), including access to counsel, and to the prosecution's evidence.

largely deprives suspects of due process rights), by infringements on the rights of defense lawyers, and by administrative detention.

- Where authorities exercise discretionary powers, ensure that there is transparency and accountability, including through review of decisions by independent bodies.
- Review and address contradictions between the 2007 revision of the Lawyers Law, and the State Secrets Law so that defense lawyers in cases involving state secrets are not prevented from effectively representing their client.
- As advocated by Chinese lawyers, abolish section 306 of the Criminal Law due to its politicized misuse to prosecute defense lawyers for “fabricating evidence” or “perjury”.
- Abolish all forms of administrative detention, and particularly Reeducation-Through-Labor; or establish judicial review for administrative detention decisions, and full access to due process rights.

Internet censorship, crackdowns on press freedom, and intensifying surveillance violate **freedom of expression**, and undermine the **right to meaningfully participate in public and political life**.

- Remove restrictions on freedom of information and expression, including on the Internet.
 - Ensure that all surveillance systems accord with international standards on privacy, particularly as concerns the vast collection of bio-metric data, and that measures taken to protect national or public security are proportional and respect citizens' rights.
-