



Chinese Human Rights Defenders (CHRD)

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Promoting human rights and empowering grassroots activism in China

Information submitted by

The Network of Chinese Human Rights Defenders (CHRD)

**to the Pre-Sessional Working Group of the Committee on Economic, Social
and Cultural Rights on the occasion of the consideration of List of Issues
related to the Second Periodic Report of the People's Republic of China
during the Committee's 51st Session**

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Introduction

1. This submission, prepared by Chinese Human Rights Defenders (CHRD), on the basis of its own documentations, and in cooperation with other Chinese NGOs (some of whom do not want to disclose their identity), raises a number of issues which we urge the Committee on Economic, Social and Cultural Rights (CESCR) to include in the List of Issues (LOI) it will request the Chinese government to address as it reviews China's second periodic report on the measures it has taken to implement the rights set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR) (E/C.12/CHN-MAC/2). This submission does not purport to provide a comprehensive overview of the current situation, but rather identifies some areas of greatest concern.
2. We recommend CESCR press the Chinese government for concrete evidence of actions being taken to address the issues raised here, many of which CESCR raised with China in its 2005 Concluding Observations (E/C.12/1/Add.107). We will address issues relating to the equal right of women and men to the enjoyment of rights set forth in the ICESCR (Article 3), the right to work (Article 6), right to just and favorable conditions of work (Article 7), right to an adequate standard of living (Article 11), right to health (Article 12), right to education (Articles 13 & 14), and cultural rights (Article 15).

I. General issues

3. In the 2005 Concluding Observations (COBs), para. 41, the Committee recommends that "the State party adopt a national human rights plan of action, and report back in its next periodic report on how the plan promotes and protects economic, social and cultural rights in the State party." China has adopted two such plans, but these plans seemed to be intended solely for the eyes of the Committee and the Human Rights Council's Universal Periodical Review. CHRD submitted a letter to the HRC and OHCHR in March 2013, alleging that China has excluded Chinese citizens from participation in the draft of these plans and obtaining information about them, largely through citing "state secret" laws, while police have harassed and in some cases detained citizens who repeatedly requested participation.

4. China has not established an independent national human rights institution with a mandate to receive, investigate, and address complaints from the public, nor with adequate financial, human, and material resources. Instead, the State party has referred to other legislative and prosecution departments, and claims that these bodies handle allegations of rights abuses. However, these government bodies are not independent from the Chinese Communist Party, nor do they play roles related to handling rights allegations. For instance, “letters and visits” offices systematically turn away petitioners with grievances involving socio-economic rights violations, especially in cases of forced evictions and land expropriation. In addition, police routinely detain many such petitioners in illegal “black jails,” sometimes holding them for months and subjecting them to torture and other inhumane treatment.

5. CHRD documented some of these abuses in a 2008 report, “Silencing Complaints: Human Rights Abuses Against Petitioners in China,” finding that: “Petitioners, officially estimated to be 10 million, are amongst those most vulnerable to human rights abuses in China today. As they bring complaints about lower levels of government to higher authorities, they face harassment and retaliation. Officially, the Chinese government encourages petitions and has an extensive governmental bureaucracy to handle them. In practice, however, officials at all levels of government have a vested interest in preventing petitioners from speaking up about the mistreatment and injustices they have suffered. The Chinese government has developed a complex extra-legal system to intercept, confine, and punish petitioners in order to control and silence them, often employing brutal means such as assault, surveillance, harassment of family members, kidnapping, and incarceration in secret detention centers, psychiatric institutions and Re-education through Labor camps.”¹

6. In the 2005 COBs, para 43, CESCR recommended on this issue both public consultation and listing of NGOs and CSOs consulted. China seems to have posted its State party report on the Ministry of Foreign Affairs (MFA) website. However, when searching for the ICESCR in China’s second state report (E/C.12/CHN/2) on the implementation of ICESCR in Chinese on the MFA website’s “search engine” at http://www.fmprc.gov.cn/wjb/search_new.jsp, the search result in both cases is a warning: “The search words contained illegal words!” We recommend the

Committee ask China to explain the reasons for disseminating the state report using only the website of the Ministry of Foreign Affairs, given that it is an agency focused on international relations, and to provide detailed information about the online public consultation, including the number of citizens it was able to reach and the timeframe during which it was conducted.

7. We recommend the Committee ask China to explain, among those “national NGOs and academic research organizations” that the State party claimed to have consulted during the drafting of the State report, that are listed in Annex 2, “Non-governmental organizations and academic institutions consulted during the preparation of the present report,” page 48, of the “Core document forming part of the reports of States parties,” how many of them are independent from the government; and produce evidence to prove the non-governmental nature of those identified by the government as being “independent.” Most of these institutions and organizations are known to be part of the government bureaucracy, or funded by the government, and/or run by government officials or government-appointed bureaucrats or retired former officials. Their directors or chairpersons and even staff are on government payrolls. Some of these organizations are unheard of in China. Those who are known in China never functioned as part of the Chinese civil society, and instead, always functioned as part or on behalf of the government or the communist party. To our best knowledge, these are government-organized “non-governmental organizations” (GONGO).

II. Issues relating to the general provisions of the Covenant (arts. 1-5)

Article 3 - Equal rights of men and women

8. According to recent Chinese press reports, family planning officials were found to be involved in the sale of girl infants.² We recommend the Committee ask China to provide information regarding such incidences and the number of officials punished for such acts, disaggregated by provinces, during the reporting period.
9. According to a survey published on the website People’s Net (www.people.com.cn/) of the government-run newspaper People’s Daily in 2010, 90% of female university students have experienced discrimination in job recruitment.³ Has the State party

taken measures to combat this problem of gender discrimination in employment?

10. During its first Universal Periodic Review, the Chinese government accepted the recommendation by South Africa to “to improve its health infrastructure, including access to health services especially for vulnerable groups like women.” What kind of measures has China taken to ensure that migrant women in particular can obtain basic health care (including maternal security) while living outside their hometowns?

III. Issues relating to the specific provisions of the Covenant (arts. 6-15)

Article 6 Right to work

11. In response to 2005 COBs, paras. 22 & 51, China stated in Section V, 5(3), of its report that the Standing Committee of the National People’s Congress has decided to include in its legislative agenda the Law on the Correction of Unlawful Behavior through Education in order to transform the system of Re-education through Labor (RTL) into a system for the correction of unlawful behavior through education. We recommend the Committee ask China to provide the Committee with a draft of this legislation and explain the extent to which the new system will be in line with the provisions of Articles 6 and 7 of the Covenant. CHR D has documented rights abuses in RTL in a report published in 2009, concluding that Chinese authorities continue to operate one of the world’s largest and most notorious arbitrary detention systems – the Re-education through Labor camps. Without charge or trial, hundreds of thousands of Chinese are held in forced labor camps every year.”⁴
12. Under China’s RTL system, Chinese police have the power to issue decisions to send anybody, including children under the age of 18, to RTL without a trial. RTL detainees can be locked up and forced to engage in hard labor for up to four years without ever seeing a lawyer or having their case heard by a judge. We recommend the Committee ask China to provide detailed information on the number of children under 16 who are detained in Re-education Through Labor camps.

Articles 7– Right to just and favorable conditions of work

13. In the state report, under V(5), in responding the Committee’s (COBs, para. 46) “calls upon the State party to implement its decision to dismantle the *hukou* system of national household registration and to ensure that in any system that replaces it, internal migrants will be able to enjoy the same work, social security, housing, health and education benefits enjoyed by those in the urban areas,” China talked about steps taken (e.g., regulations proclaimed) to adjust or “reform” the *hukou* system, but fails to acknowledge that the State has not dismantled it. This failure has allowed the discrimination against people with rural household registration. Today, the *hukou* system remains a serious impediment to internal migrants’ enjoyment of the same work, social security, housing, health and education benefits enjoyed by those in the urban areas, in practice relegating people with rural registration to an inferior class than those with urban household registration.

14. As one example, employers’ delaying or refusal to pay internal migrant workers has been a persistent problem. Without addressing the root causes of this problem – one of them being the *hukou* system – the State has perpetuated this problem despite the regulations it issued, which typically lack enforcement mechanisms. Since such regulations were adopted, for instance, the State Council “Urgent Notice” about companies delaying payment to migrant labor in February 2010, and “Supreme Court Interpretation of Issues Concerning Applicable Laws in Handling Criminal Cases Involving Refusal to Pay Labor Compensation,”⁵ the problem of unpaid migrant labor has persisted, as even official media has commented, to be one of China’s most “destabilizing” causes for social unrest, and the difficulties for migrant laborers to get the employers to pay them for their work have not become easier. The government’s central news agency, Xinhua, and its main newspaper, People’s Daily, have reported on the difficulties and problems, including bureaucratic negligence and obstacles erected by officials, that continue to obstruct migrant workers’ efforts to seek rightful compensation.⁶ These reports seem to blame the migrant workers for lacking awareness of their rights. But they fail to consider the impact of the *hokou* system, which makes migrants working in cities “unregistered” or illegal residents, a status that overshadows their efforts to use the law to fight for unpaid labor compensation.

15. China has made little progress in implementing International Labor Organization Conventions Nos. 138 and 182 regarding child labor. There is no detailed data provided by the State party on the inherent problems of child labor. Yet, the use of child labor remains widespread in China, as evidenced by child labor incidents exposed by the media in recent years, including the large number of secondary specialized or technical school students working in companies as “interns.” Government departments in many provinces (i.e., Henan, Shanxi, Shaanxi, Gansu, Xinjiang, Ningxia, Sichuan, Yunnan, Guizhou, and Anhui) do not strictly oversee this issue, and in fact tacitly approve of schools sending students to factories in the Yangtze River Delta and Pearl River Delta areas. Most of those students are not of legal working age, and some are even under 16 years old. Although they work in “internships,” the content, schedule, and intensity of their work are the same as those of full-time employees. The following two cases illustrate the seriousness of the problem of child labor in China:

(a) *Child Labor in the Shanxi Black Brick Kilns in 2007*

16. This case in Shanxi Province is important for understanding the lack of protections to prevent children from being trafficked into child or slave labor. The media reported that a total of 400 parents maintained that their children were lured into or forced into Shanxi Black Brick Kilns as hard laborers.⁷ The journalist investigating this story in Wanrong County found that among all the children sold to work in the kilns, the youngest was just eight years old and the oldest was 13 years old, and the children were performing manual labor that even adults would be unwilling to do. In helping to save these children from the illegal brick kilns, the journalist said that the strongest obstacle was the lack of cooperation and even illegal behavior on the part of local law-enforcement authorities. Special operations launched by government officials resulted in the rescue of 570 individuals, including 51 children, in the provinces of Shanxi and Henan. However, the number of rescued children was only 5% of the approximately 1,000 children reported missing, and who are believed to be suffering from horrible conditions.⁸

(b) KYE Factory in Dongguan, Guangdong Province, where a large number of children are employed

17. Media reports disclosed that the KYE factory, which makes products for Microsoft, “recruited hundreds—even up to 1,000—‘work study students’ who were 16 and 17 years old and work 15-hour shifts for six or seven days a week.” And “[i]n 2007 and 2008, dozens of the work study students were reported to be just 14 and 15 years old.”⁹ After this information was released by the media, the government did not conduct any review or exercise more oversight of the factory. In the end, the matter went unaddressed after the government deliberately played it down, and KYE even denied that any issue existed.
18. We recommend the Committee ask China to provide the number of individuals held legally accountable for illegally using child labor, disaggregated by provinces, during the reporting period.

Article 8 – Right to Form and Join Trade Unions of One’s Choice

19. China has not implemented the Committee’s recommendation (COBS 55) that the State party “to amend the Trade Union Act to allow workers to form independent trade unions outside the structure of the All China Federation of Trade Unions” and “to consider withdrawing its declaration on article 8, paragraph 1, of the Covenant.” It is illegal today in China for workers to form or join independent trade unions. The All China Federation of Trade Unions (ACFTU) is a governmental organization. Its top officials are appointed by the Chinese Communist Party. The current Chairman of the ACFTU, Li Jianguo (李建国) is a member of the Central Chinese Communist Party Poliburo, Secretary and Vice President of the Chinese National People’s Congress and a member of its Communist Party Organization Committee. Mr. Li has risen through the Communist Party ranks and has been appointed to various posts in the Party hierarchy, including serving the Communist Party Secretaries of Shaanxi Province and Shandong Province.¹⁰ All ACFTU officials working in national and local (provincial or county) governments are on the payroll of these governments, while union officials posted in state or private enterprises are paid by those enterprises.
20. In a 2009 report by CHRD, “Reining in Civil Society: The Chinese government’s use of laws and regulations to persecute freedom of association,”¹¹ we pointed out

that “Although the Trade Union Law (工会法) stipulates that ‘trade unions are mass organizations of the working class formed by the workers and staff members on a voluntary basis’, Chinese workers do not enjoy the right to form independent trade unions in practice.” The Union Law put in place a hierarchical and centralized system of managing trade unions, with the All-China Federation of Trade Unions (ACFTU) at the top of the hierarchy. This means that the ACFTU functions as part of the party-state, and so do the unions under the leadership of ACFTU.

21. The Union Law stipulates that a union at a higher level “exercises leadership” over ones at a lower level, which includes overseeing the establishment of new unions at a lower level. Thus, it effectively prohibits workers from setting up an independent union outside of the control of the ACFTU. Moreover, although a union’s leadership is chosen or removed by the workers according to the relevant procedures outlined in the Union Law, a higher-level union always holds the power to make the final decision. Because the ACFTU and its trade unions are not formed spontaneously, and their leadership is not freely chosen by the workers, they represent the interests of the authorities instead of those of their members. Unable to express their demands and defend their rights through official unions, workers have resorted to alternative forms of association, such as releasing public letters addressing the authorities or collectively petitioning government offices. However, as these forms of association are outside of the realm of the Union Law, workers often meet official retaliation for exercising their rights to associate and express their demands.

22. In 2008, 3,354 workers at the Heilongjiang Jixi Mining Group sent a public letter to the State Council. The public letter points out that, in 2004, Heilongjiang Jixi Mining Group “re-structured” the state-owned Didao coal mine and laid off thousands of workers without proper procedures or compensation. The workers alleged that, prior to its re-structuring, the Heilongjiang Jixi Mining Group had not discussed or passed the resettlement policy at a workers’ representatives meeting, as required by the law. Thousands of them were laid off without having received their full compensation. The mine management only gave them 20% of the resettlement fund it received from the central government for the purpose, while 80% of the fund together with the remaining capital and property of the mine went to the mine management, which included the leadership of the mine, the local mining bureau and other government officials. The Didao Mine, which continues to produce substantial output, has become a private mine belonging to those same officials. The workers demanded that the State Council preside over the liquidation of the mine and ensure that the workers be compensated fairly. The workers’ demands not only went unheeded, the workers themselves also suffered harassment for their collective

effort. On May 24, 2008, Yuan Xianchen (袁显臣), a rights activist who had been acting as a legal advisor to the Didao mine workers and who had publicized their plight, was apprehended by the authorities. On March 4, 2009, Yuan was convicted of “inciting subversion of state power” and sentenced to four years in prison and five years’ deprivation of political rights. Between Yuan's apprehension in Beijing and his formal detention on May 29, he was repeatedly tortured to extract confession in Beijing Municipal State Security Bureau Detention Center.¹² After repeatedly being repressed by officials, the mine workers have abandoned their collective effort to seek appropriate compensation.

Article 10 – Protection of family

23. China’s 2nd state report, under the heading of “Protection of Family,” avoided addressing issues concerning forced abortion and forced sterilization in government implementation of its “one-child” family planning policy. According to the latest official census, China continues to suffer from a high gender gap at birth, and that the gap is higher than it was ten years ago. The current ratio is 118.06 boys for every 100 girls, while in 2000 it was 116.86 boys for every 100 girls.¹³ The Committee, in its 2005 COBs (para. 18), was concerned about this issue. China noted the problem in Section 8 of its report, citing cultural preferences and the abuse of ultrasound technologies to find out the fetuses’ sex prior to birth. We recommend the Committee ask China to explain the reasons for the continued increase of such a gap, and the role the State party’s “one-child policy” plays in driving sex-selective abortions.

24. In a 2010 CHRDR report on abuses of China’s family planning policy, “I Don’t Have Control over My Own Body!,” CHRDR concluded that: “Though the enactment of the National Population and Family Planning Law in 2002 was ostensibly aimed at reining in abusive practices associated with the family planning policy, coercion and violence continue to be used in its implementation. Regardless of the number of children each couple is allowed to have, family planning policy continues to violate citizens’ reproductive rights, and will continue to do so until the current form of the policy is abolished.” In the same report, CHRDR documented serious violations of human rights associated with the implementation of the policy between 2005 and 2010: “Married women are pressured to undergo regular gynecological tests to monitor their reproductive status; When a married woman reaches her birth quota, she is pressured to have an IUD inserted or be sterilized, thus denying her a choice of birth control method; If a woman becomes pregnant out-of-quota, including premarital pregnancy, she is often forced to abort the fetus, even if the pregnancy is advanced;...”¹⁴

25. We recommend the Committee ask China to provide information on effective measures undertaken to ensure that abortions, sterilizations, insertions of intrauterine devices, and tests of reproductive status are carried out voluntarily and under adequate medical and sanitary conditions, and detailed information, including statistics, regarding the implementation of the “one-child” policy during the reporting period, and also explain how existing legislation governing the policy are in accordance with the rights enshrined in Article 10 of the Covenant. The State party should also provide detailed information on the number of individuals responsible for using violence, arbitrary detention, intimidation, and harassment against citizens for violating the “one-child” policy are held legally accountable, disaggregated by provinces, during the reporting period.
26. In the State party report, VIII (3), “Protection of Children’s Rights,” China reported on legislative or policy efforts to protect children from violence and to prohibit child labor. However, the report omitted any evidence showing that the regulations have been implemented or have had any actual impact. CHRDC has documented cases involving the State party’s neglect or violation of children’s right to life, and persecution of citizens who tried to conduct independent investigations and help parents of victims seek justice. For instance:

“Tofu-dreg” construction projects harm children’s right to life

27. Due to shoddy construction of school buildings, tens of thousands of Chinese children died in the Wenchuan earthquake in Sichuan Province on May 12, 2008, and the Chinese government must accept responsibility for the horrific loss of life. Children made up a very large percentage of those who perished in the earthquake. As Sichuan human rights activist Tan Zuoren pointed out in his independent research conducted from December 2008 to March 2009, a far higher percentage of schools collapsed than did other buildings, and the death rates of teachers and students were also far higher than those of other people. His research further shows that the deaths of teachers and students were directly caused by collapsed school buildings. More importantly, the collapse of the buildings had little to do with the intensity of the earthquake and the age of buildings, but rather stemmed from unsafe construction. The problems leading to the inadequate construction, including corruption and shortages of educational expenditures, remain widespread all over China. The poor quality of school buildings is still an alarming problem that

threatens Chinese children's lives.

28. In retaliation for Tan Zuoren's investigation and the publication of his findings, Chinese authorities detained him on charges of "subversion of state power" in March 2009 and later sentenced him to five years in prison.¹⁵ Sichuan authorities also suppressed the rights defense activities launched by parents of students who died in the earthquake.¹⁶ In addition, Huang Qi, co-founder of the 6/4 Tianwang Human Rights Center, was sentenced to three years in prison in November 2009 for his role in posting information online about the plight of parents who questioned the truth behind the collapse of school buildings.¹⁷ The artist and activist Ai Weiwei also conducted an investigation into children's deaths from the earthquake, but authorities obstructed his efforts and also shut down Ai's blogs after he posted online the names of perished children.

29. Also under the heading, VIII (3), "Protection of Children's Rights," China has failed to address the problem of child trafficking. Statistics disclosed in the Chinese media shed some light on the seriousness of child trafficking in China. One news report noted that from January to October 2009, courts nationwide had tried 1,107 child trafficking cases, which have seen a year-on-year increase of 11.25%.¹⁸ Also, child trafficking cases were becoming more serious, and cases in which children of migrant laborers were trafficked were growing. Another media outlet reported that, by the end of 2009, the Chinese police had rescued 3,455 abducted children and 7,365 abducted women.¹⁹ Hong Kong-based TVB, a media company, interviewed several abducted children's parents, most of whom were migrant laborers. All these parents indicated that police initially did not put much effort into investigating their children's whereabouts, and the government even banned media reports on the children's plights and suppressed parents who demanded accountability.²⁰

30. Though the Chinese government has taken a variety of measures to crack down on child trafficking, it is still widespread in China. The root causes have to do with current laws and government policies. First, the inadequate rural pension system has reinforced the traditional bias of raising sons to support parents in their old age, contributing to a huge "buyer's market" for trafficked children. Second, current laws ignore investigating the responsibility of parents or other adults who sell or buy children. Third, punishments of "extra quota" births imposed by family

planning officials have created incentives for discarding and abducting children. Due to the inherent disadvantages under the law of having more children than official birth quotas allow and having children out of wedlock, children born under such circumstances are more likely to be discarded or trafficked.

Article 11 – Right to an adequate standard of living

31. Despite the Committee’s request in 2005 COBs that China include in its next report information about the number and nature of forced evictions and on the extent of homelessness, disaggregated by gender, age, and urban/rural residence, during the reporting period, China has not done so. Civil society organization and the Chinese public do not have access to such statistics. We recommend the Committee also ask China to provide detailed information on the number of individuals responsible for using violence, arbitrary detention, intimidation, and harassment against evictees, and how such perpetrators are held legally accountable, disaggregated by provinces, during the reporting period.
32. CHRD documented rights violations in incidents of forced eviction and demolition in a 2009 report, “Thrown Out: Human Rights Abuses in China’s Breakneck Real Estate Development.”²¹ The report shows how a combination of factors, including contradictory laws and regulations and collusion between developers and local authorities, have created an environment in which residents are at the mercy of real estate developers once demolition permits have been issued by local governments. While not all forced evictions end in headline-grabbing confrontations, abuses of citizens’ rights are widespread and significant. While the government has publicly acknowledged the “mass incidents” and “social conflicts” erupting across China as a result of the practice, it has been slow to act to lessen and diffuse such problematic incidents.
33. In State report, Section Nine, 2(6), in response to the Committee’s 2005 COBs concern about “food safety” issues, the government provided some numbers and statistics, but there is no citation from independent media or research institutes to verify these data. In fact, these numbers veers from those reported in the more outspoken Chinese media. According to Southern Weekly, hospitals in China

received nearly 10,000 children on September 15, 2008, within three days after the first milk powder poisoning case was reported. This media report cited state officials saying that within 5 days, between September 12 and 17, 6,244 children were tested positive as sickened by the contamination.²² Without independent sources of verification, the State Party's claim that most of the 891 "seriously ill" children received compensation from companies that sold the products. The State Party report mentioned that the head of the Board of Directors at Sanlu company that produces milk powder was sentenced to life in prison. However, there is no information about any efforts at prosecuting any government officials who had taken bribes to exchange for allowing contaminated milk powder products to pass inspection. After the Sanlu contamination case was exposed, some government officials tried to censor the media and threatened families who tried to speak up and seek justice as well as their lawyers. This failure has resulted in the perpetuation of contaminated milk powder products being sold in the market. There are evidences of the prevalence of contaminated food and its roots in government neglect and corruption.²³

Article 12 – Right to health

34. Two of the major reforms of China's 2009 health care plan, as mentioned in section 10 of China's report, are: 1) increase provision of health insurance (to over 90% of its citizens by 2011) and 2) ensure access to basic medication for all citizens. We recommend the Committee ask China to provide detailed information, including statistics, on the implementation of these plans, detailed information regarding the proportion of funding in public hospitals that come from the State, versus the proportion that has to be raised by the hospitals, and detailed information regarding the proportion of government funding to health facilities located in urban areas versus to those located in rural areas, as well as in Han majority regions and ethnic minority regions.
35. We suggest the Committee ask China for information on the legal safeguards of persons subjected to involuntary hospitalization in psychiatric hospitals, and explanation whether China's new legislation, its first-ever Mental Health Law, is in line with the provisions of Article 12 of the Covenant.

36. The longstanding problem of involuntary psychiatric commitment in China has persisted since 2005. A report by CHRD, “The Darkest Corners,”²⁴ documented forced psychiatric commitment, which drew heightened attention in 2012, both in the passage of the county’s Mental Health Law²⁵, and the review by the UN Committee on the Rights of Persons with Disabilities of China’s compliance with the International Convention on the Rights of Persons with Disabilities.²⁶ When committed against their will in psychiatric hospitals by authorities, “patients” are routinely forced to take medication, receive injections or electric shocks, and endure other forms of inhumane treatment. Hospitals often restrict or prevent institutionalized persons from communicating with family members and legal counsel. Police and other authorities are granted “guardianship” rights when they forcibly bring human rights activists to psychiatric hospitals. Wielding a high degree of power, guardians can decide when individuals are released from confinement, and some guardians even choose to foot the bill for detainees’ confinement, treatment, and living expenses in order to keep them locked up and silenced. In October 2012, after more than two decades of advocacy efforts by domestic and international human rights critics and mental health professionals, China adopted a Mental Health Law (MHL), which will go into effect on May 1, 2013. Though having a law is perceived to be better than not having one, the MHL has inspired little confidence among those who monitor the issue of involuntary psychiatric commitment. The MHL fails to close loopholes that have allowed authorities, without impunity, to forcibly institutionalize individuals who do not suffer from any mental illness. Under the MHL, it will not be feasible for those committed to institutions to exercise their rights to appeal to judicial authorities for review. In addition, the new law leaves open questions of identifying guardians and limiting their power. These and other factors allow room for the likely continuation of politically-motivated abuses against activists through forced psychiatric confinement.²⁷
37. The State party report failed to address major concerns about infections spread through government-administered immunization programs. Between 2006 and 2008, nearly 100 children in Shanxi Province were inexplicably killed, disabled, or stricken with serious illnesses after receiving vaccines, according to reports by the journalist Wang Keqin.²⁸ After the disclosure of this “vaccine scandal,” the Shanxi Province Department of Health claimed that the report was untrue, and many concerned parents as well as the journalist received threatening text messages.²⁹ Later, due to widespread public attention, the Ministry of Health explicitly admitted the problem and promised to compensate the families of the sick children. However,

parents of the children who died or became disabled because of the vaccinations have not yet received any compensation. On the contrary, parents who sought justice through petitioning have often been put under surveillance, controlled by the police, or forcibly returned home from Beijing to prevent them from seeking redress. Similar problems with vaccines causing deaths or disabilities in children have also occurred in many other parts of China.³⁰

38. CHRD would also like to alert the Committee to the detrimental effects of industrial pollution on children's health. For example, a report in early 2012 disclosed that nearly 300 children contracted lead poisoning in Chenzhou, Hunan Province, an incident that attracted much media attention. However, the enterprise that caused the incident was closed down for only one month after the poisoning occurred. It was further reported that only 18 of the 300 children were hospitalized for treatment. The parents of these children intended to be examined themselves to see if they were also poisoned, but they were intercepted by local government personnel before they could reach a medical facility, and three of them were even detained.

39. Far from being unique to Hunan, lead poisoning from industrial contamination occurs throughout China. For example, in September 2006, an incident took place in Gansu Province that caused lead poisoning in about 2,000 people, including approximately 300 children. Between 1994 and 2007, the activities of a battery smeltery in Fujian Province caused approximately 200 children to suffer from excessive lead levels in their blood. In 2008, after a large-scale accident in Sanhe Village of Jiangsu Province, 41 of the 100 children under 14 years old in Sanhe suffered from lead poisoning, with the youngest under one year old.³¹ Asia's largest lead-recycling enterprise was located less than 100 meters from the village. Although the government has taken some measures after these incidents were exposed, regulations have not been issued to restrain industrial pollution or establish effective prevention mechanisms. The frequent lead poisoning incidents in China have exposed local governments' greed and their skewed notion of development, as officials have largely appeared to be more concerned about whether the polluters wanted to remain in their communities than citizens' right to health.

Articles 13 and 14 – Right to education

35. In its 2010 State report, under Section XI, China provided some useful statistics on children's schooling, but it was far from sufficient. For instance, the State report provided some statistics on school enrolment rates, broken down by gender, but it did not provide any statistics on school dropout rates. The report (under XI .1) said that by 2012, the government will have reached the targeted national spending on education to 4% of GDP, a target that was set in the 1990s. China continues to claim that, as a developing economy, it would be very difficult for the state to meet the 4% target in 2012. In March 2013, the government claims that this target has been met, though 4% is the minimal threshold of international standards. In comparison, in other developing countries, such as Columbia and Cuba, spending on public education has reached 5.6% of GDP. China has the world's second-largest economy, and the government's revenue has increased substantially during the past five years. The State party's continuing claim of economic difficulties in meeting the very low target increase in education spending is disingenuous.
36. The State party must explain why the national government does not use budgetary reallocation to provide sufficient resources to less-developed regions, especially rural areas, in order to narrow regional and rural-urban disparities in protecting children's rights to education. The current government budgetary allocation is responsible for persistent regional and rural-urban disparities in education. The compulsory education system adopts a "decentralized" financial mechanism that imposes the responsibility to raise and allocate funds for compulsory education onto local governments. This exacerbates regional disparities to affect as well as restrict the compulsory education system; hence, conditions of the compulsory education system rely on the economic development of each region and the region's financial revenues and expenditures.
37. Furthermore, China glossed over the problems with hidden school fees and migrant labour children's schooling in the State report. We recommend the Committee ask China to explain in detail concrete measures taken to eliminate all school-related fees so as to make compulsory primary education truly free for all children, in particular migrant children, and to provide data showing the percentages of migrant children still paying for miscellaneous fees in order to attend compulsory education.

38. According to a 2011 report by an independent NGO partnering with CHRD, “Equity in Education Waits To Be Met – Taking The Right to Education of Children of Three Disadvantaged Groups As An Example,”³² due to some problematic systems such as with household registration (*hukou*) and government fiscal allocation to education, unequal access to education exists widely in China, especially for disadvantaged groups, including children of migrant labors, children of petitioners, and children of individuals in prison or in Re-education through Labor (RTL) facilities. The percentages of rural and urban populations, respectively, receiving access to higher level education are: 6% and 21% in high schools; 0.8% and 13.2% in secondary specialized or technical schools; 0.2% and 11.1% in junior colleges; and 0.02% and 5.63% in universities. People in urban areas with degrees from high schools, secondary specialized or technical schools, junior colleges and universities are, respectively, 3.5 times, 16.5 times, 55.5 times and 281.55 times greater than in rural areas.³³
39. Discrimination against rural children’s right to education remains of grave concern, as many children in rural China continue to face difficulties in attending schools. In 2006, Civil Rights and Livelihood Watch (CRLW), a human rights NGO based in China, published “Report on the Right to Basic Education of Rural Children in Suizhou, Hubei Province,”³⁴ which, based on studies of education in rural areas within Suizhou City, pointed out the main reasons why rural children leave school. According to the report, poverty is the primary factor. The findings further showed that migrant workers’ children often drop out, and that school management also impacts the dropout rate of rural children. As stated in the report, “[C]urrently, one of the most important areas school managers focus on is ensuring school [financial] accounts do not fall into the red. This has resulted in parents being charged arbitrary fees and generated the use of extreme measures to boost enrolment rates, causing students to drop out of school.”
40. In addition, some issues particular to rural China also affect children’s dropout rates. For example, the CRLW report states that “many schools in rural areas have been forced to close down because of the dramatic shrinking of student numbers due to the effects of stringent family planning policies on the already thinly spread population of rural villages.” Also, due to long distances between school and home, rural students have to become boarders, which “considerably increases the cost of their education,”

according to the report. Concerning these problems, CRLW suggests that the State party should “develop the system of education funding and increase the amount of funds for the rural education system,” “implement free education for rural primary and secondary students,” and “establish a ‘supplement or grant-based’ assistance program for poor rural children.”

41. Unequal access to education by migrant children is of particular concern. The result of the Fifth Nationwide Population Census in November 2000 shows that 4% of all school-age migrant children never attend school, and 0.8% drop out. Among 14-year-old migrant children, 15.4% had left school and become “child laborers” or vagrants, and 60% of migrant children between 12 to 14 years old who had dropped out of school already had started to work.³⁵
42. According to research conducted in 2010-11, public schools continue to charge high hidden fees, making education unaffordable for migrant children, as one NGO reported.³⁶ The report also finds that 84% of public schools in Beijing charged migrant students various fees and tuition, the amount of which could be as high as 50,000 yuan (or about \$8,500 USD) per year. Most migrant students were not granted reduced tuition or scholarships. A 2008 survey on school selection fees (fees paid in order for rural migrants to choose schools in urban areas) in Beijing, Shanghai, Guangzhou, Chengdu, and Xi’an shows that the average school selection fee in these cities was 3,150 yuan, and the highest amount was 4,767 yuan, charged by public schools in Beijing.
43. Due to these problems, migrants and others create private or community schools to provide education to migrant children. These schools—commonly known as “migrant schools”—do not receive state funding, face severe funding shortages, lack qualified teachers, and are often set up in unsafe buildings. Since mid-June of 2011, nearly 30 migrant schools in the Daxing, Chaoyang, and Haidian districts in Beijing have been ordered to close down, which affected up to 30,000 students.³⁷ Common reasons leading to schools being shuttered include the lack of operating licenses or property ownership certification, and school buildings being deemed illegally constructed and with security risks. Migrant schools often are forced to go “underground” due to difficulties in meeting government requirements for legal registration, a situation that puts the safety of children at risk.

44. CHRDR would like to point out that since 2006, the Beijing government has continually closed down migrant schools, even using aggressive tactics to achieve its aims. In August of that year, a migrant school in Chaoyang District, the “Tongxin Experimental School,” refused to comply with the government’s demand to close. In response, the government cut off the school’s water supply, leading hundreds of students’ parents to gather in protest.³⁸ According to media reports, of the migrant schools in Beijing that were closed down in 2011, 32% of the students had been forced to return to their places of household registration (*hukou*), and thus were separated from their parents who were working in Beijing.³⁹

Article 15 – Cultural rights

45. CHRDR suggests the Committee ask China to provide information on the measures taken by the State party regarding the recommendations made by the Committee to “remove restrictions on freedom of information and expression” (COBs, para. 68). Specifically, what measures have been taken by the State party to dismantle the Internet censorship and surveillance tool the Golden Shield Project (*jindun gongcheng*, also known as the “Great Firewall”)?

46. During the 2009 UPR, several States recommended that the Chinese government cease practices that violate the right to freedom of expression and freedom of the press, recommendations that were rejected by the Chinese government.⁴⁰ In the reporting period, as the government has maintained a tight grip over the media, many Chinese citizens have made use of cyberspace to express themselves, despite official monitoring and censorship. However, they risk paying a heavy price if they express views that are critical of government authorities.⁴¹ The government continues to use the crimes of “subversion of state power” and “inciting subversion of state power” (Article 105 of the Chinese Criminal Law⁴²) to detain and imprison individuals for exercising their free expression rights.⁴³ Sentences of nine or more years each have been given to outspoken citizens convicted of such crimes, including Liu Xiaobo, Chen Wei, Chen Xi, Li Tie, Liu Xianbin, and Zhu Yufu.⁴⁴

47. Amendments made in April 2010 to the State Secrets Law (SSL)⁴⁵ fail to address the concern that the law has been “abused for persecution of human rights defenders in

particular petitioners or journalists,” as pointed out by the Czech Republic in the 2009 UPR.⁴⁶ The SSL continues to fail to provide precise definitions for what constitutes a “state secret.” Moreover, the revisions do not address how information is designated to be a state secret—a process that remains unsupervised by an independent body and subject to police abuse. The revisions also do not outline any mechanism through which a citizen accused of violating the law may challenge, or even inquire about, the classification of information as state secrets.

Notes:

¹ CHRD, “Silencing Complaints: Human Rights Abuses Against Petitioners in China,” at

<http://chrdnet.com/2008/03/silencing-complaints-human-rights-abuses-against-petitioners-in-china/>

² AFP, China probes child trafficking, adoption link, May 10, 2011.

<http://www.google.com/hostednews/afp/article/ALeqM5icXu-hMla4PBXIJj3xxoUOiN1eDw?docId=CNG.19ad1a55f3d38eb7cef38898ab7017bd.4d1> Caixin, Father to Lost Child: We Never Abandoned You

Parents in a Hunan village continue searching for abducted children after years of government abuse and dashed hopes
<http://english.caixin.cn/2011-06-27/100273482.html>

³ Survey shows that female university graduates studying sciences experience the greatest level of discrimination (调查显示理工科女大学生受歧视比例最高), August 24, 2010, <http://edu.qq.com/a/20100824/000225.htm>

⁴ CHRD, Re-education through Labor Abuses Continue Unabated: Overhaul Long Overdue

<http://chrdnet.com/2009/02/research-reports-article-2/>

⁵ Supreme Court Interpretation of Issues Concerning Applicable Laws in Handling Criminal Cases Involving Refusals to Pay Labor Compensation (最高人民法院^{关于}审理拒不支付劳动报酬刑事案件适用法律若干问题的解释

) http://www.court.gov.cn/qwfb/sfjs/201301/t20130123_181736.htm

⁶ Xinhua, “To Chase One Thousand Yuan Payment, One [Worker] Needs to Get Nine Certificates: An Investigation of the ‘bouncing Doors’ of Seeking Unpaid Salaries”, http://news.xinhuanet.com/politics/2013-02/03/c_114594490.htm Also see report in People’s Net of the government-run newspaper People’s Daily,

<http://leaders.people.com.cn/n/2013/0125/c178291-20327632.html>

⁷ See Henan Dahe Net, June 5, 2007, “Road of Illegal Labor! Children have been sold to illegal brick-kilns in Shanxi Province,” <http://news.qq.com/zt/2007/sxhzc/>, <http://www.clb.org.hk/en/node/47600>.

⁸ See http://www.china.com.cn/city/txt/2007-06/13/content_8380301.htm, and <http://news.sina.com.cn/z/shanximaltreat/>

⁹ “China’s Youth Meet Microsoft,” April 13, 2010, a report by the American National Labor Committee (NLC),

<http://www.globallaborrights.org/reports?id=0034>, and

http://www.globallaborrights.org/admin/reports/files/Chinas_Youth_Meet_Micro.pdf.

¹⁰ Li Jianguo’s resume can be viewed at the official website of the ACFTU:

<http://www.acftu.org/template/10001/file.jsp?cid=62&aid=56>

¹¹ CHRD, “Reining in Civil Society: The Chinese government’s use of laws and regulations to persecute

freedom of association,”

<http://chrdnet.com/2009/08/reining-in-civil-society-the-chinese-governments-use-of-laws-and-regulations-to-persecute-freedom-of-association/>

¹² For more information on Yuan Xianchen, see CHR D 2009 submission of an allegation letter to the UN Special Rapporteur on Torture and the Special Representative on the Situation of Human Rights Defenders at <http://chrdnet.com/2009/08/un-work-on-cases-yuan-xianchen-august-31-2009/>

¹³ Xinhua, China's mainland population grows to 1.3397 billion in 2010: census data, April 28, 2011, http://news.xinhuanet.com/english2010/china/2011-04/28/c_13849795.htm

¹⁴ See “I Don't Have Control over My Own Body!” Abuses continue in China's Family Planning Policy. <http://chrdnet.com/2010/12/i-dont-have-control-over-my-own-body/>

¹⁵ For more information, see: CHR D, “Prisoner of Conscience – Tan Zuoren,” <http://chrdnet.com/?p=4561>

¹⁶ See Radio Free Asia report:

http://www.rfa.org/cantonese/multimedia/earthquake_students-12312008094306.html?encoding=simpli.

¹⁷ See http://www.amnesty.org.uk/news_details.asp?NewsID=18512.

¹⁸ “Chinese Courts Handled More Than 1100 Cases of Child Trafficking in the First 10 Months of the Year,” China News Net (中国新闻网), November 26, 2009, <http://news.sina.com.cn/o/2009-11-26/160416673517s.shtml>.

¹⁹ “Ministry of Public Security ‘Crackdown on Trafficking’ Action Freed More Than Ten Thousand Women and Children,” February 24, 2010, http://news.xinhuanet.com/legal/2010-02/24/content_13041740.htm.

²⁰ See Hong Kong TVB, <http://mytv.tvb.com/news/tuesdayreport/102745#page-1>.

²¹ CHR D, *Thrown Out: Human Rights Abuses in China's Breakneck Real Estate Development*, <http://chrdnet.com/2010/02/thrown-out-human-rights-abuses-in-chinas-breakneck-real-estate-development/>

²² *The Southern Weekly*, “Memorandum on the Incidents of Sanlu Milk Power” (三鹿奶粉事件备忘录) <http://www.infzm.com/content/17335>

²³ Fang Net, “Shien Milk Power Again Exposed to Contain Far More Melamine than Standard Level” (施恩奶粉再次被曝三聚氰胺严重超标) <http://www.zsnews.cn/News/2009/06/09/1121286.shtml>; “Startling! Shocking Exposure of China's Food Safety Issues Behind-the-Scene (触目惊心! 中国食品安全惊天黑幕全曝光) <http://biz.cn.yahoo.com/newspic/biz/1425/#1>.

²⁴ CHR D, “[The Darkest Corners](#)”: Abuses of Involuntary Psychiatric Commitment in China, August 22, 2012. In 2002, Human Rights Watch published a report that exposed abuses in China's use of involuntary commitment, primarily of political dissidents and Falun Gong practitioners. See: “[Dangerous Minds: Political Psychiatry in China Today and its Origins in the Mao Era](#),” August 12, 2002. See also: Robin Munro, “Judicial Psychiatry in China and its Political Abuse,” *Columbia Journal of Asian Law*, Volume 14, Number 1.

²⁵ See full text (in Chinese) of [Mental Health Law](#).

²⁶ CHR D submitted its August 2012 report to the UN Committee on the Rights of Persons with Disabilities prior to the [review](#) in September 2012 of China's compliance with the [Convention on the Rights of Persons with Disabilities](#). China ratified the Convention in 2008.

²⁷ CHR D, “China's New Mental Health Law Falls Short in Protecting Rights,” [China Human Rights Briefing, October 25-November 2, 2012](#).

²⁸ “Nearly 100 Children Died or Became Disabled for Unknown Causes,” *China Economic Times* (中国经济时报), March

17, 2010, <http://jiaren.org/2010/03/21/shanxi-yimiao/>.

²⁹ For more information, see <http://sina.web109.zgasp.com/sina-news/shanxiyimiao/>.

³⁰ More information can be found on Wang Keqin's blog, located at <http://wangkeqin.blog.sohu.com/>.

³¹ See information on Zhonggu Net: <http://news.9ask.cn/yljf/rmzt/201003/376951.html>,
<http://news.9ask.cn/yljf/rmzt/201003/377011.html>, and also
http://news.china.com/zh_cn/domestic/945/20100312/15850663.html.

³² Equality in Education Waits To Be Met – Receiving the Right to Education for Children of Three Disadvantaged Groups (教育平等权亟待落实——以三大弱势群体子女的受教育权为例) <http://weiqianwang.org/archives/28286>

³³ See Zhang Shuying, Liu Chaochen: A Study on the Relationship between Rural Income and Education, in *Scientific Technology and Economy* (《科技与经济》), No. 5, 2009.

³⁴ See <http://chrdnet.com/?p=1674> or Appendix 2.

³⁵ These statistics were cited in Duan Chengrong, Liang Hong, “The Conditions of Our Country’s Migrant Children,” *Population Study* (人口研究), No. 1, 2004.

³⁶ See Appendix 3.

³⁷ See: CHRD, “Closure of Beijing Schools for Migrant Workers’ Children Ushers in Educational, Social Crises,” China Human Rights Briefing (August 16-22, 2011), <http://chrdnet.com/?p=3161>.

³⁸ See report in *Shandong Commercial News* (山东商报), <http://news.hexun.com/2012-08-03/144308896.html>.

³⁹ See report in *Beijing News*, August 27, 2012, <http://news.qq.com/a/20120827/000060.htm>.

⁴⁰ UPR Report, paragraphs 27, 56, 82, 92 and 97.

⁴¹ See for example: CHRD, “*We can dig a pit and bury you alive*”: *Annual Report on the Situation of Human Rights Defenders in China, 2011*, pages 13-17, March 9, 2012,
<http://chrdnet.com/2012/03/09/we-can-dig-a-pit-and-bury-you-alive-annual-report-on-the-situation-of-human-rights-defenders-in-china-2011/>.

⁴² The Criminal Law of the People’s Republic of China (中华人民共和国刑法) was adopted by the National People’s Congress on March 14, 1997, and promulgated on March 14, 1997.

⁴³ See for example the activists detained for “inciting subversion of state power” during the Jasmine Crackdown: CHRD, “Escalating Crackdown Following Call for “Jasmine Revolution” in China,” March 31, 2011,
<http://chrdnet.com/2011/03/31/escalating-crackdown-following-call-for-%E2%80%9Cjasmine-revolution%E2%80%9D-in-china/>.

⁴⁴ See information on individual cases, including urgent appeals submitted by CHRD to the UN: Prisoner of Conscience – Liu Xiaobo, <http://chrdnet.com/2011/10/16/prisoner-of-conscience-liu-xiaobo/>; Prisoner of Conscience – Chen Wei, <http://chrdnet.com/category/prisoners-of-conscience/>; Prisoner of Conscience – Chen Xi,

<http://chrdnet.com/2011/10/22/prisoner-of-conscience-chen-xi/>; Prisoner of Conscience – Liu Xianbin,
<http://chrdnet.com/2011/10/18/prisoner-of-conscience-liu-xianbin/>; Prisoner of Conscience – Zhu Yufu,
<http://chrdnet.com/2011/09/08/prisoner-of-conscience-zhu-yufu/>.

⁴⁵ The Guarding State Secrets Law of the People's Republic of China (中华人民共和国保守国家秘密法) was adopted by the National People's Congress on April 29, 2010, and has been in effect since October 1, 2010. The law is here:

http://monitorchina.org/en_show.php?id=8578.

⁴⁶ The UN UPR Report, paragraph 82.