

**Parallel submission in advance of the review of the People's
Republic of China's second report on its implementation of the
International Covenant on Economic, Social and Cultural Rights**

Submitted to the Committee on Economic, Social and Cultural Rights

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Executive Summary

Since its last review before the Committee on Economic, Social and Cultural Rights (“the Committee”) in 2005, the People’s Republic of China (“China” or “the State party”) has continued to achieve macro-economic growth, as well as formal legislative progress. However, the State party’s second periodic report on its implementation of the International Covenant on Economic, Social and Cultural Rights (“the Covenant”) and its responses to the List of Issues (“LOI”) posed by the Committee reveal on-going, systemic challenges, despite limited reforms, to the equal enjoyment of economic, social and cultural rights (“ESCRs”) and the State party’s ability to realize these rights to the maximum of its available resources.

Human Rights in China’s (HRIC) submission will focus on two key challenges raised in the Committee’s LOI:

- The **household registration (*hukou*) system** and its discriminatory impact on the enjoyment of ESCRs, especially among **rural migrants** residing or working in urban areas; and
- The impact of **corruption** on the State party’s efforts to realize ESCRs, and multiple obstacles to active **civil society participation** in combating corruption and ensuring transparent governance.

A “*hukou*” is the registered residency status of a particular individual in the Chinese household registration system. In common usage, it also refers to the registration system which was officially introduced by the Chinese government in 1958. Despite recent adjustments to the *hukou* system, primarily through **localized pilot reforms** in select locations in China, the government has yet to fully address the fundamental issue of *hukou* as an institutionalized **condition for access** to a wide range of social benefits, the equal enjoyment of which is essential to the effective exercise of ESCRs. One major weakness in many of the pilot reforms is that they set **high thresholds** for obtaining urban household registration, leaving a majority of China’s migrant population still unable to obtain **equal access to social benefits** due to their *hukou* status.

Secondly, endemic corruption in China, already recognized by the government as a major governance challenge, is also undermining its ability to realize ESCRs to the maximum of its available resources. HRIC’s submission highlights legal and administrative policies, measures and actual practices that are counter-productive to the objectives of China’s on-going campaign to combat corruption. These include **limited access to information** necessary to identify and address corruption, **ineffective accountability mechanisms** for corrupt officials and **increasing risks for citizens** calling attention to **ESCR-violations due to corruption**.

To support the Committee in its upcoming review of China’s implementation of the Covenant, HRIC respectfully puts forth the following recommendations and suggestions for additional information requests to the Chinese government:

Regarding the **household registration (*hukou*) system**, the Committee may wish to inquire into whether and to what extent the State party’s obligations under the Covenant are taken into account in the formulation of the inter-ministerial opinions on *hukou* reforms and about the level of transparency and public participation in the ‘consultations’ referenced by the Vice Minister of Public Security.

The Committee may also wish to recommend that the State party:

- Adopt a **legislative definition of discrimination** in relevant legislation to capture all forms of such discrimination, including in employment and education on the basis of *hukou* status, in line with its obligations under international human rights and labor laws
- Identify **formal and informal barriers to removing linkages between *hukou* status and access to all public services** and social benefits, devote maximum available resources to effective measures to **eliminate these barriers**, and institute independent, nation-wide mechanisms to periodically **monitor and evaluate the implementation** of these measures, in consultation with migrants, migrant rights NGOs, and other civil society actors; results of such monitoring and evaluation should be made public
- Pending the removal of linkages between *hukou* status and access to public services and social benefits, **devote maximum available resources to close the gap in access to public services** and social benefits between local *hukou* holders and non-local *hukou* holders, so as to guarantee Covenant rights can be exercised without discrimination on any ground, including on the basis of *hukou* status
- Provide further details on steps taken, and their impact, to **monitor, investigate and ensure judicial accountability for *hukou*-based discrimination**, especially in employment and education
- Provide **annual statistics on the number of *hukou*-based discrimination lawsuits** filed before a court since January 2008, the number of cases accepted by courts, the number of cases dismissed, the number of cases that have reached a verdict, the types of verdict, and the types of redress provided to plaintiffs; these statistics should be disaggregated by gender, employment sector, and location
- Provide annual statistics on the number of petitions submitted to Letters and Visits Bureaus or Offices at the national and local levels since January 2008, the number of cases accepted, the number of cases dismissed, the number of cases resolved in favor of the petitioners, and the broad categories of grievances that triggered these petitions; these statistics should be disaggregated by gender of the petitioners and the location where their petitions are submitted
- Require **transparent, accountable, rights-based, and gender-responsive budgeting at all levels of government** to ensure public services and social benefits are financed in a way that positively contributes to the equal enjoyment of economic, social and cultural rights, to the maximum of their available resources
- Publish widely the draft “opinions on expediting the advancement of household registration system reforms” and conduct regular broad-based, inclusive consultations with the public, especially migrants, to solicit their comments
- Promptly schedule visits by the UN special rapporteurs whom China has agreed to invite at its last Universal Periodic Review (UPR), and invite other relevant UN human rights experts, including the **UN Special Rapporteur on the human rights of migrants**, for a country visit during its current three-year term as a member of the UN Human Rights Council (2014-2016), with a view to explore, identify and implement constructive proposals for rights-based *hukou* reforms

Regarding **corruption**, the Committee may wish to request the following additional information during the State party's upcoming review:

- Whether **Open Government Information (OGI) requests** are **tracked at the national level** and whether responses to these requests are monitored or evaluated
- Whether **OGI requests** are being **evaluated systematically** as a source for identifying instances of corruption. And, if so, what **actions** have been **taken in response** to this information?
- Whether the Central Commission for Discipline Inspection or the Supreme People's Procuratorate disclose the **number of investigations for bribery and major embezzlement** resulting in **convictions**, and the associated **sentences**
- Whether **officials disciplined or convicted of corruption** are **re-appointed in government positions**, and if yes, what are the conditions

The Committee may further wish to recommend that the State party:

- Take steps towards the drafting and eventual promulgation of a **national law on public asset disclosure, through regular, broad-based and inclusive public consultations** with citizens, journalists, anti-corruption activists, and human rights defenders that:
 - incorporates lessons learned from current national regulations and pilot projects,
 - requires that asset disclosures are made publicly available and readily accessible, and
 - clearly defines supervisory responsibility, including investigation criteria and timeframes, and establishes avenues for seeking legal redress
- Take steps toward the drafting and eventual promulgation of a **national law on the protection of whistleblowers**
- Ensure **protection of anti-corruption activists, whistleblowers, and journalists** through prompt, effective, and impartial investigations into and judicial accountability for retaliatory actions against them
- Establish an **anti-corruption body** that is genuinely independent of the Communist Party and the government with a mandate to document, expose, and investigate all forms of corruption and to recommend criminal prosecution
- Ensure that **no** individual is deprived of their liberty or faces **criminal prosecution solely for his or her peaceful advocacy** for transparency, clean governance, and ESCRs
- Take all necessary measures to guarantee and facilitate citizens' **access to information concerning government budget and expenses**, as well as **implementation of anti-corruption measures** and their impact
- Further **facilitate citizens' participation in anti-corruption efforts** by, inter alia, modifying whistleblower laws and policies to remove priority for use of real names when receiving reports and to protect those who use non-official channels, including on social media platforms, to report on corruption

Introduction

1. HRIC presents this submission to the Committee in advance of its second review of China's implementation of the Covenant. **This submission focuses on two topics raised in the Committee's LOI related to Article 2 of the Covenant:**¹

(1) steps taken, and their impact, to address the de-facto discrimination based on a person's birthplace and their urban or rural status, especially for internal migrants, caused by the **national household registration system (*hukou*)**, including the status of the announced reform of the *hukou* system.²

(2) the impact of measures taken to address **corruption** in the context of maximizing resources available for the promotion and enjoyment of economic, social and cultural rights.³

2. These key overarching issues present systemic challenges that disproportionately affect the State party's most vulnerable populations and together impact the full and equal realization of all other rights enshrined in the Covenant. In addition, the Committee's review comes at an important time with both *hukou* and anti-corruption reform efforts already underway in China. Highlighting and constructively engaging with the State party on these core challenges presents a unique opportunity to build on and strengthen existing efforts and in doing so help to advance a broad range of economic, social and cultural rights.

Part 1: Hukou

3. Article 2(2) of the Covenant requires that state parties ensure non-discrimination in the exercise of economic, social and cultural rights.⁴ The Committee has further emphasized in its General Comment No. 20 that the "exercise of Covenant **rights should not be conditional on, or determined by, a person's current or former place of residence.**"⁵ The State party's current household registration (*hukou*) system undermines its ability to uphold this obligation by tying a person's access to employment, education, social security, and other social benefits such as housing and healthcare, to his or her *hukou* status. This system effectively imposes conditions on the equal enjoyment of a wide range of ESCRs. A comprehensive reform of the *hukou* system is therefore necessary for the State party's full compliance with its obligations under the Covenant. The below section will examine the

¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Article 2, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>.

² UN Committee on Economic, Social and Cultural Rights (CESCR), *List of issues in relation to the second periodic report of China (E/C.12/CHN/2) including Hong Kong, China (E/C.12/CHN-HKG/3) and Macao, China (E/C.12/CHNMAC/2), adopted by the pre-sessional working group at its fifty-first session (21-24 May 2013), Part One : China*, 13 June 2013, E/C.12/WG/CHN/Q/2, para. 5, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fWG%2fCHN%2fQ%2f2&Lang=en.

³ *Ibid* at para. 4.

⁴ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Article 2, *supra* note 1.

⁵ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, available at: <http://www.refworld.org/docid/4a60961f2.html>.

impact of the *hukou* system on the realization of ESCRs, **measures taken** by the State party to reform its *hukou* system and the **challenges stemming from continued linkages between *hukou* status and access to ESCRs.**

The History and Current Impact of the Hukou System

4. The *hukou* system was officially introduced by the Chinese government in 1958 to control the movement of people and workers from rural into urban areas, as part of a command economy which prioritized the development of urban industry over agriculture. In order to effectively control and discourage rural-to-urban migration, the government used the *hukou* system to give urban *hukou* holders exclusive or preferential access to public services in addition to imposing tight restrictions on movement, employment, marriage and social benefits in cities. Following the economic reforms instituted by the State party in the late 1970s, the *hukou* system became detached from its original purpose. With official announcements in March 2013 that the State party will prioritize a policy of urbanization that aims to migrate 250 million people from rural to urban areas over the next twelve years, the unequal access to ESCRs related to the *hukou* system threatens to become increasingly acute unless the system is substantially overhauled.⁶

5. Despite gradual and limited adjustment of urban *hukou* policies, access to social benefits is still largely tied to a person's *hukou* status, with children inheriting their parents' *hukou* status at birth. The majority of rural *hukou* holders remain highly restricted in their ability to change their inherited status in order to gain access to social benefits on equal footing with urban *hukou* holders. According to official statistics, 289 million people lived outside the jurisdiction of their *hukou* in 2013.⁷ The most recent national census, conducted in 2010, showed that there were 15.51 percent more urbanites than urban *hukou* holders, creating a large floating population of people living in one location with their rights and benefits tied to another.⁸

6. Given greater government expenditures on social benefits in urban areas, the current policy results in urban *hukou* holders enjoying better access to a wide range of services and opportunities provided by the State party. According to recent estimates by a National People's Congress deputy, the government spent an average of 330,000 *yuan* more per capita on social welfare services for urban *hukou* holders than for rural *hukou* holders; the difference increases to over a million *yuan* in mega-cities such as Beijing, Shanghai, Guangzhou and Shenzhen.⁹ Due to this large discrepancy, rural *hukou* holders residing or working in urban areas often cannot afford to pay for social benefits urban *hukou* holders enjoy for free.

⁶ Xinhua News, “李克强总理与中外记者见面会实录(全文),” (Transcript of Prime Minister Li Keqiang's press conference with Sino-foreign reporters), March 17, 2013, available at: <http://news.sina.com.cn/c/2013-03-17/103526556635.shtml>

⁷ National Bureau of Statistic, “2013年国民经济和社会发展统计公报” (2013 Statistical Communique of the PRC on National Economic and Social Development), February 24, 2014, available at: www.stats.gov.cn/tjsj/zxfb/201402/t20140224_514970.html.

⁸ See Ministry of Public Security Department of Law and Security, *2010 National Census Data by County and City*, 2011.

⁹ Shenzhen News, “人大代表：户籍福利挂钩 城乡人均差别33万,” (NPC delegate: household registration tied to social welfare, per capita difference between urban and rural *hukou* holders is 330,000 *yuan*), March 3, 2011, available at http://news.sznews.com/content/2011-03/03/content_5391407.htm.

7. Beyond excluding holders from access to essential social services, having a rural *hukou* status carries a host of direct and indirect consequences. For instance, *hukou*-based employment discrimination is common in both the civil service and in the private sector. The difficulties children with rural *hukou* status face in accessing affordable quality education in cities, including restrictions placed on their eligibility to take university entrance exams in urban areas, have also led to a large number of “left-behind” children who, separated from their families are vulnerable to exploitation and abuse.¹⁰ These compounding barriers to equal enjoyment of ESCRs and recent reform experiments are discussed in greater detail below.

Equal Enjoyment of ESCRs under the Hukou System

8. The Committee has repeatedly recognized the pervasive impacts of the State party’s household registration policy on a vast array of ESCRs. In its 2005 concluding observations, the Committee expressed deep concern over discrimination based on a person’s *hukou* status and called on China to ensure that internal migrant workers enjoy the same employment, social security, health services, housing and education benefits enjoyed by residents with an urban *hukou*.¹¹ In its latest LOI, the Committee again raised this issue and asked the State party to provide information on steps taken and their effectiveness on addressing de facto discrimination based on a person’s birthplace and urban or rural status.¹² This section will discuss current impacts of *hukou* status on employment and education for migrant workers and children.

Hukou-based Discrimination in Employment

9. Under Articles 6 and 7 of the Covenant and as a State party to ILO Convention No. 111, China is obligated to eliminate employment discrimination on the basis of social origin.¹³ In its response to question no. 5 in the LOI, the State party reports that “restrictive employment policies targeting rural laborers have basically been eliminated” and that “rural laborers can move around and be employed freely and choose their employment

¹⁰ See UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of China (including Hong Kong and Macau Special Administrative Regions)*, adopted by the Committee at its sixty-fourth session (16 September – 4 October 2013), 4 October 2013, CRC/C/CHN/CO/3-4, paras. 47 and 48, available at: <http://www.refworld.org/docid/5263de9d4.html>.

¹¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *Concluding observations: People’s Republic of China (including Hong Kong and Macao)*, paras. 15 and 46, 13 May 2005, E/C.12/1/Add.107, available at: <http://www.refworld.org/docid/43f306770.html>.

¹² *Supra* note 2, para. 5.

¹³ International Labour Organization (ILO), *Discrimination (Employment and Occupation) Convention, C111*, 25 June 1958, C111, available at: <http://www.refworld.org/docid/3ddb680f4.html>.

voluntarily.”¹⁴ In reality, however, private enterprises, public institutions, and government offices regularly engage in *hukou*-based discrimination.¹⁵

10. The State party has promulgated numerous laws, regulations and policies that guarantee equal treatment or prohibit discrimination – including a number of articles in the Law on Labor Promotion¹⁶ and in the Law on Labor,¹⁷ which apply to all actors, including both **public and private enterprises**. Provisional regulations issued in 2006 similarly prohibited the use of discriminatory conditions with respect to the recruitment of workers at **public institutions**.¹⁸ In May 2013, a State Council directive further called on **governments at all levels and directly affiliated institutions** to remove restrictive conditions, including *hukou* status, when recruiting university graduates.¹⁹

11. Yet despite these high-level directives and laws, NGO and academic studies have documented continued *hukou*-based discrimination both in civil service positions as well as more generally. For instance:

- A 2010 survey of employers of college graduates from across the public and private sectors found that nearly **60 percent of them set specific *hukou* requirements** for prospective employees.²⁰
- A study by the China University of Political Science and Law (CUPSL) on employment discrimination in civil service recruitment published in November 2011 found that *hukou*-based discrimination remained among the most serious forms of discrimination.²¹

¹⁴ See People’s Republic of China, *People’s Republic of China’s Response regarding the list of issues in relation to the second periodic report of China of the UN Committee on Economic, Social and Cultural Rights*, pg. 8, January 2014, E/C.12/CHN/Q/2/Add.1.

¹⁵ See “Graduate sues local government for *hukou* discrimination,” China Labour Bulletin, October 7, 2013, available at: www.clb.org.hk/en/content/graduate-sues-local-government-hukou-discrimination; “Employment Discrimination in China,” China Labour Bulletin, 20 November 2012, www.clb.org.hk/en/content/employment-discrimination-china#hukou.

¹⁶ National People’s Congress of the People’s Republic of China, *Law on Labor Promotion of the People’s Republic of China*, Articles 3, 25, 26, 29, 30, 31, and 62, available at: www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471590.htm.

¹⁷ National People’s Congress of the People’s Republic of China, *Law on Labor of the People’s Republic of China*, Articles 3, 8, 12, 13, 17, and 46, available at: <http://english.mofcom.gov.cn/aarticle/policyrelease/internationalpolicy/200703/20070304475283.html>.

¹⁸ See Ministry of Personnel, “*事业单位公开招聘人员暂行规定*” (Provisional Regulations on the Public Recruitment of Workers by Public Institutions), Article 10, effective January 1, 2006, available at: <http://politics.people.com.cn/GB/1027/4091944.html>.

¹⁹ State Council General Office, “*国务院办公厅关于做好2013年全国普通高等学校毕业生就业工作的通知*” (Notice on Adequately Carrying out the Work of Employing Graduates of Ordinary Universities), May 16, 2013, available at: http://www.gov.cn/jzwgk/2013-05/16/content_2404378.htm.

²⁰ China Labour Bulletin, “Employment Discrimination in China,” 20 November 2012, available at: www.clb.org.hk/en/content/employment-discrimination-china#hukou.

²¹ Constitutional Governance Research Center of the China University of Political Science and Law, “*2011年国家公务员招考中的就业歧视调查报告*,” (2011 Research Report on Employment Discrimination in National Civil Service Recruitment), November 2011, available at: http://edu.qq.com/a/20111125/000311_3.htm.

- In 2012, Zhengzhou Yirenping (郑州亿人平), a Chinese anti-discrimination NGO, further found that at least 1,500 civil service positions open for recruitment in 2012 carried *hukou*-related restrictions.²²
- In 2013, the NGO Zhengzhou Yirenping examined almost 100 job advertisements posted by public institutions in the first five months of 2013 and found over 90% of these require applicants to be a “local *hukou*” holder.²³
- As recently as February 2014, 12 out of 30 vacancies at various public institutions directly under the Supervision Department of the Central Commission for Discipline Inspection require applicants to be holders of a permanent Beijing *hukou*.²⁴

12. Chinese labor rights NGOs and activists attribute on-going discrimination in part to deficiencies in the laws, regulations and policies, including fragmentation and the **lack of a clear and operable definition of employment discrimination**. These deficiencies impede effective enforcement and fair adjudication of discrimination cases by the judiciary. To ensure that laborers holding rural *hukou* can truly move around and be employed freely a detailed definition of discrimination and its constitutive elements is needed, as well as robust enforcement measures.

Hukou as a Condition for and Obstacle to the Right to Education

13. Under Article 2 of the Covenant, the State party must guarantee that the right to education is exercised without discrimination to social origin, birth, or other status.²⁵ Article 13 of the Covenant additionally provides that secondary education must be made “available and accessible to all by every appropriate means,” and higher education “equally accessible to all, [...] by every appropriate means.”²⁶ In its LOI, the Committee expressed concerns regarding discriminatory realization of the right to education, requesting that the State party “provide information on steps taken, and their impact, to improve the access to and availability of education, in particular for children living in rural areas and western provinces, as well as migrant children.”²⁷ Similarly, the concluding observations of the Committee on the Rights of the Child following China’s combined third and fourth review voiced deep concerns on this issue and recommended the elimination of discrimination, including in education, against children of migrant workers, among others.²⁸

²² Legal Daily, “事业单位成招聘户籍歧视重灾区 99%要求本地户口,” (Hukou-based employment discrimination rampant among public service institutions), May 29, 2013, available at: http://news.xinhuanet.com/politics/2013-05/29/c_115945640.htm.

²³ *Ibid.*

²⁴ Central Commission for Discipline Inspection, *General information on the 2014 public recruitment of workers for public institutions directly under the Supervision Department of the Central Commission for Discipline Inspection*, February 25, 2014, available at: http://www.ccdi.gov.cn/special/2014zpzl/201402/t20140225_19061.html.

²⁵ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, Article 2, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.refworld.org/docid/3ae6b36c0.html>.

²⁶ *Ibid.*, Articles 2 and 13.

²⁷ *Supra* note 2 para. 27.

²⁸ *Supra* note 10 paras. 24 and 25.

14. In its responses to the Committee's LOI, the State party describes **steps taken in urban areas to allow children accompanying migrants to take high school and university entrance exams locally.**²⁹ The State party also indicates that accompanying children in 26 provinces took high school entrance exams locally in 2013, and 4,440 children who *met certain conditions* took university entrance exams in 12 provinces, 2,770 of whom (62.4 percent) were admitted.³⁰ Despite these advances, it is important to note that the number of migrant children taking entrance exams cited in the response is a small fraction of the State party's total population of migrant children. Furthermore, the State party's response does not provide details on the nature of the conditions children must meet. While beyond the scope of this submission, it is important to recognize that *hukou*-based discrimination takes place in a context of broader inequalities in education between rural and urban areas. The quality of teachers, the level of public expenditures on education, and the quality of educational facilities in rural areas are generally inferior to those in urban areas.³¹ As a result, in addition to permission to sit for educational entrance exams, even rural students who are able to do so are at a disadvantage in terms of academic preparation.

15. Localized pilot reforms targeting educational equality for migrant children provide some insight into the nature of conditions for accessing education and the obstacles they can present. Publicly available information regarding local reforms in the major destination cities or provinces reveals that **conditions on both migrant parents and children are extremely challenging to meet and in effect perpetuate *hukou* discrimination.** Examples from two cities and one province are provided below.

Beijing

16. In **Beijing**, starting in 2013, children accompanying migrant workers could enroll in **secondary vocational schools** and, according to media reports, as of 2014, 114 migrant students have registered for higher vocational school entrance exam.

17. Under the Beijing reforms, these students must have migrant parents who: 1) hold a temporary residential permit or a work residential permit; 2) have a legal, stable place of residence; 3) have had a legal, stable job for at least six years; and 4) have paid social insurance premiums for six consecutive years in Beijing (supplementary payments not included). In addition, the children must have already enrolled in and have attended a high school in Beijing for three consecutive school years.³² According to the 2010 national census, there were 19.61 million people residing in Beijing, 7.04 million of whom (36 percent) were out-of-towners. In 2011, there was an estimated 478,000 migrant children, who made up 48 percent of all compulsory-education-age children in

²⁹ See *supra* note 14 at pages 9 and 10.

³⁰ *Ibid.*

³¹ Legal Daily, "3-5年基本解决城乡教育差异," (Basically Resolve Urban-Rural Education Difference in 3-5 years), February 13, 2014, available at: http://www.legaldaily.com.cn/xwzx/content/2014-02/13/content_5277145.htm.

³² Beijing Education Examinations Authority, "2014年进城务工人员随迁子女在京参加高等职业学校招生考试政策问答" (Questions and Answers on the 2014 higher vocational school entrance exam policy for children accompanying migrant workers in Beijing), November 5, 2013, available at: www.bjeea.cn/html/fwdt/bmbk/gzbn/cjw/2013/1105/50815.html.

Beijing.³³ According to the 2013 annual survey of left-behind and migrant children conducted by the All China Women's Federation, Every third child in Beijing is a migrant.³⁴ Further statistics and information are needed to gauge the extent to which the large population of migrants and their children in Beijing are enjoying this particular reform and whether they have access to other educational opportunities.

Shanghai

18. In July 2013, **Shanghai** started to implement a **point-based residential permit system** whereby persons who have accumulated 120 points by meeting education, employment, investment and other conditions are awarded a Shanghai residential permit and may then enjoy corresponding social benefits, including eligibility of their children to take university entrance exams locally.³⁵ Starting in 2014, migrants who have (1) accumulated 120 points under this system, (2) obtained a Shanghai Residential Permit, and (3) met “other conditions,” may enjoy public education services equivalent to those enjoyed by urban *hukou* holders. These services include pre-school education, compulsory education, and eligibility to take high school entrance exams locally for their children.³⁶ **However, it remains difficult for a large number of migrants, especially newcomers, to meet these thresholds for obtaining a Shanghai Residential Permit.**

19. Points are awarded under four categories of individual characteristics, each weighted differently:

- age (maximum 50 points);
- education (maximum 110 points);
- employment in a professional technical position or level of technical certification (maximum 140 points); and
- payment of employee social insurance premiums (3 points for every 12 months of full payment).³⁷

³³ Zhao Han, “北京外来工子女的求学梦,” (Beijing’s migrants workers’ children’s dream of education), January 28, 2014, available at: <http://cn.tmagazine.com/education/20140128/tc28migrant/>.

³⁴ All China Women’s Federation, “我国农村留守儿童、城乡流动儿童状况研究报告” (Research Report on Our Country’s Rural Left Behind Children and Urban Migrant Children), May 10, 2013, available at: <http://acwf.people.com.cn/n/2013/0510/c99013-21437965.html>.

³⁵ See Shanghai People’s Government, “上海市居住证管理办法” (Management Measures on Shanghai Residential Permits), effective July 1, 2013, <http://www.shanghai.gov.cn/shanghai/node2314/node2319/node12344/u26ai36128.html>.

³⁶ General Office of the Shanghai People’s Government, “上海市人民政府办公厅转发市教委等四部门关于来沪人员随迁子女就读本市各级各类学校实施意见的通知” (Notice on the Opinion of the Shanghai Municipal Education Commission and Three Other Departments Concerning the Enrollment of Children Accompanying Persons who Migrate to Shanghai in Different Types of Local Schools at Various Levels), effective January 1, 2014, available at: <http://www.shanghai.gov.cn/shanghai/node2314/node2319/node10800/node11408/n30985/u26ai37668.html>.

³⁷ Shanghai People’s Government, “上海市居住证积分管理试行办法” (Provisional Regulations on Administering the Accumulation of Points for Shanghai Residential Permits), effective June 30, 2013, available at: http://www.12333sh.gov.cn/200912333/2009xxgk/zhxx/flfg/szfgz/201306/t20130619_1148991.shtml.

20. The educational attainment and professional certification thresholds are such that no points are accumulated for education below a junior college level or below a Level 5 professional certification. A migrant that does not meet these thresholds could pay social insurance premiums for 30 years, accumulating just 90 points, without ever becoming eligible for a residential permit. To illustrate how few migrants in Shanghai and their children are likely to benefit from this point system, the 6th municipal census in 2010 shows that: rural migrants make up 79.4 percent of all out-of-towners residing in the city and less than 8 percent of them have education above the high school level; there are 538,000 migrant children, more than 85 percent of whom are children of rural migrant workers.³⁸

Guangdong Province

21. **Guangdong** province began to experiment with a similar **point-based system for rural migrant workers** to obtain urban *hukou* in 2010 and introduced other new policies.

- Starting in 2013, children of migrant workers who qualify as “highly-skilled” under the pilot program and have obtained urban *hukou* after accumulating sufficient points could take university entrance exams locally with “zero thresholds.”
- According to provisional regulations promulgated in November 2013, starting January 1, 2014, children whose father or mother is a migrant worker who 1) has a stable job; 2) has stable place of residence; 3) has made full social insurance payment for at least three years; and 4) has held a Guangdong provincial residential permit for at least three years, and who themselves have enrolled in a secondary vocational school for at least three years, may be eligible to take entrance exam for higher vocational schools on equal footing with students holding Guangdong *hukou*.
- Starting in 2016, children of migrant workers with a legal, stable job and place of residence and who have held a Guangdong residential permit for at least three consecutive years, and who themselves have both taken part in a middle school entrance exam, and enrolled in a high school for three years, may register to take university entrance exams locally on equal footing with students holding Guangdong *hukou*.³⁹ The stringent conditions demonstrate that despite the reforms, children with rural *hukou* must surmount significant obstacles in order to take university entrance exams at their place of residence.

³⁸ Netease, “居住证制度能否改变户籍困境,” (Can a residential permit system ease the pains of hukou?), March 4, 2014, available at: <http://view.163.com/140304/179MGS833I00012Q9L.html>.

³⁹ Guangdong Provincial Department of Education, Guangdong Provincial Development and Reform Commission, Guangdong Provincial Department of Public Security, and Guangdong Provincial Department of Human Resources and Social Security, and Guangdong Provincial Department of Housing and Urban-Rural Development, “进城务工人员随迁子女在广东省参加高校招生考试实施办法（试行）” (Trial Regulations on Implementing the Participation in Entrance Exams in Guangdong by Children Accompanying Migrant Workers), effective date November 27, 2013, available at: <http://www.eeagd.edu.cn/portal/bizdesk/ArticleAction.do?dispatch=view&ID=8a8048b341b4e40b0142a340076f0011&CHANNELNAME=%BF%BC%CA%D4%D4%BA%B9%AB%B8%E6>.

22. The above examples illustrate that even with regard to education, where the State party has adopted targeted pilot reforms, **two substantial barriers to equal access to services remain**. First, the thresholds for obtaining an urban *hukou* or a residential permit are high, and second, local reforms continue to tie *hukou* status to access to social benefits and exclude many migrants from access to a *hukou*, including education rights of children. This effectively creates an impossible situation for many migrants where they must establish a relationship with a locality overtime in order to obtain benefits, but face discrimination and high expense in trying to do so.

Reform of the Hukou System

23. As seen in the variations among the above reforms, local governments have significant autonomy in defining the social benefits tied to *hukou* status and in determining requirements for obtaining a local *hukou*. However, these reforms all fit within a broader national framework laid out in high-level policy documents and statements by key officials. The below section will examine both national policy developments and directives, as well as lessons and trends highlighted in a recent national evaluation of local level *hukou* pilot projects.

Recent National Policy Developments

24. In November 2013, the Communist Party of China issued a top-level agenda for all planned national reforms (hereafter “the Third Plenum Decisions”). Regarding *hukou*, the Third Plenum Decisions called for “innovative population management” (创新人口管理 *chuang xin ren kou guan li*) and indicated the State party’s aim to “completely lift restrictions on new residence registration in administrative townships and small cities, relax restrictions on new residence registration in medium-sized cities in an orderly manner, lay down appropriate conditions for new residence registration in large cities, and strictly control the population size of megacities.”⁴⁰

25. In an interview with state media in December 2013, Huang Ming, the Vice Minister of Public Security, the ministry responsible for processing *hukou*, said that local governments should communicate clearly to rural *hukou* holders the conditions for obtaining urban *hukou*. With respect to the concept of “innovative population management” advanced in the Third Plenum Decisions, Huang clarified that such management entails the introduction of a residential permit system and the establishment of a system to provide basic public services based on duration of residence and other conditions.”⁴¹ Similarly, at the opening session of the National People's Congress in March 2014, Premier Li Keqiang announced plans to “implement a household registration policy with different eligibility requirements for people of different conditions,” and to “introduce a residence permit

⁴⁰ Central Committee of the Communist Party of China, *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform*, adopted at the Third Plenary Session of the 18th Central Committee of the Communist Party of China on November 12, 2013, available at: http://www.china.org.cn/china/third_plenary_session/2014-01/16/content_31212602.htm.

⁴¹ Xinhua News, “公安部副部长黄明就加快户籍制度改革接受专访,” (Exclusive interview with Vice Minister of Public Security Wang Ming Regarding Accelerating Reform of the Household Registration System), December 17, 2013, available at: http://www.gov.cn/jrzq/2013-12/17/content_2549171.htm.

system for rural people in urban areas who have not yet gained urban residency.”⁴²

26. While these statements represent progress in advancing *hukou* reform, read together they articulate a national framework that is premised upon establishing **conditional avenues and opportunities for obtaining an urban *hukou*** or residential status **rather than the gradual removal of the linkage between *hukou* status and access to social benefits.**

27. The premise that *hukou* should be modified rather than eliminated as a condition for access to social benefits is also evident in the policies highlighted in the State party’s response to the LOI. For instance, the State Council General Office’s 2011 “Notice on Energetically and Steadily Pushing Forward *Hukou* Management System Reform” (国务院办公厅关于积极稳妥推进户籍管理制度改革的通知),⁴³ featured in the LOI response includes the following concerning elements:

- It *lays down conditions* for obtaining urban *hukou* in townships and medium-sized cities, including legal, stable employment and residence. Where the capacity to accommodate more *hukou* holders is under pressure, local governments may introduce further conditions.
- It instructs governments at all levels to “*continue to reasonably control population size in large and mega-cities*” and to “*further perfect and implement existing *hukou* policies in those cities.*” (emphasis added)

28. The Notice provides some encouraging language calling for future policies to refrain from tying select social services to *hukou* status, and the State party indicates in its second periodic report that inter-ministerial consultations are underway to develop further guidance.⁴⁴ The Vice Minister of Public Security told domestic media in the same aforementioned interview that 14 ministries and commissions are jointly drafting a set of “opinions concerning expediting the advancement of household registration system reforms” (关于加快推进户籍制度改革的意见) and that working groups comprised of six ministries or commissions are soliciting comments in different provinces. Further details regarding these inter-ministerial opinions are needed to gauge their potential in ensuring non-discrimination.

⁴² See People’s Republic of China, “李克强总理作政府工作报告 (文字实录)” (Report on the Work of the Government delivered by Li Keqiang, Premier of the State Council), sub-section 3, Section III, March 5, 2014, available at: http://www.gov.cn/guowuyuan/2014-03/05/content_2629550.htm.

⁴³ State Council General Office, “国务院办公厅关于积极稳妥推进户籍管理制度改革的通知” (2011 Notice on Energetically and Steadily Pushing Forward *Hukou* Management System Reform), available at: http://www.gov.cn/zwgg/2012-02/23/content_2075082.htm.

⁴⁴ UN Committee on Economic, Social and Cultural Rights (CESCR), Implementation of the International Covenant on Economic, Social and Cultural Rights : 2nd periodic reports submitted by States parties under articles 16 and 17 of the Covenant : China , 6 July 2012, E/C.12/CHN/2, available at: <http://www.refworld.org/docid/52ca7ff64.html>.

Local Reform and the De-centralization of *Hukou* Policy-Making

29. Although the Central Government provides broad guidelines and principles for *hukou* reforms, *hukou* policy-making and implementation has been de-centralized to the local level over the last two decades. The 2011 Notice and other related *hukou* reform directives grant local authorities significant discretion to formulate their own specific *hukou* policies and implementation regulations, based on the “local level of socio-economic development and overall capacity to absorb” new *hukou* holders.⁴⁵

30. In the context of rapid economic growth, especially in major cities along the coastal areas, municipal governments are primarily pre-occupied with maintaining and enhancing development. Governments of cities with a large number of residents wishing to obtain urban *hukou* tend to view the costs associated with providing basic social benefits to incoming migrants as a burden rather than an obligation. Opponents of loosening *hukou* restrictions argue that it will lead to massive rural to urban migration, which presents additional challenges such as: overburdening of public resources; pollution; traffic congestion; and social instability, including unrest and crime.

31. The de-centralization of *hukou* policy-making power has provided a significant tool for local governments to address these concerns through strict control of local population size and access to public services and social benefits. As a result, these local policies maintain the status quo linkages between *hukou* status and such benefits, and create barriers to obtaining an urban *hukou* in the first place. Governments of major cities, like Beijing, Shanghai and Guangzhou, tend to set significant barriers while smaller and medium-sized cities, like Suzhou, tend to be less stringent in granting *hukou* or residential status.

⁴⁵ See, e.g., Ministry of Public Security, “关于解决当前户口管理工作中几个突出问题的意见” (1998 Ministry of Public Security Notice on Resolving Several Acute Problems Facing Current *Hukou* Management Work) (stipulating that governments at various levels should take into consideration their local situation of social and economic development when formulating specific *hukou* policies and governments of megacities like Beijing and Shanghai should exercise strict control over policies concerning the granting of *hukou*) available at: <http://wenku.baidu.com/view/756cd562783e0912a2162a4e.html>; Ministry of Public Security, “国务院批转公安部关于推进小城镇户籍管理制度改革意见的通知” (2001 Ministry of Public Security Notice on Advancing *Hukou* Management System in Small Cities and Towns) (stipulating that various regions shall study and formulate concrete implementation regulations by taking into consideration the realities of the local level of economic and social development), available at: http://www.gov.cn/gongbao/content/2001/content_60769.htm; State Council General Office, “国务院办公厅关于积极稳妥推进户籍管理制度改革的通知” (2011 State Council General Office Notice on Energetically and Steadily Pushing Forward *Hukou* Management System Reform) (stipulating that local governments shall take into consideration local realities when studying and formulating concrete *hukou* measures within the parameters of the principles and policies determined by the Central Government), available at: http://www.gov.cn/zwgg/2012-02/23/content_2075082.htm.

Local *Hukou* Reforms

32. Over a dozen provinces, regions or directly administered municipalities have engaged in localized experiments aimed at reforming or abolishing the *hukou* system.⁴⁶ Reforms have ranged in approach, with some focused on individual characteristics or actions, including: financial contributions, education-level, employment, ownership or rental of housing, or age. Others apply evenly to all rural *hukou* holders, for instance by offering urban *hukou* in exchange for the surrender of rural status, and with it associated land benefits, or by eliminating the distinctions between rural and urban *hukou* holders.

33. In 2004, the National Development and Reform Commission (NDRC) – a national body under the State Council responsible for studying and formulating policies for economic and social development – issued a “Notice on Launching Nation-wide Small City-Town Reform Pilot Programs,” and designated two groups of pilot towns in 2005 and 2008. A third group, designated in 2011, expanded the pilot locations to small-to-medium scale cities. A total 711 pilot units in 31 provinces and municipalities were ultimately selected in these three experiments.

34. In April 2013, the NDRC issued a report, “Experience and Lessons Gleaned from National Urban Development Reform Pilot Programs: Integrated Report,” which reported on the impact of pilot programs around key areas related to urbanization, including the transformation of migrant workers into urbanites; *hukou* reform; land reform; rental housing for peasants; and green low-carbon cities.⁴⁷

35. The report summarized key developments of *hukou* reform efforts to date including:

- In Jiashan County, **Zhejiang** province, a pilot program enabled rural *hukou* holding residents to retain their rural rights and obligations while also enjoying the rights and obligations of urban *hukou* holders.
- Since April 2011, the city of **Suzhou**, Jiangsu province, has been experimenting with a pilot program under which migrants may trade in their 'temporary residence card' for a 'residence card,' provided they could furnish five types of identification documents. Holders of a residence card may *partially* enjoy Suzhou's public welfare services. As of January 2012, Suzhou has established 1,240 offices to receive residence card applications and these centers have processed applications from 2,420,000 people. 2,195,000 people, or about 33.8 percent of the total population of migrants in the city, have obtained their residence cards.
- **Chongqing City** introduced complex local *hukou* reforms in 2010 whereby different districts, towns, and counties may introduce its own *hukou* requirements. Generally, migrants become eligible for *hukou* in a

⁴⁶ These include Jiashan county, Zhejiang province; Diankou town, Zhushi city, Zhejiang province; Korla city, Xinjiang Uyghur Autonomous Region; Shuanglin town, Jiangxi province; Kalun town, Jiutai city, Jilin province; Beijiao town, Foshan city, Guangdong province; Shaoguan city, Guangdong; Xinxiang city, Henan; Huachuang Animation Industrial Park, Panyu district, Guangzhou city, Guangdong province; Dagang town, Panyu district, Guangzhou city, Guangdong province; Zhongshan city, Guangdong province; Suzhou city, Jiangsu province; Shanghai; Wuhan; Chongqing; Chengdu.

⁴⁷ National Development and Reform Commission, “全国城镇发展改革试点经验总结：总报告” (Experience and Lessons Gleaned from National Urban Development Reform Pilot Programs: Integrated Report), 2013, available at: http://www.town.gov.cn/csxwlb/shidian/201304/22/t20130422_710612.shtml.

metropolitan area after having worked or conducted business for five years, and for *hukou* in a district or county after having worked or conducted business for three years.⁴⁸

36. Most local reforms continued to link urban *hukou* and access to social benefits, and institutionalized thresholds or conditions for obtaining urban *hukou*. Migrants must meet all or most conditions before becoming eligible for urban *hukou*. A 2010 study of these conditions in 46 cities across 31 provinces, conducted by Fudan University of Shanghai, identified five types of thresholds for obtaining urban *hukou* currently in place:

- **Comprehensive threshold:** eligibility depends on possession of a temporary residential permit or residential permit, duration of residence in a city, and payment of social insurance premiums;
- **Employment-based threshold:** eligibility depends on formal and stable employment (implicitly, stable income or a certain level of income);
- **Qualifications-based threshold:** eligibility depends on level of education, job title, technical expertise, etc.;
- **Property-based threshold:** eligibility depends on ownership or rental of a house or a fixed place of residence; and
- **Investment-based threshold:** eligibility depends on amount of local investment.

37. The study further revealed that cities with the largest migrant populations also have the most arduous thresholds, while smaller and relatively less developed cities, towns and regions are less demanding in order to attract more workers to compensate for a shrinking labor force.⁴⁹ These high thresholds favor migrants with higher levels of education, technical expertise and capacity to contribute financially, in effect excluding the majority of the migrant population.

38. Even those who are eligible face strenuous application procedures and a long waiting list as a result of annual *hukou* quotas, leaving them and their children with inadequate access to social benefits for several years. For instance, Shanghai grants only 20,000-30,000 *hukou* a year but the number of non-*hukou* holders residing in Shanghai increases by about 500,000 a year.⁵⁰

39. *Hukou*-based discrimination, on the one hand, and preferential treatment in *hukou* policies based on characteristics such as employment or education level, on the other, create a situation in which rural *hukou* holders face significant obstacles in accessing the opportunities they need in order to meet conditions for urban *hukou*.

⁴⁸ National Development and Reform Commission and the Center for Development and Reform in Small Cities and Towns, “户籍改革试点经验总结一：重庆农民工户改” (Summary I of Experience Gleaned from Household Registration Reform Pilot Programs: Hukou Reforms for Migrant Workers in Chongqing), May 16, 2013, available at: http://www.town.gov.cn/csxwlb/shidian/zhuanti2/201305/16/t20130516_748680.shtml.

⁴⁹ Wu Kaiya, Zhang Li, and Chen Xiao, “The Barrier of *Hukou* Reform: An Analysis of the Qualifications for the Urban *Hukou*,” Fudan University, 2010.

⁵⁰ Netease, “居住证制度能否改变户籍困境,” (Can a residential permit system ease the pains of *hukou*?), March 4, 2014, available at: <http://view.163.com/140304/179MGS833I00012Q9L.html>.

Recommendations

40. Full compliance with the Covenant will require that the State party not only systematically dismantle regulatory linkages between *hukou* status and access to social benefits, but also institute comprehensive rights-based reforms in land management, social welfare, urban planning, agriculture, and industrialization. Despite the complexity of much-needed *hukou* reform, there is a convergence of interests around this topic that can be leveraged for policy traction. These interests include: policy makers' need to promote consumption-based economic growth, social stability, workers' and employers' desire for a free-flow of labor, and the interests of rural *hukou* holders in equal access to social goods.

41. While recognizing the significant resource constraints inherent in providing social benefits to a large number of people, as the Committee has previously noted, "failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority."⁵¹

42. In light of the above, the Committee may wish to inquire into whether and to what extent the State party's obligations under the Covenant are taken into account in the formulation of the inter-ministerial opinions on *hukou* reforms and about the level of transparency and public participation in the 'consultations' referenced by the Vice Minister of Public Security.

43. The **Committee may also wish to recommend that the State party:**

- Adopt a **legislative definition of discrimination** in relevant legislation to capture all forms of such discrimination, including in employment and education on the basis of *hukou* status, in line with its obligations under international human rights and labor laws
- Identify **formal and informal barriers to removing linkages between *hukou* status and access to all public services** and social benefits, devote maximum available resources to effective measures to **eliminate these barriers**, and institute independent, nation-wide mechanisms to periodically **monitor and evaluate the implementation** of these measures, in consultation with migrants, migrant rights NGOs, and other civil society actors; results of such monitoring and evaluation should be made public
- Pending the removal of linkages between *hukou* status and access to public services and social benefits, **devote maximum available resources to close the gap in access to public services** and social benefits between local *hukou* holders and non-local *hukou* holders, so as to guarantee Covenant rights can be exercised without discrimination on any ground, including on the basis of *hukou* status
- Provide further details on steps taken, and their impact, to **monitor, investigate and ensure judicial accountability for *hukou*-based discrimination**, especially in employment and education
- Provide **annual statistics on the number of *hukou*-based discrimination lawsuits** filed before a court since January 2008, the number of cases accepted by courts, the number of cases dismissed, the number of cases that have reached a verdict, the types of verdict, and the types of redress provided to plaintiffs;

⁵¹ UN Committee on Economic, Social and Cultural Rights (CESCR), *General comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights)*, 2 July 2009, E/C.12/GC/20, available at: <http://www.refworld.org/docid/4a60961f2.html>.

- these statistics should be disaggregated by gender, employment sector, and location
- Provide annual statistics on the number of petitions submitted to Letters and Visits Bureaus or Offices at the national and local levels since January 2008, the number of cases accepted, the number of cases dismissed, the number of cases resolved in favor of the petitioners, and the broad categories of grievances that triggered these petitions; these statistics should be disaggregated by gender of the petitioners and the location where their petitions are submitted
 - Require **transparent, accountable, rights-based, and gender-responsive budgeting at all levels of government** to ensure public services and social benefits are financed in a way that positively contributes to the equal enjoyment of economic, social and cultural rights, to the maximum of their available resources;
 - Publish widely the draft “opinions on expediting the advancement of household registration system reforms” and conduct regular broad-based, inclusive consultations with the public, especially migrants, to solicit their comments
 - Promptly schedule visits by the UN special rapporteurs whom China has agreed to invite at its last Universal Periodic Review (UPR), and invite other relevant UN human rights experts, including the **UN Special Rapporteur on the human rights of migrants**, for a country visit during its current three-year term as a member of the UN Human Rights Council (2014-2016), with a view to explore, identify and implement constructive proposals for rights-based *hukou* reforms

Part 2: Corruption

44. Like *hukou*, corruption is a systemic issue that compromises the enjoyment of a wide range of ESCRs. Since coming into power in late 2012, China’s president, Xi Jinping, has waged a sustained anti-corruption campaign, declaring corruption a fundamental challenge for China and the Communist Party.⁵² The problem of corruption is indeed endemic, widespread and multifaceted in China and both undermines resources available for social services and equal access to those services where they exist. The below section will examine measures taken by the State party to combat corruption in order to maximize resources available for the promotion of ESCRs, and avenues for improving the efficacy of the State party’s anti-corruption efforts.

The Impact of Corruption in China on ESCRs

45. Since the Committee’s last review of the State party, there have been numerous high-profile cases illustrating the direct and indirect impact of corruption on the daily rights of citizens across China. For instance:

- In August 2013, the State party’s National Audit Office reported that **360 projects and organizations had embezzled 5.8 billion yuan** from a fund for low-income housing projects, stating that the money had

⁵² See People’s Daily, “习近平在十八届中央纪委二次全会上发表重要讲话,” (Xi Jinping gives keynote speech at Second Plenum of the 18th Session of the Central Commission for Discipline Inspection), January 22, 2013, available at: <http://politics.people.com.cn/n/2013/0122/c1001-20289699.html> ; English.news.cn, “Xi Jinping vows unswerving fight against corruption,” Xinhua, January 22, 2013, available at: http://news.xinhuanet.com/english/china/2013-01/22/c_132119843.htm.

been used for “loan repayment, foreign investment, land requisition and house demolitions, office cash flow and other expenses not related to affordable-housing projects.”⁵³

- Over the reporting period, bribery and embezzlement were also linked to **large-scale accidents**, including the collapse of a series of schools following the Sichuan Earthquake in 2008 that had been built with sub-par construction materials, and a head-on collision of trains in eastern China in 2011 that killed 39 people and injured over 200 caused by design flaws.⁵⁴
- Low medical salaries further fuel rampant bribery which results in **high fees for medical services and dangerous incentives** for doctors to push potentially harmful products when they receive a commission to do so.⁵⁵

46. In addition to these direct forms of theft and bribery, more downstream corruption, evident in the misallocation of local government funding, presents another challenge to realizing ESCRs. A striking example of the impact of this form of corruption can be seen in the construction of ghost cities throughout China during the reporting period. This phenomenon occurs when substantial resources are allocated to building cities and extravagant buildings which remain largely unoccupied and unused upon completion.⁵⁶ One such building project in Chengdu, completed in August 2013, reportedly cost over 51 billion *yuan*. In a country where, according to the most recent World Bank study in 2009, over 157 million people live under the international poverty line of \$1.25 per day, the cost of such misallocations to the enjoyment of ESCRs is considerable.

International Frameworks for Effectively Combatting Corruption

47. The problem of corruption impacts countries and the rights of citizens around the world. In light of the pervasiveness and far reaching effects of corruption, the United Nations has undertaken significant anti-corruption efforts in the past decade, developing frameworks and best practices to aid states in tackling corruption successfully. The Committee may find it helpful to build upon these efforts in evaluating and

⁵³ Agence France-Presses in Beijing, “Billions stolen from China’s low-cost housing programme,” August 9, 2013, available at: <http://www.scmp.com/news/china/article/1295517/nearly-6b-yuan-stolen-china-low-cost-housing-programme>.

⁵⁴ British Broadcasting Corporation, “China ex-rail minister given suspended death sentence,” July 8, 2013, available at: <http://www.bbc.co.uk/news/world-asia-china-23222240>; Tom Philips, “China’s former railways minister ‘took bribes worth £7 million’ court hears,” The Telegraph, June 9, 2013, available at: <http://www.telegraph.co.uk/news/worldnews/asia/china/10108704/Chinas-former-railways-minister-took-bribes-worth-7-million-court-hears.html>; Wang Qiang, “校舍质量依然牵动人心” (Quality of school buildings still influencing popular sentiment), The New York Times, April 28, 2013, available at: <http://cn.nytimes.com/article/china/2013/04/28/cc28wangqiang/>.

⁵⁵ Kazunori Takada, “Bribery serves as life-support for Chinese hospitals,” Reuters, July 23, 2013, available at: <http://www.reuters.com/article/2013/07/23/us-china-hospitals-bribery-idUSBRE96M12Y20130723>.

⁵⁶ Malcom Moore, “Chinese village builds seven-floor government office,” The Telegraph, October 24, 2013, available at: <http://www.telegraph.co.uk/news/worldnews/asia/china/10402088/Chinese-village-builds-seven-floor-government-office.html>; Malcom Moore, “Corruption and the world’s biggest building,” The Telegraph, September 13, 2013, available at: <http://www.telegraph.co.uk/news/worldnews/asia/china/10308029/Corruption-and-the-worlds-biggest-building.html>.

developing recommendations to advance the efficacy of the anti-corruption measures reported in the State party's response to the LOI.

48. The first such framework is codified in the **United Nations Convention against Corruption** ("UNCAC"), which is particularly relevant given China's ratification in 2006. The UNCAC sets out a range of obligations for member states related to, among other things, **prevention efforts** and the **criminalization of corrupt acts**.⁵⁷ Articles 5 and 13 set forth specific preventative measures that member states must undertake including "promot[ing] the active participation of individuals and groups outside the public sector, such as civil society ... and rais[ing] public awareness regarding the existence, causes and gravity of and the threat posed by corruption." The UNCAC further stipulates that "this participation should be strengthened by such measures as:

- (a) **Enhancing the transparency** of and promoting the contribution of the public decision-making processes;
- (b) Ensuring that the public has **effective access to information**; ... and
- (d) Respecting, promoting and **protecting the freedom to seek, receive, publish and disseminate information concerning corruption.**"

49. These prevention obligations and best practices are further echoed in a subsequent **framework set forth by the Office of the High Commissioner for Human Rights** ("OHCHR") which specifically articulates the impact of corruption on human rights and emphasizes that "the core human rights principles of **transparency, accountability, non-discrimination, and meaningful participation**, when upheld and implemented, are the most effective means to fight corruption." The OHCHR additionally underscores the importance of looking beyond just punitive measures in individual cases, noting that "anti-corruption efforts are likely to be successful when they approach corruption as a systemic problem rather than a problem of individuals."

50. Building upon the obligations and lessons of the above frameworks, this section will discuss three systemic challenges evident in the State party's response to the Committee's LOI: (1) limited access to information and transparency; (2) ineffective access to justice and accountability; and (3) the dangers facing civil society actors engaged in anti-corruption activities. To accomplish its anti-corruption goals, and in doing so free up resources for the promotion and enjoyment of ESCRs, the State party must make meaningful progress with respect to each of these core challenges.

Access to Information and Transparency

51. Under both the UNCAC and OHCHR frameworks, access to information and transparency are viewed as essential to the effective prevention of corruption. In its response to the Committee's LOI, the State party articulates an appreciation for the importance of transparency in making meaningful progress on eliminating corruption. The State party highlights in particular its efforts to "[s]trengthen... work on public disclosure," further but noting that it makes "decisions, administration, services and results known to the public and let[s] the people supervise authority, " and that "by doing so, work transparency has been improved and people's right

⁵⁷ UN General Assembly, United Nations Convention Against Corruption, Articles 5.1 and 13, 1 October 2003, A/58/422, available at: <http://www.refworld.org/docid/4374b9524.html>.

to information and right to participation have been guaranteed.”⁵⁸ During the review period the State party has taken some promising regulatory steps to increase transparency and access to information for its citizens, including revising its asset disclosure regulations and launching related pilot programs, and promulgating the State party’s first Open Government Information Regulations (2008). However, a persistent culture of opacity and a state secrets system continues to undermine the implementation and impact of these anti-corruption efforts.⁵⁹

Asset Declaration Regulations and Pilot Projects

52. As recognized in the State party’s responses to the LOI, one way to combat corruption is to strengthen public disclosure of information related to government actions. In particular, requiring officials to publicly disclose their assets increases the difficulty of siphoning off resources through bribes, kickbacks and outright embezzlement. With access to information about official assets, individual citizens, groups and disciplinary bodies can all help to identify when corruption is likely occurring by calling attention to cases where individual officials’ assets are inconsistent with their legitimate sources of income. Through modifications of its national asset disclosure regulations and local pilot projects, the State party has taken initial steps toward expanding the collection of information regarding officials’ assets. However, a closer examination reveals that both a broader scope of disclosure and enhanced accountability mechanisms are needed in order for these steps to have meaningful impacts on reducing corruption.

53. At the national level, the Regulations Concerning the Reporting of Relevant Personal Information by Party Members and Cadre Leaders (2010)⁶⁰ establish asset disclosure requirements for officials in the State party. The 2010 regulations require cadres of deputy rank or above, at or above the county level, to report their personal information as well as relevant information regarding their spouse and co-inhabitant children. Required information includes:

- Officials’ own salary and all types of bonuses, subsidies, allowances, etc.;
- Income earned through lectures, writings, consultancies, manuscript review, calligraphy/painting, etc.;
- Properties owned by the officials, their spouses, and co-inhabitant children;
- The cadre's, his/her spouse's, and his/her co-inhabitant children's investments and other securities, stocks (including stock option incentives), futures, fund, investment-type insurance and other financial products;
- Listed companies in which officials, their spouse or co-inhabitant children have investment; and
- Individually-owned businesses, sole proprietorship enterprises or jointly-owned enterprises registered under an officials’ spouse or co-inhabitant children.

⁵⁸ *Supra* note 2, para. 4.

⁵⁹ See Human Rights in China, *State Secrets: China’s Legal Labyrinth* (2007), available at: http://www.hrichina.org/sites/default/files/PDFs/State-Secrets-Report/HRIC_StateSecrets-Report.pdf.

⁶⁰ State Council General Office, *Regulations Concerning the Reporting of Relevant Personal Information by Party Members and Cadre Leaders*, effective July 11, 2010, available at http://www.gov.cn/jrzq/2010-07/11/content_1651255.htm.

54. The above scope of the 2010 regulations represent some legislative progress over their prior iterations (in 1998 and 2006) by extending required disclosure of the assets of some family members. Despite this progress, there remained some notable limitations including assets held by adult children who do not reside in the official's home, a logical category of recipients of ill-gotten wealth, and retired cadre and party members.

55. Provisions setting out accountability mechanisms for the obligations established in related regulations were similarly limited. For instance, under the 2010 regulations, declarations are made entirely via intra-Party mechanisms and supervised by the Central Commission for Discipline Inspection (CCDI), the internal disciplinary organ of the Communist Party of China, along with the Party's other departments of organization and of supervision.⁶¹ There are no requirements that the disclosures are ever made public. The result is that disclosures under the current system benefit from no independent or impartial monitoring. It is not clear from the regulations whether declarations must undergo any verification process and if so who is responsible for identifying cases requiring further investigation or follow up. Additionally, there is no mention of the role of the courts, and the only reference to the criminal justice system states that prosecutors may access the declarations with the approval of the organization responsible for receiving and processing the declaration.⁶² The result is a national system that is opaque not only to Chinese citizens, but also to the judiciary and law enforcement bodies. This is not surprising in light of the dominance of intra-party anti-corruption mechanisms under the CCDI, described in further detail below.

56. Since 2009, the State party has implemented several pilot asset disclosure programs which have varied in terms of the level of officials required to disclose, whether they must disclose information about close relations, what assets they must disclose, whether those disclosures will be made public in whole or in part, and what accountability mechanisms are in place to address the substance of disclosures or failure to disclose. While some of the pilot projects have expanded the limited scope defined by the national regulations, none of them have built in robust public disclosure or a clear role for the judiciary.⁶³ This continued internal focus of asset disclosure was highlighted in February 2013 when Guangdong Province, where several of the pilot programs have been launched, issued a statement clarifying that 'asset declaration' is not the same as 'public declaration of assets.'⁶⁴ Nonetheless, these programs provide helpful groundwork which the State party can utilize in further strengthening regulations or in developing a more comprehensive national law on asset disclosure.

⁶¹ *Ibid*, Articles 8-15.

⁶² *Ibid*, Article 12, clause 3.

⁶³ See Pilot program in Altay, Xinjiang Uyghur Autonomous Region, which extended the scope of reporting to spouse, children and parents, as well as to officials for three years after their retirement. More information available at: Xiandai Kuaibao, "新疆阿勒泰纪委书记详解推行官员财产申报背景" (Xinjiang Altay's disciplinary committee secretary explains the background of implementing official asset declaration), January 11, 2009, available at: <http://news.163.com/09/0111/074VC2F0J90001124J.html>.

⁶⁴ China National Radio, "广东将启动领导干部重大事项申报公示:并非财产公开" (Guangdong to require party leaders to disclose key person information, disclosure is not public), March 1, 2013, available at: http://china.cnr.cn/yaowen/201303/t20130301_512055411.shtml.

Open Government Information Regulations

57. In addition to regular and mandatory disclosure of official assets, the ability for citizens to request information regarding government decisions, policies and practices provides an important tool for combatting corrupt activities. With the passage in May 2008 of the *Regulations on Open Government Information* (“the OGI Regulations”), the State party took the first necessary step to “make decisions, administration, services and results known to the public and let the people supervise authority.”⁶⁵ 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 at most 30 days.⁶⁶ Though there are a variety of grounds on which the government may refuse to grant the requests, including that the information is unavailable or is classified as secret under the State Secrets framework,⁶⁷ the requests themselves provide an avenue through which citizens can communicate perceived problems of diverted funding, misallocation of resources, or favoritism related to ESCRs due to corruption.

58. Publicly available examples of OGI requests reveal that citizens regularly use this tool to inquire into resource allocations:

- Prominent Shanghai lawyer Yan Yiming requested the Ministry of Finance (MOF) and the National Development and Reform Commission to release detailed budgets ahead of the National People’s Congress in 2009.⁶⁸
- A Shenzhen resident, Li Detao, requested the disclosure of various government budgets over several years with limited success and created the website budgetofchina.org to publicize the information he received from his OGI requests.⁶⁹
- In August 2013 due to a disagreement regarding the allocation of income from the collective’s 400 mu of hillside forest, Li Mou and 9 other villagers requested their village committee to disclose the village committee’s financial information and allow villagers to discuss it.⁷⁰
- Several villagers from Guoqing Village, Jiangsu Province requested that their village chief release the village’s detailed financial information for 2012-2013.⁷¹

⁶⁵ *Supra* note 14, para. 4.

⁶⁶ *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.

⁶⁷ *Ibid*, Article 14.

⁶⁸ Jamie Horsley, *Update on China’s Open Government Information Regulations: Surprising Public Demand Yielding Some Positive Results*, April 23, 2010, available at: http://www.law.yale.edu/documents/pdf/Intellectual_Life/CL-OGI_Update_for_freedominfo_Horsley_article_4-6-10.pdf.

⁶⁹ *Ibid*.

⁷⁰ Hainan Legal Daily, “村民要求公布账务村委会有权拒绝吗” (Villagers ask whether village committee has the right to refuse disclosing budget), March 18, 2013, available at: <http://www.chinatransparency.org/newsinfo.asp?newsid=19481>.

⁷¹ People’s Daily, “南通港闸村民要求财务公开未果 告村长不作为” (Nantong Gangzha villagers accuse village chief for failure to disclose financial information), March 18, 2014, available at: <http://www.chinatransparency.org/newsinfo.asp?newsid=19470>.

59. As the above cases demonstrate, these regulations offer an avenue by which citizens can formally seek information about resource allocation and expenditure in order to identify inconsistencies and misallocations of funds. Used effectively, these regulations can be a powerful anti-corruption tool, but publicly available information from the State party indicates that **implementation is currently inconsistent**. Statistics on OGI requests published by individual government departments suggest wide disparities in the number of requests filed and the responses received across localities, levels of government, and departments.⁷²

60. There are avenues by which citizens can challenge inadequate responses, thereby generating pressure for improved implementation, but these too yield inconsistent results.⁷³ In 2011, the Supreme People's Court of China ("SPC") solidified one such mechanism when it ruled that citizens can sue any government department that refused to provide unclassified information.⁷⁴ A recent joint study conducted by Peking University in Beijing found that such cases are rapidly rising throughout the country, and that a majority of the court cases brought involve ESCRs – including land expropriation, housing demolition and social security. However, the study further found that rulings in favor of plaintiffs in these cases have been consistently rare, meaning that many citizens may never obtain access to the information they are seeking.

61. Though individuals and groups have been regularly utilizing this system to shed light on problematic policies and practices, without more consistent implementation, their ability to obtain the information necessary to identify and assess the potential impact of corruption on their ESCRs remains limited.

Access to Justice

62. In addition to access to information, accountability requires criminalization of corrupt actions and access to justice when those crimes are committed. As both the UNCAC and OHCHR frameworks recognize, holding corrupt acts accountable by ensuring access to justice and appropriate criminalization provides not only means of redress but also a powerful prevention and deterrence mechanism against corruption. The State party's response to the Committee's LOI further notes the importance of assigning accountability and punishing corrupt acts through its emphasis on "correcting" and "combating" corruption.⁷⁵ For example, the State party reports that "[r]ectification on specific issues has been carried out" and "special inspections and other measures have

⁷² See, e.g., Shanghai Municipal Government, Open Government Information work report (2012), available at: <http://www.shanghai.gov.cn/shanghai/newshanghai/pdf2012/gk.pdf>; Guangzhou Municipal Government, Open Government Information work report (2012), available at: http://zwgk.gd.gov.cn/007482532/201303/t20130328_370958.html; National Bureau of Statistics, Open Government Information work report (2011), available at: http://www.stats.gov.cn/statsinfo/xgknb/201310/t20131028_449057.html; Bishan County, Chongqing People's Government, Open Government Information work report (2013), available at: http://bs.cq.gov.cn/bszf_Content/2014-02/27/content_3224961.htm.

⁷³ See Southern Metropolis, "报告称近年申请信息公开案激增 原告败诉居多" (Report finds dramatic increase in Open Government Information lawsuits, courts tend to rule against plaintiffs), October 16, 2013, available at: <http://news.163.com/13/1016/04/9B9J0LB800011241.html>.

⁷⁴ Xinhua News, "最高人民法院 关于审理政府信息公开行政案件若干问题的规定" (Supreme People's Court's Regulations on Certain Issues Concerning the Handling of Open Government Information Administrative Cases), effective since August 13, 2011, available at: http://news.xinhuanet.com/legal/2011-08/15/c_121860879.htm.

⁷⁵ *Supra* note 14 at para 2.

been adopted” regarding acts and problems that “harm the interest of the people.” The State party also lists a number of areas, including government requisition of farm land, housing demolition, and medical services, where the government’s anti-corruption efforts have “corrected problems.”⁷⁶ In addition, the State party reports that through persistent investigation and severe punishment of corrupt acts, it has “responded to the concerns of society, and safeguarded social equity and justice.”⁷⁷

63. Although the State party’s emphasis on efforts to hold corrupt officials accountable is timely and encouraging, the lack of disaggregated statistical information and examples of concrete measures adopted makes it difficult to appraise the exact nature and efficacy of the State party’s endeavors. Absent this information, there are reasons for concern regarding equal access to justice when ESCRs are violated due to corruption. First, the political oversight of mechanisms for investigating and resolving cases of corruption, creating structural vulnerabilities to politicized outcome. Second, the continued prevalence of large-scale protests around ESCR-related grievances further suggests that access to justice remains problematic in many cases.

Politicization of anti-corruption organs

64. Due to its parallel party-state political structure, the State party has two separate institutional mechanisms for addressing corruption: an intra-party mechanism and state-run institutions, most notably the judiciary. As described below, each of these systems in its present form is ill-equipped to independently investigate and resolve cases of corruption.

65. The Central Commission for Discipline Inspection of the Communist Party of China (CCDI), is the body responsible for **intra-party discipline**, including misconduct and corruption of members of the Communist Party of China (CPC).⁷⁸ Although initially established as a mechanism to investigate and punish Party members’ misbehaviors, the CCDI has evolved into the **main anti-corruption institution in the State party**.⁷⁹ Since 1993, the CCDI has been working in tandem with the Ministry of Supervision (MOS), the parallel state body. While the CCDI mainly oversees the conduct of CPC members, the MOS, with the support of their subordinate branches at every level of government, is charged with supervising state government bodies and their personnel to ensure legislation is carried out ethically and efficiently. The CCDI, however, provides direction and guidance to the MOS in sensitive cases. As an intra-party institution, the CCDI is subjected to the influence of party politics and is further not accountable to the legal restrictions and transparency requirements that regulate government organs.

66. The judiciary, the primary state body for addressing cases of corruption, while generally more independent is similarly vulnerable to political influence in cases of corruption due to the continued presence of Political and Legal Affairs committees within every people’s court. These committees are responsible for implementing Party policy in legal affairs, and review and decide “difficult, complicated, or major cases.” Furthermore, a court may

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ For general information about the CCDI, see its website, available at: <http://www.ccdi.gov.cn/>

⁷⁹ Fu Hualing, “The Varieties of Law in China,” China Rights Forum, No. 1-2, 2011, available at: <http://www.hrichina.org/en/crf/article/5422>.

refuse to hear a case if it is deemed politically sensitive, creating a means for courts to avoid accepting corruption cases, especially when higher level officials are involved. Through its influence on the legal careers of judges, prosecutors and public security personnel, the impact of political-legal committees extends beyond the courts to the entire legal system.⁸⁰ As a result, Chinese citizens seeking accountability for corrupt acts may face obstacles in both the adjudicative and investigative organs.

67. These structural issues undermine access to justice for individuals whose ESCRs have been violated by corrupt officials, and lead them to seek alternative methods of obtaining redress and holding corrupt officials accountable.

Mass Incidents Related to ESCRs

68. The sharp increase in the number of mass incidents in the recent years and their persistence within the State party suggests that there remain a significant number of citizens whose ESCR-grievances go unaddressed. Mass incidents are loosely defined by the *Legal Daily*, the official state-owned newspaper of the Central Political and Legal Affairs Commission of the CPC as “large scale activities that lack legal bases carried out by groups with a certain common interest [...]”⁸¹ Although official statistics regarding mass incidents are not available, Sun Liping, a professor at Tsinghua University, estimated that there were around 180,000 mass incidents in China in 2010, amounting to three times the number in 2003.⁸²

69. A report by the *Legal Daily* analyzing mass incidents that occurred in the State party from 2012 and media reports of mass incidents suggest that although the causes of such incidents vary, the majority stem from ESCR-related concerns. For example, causes such as forced demolitions and removals, defense of environmental rights, and conflicts with official misconduct such as corruption feature prominently in *Legal Daily*’s analysis of mass incidents.⁸³ Below are a few illustrative examples of mass incidents that occurred in the State party during the review period:

- In September 2011, villagers in **Wukan, Guangdong Province**, protested the **land sale** by an official alleged to have colluded with real estate developers.⁸⁴ Incensed by the lack of proper compensation subsequent to the land sale, the villagers attacked government buildings including a police station.⁸⁵ Although the local government agreed to negotiate with the villagers’ representative, the subsequent

⁸⁰ Jerome A. Cohen, “Criminal Justice in China: From the Gang of Four to Bo Xilai,” Human Rights Watch, July 25, 2013, available at: <http://www.hrw.org/news/2013/07/25/criminal-justice-china-gang-four-bo-xilai>.

⁸¹ *Legal Daily*, “2012年群体性事件研究报告” (2012 Research Report on Mass Incidents), December, 27, 2012, available at: http://www.legaldaily.com.cn/The_analysis_of_public_opinion/content/2012-12/27/content_4092138.htm.

⁸² Feng Shu, “A National Conundrum,” *People’s Daily*, February 10, 2012, available at: <http://english.peopledaily.com.cn/90882/7725198.html>.

⁸³ *Supra* note 84.

⁸⁴ James Pomfret, “Velvet glove trumps iron fist in south China land riot,” *Reuters*, September 29, 2011, available at: <http://in.reuters.com/article/2011/09/29/idINIndia-59609720110929>.

⁸⁵ British Broadcasting Corporation, “China riot suspect dies in Guangdong police custody,” December 12, 2011, available at: <http://www.bbc.co.uk/news/world-asia-pacific-16135013>.

detention of five representatives, and the death of one while in custody, caused the situation to rapidly escalate.⁸⁶ In December 2011, the villagers engaged in confrontation with heavily armed security personnel who were laying siege of the village.⁸⁷

- In June 2011, around 2,000 villagers of **Lichuan, Hubei Province** protested against **the death of a local legislator** who was reported to have been under interrogation by the police at the time of his death.⁸⁸ The legislator had been investigating accusations of corruption in a city-backed land requisition prior to being detained and interrogated by the police. Villagers believed that he was framed due to his refusal to cooperate with corrupt superiors.⁸⁹ Following the protestors' storming of government headquarters, a large contingent of the paramilitary People's Armed Police and columns of armed police responded.⁹⁰
- In April 2010, hundreds of villagers in **Zhuanghe, Liaoning Province**, knelt outside of the city hall requesting the mayor's assistance in dealing with local officials they accused **of embezzling public money, taking bribes, and neglecting their duties**.⁹¹ The mayor was sacked by the central government after ignoring the peaceful protest of villagers.⁹²

70. The prevalence and scale of such protests, which often allege infringement of ESCRs by corrupt officials and insufficient resolution of grievances by local governments, suggest a lack of effective alternative channels for Chinese citizens to report and receive adequate compensation for violations of their ESCRs through corruption.

An Engaged Civil Society

71. As the above mass incidents demonstrate, there are growing and widespread citizen actions in response to the impact of corruption on ESCRs. Active citizen participation is a crucial means of preventing and addressing corruption and is called for under both the UNCAC and OHCHR anti-corruption frameworks. In describing the measures it has taken to combat corruption in response to the Committee's LOI, the State party acknowledges the importance of civil society oversight, reporting that it has "[m]aximized the masses' supervisory role."⁹³ In fact, under current policies and practices citizens face an increasing set of risks when seeking and disseminating information concerning corruption. In particular, expanded liability for information shared online, limited protection for whistleblowers, and an intensifying crackdown on citizens calling for greater asset transparency all

⁸⁶ Michael Bristow, "China protest worsens in Guangdong after villager death," British Broadcasting Corporation, December 14, 2011, available at: <http://www.bbc.co.uk/news/world-asia-china-16173768>.

⁸⁷ British Broadcasting Corporation, "China protest in Guangdong's Wukan 'vanishes from web'," December 15, 2011, available at: <http://www.bbc.co.uk/news/world-asia-china-16192541>.

⁸⁸ Michael Wines, "Chinese Street Vendor Dispute Expands into Violent Melee," The New York Times, June 12, 2011, available at: http://www.nytimes.com/2011/06/13/world/asia/13china.html?_r=0.

⁸⁹ British Broadcasting Corporation, "China unrest: 25 arrested after clashes with police," June 12, 2011, available at: <http://www.bbc.co.uk/news/world-asia-pacific-13741074>.

⁹⁰ *Supra* note 91.

⁹¹ British Broadcasting Corporation, "China mayor dismissed for ignoring corruption protests," April 26, 2010, available at: <http://news.bbc.co.uk/2/hi/8643615.stm>.

⁹² *Ibid*.

⁹³ *Supra* note 14 at para 5.

create strong disincentives to greater citizen participation and undermine sustainable progress in eliminating corruption.

Heightened Risks to Online Reporters of Corruption

Expansion of defamation liability

72. Filtering out valid citizen reports of corruption from defamation, slander and other intentional falsehoods is a challenge that all governments face, particularly given the expanded reach of information made possible by the internet. The State party's response to the LOI reflects its approach to resolving this tension, stating that it has "strengthened the collection, research, and management of the internet public opinion and information in connection with corruption."⁹⁴ Since its last review before the Committee, the State party has indeed invested in and expanded its information control system in order to guide online public opinion through a combination of technical, administrative, and legal measures. Rather than strengthening anti-corruption reporting, these reforms have instead introduced new risks for citizens who seek to expose corruption online and, in seeking to regulate public opinion, go beyond reasonable protections against false information.

73. One particularly concerning recent reform is a joint official interpretation, issued by the Supreme People's Court and the Supreme People's Procuratorate in September 2013.⁹⁵ The interpretation dramatically expanded the scope of the Criminal Law into the online space and threatened criminal punishment of online reports which authorities deem to constitute broadly defined crimes including defamation and creating public disturbances.

74. The interpretation expressly allows for criminalization and criminal sentencing, detention or surveillance for up to three years in "grave circumstances," which include situations in which the information is viewed 5000 or more times, or where the information is reposted 500 or more times. For individuals using popular social media fora, such as *weibo*, to expose corruption, these figures could easily be exceeded in a matter of seconds. The interpretation further includes a problematic catch-all provision, which permits the same criminalization and punishments in the event of "other grave circumstances," which is left undefined.

75. Shortly after issuing the interpretation, a SPC spokesperson released a statement regarding its application to cases of online corruption reporting.⁹⁶ The statement emphasized the positive role of "online anti-corruption" efforts, and gave assurance that credible reporting will be addressed and inaccuracies that are not willful will not

⁹⁴ *Ibid.*

⁹⁵ Supreme People's Network, "最高人民法院新闻发言人解读网络诽谤司法解释", (Supreme People's Court Spokesman's analysis of the Judicial Interpretation regarding Libel) September 10, 2013, available at:

<http://www.chinacourt.org/law/detail/2013/09/id/146710.shtml>; also available in English at:

<http://chinacopyrightandmedia.wordpress.com/2013/09/06/interpretation-concerning-some-questions-of-applicable-law-when-handling-uses-of-information-networks-to-commit-defamation-and-other-such-criminal-cases/>.

⁹⁶ Supreme People's Court, "最高人民法院新闻发言人解读网络诽谤司法解释" (Supreme People's Court spokesperson explains the interpretation on online defamation), available at: <http://www.dffyw.com/fazhixinwen/lifa/201309/33566.html>;

also available in English at: <http://chinacopyrightandmedia.wordpress.com/2013/10/30/spc-spokesperson-provides-background-to-online-defamation-judicial-interpretation/>.

be prosecuted. The statement concluded by reiterating that willful misrepresentations or falsehoods under the pretext of “online anti-corruption” would not be tolerated and criminal liability will be firmly pursued in such cases.

76. Recent case examples demonstrate that there is a gap between the state commitment to narrowly defined cases in which they seek criminal punishment and its practice. For instance, shortly after the interpretation was announced, the Beijing People’s Procuratorate approved the arrest of **Liu Hu (刘虎)**, a journalist who had posted allegations that local officials had purchased assets for 1.7 million *yuan* that were valued at 27.7 million *yuan*, and urged investigation into the supervising deputy director, Ma Zhengqi (马正其).⁹⁷ Liu’s *weibo* account was subsequently deactivated and, as of March 2014, he remains in detention pending trial.⁹⁸

77. In another case, a household appliance salesman, **Zhou Lubao (周禄宝)** was summoned by Beijing police following allegations of corruption that he had posted online. His detention is particularly egregious given that his post, which revealed photos of a local mayor wearing watches he could not possibly afford with his official salary alone, was credible enough that it led to an investigation into the mayor’s income.⁹⁹

78. Prosecutions under the new interpretation are just one sign of a broader tightening of online avenues for raising allegations of corruption. Beyond the targeting of individual corruption reporters, the **State Council’s National Internet Information Office has shut down hundreds of private websites** in part for publishing “fabricated or negative news.”¹⁰⁰ Examples of sites shut down include: China Rule of Law & Rights Protection Site (中国法治维权网); China Green Economy Site (中国绿色经济网), and the Voice of the People Site (人民之声网), as well as some local news sites.¹⁰¹

⁹⁷ Bloomberg News, “China Arrests Journalist Who Posted Claims of Graft Online,” October 11, 2013, available at: <http://www.bloomberg.com/news/2013-10-10/china-arrests-journalist-who-posted-claims-of-corruption-online.html>.

⁹⁸ Patrick Boehler, “Journalist Liu Hu, accuser of Chinese government minister, is formally arrested for defamation,” South China Morning Post, October 10, 2013, available at: <http://www.scmp.com/news/china-insider/article/1328603/journalist-liu-hu-formally-charged-defamation>.

⁹⁹ Patrick Boehler, “Whistleblower Zhou Lubao disappears after police questioning amid crackdown,” South China Morning Post, August 2, 2013, available at: <http://www.scmp.com/news/china-insider/article/1293789/whistleblower-zhou-lubao-disappears-after-police-questioning-amid>

¹⁰⁰ Xinhua News, “互联网信息办部署规范互联网新闻传播秩序行动” (Internet Information Office to deploy and standardize internet news transmission stability maintenance actions), May 20, 2013, available at http://www.gov.cn/jrzq/2013-05/10/content_2400079.htm; Xinhua News, “国信办查处人民内参网等31家网站” (National Information Office investigate and handle 31 websites including Renminnaican site) October 24, 2013, available at <http://news.eastday.com/c/20131024/u1a7732704.html>.

¹⁰¹ Beijing News, “107家非法新闻信息网站被关闭” (107 illegal news websites closed), July 30, 2013, available at: <http://www.bjnews.com.cn/news/2013/07/30/275892.html>.

Official Preference for Whistleblowers who Disclose their True Identity

79. In addition to generally strengthening the management of internet public opinion and information related to corruption, the State party also notes that it has “improved the establishment of rules and regulations for public corruption reporting websites, and perfected the approval mechanism for corruption reporting websites and the feedback system for use of public tips...”¹⁰²

80. Though the State party has launched a new official website for reporting corruption, currently preference is given to individuals who disclose their true identify when reporting.¹⁰³ This model threatens to chill reporting given the inherent and documented risks facing those who have reported corruption in the past. Furthermore, according to information received from local Beijing citizens who have attempted to use the site, even when the reporter discloses his or her identity, the response provides no follow-up details, stating only: “your report has already been passed on to the city disciplinary committee and has been handled.”

81. The reach and egalitarian nature of the internet makes it a considerable tool in fighting corruption around the world. However, the above developments in the State party create strong disincentives to and chilling of public online anti-corruption efforts, thereby undermining its ability to harness this tremendous resource.

Inadequate protection for whistleblowers

82. Retaliations against individuals who report corrupt activities are an inherent risk and challenge to active civil society participation. Without strong and well-implemented legal protections for whistleblowers, citizens are unlikely to risk reporting corrupt officials and may instead exacerbate the issue by resolving situations or problems through bribery. Sound legal protections for whistleblowers are therefore indispensable to an effective anti-corruption strategy. In the State party, although whistleblowing is protected under laws and regulations, as described below, these do not provide adequate protections in actual practice.

83. Under the State party’s Constitution, citizens have the right to supervise and criticize the work of government officials. This right was further solidified in 1991, when the Supreme People’s Procuratorate issued the Regulations on the Protection of Citizens’ Whistleblowing Rights (最高人民检察院关于保护公民举报权利的规定).¹⁰⁴ These regulations set out provisions protecting confidentiality of whistleblowers,¹⁰⁵ and prohibiting suppression of or retaliation against them.¹⁰⁶ However, in addition to its limited scope of application, vagueness regarding the parties responsible for investigating acts of reprisals and holding perpetrators accountable substantially limit the regulations’ impact in actual cases.

¹⁰² *Supra* note 14 at para 5.

¹⁰³ See Beijing City Commission on Disciplinary Inspection Citizen Whistleblowing Website, available at: <http://www.bjsupervision.gov.cn:8080/caphtjci/jsp/reportForm/reportIndex.jsp>.

¹⁰⁴ Supreme People’s Procuratorate, “最高人民检察院关于保护公民举报权利的规定” (Regulations on the Protection of Citizens’ Whistleblowing Rights), promulgated May 6, 1991, available at: <http://www.people.com.cn/GB/shehui/212/3576/3579/20001229/364916.html>.

¹⁰⁵ *Ibid.*, Articles 3 and 4.

¹⁰⁶ *Ibid.*, Articles 5-7.

84. Furthermore, similar to the interpretation regarding internet rumors, these regulations emphasize that criminal liability shall be sought for individuals who fabricate facts, fake evidence, and use whistleblowing to frame others. Despite *de jure* protection, as the cases against online whistleblowers described above demonstrate, criminal liability is still being used as a retaliatory measure even in cases of legitimate whistleblowing.

85. According to 2010 statistics from the Supreme People's Procuratorate, 70 percent of reporting individuals have experienced some form of reprisal.¹⁰⁷ Reprisals include actions that are not manifestly unlawful, such as suspension, re-assignment and demotion at the reporting individual's workplace. For instance, Luo Changping (罗昌平), a prominent investigative journalist with the *Caijing* magazine, was removed from his deputy editor post and reassigned to a different department in November 2013 after publishing evidence of corruption on his personal *weibo* microblog, which led to the downfall of a senior economic policy official.¹⁰⁸ The Procuratorate report also includes experts critical of the lack of robust responses to these retaliations, but the report does not provide information on what actions are being taken or considered in response to these findings.

86. The continued prevalence of reprisals against whistleblowers clearly demonstrates the need for improved protective legislation and implementation.

Retaliations against active citizens

87. In response to perceived ineffectiveness of current anti-corruption institutions and efforts, in recent years citizens have begun to independently organize around calling for greater official transparency and accountability, particularly those related to ESCR-violations stemming from corruption. One of the most famous and wide-spread campaigns has been the New Citizens Movement (NCM), a loose network of citizens dedicated to, among other things, “destroy[ing] the privileges of corruption, the abuse of power, the gap between rich and poor, and construct[ing] a new order of fairness and justice.”¹⁰⁹ The NCM is inclusive of many social movements in China, including campaigns addressing displaced residents, opposing household registration stratification, calling for environmental protection and food and health safety, and opposing corruption – and is notable for the diversity of its members which include white collar workers that are often not normally affiliated with such movements. It calls for all citizens, including judges, policemen, prosecutors, deputies to people’s congresses, physicians, teachers and entrepreneurs to act for the public good and to eschew corruption in all forms. The movement’s development and the recent trials of key members demonstrate the severe risks that citizens seeking to push back on corruption and call for greater transparency face.

Development and treatment of the New Citizens Movement

¹⁰⁷ Justice Network, “最高检材料显示70%举报者曾遭打击报复” (Supreme People’s Procuratorate report shows 70% of whistleblowers have suffered retaliation), available at: <http://news.163.com/10/0619/14/69I338H10001124J.html>.

¹⁰⁸ Zhang Hong, “Hard-hitting Caijing editor Luo Changping removed from post: sources,” South China Morning Post, November 27, 2013, available at: <http://www.scmp.com/news/china/article/1367171/hard-hitting-caijing-editor-luo-changping-removed-post-sources>.

¹⁰⁹ Xu Zhiyong, “China Needs a New Citizens Movement,” Human Rights in China, July 23, 2012, available at: <http://www.hrichina.org/en/crf/article/6205>.

88. The early roots of the New Citizens Movement can be traced to the Gongmeng Law Research Center of the Open Constitution Initiative (OCI). The Center, which was founded in 2003 by human rights defender **Xu Zhiyong (许志永)** and three other Peking University Law graduates, aimed to promote the rule of law and social justice, taking on cases and research related to migrant workers and their children, labor rights, consumer safety, crackdowns in Tibet and training citizens to use the newly promulgated OGI regulations. In 2009, the Center was shut down on the basis of registration issues. A board member and researcher at OCI said the shutdown lacked legal basis because the research center was part of the OCI organization, and did not have to register separately. Despite efforts to pay the tax fines levied against the organization, it remained closed and the executive director, Xu Zhiyong, was arrested for tax evasion.¹¹⁰ He was subsequently released without trial, and in late 2009 launched a three-year initiative pushing for equal access to education rights particularly for children of migrant workers.

89. The NCM expanded in the coming years to cover a wide-range of issues, including asset transparency and corruption, and members began to meet in cities across the country through informal dinners. In late 2012, several of the movements leading members, including **Sun Hanhui (孙含会)** and **Ding Jiayi (丁家喜)**, launched a **campaign to demand that 205 government officials at the ministerial level or higher lead the way in publicly disclosing their assets**. The campaign collected 7,000 signatures from Chinese citizens and submitted a joint proposal to the Standing Committee of the National People's Congress during the convening of the Two Congresses, an important political event in the State party, held in March 2013.

90. During the remainder of 2013, more than 18 individuals affiliated with the movement were detained and nine have since been tried for charges ranging from “illegal assembly” to “gathering a crowd to disturb order in a public place.”¹¹¹ Xu received a harsh sentence, four years (out of a maximum of five) in prison, for his role as a key organizer of the movement and of peaceful protests, including those advocating for the rights of migrant children to education and for asset disclosure.¹¹² In a statement at the close of his trial, Xu explained with regard specifically to the NCM’s calls for officials to disclose their assets that in the interest of being constructive the group had even drafted a “Sunlight Bill” in March 2013 to help address the issues they were surfacing.¹¹³ The draft bill responded to citizens, transparency advocates, and even members of the Chinese legislature, who have long called for a national law on asset disclosure.¹¹⁴

¹¹⁰ Human Rights in China, “Criminally Detained: Zhao Changqing and Six Other Advocates of Public Disclosure of Officials’ Assets,” April 19, 2013, available at <http://www.hrichina.org/en/content/6648>.

¹¹¹ Human Rights Watch, “China: First Trial of Anti-Corruption Activists,” October 24, 2013, available at: <http://www.hrw.org/news/2013/10/24/china-first-trial-anti-corruption-activists>.

¹¹² See Human Rights in China, “English translation of Xu Zhiyong’s first-instance verdict,” January 26, 2014, available at: <http://www.hrichina.org/en/citizens-square/xu-zhiyongs-first-instance-verdict-english-translation>.

¹¹³ Xu Zhiyong, ““For Freedom, Justice, and Love”—Xu Zhiyong’s Final Statement at Trial,” Human Rights in China, January 22, 2014, available at: <http://www.hrichina.org/en/citizens-square/freedom-justice-and-love-xu-zhiyongs-final-statement-trial>.

¹¹⁴ China Youth Daily “韩德云七年死磕官员财产申报公开” (NPC deputy waged 7-year campaign for a law on asset disclosure), March 9, 2012, available at: http://zqb.cyol.com/html/2012-03/09/nw.D110000zgqnb_20120309_1-T04.htm;

91. The crackdown on citizens who report corruption online and on groups such as the NCM for their attempts to constructively participate in and advance the State party's anti-corruption efforts raise serious concerns regarding the State party's willingness to truly advance its stated commitment and policies of letting the masses supervise authority. As a board member of OCI noted upon its closure, these kinds of organizations are not only an important source of information regarding where corruption is occurring, but also "help to relieve social conflict."¹¹⁵ He went on to say that, "[i]n a society where violence is pervasive, if organizations like OCI are not allowed to exist, violence in society will only increase."¹¹⁶

92. This prediction is all the more ominous by the State party's five year anti-corruption plan (2013-2015), which indicates it will focus on corruption that causes protests and accidents.¹¹⁷ By increasing the risks associated with peaceful and legal means for individuals to request information and call for justice and prioritizing addressing corruption that leads to mass protests and social instability, the State party is creating dangerous incentives for citizens.

Recommendations

93. The Committee may wish to request the following additional information during the State party's upcoming review:

- Whether **OGI requests** are **tracked at the national level** and whether responses to these requests are monitored or evaluated
- Whether **OGI requests** are being **evaluated systematically** as a source for identifying instances of corruption. And, if so, what **actions** have been **taken in response** to this information?
- Whether the Central Commission for Discipline Inspection or the Supreme People's Procuratorate disclose the **number of investigations for bribery and major embezzlement** resulting in **convictions**, and the associated **sentences**
- Whether **officials disciplined or convicted of corruption are re-appointed in government positions**, and if yes, what are the conditions

94. The Committee may further wish to recommend that the State party:

- Take steps towards the drafting and eventual promulgation of a **national law on public asset disclosure, through regular, broad-based and inclusive public consultations** with citizens, journalists, anti-corruption activists, and human rights defenders that:
 - incorporates lessons learned from current national regulations and pilot projects,

see also an March 2014 open letter by human rights defenders to the 12th National People's Congress calling for, among others, a "Law on the Disclosure of Public Official's Assets," <http://chinalawtranslate.com/en/open-letter-to-the-npc-by-lawyers-of-the-xu-zhiyong-et-al-cases/?edit=1>.

¹¹⁵ Human Rights in China, "Law Research Center Is Shut Down as Authorities Tighten Control on Civil Society Groups," July 17, 2009, available at: <http://www.hrichina.org/en/content/320>.

¹¹⁶ *Ibid.*

¹¹⁷ Central Committee of the Communist Party of China, "建立健全惩治和预防腐败体系2013-2017年工作规划" (2013-2017 work plan establishing a system of robust punishment and prevention of corruption), December 25, 2013, available at http://news.xinhuanet.com/politics/2013-12/25/c_118708522.htm.

- requires that asset disclosures are made publicly available and readily accessible, and
- clearly defines supervisory responsibility, including investigation criteria and timeframes, and establishes avenues for seeking legal redress
- Take steps toward the drafting and eventual promulgation of a **national law on the protection of whistleblowers**
- Ensure **protection of anti-corruption activists, whistleblowers, and journalists** through prompt, effective, and impartial investigations into and judicial accountability for retaliatory actions against them
- Establish an **anti-corruption body** that is genuinely independent of the Communist Party and the government with a mandate to document, expose, and investigate all forms of corruption and to recommend criminal prosecution
- Ensure that **no** individual is deprived of their liberty or faces **criminal prosecution solely for his or her peaceful advocacy** for transparency, clean governance, and ESCRs
- Take all necessary measures to guarantee and facilitate citizens' **access to information concerning government budget and expenses**, as well as **implementation of anti-corruption measures** and their impact
- Further **facilitate citizens' participation in anti-corruption efforts** by, inter alia, modifying whistleblower laws and policies to remove priority for use of real names when receiving reports and to protect those who use non-official channels, including on social media platforms, to report on corruption

Conclusion

95. The Committee's review of China's implementation of its obligations under the Covenant comes at an important time – a time of both greater rights challenges and opportunities for advancing reforms, including *hukou* reform and anti-corruption efforts. Building upon the lessons learned in local *hukou* pilot reform projects and incorporating international best practices into its anti-corruption methods will enable the State party to make meaningful progress on these complex issues. The State party's shared recognition of the problems and interest in finding sustainable solutions are a positive foundation for the Committee's exchange and dialogue with it about these challenges. HRIC looks forward to a rigorous and constructive review.