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REPORT SUBMITTED TO THE

UNITED NATIONS COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION

BY

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Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in China

A Report Submitted by the China Society for Human Rights Studies (CSHRS)

1. Pursuant to Article 9 (1) of the *International Convention on the Elimination of All Forms of Racial Discrimination* (hereinafter referred to as the Convention), the People's Republic of China submitted to the Secretary General an integrated report (containing the tenth, eleventh, twelfth and thirteenth periodic reports) on its implementation of the Convention. In the report, China elaborated all relevant laws, policies and measures that China has taken from 1999 to 2007 to implement the Convention, and introduced the progress made and difficulties encountered during the period. While fully acknowledge the fairly comprehensive contents of the report and appreciate the progress made, the China Society for Human Rights Studies, an NGO with consultative status at the United Nations Economic and Social Council, would like to make following comments on the report of China.

2. China has established an extensive legal system relating to the protection of ethnic minorities in China (CERD/C/CHN/10-13, paras. 9-12; CERD/C/357/Add.4 (Part I), paras. 9-11). However, except the relevant provisions in the Constitution and other laws, the *Law of the People's Republic of China on the Autonomy of Minority Nationality Regions* (hereinafter referred to as the *REAL*) remains the only statute enacted by the National People's Congress that specifically addresses the issue of ethnic minorities. Besides, the *REAL* mainly concerns the autonomous governance of the minority regions, it is not a law that protects and promotes the rights and interests of ethnic minorities in a comprehensive way. Despite the fact that there are numerous other laws and regulations on both national and local levels which are also playing important roles in protecting and promoting the rights and interests of ethnic minorities, it would nevertheless be desirable that the National People's Congress or its Standing Committee adopts a basic law to address the ethnic minority issues in China in a comprehensive way. That law should systematically regulate all issues in relation to ethnic minorities, serve as a basis for all other laws and regulations pertinent to the protection and promotion of the rights and interests of ethnic minorities, and aim at being fully consistent with the provisions of the Convention.

3. In its previous concluding observations, the Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee) recommended that China review its legislation to ensure the adoption of a definition of discrimination in accordance with the Convention (A/56/18, para. 241). China replied that the "discrimination against any ethnic group" as prohibited by Chinese laws covers discrimination based on race, color and ethnicity, and that it is in line with the definition of racial discrimination in Article 1 of the Convention

(CERD/C/CHN/10-13, para. 7). However, since neither the relevant provisions in the Constitution of China nor other laws have ever defined the concept of “discrimination”, and the corresponding Chinese word *Qishi* to “discrimination”, in its ordinary sense in Chinese language, may have more restricted meaning and scope than the concept of “discrimination” in the Convention, it is doubtful whether the prohibition of the “discrimination against any ethnic group” in Chinese laws has fully covered all forms of distinction, exclusion, restriction or preference which have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life, as required by Article 1 of the Convention.

4. In accordance with the reports by China, there are about 30 million scattered ethnic minorities, accounting for 1/3 of the total population of ethnic minorities, living either outside autonomous areas or inside autonomous areas without the right to minority self-government (CERD/C/CHN/10-13, para. 65; CERD/C/357/Add.4 (Part I), para. 72). China has adopted various measures, both on national and regional levels, to protect the equal rights of the scattered ethnic minorities. However, those scattered ethnic minorities, especially those living in metropolitan areas, sometimes may not enjoy the same benefits as that of those ethnic minorities living within the autonomous regions. For instance, according to the *Regulations on Population and Family Planning of Beijing Municipality* adopted by the Standing Committee of the People’s Congress of Beijing in 2003, members of ethnic minorities living in Beijing do not fall within the categories permitted to have more than one child, while “in most regions inhabited by ethnic minorities two or three children are allowed” (CERD/C/357/Add.4 (Part I), para. 103). That situation does not *per se* constitute a form of discrimination between different ethnic minorities and a violation of the Convention. However, this kind of distinction must be based on reasonable and objective criteria, which are not adequately addressed in the report of China. Otherwise it would not be compatible with the object and purpose of the Convention. It has also to be noted there have been some cases in which some people not belonging to ethnic minorities illegally changed their ethnic identity in order to take advantage of the benefits granted only to the members of ethnic minorities, such as the extra points given to ethnic minority students attending the college entrance examination. It would be necessary for China to adopt further and stronger measures to punish and eliminate such phenomena in accordance with its laws and regulations.

5. China has taken various measures to promote the access of the members of ethnic minorities to public service at all levels. According to the report of China, at the end of 2006, there were more than 2.9 million public servants from ethnic minorities all over the country, accounting for 6.9% of the country’s total (CERD/C/CHN/10-13, para. 84). However, comparing with the percentage of the population of ethnic minorities in the whole population (8.41%), it appears that China should take further steps to promote and facilitate the access of the members of ethnic minorities to

public service, in order to make the percentage of public servants from ethnic minorities reach the average level, at least.

6. In its previous concluding observations, the Committee requested China to provide in subsequent reports, *inter alia*, detailed information on judicial cases relating specifically to violations of the Convention, with special reference to the granting by courts of adequate reparation for such violations (A/56/18, para. 249). In the report, a few cases were given to exemplify how China prohibits and punishes activities disseminating racial discrimination or inciting ethnic hatred (CERD/C/CHN/10-13, paras. 78-80). However, those cases do not seem to be judicial cases, since it was not indicated that the "relevant authorities" imposing the sanctions were courts of law. In addition, even though the Convention itself does not require the courts of State Parties directly apply the Convention in judicial practice, it is recommendable that as many State Parties as possible, including China, incorporate the Convention in their domestic laws and directly apply it in the cases involving the prohibition and punishment of racial discrimination activities.

7. China ratified the Convention in as early as 1981, one of the earliest core international human rights treaties that China has ratified, and has taken various measures to strengthen the propagation of the Convention (CERD/C/CHN/10-13, paras. 145-146). However, it appears from the report that the education on the Convention in China is mainly addressed to the ethnic minorities, not so much to the whole population. Besides, in the human rights research and studies rapidly developing in China, the Convention has not been given adequate attention, much less than that of other human rights instruments such ICCPR, ICESCR or CAT, which China has not ratified or ratified much later. It is therefore necessary for China to even more widely disseminate the knowledge of the Convention, its periodic reports submitted under the Convention and the concluding observations adopted by the Committee thereto, in order to let the whole population, not only the members of ethnic minorities, be aware of the Convention and its importance to the protection and promotion of human rights in China.