

**CHINESE SUBVERSION:  
THE CASE FOR COMPREHENSIVE  
REFORM OF HUMAN RIGHTS TREATY  
BODY SYSTEM**



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The Tibetan Centre for Human Rights and Democracy (TCHRD) is a registered non-governmental human rights organization established in January 1996 in Dharamsala (India) with the mission to protect the human rights of the Tibetan people in Tibet and promote principles of democracy in the exile Tibetan community.

Entirely run and staffed by Tibetans in exile, the centre's work entails conducting regular and systematic investigations into human rights abuses and publishing annual reports, thematic reports, translated testimony of victims of human rights violations, electronic newsletters, and briefings on human rights issues that confront Tibetans inside Tibet.

The centre generates awareness of a wide range of issues relating to human rights and democracy through both grassroots and diplomatic means, using regional and international human rights mechanisms as well as community-based advocacy and awareness campaigns.

The TCHRD logo features the image of a white dove rising out of the flames. The dove and olive branch are universal emblems of peace. The flames, drawn in traditional Tibetan style, represent the suffering of the Tibetan people as well as the devastating and purifying force of truth.

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**Chinese Subversion:  
The Case for Comprehensive Reform of  
Human Rights Treaty Body System**



TIBETAN CENTRE FOR HUMAN RIGHTS AND DEMOCRACY

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## EXECUTIVE SUMMARY

*The future of human rights mechanisms largely depends on their capacity to transcend politics and add value to all stakeholders, including States. – Ibrahim Salama<sup>1</sup>*

The future of the United Nations Treaty Body monitoring system is at risk. Developed as a means to promote the universal implementation of the international human rights treaties and to hold States to their treaty obligations, the independent expert mechanism has faced increasingly hostile behaviour from ratifying States. The UN Human Rights Treaty Body (HRTB) system is a “custodian of universal values, as expressed by legally binding human rights norms”,<sup>2</sup> which means a threatened TB system endangers the enjoyment of universal human rights by individual rights-bearers. This report seeks to identify reforms that would help hold States accountable to their treaty obligations.

The People’s Republic of China (PRC) exemplifies the growing number of states working to manipulate the Treaty Bodies to conform to their state-centric interpretation of human rights implementation. One reason why they are able to do this is that the working methods of the Treaty Bodies were never consciously designed. Based on “normative grounds,” “independence,” and “constitutional parameters,” the HRTB system has evolved over the past 50 years with the aim of supporting the implementation of the treaty body resolutions. As more treaties are created and ratified by states, new challenges to human rights occur and the Treaty Bodies’ working methods increasingly lose their efficacy as human rights implementing-aids.

The year 2020 hosts the UN Treaty Body Review, called for six years ago in the General Assembly Resolution 68/268.<sup>3</sup> As the review is underway,<sup>4</sup> stakeholders will do well to recognize that the PRC and other like-minded states are looking to strengthen only the elements of the treaty bodies that are top-down and state-oriented. Review of the Treaty Bodies should be wary of ambitions to channel power away from rights-bearers.

Having considered the various ways that states like PRC manipulate, obstruct and exploit the current HRTB system, the Treaty Bodies should reform their working methods to better allow all people to enjoy their human rights. There needs to be more focus on implementation and assessment and less on the formulation of resolutions and recommendations. Presently, there is too much emphasis on reviewing the reports that States submit, while too little is being done to ensure State compliance and implementation after the HRTBs issue their recommendations. In addition, reform of the Treaty Bodies should aim to empower all human rights stakeholders. Consequently, it is essential that Treaty Body processes, working methods, and outputs are accessible to a broad range of stakeholders, including individuals, NGOs and national human rights institutions.<sup>5</sup>

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<sup>1</sup> Ibrahim Salama. Strengthening the UN human rights Treaty Body System: Prospects of a work in progress. <https://www.geneva-academy.ch/joomlatools-files/docman-files/Ibrahim%20Salama%20-%20Strengthening%20the%20UN%20human%20rights%20TBs.pdf>

<sup>2</sup> Ibid.

<sup>3</sup> UN DOC. A/RES/68/268, paragraph 41

<sup>4</sup> Jeremy Sarkin (2020) The 2020 United Nations human rights treaty body review process: prioritising resources, independence and the domestic state reporting process over rationalising and streamlining treaty bodies, *The International Journal of Human Rights*, DOI: [10.1080/13642987.2020.1822337](https://doi.org/10.1080/13642987.2020.1822337)

<sup>5</sup> UN Treaty Bodies Reform: NGOs respond. (2020)

<https://www.hrw.org/news/2010/12/02/un-treaty-bodies-reform-ngos-respond>

The HRTBs should be reformed with three major goals in mind:

1. To harmonize working methods so that the Treaty Body system is more accessible to all stakeholders, including states, treaty body members, civil society organisations (CSOs) and individual rights holders;
2. To develop an effective system of follow-up on States' consideration and implementation of Treaty Body recommendations;
3. To develop ways that CSOs can formally contribute to the work of treaty bodies, for example, through new CSO reporting methods.<sup>6</sup>

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<sup>6</sup> Ibid.

## INTRODUCTION

The People's Republic of China (PRC) is responsible for “industrial-scale” human rights violations including apartheid against Tibetans,<sup>7</sup> the arbitrary detention of a million Turkic Muslims in Xinjiang, and the deaths in state custody of those who dare to criticise these policies.<sup>8</sup> The PRC is party to six out of 10 human rights treaty bodies, but it frequently disrespects the obligations it agreed to uphold. On top of defying HRTB working practices by failing to turn in their mandatory reports on time, Treaty Body Committee members also describe PRC delegates behaving in often noncompliant, inappropriate, and sometimes even threatening ways during their treaty body reviews.<sup>9</sup> Worst of all, the PRC continues to ignore Treaty Body Committees' recommendations on addressing its treaty violations. As a result, crimes against humanity continue to be committed with impunity in Xinjiang and Tibet.<sup>10</sup>

The UN Office of the High Commissioner on Human Rights (OHCHR) continues its ongoing process of strengthening the UN human rights Treaty Bodies (HRTB). Unfortunately, only procedural reforms have momentum while substantive reforms, measures that directly aim to improve human rights for all stakeholders, are largely being ignored or rejected. For example, many stakeholders support adopting simplified state party reporting procedures for initial and periodic reports, an aligned methodology for constructive dialogues, and developing calendars for States party reviews. However, there needs to be more support for suggested policies that aim to ensure that any changes to the structure of the Treaty Bodies actually strengthen the capacity of rights-holders to enjoy their human rights.

This report argues that, when reviewing the HRTB, stakeholders must adopt reforms that affect not just the HRTB system's working methods, but its capacity to achieve its original purpose: help all people to enjoy their human rights. As this report will demonstrate, the treaty bodies as they are currently structured allow state parties to consistently ignore the concluding observations and recommendations of Treaty Body committees. Furthermore, there is a significant need to better protect the participation of civil society organizations in the reporting process. Procedural reform is not enough. Stakeholders must adopt reforms that move the treaty bodies closer to fulfilling their original purpose and take into account the needs of states, civil society organizations and rights-holders equally.

This report presents the PRC as a case study on how the Treaty Bodies in their current form enable states to neglect their human rights obligations. The PRC's repeated violations of the treaties is made clear when looking at the past twenty years of its engagement with three of the six core treaties that it ratified. The treaties are:

- Convention on Elimination of Racial Discrimination (ratified 1981)
- Convention Against Torture (ratified 1988)
- Convention on Economic, Social and Cultural Rights (ratified 2001)

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<sup>7</sup> Tsering Woesser (2012), *The Moat and Apartheid*, International Campaign for Tibet, 26 July 2012, available at <https://savetibet.org/the-moat-and-apartheid/>

<sup>8</sup> “China Grudgingly Gets UN Rights Body Seat,” October 20, 2020. <https://www.hrw.org/news/2020/10/13/china-grudgingly-gets-un-rights-body-seat>

<sup>9</sup> *The Costs of International Advocacy*, Human Rights Watch (2017). Available at [https://www.hrw.org/sites/default/files/report\\_pdf/chinaun0917\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/chinaun0917_web.pdf)

<sup>10</sup> “Ending Impunity: Crimes Against Humanity in Tibet”, TCHRD, 1 September 2013, available at <https://tchrd.org/tchrd-new-report-on-ending-impunity-crimes-against-humanity-in-tibet/>

These treaties were chosen because of their relevance to some of the PRC's most notorious human rights violations, primarily against Tibetans and Uyghurs.

It is important to note that this analysis does not compare the PRC to other State parties. Instead, our objective is to use the PRC's record as an example of how the current mechanisms of the HRTB allow the world's most authoritarian States to repeatedly ignore their obligations, leading the way for like-minded States to commit their own human rights violations.

In this analysis, we first look at the PRC's self-reporting record before overviews its comportment before the Treaty Body Committees, with special attention for its refusal to allow CSOs to participate in Treaty Body processes. Then, we note how the State has failed to heed the Treaty Body Committees' urgent, repeated, concluding observations and recommendations throughout the last two decades. In the next section, we analyse whether the most common procedural reform suggestions would help address the PRC's disregard for HRTB working methods. Then, we will discuss policies that would be more likely to have an impact on rights-holders: involving CSOs in HRTB procedures and adopting follow-up mechanisms for HRTB recommendations. Finally, we will summarize our own conclusions and recommendations for a HRTB reform that will strengthen rights-holders' capacity to enjoy their human rights.



## IN BAD FAITH: PRC'S INTERACTIONS WITH TREATY BODIES

For years, the PRC has actively proved that an influential authoritarian state can “[work] within the UN system to undermine its ability to strengthen global compliance with international human rights norms”.<sup>11</sup> A 2017 report by Human Rights Watch documented the PRC’s interventions at meetings of the UN Human Rights Treaty Bodies, hindering treaty objectives to improve human rights in the PRC and around the world. It also recorded the PRC’s non-compliance with the reporting procedures of three core human rights treaties. We also note the PRC’s failure to implement Treaty Body Committees’ recommendations, meaning that despite the Committees’ best efforts, the PRC’s most serious human rights violations continue, and in some cases, worsen.

### PROCEDURAL COMPLIANCE

The PRC has a consistent history of trying to influence the review process of the treaties it has ratified. It has done so through challenging the authority of HRTB, inappropriately contacting HRTB Committee members, resisting HRTB working practices, not providing the Committees with adequate information, and blocking the participation of CSOs.<sup>12</sup>

#### *Challenging Treaty Body Authority*

The PRC has worked to transfer the authority from Treaty Bodies to State parties and weaken the HRTBs’ ability to monitor State compliance. Without any evidence, the PRC has accused some of the treaty bodies of using inaccurate information (meaning any information provided by CSOs and National Human Rights Institutions), questioning the integrity of treaty bodies members and opposing the use of the San Jose Guidelines.<sup>13</sup>

#### *Inappropriate Contact with Treaty Bodies Members*

Chinese diplomats have repeatedly violated the Addis Ababa guidelines, which aim to eliminate conflicts of interest for Treaty Body members in their relations with States.<sup>14</sup> The guidelines prohibit contact between governments and the TB members before each review to prevent pressure or influence from State delegations.<sup>15</sup> However, Chinese diplomats have repeatedly ignored these guidelines and even offered TB members meals and trips to China in the hopes of getting favourable treatment during their review.<sup>16</sup>

#### *Resisting Treaty Bodies Practices*

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<sup>11</sup> The Costs of International Advocacy, Human Rights Watch (2017)  
[https://www.hrw.org/sites/default/files/report\\_pdf/chinaun0917\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/chinaun0917_web.pdf)

<sup>12</sup> China has ratified only six of the ten UN human rights treaties. It is also not party to any optional protocols or treaties that require close international scrutiny of their human rights policies and practices through the Individual Complaints procedure or the Inquiry procedure.

<sup>13</sup>The San Jose Guidelines aim to help treaty bodies to prevent and address reprisals by establishing practical measures and underlying principles. OHCHR (30 July 2015) Guidelines against Intimidation or Reprisals “San José Guidelines”. OHCHR. <https://www.ohchr.org/EN/HRBodies/Pages/Reprisal.aspx>

<sup>14</sup> UN DOC. Report of the Chairs of the Human Rights Treaty Bodies on their 24<sup>th</sup> Meeting, 2 August 2012, A/67/222, Ibid. Annex I, pp. 26-33.

<sup>15</sup> The Costs of International Advocacy, Human Rights Watch (2017).  
[https://www.hrw.org/sites/default/files/report\\_pdf/chinaun0917\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/chinaun0917_web.pdf)

<sup>16</sup> Ibid.

The PRC tries and often succeeds in changing the actions of the Treaty Bodies. For example, while the Committee Against Torture allows for the appointment of two rapporteurs, the PRC forced the UN to concede to only one rapporteur in their case.<sup>17</sup>

The PRC has also resisted Treaty Body practices by protesting the filming and internet broadcasting of TB reviews. In one instance, despite the PRC's initial opposition to the webcasting of their reviews, they later requested that the Chinese government news agency also be allowed to film the reviews, raising concerns about reprisals against CSO participants.<sup>18</sup>

### *Blocking Civil Society Participation*

The Chinese delegation regularly attempts to impede CSO's participation in Treaty Body reviews. Their methods include blocking organisations from providing information, demanding the UN to bar specific people – including individuals from Tibetan and Uyghur groups – from participating, and in at least one review, taking unauthorised photographs of CSO participants.<sup>19</sup>

If they do manage to participate in Treaty Body reviews, members of civil society organisations are subjected to intimidation and monitoring during the reviews and may face reprisals when they return to the PRC. There are well-documented cases of PRC State agents hindering CSO participation through intimidation and unauthorized photography at UN events, harassment and travel restrictions on Chinese activists.<sup>20</sup>

### *Non-ratification of key treaties*

The PRC has not ratified the Optional Protocol of the Convention against Torture, the ICCPR, the Second Optional Protocol to the International Covenant on Civil and Political Rights (which aims to abolish the death penalty), the Convention for the Protection of All Persons from Enforced Disappearance, or the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

The PRC has refused to comply with the individual complaints systems created under the CAT, Art.22, the Individual complaints procedure under the Convention against Torture; the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR-OP1); the Individual complaints procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (CED, Art.31); the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP); Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD, Art.14 ); Optional protocol to the International Covenant on Economic, Social and Cultural Rights (CESCR-OP); Individual complaints procedure under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW, Art.77); Optional Protocol to the Convention on the Rights of the Child (CRC-OP-IC) or Optional protocol to the

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<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ensuring Safe and Sustainable Civil Society Space Within UN Human Rights Bodies: Challenges and Recommendations, Submitted by Human Rights in China September 30, 2017 <https://www.ohchr.org/Documents/AboutUs/CivilSociety/Procedures/CivilSociety/HumanRightsInChina.pdf>

Convention on the Rights of Persons with Disabilities (CRPD-OP).<sup>21</sup> Similarly, China accepts no inquiry procedure from CAT, Art.20; CED, Art.33; CEDAW-OP, Art. 8-9; CESCR-OP, Art.11; CRC-OP-IC, Art.13; CRPD-OP, Art.6-7.

### *Complaints Procedures*

Most Treaty Bodies can consider individual complaints. This competence is either written into the respective treaty or established under an Optional Protocol to that treaty (ICCPR, ICESCR, and the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPCRIC)).<sup>22</sup> This allows treaty bodies to monitor compliance regarding individual cases and to interpret the rights and obligations under the relevant treaty. However, in contrast to the State party reporting procedure, individual complaints can only be brought against the State party if the State formally accepts the Committee’s competence to do so.<sup>23</sup> The PRC joins several other states that have not accepted any individual complaints procedures.<sup>24</sup>

### Reporting and Reviews

#### *China and the Committee Against Torture*<sup>25</sup>

China has been reviewed five times by the Committee since its ratification. In the last two decades, the PRC has not submitted any of its State party’s reports to the Committee Against Torture on time. Furthermore, the PRC has yet to ratify the Optional Protocol of the Convention against Torture. China’s latest State party report for the sixth periodic review was due on 9 December 2019.

Reporting Cycle	Name	Due Date	Submitted Date
VI	n/a	09 Dec 2019	n/a
V	CAT/C/CHN/5	21 Nov 2012	20 Jun 2013
IV	CAT/C/CHN/4	02 Nov 2001	14 Feb 2006

Figure 1: PRC CAT reporting record (2000-2020)<sup>26</sup>

<sup>21</sup>CESCR-OP, CMW, Art.77, and CRPD-OP are available at:

[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=36&Lang=EN)

<sup>22</sup> Oette L. (2018) *The UN Human Rights Treaty Bodies: Impact and Future*. In: Oberleitner G. (eds) *International Human Rights Institutions, Tribunals, and Courts*. International Human Rights. Springer, Singapore. [https://doi.org/10.1007/978-981-10-4516-5\\_5-1](https://doi.org/10.1007/978-981-10-4516-5_5-1)

<sup>23</sup>Ibid.

<sup>24</sup> Bantekas I, Oette L (2016) *International human rights law and practice*, 2nd edn. Cambridge University Press, Cambridge

<sup>25</sup> The PRC ratified the CAT in 1988. At the time of ratification, the PRC did not believe the Committee was competent enough to investigate the alleged acts of torture, as stated under article 20 of the Convention. China also declared its reservations regarding paragraph 1 of article 30 of the Convention, which states: “*Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.*”

<sup>26</sup> PRC’s Treaty Body reporting history is available at the UN Treaty Body Online Database [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=CHN&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=CHN&Lang=EN)

### *China and the Committee on the Elimination of Racial Discrimination*

China has been reviewed seven times by the Committee since its ratification. China's next report is due in 2023.<sup>27</sup>

Reporting Cycle	Name	Due Date	Submitted Date
XIV-XVII	CERD/C/CHN/14-17	21 Nov 2012	20 Jun 2013
X-XIII	CERD/C/CHN/10-13	28 Jan 2003	30 Jul 2009

Figure 2: PRC CERD reporting record (2000-2020)<sup>28</sup>

Neither of the PRC's State party's reports to the Committee on the Elimination of Racial Discrimination were submitted on time.

### *China and the Committee on Economic, Social and Cultural Rights<sup>29</sup>*

China has been reviewed twice by the committee since its ratification. Only two out of three of the PRC's State reports to the Committee on Economic Social and Cultural Rights were submitted on time. China's next State party report was due on 30 May 2019 and the report was submitted on 19 December 2019.

Reporting Cycle	Name	Due Date	Submitted Date
III	E/C.12/CHN/3	30 May 2019	19 Dec 2019
II	E/C.12/CHN/2	30 Jun 2010	30 Jun 2010
I	E/1990/5/Add.59	30 Jun 2002	27 Jun 2003

Figure 3: PRC CESCR reporting record (2000-2020)<sup>30</sup>

### *Lack of Adequate Information*

The PRC has repeatedly failed to provide Treaty Body committees with the information it was requested to submit. The Chinese delegation has often refused to respond or evaded the

<sup>27</sup> The CERD was ratified by the PRC in 1981. However, the PRC declared at the time of ratification that it had reservations on Article 22 of the convention and would not be bound by it.

Article 22 states: "Any dispute between two or more State Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement." The PRC has been reviewed seven times by the Committee, since its ratification. Their next report is due in 2023.

<https://www.hrichina.org/en/international-convention-elimination-all-forms-racial-discrimination-cerd>

<sup>28</sup>The PRC's Treaty Body reporting history is available at the UN Treaty Body Online Database [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=CHN&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=CHN&Lang=EN)

<sup>29</sup> The ICESCR was ratified by the PRC in 2001. However, PRC declared at the time of ratification, that it has reservations on article 8.1 (a) of the convention and would not be bound by it. The Chinese government will only implement article 8.1(a) 1 of the Covenant within the parameters of the Chinese Constitution, Trade Union Law and the Labour Law. The PRC stated that: "The application of Article 8.1 (a) of the Covenant to the People's Republic of China shall be consistent with the relevant provisions of the Constitution of the People's Republic of China, Trade Union Law of the People's Republic of China and Labor Law of the People's Republic of China."

<sup>30</sup> PRC's Treaty Body reporting history is available at the UN Treaty Body Online Database [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=CHN&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=CHN&Lang=EN)

Committees' questions regarding statistics of complaints, investigations, executions, and other crucial information. The PRC often justifies its refusal to give information with concern for state secrets. It also frequently brandishes claims that the country is too big, too populated, or otherwise too hard to obtain statistics on, which seems unlikely given the government's ability to control the entire country's media, internet, and mobile networks.<sup>31</sup> The State's persistent refusal to inform the Committees has made it nearly impossible for the TBs to accurately and comprehensively evaluate the human rights situation in the PRC.<sup>32</sup>

## SUBSTANTIVE COMPLIANCE

### *Lack of implementation*

An analysis of the concluding observations and recommendations issued on Tibet by the above mentioned three treaty bodies during the PRC's periodic reviews in the past two decades show that the Chinese government has consistently refused to address issues raised in the State report reviews. This was most apparent during the PRC's review by CAT in 2015 and CERD in 2018.<sup>33</sup> A large number of recommendations on Tibet in the Concluding Observations on China have remained unchanged for decades reinforcing the general perception that China is not serious about complying with its human rights obligations and that the Treaty Bodies system requires substantial reforms to further its goal to not just promote but also protect human rights.

This report presents an analysis of the most frequent recommendations made by CAT, CERD, and the Committee on Economic, Social and Cultural Rights (CESCR) in the past two decades on Tibet in particular and human rights in general.

### *China and the Committee Against Torture*

The PRC has shown no urgency in eradicating torture within the State, which it makes clear year after year of ignoring repeated recommendations from the Treaty Bodies to the State.

The CAT's Concluding Observations for the PRC are unusually long compared to the recommendations to other State parties due to the number and severity of issues. The Concluding Observations in the years 2008 and 2016 are much longer than that of 2000, reflecting the increasing gravity of these issues. New problems could have been avoided if the HRTB's recommendations had been followed, but this has not been the case. Major concerns like the PRC's refusal to define torture, its lack of adequate due process, issues of arbitrary detention, and its unwillingness to provide disaggregated data have repeatedly shown up within each periodic review over the last twenty years, reflecting China's contempt for the Treaty Body.<sup>34</sup>

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<sup>31</sup> Ibid.

<sup>32</sup> Civil Society Follow-Up Report Submitted to the UN Committee Against Torture: Responses to the Committee's Requests & to China's Follow-up Report, Network of Chinese Human Rights Defenders (CHRD) in Collaboration with a Consortium of Chinese Civil Society Groups, June 19, 2017 <https://www.nchrd.org/2017/06/civil-society-follow-up-report-submitted-to-un-committee-against-torture-jun-2017/>

<sup>33</sup> <https://www.ohchr.org/EN/Countries/AsiaRegion/Pages/CNIndex.aspx>

<sup>34</sup> Richardson, S. (2015, December 09). China: UN Review Slams Lack of Progress on Torture. <https://www.hrw.org/news/2015/12/09/china-un-review-slams-lack-progress-torture>

China has responded to many of the Committee's questions with absurd excuses, such as the term “torture” being difficult to translate into Chinese, that solitary confinement was used only as a “management method”, and that “tiger chair” torture tool is used as a “protective measure” for detainees.<sup>35</sup>

The Committee recently noted some positive advances in China’s Criminal Procedure Law since its last review in 2008, namely, the amendment of Criminal Procedure Law in 2012 to allow detainees quicker access to their lawyers and ban the use of confessions obtained through torture. However, it also allows for loopholes, particularly with those that are charged with “terrorism” or “endangering state security”. In these cases, the amendment removes basic safeguards for detainees, including access to lawyers during police interrogations. This allows for the increased risk of self-incrimination and forced “confessions”, which is in violation of article 15.

The new article 54 of the amended Criminal Procedure Law states that “*confession by a suspect or a defendant obtained through torture and extortion and other illegal means and witness testimonies and victim statements obtained through the use of violence, threats and other illegal means should be excluded.*”.<sup>36</sup> However, any illegally obtained evidence can still be used so long as police can “justify” their actions. This means that torture and ill-treatment can be used to obtain evidence as long as that evidence is critical for “proving” a defendant’s guilt.<sup>37</sup>

The PRC claims that the country does not have any human rights-related problems, or, if it does, that the State is currently resolving them or has already resolved them. In the PRC’s last review before the CAT in 2015, UN Ambassador Wu Hailong denied most of the issues brought up by the Committee, even claiming that all detainees had access to a lawyer and that all lawyers are free to practice their trade without any government interference.<sup>38</sup> Despite failing to provide information about 24 of 26 Tibetan cases that the Committee had asked PRC to provide in the previous review, Ambassador Wu stuck to the standard PRC practice of repeating the same line on non-existence of any political prisoners in PRC, improved detention conditions including adequate medical facilities and personnel in detention centers and prisons, and the ‘sense of comfort’ and ‘safety’ the dreaded ‘Tiger Chair’ torture tool provides to the detainees during interrogation.

To date, the PRC has not fulfilled any of the recommendations made on Tibet by the Committee particularly in relation to the widespread crackdown in 2008 that caused the death of hundreds of Tibetans and arbitrary detention and enforced disappearances of thousands in Tibet Autonomous Region and other Tibetan areas in Gansu, Sichuan and Qinghai.<sup>39</sup>

### *China and Committee on the Elimination of Racial Discrimination*

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<sup>35</sup> UN Torture Committee Concludes Review of China with Scathing Observations. (2015, December 09). R from

<https://www.hrichina.org/en/press-work/press-release/un-torture-committee-concludes-review-china-scathing-observations>

<sup>36</sup> China Submission to the United Nations Committee Against Torture, Amnesty International (2015).

[https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT\\_CAT\\_NGO\\_CHN\\_19723\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/CHN/INT_CAT_NGO_CHN_19723_E.pdf)

<sup>37</sup> Ibid.

<sup>38</sup> Tiezzi, S. (2015, December 10). UN Committee Urges China to Halt Torture.

<https://thediplomat.com/2015/12/un-committee-urges-china-to-halt-torture/>

<sup>39</sup> Concluding observations of the Committee against Torture, CAT/C/CHN/CO/4, 12 December 2008

During its last review with the CERD in 2018, the Chinese delegation shocked the committee by flatly denying accounts of human rights violations in all areas of the PRC, including Tibet.<sup>40</sup>

In response to the Committees' questions, a Chinese delegation stated that "Tibetans in Tibet are happy, and the Chinese government has spent billions of dollars for the development of Tibet Autonomous Region." The delegation also stated that the rising rate of Tibet's GDP was much higher than the national GDP.<sup>41</sup>

The Chinese delegation became defensive during the review, even questioning the basis of the Committee's questions and recommendations as well as the members' own expertise. According to the delegation, some of the Committee's information was sourced from "terrorists" or, at the very least, from organizations with explicitly anti-Chinese political intent. The delegation added that they hope that the committee would carefully screen unsubstantiated materials from the political groups who want to split the state and incite confusion.<sup>42</sup>

Afterwards, Professor Gun Kut, Committee Rapporteur for Follow-up to Concluding Observations, expressed disappointment in the Chinese delegation's evasive and defensive answers. The delegation deliberately formulated their answers in a way to signify the questions as baseless and uninformative, said Professor Kut, stating that he regretted there was not a more "fruitful discussion" aimed at actually improving the situation of rights holders in the PRC.<sup>43</sup>

During the PRC's review in 2009, the Committee reiterated its request to the state party to provide statistics disaggregated by ethnicity to ascertain that the economic and social development benefits touted in official reports are actually reaching the Tibetans.<sup>44</sup> Reminding the PRC of its assurance in 2001 review that the state party had no plans to encourage large-scale migration of Chinese settlers into areas inhabited by "ethnic minority" population, the Committee pointed out that one of the major causes of protests among the Tibetans in 2008 and the Uyghurs in 2009 was the dramatic change in the demographic composition brought about the continued influx of Chinese settlers. Lhasa, where the Chinese have become the majority, was cited as an example.<sup>45</sup>

In a follow-up letter in 2011 to PRC, Anwar Kemal, the Committee chairperson noted that in the same period China achieved the advancement of economic and social development during the National Human Rights Action Plan (2009-2010), it refused requests to visit Tibet Autonomous Region by the UN High Commissioner for Human Rights and six UN special rapporteurs.

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<sup>40</sup> China: Beijing Denies UN CERD's Concerns over Tibetans and Uyghurs. (2014, August 14).

<https://unpo.org/article/21028>

<sup>41</sup> Admin. (2018, August 14). Committee On the Elimination of Racial Discrimination Reviews the Report of China.

<https://www.tibetoffice.ch/2018/08/14/committee-on-the-elimination-of-racial-discrimination-reviews-the-report-of-china/>

<sup>42</sup> *ibid*

<sup>43</sup> *ibid*

<sup>44</sup> CERD/C/SR.1942, 14 August 2009

<sup>45</sup> *Ibid*.

## *China and the Committee on Economic, Social and Cultural Rights*

Economic and social rights remain mostly unrecognised within Chinese legislative framework. In 2004, the PRC amended its 1982 Constitution to ensure that “the state respects and protects human rights”. Chapter II of the Constitution contains various terms dealing with the subject-matter of the ICESCR; however, the formulation of the rights set out in the Constitution differs from the rights of the Covenant. Many of the rights of the Covenant also have no equivalent within the Constitution. In addition, UN human rights treaties are only applied in Chinese courts after they are transformed into domestic law through legislative procedures. These treaty bodies are not referenced in Chinese courts, and economic and social rights are not dealt with in specific human rights terms in Chinese legislation.<sup>46</sup>

At the end of the CESCR’s second review of China in 2014, Country Rapporteur Mr. Schrijver stated that he was appreciative of the Chinese delegation’s open attitude and acceptance that there was a need for improvement in the promotion and protection of human rights in PRC. He also stated, however, that he must emphasize concern regarding the quantity of reports the Committee had received regarding restrictions of human rights defenders and lawyers and of the retaliation against them.<sup>47</sup>

It was also pointed out that PRC authorities had consulted very little with civil society organisations in preparation for its CESCR review and in trying to fulfil its obligations under the treaty body convention. CESCR member Ms. Heisoo Shin, stated that “the sample of ‘nearly 20 national-level non-governmental organizations’ consulted in the preparation of the current report was tiny for a country the size of China.”<sup>48</sup> Thus she “urged the State party to consult NGOs and civil society more widely prior to reporting and to extend and enhance NGO engagement in general.”<sup>49</sup>

As with all of PRC’s treaty body reviews, the lack of adequate information was noted. CESCR stated that this information is needed to “allow for an accurate assessment of the fulfilment of economic, social and cultural rights in the State party,”<sup>50</sup> and the Committee urged the State party “to develop systematic data collection and the production and use of statistics for human rights indicators, including for economic, social and cultural rights based upon such data”. The Committee requested that PRC include statistical data on the enjoyment of each Covenant right, in the next periodic report, “disaggregated by age, sex, ethnic origin, urban/rural population and other relevant status on an annual comparative basis.”<sup>51</sup>

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<sup>46</sup> The Costs of International Advocacy. (2020, April 10).

<https://www.hrw.org/report/2017/09/05/costs-international-advocacy/chinas-interference-united-nations-human-rights>

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid.

<sup>50</sup> UN DOC. E/C.12/UGA/CO/1 Economic and Social Council.

<https://undocs.org/pdf?symbol=en/E/C.12/UGA/CO/1>

<sup>51</sup> UN DOC E/C.12/UGA/CO/1 Economic and Social Council.

<https://undocs.org/pdf?symbol=en/E/C.12/UGA/CO/1> cited in

NGO Mid-Term Assessment of China’s Implementation of 2<sup>nd</sup> Universal Periodic Review (UPR)

Recommendations, Network of Chinese Human Rights Defenders (CHRD) and multiple Chinese civil society groups and human rights defenders inside China (2016, November 22).

[https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/HumanRightsChina\\_3.pdf](https://www.ohchr.org/Documents/HRBodies/UPR/NGOsMidTermReports/HumanRightsChina_3.pdf)



The Committee's recommendations in 2014 reiterated two thirds of the recommendations that were made in 2005.<sup>52</sup> This, along with the fact that PRC was four years late in submitting its second report to the Committee, demonstrates how unresponsive PRC is in complying with and implementing the obligations under the covenant.

Despite being party to six of the ten human rights treaties, the PRC has done little to address pressing human rights concerns. The Treaty Bodies need stronger mechanisms to promote substantive compliance from State parties.

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<sup>52</sup> E/C.12/CHN/CO/2, 13 June 2014

## HUMAN RIGHTS TREATY BODY REFORM

The UN Treaty Body system is fundamental to the international human rights protection system. However, as the number of treaty bodies has increased in recent decades, so have the challenges and obstacles they face. Ongoing problems of “efficiency, effectiveness, and legitimacy” have prompted an ongoing review of the treaty body system by the UN.

Structural challenges, such as the backlog of un-reviewed reports and individual complaints –the result of poor reporting compliance by states parties – as well as weak follow-up mechanisms at national levels have impeded implementation of Treaty Body recommendations.<sup>53</sup>

The 2020 review of the Treaty Bodies must aim to fulfil the TBs’ original purpose: promote the universal implementation of human rights treaties.<sup>54</sup> Reforming TB reporting procedure is not enough. While new structures can help ensure that State parties submit adequate, timely reports on the human rights situation in their respective countries, we also need mechanisms that compel States to implement the subsequent TB recommendations.<sup>55</sup>

### BACKGROUND

Since the establishment of the first Treaty Body in 1969, the system’s size and activities have grown considerably. Ten treaty bodies, made up of independent expert committees, bring international norms and standards to life by interpreting their respective human rights treaties and monitoring their implementation by State parties.<sup>56</sup>

The Treaty Body committees are supported by the UN’s human rights secretariat (the Office of the High Commissioner for Human Rights, OHCHR). They are primarily funded by the UN General Assembly. Each of the Treaty Bodies has between 10 and 25 unpaid experts who are elected at the meetings of States Parties or ECOSOC (in the case of CESCR)<sup>57</sup> and convenes for up to 14 weeks per year. Although experts are nominated and elected by states parties to the treaties, they are expected to serve in their personal capacities. The TBs have the authority to establish their own rules of procedure and working methods, allowing them to be operationally independent from states.<sup>58</sup>

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<sup>53</sup> Treaty Body Strengthening. (n.d.). Retrieved September 17, 2020, <https://www.ohchr.org/EN/HRBodies/HRTD/Pages/TBStrengthening.aspx>

<sup>54</sup> Oette L. (2018) The UN Human Rights Treaty Bodies: Impact and Future. In: Oberleitner G. (eds) International Human Rights Institutions, Tribunals, and Courts. International Human Rights. Springer, Singapore. [https://doi.org/10.1007/978-981-10-4516-5\\_5-1](https://doi.org/10.1007/978-981-10-4516-5_5-1)

<sup>55</sup> The Reform of the United Nations' Human Rights Treaty Bodies. (2014, August 08). <https://www.asil.org/insights/volume/18/issue/16/reform-united-nations%E2%80%99-human-rights-treaty-bodies>

<sup>56</sup> Human Rights Bodies. (n.d.). <https://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>

<sup>57</sup> Oette L. (2018) The UN Human Rights Treaty Bodies: Impact and Future. In: Oberleitner G. (eds) International Human Rights Institutions, Tribunals, and Courts. International Human Rights. Springer, Singapore. [https://doi.org/10.1007/978-981-10-4516-5\\_5-1](https://doi.org/10.1007/978-981-10-4516-5_5-1)

<sup>58</sup> UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, 15 January 2009, A/HRC/10/61 <https://www.refworld.org/docid/498811532.html> [accessed 17 September 2020]

States are obliged to report periodically to the Treaty Bodies on their compliance with treaty obligations. This reporting obligation has three benefits for the State under review: self-assessment, national dialogue, and international exposure to expert advice and good practices. Advice from the TBs comes mainly in the form of Concluding Observations, which are meant to identify where States are facing issues with human rights implementation and recommend ways in which the State can improve.

Considering the three Treaty Bodies examined in this report, the Committee on the Elimination of Racial Discrimination (CERD) was the first treaty body to be established in 1969. The second was the Committee on Economic, Social, and Cultural Rights (CESCR), which was established as the UN Economic and Social Council (ECOSOC) in 1985. Today there are ten Treaty Bodies, including the Committee against Torture (CAT), founded in 1987.<sup>59</sup> Most of the Treaty Bodies have a set of common core functions, namely, consideration of States Parties reports and of individual complaints as well as the adoption of general comments/recommendations.

Generally, human rights-related NGOs can interact with the treaty bodies and do not require ECOSOC accreditation to do so. There are multiple formal and informal ways in which NGOs and other civil society actors can provide input into the work of the treaty. Several of the treaty bodies, such as CESCR and CRC, have specific guidelines for NGO participation in their work.<sup>60</sup>

Whether or not they are involved in preparing the State report, NGOs and other stakeholders can submit their own reports to the Treaty Bodies based on their research, findings and views on the implementation of the relevant treaty at the national level. These reports are essential to examining a State party's record because they provide insight into a country's human rights situation beyond the State Party's portrayal.<sup>61</sup>

NGOs may attend the plenary sessions of the treaty bodies as observers. To do so, NGOs must obtain accreditation from the secretariat of the relevant committee in advance. NGOs cannot participate in the formal dialogue between the treaty body and the concerned State. NGOs can also participate in briefings either before or during the treaty body sessions. For example, CESCR holds a pre-sessional briefing open to NGOs, who may present oral or written submissions.<sup>62</sup>

The participatory nature of processes, particularly the reporting procedure, and the authority of treaty bodies have made their findings, decisions and recommendations important advocacy tools for civil society and national institutions worldwide<sup>63</sup>. Without access to these

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<sup>59</sup> Oette L. (2018) The UN Human Rights Treaty Bodies: Impact and Future. In: Oberleitner G. (eds) International Human Rights Institutions, Tribunals, and Courts. International Human Rights. Springer, Singapore. [https://doi.org/10.1007/978-981-10-4516-5\\_5-1](https://doi.org/10.1007/978-981-10-4516-5_5-1)

<sup>60</sup> UPDATED: Simple Guide to the UN Treaty Bodies - Guide Simple sur les organes de traités des Nations Unies. (2015, July 16). Retrieved September 17, 2020, from <http://www.ishr.ch/news/updated-simple-guide-un-treaty-bodies-guide-simple-sur-les-organes-de-traites-des-nations-unies>

<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Oette L. (2018) The UN Human Rights Treaty Bodies: Impact and Future. In: Oberleitner G. (eds) International Human Rights Institutions, Tribunals, and Courts. International Human Rights. Springer, Singapore. [https://doi.org/10.1007/978-981-10-4516-5\\_5-1](https://doi.org/10.1007/978-981-10-4516-5_5-1)

treaty body processes, human rights activists everywhere would lose a critical forum for dialogue, critical scrutiny and awareness raising.<sup>64</sup>

## THE DUBLIN PROCESS

The Treaty Body strengthening process, named the Dublin Process, was initiated when, in her statement to the Human Rights Council on 14 September 2009, the former High Commissioner for Human Rights Navanethem Pillay, launched a three-year-long consultation process among all key stakeholders aiming to streamline and strengthening the treaty body system. She defined the purpose of the process as an effort “to improve the impact of Treaty Bodies on rights-holders and duty-bearers at the national level by strengthening the functioning of treaty bodies while fully respecting the independence of the latter”.<sup>65</sup>

Relevant human rights stakeholders were invited to design more efficient, harmonized working methods for the Treaty Bodies. High Commissioner Pillay then summarized those ideas in a report, recommending strategies that focus on "the availability of resources; increasing accessibility and visibility; streamlining of reporting and working methods and improving coordination between the treaty bodies"<sup>66</sup>. An inter-governmental process aimed at strengthening and enhancing the effective functioning of the system also reflected on the proposals<sup>67</sup>. Then, in 2014, UN General Assembly resolution 68/268 set an overall review of the proposals to take place in 2020<sup>68</sup>.

## HIGH COMMISSIONER NAVANETHEM PILLAY’S 2012 REPORT

### *Independent Experts*

The High Commissioner's report makes several recommendations to improve the quality and expertise of Treaty Body Committee membership. First, it adopts the popular suggestion from the consultations that States use open and transparent selection processes so that only qualified personnel who are willing to take on the responsibilities of membership are selected. Second, the report recommends that persons in positions – government or otherwise – that may put them at risk of a conflict of interest or pressure should not be nominated or elected.<sup>69</sup> These recommendations aim to discourage State parties from nominating active diplomats and government officials as candidates for Treaty Body membership. This is echoed in the General Assembly resolution, which states that the Addis Ababa Guidelines– developed to regulate the ‘independence and impartiality of the treaty body members’<sup>70</sup>– should be adopted by Treaty Bodies and conveyed to State Parties.<sup>71</sup>

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<sup>64</sup> Ibid.

<sup>65</sup> Opening address by Ms. Navi Pillay, United Nations High Commissioner for Human Rights for the Treaty body strengthening Consultation for States parties. (2012, April 2). Retrieved September 17, 2020, from <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12035>

<sup>66</sup> Pillay N (2012) Strengthening the United Nations Human Rights Treaty Bodies: A report by the United Nations High Commissioner for Human Rights, [www2.ohchr.org/English/bodies/HRTD/docs/HCreportTBStrengthening.pdf](http://www2.ohchr.org/English/bodies/HRTD/docs/HCreportTBStrengthening.pdf).

<sup>67</sup> Suzanne Egan, ‘Strengthening the United Nations Human Rights Treaty Body System’ HRLR (2013) 13 (2) 209, 232.

<https://www2.ohchr.org/English/bodies/HRTD/docs/HCreportTBStrengthening.pdf>

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Guidelines on the Independence and Impartiality of Members of the Human Rights Treaty Bodies (“the Addis Ababa guidelines) A/67/22 I preamble.

<sup>71</sup> General Assembly A/RES/68/268 para 36-37.

If a State party is treated preferentially due to political pressure, it risks undermining the effectiveness of the whole treaty body system. The Geneva Academy suggests that the determination of a Treaty Body member's independence should be assessed upon "concrete situations that may constitute conflicts of interest".<sup>72</sup> The situations in which conflicts of interest arise are when a member is a national or resident of, or has ties to, the State under scrutiny.<sup>73</sup>

To date, the only Treaty Body that recommends independence of its membership is the Committee on the Elimination of Racial Discrimination. Other Treaty Bodies require only impartiality.<sup>74</sup>

Currently, there are 172 committee members of the Treaty Bodies, and there has been evidence to show that there is a frequent affiliation to the executive branch of State parties. For instance, 55 members have an affiliation to the executive in their state of origin.<sup>75</sup>

Whether or not these recommendations are implemented depends entirely on the States Parties. In order to empower civil society actors and National Human Rights Institutions to monitor the election of treaty body members and advocate for suitable candidates, the high commissioner's report proposes that OHCHR create an 'open space' where States present their potential candidates for nomination to the Treaty Bodies.<sup>76</sup> This, likely digital, open space would be moderated by five former treaty body members. By opening the nomination process to CSOs and NHRIs, this proposal could ensure a more transparent election process with better quality candidates.<sup>77</sup>

### *Comprehensive Reporting Calendar*

The High Commissioner's report focuses heavily on proposals to streamline the reporting procedures,<sup>78</sup> including a harmonized reporting calendar for all treaties with mandatory reporting obligations.<sup>79</sup> NGOs have promoted this idea for years,<sup>80</sup> and the Secretary General formally proposed it to the General Assembly in 2011.<sup>81</sup> The calendar would include all TB reporting deadlines within a five-year cycle and assume a 100% compliance rate, "whereby

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<sup>72</sup> Geneva Academy of International Humanitarian Law and Human Rights 'The Independence of UN Human Rights Treaty Body Members' December 2012 Academy in-brief No. 1 12, <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Independence%20of%20UN%20Human%20Rights%20Treaty%20Body%20MembersGenevaAcademGeneva.pdf>

<sup>73</sup> Guidelines on the Independence and Impartiality of Members of the Human Rights Treaty Bodies ("the Addis Ababa guidelines) A/67/22 para 3.

<sup>74</sup> Fundamental challenges of the UN human rights treaty body system (2015) Geneva Academy. <https://www.geneva-academy.ch/joomlatools-files/docman->

<sup>75</sup> Fundamental challenges of the UN human rights treaty body system (2015) Geneva Academy. <https://www.geneva-academy.ch/joomlatools-files/docman->

<sup>76</sup> Suzanne Egan, 'Strengthening the United Nations Human Rights Treaty Body System' HRLR (2013) 13 (2) 209, 232, <https://www2.ohchr.org/English/bodies/HRTD/docs/HCreportTBStrengthening.pdf>

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

<sup>79</sup> This includes the periodic reporting obligations contained in the core human rights treaties, the 'once-off' reporting obligations provided for in the International Convention on the Protection of Persons from Enforced Disappearances (ICPED) 2006, A/61/488 and reports due under the two substantive protocols to the CRC. See generally Egan, supra n 4 at 131-177.

<sup>80</sup> See Treaty Body Reform Following the Secretary General's Proposals: NGO Non-Paper, 24 June 2003, available at: <http://www.iwraw-ap.org/news/archive08.htm> [last accessed 10 January 2013].

<sup>81</sup> Measures to improve further the effectiveness, harmonization and reform of the treaty body system: Report of the Secretary-General, 7 September 2011, A/66/344, paras 27-29.

each State would be expected to submit a maximum of two reports per year with the constructive dialogue for each submitted report taking place within one year of submission”<sup>82</sup>

Broadly endorsed by NGOs,<sup>83</sup> the proposal aims for more consistent submission and review of State reports. Currently, the Treaty Bodies schedule meetings depending on when (or whether) reports are received, rather than when their respective treaties say they are due. In her report “Strengthening the United Nations Human Rights Treaty Body System”, Suzanne Egan explains, “this has led to an inequitable situation whereby States that report on time are reviewed more systematically than others, whereas reviews for defaulting States are regularly pushed back until such time as the treaty bodies have time to conduct a review in the absence of a report”.<sup>84</sup> Furthermore, under the current system, States that do submit their reports on time may become overwhelmed with obligations to report to multiple different treaties in the same year. The High Commissioner’s ‘Master Calendar’ proposal would have established a mandatory schedule according to which every State would report under every treaty to which it is a party once every five years, with states reporting to no more than two treaty bodies per calendar year. Under this scheme, a Treaty Body would review a state even if it failed to submit a report on schedule.<sup>85</sup>

Unfortunately, the calendar was not supported by the General assembly resolution since it would significantly increase the Treaty Bodies’ meeting time. However, the General Assembly should revisit the suggestion for a harmonized TB reporting calendar, as it would make reporting obligations more predictable and likely lead to greater reporting compliance among State parties.<sup>86</sup>

### *Simplified Reporting Procedure*

The High Commissioner’s report urges all Treaty Bodies and States parties to implement an optional “simplified reporting procedure” (SRP).<sup>87</sup> The SRP essentially replicates the List of Issues Prior to Reporting (LOIPR) procedure, which Philip Alston introduced in his 1993 expert report on the treaty bodies<sup>88</sup>. The optional LOIPR procedure has been implemented by the Committee Against Torture (CAT), CPPR and Committee on Migrant Workers (CMW).<sup>89</sup>

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<sup>82</sup>UNHCHR Report, supra n 1 at 37-38. Cited in

Suzanne Egan, Strengthening the United Nations Human Rights Treaty Body System, *Human Rights Law Review*, Volume 13, Issue 2, June 2013, Pages 209–243, <https://doi.org/10.1093/hrlr/ngt008>

<sup>83</sup> Strengthening the United Nations Treaty Bodies: A Preliminary response from non-governmental organizations, 13 July 2012, (‘NGO Preliminary Response to the UNHCHR Report’), available at: <http://www.amnesty.org/en/library/info/IOR40/015/2012/en> [last accessed 10 January 2013].

<sup>84</sup> Suzanne Egan, Strengthening the United Nations Human Rights Treaty Body System, *Human Rights Law Review*, Volume 13, Issue 2, June 2013, Pages 209–243, <https://doi.org/10.1093/hrlr/ngt008>

<sup>85</sup>UNHCHR Report, supra n 1 at 40. It is envisaged that the first six months after submission of each State report would allow for “others” to contribute supplementary information, with the following six months set aside for the treaty body concerned and the Secretariat to prepare for the constructive dialogue: *ibid.* at 38.

<sup>86</sup> Fundamental challenges of the UN human rights treaty body system (2015) Geneva Academy. <https://www.geneva-academy.ch/joomlatools-files/docman-files/Research%20documents/Background%20Paper%20English.pdf>

<sup>87</sup> UNHCHR Report, supra n 1 at 47-50. Implementation of this proposal can be achieved in the context of the comprehensive reporting calendar or without.

<sup>88</sup> See Interim Report, supra n 3 at paras 174-182 and elaborated further in the Final Report, *ibid.* at paras 91-93.

<sup>89</sup> Suzanne Egan, ‘Strengthening the United Nations Human Rights Treaty Body System’ HRLR (2013) 13 (2) 209, 232.

If a State party agrees to use the SRP method, each of their reports would be structured as a series of answers to a questionnaire created by relevant Treaty Body. The format for SRP questionnaires would be standardized and consist of a maximum of 25 questions and 2500 words.<sup>90</sup>

The General Assembly resolution encourages the Treaty Bodies to offer States the SRP and for States to accept the procedure, as it would focus reports while limiting the time States have to spend on creating documents. After CAT adopted the LOIPR procedure, compliance with Treaty Body obligations doubled between 2010 and 2011, suggesting that the SRP may improve reporting compliance for all HRTBs. The limited word count would reduce TB spending on translation and reduce the amount of time that TBs spend on drafting lists of issues.<sup>91</sup>

## **RESOLUTION 68/268**

The General Assembly resolution 68/268 called for the formal review of the Treaty Body system in 2020. It was agreed that the review should proceed with a “multi-stakeholder approach that includes States, academia, civil society, national human rights institutions, experts, and treaty bodies”.<sup>92</sup> The 2020 review presents States and other stakeholders with the chance to reflect on the TB system’s future and develop innovative reform proposals to further protect international human rights.

However, the resolution failed to endorse proposals that would have urged states to both honour their reporting obligations *and* implement Treaty Body recommendations. Various proposals from stakeholders that focused on improving the impact of TBs, such as having systematic follow-up mechanisms for implementation of their recommendations, were ignored.<sup>93</sup> For example, the resolution did not endorse the High Commissioner’s crucial recommendation that State parties should establish national mechanisms to coordinate their interaction with the Treaty Bodies.<sup>94</sup>

The resolution also disappointingly recommends that Treaty Bodies apply word limits to submissions they receive from NGOs, even though contributions from such organisations do not use UN resources, such as translation services.<sup>95</sup>

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<sup>90</sup>UNHCHR Report, supra n 1 at 50 Suzanne Egan, Strengthening the United Nations Human Rights Treaty Body System, *Human Rights Law Review*, Volume 13, Issue 2, June 2013, Pages 209–243, <https://doi.org/10.1093/hrlr/ngt008>

<sup>91</sup> Naomi Davis (2015) An assessment of the effectiveness of the treaty-based supervision mechanisms, and a discussion on whether the weaknesses of the treaty-based supervision are structural as opposed to political in nature. LLM International Human Rights and International Criminal Law. Bangor University.

<sup>92</sup> Treaty Bodies: Maximising the effectiveness of the treaty bodies, where to now? (2017, October 31). Retrieved from <https://www.ishr.ch/news/treaty-bodies-maximising-effectiveness-treaty-bodies-where-now>

<sup>93</sup> Ploton, V. (2014, July 10). More ambition required to reform UN treaty bodies. Retrieved from <https://www.opendemocracy.net/en/openglobalrights-openpage/more-ambition-required-to-reform-un-treaty-bodies/>

<sup>94</sup> Broeker, C., & O’Flaherty, M. (2020, May 06). The Outcome of the General Assembly’s Treaty Body Strengthening Process: An Important Milestone on a Longer Journey. Retrieved from <https://www.universal-rights.org/urg-policy-reports/the-outcome-of-the-general-assemblys-treaty-body-strengthening-process-an-important-milestone-on-a-longer-journey/>

<sup>95</sup> Treaty Body Reform: The Dublin Process, ISHR, (2013, April 11). Retrieved from <http://www.ishr.ch/news/treaty-body-reform-dublin-process>

The resolution falls short of expectations<sup>96</sup> in large part because it does not address the weak reporting compliance among many States. At the time of writing, only 27 of 197 States were fully compliant with their reporting obligations.<sup>97</sup> The state reporting process is based on the obligation of state parties to periodically report on the implementation of each UN human rights treaty and Optional Protocol it has ratified, usually every 4 or 5 years.<sup>98</sup> In its biennial report to the General Assembly in January 2020, the Secretary-General reported that as of 31 October 2019, 159 States parties (81 per cent) had 569 reports overdue. In the previous reporting period, 163 States parties (83 per cent) had 578 reports overdue, 266 initial and 312 periodic.<sup>99</sup>

Criticisms of the treaty body system are essentially concentrated on the States' reporting procedure. Some States parties do not submit their reports at all. Others do report, but late. These factors hinder the treaty bodies from correctly and timely evaluating the human rights situation in the country. The failure to properly report can be attributed to a number of factors, including limited capacity of States parties, multiple reporting obligations and, crucially, a lack of incentive, since States face virtually no political repercussions for non-compliance.<sup>100</sup>

## ADDITIONAL REFORM PROPOSALS

### *Accessibility*

To date, civil society organizations have not had sufficient opportunities to contribute to Treaty Body strengthening. Christen Broecker, Deputy Director of the Jacob Blaustein Institute for the Advancement of Human Rights<sup>101</sup>, noted, “the platform for civil society engagement has been limited and the processes not fully transparent. It is a disservice to people seeking to use the treaty body system to be divorced from momentous conversations about their future”.<sup>102</sup>

The UN Human Rights Treaty Body system should be brought “closer to the people on the ground.”<sup>103</sup> Efforts to improve accessibility could start with convening Treaty Body regional meetings away from their home base at Palais Wilson, enabling the Treaty Bodies to dialogue

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<sup>96</sup> Ploton, V. (2014, July 10). More ambition required to reform UN treaty bodies. Retrieved from <https://www.opendemocracy.net/en/openglobalrights-openpage/more-ambition-required-to-reform-un-treaty-bodies/>

<sup>97</sup> List of States parties without overdue reports, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/LateReporting.aspx](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/LateReporting.aspx)

<sup>98</sup> Alston, P., & Crawford, J. (Eds.). (2000). *The future of UN human rights treaty monitoring*. Cambridge: Cambridge University Press

<sup>99</sup> UN General Assembly, *Status of the human rights treaty body system*, 10 January 2020, available at: <https://digitallibrary.un.org/record/3849276>

<sup>100</sup> Lawrence J. LeBlanc, Ada Huibregtse & Timothy Meister (2010) Compliance with the reporting requirements of human rights conventions, *The International Journal of Human Rights*, 14:5, 789-807, DOI: [10.1080/13642980903504124](https://doi.org/10.1080/13642980903504124)

<sup>101</sup> <https://www.jbi-humanrights.org/jacob-blaustein-institute/jbi-programs.html>

<sup>102</sup> Treaty Bodies: Maximising the effectiveness of the treaty bodies, where to now? (2017, October 31). <https://www.ishr.ch/news/treaty-bodies-maximising-effectiveness-treaty-bodies-where-now>

<sup>103</sup> Heyns, C., & Gravett, W. (2018, April 24). Bringing the UN Treaty Body system closer to the people. Retrieved from <https://www.universal-rights.org/blog/bringing-un-treaty-body/>



with local people on the ground, not just with government officials or prominent INGOs that are able to attend sessions in Geneva.<sup>104</sup>

### *Implementation of Treaty Body Recommendations*

Efforts to revise Treaty Body procedures or improve State party reporting compliance means little if States do not later implement TB Committee recommendations.<sup>105</sup>

Treaty Body Committee recommendations receive great attention from drafters and lobbyists while being formulated, but are forgotten afterwards. Human rights experts, diplomats, NGOs, NHRIs, and lobbyists work to ensure their priorities are reflected in the drafted recommendations but spend much less attention verifying whether State parties implement those resolutions in concrete ways.<sup>106</sup>

UN Treaty Bodies must spend fewer resources on formulating concluding observations and more on monitoring and evaluating State parties' on-the-ground implementation of those recommendations. This could entail standardized follow-up and grading systems modelled after those already in use by several HRTBs.

The UN Human Rights Committee, which monitors the implementation of the Covenant on Civil and Political Rights (ICCPR), was the first TB to systematically follow-up on and track implementation of its recommendations.<sup>107</sup> The system, adopted in 2013, grades States from A to E. Grade A is the highest level of implementation and E is the worst.<sup>108</sup> In its review of the State's periodic report, the Committee flags two to four key issues that require special attention. Stakeholders, including CSOs and NHRIs, as well as the State party, are then allowed 12 months to contribute information for the Committee's follow-up review.<sup>109</sup>

Four treaty monitoring bodies in addition to the Human Rights Committee have adopted similar procedures, including the Committee Against Torture, Committee for the Elimination of Racial Discrimination, Committee for the Elimination of Discrimination against Women, and Committee on Enforced Disappearances.<sup>110</sup> The CAT recently adopted a follow-up and grading procedure that builds on the Human Rights Committee procedure, adding innovative new elements that focus on the Committee's Concluding Observations.<sup>111</sup>

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<sup>104</sup> Ibid.

<sup>105</sup> Suzanne Egan, 'Strengthening the United Nations Human Rights Treaty Body System' HRLR (2013) 13 (2) 209, 232.

<sup>106</sup> Vincent Ploton, The Implementation of UN Treaty Body Recommendations, International Journal on Human Rights, Issue 25, July 2017

<https://sur.conectas.org/en/implementation-un-treaty-body-recommendations/>

<sup>107</sup> "Note by the Human Rights Committee on the procedure for follow-up to concluding observations," UN Doc CCPR/C/108/2, United Nations, October 21, 2013, accessed May 21, 2017, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F108%2F2&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F108%2F2&Lang=en)

<sup>108</sup> Vincent Ploton, The Implementation of UN Treaty Body Recommendations, International Journal on Human Rights, Issue 25, July 2017

<https://sur.conectas.org/en/implementation-un-treaty-body-recommendations/>

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

<sup>111</sup> "Guidelines for Follow-up to Concluding Observations," UN Doc. CAT/C/55/3, CAT, September 17, 2015, accessed May 21, 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/210/35/PDF/G1521035.pdf?OpenElement>.

## CONCLUSION

Although the treaty body system will benefit from measures to strengthen its efficacy during the 2020 review, more comprehensive and fundamental reform efforts are required to "strengthen the capacity of rights-holders to enjoy their human rights". A state-centric approach to strengthening the treaty body system will contribute little to making the system effective and accessible to key stakeholders, such as civil society organizations and victims of human rights abuses. Therefore, while the independence and impartiality of the treaty body members and a clear, streamlined and feasible reporting system are important to avoid conflicts of interest and maintaining transparent human rights monitoring, it is also critical to foster a free and secure space for all stakeholders to engage with the treaty body system.

Furthermore, any efforts at reforming the treaty body system should be aimed at fulfilling the goal of promoting and protecting human rights. The actual implementation of treaty body recommendations at the national level is indispensable to fulfil this goal. As shown in the preceding sections, despite the deteriorating human rights situations in Tibet, the PRC has not implemented the most pressing recommendations issued by CAT, CERD, or CESCR during its periodic reviews. It shows that although a State party may have complied with some of procedural obligations, like submitting (some) State party reports, it can still consistently fail to fulfil the substantive obligations of adhering to the human rights standards in the treaties. One solution might be for all Treaty Bodies to adopt an implementation grading system, rating States from A to E. It is only through these kinds of innovative mechanisms that stakeholders will be able to fully engage, counteract politicisation of the Treaty Body recommendations, and turn them into a reality for rights holders in the PRC and around the world.

## RECOMMENDATIONS

The recommendations proposed in this report are aimed at restoring the dignity and authority of the treaty bodies and at enhancing their capacity to overcome challenges posed by states parties attempting to exploit the system to further political agendas.

We recommend that the Treaty Bodies:

Improve procedural and substantive coordination between themselves by:

- Aligning working methods wherever standardization of working methods would not be detrimental to rights-holders;
- Coordinating between Committees to enforce States' human rights obligations with the underlying principle that rights are interdependent and indivisible.

Improve accessibility, visibility and predictability by:

- Strengthening NGO engagement at all stages of the review process, while taking concrete steps to prevent intimidation and reprisals;
- Using technology to ensure members of civil society organizations can remotely participate during NGO consultations;
- Streamlining and aligning procedures relating to the individual communications procedure wherever standardization of such procedures would not be detrimental to rights-holders;
- Holding sessions outside of Geneva to make the Treaty Bodies more accessible to local CSOs or NHRIs.

Improve reporting predictability and regularity by:

- Introducing, fixed, predictable calendars across all Treaty Bodies for regular State party reporting and reviews, including in the absence of reports.

Improve Treaty Body recommendation implementation by:

- Adopting a systematic follow-up system that grades States on their implementation of key Treaty Body recommendations.

We recommend that the Office of the High Commissioner for Human Rights:

- Helps the Treaty Bodies to coordinate a stable and predictable reporting and review calendar;
- Disseminates the predictable calendars in a way that is accessible to CSOs and NHRIs, encouraging them to more effectively engage with the Treaty Bodies.

We recommend that the government of the People's Republic of China:

- Ratify the four remaining core human rights treaty bodies;

- Produce the State report to the respective Committees within the previously agreed upon timeframe;
- End the use of reprisals and travel restrictions that are imposed upon civil society activists, so that they can freely participate in state reviews;
- Cease all inappropriate contact with Treaty Body members.

## Appendix

### Repeated Recommendations by CAT, CERD and CESC

#### CAT

SUBJECT	RECOMMENDATION	2000	2008	2016
Definition of Torture	[Include]comprehensive definition of torture in its legislation that is in full conformity with the Convention and covers all the elements contained in article 1, including the purpose of discrimination	X	X	X
	Ensure that all public officials and any other person acting in an official capacity or with the consent or acquiescence of a public official can be prosecuted for torture		X	X
Prolonged Pretrial detention	Reduce the 37-day maximum period of police custody and ensure, in law and in practice, that detained persons are promptly brought before a judge within a time limit in accordance with international standards, which should not exceed 48 hours		X	X
	Ensure that all detainees are either formally charged and remanded by a court pending trial or released			X
	Guarantee the right of detainees, any time during the detention, to challenge the legality or necessity of their detention before a judge who can order their immediate release			X
	Encourage the application of non-custodial measures as an alternative to pretrial detention			X
Access to lawyer and notification of custody	Amend its legislation and grant all detainees the right to have access to a lawyer from the very outset of deprivation of liberty, including during the initial interrogation by the police, irrespective of the charge brought against them;	X	X	X
	Ensure in practice that detainees are able to communicate with a lawyer in full confidentiality			X
	Guarantee that the relatives or other persons of the detainee's choice are notified of the facts, the reasons and the place of detention within the 24 hours specified in the law		X	X

	Repeal the provisions in the Criminal Procedure Law that allow restrictions to the right to counsel and to notifying relatives in cases of “endangering State security”, “terrorism”, serious “bribery” or cases involving “State secrets			X
	Ensure that detainees, their legal representatives and relatives can challenge any unlawful restriction to have access to their clients or to notify the relatives before a judge			X
Residential Surveillance	Regularly monitor compliance with the legal safeguards by all public officials and ensure that those who do not comply with those safeguards are duly disciplined		X	X
	State party should repeal, as a matter of urgency, the provisions of the Criminal Procedure Law that allow suspects to be held de facto incommunicado, at a designated location, while under residential surveillance. In the meantime, the State party must ensure that procuratorates promptly review all the decisions on residential surveillance taken by public security officers, and ensure that detainees who are designated for potential prosecution are charged and tried as soon as possible and those who are not to be charged or tried are immediately released. If detention is justified, detainees should be formally accounted for and held in officially recognized places of detention. Officials responsible for abuses of detainees should be held criminally accountable			
Independent medical examination	(a) Ensure that detained persons undergo a medical examination at the detention centre by medical professionals who operate independently of the police and custodial authorities;		X	X
Crackdown on lawyers	The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, and to ensure the prompt, impartial and effective investigation of such acts.		X	X

Relying on coerced confessions	The State party should adopt effective measures to strictly enforce the new legal provisions and guarantee that coerced confessions or statements are inadmissible in practice, except when invoked against a person accused of torture as evidence that the statement was made		X	X
Administrative Detention	Abolish all forms of administrative detention, which confine individuals without due process and make them vulnerable to abuse	X	X	X
Secret Detentions	Ensure that no one is detained in any secret detention facility, as these are per se a breach of the Convention		X	X
Monitoring and investigations	All reports of torture or ill-treatment are promptly, effectively and impartially investigated			
	Ensure that all allegations of torture, ill-treatment or arbitrary detention in places of administrative detention, including in former “re-education through labour” facilities, are impartially investigated, the results made public, and any perpetrators responsible for breaches of the Convention held accountable;		X	X
	It also urges the State party to ensure that all custodial deaths, disappearances, allegations of torture and ill-treatment and reported use of excessive force against persons in the autonomous region of Tibet and neighbouring Tibetan prefectures and counties, and in the Xinjiang Uyghur Autonomous Region, are promptly, impartially and effectively investigated by an independent mechanism			X
Information	The Committee urges the State party to provide the requested information on all Tibetan cases mentioned in paragraph 27 of the list of issues			X
	Ensure that all allegations of torture, ill-treatment or arbitrary detention in places of administrative detention, including in former “re-education through labour” facilities, are impartially investigated, the results made public, and any perpetrators	X	X	X

	responsible for breaches of the Convention held accountable;			
	The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level		X	X
	The Committee calls for the declassification of information related to torture, in particular, information about the whereabouts and state of health of detained persons whose cases fall under the scope of the State Secrets Law. The State party should also declassify information on the numbers of deaths in custody, detainees registered, allegations of torture and ill-treatment and consequent investigations, administrative detention and death penalty cases. The State party should ensure that the determination as to whether a matter is a State secret should be the object of an appeal before an independent tribunal.			X
State secrecy concerns	Repeal the provisions in the Criminal Procedure Law that allow restrictions to the right to counsel and to notifying relatives in cases of “endangering State security”, “terrorism”, serious “bribery” or cases involving “State secrets			X

## CERD

SUBJECT	RECOMMENDATION	2001	2009	2018
<b>Definition of racial discrimination</b>	Amend domestic laws and define and criminalize all forms of racial discrimination in full conformity with article 1	X	X	X
<b>Anti-discrimination Law</b>	The Committee recommends that the State party adopt a comprehensive law, at the national level, on the elimination of discrimination on the grounds of race, colour, descent or national or ethnic origin, covering all rights and freedoms protected under the Convention.		X	X



<b>Disaggregated Data</b>	The Committee reiterates its request that the State party include, in its next periodic report, updated and detailed statistical data on the socio-economic situation of the population, disaggregated by ethnic groups and nationalities.		X	X
<b>Religion</b>	The Committee remained concerned with regard to the actual enjoyment of the right to freedom of religion by people belonging to national minorities in the State party, particularly in the Muslim part of Xinjiang and in Tibet.	X	X	X
<b>Population Transfer</b>	The Committee reiterates its previous recommendation [1996 review] that any policies or incentives offered that may result in a substantial alteration of the demographic composition of autonomous minority areas be reviewed.		X	
<b>Minority Language and education</b>	The Committee reiterates its concern about remaining disparities for ethnic minority children in accessing education, which is often linked to the availability of teaching in Mandarin only.		X	X

## CESCR

SUBJECT	RECOMMENDATION		2005	2014
Poverty reduction	Amend domestic laws and define and criminalize all forms of racial discrimination in full conformity with article 1		X	X
Health	The Committee also recommended that the State improve the delivery of health services in rural and ethnic minority areas through the allocation of increased resources.		X	X
Forced Evictions	[E]nforce laws and regulations that prohibit forced evictions and to guarantee that those evicted are given adequate compensation or alternative accommodation. It also similarly		X	X

	recommended that the State should provide consultations with the people affected, before development projects begin.			
Environment	The Committee requests the State party to provide detailed information on environmental policies formulated by the State party, in particular, policies to reduce atmospheric pollution, and to evaluate the impact of large infrastructure development projects on the environment.		X	X
Cultural Rights	<p>[R]emove restrictions on freedom of expression and information and to allow the entire population to take part in cultural life and benefit from scientific progress protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author.</p> <p>The Committee recommends that the State party take all necessary measures to ensure the full and unrestricted enjoyment by minorities, including Tibetans, Uighurs and Inner Mongolians, of their right to enjoy fully their own cultural identity and take part in cultural life, and to ensure the use and practice of their language and culture. The Committee also recommends that the State party take adequate measures to protect cultural diversity and promote awareness of the cultural heritage of ethnic, religious and linguistic minorities.</p>		X	X
Access to Education	The Committee recommended that all children, including ethnic minority children, have access to free compulsory education. The Committee recommended that the State reform its education financing policies so that free compulsory education is provided for all children and that the State raise public expenditure in general		X	X

Nomad Resettlement	[T]ake all necessary measures to immediately halt non-voluntary resettlement of nomadic herders from their traditional lands and non-voluntary relocation or rehousing programmes for other rural residents. The Committee recommends that the State party carry out meaningful consultations with the affected communities in order to examine and evaluate all available options.			X
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