

# The Dui Hua Foundation

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## NGO Submission for the Universal Periodic Review of the People's Republic of China: Promoting Increased Transparency in China's Criminal Justice System

### I. EXECUTIVE SUMMARY

1. Despite certain reforms and achievements, the criminal justice system of the People's Republic of China's lacks sufficient transparency for the promotion and protection of human rights as provisioned by the International Covenant on Economic, Social and Cultural Rights (ICESCR), which China ratified in March 2001, and by the International Covenant on Civil and Political Rights (ICCPR), which China signed in October 1998 but has yet to ratify.

2. To more fully demonstrate human rights promotion and protection in China, The Dui Hua Foundation encourages the Chinese government to enhance transparency in its criminal justice system. Dui Hua has focused its work on three areas: use of capital punishment, "endangering state security" arrests and case-handling, and access to trials and verdicts by citizens and non-citizens. Achieving greater transparency will help promote democracy, governance (in particular, the independence of the judiciary), and human rights, including rule of law and promotion and protection of civil, political, economic, social, and cultural rights as outlined by the Millennium Declaration adopted by the UN General Assembly in September 2000.

### II. USE OF CAPITAL PUNISHMENT

#### A. AREAS OF CONCERN

3. The Chinese government has failed to comply with the request by the UN Committee Against Torture to disclose the number of individuals in China who are sentenced to and receive capital punishment. The request was initially made in 1990 after the committee considered China's first report under the UN Convention Against Torture, which China ratified in 1988.

4. In classifying capital punishment statistics as "state secrets," China prevents open knowledge and discussion of the use of capital punishment, the large number of crimes eligible for capital punishment, and the government's own goal to ultimately abolish capital punishment.

5. It is believed that China implements capital punishment more than all other countries combined, with executions in China thought to account for as many as 90 percent of all executions in the world every year. More than 60 crimes in China's criminal code are eligible for capital punishment, the majority of which are non-violent offenses. The large number of capital crimes contributes to a high rate of capital punishment disproportionate to the severity of criminal offenses, as China maintains very low rates of violent crime.

#### B. ACHIEVEMENTS

6. As of January 1, 2007, the Supreme People's Court (SPC) resumed authority for final review and ratification of all capital sentences handed down by provincial courts.<sup>1</sup> This reform,

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<sup>1</sup> Provincial courts were given the right to issue capital sentences in the majority of cases in 1983.

considered the most important in China's criminal justice system in recent years, has helped China implement capital punishment with stricter regulations and more consistent application.

7. Statistics published in the official Chinese media have illustrated positive results of the resumed SPC review. In 2007, the number of capital sentences decreased by roughly 30 percent compared to 2006. In the first half of 2008, the SPC had overturned about 15 percent of capital sentences issued by provincial courts.

8. These statistics mirror a decrease in the use of capital punishment in China. Dui Hua estimates that China executed between 5,000 and 6,000 individuals in 2007, down from approximately 8,000 in 2005 and 7,000 in 2006.<sup>2</sup>

### **C. RECOMMENDATIONS**

9. In order to increase transparency and fairness in the capital punishment system, Dui Hua recommends that the People's Republic of China:

10. Reveal the numbers of individuals sentenced to capital punishment and executed in order to fulfill the request by the UN Committee Against Torture;

11. Increase use of death sentences with two-year reprieve, since as many as 99 percent of death sentences with two-year reprieve are commuted to sentences of life imprisonment;

12. Provide individuals arrested in capital cases access to legal counsel immediately following arrest and otherwise enhance scrutiny by Chinese courts of cases eligible for capital punishment in order to help prevent wrongful convictions and capital sentences;

13. Reduce the number of crimes eligible for capital punishment, particularly non-violent crimes, and increase training of SPC judges who carry out reviews of capital sentences; and,

14. Publish a plan to achieve the government's stated goal of eliminating capital punishment, a policy in accord with the death penalty moratorium adopted by the UN General Assembly in December 2007.

## **III. "ENDANGERING STATE SECURITY" ARRESTS AND CASE-HANDLING**

### **A. AREAS OF CONCERN**

15. The number of arrests for "endangering state security" (ESS) has been rising significantly in recent years. According to aggregate annual statistics published by the Chinese government, ESS arrests in China doubled from 296 in 2005 to 604 in 2006, and rose sharply again to 742 in 2007.<sup>3</sup> Official statistics (scheduled for release in the fourth quarter of 2008) are expected to reveal that ESS arrests will have increased further still in 2008, due to unrest in Tibet and Xinjiang,

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<sup>2</sup> These estimates are drawn from accounts in the Chinese and foreign press, anecdotal evidence, and statistics gathered through Dui Hua's research of Chinese government documents.

<sup>3</sup> The 742 ESS arrests in 2007 were the highest total since 1999. ESS arrests decreased from 2003 to 2005.

where as many as 50 percent of ESS trials are believed to take place,<sup>4</sup> and heightened measures to suppress protest and dissent prior to and during the 2008 Beijing Summer Olympics.

16. Published statistics have shown that ESS provisions in China are employed to suppress perceived political dissent, particularly with respect to activities related to freedom of expression and association.<sup>5</sup> Given the lack of transparent information about ESS arrests in China, Dui Hua's prisoner database—considered the most comprehensive source of information about Chinese prisoners in the world—only identifies by name an estimated five percent of all individuals arrested or currently imprisoned for ESS crimes in China.

17. Because Chinese law-enforcement authorities frequently invoke legal provisions aimed at protecting state secrets, many individuals arrested for ESS crimes in China do not receive basic legal protections and provisions, and are usually prevented from meeting with legal counsel until their case has been submitted for prosecution. State-secrecy provisions may also be invoked by the court to bar observers from attending the trials of individuals charged with ESS crimes.

18. Information from the Chinese government, including on ESS prisoners discussed in human rights dialogues, suggests that ESS prisoners have lower rates of sentence reduction and parole compared to other prisoners. This situation reveals possible discrimination against ESS prisoners and appears to contradict the Chinese government's claim that ESS prisoners enjoy equal access to sentence reduction and parole. Annual Chinese government statistics show that about 30 percent of all prisoners in China between 2004 and 2007 were granted sentence reduction or parole.<sup>6</sup>

19. Statistics are unavailable on the number of individuals still serving sentences for being convicted of crimes removed from China's criminal code in 1997, including counterrevolution and hooliganism. It is likely that several hundred people, including individuals convicted of counterrevolutionary offenses committed during the spring 1989 pro-democracy demonstrations, are still in prison. Their continued incarceration runs counter to Article 15 of the ICCPR, which provides for prisoners to benefit from changes to the law that call for the imposition of lighter penalties.

## **B. ACHIEVEMENTS**

20. The Chinese government is engaged in human rights dialogues with several countries and with thematic UN mechanisms. Through these dialogues, information is provided about a large number of cases of individuals serving sentences for counterrevolution and ESS. This information enables outside observers to draw conclusions about the treatment of these prisoners.

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<sup>4</sup> Statistics on ESS trials are from the *Xinjiang Yearbook* (1997-2004) and *China Law Yearbook* (1997-2004).

<sup>5</sup> Expression and association activities that have been charged as political crimes include: distributing reactionary leaflets, letters, and correspondence, and reviving reactionary sects, belonging to a reactionary religious group, and organizing and leading counterrevolutionary groups (Information published and analyzed in three volumes of *Occasional Publications of The Dui Hua Foundation: Statistics on Political Crime in the People's Republic of China*, April 2001, May 2004, and December 2006).

<sup>6</sup> Chinese criminal justice officials consistently state that approximately 30 percent of prisoners in China receive sentence reduction or parole every year, which is supported by statistics published in 2008 in the *Work Report of the Supreme People's Court to the National People's Congress* and *China Statistical Yearbook*.

21. In 2005, the Chinese government voluntarily provided Dui Hua with information about 56 political prisoners who had been granted or were being considered for parole or sentence reduction. This instance is believed to be the first time the Chinese government had voluntarily provided information about prisoners who were unknown outside of China. The disclosure was meant to demonstrate that ESS prisoners (and those incarcerated for crimes of “counterrevolution”) frequently benefit from sentence reductions and parole, a policy reportedly being implemented at local levels of the criminal justice system.

### **C. RECOMMENDATIONS**

22. In order to enhance legal protections for individuals arrested and imprisoned for ESS and counterrevolution, Dui Hua recommends that the People’s Republic of China:

23. Reveal ESS arrest statistics according to crime categories to help the international community assess particular incidences of ESS crimes, recognizable trends in ESS arrests, and whether ESS arrests are used to suppress internationally protected rights of speech and assembly;

24. Provide individuals arrested for ESS crimes fundamental legal protections and provisions, including the opportunity to meet with legal counsel at the time of arrest and equal eligibility for sentence reductions and parole provided to other prisoners; and

25. To help speed ratification of the ICCPR, China should release from prison individuals still serving sentences for crimes that were removed from the criminal code in 1997, such as counterrevolution and hooliganism.

## **IV. ACCESS TO TRIALS AND VERDICTS BY CITIZENS AND NON-CITIZENS**

### **A. AREAS OF CONCERN**

26. In opposition to the Criminal Procedure Law (CPL), access to trials for politically sensitive cases that should be publicly open, including ESS trials, is often denied to citizens and almost always for non-citizens. The CPL requires courts to provide access to criminal trials for any observer, regardless of citizenship, except where the law specifically prohibits an open trial: cases involving state secrets, juveniles, and certain matters of individual privacy.

27. On several occasions, including the trial of Hu Jia in April 2008, a Dui Hua representative has been denied access to trials that should have been open. Procedures designed to manage trial access are not consistently implemented by all courts of the criminal justice system and appear intended to restrict access as desired by a court.<sup>7</sup>

28. Courts limit access to verdicts beyond the limited distribution to those associated with a criminal case.<sup>8</sup> Lawyers and defendants’ family members are warned against circulating verdicts

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<sup>7</sup> The enforcement of regulations varies according to location. For example, in Beijing, access to trials is allowed for delegations of international jurists or other experts with a visa denoting “official business.” In Guangzhou, a Dui Hua representative was allowed access to a criminal trial by filling out a form and passing a security check.

<sup>8</sup> The SPC requires courts to provide verdicts to plaintiffs, defendants, lawyers, prosecutors, and defendants’ immediate family members.

under vague threat of prosecution under “state secrets” laws, and courts often do not circulate verdicts (particularly from closed trials), routinely refuse to provide additional copies of verdicts, and bar general public access to court registries.<sup>9</sup>

## B. ACHIEVEMENTS

29. China’s SPC has made a priority of promoting access to trials and issuing instructions for lower courts to “strictly implement” a system of openness. Many, though not all, courts are fulfilling their legal obligation to provide advance public notice of trials and allowing access to open trials, including ESS trials not involving state secrets.

30. Representatives of China’s criminal justice system, including former SPC President Xiao Yang, have confirmed that foreigners can attend Chinese trials except those involving state secrets, juveniles, and certain matters of individual privacy.

31. In accord with the CPL, a Dui Hua representative has been granted access to trials on two occasions: on February 17, 2006, for a trial of “creating a public disturbance” adjudicated by the Chaoyang District People’s Court, and on February 20, 2006, for a trial for “attempted robbery” adjudicated by the Guangzhou Intermediate People’s Court.

32. As part of an effort to promote greater openness and transparency, Chinese courts have increased the number of court verdicts made available to the public, even using the Internet to broaden the availability of verdicts.

## C. RECOMMENDATIONS

33. In order to increase access to criminal trials and verdicts by citizen and non-citizen observers,<sup>10</sup> Dui Hua recommends that the People’s Republic of China:

34. Issue and implement clear guidelines for instructing Chinese courts that there should be no distinction between citizen and non-citizen observers with respect to trial access;

35. Modify and implement court regulations so that trials may be closed to the public only for cases involving state secrets, juveniles, and certain matters of individual privacy;

36. Eliminate the requirement for observers to fulfill registration requirements or otherwise obtain “passes” to attend open trials;

37. Enact effective, transparent measures to pursue complaints of court refusal to allow trial access to observers in violation of Chinese law; and,

38. Allow full public access to criminal court verdicts in their entirety, allowing for limited redaction as necessary on grounds of national security and individual privacy.

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<sup>9</sup> E.g., “Justice Remains the Great Brick Wall of China,” *Financial Times* (22 April 2006): 5.

<sup>10</sup> For additional analysis and recommendations on this issue, see Annex A: “Public Access and the Right to a Fair Trial in China,” (Rosenzweig, J.D., The Dui Hua Foundation, May 2007)

**Universal Periodic Review Submission: Annex A**

“Public Access and the Right to a Fair Trial in China”

Joshua D. Rosenzweig  
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## Public Access and the Right to a Fair Trial in China

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Berlin, 10–11 May 2007

There is a close linkage under international law between the public, open nature of court proceedings and the fair administration of justice. Public court proceedings are an important safeguard against judicial corruption and violations of defendants' due process rights. Opening court hearings has the added benefit of fostering confidence in the legal system's procedures and outcomes. The European Court of Human Rights has stated the connection thusly: "By rendering the administration of justice visible, publicity contributes to the achievement of the aim of . . . a fair trial, the guarantee of which is one of the fundamental principles of any democratic society . . ." <sup>1</sup>

The International Covenant on Civil and Political Rights (ICCPR) states clearly: "Everyone shall be entitled to a fair and public hearing by a competent, independent tribunal established by law."<sup>2</sup> The public nature of court hearings is held to be "an important safeguard in the interest of the individual and of society at large."<sup>3</sup> There are, of course, exceptional instances in which the public interest in opening court proceedings is counterbalanced by other interests, in which case courts may legitimately restrict access to all or part of a trial. These exceptional circumstances include moral grounds, threats to public order (*ordre public*) or national security, or certain privacy interests involving the parties to the case. However, it is clear that these exceptions to a public hearing are meant to be construed narrowly and that court proceedings must, as a rule, be open to the public.

Regardless of whether exceptional circumstances require the public to be excluded from a trial, the ICCPR requires that "any judgment made in a criminal case or in a suit at law shall be made public," except in cases involving juveniles, matrimonial disputes, or the guardianship of children.<sup>4</sup>

Current Chinese law basically establishes the internationally recognized principle of public court proceedings. China's constitution states: "All cases handled by the people's courts, except for those involving special circumstances as specified by law, shall be heard in public."<sup>5</sup> This constitutional guarantee is further embodied in the Criminal Procedure Law (CPL), which also

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1. *Sutter v. Switzerland*, judgment of 22 February 1984, Series A no. 74, at para. 26.

2. (1966) UNTS 171, at art. 14(1).

3. United Nations Human Rights Committee, *General Comment 13 (21)* (adopted in 1984), UN Doc. HRI/GEN/1/Rev.2 (1996), at p. 15, para. 6.

4. ICCPR, *supra* note 2.

5. Constitution of the People's Republic of China (1982), at art. 125.

sets out the exceptional circumstances in which trials of first instance may be heard in closed hearing: cases involving state secrets or individual privacy and certain cases involving juvenile defendants.<sup>6</sup> Regulations issued by the Supreme People's Court in 1999 further grant lower courts discretion to approve requests by litigants to close proceedings on grounds of protection of trade secrets.<sup>7</sup> Moreover, the CPL unambiguously states: "Judgments shall be pronounced publicly in all cases."<sup>8</sup>

On paper, China's provisions regarding publicity of trials are generally in accord with international law. As with many other aspects of China's criminal justice system, however, principles that are established in law are not consistently guaranteed in practice. In some cases, this is because limitations acceptable under international law are applied in China using different standards, such as the overreaching use of state secrecy as grounds for excluding the public from court proceedings. In other cases, it is an institutional culture that tends toward secrecy and bureaucratic administration, coupled with lax enforcement of legal standards, that results in the failure of Chinese courts to guarantee full public access to court proceedings.

### **Access to Court Proceedings is not a Privilege**

It is important to acknowledge that China's courts have taken many important steps to encourage public access to trials. China's Supreme People's Court (SPC) has made a priority of promoting expanded publicity in court proceedings and issued, notably, instructions calling on lower courts to "strictly implement" a system of openness.<sup>9</sup> Most courts are believed to be fulfilling their legal obligation to provide advance public notice of scheduled court proceedings, although there are isolated exceptions. Some courts have even gone so far as to make such information available on the Internet; however, only several dozen courts have so far made such efforts and the results have not always been consistent or long-lasting.

Part of the problem lies in the system through which the public is allowed access to trials in China. The rules in Chinese courts currently require prospective observers to register with an office of the court, where they present identification and request an "observer pass" (旁听证) that enables access to a particular hearing. Intentionally or not, this type of "gatekeeper" system, by its very existence, restricts access and risks turning courts' obligation to provide access to their proceedings into a privilege to be granted at the discretion of court employees. This unnecessary layer of screening should be eliminated.

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6. Criminal Procedure Law of the People's Republic of China (1997), at art. 152.

7. Supreme People's Court Rules Regarding the Strict Implementation of an Open Trial System 最高人民法院关于严格执行公开审判制度的若干规定 (1999), at art. 2(4).

8. Criminal Procedure Law, *supra* note 6, at art. 163.

9. See *supra* note 7.

Even when trials are technically open, a variety of methods is used to restrict access to court hearings—particularly in sensitive cases. Trial dates in criminal cases—especially in sensitive cases—are only required to be publicized a mere three days in advance. Prospective observers frequently arrive at the courthouse on the designated day only to be told that there are “no more seats” or that the one or two seats remaining are being reserved for family members. Upon entering the courtroom, family members and defense lawyers have observed seats reserved for spectators filled with police officers (both uniformed and plainclothes) and officials from the local procuratorate, justice bureau, or other government agencies.

It may be argued that such maneuvering to prevent members of the public from observing trials occurs in only a relatively small number of cases and does not reflect an overall tendency to bar the public from access to court proceedings. Even if this were in fact true and these were isolated incidents, one wonders whether an effective process exists in China whereby those individuals who have been illegally barred from observing a trial may lodge a complaint that will be thoroughly and independently investigated, with that investigation leading to appropriate disciplinary measures designed to eliminate further such incidents. If the system of “letters and visits” (信访) is any guide to how such complaints would be dealt with, it does not inspire much confidence that these “isolated” violations will be truly remedied.

Beyond this, there appears to be a great deal of confusion about whether Chinese courts should provide access to only Chinese citizens (公民) or to a broader “public” (公众) that would include non-citizens. The situation should be quite simple: According to the SPC’s 1999 regulations on the subject of “strictly implementing” a system of open court proceedings, “Foreigners and stateless persons who carry valid documents and wish to observe a trial should be handled in accordance with the regulations for observing trials applicable to Chinese citizens.”<sup>10</sup> In an October 2004 speech in San Francisco, SPC President Xiao Yang reiterated that the public—“including foreigners”—may attend trials in China as observers, except in those cases explicitly required by law to be heard in closed session.

However, as many have observed, gaining access to criminal trials is anything but routine for foreigners in practice. Based on the personal experience of myself and others in my organization, access to trials varies by location, with some cities more “open” than others. There appears to be widespread confusion about what the proper procedure is for allowing foreigners access to court proceedings and a great deal of anxiety about the possible consequences if proper procedure is not followed exactly. Courts seem to be operating under SPC guidance issued nearly 25 years ago, which instructed courts to handle individual requests for access to trials by foreigners through a bureaucratic system of reporting, careful selection, and permissions.

Neither these instructions nor the suspicious attitude toward foreigners that underlies them have been updated to reflect the new openness promoted by China’s courts over the past several years. In light of this, we would welcome clearer, stronger guidance from the SPC on the subject of

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10. Supreme People’s Court Rules, *supra* note 7, at art. 10.

removing all distinctions between citizens and non-citizens with respect to access to China's courts for the purposes of observing proceedings. Doing so would go a long way toward guaranteeing that Chinese court hearings "be open to the public in general . . . [and] not, for instance, be limited only to a particular category of persons."<sup>11</sup>

### **"State Secrets" Overused as Grounds to Restrict Access**

One of the limitations to public trials allowed under the ICCPR is on grounds of "national security," and Article 152 of the CPL requires Chinese courts to close court proceedings in cases "involving state secrets." The reasonableness of this limitation is, of course, dependent on the legitimacy of the standards used to classify state secrets. China's use of vague and flexible standards of classification with respect to secrecy is a major impediment to the transparency of the entire criminal justice system. In particular, the broad range of topics subject to secrecy classification in China serves to restrict access by the public to court proceedings and, therefore, threatens defendants' right to a fair trial.

If the limitation in the CPL is interpreted to mean that criminal proceedings in which state secrets may be introduced as evidence, then it would be reasonable for courts to restrict public access to those proceedings. However, current practice allows for an "all-or-nothing" decision in which entire trials are either public or closed. From the perspective of guaranteeing public access to trials, it would be far preferable for courts to restrict access to proceedings only to the extent strictly necessary for the purposes of considering evidence that has been classified as a secret.

Moreover, based on our current understanding of the way that trial closure is justified on the grounds of state secrets in China, it appears that access is restricted for far broader reasons. The regulations governing the handling of state secrets in Chinese courts are not well understood (being themselves subject to classification). It appears that entire criminal cases may be classified as secret from the police investigation stage onward, based solely on the politically sensitive nature of the alleged criminal activities at issue, and that this classification holds over when the case is tried in court.

This situation is illustrated in the recent case of Yang Tongyan (杨同彦), convicted by the Zhenjiang Intermediate People's Court in Jiangsu Province on charges of subversion and sentenced to 12 years' imprisonment in May 2006. After being placed under residential surveillance (监视居住) in December 2005, local police authorities requested the Jiangsu Provincial Public Security Department to determine the secrecy-classification level of Yang's case. In a January 2006 response, the provincial department's secrecy committee (保密委员会) ruled that because Yang's case involved making contacts with overseas representatives of the China Democracy Party and engaging in opposition party-organizing activities, the case should

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11. See *General Comment*, *supra* note 3, at para. 6.

be classified as a second-grade state secret (机密). Consequently, Yang’s case was subsequently tried in closed court.<sup>12</sup>

Denying the public access to trials such as these on the grounds of “protecting state secrets”—as determined solely by the police making the initial arrest—goes far beyond the bounds of what should be considered acceptable under international law. According to the Siracusa Principles, which cover limitations to rights granted by the ICCPR, “national security may be invoked to justify measures limiting certain rights only when they are taken to protect the existence of the nation or its territorial integrity or political independence against force or threat of force.”<sup>13</sup> It is difficult to see how involvement in opposition party activities meets the standard of threatening the “existence of the nation or its territorial integrity or political independence.”

The Siracusa Principles go on to state: “national security . . . may only be invoked when there exists adequate safeguards and effective remedies against abuse.”<sup>14</sup> If Chinese courts are to continue restricting public access to trials on grounds of “state secrecy,” there must be a viable process by which defendants may challenge court decisions to limit their rights to this aspect of a fair trial.

### **Expand Public Access to Court Judgments**

There is a long history in China of using individual cases as a tool for promoting better understanding of the law—*yi an shuo fa* (以案说法). As part of the effort to promote greater openness, courts have increased the number of court judgments that they make available to the public and taken advantage of new channels such as the Internet to broaden the scope of availability. These preliminary steps are laudable, but we would like to see bolder, more complete steps taken in this regard.

As noted above, Article 163 of the CPL states: “Judgments shall be pronounced publicly *in all cases*” (emphasis added). SPC regulations further require courts to provide copies of judgment documents to plaintiffs, defendants, lawyers, prosecutors, and defendants’ immediate family members. Beyond this limited scope of distribution, however, such court documents are frequently treated as if they were classified—particularly in cases where trial proceedings were not held publicly. Lawyers and defendants’ family members are warned against circulating

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12. The Dui Hua Foundation, “Documents Shed Light on Use of Secrecy Classifications in Handling Political Crime in China,” *Dialogue* 24 (Summer 2006): 6-7. See also “Dui Hua Releases English Translation of Verdict in Subversion Case of Yang Tongyan” ([http://www.duihua.org/2006/06/dui-hua-releases-english-translation\\_21.html](http://www.duihua.org/2006/06/dui-hua-releases-english-translation_21.html)).

13. The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc. E/CN.4/1985/4 Annex (1985), at p. 5, para. 29.

14. *Id.*, at para. 31.

verdicts, and courts routinely refuse to provide additional copies of verdicts and bar members of the general public who seek verdicts access to court registries.<sup>15</sup>

We view this failure to provide general access to court judgments to be a violation of the principle of publicity implicit in the guarantee to a fair trial. There is an inherent contradiction between requiring courts to announce judgments publicly and restricting access to the written versions of the same judgments. In the interest of improving the rights of Chinese defendants to fair trials, Chinese courts should resolve this contradiction and allow full public access to court judgments without restriction. (There may be legitimate cause for redacting certain pieces of information on grounds of privacy or national security; however, these grounds should not be used as blanket excuses to restrict access to court documents in their entirety.)

While we welcome the call made by Prof. He Weifang to require courts to make all judgments available publicly on the Internet, we recognize that there are many technical hurdles China must overcome before such an ideal may be realized throughout the country.<sup>16</sup> This does not mean that concrete measures cannot still be taken in the meantime. The SPC should issue guidelines clearly stating that all judgment documents in criminal cases should be made publicly available to anyone who wishes to examine them—again, including non-Chinese citizens.

As Prof. Chen Ruihua and others have pointed out, providing mere access to court proceedings and judgment documents is not a full check against judicial injustice because it does not shed light on the process by which courts arrive at their judgments.<sup>17</sup> While we agree that implementing a system by which courts are required to present fuller explanation of the reasoning behind their judgments would be a welcome step toward increasing transparency in the Chinese judicial system, we believe it is important first to have full implementation of existing measures guaranteeing publicity of court proceedings before moving on to realize other measures aimed at transparency.

## **Conclusion and Summary of Recommendations**

Both Chinese and foreign observers have a legitimate interest in understanding how China's laws are applied over the wide range of criminal cases, and not simply in those cases that officials want to emphasize. Shedding light on the workings of China's criminal justice system is an essential element of promoting transparency and ensures the fair administration of justice, and it should in no way be perceived as a threat to law and order, national security, or sovereignty.

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15. E.g., "Justice Remains the Great Brick Wall of China," *Financial Times* (22 April 2006): 5.

16. He Weifang 贺卫方, "Where's the Difficulty in Putting Judgments Online?" 判决书上网难处何在? , *Legal Daily* 法制日报 (15 December 2005): 9.

17. Chen Ruihua 陈瑞华, "What Are Open Trials?" 什么是公开审判, in *Visible Justice* 看得见的正义 (Beijing, 2000).

With the goal of encouraging China's increased implementation of international legal standards for fair and public trials, we summarize our recommendations as follows:

- Eliminate the requirement for the public to obtain “observer passes” before attending court proceedings.
- Enact effective, transparent measures to pursue complaints of court refusal to allow access to proceedings in violation of the law.
- Issue clear, universally binding guidelines instructing courts that there should be no distinction between citizens and non-citizens with respect to access to China's courts for the purposes of observing proceedings or viewing judgments.
- Modify court regulations so that proceedings may be closed to the public only to the extent strictly necessary for the purposes of considering evidence that has been classified as a secret.
- Publish all regulations governing the handling of state secrets in the criminal justice system.
- Establish and implement provisions allowing defendants to challenge court decisions to hold proceedings in closed session.
- Allow full public access to criminal court judgments in their entirety, allowing for limited redaction as strictly necessary on grounds of national security or individual privacy.