

COMPARATIVE INTERNATIONAL AND DOMESTIC APPROACHES

AN HRIC CONSULTATION AND ROUNDTABLE¹

Experts and activists discuss what lessons the PRC can draw from other countries in addressing human rights violations.

The history of mainland China under CCP rule has been marked by serious human rights abuses, including those that occurred during the Cultural Revolution (1966–1976), the violent suppression of the 1989 Democracy Movement on Tiananmen Square (June 4, 1989) and ongoing violations of the PRC's international human rights obligations.² Although the PRC has declared official blame in some cases,³ there is still a need for further discussion of accountability and redress. However, while there has been an official policy of economic transition to a market system, the current 11th Five Year Plan makes it clear that the political reforms necessary for greater openness and accountability regarding both the past and the future are not on the policy agenda.

With the possibility or extent of democratic reform a matter of ongoing debate, HRIC decided to explore questions of social justice within a comparative context and exchange, drawing upon the experiences of other societies in transition. On October 28, 2005, Human Rights in China (HRIC) organized a day-long event, *Building Social Justice Consultation and Roundtable*, which brought together Chinese and international human rights activists, intellectuals and practitioners to explore insights that some of these comparative approaches raise in addressing human rights abuses in the PRC (a list of the attendees appears at the end of this article).

The concept of *transitional justice* has become one of the most prominent developments in human rights practice today.⁴ It addresses a range of complex issues: How do countries approach or deal with mass atrocities or human rights abuses of the past? How can a country adequately meet the different and interrelated needs for *accountability, justice, reconciliation and peace*? Judicial and non-judicial approaches ranging from international or domestic litigation to investigations, amnesties, silence and truth-seeking have been implemented in countries such as South Africa, Rwanda, Cambodia, Guatemala and many others, with varying degrees of success or failure.

During the lively and thought-provoking exchange at the HRIC consultation, participants explored the applicability of

some of these international approaches, including truth commissions and litigation. The consultation participants also presented and discussed PRC-specific initiatives, including the building of virtual archives, spiritual practice and grassroots activism. The discussion below summarizes the issues, themes and approaches presented by the participants. HRIC thanks participants for sharing their experience, work and ideas, and their commitment to advancing the development of more effective strategies for building social justice in the PRC.

International initiatives

The consultation discussion opened with an overview of approaches that have been developed internationally on conflict resolution and reconciliation, with a specific look at South Africa and Indonesia. The concepts of peace, justice and reconciliation stem from universal understandings of human rights and human dignity that have sparked the development of international human rights law in the twentieth century. The grave abuses of human rights and dignity during the Second World War led the international community to adopt a universal set of standards in the Universal Declaration of Human Rights (UDHR), and later the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

International humanitarian law also developed to recognize the crimes of genocide, war crimes and crimes against humanity,⁵ and at the beginning of the 21st century, the International Criminal Court (ICC) was established to exercise jurisdiction over those crimes committed after July 1, 2002. The ICC began its first investigations in 2004.

However, the prosecutor/defendant model does not account for collective victimhood and collective guilt. Moreover, trials have not always been sufficient to turn the page on a violent past. For example, in countries such as South Africa, racism—institutionalized in the 20th century by apartheid—had been violently practiced against non-white Africans for centuries. Political compromise and institutional incapacity to handle hundreds of criminal trials made prosecutions unfeasible in post-apartheid South Africa.

Truth and Reconciliation processes
South Africa's Truth and Reconciliation Commission (TRC),

modeled on non-judicial truth-seeking (and sometimes investigatory) bodies in Africa and Latin America, provided a framework for truth commissions in other countries, including El Salvador and Guatemala, and became the basis for further developments in transitional justice initiatives elsewhere.

One key test for foreign engagement must be that independent domestic voices are supported rather than undermined.

The adoption of non-judicial responses in countries that have faced years of government-sponsored abuse allows greater leeway in the introduction of victims' stories and other historical and testimonial accounts of the past, and seeks to establish societal reconciliation in addition to some form of accountability. TRCs are often established alongside judicial or investigatory organs, as well as reparations initiatives, archive or museum projects and other responses. Thus, such mechanisms focus not only on providing redress for victims, but also on establishing a historical record and laying a foundation for reconciliation. These non-judicial responses are not perfect, however; victims are often left unsatisfied, unable to forgive what they cannot punish, and perpetrators may remain active members of society.

Relevance for the PRC

The applicability of international approaches such as these to the PRC context remains a matter of debate. International actors, including organizations with experience in implementing post-abuse processes, can support healing, justice and accountability and contribute to building social justice in the PRC, but any efforts to address the wrongs of the past and present must be implemented in ways that support transparent and independent discussion. Given that the PRC is not a transitional society in the sense in which this term is currently understood, one key test for foreign engagement must be that independent domestic voices, such as journalists, lawyers and other members of civil society, are supported rather than undermined. The implementation of any model—whether adapted from an international model or from initiatives undertaken by Chinese communities outside of the PRC—will rely to a great extent on available political will to allow an independent and unencumbered process that supports open and constructive societal dialogue with the government, as well as independent from the government.

In the absence of political will, initiatives undertaken outside of the PRC (such as archiving and memory projects, dialogue and international pressure described in greater detail below) will continue to establish a firm foundation to establishing social justice.⁶

The potential and limits of prosecution and litigation models

Despite great strides in legal reform over the past twenty years, the Chinese judicial system continues to suffer from a lack of judicial independence, as well as a judicial and administrative system clogged with individual cases and petitions. Whereas

several laws and regulations provide for compensation in the event of abuse by the state,⁷ individuals often remain barred by short statutes of limitations;⁸ when these cases do reach the courts—or when individuals seek to petition the state—the rate of success is extremely low,⁹ suggesting that domestic courts and offices are a less than satisfactory solution.

Some groups, including HRIC, have sought redress in courts outside of the PRC, for example in the United States, Latin American and Europe. The Global Coalition to Bring Jiang Zemin to Justice has filed sixteen cases in fifteen countries against Jiang Zemin, and numerous additional cases against other Chinese officials to seek accountability for the torture and death in custody of Falun Gong practitioners.¹⁰ Some of the cases filed remain live issues while courts seek to exert jurisdiction. Others, however, have been dismissed on grounds of foreign immunity. The Coalition has filed appeals papers in many cases where the cases have been dismissed.¹¹

The process of suing Chinese officials in the domestic courts of other countries is often fraught with jurisdictional and other procedural problems. While filling legal papers can serve an important purpose in documenting and highlighting abuse, even if courts are able to exert jurisdiction over the Chinese officials sued, issues such as standing and enforcement still render litigation a less than satisfactory legal model.

The ICC is likewise an inappropriate forum for a number of reasons, including the fact that the PRC is not a State Party to the ICC (and also serves on the UN's Security Council), as well as the limited number of humanitarian crimes that fall under the ICC jurisdiction, and its lack of jurisdiction over crimes prior to 2002.

The role of political transition

Although there are a variety of international examples from which the PRC can adapt its own process for addressing past and present abuses of human rights, the Taiwan experience may provide an example that is more culturally adaptable, and when there is domestic political will in the PRC to enact change. The process of political transition shaped Taiwan's method of dealing with the massacres of 1947 and subsequent decades of "white terror," a period of rule by the Kuomintang military police-state characterized by frequent disappearances, politically-motivated killings and detentions. The current Taiwan administration has used a number of methods to provide closure and accountability, including reparations, two government-issued reports, a victims register, memory projects, monuments, traveling exhibits and an official museum.

Notably, Taiwan has not chosen to go the route of a truth commission, primarily because of the gradual nature of official acknowledgment of wrongdoing. The process, which ran parallel with the island's democratization in the 1990s, began with symbolic acknowledgement, including official apology and moments of silence. The liberalizing social and political environment of the late 1990s led to more substantive projects such as the establishment of public archives, an in-depth report with decisive conclusions regarding the state's responsibility, and a reparations program for survivors.

The PRC government continues to maintain active control

over information and society through its legal framework, its technical apparatus, and the culture of censorship and self-censorship bred by that control. Taiwan, however, with a predominantly Han ethnic population, demonstrates that official accountability and social reconciliation mechanisms are possible within a Chinese cultural context. Much like Taiwan prior to embarking on its difficult road towards political reform, the PRC government exercises pervasive information and social control through legal and social means, with the additional state of the arts apparatus. In order for the PRC to move forward, it must abandon its current policy of bifurcating economic and political reforms, which neglects the promotion of fundamental human rights.

The role of culture, history and memory

Many countries face wide-ranging and varying degrees of human rights abuses that call for a nuanced approach to redressing past wrongs. China's long history and its diverse geography, culture and population suggest that multiple approaches may be needed to address wrongs left over from the Cultural Revolution, the violent repression of the 1989 Democracy Movement and systemic repression of the rights to freedom of expression and religion. Government control, institutionalized by the state secrets legal framework, impedes independent discourse and implementation of human rights. An underlying respect for human rights must be cultivated through education and training, as well as legal reform.

A culture of human rights can be strengthened through the participation of independent civil society groups, both within and outside of the PRC. Inside the PRC, academics are given little latitude for advancing controversial ideas. Increasing numbers of independent lawyers, journalists and others, however, have been promoting human rights through reporting on human rights concerns or vigorously representing clients accused of politically sensitive crimes, despite increasingly harsh repression by the government. Strikes and social unrest are also on the rise. These calls for greater democracy and freedom of expression and association evidence the desire by individuals and groups in the PRC for greater political space as well as more equitable distribution of the benefits of economic development and growth.

Chinese communities outside of the PRC continue to support calls for greater promotion of human rights, and have adopted international models to address human rights abuses in the context of the Chinese diaspora. Unable to seek redress in courts or through petitioning, dissident community discussion and cooperation seeks to highlight human rights concerns, and groups such as HRIC and others disseminate uncensored information both from inside and outside the PRC in order to widen independent civil space. Community forums allow for in-person engagement and discussion, and help Chinese in exile retain ties with human rights issues in the PRC. Other initiatives for person-to-person engagement have also been developed, including support for AIDS orphans living in the PRC. Online forums such as www.renyurenquan.org, www.dajiyuan.com, www.observechina.net, www.boxun.com, www.ncn.org and www.chinaeweekly.com, among many others,

provide virtual communities that link individuals inside and outside the PRC.

The preservation of memory and history has also been undertaken by individuals unwilling to leave the Chinese government as the sole scribe of history. Virtual museums for the Cultural Revolution, the June Fourth Democracy Movement crackdown and the Laogai have been created online, collecting hundreds and thousands of personal histories, pictures, news reports and writings.¹² These museums ensure that a more critical history than the one written by the Chinese government is preserved for a future accounting for these past human rights abuses. In addition to preserving the record and facts for a future truth-finding process, these museums are important educational resources. Chinese tradition, culture and history can be formed and reformed in a space beyond that which is provided for by legislation and regulation. Critical to this process is that it reach out to individuals from different parts of Chinese society: academic and activist, urban and rural resident, male and female, Han Chinese and minority. The preservation of history and memory beyond the officially-mandated space allows for the possibility that when there is the political will to revisit past wrongs, tools will exist for that process.

Economic justice

The consultation participants also discussed the interrelated challenges of addressing current economic and social dislocations and growing inequalities. The PRC's increasing political and economic presence on the international arena has created the dominant view that the PRC's economic progress has made individuals much better off than they were before the "opening and reform" policy that began in the late 1970s. This flat perspective does not extend beyond macroeconomic growth to the widely varying levels of economic development between and within provinces, geographic regions and even cities.

The so-called Washington Consensus view of economic liberalism as a tool for ultimate democratic reform has not played out successfully in most countries living under authoritarian rule, including the PRC. Macroeconomic growth has not led to greater freedom of expression, democratic representation or respect for human rights. Whereas urban elites have benefited from foreign direct investment in the PRC as well as the PRC's international trade and investments, rural residents, migrants and other vulnerable populations lack basic healthcare and access to adequate education, despite the PRC's concrete international obligations to implement the rights to health, education, housing and other social and economic rights. The PRC therefore needs to address not only political wrongs of the past, but also current economic injustice.

Looking ahead

The participants identified a number of suggestions for the future:

The role of different actors: Various actors can and will play an important role in building social justice in the PRC. These include international actors with experience from other countries that have faced the need to move on from massive viola-

tions of human rights, as well as members of the Chinese community inside and outside of the PRC.

Government-sponsored initiatives: A government-sponsored initiative that revisits past wrongs committed in the PRC—beyond the current official closure of events such as the Cultural Revolution and June 4th—is necessary to provide a framework for moving forward. Supported by the requisite political will, such initiatives could include official reports, memory projects, victims registries and reparations;

Multiple and simultaneous approaches should be used: Important examples of non-government approaches include community and religious organizations, which provide forums for discussion and raising awareness, and the virtual archives already being developed, which remain important resources to advance goals of documentation, truth-seeking and pressure for accountability;

Building a culture of rights: A shift must be enacted from a very deep culture of censorship, self-censorship and fear to one that is open and supportive of all voices in society. This culture of respect for human rights can be built through education and training, building virtual or real museums and monuments, and by providing space for uncensored discussion and learning.

Underlying these approaches is the broader question of how to monitor and address the impact of various initiatives. This process can draw upon the existing body of benchmarks and substantive indicators on human rights, the environment, development and corruption.¹³

Participant's List

Guest Participants

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Dr. Robert Evans, Executive Director, Plowshares Institute
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NOTES

1. Elisabeth Wickeri was the primary drafter of this discussion summary.
2. The PRC has signed or ratified the following international human rights treaties: International Covenant on Economic, Social and Cultural Rights (ICESCR), signed in 1997, ratified in March 2001; International Covenant on Civil and Political Rights (ICCPR), signed in 1998; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), acceded December 1981; Convention

on the Elimination of All Forms of Discrimination against Women (CEDAW) signed July 1980, ratified November 1980; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), signed December 1986, ratified October 1988; Convention on the Rights of the Child (CRC), signed August 1990, ratified March 1992.

3. For example, following the Cultural Revolution in October 1976, the “Gang of Four” was arrested, charged and found guilty of causing the persecution and deaths that had occurred during that ten year period. In June 27, 1981, the Party Central Committee of the Chinese Communist Party (CCP) adopted a resolution that placed partial blame for the wrongs of the Cultural Revolution on Mao Zedong, and rehabilitated several of Mao’s political opponents. See accompanying discussion, “The Cultural Revolution as Legacy and Precedent.”
4. Numerous international and domestic organizations and bodies have been set up related to transitional justice concerns. Those include NGOs with expertise on advising governments and civil society members on how to begin a process of reconciling the past (such as the International Center for Transitional Justice, www.ictj.org and the Ploughshares Institute, www.ploughsharesinstitute.org), as well as bodies or groups set up to address specific issues (such as the International Court for the Former Yugoslavia, www.un.org/icty and the Greensboro Truth and Community Reconciliation Project, www.gtcp.org).
5. See, e.g., The Geneva Conventions and their Protocols, covering war crimes (for internal and international conflict) and genocide, and also the Rome Statute of the International Criminal Court (establishing substantive jurisdiction over genocide, crimes against humanity, war crimes as well as the crime of aggression, once it has been defined).
6. See discussion below on existing virtual online archives.
7. See, e.g., PRC State Compensation Law, issued by the Standing Committee of the NPC on May 12, 1994, effective January 1, 1995. Article 32 sets the statute of limitations for presenting a claim at two years.
8. See accompanying discussion, “The Cultural Revolution as Legacy and Precedent.”
9. Only two out of one thousand petitions receive official replies, though it does not mean those are resolved. David Fang, “Courts may be shielded from petitions,” *South China Morning Post*, January 8, 2005.
10. See the group’s Web site, www.flgjustice.org, for details about the cases filed as well as copies of legal papers.
11. *Ibid.*
12. Several online historical archives have been established in the context of violations of human rights in the PRC. These include the June Fourth Multimedia Archive (www.64memo.org), compiling memories, videos and print media, photographs and other documentation related to the violent suppression of the 1989 Democracy Movement; the Virtual Museum of the Cultural Revolution (www.cnd.org/CR/english/about.htm), launched in 1996 by China News Digest and including official and unofficial materials; and the Memorial for the Victims of the Cultural Revolution (www.chinese-memorial.org), developed by Dr. Wang Youqin, which includes more than one thousand interviews, names and testimonies of victims and other personal histories. The Laogai Research Foundation (www.laogai.org) provides extensive resources on prison labor in China, including official documents and memoirs of former prisoners. Harry Wu, founder and Executive Director of the Laogai Research Foundation, has proposed a physical museum on the Laogai in China, which would cover human rights abuses committed against numerous groups of people, including lawyers, religious practitioners, petitioners and ethnic minorities.
13. HRIC’s IR2008 Campaign is one example of linking advocacy initiatives with monitoring progress using specific benchmarks.