

Administrative Detention and the Right to Liberty: Evaluating China's Immigration Framework under International Human Rights Law

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Abstract

This article examines the compatibility of China's immigration-related administrative detention regime with the right to liberty under international human rights law. Drawing upon Article 3 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights, the study develops a structured analytical framework based on four cumulative criteria: legality, necessity, proportionality, and judicial oversight. These principles are widely recognized within international human rights jurisprudence as essential safeguards against arbitrary detention. The framework is subsequently applied to the Exit-Entry Administration Law of the People's Republic of China (2012), which constitutes the principal domestic legal basis governing immigration detention in China. The article argues that the 2012 Law represents an important stage in the formal codification and consolidation of China's immigration governance system. In comparison to earlier fragmented regulatory approaches, the legislation introduces clearer legal authority for detention measures and establishes a more coherent administrative structure. Nevertheless, the study demonstrates that the framework remains only partially compatible with international standards relating to the protection of personal liberty. Significant concerns persist regarding the broad scope of administrative discretion granted to public security authorities, the insufficient incorporation of non-custodial alternatives to detention, and the absence of prompt, independent, and effective judicial review mechanisms. These shortcomings limit the practical availability of safeguards capable of preventing arbitrary or prolonged detention. The article further contributes to existing scholarship by distinguishing between formal legality and substantive

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compliance with international human rights standards. It conceptualizes divergence not only as a matter of procedural deficiency but also as a reflection of deeper structural characteristics within China's administrative governance model, which prioritizes administrative supervision over judicial control. The article concludes by proposing targeted and incremental reforms designed to strengthen procedural safeguards, improve accountability, and enhance compatibility with international human rights norms while preserving the broader institutional framework of the existing administrative system.

Keywords

Immigration Detention, Right to Liberty, Administrative Detention, Arbitrary Detention, International Human Rights Law, ICCPR Article 9, China Immigration Law, Judicial Oversight

1. Introduction

The right to liberty occupies a fundamental position within the international human rights framework. It is both a substantive guarantee against arbitrary detention and a procedural guarantee against any deprivation of liberty, ensuring its legal limitation and independent review.¹ This right was originally enshrined in Article 3 of the Universal Declaration of Human Rights, and its normative content has been further specified by Article 9 of the International Covenant on Civil and Political Rights² and subsequent interpretations, in particular General Comment No. 35 of the Human Rights Committee (*Human Rights Committee, 2014*). These sources together constitute a set of structured and cumulative requirements of legality, necessity, proportionality, and judicial oversight that serve as parameters for assessing the admissibility of detention in various legal systems (*Human Rights Committee, 2014; U.N. Working Group on Arbitrary Detention, 2017*).

Meanwhile, the detention of migrants has become a common practice in contemporary immigration policy. Although legal traditions vary between countries, administrative detention is used as an instrument of border control, identity verification, and deportation, often operating outside the traditional framework of criminal justice (*Bosworth, 2014*). This expansion sparks a debate in international human rights practice regarding the potential for arbitrariness in administrative detention compared with judicial pre-trial detention (*U.N. Working Group on Arbitrary Detention, 2018*). China's immigration detention system, primarily based on the People's Republic of China's Exit-Entry Administration Law (2012),³ provides a particularly vivid example. This system incorporates a highly institutionalized model of administrative control, in which public security agencies in-

¹Universal Declaration of Human Rights art. 3, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

²International Covenant on Civil and Political Rights art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.

³Exit-Entry Administration Law of the People's Republic of China (promulgated June 30, 2012; effective July 1, 2013) (China).

tegrate investigation, decision-making, and detention. This raises significant questions about the compatibility of this arrangement with international guarantees of liberty.

The relationship between immigration detention and the right to liberty has been widely examined within international human rights scholarship, particularly through the interpretation of Article 9 of the International Covenant on Civil and Political Rights. Authoritative doctrinal work has emphasized that detention must not only be lawful, but also necessary, proportionate, and subject to effective judicial oversight (Joseph & Castan, 2013). This body of scholarship, reflected in both academic commentary and the jurisprudence of the Human Rights Committee, has established a structured understanding of arbitrariness that extends beyond formal legality to encompass broader concerns of justification and procedural fairness (Human Rights Committee, 2014).

At the same time, studies of migration governance have documented the increasing reliance on administrative detention as a tool of immigration control across jurisdictions. Bosworth's work, for example, highlights how detention has become embedded within administrative systems that operate alongside, and often outside, the criminal justice framework (Bosworth, 2014). While such analyses provide important insights into the expansion and function of detention practices, they often remain general in scope and do not systematically apply international liberty standards to specific legal systems.

In the Chinese context, existing scholarship has focused primarily on the historical development and institutional structure of migration law. Liu's analysis of the evolution of Chinese migration regulation demonstrates a gradual shift from restrictive control toward a more structured administrative framework, culminating in the consolidation achieved by the 2012 Exit-Entry Administration Law (Liu, 2009). Complementary literature on Chinese administrative law further emphasizes the role of internal supervision and administrative self-control as key mechanisms for regulating discretion (Cui & Liu, 2009; Du, 2022).⁴ However, this body of work has generally not engaged in a detailed compatibility analysis of immigration detention practices against international human rights standards. Critical scholarship on international law has also questioned the extent to which contemporary human rights standards reflect historically Western institutional models. Drawing on Antony Anghie's analysis of the colonial foundations of international law, this article further considers how differing administrative and legal traditions shape contemporary assessments of liberty, judicial oversight, and state authority.

This article aims to address this gap by analyzing the theoretical compatibility of China's immigration detention system with the international standards of liberty derived from the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and by examining its conformity with those standards. The article highlights that, despite the significant consolida-

⁴English translations of the titles of Chinese-language sources were provided by the authors, with the assistance of an AI language model.

tion and simplification of previous regulations through the 2012 Exit-Entry Administration Law, the framework remains only partially compliant with international norms. The main differences lie not in administrative detention itself, but rather in the lack of direct and independent judicial review, the excessive discretion afforded to administrative authorities in setting detention periods, and the insufficient institutionalization of alternative detention measures. The combination of these features can lead to deprivation of liberty that exceeds the limits permissible under international human rights law.

Methodologically, this article follows a three-stage approach. First, the theoretical foundations of international standards of liberty are presented, based on treaty provisions, authoritative interpretations, and international practice. Next, a functional analysis of the Chinese legal framework for the detention of migrants is conducted, examining the legislation and its operational logic within the administrative system. Third, four cumulative criteria—legitimacy, necessity, proportionality, and judicial review—are used to assess their compatibility, analyzing textual consistency and effective implementation. Any differences identified are categorized into procedural and structural differences to further determine their causes.

Although China has signed but not yet ratified the International Covenant on Civil and Political Rights (ICCPR), its provisions remain relevant for interpretation within the scope of this analysis. Article 18 of the Vienna Convention on the Law of Treaties obliges the contracting parties to refrain from any conduct contrary to the aims and purposes of the treaty;⁵ and the interpretation of Article 9 by the Human Rights Committee is widely regarded as the authoritative interpretation of the principle of liberty first formulated in the Universal Declaration of Human Rights (UDHR) (Human Rights Committee, 2014). Moreover, there is international consensus in practice and theory that the norms of the ICCPR, regardless of formal ratification, reflect universally recognized standards regarding deprivation of liberty (Nowak, 2005; Joseph & Castan, 2013). Therefore, this article does not treat the case law on the ICCPR as a formally binding source of law, but rather as a compelling framework for interpretation through which the liberties enshrined in the UDHR can be realized and applied.

This article is structured as follows: Section 2 explains the normative content of the right to personal liberty in international law; Section 3 examines the development and current state of administrative detention in Chinese immigration law; Section 4 analyzes in detail its compatibility with international norms and highlights the most important similarities and differences; Section 5 puts forward concrete reform proposals to improve procedural safeguards and to align national practice with international expectations; Section 6 examines how differing legal and institutional traditions complicate the application of universal international liberty standards to China's administrative detention framework; and Section 7 sets out the conclusions of the analysis.

⁵Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

2. The Right to Liberty under the UDHR

The right to liberty, as defined in Article 3 of the Universal Declaration of Human Rights, is a fundamental guarantee against arbitrary deprivation of personal liberty.⁶ Although the Declaration is not a binding treaty, its provisions have exercised a lasting normative influence, shaping subsequent legal instruments, state practice, and judicial interpretation (Hannum, 1996). The adoption of the International Covenant on Civil and Political Rights transformed this fundamental principle into a legally binding obligation, and Article 9 defines both the substantive and procedural dimensions of the freedom.⁷ The Human Rights Committee has indicated that the prohibition of arbitrary arrest and detention reflects customary international law (Human Rights Committee, 1994).

The Human Rights Committee has made it clear that the prohibition of arbitrary detention extends beyond what is simply unlawful. In its authoritative interpretation, arbitrariness must be understood as including elements of lack of necessity, disproportionality, and the absence of effective procedural safeguards (Human Rights Committee, 2014, para. 12). Therefore, a deprivation of liberty may be in accordance with domestic law, but still violate international norms when it is unnecessary, disproportionate, or not subject to effective procedural safeguards (Nowak, 2005, pp. 212-220). This expanded concept is particularly important in administrative contexts, where detention is often imposed through executive decisions rather than judicial decisions. By synthesizing treaty provisions, interpretative guidance, and international practice, four cumulative requirements emerge for assessing the compatibility of detention with the right to liberty: legality, necessity, proportionality, and judicial oversight. These criteria are grounded primarily in the Human Rights Committee's interpretation of Article 9 in General Comment No. 35, which frames arbitrariness as encompassing elements of unlawfulness, unreasonableness, lack of necessity, disproportionality, and the absence of effective judicial control (Human Rights Committee, 2014, paras. 11-12, 15, 18, 32-33, 39-40). First, legality requires that detention be based on a law that is sufficiently clear, accessible, and predictable to prevent its arbitrary application (Human Rights Committee, 2014, para. 22). However, mere legal authority is not sufficient. Second, detention must be necessary in each particular case, that is, it must pursue a legitimate aim. It cannot be justified when less restrictive measures achieve the same aim (Human Rights Committee, 2014, paras. 18-19). Third, the measure must be proportionate, requiring that both the scope and duration of detention be strictly limited to what is necessary to achieve its legitimate aim (Human Rights Committee, 2014, paras. 10, 12, 15; Joseph & Castan, 2013, ch. 11). Finally, detention must be subject to prompt and effective judicial oversight, including the right of the detained person to challenge the lawfulness of the detention before an independent and impartial authority (Human Rights Committee, 2014, paras. 32, 39). These requirements operate as a whole: failure to comply with

⁶Universal Declaration of Human Rights, *supra* note 1, art. 3.

⁷International Covenant on Civil and Political Rights, *supra* note 2, art. 9.

any one of them may render detention arbitrary under international law.

In this context, immigration detention is particularly sensitive. While states have the sovereign power to regulate the entry and stay of non-citizens, the exercise of this power is limited by international human rights law. The Human Rights Committee has emphasized that detention in the context of migration must be justified on an individual basis and not imposed merely for formal or administrative convenience (Human Rights Committee, 2014, para. 18). Automatic, prolonged, or unreviewed administrative detention risks being arbitrary, even when authorized by national legislation (U.N. Working Group on Arbitrary Detention, 2017).

This reveals an inherent tension at the heart of migration governance: on the one hand, the need for administrative efficiency in migration control and, on the other, the obligation to guarantee robust procedural safeguards against arbitrary detention. Systems that rely heavily on executive branch discretion, especially in the absence of independent judicial review, raise serious questions about whether these conflicting demands can be resolved within the limits imposed by international guarantees of freedom. The above principles establish the theoretical foundation for the present analysis. The following section examines how these overall requirements interact with the structure and practice of China's administrative detention system, the role of administrative discretion, the availability of procedural safeguards, and the extent to which existing mechanisms comply with international standards of legality, necessity, proportionality, and judicial oversight.

3. Administrative Detention under Chinese Immigration Law

The contemporary legal basis for immigration-related detention in China is found primarily in the Exit-Entry Administration Law of the People's Republic of China (2012), which came into effect in 2013 and consolidated a set of previously fragmented regulatory instruments.⁸ Prior to 2012, Chinese immigration law was fragmented and dispersed across a wide range of legislative and administrative instruments rather than being contained in a unified code. The Exit-Entry Administration Law (2012) subsequently consolidated this previously diffuse framework (Liu, 2016). This legislative reform did not introduce administrative detention as a new procedure, but rather reorganized and streamlined pre-existing law enforcement practices that had developed from a variety of legal sources, including border inspection regulations, public security measures, and procedural rules governing administrative sanctions.

Historically, immigration-related provisions (including detention powers) were scattered across various instruments, including the Regulation on the Management of Entry, Exit, Transit, Residence and Travel of Aliens (1964), the Detailed Regulation for the Implementation of the Law on the Control of Entry and Exit of Aliens (1986), and the Exit and Entry Border Inspection Regulations

⁸Exit-Entry Administration Law of the People's Republic of China, *supra* note 3.

(1995).⁹ These instruments provided public security authorities with the power to impose detention in a variety of circumstances, such as illegal entry, visa overstay, or failure to meet documentation requirements.¹⁰ Although formally distinct, they shared a common logic of application: detention served as an administrative tool within a broader immigration control system, rather than as a measure integrated into the judicial process.

The 2012 Law consolidates this framework into a unified legal scheme, providing a clear legal basis for various deprivations of liberty measures, including detention for investigation, administrative sanctions, and pre-deportation detention.¹¹ Specifically, Articles 60–62 provide for detention for investigation, movement restrictions, and repatriation of foreigners suspected of violating exit and entry regulations, while Article 63 permits custody pending repatriation.¹² These provisions reflect a systematic legislative effort to standardize law enforcement powers and improve formal legality by placing detention within a comprehensive legal framework.

The Exit-Entry Administration Law of the People's Republic of China (2012) establishes a parallel system of punitive (sanction-based) detention that operates alongside detention related to investigation and deportation. Unlike detention for investigation provided for in Article 60 or detention pending repatriation provided for in Article 63, these provisions clearly establish detention as an administrative sanction imposed after a violation has been established. Articles 71 to 82 collectively show that deprivation of liberty is routinely applied to a wide range of immigration-related offences. For example, Article 71 allows for detention for between five and ten days for acts such as illegal entry or exit or evading border checks, while Article 72 extends this period to between ten and fifteen days for assisting others in committing such offences. Similarly, Article 73 allows for detention when entry or exit documents are obtained fraudulently. In addition to entry-related offenses, the law extends detention powers to a wider range of regulatory violations: Article 77 allows for detention for unauthorized access to restricted areas or failure to comply with evacuation orders. Article 78 provides for detention in cases of illegal residence. Article 79 addresses those who harbor or assist illegal immigrants. Article 80 allows for detention for illegal employment. Even relatively minor administrative obstructions, such as interference with a port

⁹Regulation on the Management of Entry, Exit, Transit, Residence, and Travel of Aliens (1964) (China); Law of the People's Republic of China on the Control of the Entry and Exit of Aliens (promulgated Nov. 22, 1985, effective Feb. 1, 1986) (China); Rules for the Implementation of the Law on the Control of the Entry and Exit of Aliens (promulgated Dec. 27, 1986) (China); Exit-Entry Border Inspection Regulations (1995) (China).

¹⁰Law of the People's Republic of China on the Control of the Entry and Exit of Aliens, *supra* note 9, arts. 27, 29; Rules for the Implementation of the Law on the Control of the Entry and Exit of Aliens, *supra* note 9; Exit-Entry Border Inspection Regulations, *supra* note 9; Law of the People's Republic of China on Public Security Administration Punishments (promulgated Aug. 28, 2005, effective Mar. 1, 2006) (China); Procedural Rules for Handling Administrative Cases by Public Security Authorities (Ministry of Pub. Sec. Order No. 88, 2006) (China).

¹¹Exit-Entry Administration Law of the People's Republic of China, *supra* note 3.

¹²*Id.* arts. 60–63, 66.

administration order, can lead to detention under Article 82. These provisions demonstrate that detention under the Law is not limited to extraordinary or security-motivated circumstances, but is integrated as a routine enforcement procedure for a wide range of violations. The structure of the law thus blurs the line between criminal punishment and administrative regulation, as short periods of custody are typically imposed without the procedural safeguards associated with criminal proceedings. This widespread use of administrative detention is particularly significant when examined in light of international human rights standards, particularly under Article 9 of the International Covenant on Civil and Political Rights, as it raises concerns about the necessity, proportionality, and availability of effective judicial oversight.¹³

The stability achieved by the 2012 Law is primarily legislative rather than conceptual. While the framework improves clarity and accessibility, it largely maintains the underlying administrative logic of the previous instruments. Administrative detention is integrated into a system in which public security officials perform the combined functions of investigation, decision-making, and law enforcement (Biddulph, 2007). This institutional arrangement reflects a broader feature of Chinese administrative law, in which discretion is not seen simply as a loophole requiring judicial demarcation, but as an operational necessity that enables flexible and responsive governance (Liu & Wu, 2001). Within this model, administrative discretion is structured through internal oversight mechanisms, including hierarchical review, reporting responsibilities, and procedural rules (Cui & Liu, 2009; Du, 2022). These mechanisms aim to ensure accountability without relying on external judicial intervention and are often considered sufficient safeguards against abuse of power within the national legal framework. As a result, administrative detention is usually authorized and reviewed within the same institutional hierarchy, with little possibility of independent judicial oversight in the early stages of deprivation of liberty.

This administrative design has significant implications when assessed against international standards of liberty. As explained in Section 2, the authorization of detention depends not only on the existence of a legal basis, but also on the overall satisfaction of legality, necessity, proportionality, and judicial oversight. While the 2012 Law reinforces the first of these requirements by providing a more permanent legal basis, doubts arise as to whether the remaining standards are adequately met within a system that is based primarily on internal management control.

In particular, the broad legal discretion granted to public security authorities raises concerns regarding the necessity of detention. Provisions authorizing detention often use open-ended limitations, such as situations requiring investigation or identity verification, without clearly defining the conditions under which less restrictive alternatives should be considered.¹⁴ This creates the risk that detention will be applied as a predetermined coercive measure rather than a measure

¹³Id. arts. 71-82.

¹⁴Exit-Entry Administration Law of the People's Republic of China, *supra* note 3, art. 60.

of last resort.

Furthermore, the proportionality of detention is influenced by the structure of the detention period and the possibility of extension. Under current regulations, detention for investigation in complex cases can be held for longer periods, while detention pending deportation can continue until removal is possible.¹⁵ In the absence of independent review and clearly defined time limits, such provisions raise doubts as to whether the period of detention is limited to what is necessary to achieve its stated purpose.

Most importantly, the framework provides limited mechanisms for swift and independent judicial oversight. While internal review and reporting requirements exist, these do not constitute equivalent protection to judicial review, as they lack institutional independence from the decision-making authority responsible for detention (Human Rights Committee, 2014, para. 46; International Commission of Jurists, 2014, p. 10). The lack of automatic or timely access to an independent court to challenge the legality of detention represents a significant point of tension with international norms.

These features do not mean that the framework lacks legal structure or procedural safeguards. On the contrary, the 2012 Law represents a significant attempt to consolidate and formalize immigration control powers within a unified legal system. However, the persistence of an administrative control model focused on administrative discretion and internal oversight suggests that compliance with international standards of liberty cannot be assessed solely in the context of formal legality. Rather, the key question is whether the institutional design of the system can ensure that detention is applied only when necessary, proportionate, and subject to effective independent oversight.

The following section examines this issue in detail by applying the four overall criteria identified in Section 2 to the functioning of China's administrative detention system, distinguishing between areas of formal compliance with international guarantees of liberty and areas of fundamental deviation.

4. Compatibility between UDHR Liberty Guarantees and China's Administrative Detention Framework

The compatibility of China's immigration detention system with international guarantees of liberty should be assessed according to the cumulative requirements of legality, necessity, proportionality, and judicial review set out in Section 2. These standards provide not only a formal reference but also an analytical framework through which the structure and functioning of administrative detention can be assessed. The following analysis is based on a functional approach, examining how the relevant legal provisions operate in practice and whether they meet these interrelated requirements.

First, it is important to note that the Exit-Entry Administration Law (2012) rep-

¹⁵Id. art. 63.

resents a significant step towards legislative consolidation. As discussed in Section 3, the Law replaces a fragmented regulatory landscape with a unified legal framework that clearly defines the circumstances under which detention may be imposed.¹⁶ In this regard, the requirement for legality has been considerably strengthened, at least formally. The existence of codified provisions governing detention, investigation, and deportation reflects progress towards greater transparency and predictability compared to previous regulatory instruments.

However, the requirement for legality in international law goes beyond the mere existence of legal authority. It requires that legal rules be sufficiently precise and circumscribed to prevent arbitrary application (*Human Rights Committee, 2014*, para. 22). In this sense, certain provisions of the 2012 law are based on broad criteria such as the need for investigation or identity verification without clearly defining the conditions under which detention is justified (*Human Rights Committee, 2014*, paras. 12, 14, 22). The use of open-ended limits risks giving broad discretion to administrative authorities, thus limiting the law's capacity to effectively constrain decision-making power. While the framework satisfies the formal dimension of legality, its substantive validity remains inconsistent.

The necessity requirement has introduced a more demanding standard, requiring that detention be justified in each case and not imposed merely as a matter of routine or administrative convenience (*Human Rights Committee, 2014*, paras. 12, 18). International jurisprudence makes it clear that detention in the migration context must be exceptional and justified for specific and individual reasons that demonstrate why less restrictive alternatives are insufficient (*Human Rights Committee, 2014*, para. 18). When assessing the Chinese regulatory framework against this standard, areas of tension emerge. While detention is formally linked to specific categories of immigration violations, the legislation does not require authorities to demonstrate that detention is strictly necessary in each particular case. Nor does it systematically require that non-custodial alternatives be considered before imposing detention.

This absence is particularly significant given the breadth of administrative discretion available in the system. As discussed in Section 3, public security officials exercise combined investigative and decision-making powers, allowing them to determine both the existence of a violation and the appropriate enforcement response. In the absence of clear legal requirements to justify detention as a last resort, there is a risk that it will be used as a default law enforcement procedure, particularly in cases of identity verification or irregular immigration status. This does not mean that detention is always unnecessary, but rather that the legal framework does not consistently guarantee compliance with the requirements of necessity, as set out in international law.

The proportionality requirement further refines the analysis by focusing on the relationship between the intensity and duration of detention and the achievement of the purpose. Under international standards, detention must be strictly limited

¹⁶Exit-Entry Administration Law of the People's Republic of China, *supra* note 3.

in both scope and duration, and must not exceed what is necessary to achieve its legitimate aim (Human Rights Committee, 2014, paras. 12, 15; Joseph & Castan, 2013, ch. 11). The 2012 law introduces a more structured timeframe than previous regulatory instruments, but also allows for extensions in cases involving complex investigations or practical obstacles to removal.¹⁷ In particular, detention may be prolonged until deportation is possible, potentially leading to an extension of detention or an indefinite period of detention.

These measures raise concerns where time limits are not clearly defined or subject to independent review (Human Rights Committee, 2014, paras. 22-23). The absence of fixed maximum time limits for certain forms of detention, combined with the possibility of extension through administrative review, creates a risk that detention may exceed what is proportionate to its stated purpose. International standards emphasize that, even where detention is initially justified, its continued legality depends on ongoing assessment to ensure that it remains necessary and proportionate (Human Rights Committee, 2014, para. 18). In this regard, detention becomes arbitrary where it is not subject to periodic re-evaluation or where it extends beyond the time strictly required to achieve its legitimate aim (Human Rights Committee, 2014, paras. 12, 15). When such a review is not guaranteed, it becomes difficult to maintain proportionality in practice.

The most important point of disagreement arises with regard to judicial review. As established in Section 2, prompt access to an independent and impartial authority competent to review the lawfulness of detention constitutes a fundamental safeguard against arbitrariness (Human Rights Committee, 2014, paras. 4, 15, 45). While the Chinese legal framework provides for internal management review and reporting mechanisms, these do not constitute an equivalent form of oversight. Internal oversight, by its very nature, operates within the same institutional structure as the decision-making authority and therefore lacks the necessary independence to effectively control the exercise of custodial powers.

The absence of automatic or timely judicial review in the early stages of detention is particularly significant. International jurisprudence consistently emphasizes that detainees must have the opportunity to challenge the lawfulness of their detention in court without undue delay (Human Rights Committee, 2014, paras. 32, 39, 42). When such access is limited or delayed, the risk of arbitrariness increases, regardless of the existence of formal legal authority or internal administrative controls. In this regard, the Chinese system reflects a structural reliance on administrative rather than judicial accountability mechanisms, which do not fully meet the requirements of international guarantees of liberty.

Taken together, these observations suggest that China's framework for detaining immigrants presents a pattern of partial alignment with international standards and fundamental deviations. In terms of formal legality, the 2012 law represents a clear improvement over previous regulatory models, providing a coherent legal basis for detention. However, regarding necessity and proportionality, the

¹⁷Exit-Entry Administration Law of the People's Republic of China, *supra* note 3.

framework does not consistently ensure that detention is used only as a measure of last resort or that it adheres to strictly defined limits. Most importantly, the limited role of independent judicial oversight is a structural deficiency that affects the functioning of the entire system.

These differences should not be interpreted as evidence of a complete incompatibility between the Chinese legal framework and international law. Rather, they reflect profound differences in the structure and control of administrative power within the domestic legal system. While international standards emphasize external judicial oversight as a safeguard against arbitrariness, the Chinese system relies more on internal administrative oversight and institutional discipline. The issue, therefore, is not simply whether detention is authorized by law, but rather whether existing control mechanisms are sufficient to ensure that deprivation of liberty remains exceptional, lawful, and subject to effective review.

The analysis developed in this section forms the basis for the reform proposals outlined in Section 5. By identifying specific points where the current framework deviates from international standards, particularly in relation to necessity, proportionality, and judicial oversight, it is possible to set out specific adjustments that improve procedural safeguards without requiring a fundamental restructuring of the administrative system.

5. Enhancing Compatibility through Targeted Institutional Reform

The analysis in Section 4 demonstrates that China's immigration detention framework shows partial alignment with international standards of liberty concerning formal legality, but more significant differences regarding necessity, proportionality, and judicial oversight. These contradictions do not arise from the existence of administrative detention itself, but from the institutional framework through which detention powers are exercised and reviewed. Therefore, the reforms should not be conceived as a fundamental institutional change, but rather as specific adjustments to strengthen procedural safeguards while maintaining compatibility with the existing administrative structure.

This section proposes a set of incremental reforms aimed at improving compliance with international guarantees of freedom. The aim is not to replace the administrative model of migration control, but to improve it by introducing clearer limits on discretion, more structured decision-making processes, and more effective review mechanisms.

5.1. Strengthening the Requirement of Necessity: Introducing a "Last Resort" Standard

A key concern stated in Section 4 is the lack of a clear requirement that detention should be imposed only when necessary in each specific case. While the Exit-Entry Administration Law allows for detention in relation to specific offences, it does not systematically require authorities to demonstrate that less restrictive measures

would be insufficient.¹⁸

To address this gap, the legal framework could be amended to include a clear “last resort” principle. Such a provision would require administrative authorities to assess in each case whether detention is strictly necessary to achieve a legitimate aim, such as ensuring compliance with deportation procedures or preventing absconding (Human Rights Committee, 2014). This assessment should be documented in writing and be subject to internal review, thus creating a transparent decision-making process.

In practice, these reforms would not eliminate administrative discretion but would frame its exercise through the requirement of justification rather than presumption. They would also align the domestic framework with international standards, which emphasize that detention in the migration context should be exceptional, not routine (Human Rights Committee, 2014).

5.2. Expanding the Use of Non-Custodial Alternatives

The need to institutionalize non-custodial alternatives to detention is closely linked to the demands of necessity. International practice increasingly recognizes that reporting requirements, residence restrictions, or financial guarantees can achieve immigration control objectives without resorting to the deprivation of liberty (U.N. Working Group on Arbitrary Detention, 2017).

Although elements of these alternatives exist in the general administrative system, they are not consistently presented as alternatives to detention within the legal framework. A clearer statement of the alternatives, either in central legislation or through implementing regulations, would allow authorities to adopt a phased approach to implementing the law.

It is important to emphasize that the development of alternatives should not be interpreted as a limitation of state capacity. On the contrary, it can improve administrative efficiency by reducing reliance on custodial resources and allowing for more flexible case management. By integrating alternatives into the decision-making process, the framework will better reflect the principle of proportionality while maintaining effective migration control.

5.3. Clarifying Temporal Limits and Strengthening Proportionality Controls

As discussed in Section 4, the proportionality of detention is influenced not only by its initial justification but also by its duration. The current framework allows for the extension of detention in circumstances involving complex investigations or practical obstacles to removal, with little clarity on maximum time limits.¹⁹

To address this issue, the law could introduce clear legal guidelines on the permissible duration of detention, including a set maximum period and strict conditions for extensions. Extensions require a reassessment of necessity and proportionality, supported by documented justification (Human Rights Committee,

¹⁸Exit-Entry Administration Law of the People’s Republic of China, *supra* note 3.

¹⁹Exit-Entry Administration Law of the People’s Republic of China, *supra* note 3.

2014).

Furthermore, periodic review procedures could be formalized within the administrative system. Such reviews, conducted at regular intervals, would ensure that continued detention is justified on the basis of changing circumstances. This approach would strengthen proportionality without fundamentally changing the administrative nature of the system.

5.4. Introducing Limited but Effective Judicial Oversight

The most important distinction identified in Section 4 concerns the lack of prompt and independent judicial oversight. Addressing this issue represents the greatest institutional challenge, as it relates to the broader relationship between administrative authority and judicial control within the Chinese legal system.

Rather than proposing a radical change to the purely judicial model of immigration detention, a more viable approach would be to introduce specific forms of judicial intervention at critical stages of the detention process. For example, legislation could include:

- a) The right of detainees to request a judicial review of their detention within a specified time frame;
- b) Mandatory judicial authorization for detention beyond a specified period;
- c) Procedures for reviewing the legality of detention in urgent cases.

These measures would not replace the fundamental role of administrative authorities, but they would introduce an external layer of oversight that would be able to address the most significant risks of arbitrariness. Even limited judicial review could constitute an important safeguard by ensuring that detention decisions are subject to independent scrutiny.

5.5. Enhancing Transparency and Internal Accountability

In addition to external oversight, the effectiveness of the administrative model depends on the strength of internal accountability mechanisms. As discussed in Section 3, Chinese administrative law attaches great importance to internal oversight, including hierarchical review and procedural regulation. Therefore, strengthening these mechanisms can play an important role in improving compliance with international standards.

Reforms in this area could include:

- a) Require detailed written justification for detention decisions;
- b) Standardize documentation practices across all administrative agencies;
- c) Improve the training of officials on international human rights standards;
- d) Improve detainees' access to legal information.

These measures will increase transparency and reduce the risk of arbitrary decisions while remaining consistent with the existing institutional framework. Furthermore, they complement, rather than replace, the introduction of external oversight mechanisms.

5.6. Toward Incremental Alignment Rather than Structural Transformation

Taken together, the reforms proposed in this section reflect a step-by-step approach to improving compliance with international guarantees of liberty. They do not require a fundamental restructuring of China's administrative detention system, but rather focus on how discretion is exercised, limited, and reviewed.

This approach recognizes that differences between national legal systems and international norms often arise not from a complete rejection of normative principles, but from variations in institutional design. By introducing specific adjustments, particularly those relating to necessity, proportionality, and judicial oversight, it is possible to reduce the risk of arbitrary detention while maintaining the functional features of the existing legal framework.

The goal is not to abolish administrative detention, but to ensure that it operates within clearly defined boundaries that reflect the essential requirements of legality, necessity, proportionality, and effective oversight. In this sense, compliance with international law is not understood as a binary condition, but rather as a process of progressive alignment in the form of both principled commitments and institutional realities.

6. Universal Liberty Standards and Institutional Diversity

Contemporary international human rights law is frequently presented as a universal normative framework applicable across legal systems irrespective of institutional or historical differences. However, critical scholarship on the history of international law has questioned the extent to which modern international legal standards emerged through specifically European historical experiences and colonial encounters. Antony Anghie, for example, argues that colonialism was not peripheral to the development of international law, but central to the formation of foundational concepts such as sovereignty and governance (Anghie, 2006, pp. 741-745). In this account, international law historically operated through a "dynamic of difference" in which European institutional models were universalized while non-European systems were positioned as deficient, backward, or in need of transformation (Anghie, 2006, pp. 741-742).

These critiques are particularly relevant in the context of administrative detention and judicial oversight. Contemporary international liberty standards, especially those developed through Article 9 of the ICCPR and the jurisprudence of the Human Rights Committee, place strong emphasis on external judicial control as the primary safeguard against arbitrary detention (Human Rights Committee, 2014, paras. 32-39). Such standards emerged largely within liberal legal traditions that prioritize separation of powers, adversarial adjudication, and judicial review as central mechanisms for constraining executive authority.

By contrast, the Chinese administrative framework reflects a different institutional tradition in which accountability is structured more heavily through hier-

archical supervision, administrative coordination, and internal review mechanisms. As discussed in earlier sections, this does not necessarily indicate an absence of legal structure or procedural control. Rather, it reflects a distinct understanding of how administrative authority should be organized and constrained within the broader governance system.

Recognizing this institutional divergence is important for two reasons. First, it cautions against assessments that implicitly treat one institutional model as universally self-evident or normatively exclusive. Second, it suggests that compatibility analysis should focus not solely on whether domestic systems replicate Western liberal mechanisms in identical form, but on whether they are capable in practice of preventing arbitrariness and constraining coercive power.

At the same time, acknowledging the historical and institutional origins of international legal standards does not render such standards irrelevant or illegitimate. As Anghie himself observes, international law remains an unavoidable framework through which questions of legitimacy, governance, and rights are debated in the contemporary international order (Anghie, 2006, pp. 751-753). The issue, therefore, is not whether international liberty standards should apply, but how they should be interpreted and operationalized in ways that remain attentive to institutional diversity while preserving meaningful safeguards against arbitrary detention.

From this perspective, the divergences identified in this article are best understood neither as evidence of complete incompatibility nor as grounds for rejecting international standards altogether. Rather, they reflect an ongoing tension between universal normative commitments and differing institutional approaches to governance and accountability. The challenge for compatibility analysis is therefore not to impose uniformity, but to evaluate whether alternative institutional arrangements can achieve the underlying objectives of legality, necessity, proportionality, and effective oversight.

7. Conclusion

This article has examined the compatibility of China's immigration-related administrative detention framework with international liberty standards through a structured analysis grounded in legality, necessity, proportionality, and judicial oversight. By applying these cumulative criteria to the Exit-Entry Administration Law of the People's Republic of China (2012), the article has argued that although the Chinese framework demonstrates increasing formal legal consolidation, important tensions remain between the operation of administrative detention and the substantive safeguards required under contemporary international human rights law.

The analysis has shown that the 2012 Law significantly strengthened the formal legality of immigration detention by replacing a fragmented regulatory structure with a more coherent statutory framework. However, the article has also demonstrated that legality alone is insufficient to prevent arbitrariness. International lib-

erty standards require detention to remain exceptional, individually justified, proportionate in duration and scope, and subject to effective oversight. In this regard, the Chinese framework does not consistently ensure that detention operates as a measure of last resort, nor does it systematically require consideration of non-custodial alternatives. Similarly, the broad scope of administrative discretion and the limited availability of prompt and independent judicial review create continuing risks of disproportionate or insufficiently constrained detention practices.

At the same time, the article has argued that these divergences should not be understood through simplistic assumptions of compliance versus non-compliance. Rather, they reflect broader differences in institutional design and legal tradition. Contemporary international liberty standards developed largely through legal systems that prioritize judicial oversight and external constraints on executive power, whereas the Chinese administrative model places greater reliance on hierarchical supervision, internal accountability, and coordinated administrative governance. Recognizing this distinction is important because it shifts the analysis away from formal comparisons between institutional models and toward the more substantive question of whether existing safeguards are capable of effectively preventing arbitrary detention in practice.

In this respect, the article contributes to existing scholarship in two principal ways. First, it develops a structured compatibility framework based on legality, necessity, proportionality, and judicial oversight, allowing for a more systematic assessment of immigration detention under international human rights law. Second, it distinguishes between formal compliance at the level of statutory legality and substantive alignment at the level of institutional safeguards, thereby providing a more nuanced account of how divergences between domestic legal systems and international standards emerge. By integrating doctrinal analysis with institutional context, the article moves beyond purely descriptive accounts of Chinese immigration law and beyond generalized critiques of administrative detention.

The broader implications of this analysis extend beyond the Chinese context alone. As states increasingly rely on administrative detention as a tool of migration governance, the tension between migration control and liberty protection has become a central challenge within contemporary international law. The findings of this article suggest that compatibility with international liberty standards cannot be assessed solely through the existence of statutory authority or procedural formality. Effective safeguards against arbitrariness require institutional mechanisms capable of meaningfully constraining coercive state power.

For this reason, the article has proposed a series of targeted reforms aimed at strengthening procedural safeguards while remaining attentive to existing institutional realities. Introducing clearer necessity requirements, expanding the use of non-custodial alternatives, clarifying temporal limits on detention, and incorporating more effective forms of independent review would substantially reduce the risk of arbitrary detention without requiring a wholesale transformation of the administrative system. Such reforms would not only enhance compatibility with

international human rights standards, but also strengthen the overall legitimacy and predictability of immigration governance.

Ultimately, the question raised by China's administrative detention framework is not simply whether immigration control is a legitimate state objective, but how legal systems can ensure that the exercise of coercive administrative power remains subject to meaningful limits. In this sense, the right to liberty continues to serve as a fundamental measure of the relationship between state authority and individual protection. As migration governance expands globally, ensuring that detention remains exceptional, justified, and effectively constrained will remain essential to the preservation of legality, accountability, and human dignity within the international legal order.

AI Usage Statement

During the manuscript preparation, the authors used ChatGPT 4.0 only for grammatical correction, academic language polishing, sentence structure optimization, logical refinement and format checking and translation of the titles of Chinese-language sources. All research design, experimental operation, data analysis, core viewpoints and conclusions were independently completed by the authors. No AI tool was involved in data generation, figure creation, experimental design or key academic content writing. The authors have fully reviewed, revised and verified the entire manuscript, and take full responsibility for the originality, accuracy and integrity of this research work.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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