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People's Republic of China Submission to the UN Universal Periodic Review

**Fourth session of the UPR Working Group of the
Human Rights Council
February 2009**



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concern over the use of the death penalty and extra-judicial forms of detention, including *Re-education through Labour*.
- Section C highlights Amnesty International's concerns in relation to torture and other ill-treatment and violations of the right to freedom of expression.
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

People's Republic of China

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B. Normative and institutional framework of the State

The death penalty

Since the Supreme People's Court resumed its review of all death sentences on 1 January 2007, Chinese authorities have claimed a drop in their number. However, the authorities continue to consider death penalty statistics to be a state secret, and refuse to make public national statistics on death sentences and executions. In 2007, Amnesty International recorded 470 executions; however, this was based only on public reports and should be considered as an absolute minimum. The Dui Hua Foundation estimates that executions in 2007 numbered between 5,000 and 6,000. In the absence of full national statistics it is impossible to assess how the reinstatement of review by Supreme People's Court (SPC) of all death sentences has affected the application of the death penalty in China, including whether it has brought about a reduction in death sentences and executions.

Those facing capital charges do not receive fair trials in line with international human rights standards. Failings include lack of prompt access to lawyers, lack of presumption of innocence, political interference in the judiciary and failure to exclude evidence extracted through torture. Death row inmates suffer cruel, inhuman and degrading conditions of detention, in some cases being shackled or handcuffed 24 hours a day, and severely beaten, sometimes by other inmates. The continued admissibility in court of confessions based on torture has undercut government-led campaigns against forced confessions.

Arguing that it was a more humane method of execution, China expanded its lethal injection programme in 2008. This ignores the inherent problems of the death penalty, including its arbitrary application and possible miscarriages of justice that include execution of the innocent. In addition, the death penalty continues to be applied to some 68 crimes in the PRC, which include a wide range of non-violent offences, such as economic and drug-related crimes.

Detention without trial

Chinese authorities continue to make extensive use of various forms of extra-judicial or administrative detention in which individuals are deprived of their liberty without charge, trial or judicial review. This is a violation of both Article 9 and Article 14 of the International Covenant on Civil and Political Rights, which China has signed and declared an intention to ratify in the near future. The failure to uphold such safeguards as the rights to liberty and to a fair trial seriously undermines the quality of the criminal justice system and facilitates the use of torture and other cruel, inhuman or degrading treatment or punishment.

One of the largest of such detention systems is the *Re-education through Labour* system, in which estimates of between 300,000 and 500,000 individuals are held. Other forms of administrative detention include *Custody and Education* (for prostitutes and those soliciting prostitutes), and *Enforced Drug Rehabilitation* (for drug addicts). Administrative forms of detention give the police the power to impose punishment without judicial oversight while depriving defendants of the rights of due process, including the right to legal counsel and the presumption of innocence. While the new Public Order Administrative Punishment Law, put into operation in March 2006, in theory

allows defendants to challenge or to appeal for a reduction or suspension of their sentences, it is difficult for defendants to carry out such appeals in practice and they rarely succeeded.

The *Re-education through Labour* system has been used to facilitate the incarceration of common criminals and to crack-down on and intimidate activists, human rights defenders, and individuals who practice their religion outside official channels. The system is often used on those regarded as “troublemakers”, or those accused of minor offences which are not considered to amount to a “crime” and are therefore not prosecuted under the criminal justice system. While the authorities may wish to introduce special procedures or bodies to deal with minor offenders, essential procedural safeguards must be upheld: laws should not be used to punish people on the basis of their “anti-social” behaviour as assessed by non-judicial bodies.

Despite calls by Chinese reformers and legal experts for its abolition, legislative reform of the *Re-education through Labour* system has remained stalled in recent years, and in the run-up to the Olympics the authorities made increased use of the system to lock up those they believed might disrupt the Games and to “clean-up” Beijing prior to the Games. The lack of independent oversight over the RTL system and other forms of administrative detention has also engendered widespread use of torture and other ill-treatment to punish or “reform” detainees. According to a 2006 report on the Mission to China by the UN Special Rapporteur on torture, an estimated 66% of cases of torture are thought to take place in administrative detention.

One such case is Liu Jie, who is serving a term of 18 months in RTL in Heilongjiang province, northeast China, after she organised a public letter urging leaders at the 17th Chinese Communist Party Congress to introduce political and legal reforms, including a call for the abolition of RTL. According to sources, for five consecutive days in May 2008 she was forced to sit upright on a long bench (known as the ‘tiger bench’) with her hands tied behind her back, her thighs tied to the bench, and her feet raised off the floor on bricks. On or around 22 May 2008, the authorities transferred Liu Jie from Qiqihaer RTL facility to Harbin Drug Rehabilitation Centre together with around 30 other inmates and it is unclear whether the torture took place in Qiqihaer or Harbin.

C. Promotion and protection of human rights on the ground

Torture and other ill-treatment

Amnesty International has noted concern expressed by legislators and other officials in China about the continued use of torture and other ill-treatment by law enforcement officials across the country. Notwithstanding steps taken by the government in this respect, torture and ill-treatment continues to be endemic in the authorities’ treatment of prisoners and individuals held in extra-judicial or illegal detention centers.

Amnesty International continues to receive reports of deaths in custody in a variety of state institutions, including prisons, RTL facilities and police detention centres. Many of these deaths are alleged to be the result of torture or ill-treatment in custody. According to overseas Falun Gong sources, in the course of 2007 over 100 Falun Gong practitioners died in detention or shortly after release as a result of torture, denial of food or medical treatment, or other forms of ill-treatment. The rate of deaths in detention of Falun Gong practitioners is reported to have increased in 2008. Occasional reports in the Chinese media suggest that perpetrators of torture are in some instances punished for such violations, but in many more cases documented by Chinese human rights activists, Amnesty International and other NGOs, official investigations rarely take place and perpetrators continue to enjoy impunity. Investigations that are undertaken also fail to meet the necessary requirements of independence as stipulated in the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) to which China is a party.

Over recent years, the Chinese authorities have passed numerous regulations intended to strengthen the formal prohibition of torture stipulated in the Criminal Law. However, the categories of prohibited behaviour are limited and fail to fully comply with definitions of torture under international law, failing, for instance, to prohibit certain acts

defined as torture in CAT, such as mental torture. Furthermore, Articles 247 and 248 of the Criminal Law list several offences related to the prohibition of torture; however, these crimes are only applicable to a limited range of officials in limited circumstances or locations. In addition the procuratorate (prosecuting authorities), which directly investigates and prosecutes torture and other offences committed by officials, continues to set criteria for taking up cases which further limit the application of these provisions.

The broad discretion given to the police by the Criminal Procedure Law (CPL) to detain suspects for long periods in pre-trial detention increases opportunities for torture and other ill-treatment of detained individuals. The CPL provides for police detention without charge for up to 14 days for ordinary criminal suspects, 37 days for some categories of suspects, and potentially indefinitely for others. Detention for investigation after charge may be as long as seven months, and may be extended to nine months under certain circumstances. During this time detainees' access to their families and legal representatives may be limited. Under the CPL, the police should inform the family of a detainee about their detention, arrest and place of detention within 24 hours, except where it "would hinder the investigation" (Articles 64 and 71). However, in practice communication with the family is frequently denied until the detainee is brought to trial or sentenced.

Provisions on access to a lawyer also fall short of international standards. Article 96 of the CPL states that a suspect "may appoint a lawyer to provide legal advice or to file petitions and complaints on his behalf" after the first session of interrogation by the "investigative organ", or from the day when the suspect is subjected to one of the forms of detention or restriction provided by the law ("compulsory measures"). Lawyers "may" meet the suspect in custody "to enquire about the case", but police investigators may also be present at such meetings. In cases "involving state secrets" the prior approval of the police is required before a lawyer is appointed or any meeting between lawyer and client can take place. The use of vague language means that in practice detainees are required to obtain permission from the police before obtaining access to a lawyer, and often they are also denied access to family and legal counsel during extended periods of detention.

Recent examples of death in custody include Yu Zhou, a well-known folk singer, graduate of Beijing University, and reportedly a Falun Gong practitioner, who was arrested in Tongzhou District, Beijing, on 26 January 2008, along with his wife, Xu Na, a poet and painter. On 6 February 2008, the authorities notified the family to come to the Qinghe District Emergency Centre, where they learned that Yu Zhou had already died. A family member recounted how his body was covered by a white sheet, and only his eyes were visible. The family was told that Yu had died from either diabetes or from a hunger strike, although he had been perfectly healthy at the time of his arrest. The staff at the Emergency Centre refused the family's request to view the body and for an autopsy to be performed, and the authorities refused to hand over Yu's body to the family. Xu Na, who was imprisoned from 2001 to 2006 for her adherence to Falun Gong, is reported to remain in custody, at risk of ill-treatment and long-term detention.

Another case is that of Paltsal Kyab, who died five weeks after he was detained by police in connection with a protest march on 17 March 2008 in Charo township in Ngaba (Ch:Aba) county, a Tibetan-populated area of Sichuan province. According to witnesses, Paltsal Kyab did not take part in the violence, but tried to persuade the protesters to demonstrate peacefully in line with the Dalai Lama's principle of non-violence. Paltsal Kyab gave himself up voluntarily to the police following an official announcement that those who surrendered voluntarily would be treated leniently. The police detained him on arrival at Charo police station on 17 or 18 April 2008. He was transferred to Ngaba police detention centre on 27 April 2008 and his family had no further news of him until 26 May 2008 when two Charo township leaders came to Paltsal Kyab's home to inform his family of his death.

When family representatives went to claim his body, the police told them that he had died of an illness, claiming that they had taken him to hospital twice for treatment for kidney and stomach problems. His relatives report that he was healthy when he was first detained with no history of major health problems. According to witnesses who saw his body, the front of his body was bruised and covered with blisters from burns; his back was also bruised without a

single area of natural skin tone; bruising was evident on his wrists, elbow joints, just below his shoulders, biceps and forearms. According to his relatives, to date there has been no official investigation into his death.

Criminalizing free speech

Over recent years the Chinese authorities increasingly use vaguely defined criminal charges, including "subverting state power", "disturbing public order", "endangering state security", and "leaking state secrets", to silence and imprison peaceful activists in China. Defendants charged with having committed such crimes, or others relating to "state secrets", are deprived of many rights, including access to legal counsel of their choosing, access to family and a public trial. Amnesty International fears that the police may use this provision in the law to deny detainees access to evidence against them. The definition of "state secrets" in China is very broad; encompassing matters which would be subject to public scrutiny in other countries.

Article 105(2) of the Chinese Criminal Code, which stipulates the crime of "inciting subversion of state power", is one of the most frequently used to bring such criminal charges. China's use of the concepts of "state security" and "subversion of state power" violates international standards as specified in the International Covenant on Civil and Political Rights and the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, which state that any restrictions placed on freedom of expression must be narrow, specific and limited to information that would threaten the life of the nation if disclosed.

Recent examples of individuals charged under these provisions include Yang Tongyan (pen-name: Yang Tianshui), a freelance writer, who is serving a 12 year prison sentence for "subversion" in connection with several charges, including writing in support of political and democratic change in China. In 2007, he was reportedly forced to work making footballs and basketballs in a toxic environment for 8-10 hours per day; however, at the end of 2007, he was transferred to lighter work as prison librarian. He is serving his sentence in Nanjing Municipal Prison, Jiangsu province and is due for release on 22 December 2017.

Hu Jia, a human rights activist, was sentenced on 28 January 2008 to three-and-a-half years' imprisonment and one year's deprivation of political rights for "inciting subversion". The verdict on his case cites his writing and other activities as the basis of the charge. The timing of his formal detention suggests that Hu's imprisonment was related to his role in speaking out publicly on human rights issues in China, as well as the fact that he had established contacts with foreign journalists, embassy staff and other international figures.

Individual Chinese writers, journalists, and human rights defenders continue to be arrested and sentenced to prison terms for their writings and posting of articles on the internet. Access to the Internet continues to be closely monitored and censored. Under international pressure, the Chinese authorities unblocked a number of Internet sites just days before the start of the Olympic Games (including Amnesty International's main site and those of Human Rights Watch and Radio Free Asia). However, other sites remain blocked. There have been no official pronouncements from the Chinese authorities as to how long these sites will remain unblocked. New regulations for foreign journalists in China introduced in January 2007, ostensibly gave them greater freedom to investigate news stories; however, the regulations do not apply to Chinese journalists, who continue to work under conditions of tight control and at high risk of prosecution and imprisonment for reporting on sensitive issues.

D. Recommendations for action by the State under review

Amnesty International call on the government to:

The death penalty

- Publish full national statistics on death sentences imposed and executions, disaggregated by region, sex, income, and other categories;
- Reduce the scope of crimes subject to the death penalty, including elimination of all non-violent crimes currently subject to the death penalty;
- Provide information on the procedures for the Supreme People's Court review of death penalty cases and ensure that the rights of defendants meet international standards, including the right to prompt access to a lawyer, to regular family visits, to a presumption of innocence and the inadmissibility of confessions extracted under torture;
- Provide a time-table for effecting concrete reforms relating to the death penalty, with the goal of declaring a moratorium on executions in line with UN General Assembly resolution 62/149 of 18 December 2007.

Detention without trial

- Bring all administrative detention laws and provisions into line with the international human rights law and standards, including Articles 9 and 14 of the International Covenant on Civil and Political Rights. In particular, to ensure that those arrested and accused of offences punishable with deprivation of personal liberty are afforded all due process rights, including the rights to a fair and public trial by a competent, independent and impartial tribunal, access to legal counsel of one's choosing, the presumption of innocence, and the opportunity to appeal their sentence through a process of judicial review;
- Transfer all powers to impose imprisonment as a punishment from the police to the courts. To introduce institutional reforms to ensure that courts are competent, independent and impartial and carry out proceeding in accordance with international fair trial standards;

Torture and other ill-treatment

- Implement the recommendations by the UN Committee against Torture and the Special Rapporteur on torture. These include revision of China's legal codes, including the Criminal Law and the Criminal Procedures Law, to bring these in line with CAT, and making inadmissible evidence obtained through torture; strengthening the right of detainees to prompt access to legal counsel and to regular family visits; and bringing the definition of torture into line with international standards, including mental torture;
- End the impunity of officials who engage in torture and other ill-treatment by making the institutional reforms necessary to ensure effective implementation of existing laws prohibiting torture;
- Ensure that law enforcement officials, medical personnel, investigators and other personnel involved in the custody, interrogation or treatment of detainees receive appropriate training about the prohibition of torture;

Freedom of expression

- Release all prisoners of conscience and all those detained solely for peacefully exercising their rights to freedom of expression, including Yang Tongyan, Hu Jia, and Liu Jie;
- Cease censorship of the Internet and other media, and fulfil the right to freedom of expression guaranteed in China's Constitution;

- Make permanent media regulations introduced in January 2007 granting greater freedoms to foreign journalists and extend these to Chinese journalists;
- Review criminal and administrative legislation to ensure that all offences are clearly and narrowly defined, including Article 105(2) of the Criminal Law;
- Exclude from punishment any act undertaken in peaceful pursuit of fundamental human rights, including the rights to peaceful assembly and association, and the rights to freedom of expression and opinion, as provided in the International Covenant on Civil and Political Rights and other international treaties and standards.

Appendix: Amnesty International documents for further reference²

The People's Republic of China: The Olympics countdown – broken promises: Update, 29 July 2008, AI Index: ASA 17/090/2008

The People's Republic of China: The Olympics countdown – broken promises, 29 July 2008, AI Index: ASA 17/089/2008

The People's Republic of China: Amnesty International website blocked at Olympic venue, 28 July 2008, AI Story

The People's Republic of China: Ye Guozhu must be released immediately, 23 July 2008, AI Story

The People's Republic of China: An open letter to the President of the People's Republic of China, 1 July 2008, AI Index: ASA 17/087/2008

The People's Republic of China: Further Information on Incommunicado Detention/ Fear of torture or ill-treatment: Jaranbayar Soyolt (m), 24 June 2008, AI Index: ASA 17/086/2008

The People's Republic of China: One thousand protesters unaccounted for in Tibet lock-down, 18 June 2008, AI press release

The People's Republic of China: Tibet Autonomous Region: Access Denied, 18 June 2008, AI Index: ASA 17/085/2008

The People's Republic of China: Hu Jia jailed for three and a half years, 4 April 2008, AI Appeal for Action

The People's Republic of China: Olympics countdown - Time running out for improvement in human rights, 1 April 2008, AI press release

The People's Republic of China: The Olympics countdown: Repression of activists overshadows death penalty and media reforms, 30 April 2007, AI Index: ASA 17/015/2007

² All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/asia-and-pacific/east-asia/china>