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**Submission to the Universal Periodic Review Working Group
of the United Nations Human Rights Council**

Country: People's Republic of China

Submitted by: Chinese Human Rights Defenders (CHRD), an NGO stakeholder

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The following submission presents five areas of particular concern that CHRD recommends the Universal Periodic Review (UPR) Working Group take into consideration in regard to the UPR to be conducted on China in the 4th session in 2009. The five areas are:

- (1) China must take effective measures to implement the Convention against Torture.
- (2) China must abolish all systems of arbitrary detention.
- (3) China must end the criminalization of freedom of speech and of the press.
- (4) China must cease Party and government control of the judiciary.
- (5) China must honor its commitment to protect human rights defenders.

In each area below, CHRD recommends that the UPR Working Group raise specific issues with the Chinese government.

(1) China must take effective measures to implement the Convention against Torture

The Chinese government has taken some measures to implement the Convention against Torture, which it ratified in 1988, especially in the area of law-making, but there remain very serious problems of implementation, and new areas of concern have emerged. Torture continues to be employed by authorities to achieve official goals. There is a serious lack of transparency in the investigation and disposition of the few torture cases in which officials have decided to take action. Confessions are still treated as the most valuable form of evidence and are often coerced. The use of violence by privileged prison inmates at the instigation of guards as a technique for disciplining and coercing uncooperative counterparts remains endemic in detention facilities. Such violence is almost never prosecuted.

The treatment of petitioners¹, in particular, has worsened in recent years. “Interception”² of petitioners often includes the use of physical violence, either by government agents or hired thugs acting at their behest. A new form of illegal detention—“black jails”—has emerged, in which torture and ill-treatment are widespread, even routine. Conditions in “black jails”, to which petitioners are frequently sent, are often extremely poor. Petitioner advocates have reported a number of cases in which torture in “black jails” has resulted

in the deaths of petitioners, but even when such violence has resulted in serious injury or death, it has been committed with complete impunity. No cases have come to the attention of CHRD in which a government official has been investigated or prosecuted for torturing a petitioner. In some cases, petitioners are subjected to abusive detention, torture and ill-treatment in retaliation for their attempts to report incidents of torture experienced by themselves or their family members. (For more information, see CHRD's recent report, *Silencing Complaints: Human Rights Abuses against Petitioners in China* (http://crd-net.org/Article/Class9/Class11/200803/20080314221750_8056.html))

In many cases, there appears to have been collusion between law enforcement officers and hired thugs. Law enforcement officers have failed to stop or investigate brutal assaults on protesters, petitioners, human rights defenders and human rights lawyers by unidentified persons. In some cases, such attacks have occurred in full view of law enforcement officials who have made no effort to intervene. In a few cases, individuals have reportedly even been killed in such incidents.

The use as evidence of a confession obtained by torture is still admissible in court. Furthermore, in practice, many courts do not even make the distinction between a confession obtained by torture and other kinds of evidence but still allow confessions obtained by torture to be admitted as decisive evidence. Courts often attempt to silence defense lawyers who try to introduce evidence of torture to court proceedings or to question whether the prosecution's evidence has been obtained through torture.

Recommendations:

CHRD recommends that the UPR Working Group ask the central government:

- to take effective measures to implement the Convention against Torture;
- to clarify whether it recognizes the following practices as torture under Chinese law: extreme sleep deprivation; the shining of bright lights into eyes; forcing individuals to sit on very low and small stools without being able to stretch for hours at a time; forcing individuals to remain in the hot sun for hours at a time; forcibly blindfolding and stripping individuals; and threatening the safety of individuals' families, as well as other methods of ill-treatment;
- to stipulate in law clear standards and criteria for initiating investigations of cases of torture, whether committed by uniformed officers, plainclothes officers or officially hired thugs;
- about whether or not the government has plans to lift restrictions on lawyers' access to their clients on the grounds that a case involves state secrets, and on lawyers' consultation with clients without the presence of police or guards, as well as to establish a transparent process for reviewing decisions to restrict access to lawyers on the grounds that a case involves state secrets;
- about the admissibility of evidence obtained from coerced confession;
- for details of specific measures to prevent torture and ill-treatment in all known types of detention facilities. The government should take effective measures to halt torture, ill-treatment and inter-inmate violence in all detention facilities and prosecute officials who are responsible for such violence.

(2) China must abolish all systems of arbitrary detention

In 2003, the government abolished “internment and repatriation” (shourong qiansong, 收容遣送, also translated as “custody and repatriation”), but some old forms of detention such as Re-education Through Labor (RTL) have been re-purposed to take over the “functions” previously performed by “internment and repatriation”, namely, to punish and restrict dissidents, human rights defenders, and people who expose official corruption and seek redress for grievances. In addition, the new form of detention mentioned above, “black jails”, has emerged.

“Black jails” are illegal detention facilities usually run by local governments and institutions (such as the judiciary) and specifically intended to detain petitioners. The detention of the petitioners prevents them from registering grievances with higher authorities that implicate local officials. Petitioners are incarcerated without charge or trial. Conditions in such facilities are often so poor as to constitute ill-treatment. CHRD has documented “black jails” in its report, *Secret Detention Facilities in Beijing Are Illegally Incarcerating Petitioners* (http://crd-net.org/Article/Class9/Class11/200709/20070921161949_5739.html). The government also arbitrarily detains petitioners in other facilities, such as RTL camps and psychiatric institutions (see CHRD’s report, *Silencing Complaints: Human Rights Abuses against Petitioners in China*, http://crd-net.org/Article/Class9/Class11/200803/20080314221750_8056.html).

In addition to the extensive use of RTL, “black jails” and psychiatric institutions to detain rights activists, religious practitioners and petitioners, other common forms of arbitrary detention are the practice of Shelter for Education (shourong jiaoyu 收容教育) to detain prostitutes and their clients and various kinds of unofficial detention practices related to the enforcement of the population control policy, such as detaining people who have violated the policy or their family members in the village CCP chief’s office or other official facilities such as local schools.

Another type of detention which remains virtually unmonitored is “double regulation” (shuanggui 双规), according to which party or government officials suspected of corruption or malfeasance are detained. “Double regulation” is completely outside of the criminal justice system. CHRD believes that torture and ill-treatment of those held in “double regulation” facilities are a major problem.

Recommendations:

CHRD recommends that the UPR Working Group ask the central government:

- for a timetable to abolish the RTL system, Shelter for Education and “double regulation”. Any punishment that involves deprivation of liberty must be subsumed under the Criminal Law system where some procedural guarantees exist.

- for immediate abolition of all other illegal facilities and for information about the detention of petitioners, human rights defenders and dissidents in these illegal detention facilities
- for information on safeguards for detainees held under “double regulation”.

(3) China must end the criminalization of freedom of speech and of the press.

The government continues to use Article 105(2) of the Chinese Criminal Code to persecute individuals for exercising basic human rights, in particular the right to freedom of expression. Article 105(2) stipulates the crime of “inciting subversion of state power.”³ CHRD has documented the routine use of this law to detain and imprison individuals solely for exercising their rights in the report, “*Inciting Subversion of State Power”: A Legal Tool for Prosecuting Free Speech in China* (http://crd-net.org/Article/Class9/Class11/200801/20080108225721_7032.html)

Article 105(2) as it stands now readily lends itself to the punishment of freedom of expression. First, the text of the law is vague and does not require that any potential or actual effect of an act be demonstrated in order for a crime to have been committed. Thus, the “evidence” often consists of no more than the writings of an individual or simply shows that he/she circulated certain articles containing dissenting views, without any effort to show that the expression had any potential or real subversive effect. That is to say, speech in and of itself is interpreted as constituting incitement of subversion. Second, the text of the law fails to clearly define the key concepts, “subversion” and “state power,” and to precisely specify what constitutes “subversion” and “state power.” Thus, anything from calling for an end to one-party rule to criticizing corruption has been construed as “inciting subversion of state power.”

Recommendations:

CHRD recommends that the UPR Working Group ask the central government:

- to clarify and precisely define the meaning of the terms “incitement,” “subversion” and “state power” in Article 105(2) as well as the specific conditions under which a peaceful act of expression may constitute “incitement of subversion of state power.” Such conditions must explicitly exclude any non-violent activity in the exercise of the right to freedom of expression, including expression critical of political parties and government authorities.

(4) China must cease Party & government control of the judiciary.

Little has been done in the supposed reform of China’s legal system to address the underlying structural and institutional causes of the lack of judicial independence, notably the control of courts at all levels by the Chinese Communist Party Political-Legal Committees (zhengfawei, 政法委) and the dependence of local courts on the local governments that fund and oversee them and appoint their judges. Efforts by lawyers,

human rights defenders and citizens to exercise oversight of law enforcement agencies and courts are routinely met with retaliation from those agencies. Meanwhile, China's media continues to be constrained in its reporting on the judiciary and law enforcement agencies by official censorship and laws and regulations on state secrets, thus weakening another potential force for greater transparency and accountability in the judiciary.

China's lawyers still lack truly independent professional associations which can help to protect and support their work. Lawyers who take human rights cases on a regular basis or who provide professional legal assistance to victims of human rights violations become often themselves the victims of disappearances, beatings, harassment, intimidation and monitoring. Some are even barred from practicing law. Such acts of government against legal professionals seriously undermine the independence, personal freedom and safety required by lawyers to practice their profession properly.

Recommendations:

CHRD recommends that the UPR Working Group ask the central government:

- to end political interference in the judiciary and to promote the independence and protect the personal safety and professional freedom of lawyers and judges.
- for information on whether or not any measures are being taken toward abolishing the Political-Legal Committees. While abolition is the most advisable, in case no measures are foreseen, at least reforms should occur in the allocation of positions in the Political-Legal Committees to avoid prejudicing the ability of local procuratorates and courts to exercise supervision over public security agencies.
- about plans to amend the newly revised "People's Republic of China Lawyers Law"⁴ (hereafter "Lawyers Law"). Firstly, the Lawyers Law should be revised to allow and clearly stipulate the independence and legitimacy of lawyers associations as self-governing professional organizations. Secondly, Article 37 of the Lawyers Law, which provides opportunity for the state to characterize lawyers' speech as endangering national security, maliciously slanderous, and a disturbance of the order of the court, should be withdrawn. Thirdly, the government should amend the Lawyers Law and Criminal Law in the spirit of the UN's "Basic Principles Regarding the Role of Lawyers," which the government has supported, to ensure that lawyers enjoy the rights to freedom of expression, belief, association, assembly and the right to establish and participate in the management of their own professional organizations to represent their own interests.

(5) China must honor its commitment to protect human rights defenders.

Human rights defenders (HRDs) have suffered substantial political persecution in China in recent years, as CHRD has documented in [*The Perils of Defending Rights: A Report on the Situation of Human Rights Defenders in China \(2006\)*](#)

(http://crd-net.org/Article/Class9/Class11/200705/20070504163029_4196.html) and *Dancing in Shackles: A Report on the Situation of Human Rights Defenders in China* (2007) (http://crd-net.org/Article/Class9/Class11/200805/20080501034205_8531.html).

Particularly during and prior to sensitive political events, such as the Beijing Olympics, authorities tighten the surveillance and increase the harassment and persecution of HRDs. They have been taken into custody for interrogation, placed under residential surveillance or house arrest, monitored in their homes, and followed by police and other security officers. Their personal correspondence and communications, particularly via internet and mobile phone, have been monitored by “cyber-police”. Some have been detained or jailed. Many have undergone police searches of their private residences and experienced loss of personal belongings to illegal confiscation. Some have been severely beaten by unidentified persons thought to be linked to officials. A number have been sent to RTL or sentenced to imprisonment.

In 2006-07, the situation regarding the two rights essential to the defense of human rights—the rights to freedom of expression and of association and assembly--worsened. A number of laws and regulations adopted in the past decade continued to restrict these rights. Authorities stepped up monitoring and surveillance of activists and non-governmental organizations (NGOs) and imposed stricter bans on gatherings and demonstrations. The government also developed more sophisticated tools to control and restrict free speech on the internet and in telecommunications.

Especially worrying trends in 2007 included:

- (1) the use of laws, such as the crimes of “inciting subversion of state power” (Article 105(2) of the Chinese Criminal Law), “leaking or passing state secrets” and “disturbing social order”, to punish individuals exercising the right to freedom of expression,
- (2) arbitrary detention in extra-judicial facilities such as RTL and “black jails”, and
- (3) targeted persecution of leading rural and labor organizers, human rights lawyers, and independent writers and journalists.

Recommendations:

CHRD recommends that the UPR Working Group, in addition to making the inquiries listed above, ask the central government:

- to list restrictions on freedom of expression on the internet and end persecution of online human rights activities. The government should conduct a constitutional review of the PRC State Council’s “Regulations of the Administration of Internet News Reports”⁵ since much of the administrative ordinance clearly violates principles of freedom of expression.
- to conduct a constitutional review of the “Regulations for Registration and Management of Social Organizations”⁶. The requirement that an organization has to be associated with a governmental “oversight unit” restricts the ability of citizens to exercise their rights to freedom of association and assembly, making it impossible for them to take part in activities to protect and promote human rights.

- to conduct a constitutional review of the “Law of the PRC on Assemblies, Processions and Demonstrations”⁷. Instead of protecting freedom of association, the Law has in practice been used by the government to bar gatherings and demonstrations and punish individuals who apply for official permit to demonstrate.

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Notes:

¹ “Petitioners” are citizens who bring grievances about lower levels of government to higher authorities for redress. “Petitioning” is a constitutionally-protected right and most Chinese government departments have Letters and Visits Offices to receive complaints brought by petitioners.

² “Interception” of petitioners refers to all government actions to prevent petitioning as well as government actions to punish persistent petitioners.

³ 煽动颠覆国家政权罪

⁴ 中华人民共和国律师法

⁵ 互联网新闻信息服务管理规定

⁶ 社会团体登记管理条例

⁷ 中华人民共和国集会游行示威法