

CHINA

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By Hong Kong Alliance in Support of Patriotic Democratic Movements of China (HKA)

CHINA FAILS TO HAVE EARLY RATIFICATION OF ICCPR AS PROMISED

During the 2009 UPR, China adopted various recommendations, including “create conditions for an early ratification of the ICCPR”¹. However, China still fails to ratify ICCPR after 4 years.

2. In fact, China has already signed the ICCPR for nearly 15 years without formally ratifying it, HKA considers this is a delay strategy to fully fulfilling China’s international human rights obligations. In the past, China claimed that time was needed to reform its criminal law and criminal procedure law so as to fully in conformity with the provisions of the ICCPR. In that, China has already revised its Criminal Law and Criminal Procedure Law in 2011 and 2012 respectively, thus China has no excuse to further delay its obligation to ratify the ICCPR.

3. **HKA urges China to: (a) Ratify the ICCPR within 1 year with minimal reservations²; (b) Establish a national human rights institution in accordance with the Paris Principles³.**

SUPPRESSION OF HUMAN RIGHTS DEFENDERS

4. During the 2009 UPR, Hungary recommended that China accept different opinion if it is expressed by human rights defenders through peaceful demonstrations. However, during the past 4 years, many human rights defenders were detained, charged, convicted and sentenced for their peaceful expression of different opinion.

5. Among them, the 2010 Nobel Peace Prize laureate Liu Xiaobo is a classical example. On 8 December 2008, Liu was detained because of his participation with the Charter 08 manifesto. He was formally arrested on 23 June 2009 on suspicion of

¹ Recommendation 1 (proposed by Sweden, Algeria, Argentina, Brazil and Austria) adopted by China in 2009 UPR.

² Australia, the Netherlands, Switzerland, UK and France’s recommendation to China in 2009 UPR.

³ Australia, New Zealand and Sweden’s recommendation to China in 2009 UPR.

“inciting subversion of state power”⁴. He was tried on the same charges on 23 December 2009 and sentenced to 11 years’ imprisonment on 25 December 2009. Liu Xiaobo’s wife, Liu Xia, has also been *de facto* house arrest for more than 2 years since Liu Xiaobo was awarded the Nobel Peace Prize in 2010.

6. Gao Zhisheng, a famous Chinese human rights lawyer, is another well known dissident. In 2007, Gao was convicted of “inciting subversion of state power” and was sentenced to 3 years in prison, suspended, and placed on probation for 5 years. He last disappeared in February 2009 and was unofficially detained until December 2011, when it was announced that he would be imprisoned for 3 years since violating the probation conditions.

7. Liu Xianbin, a Sichuan democracy advocate and signer of Charter 08, was convicted for “inciting subversion of state power” and sentenced to 10 years’ imprisonment in March 2011. Evidence for Liu’s charge and conviction included 3 essays he published after 2009.

8. Chen Xi, a veteran democracy activist from Guizhou province, was sentenced to 10 years’ imprisonment in December 2011 for “inciting subversion of state power”. Chen’s conviction was based on the fact that he had published 36 articles on overseas websites advocating democratic reform in China.

9. It is submitted that the above examples clearly demonstrate the continuous suppression of human rights defenders in China. HKA considers that it violates the international human rights law of respecting freedom of expression.

10. Article 19 of the Universal Declaration of Human Rights (UDHR) provides: “[e]veryone has the right to freedom of opinion and expression; this rights includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. Article 9 of the UDHR further provides: “[n]o one shall be subjected to arbitrary arrest, detention or exile”. HKA submits that China’s suppression of human rights defenders is a violation to the UDHR.

11. HKA further submits that national security offence like the crime of “inciting subversion of state power” has been misused by China as a tool to suppress people with different opinion. The examples above demonstrated that the conviction for “inciting subversion of state power” would be made even for peaceful expression of different

⁴ Article 105(2) of the PRC Criminal Law.

voices. HKA considers that it is a violation to the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information.

12. HKA urges China to: (a) Release all prisoners of conscience and all those detained solely for peacefully exercising their rights to freedom of expression, including Liu Xiaobo, Liu Xia, Gao Zhisheng, Liu Xianbin and Chen Xi; (b) Stop all kinds of unlawful and arbitrary detentions; (c) Fully respect people's freedom of expression, right to peaceful assembly and association⁵.

13. HKA also urges China to: Review criminal and administrative legislation to ensure that all offences are clearly and narrowly defined, including the repeal of Article 105(2) of the Criminal Law.

ADMINISTRATIVE DETENTION WITHOUT JUDICIAL CONTROL

14. During the 2009 UPR, Canada recommended China to abolish all forms of administrative detention, including "Re-Education Through Labour". Germany, on the other hand, also recommended China to abolish administrative detention and forced labour without proper trial.

15. Up till now, China still uses this most serious administrative punishment of "Re-Education Through Labour" as a tool to detain people up to 4 years without any judicial process and involvement. HKA submits that it violates the basic human rights of security of person⁶, no arbitrary detention⁷ and right to be heard by independent and impartial tribunal⁸.

16. Although in early 2013 there were some unofficial sources revealed that China might stop the use of "Re-Education Through Labour" soon after receiving the endorsement of the Standing Committee of the National People's Congress, it is still unclear about the timetable of the reform.

17. HKA urges China to: Abolish all forms of administrative detention, in particular "Re-Education Through Labour".

⁵ See also Sweden's recommendation to China in 2009 UPR: removing restrictions on freedom of information and expression.

⁶ Article 3 of the UDHR.

⁷ Article 9 of the UDHR.

⁸ Article 10 of the UDHR.

THE JUNE 4 ISSUE STILL NOT RESOLVED

18. HKA deeply concerns the issue of the Tiananmen Square protests of 1989 and the military suppression on 3-4 June 1989 ("June 4 Incident). Although nearly 24 years since 1989, the truth of the June 4 Incident is still not fully disclosed.

19. In Hong Kong (a Special Administrative Region of China), HKA holds candle light vigil each year after 1989 to ask for truth and justice. In recent years, each time the demonstration attracted more than 150,000 people to attend.

20. Over the years in Mainland China, there are people calling for a redress of the 1989 protests and compensation from the Chinese Government to June 4 victims' families. One group in particular, the Tiananmen Mothers, seeks compensation, vindication for victims and the right to receive donations from Mainland China and abroad.

21. The Committee Against Torture, during its 41st session in November 2008, expressed that China's response to the 1989 Democracy movement was worrying. The Committee was concerned that despite the multiple requests by relatives of people "killed, arrested or disappeared on or following the 4 June 1989 Beijing suppression", there was a lack of investigations into these matters. The Committee was also concerned with the failure of the Chinese Government to inform families of the fate of relatives involved, and it regretted that those responsible for the use of excessive force have not "faced any sanction, administrative or criminal". The Committee recommended that: "the State party (China) should conduct a full and impartial investigation into the suppression of the Democracy Movement in Beijing in June 1989, provide information on the persons who are still detained from that period, inform the family members of their findings, offer apologies and reparation as appropriate and prosecute those found responsible for excessive use of force, torture and other ill-treatment"⁹.

22. **HKA urges China to: (a) Fully respect and positively response to the recommendations suggested by the Committee Against Torture in 2008 regarding the 1989 Democracy Movement; (b) Stop the harassment towards the Tiananmen Mothers.**

DENIED RIGHT TO POLITICAL PARTICIPATION

⁹ Paragraph 21 of the Concluding Observations of the Committee Against Torture on China (Forty-first session, Geneva, 3-21 November 2008).

23. Article 21(3) of the UDHR provides: “[t]he will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”. However, it is submitted that China is lack of full democracy and not in conformity with the UDHR.

24. HKA considers the Chinese Communist Party dominates the whole political structure without giving the people the right to full democracy. HKA submits that it’s not a choice of different political system, rather it is a lack of respect of basic human rights.

25. **HKA urges China to: Revise its constitution and law in order to build a democratic state.**

RECOMMENDATIONS

26. In sum, HKA urges China to:

(a) Ratify the ICCPR within 1 year with minimal reservations;

(b) Establish a national human rights institution in accordance with the Paris Principles;

(c) Release all prisoners of conscience and all those detained solely for peacefully exercising their rights to freedom of expression, including Liu Xiaobo, Liu Xia, Gao Zhisheng, Liu Xianbin and Chen Xi;

(d) Stop all kinds of unlawful and arbitrary detentions;

(e) Fully respect people’s freedom of expression, right to peaceful assembly and association;

(f) Review criminal and administrative legislation to ensure that all offences are clearly and narrowly defined, including the repeal of Article 105(2) of the Criminal Law;

(g) Abolish all forms of administrative detention, in particular “Re-Education Through Labour”;

(h) Fully respect and positively response to the recommendations suggested by the Committee Against Torture in 2008 regarding the 1989 Democracy Movement;

(i) Stop the harassment towards the Tiananmen Mothers; and

(j) Revise its constitution and law in order to build a democratic state.