

NOTE ON CHINA'S PROGRESS SINCE THE 2009 UNIVERSAL PERIODIC REVIEW

A STAKEHOLDER'S SUBMISSION BY HUMAN RIGHTS IN CHINA

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*Submitted to the Human Rights Council in Advance of its Second Universal Periodic Review of
the People's Republic of China*



HRIC is an international, Chinese, nongovernmental organization, founded in March 1989 with a mission to promote international human rights and advance the institutional protection of these rights in the People's Republic of China.

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INTRODUCTION

1 Since the 2009 Universal Periodic Review of the People's Republic of China (China) there have been significant political and social developments, including a decadal leadership change, Criminal Law and Procedure revisions and an expanding dynamic civil society landscape, including exploding Chinese citizen activism on a diverse range of issues.

2 At the same time, progress on implementing the UPR recommendations has been undermined by on-going challenges, including transparency and accountability deficits, vague laws vulnerable to politicized implementation, and restrictions on civil society and cultural rights, especially of ethnic groups. As a constructive starting point for advancing UPR implementation, HRIC's concerns and suggestions focus on recommendations which China either accepted or indicated were already being implemented at the conclusion of the 2009 review.

3 Recognizing that human rights challenges are complex and difficult, HRIC urges China to take concrete steps and adopt results-oriented measures, including transparent monitoring, assessment, and full disclosure of relevant information. UPR progress should also be assessed within the broader framework of related concerns and recommendations of relevant UN human rights mechanisms.

COOPERATION WITH SPECIAL PROCEDURES

Recommendation Accepted by China: "Step up cooperation with the special procedures (Latvia); Engage with the Human Rights Council's special procedure mandate holders on addressing human rights challenges (New Zealand)."¹

4 Since 2009, China has continued to fully participate with the UN Working Group on Arbitrary Detention's (WGAD) individual complaint review process. However, the government has not yet implemented the WGAD's final determinations and recommendations regarding individuals declared arbitrarily detained, including Liu Xiaobo,² Alimujiang Yimiti (a.k.a. Alimjan Yimit),³ Guo Quan,⁴ and Shi Tao.⁵

¹ U.N. Human Rights Council, "Report of the Working Group on the Universal Period Review: China," para. 114.10, U.N. Doc. A/HRC/11/25 (2009), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/11/25 (hereafter, UPR Report).

² Opinion No. 47/2006, U.N. Human Rights Council, "Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Opinions Adopted by the Working Group on Arbitrary Detention," U.N. Doc A/HRC/7/4/Add.1 (2008), para. 49, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/7/4/Add.1.

5 *To demonstrate stepped up cooperation China should immediately and unconditionally release all individuals the WGAD has declared arbitrarily detained.*

ADMINISTRATION OF JUSTICE AND THE RULE OF LAW & THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON

DEATH PENALTY

Recommendation Accepted by China: “In the light of its national realities, continue to implement the policy of strictly controlling and applying the death penalty (Egypt).”⁶

6 Since China’s last UPR, it instituted a series of legal and policy reforms regarding the death penalty; however, implementation measures have been limited so far and the on-going restrictions on transparency of execution statistics under the state’s secrets framework make it difficult to assess progress.

7 Since 2009, China mandated the strict application of the death penalty⁷, issued rules⁸ and amended its Criminal Procedure Law⁹ to exclude evidence in death penalty cases obtained through

³ Opinion No. 29/2008, U.N. Human Rights Council, “Report of the Working Group on Arbitrary Detention,” U.N. Doc. A/HRC/13/30/Add.1 (2010), paras. 61-63, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/13/30/Add.1.

⁴ Opinion No. 59/2012, U.N. Human Rights Council, “Report of the Working Group on Arbitrary Detention,” December 24, 2012, UN Document No. A/HRC/22/44, p. 10, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf.

⁵ Opinion No. 27/2006, U.N. Human Rights Council, “Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled ‘Human Rights Council’: Opinions Adopted by the Working Group on Arbitrary Detention,” U.N. Doc A/HRC/4/40/Add.1, 98, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/4/40/Add.1.

⁶ UPR Report, supra n. 1, 114.30.

⁷ “Supreme People’s Court: Strictly Control the Application of the Death Penalty According to the Law” [最高法院: 依法严格控制死刑适用], Xinhua News Agency [新华社], February 9, 2010, http://news.xinhuanet.com/legal/2010-02/09/content_12960382.htm; “Wang Shengjun: Strictly Controlling the Death Penalty and Feasibly Preventing Miscarriages of Justice” [王胜俊: 严格控制死刑 切实防止发生冤假错案], Xinhua News Agency [新华社], March 11, 2011, <http://news.qq.com/a/20110311/002019.htm>.

⁸ Notice Regarding the Issue of *Rules Concerning Questions About Examining and Judging Evidence in Death Penalty Cases and Rules Concerning Questions About Exclusion of Illegal Evidence in Handling Criminal Cases* [《关于办理死刑案件审查判断证据若干问题的规定》和《关于办理刑事案件排除非法证据若干问题的规定》的通知], issued by the Supreme People’s Court, Supreme People’s Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice [最高人民法院、最高人民检察院、公安部、国家安全部、司法部], promulgated and effective June 13, 2010, http://www.court.gov.cn/qwfb/sfwj/tz/201007/t20100705_7369.htm.

⁹ The amendment includes significant reforms regarding procedures that involve juvenile offenders, the death penalty, judicial oversight of orders for compulsory psychiatric treatment, and the extension of exclusionary rules to illegally obtained evidence. Under these amendments, to prevent admitting evidence illegally obtained through torture, interrogations that involve crimes carrying the death penalty must be audiovisually recorded. “NPC Decision on the Amendment of the Criminal Procedure Law of the People’s Republic of China” [全国人民代表大会关于修改〈中华人民共和国刑事诉讼法〉的决定], promulgated by National People’s Congress [全国人民代表大会], March 14, 2012, effective January 1, 2013, full text of the law in Chinese see http://www.china.com.cn/policy/txt/2012-03/18/content_24922812.htm (hereafter CPL).

illegal means, and eliminated the death penalty for 13 non-violent, economic crimes.¹⁰ Appeals to overturn death penalty rulings must also now undergo a full hearing rather than just a review of the record.¹¹

8 In order to advance progress and accountability on the ground, in addition to general guidelines on the death penalty there must be specific implementation measures. Available documents also suggest that death penalty statistics remain classified as “top secret” under China’s state secrets system,¹² impeding accurate and comprehensive assessment of any progress.

9 *To demonstrate progress, China should clarify whether death penalty statistics are still classified as secret under the state secrets framework. If so, China should take all necessary steps to declassify these figures and to release accurate, accessible information regarding application of the death penalty including the number of current and past executions.*

REEDUCATION-THROUGH-LABOR (RTL)

Recommendation Accepted by China: “Actively and prudently push forward reform of re-education through labor according to its national realities, so that everything goes according to its system (Sudan).”¹³

10 Since 2009, there has been limited progress in RTL reform, local-level RTL experiments, or moves to improve administrative detention systems and practices.¹⁴ The current RTL system vests broad discretionary power in local officials, resulting in regular targeting of petitioners raising legitimate grievances.¹⁵ These concerns are exacerbated by recent CPL amendments, which though excluding illegally obtained evidence from criminal cases still allow its use in RTL orders.¹⁶

¹⁰ Since individuals are rarely charged or sentenced under the eliminated crimes, the amendment still permits broad use of the death penalty. “Xinhua Authorized to Announce the 8th Amendment to the Criminal Law of the People’s Republic of China” [新华社授权发布:中华人民共和国刑法修正案(八)], Xinhua News Agency [新华社], February 25, 2011, http://news.xinhuanet.com/politics/2011-02/25/c_121123981.htm; “China Exempts 13 Crimes from Death Penalty,” Xinhua News Agency, February 25, 2011, http://news.xinhuanet.com/english2010/china/2011-02/25/c_13750127.htm.

¹¹ CPL, supra n. 9, articles 222, 235.

¹² Regulation on State Secrets and the Specific Scope of Each Level of Secrets in the Work of the People’s Courts [人民法院工作中国家秘密及其密级具体范围的规定], issued by the Supreme People’s Court [最高人民法院], promulgated July 31, 1995, effective August 8, 1995, Article 3(1)(3).

¹³ UPR Report, supra n. 1, para. 114.31.

¹⁴ See Human Rights Watch, *Promises Unfulfilled: An Assessment of China’s National Human Rights Action Plan* (New York, 2011), <http://www.hrw.org/sites/default/files/reports/china0111webwcover.pdf>.

¹⁵ See e.g., HRIC, “Shanghai Petitioner Mao Hengfeng Released to Finish Reeducation Order at Home,” February 8, 2013, <http://www.hrichina.org/content/6561>, and HRIC “Reeducation-Through-Labor and Criminal Detention for Shanghai Petitioners on Eve of 18th Party Congress,” November 6, 2012, <http://www.hrichina.org/content/6366>.

¹⁶ Flora Sapio and Annabel Egan, “Human Rights Implications of the Draft Amendments to the Criminal Procedure Law of the People’s Republic of China,” Research note prepared in association with the Centre of Advanced Studies on Contemporary China, Turin, Italy and the EU-China Human Rights Network, Irish Centre for Human Rights, National University of Ireland, Galway (unpublished) para. 5 (hereafter, Sapio and Egan).

11 Official statements reported in January 2013 indicated steps would be taken to end RTL within the year.¹⁷ Four test cities -- Nanjing, Jiangsu Province; Lanzhou, Gansu Province; Zhengzhou, Henan Province, and Jinan, Shandong Province --¹⁸ have begun reform steps and some provincial authorities have indicated that they will be ending RTL.¹⁹ Local authorities also report a lack of instruction.²⁰

12 *During the process of reforming and abolishing RTL, China must ensure that any form of administrative detention guarantees procedural protections in accordance with China's constitution and international human rights standards.*

13 *In order to advance reforms and steps underway to end RTL, China should provide full transparency and monitoring of progress.*

BLACK JAILS AND RESIDENTIAL SURVEILLANCE

Recommendation Accepted by China: “Continue to advance the rule of law and to deepen the reform of the judicial system (Netherlands).”²¹

14 Legal experts have noted a resurgence of informal, extra-legal political institutions that advance predatory and repressive government policies,²² including “black jails”²³ and enforced disappearances used to target activists, petitioners and dissidents.²⁴ Targeted individuals are left entirely outside the protection of law, without the ability to challenge and seek redress for their detention or ill-treatment.²⁵

¹⁷ Yang Jingjie, “Local govts confused by re-education reforms,” *Global Times*, January 15, 2013, <http://www.globaltimes.cn/content/755842.shtml>

¹⁸ Song Shijing [宋识径], [四市试点劳教制度改革], *The Beijing News* [新京报], August 29, 2012, http://epaper.bjnews.com.cn/html/2012-08/29/content_368058.htm; Tang Xiangyang, “Cities Pilot Alternative to Re-education through Labor,” *The Economic Observer*, August 29, 2012, <http://www.eeo.com.cn/ens/2012/0829/232678.shtml>.

¹⁹ Ibid.

²⁰ Yang Jingjie, “Local govts confused by re-education reforms,” *Global Times*, January 15, 2013, <http://www.globaltimes.cn/content/755842.shtml>

²¹ UPR Report, supra n. 1, para. 114.32.

²² Fu Hualing, “The Varieties of Law in China,” *China Rights Forum*, 2011, no. 1-2, <http://www.hrichina.org/node/5422/5422>. See also, Jerome Cohen, “Cry of Freedom,” *South China Morning Post*, December 11, 2012, http://www.usasialaw.org/wp-content/uploads/2012/12/2012.12.11_Cry-Freedom.pdf; Joshua Rosenzweig, “Testimony to the Congressional-Executive Commission on China for the hearing,” August 3, 2010, http://duihua.org/wp/?page_id=587; Jerome A. Cohen, “China’s Legal Blindness,” *The Wall Street Journal*, November 3, 2011, <http://online.wsj.com/article/SB10001424052970203804204577013440386484030.html>.

²³ These are used by government officials to detain peasants defiant against illicit taxes, petitioners in Beijing airing their grievances, and Tibetan monks who challenge the official policy on religions (see Fu, supra n. 22). See e.g., HRIC, “Former Police Officers Held in Black Jails, One Began Hunger Strike,” November 7, 2012, <http://hrichina.org/content/6369>; U.N. Committee Against Torture, “List of Issues Prior to the Submission of the Fifth Periodic Report of China,” U.N. Doc CAT/C/CHN/Q/5 (2011), para. 12.

²⁴ See HRIC, “Guizhou Dissidents under Strict Watch as Authorities Clean Up for Party Congress,” August 7, 2012, <http://hrichina.org/content/6240>; Jerome A. Cohen, “Turning a Deaf Ear,” *South China Morning Post*, June 6, 2011, <http://www.usasialaw.org/?p=5543>; Keith B. Richburg, “Chinese Artist Ai Weiwei Arrested in Latest Government Crackdown,” *The Washington Post*, April, 3, 2011, http://www.washingtonpost.com/world/chinese-artist-ai-wei-wei-arrested-in-latest-government-crackdown/2011/04/03/AFHB5PVC_story.html; HRIC, “Lawyers and Activists Detained, Summoned, and Harassed in ‘Jasmine Rallies’ Crackdown,” February 23, 2011,

15 The recent CPL amendments have also expanded the discretionary power of authorities to legally detain individuals at a “designated residence” other than their home or an established detention center.²⁶ Under so-called “residential surveillance” provisions, individuals suspected of endangering state security, terrorism, and bribery may be detained for up to six months without independent review.²⁷ Given the systemic rule of law deficits in China, these amendments are vulnerable to abuse, potentially legalizing secret and unsupervised detentions for a broad range of activities.

16 *China should take all necessary steps to eliminate and prevent enforced disappearances, illegal detention of individuals in black jails and the illegal use of house arrest by officials.*

17 *China should amend its Criminal Procedure Law to ensure individuals are entitled to robust procedural protections when facing deprivation of liberty, including “residential surveillance.”*

ENSURING FREEDOM OF RELIGION OR BELIEF, EXPRESSION, ASSOCIATION AND PEACEFUL ASSEMBLY, AND RIGHT TO PARTICIPATE IN PUBLIC AND POLITICAL LIFE

REGULATION OF CIVIL SOCIETY ORGANIZATIONS

Recommendation Accepted by China: “Consider strengthening its positive engagement with civil society, NGOs and academic institutions, with a view to enhancing the promotion of human rights and fundamental freedoms of its people (Malaysia).”²⁸

17 Over the past four years, China has continued to place significant restrictions on the legal operation of civil society organizations (CSOs).²⁹ At present, national laws require CSOs seeking legal recognition to obtain sponsorship from an authorized department, which generally places them under the supervision of a government or quasi-government agency. National law³⁰ additionally places onerous requirements³¹ on the flow of foreign exchange, impacting CSOs’ ability to access foreign

<http://www.hrichina.org/content/4896>; HRIC, “Dozens Put Under House Arrest as Chinese Authorities Intensify Crackdown Following Nobel Peace Prize Announcement,” October 28, 2010, <http://www.hrichina.org/content/849>; Fu, supra n. 22.

²⁵ Ibid.

²⁶ See Sapio and Egan, supra n. 16; Jerome A. Cohen and Yu Han, “Seeking Shelter,” *Council on Foreign Relations*, September 28, 2011, <http://www.cfr.org/china/seeking-shelter/p26064>.

²⁷ CPL, supra n. 9, article 73 of the CPL.

²⁸ UPR Report, supra n. 1, para. 114.6.

²⁹ Li Liguo, Minister of Civil Affairs, at the 2013 National Civil Affairs Conference [民政部部长李立国在 2013 年全国民政工作会议上的讲话], Speech on December 27, 2012, <http://www.mca.gov.cn/article/zwgk/ldjh/201301/20130100403111.shtml>.

³⁰ Circular of the State Administration of Foreign Exchange on Relevant Issues Concerning the Administration of Donations in Foreign Exchange by Domestic Institutions (Official Translation) issued by the State Administration of Foreign Exchange on December 30, 2009, http://www.safe.gov.cn/model_safe_en/laws_en/laws_detail_en.jsp?ID=30600000000000000000,58.

³¹ Aizhixing Institute, “Facilitate the orderly and healthy development of civil organizations, revoke the relevant provisions in SAFE Circular No. 63 concerning notarization procedures” [北京爱知行研究所: 推动民间组织健康有序发展, 取消外汇局 63 号文件相关公证程序的建议], February 20, 2012, <http://www.aizhi.co/view.php?id=653>.

funding. In 2012, officials announced further legal reforms that, if pursued, would increase restrictions on international non-governmental organizations seeking to operate within China.³²

18 *China should take concrete steps to advance and support the formation and operation of CSOs by ensuring reasonable registration and reporting requirements that promote a diverse and vibrant civil society.*

CULTURAL RIGHTS OF ETHNIC GROUPS

Recommendation Accepted by China: “Continue its efforts to further ensure ethnic minorities the full range of human rights including cultural rights (Japan).”³³

Recommendation Already Being Implemented: “Strengthen the protection of ethnic minorities’ religious, civil, socio-economic and political rights (Australia); In accordance with the Constitution, allow ethnic minorities to fully exercise their human rights, to preserve their cultural identity and to ensure their participation in decision-making; (and address these issues in the National Plan of Action) (Austria).”³⁴

19 Since 2009, over 100 Tibetans have self-immolated to protest the Chinese authorities’ policies and crackdowns in Tibet.³⁵ The government has responded with increased militarization, vilification of the Dalai Lama, forced “patriotic education,” enhanced surveillance of religious activities, detentions, restricted access to Tibet, and criminalization of those accused of “assisting” self-immolators.³⁶

20 These actions are incompatible with ensuring and strengthening protection of the cultural, religious, civil, socio-economic and political rights of ethnic groups.

21 *China should take immediate steps to defuse tension and address fundamental underlying causes of the on-going protests in Tibet, including reducing military presence and violence, ending criminalization of self-immolators and supporters, and stopping rhetorical attacks against the Dalai Lama, the spiritual leader of the Tibetan people. China should also immediately grant independent monitors and journalists full access to the region.*

³² China Daily, “China to tighten oversight of int’l NGOs,” September 21, 2012, http://china.org.cn/china/2012-09/21/content_26587437.htm.

³³ UPR Report, supra n. 1, para. 114.37.

³⁴ Ibid., para. 115.3.

³⁵ Edward Wong and Jim Yardley, “100th Self-Immolation Reported in Tibet,” *The New York Times*, February 14, 2013, http://www.nytimes.com/2013/02/15/world/asia/100th-self-immolation-inside-tibet-is-reported.html?_r=0

³⁶ See e.g., Kunsang Tenzin and Chakmo Tso, “New Burning Protest in Tibet,” *Radio Free Asia*, February 17, 2013, <http://www.rfa.org/english/news/tibet/burning-02172013112417.html>; Associated Press, “China Arrests 5 Tibetans, Mostly Buddhist Monks, Whom it Accuses of Inciting Self-Immolations,” *Washington Post*, February 27, 2013, http://www.washingtonpost.com/world/asia_pacific/china-arrests-5-tibetans-mostly-monks-accusing-them-of-inciting-self-immolations/2013/02/27/b90a8588-8146-11e2-a671-0307392de8de_story.html; <http://www.asianews.it/news-en/Another-re-education-campaign-in-Tibet's-monasteries-24779.html>