

# UPR Submission on Administrative Detention: Involuntary Commitment to Psychiatric Institutions in China

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**Social-Economic Rights Watch** is a China-based NGO, created in 2005 to monitor human rights conditions in China, especially social and economic rights, including labor rights, the right to education, health, and the rights of women and children, through conducting investigation, information gathering, reporting update news and publishing research reports.

## 1) *Recommendations for Member States to ask the Chinese government:*

- Abolish all forms of extra-judicial detention;
  - Ensure all institutions of compulsory care meet international human rights standards and protect the rights of those committed in such institutions, including granting access to legal counsel, visitors, and periodic judicial review;
  - Release all individuals held in extra-judicial detention facilities, including psychiatric institutions, for political reasons, including religious practitioners, dissidents, petitioners, journalists, human rights defenders, and their family members.
- 2) Since China's 2<sup>nd</sup> UPR, the Chinese government took a positive step in abolishing the administrative detention system, Re-education Through Labor (RTL), in December 2013.<sup>1</sup> However, the government failed to provide redress for past victims of the system who had been tortured and arbitrarily detained.<sup>2</sup> Another form of administrative and extra-judicial detention that continues to be used is involuntary commitment in psychiatric institutions. It is possible Chinese authorities are continuing to use this type of detention despite legal restrictions in order to fill the void left after the abolishment of RTL.
- 3) The government accepted recommendation 186.118 (Sweden) that China should “[e]nsure that any reformed prison or compulsory care system meets international human rights standards, and abolish system of arbitrary detention, including Re-Education Through Labour.” In responding to this recommendation, the government claimed that this recommendation was “being implemented” and pointed out that “[t]he amended Criminal Procedure Law of China clearly stipulates that compulsory mental health treatment for mentally ill people should be decided by courts.”<sup>3</sup> The government also responded to recommendation 186.118 (Canada) that China must “[r]elease all people in administrative detention for political reasons” by repeating its response given to the United States (186.115): “There is no one in China who is kept in administrative detention for political reasons.”<sup>4</sup>
- 4) The government's statements do not reflect the fact that other forms of administrative detention remain in operation, and also that the amended CPL has not been fully implemented in regard to involuntary psychiatric commitment, which remains a common form of extra-judicial detention for activists and government critics in China.

- 5) Despite enacting its first Mental Health Law (MHL) in May 2013, the government has failed to halt involuntary psychiatric commitment as a form of political persecution. The MHL stipulates that forced psychiatric commitment be based on a qualified physician diagnosing someone with a “serious mental disorder” and assessing that they have caused harm to, or are at risk of harming, themselves or others.<sup>5</sup> MHL calls for a “voluntary” principle and, at the very least, approval from the individuals’ guardians. In criminal cases, the Criminal Procedure Law (CPL) only permits a court to approve an involuntary commitment on the recommendation of a procuratorate, and it does not allow government officials or public security police to act unilaterally to institutionalize anyone.<sup>6</sup>
- 6) Because the MHL does not require a court order, police or other government officials who send someone to a psychiatric institution usually do not have one. Since the MHL took effect, government officials or police have continued to commit petitioners, human rights activists, and critics of the government to psychiatric hospitals against their will, without obtaining a diagnosis of mental illness from qualified physicians or where no perceived threat of violence exists.
- 7) China’s Supreme People’s Procuratorate released regulations in February 2018 to further standardize supervision of compulsory psychiatric treatment by police.<sup>7</sup> One aim of the regulations is to prevent police from falsely classifying healthy individuals as having a mental illness. If properly enforced, such oversight could strengthen the implementation of the MHL. However, new regulations and procuratorial supervision is unlikely to prevent such abuses continuing in politically-sensitive cases involving human rights defenders as police already ignore existing legislation in some cases. Furthermore, such regulations only apply in criminal cases.
- 8) China does not release comprehensive statistics on involuntary psychiatric commitment. One Chinese NGO, Civil Rights and Livelihood Watch (CRLW), has documented hundreds of cases in China of forced psychiatric detention on political grounds between 2009 to 2016.<sup>8</sup> The director of the NGO has been indicted, at the time of writing, on charges of “inciting subversion of state power” for the NGO’s activities. Prosecutors cited the NGO’s release of reports on involuntary psychiatric commitment of HRDs as evidence of “subversion.”<sup>9</sup>
- 9) Cases show that authorities have ordered hospital personnel to detain such individuals and medicate them as they see fit in order to “discipline” them or make them obey rules in the institutions.<sup>10</sup> Besides illegal detention, individuals involuntarily committed for political reasons are usually deprived of visitors, including attorneys, and are blocked from seeking judicial review of their institutionalization.<sup>11</sup> These practices clearly violate the MHL, which requires the treatment facilities and their staff to inform the patient or their guardian of their rights during diagnosis and treatment (Article 37) and allow the patient to have communications and meetings with visitors (Article 46). Detainees can also face myriad physical abuses, often used as punishment, that constitute torture or other forms of cruel, inhumane, and degrading treatment. These include beatings, forced injections of unidentifiable drugs, electric shocks, and having their hands, legs, and torsos tied to hospital beds.<sup>12</sup>
- 10) One emblematic example is Xing Shiku (邢世庫), a labor activist who had been detained and abused in a psychiatric hospital in Heilongjiang Province from 2009 to 2015 on orders

of the local government.<sup>13</sup> The UN Working Group on Arbitrary Detention in May 2014 had issued an opinion that Xing had been arbitrarily detained in the psychiatric facility because of the peaceful expression of his views.<sup>14</sup> In a recent case from May 2017, dissident writer Ren Naijun (任迺俊) was sent to Shanghai Minhang District Mental Health Center after being released from detention. Police lacked evidence to pursue a criminal case but were determined to continue to deprive Ren of his liberty.<sup>15</sup> Chinese NGO CRLW stated in its 2017 annual research report on mental health and human rights that it is still very easy to involuntarily commit a healthy individual to a psychiatric hospital, and that the mechanisms for filing complaints, appeals, and lawsuits are inadequate.<sup>16</sup>

11) UN human rights treaty bodies have repeatedly raised serious concerns over these above practices and made specific recommendations for their abolition. The Committee against Torture (CAT) raised its concern in its November 2015 review of China that involuntary psychiatric commitment breaches the Convention against Torture (Articles 2, 11, and 16). CAT noted that “compulsory psychiatric institutionalization” has been “allegedly used to detain [criminal] suspects without accountability,” and that “local police impose such measures without any judicial process.”<sup>17</sup> CAT further stated that the Chinese government has not responded with clarity to inquiries about forced psychiatric commitment.<sup>18</sup>

12) In 2012, the UN Committee on the Rights of Persons with Disabilities (CRPD) raised concern that involuntary confinement is used as a tool to maintain public security, and was “disturbed” that individuals with “actual or perceived impairments” had been subjected to such detentions, which violates the Convention in regard to liberty and security of persons, and freedom from torture (Articles 14 and 15). CRPD recommended the government abolish all forms of involuntary civil commitment based on actual or perceived impairments and cease subjecting such individuals to therapies,<sup>19</sup> but Chinese authorities have ignored these recommendations.

## Notes

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<sup>1</sup> *Xinhua News Agency*, “China abolishes reeducation through labor,” December 28, 2013, [http://www.chinadaily.com.cn/china/2013-12/28/content\\_17202294.htm](http://www.chinadaily.com.cn/china/2013-12/28/content_17202294.htm).

<sup>2</sup> *Ibid.*

<sup>3</sup> China’s full reply to Sweden (118): “The amended Criminal Procedure Law of China clearly stipulates that the compulsory mental health treatment for mentally ill people should be decided by courts. At present, the relevant Chinese authorities are formulating rules to regulate the treatment, rehabilitation, management, diagnose and assessment conducted by the institutions of compulsory mental health treatment and the protection of the rights of the people under compulsory mental health treatment. As for re-education through labour, see 186.117.” UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review, China, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review,” A/HRC/25/5/Add.1, 2014.

<sup>4</sup> China’s full reply to 186.115: “There are no arbitrary or extrajudicial detentions in China. All criminal and security detentions are decided on and implemented based on the Criminal Procedure Law and Law on Public Security Administration of China. According to China’s Constitution and relevant laws, all citizens enjoy freedom of speech, the press, assembly, association and religious belief, and shall not harm the national, social and collective interests and legitimate rights of other citizens when exercising the above-mentioned rights. Illegal and criminal activities shall be prosecuted according to law.” UN Human Rights Council, “Report of the Working Group on the Universal Periodic Review, China, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.”

<sup>5</sup> Articles 30- 36 deal with in-patient therapy. Mental Health Law of the People’s Republic of China (中华人民共和国精神卫生法), 2012, [http://www.npc.gov.cn/huiyi/cwh/1129/2012-10/27/content\\_1741177.htm](http://www.npc.gov.cn/huiyi/cwh/1129/2012-10/27/content_1741177.htm).

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<sup>6</sup> Article 285, Criminal Procedure Law of the People's Republic of China (中华人民共和国刑事诉讼法), (1996, amended 2012), [http://www.gov.cn/flfg/2012-03/17/content\\_2094354.htm](http://www.gov.cn/flfg/2012-03/17/content_2094354.htm).

<sup>7</sup> “Supreme People's Procuratorate issues regulation to further standardize supervision of medical decisions to prevent healthy individuals from being “falsely” diagnosed or “subjected” to compulsory mental health treatment” (最高检出台《规定》进一步规范强制医疗决定监督工作 坚决防止和纠正“假精神病”“被精神病”), February 26, 2018, [http://www.spp.gov.cn/xwfbh/wsfbt/201802/t20180226\\_367788.shtml](http://www.spp.gov.cn/xwfbh/wsfbt/201802/t20180226_367788.shtml).

<sup>8</sup> Civil Rights & Livelihood Watch (CRLW), “Database of Forcible Psychiatric Commitment” (被精神病数据库), 2009-2016, <http://www.msguancha.com/plus/list.php?tid=14>.

<sup>9</sup> CRLW, “Procuratorate Indictment Sheet Accuses Civil Rights & Livelihood Watch's Liu Feiyue of “6 Major Criminal Charges” (检方起诉书指控民生观察刘飞跃“六大罪状”), January 17, 2018, <http://msguancha.com/a/lanmu4/2018/0117/16941.html>.

<sup>10</sup> CHRd, *China Human Rights Briefing April 29-May 5, 2016*, <https://www.nchrd.org/2016/05/chrb-forced-psychiatric-commitment-of-dissidents-continues-as-police-act-above-enacted-law-429-55-2016/>.

<sup>11</sup> Human Rights Watch, “China: End Arbitrary Detention in Mental Health Institutions,” May 3, 2013, <https://www.hrw.org/news/2013/05/03/china-end-arbitrary-detention-mental-health-institutions>; CHRd, *China Human Rights Briefing November 8-13, 2013*, <https://www.nchrd.org/2013/11/chrb-six-months-after-mental-health-law-implemented-involuntary-psychiatric-commitment-continues-118-13-2013/>; CHRd, *China Human Rights Briefing September 12-18, 2014*, <https://www.nchrd.org/2014/09/chrb-new-cases-of-forced-psychiatric-commitment-detentions-of-prominent-writer-democracy-activist-912-182014/>; CHRd, *China Human Rights Briefing May 8-14, 2015*, <https://www.nchrd.org/2015/05/chrb-forced-psychiatric-detention-persists-2-years-after-china-enacted-mental-health-law-58-142015/>; CHRd, *China Human Rights Briefing April 29-May 5, 2016*, <https://www.nchrd.org/2016/05/chrb-forced-psychiatric-commitment-of-dissidents-continues-as-police-act-above-enacted-law-429-55-2016/>; Stanley Lubman. “Political Psychiatry: How China Uses ‘Ankang’ Hospitals to Silence Dissent,” *Wall Street Journal*, April 19, 2016, <https://blogs.wsj.com/chinarealtime/2016/04/19/political-psychiatry-how-china-uses-ankang-hospitals-to-silence-dissent/>; For analysis of the system from before the MHL, see: See: CHRd, “The Darkest Corners”: Abuses of Involuntary Psychiatric Commitment in China, August 2012, <https://www.nchrd.org/2012/08/the-darkest-corners-abuses-of-involuntary-psychiatric-commitment-in-china/>;

<sup>12</sup> Ibid.

<sup>13</sup> CHRd, Portrait of a Defender - Xing Shiku (邢世库), <https://www.nchrd.org/2016/03/xing-shiku/>.

<sup>14</sup> UN Human Rights Council, Opinion No. 8/2014 (China) on Mr Xing Shiku, in Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session, 22 April – 1 May 2014, <https://www.nchrd.org/wp-content/uploads/2013/12/Opinion-No.-8-2014-China.pdf>.

<sup>15</sup> CRLW, “Shanghai's Ren Naijun Sent to Psychiatrist Hospital Due to Speech Crime”(上海任迺俊“因言获罪”被关精神病院, January 16, 2018, <http://msguancha.com/a/lanmu51/diliushiwuqi/2018/0105/16886.html>.

<sup>16</sup> CRLW, “2017 Annual Report on Mental Health and Human Rights (Involuntary Psychiatric Commitment)” (2017 年中国精神健康与人权 (被精神病) 年终总结), February 14, 2018, <http://msguancha.com/a/lanmu2/2018/0214/17050.html>.

<sup>17</sup> Committee against Torture (CAT), Concluding observations on the fifth periodic report of China, December 2015, CAT/C/CHN/CO/5, para 42. [https://www.nchrd.org/wp-content/uploads/2016/01/CAT\\_COB-2015.pdf](https://www.nchrd.org/wp-content/uploads/2016/01/CAT_COB-2015.pdf).

<sup>18</sup> CAT, Concluding observations on the fifth periodic report of China, paras. 42, 55.

<sup>19</sup> Committee on the Rights of Persons with Disabilities, Concluding observations on the initial report of China, October 2012, CRPD/C/CHN/CO/1, paras. 25-8.