



**UPR Submission  
China  
March 2013**

## **Summary**

The Chinese government faces growing pressure from ordinary citizens, reform-oriented media, civil society groups, and “rights defense” movement activists on issues ranging from land seizures to legal reforms to press freedom, but it has yet to take steps to ensure many basic human rights protections. During its previous UPR, the government systematically rejected, without a single exception, every recommendation pertaining to freedoms of expression and association, independence of the judiciary and lawyers, use of the death penalty, abolition of reeducation-through-labor, prohibition of torture and media freedom.

Since then, the government has taken no affirmative action towards some of the issues it promised in its UPR to address: ratification of the International Covenant on Civil and Political Rights, loosening restrictions on civil society organizations, addressing growing rural-urban inequality, or inviting a spectrum of United Nations special rapporteurs to visit China. Unchecked economic development continues in some circumstances to cause widespread public health problems, while basic services are denied to many as a result of discrimination on the basis of ethnicity, place of birth, whether an individual has a disability, or economic status, among others.

On other key issues, the Chinese government has taken steps backwards. It was praised for expressing support for the universality of human rights in its first National Human Rights Action Plan (2009-2010). Yet the second Action Plan (2012-2015) weakens that commitment by pledging instead to implement human rights according to “the principle of practicality,” a vague term designed to allow the government to sidestep obligations deemed “impractical.” Some legal reforms have enshrined the ability of police to hold individuals incommunicado for up to six months, or detain people with mental disabilities against their will and without legal remedies. Virtually no steps have been taken to investigate or prosecute security forces for abuses committed in the name of the government’s “stability maintenance” project. The Chinese government continues to violate its obligations under the Refugee Convention and the Convention Against Torture; in August 2012 it forced approximately 4,000 ethnic Kachin from Burma out of Yunnan Province back to a conflict zone in northern Burma. Despite the publication of government statistics that show that one in four women in China is the victim of domestic abuse, few steps have been taken to draft a comprehensive national law that would protect victims of domestic violence.

### **Attacks on human rights defenders**

The Chinese government continues to harass, detain, imprison, and/or torture some human rights defenders. After Liu Xiaobo was awarded the Nobel Peace Prize and in the wake of the “Arab Spring,” when calls for similar protests in China were posted online in February 2011, the government interrogated and detained hundreds of activists across the country.

Recent examples of particularly heavy sentences or harsh treatment given to human rights defenders include Chen Wei, a Tiananmen Square student protestor and a human rights advocate from Sichuan Province, who was convicted of “inciting subversion of state power” for publishing on-line essays in December 2011 and sentenced to nine years in prison. After bouts of lengthy enforced disappearances, the government announced in December 2011 that human rights lawyer Gao Zhisheng had been sent to a Xinjiang jail for “violating probation rules.” Hada, a Mongolian activist, is currently held in an unknown location after he was released from 15 years of prison for “espionage and separatism.”

Authorities have also targeted defenders’ family members, including children. In apparent retaliation against the

family of Chen Guangcheng, who in April 2012 escaped house arrest in Shandong, Chen's nephew, Chen Kegui, was convicted in November 2012 of "intentional infliction of injury" and sentenced to three years in prison after an unfair trial. Since Liu Xiaobo was awarded the Nobel Peace Prize, his wife, Liu Xia, has been held under unlawful house arrest.

### **Torture Persists Despite Limited Improvements in Law**

The use of torture remains endemic in China's criminal justice system as well as by other branches of the government. Examples of torture, including beatings, sleep deprivation and use of painful or stressful positions in detention facilities continue to be well-documented by Chinese human rights organizations and activists. Dissident writer Yu Jie, placed under house arrest in Beijing in October 2010, described in January 2012 how state security officers had in December 2010 taken him to an undisclosed location, where they stripped him naked, beat, kicked and slapped him. Several human rights lawyers who were detained secretly in 2012 have recounted that they had also been severely tortured during their detention.

The Chinese government seldom investigates allegations of torture and, when it does, perpetrators are sometimes given light punishments. In a 2011 case, four police officers were given less than three years probation after a suspect died after torture.<sup>i</sup> According to a Chinese media report, between 1997 and 2012, there were 17 publicly-reported prosecutions against law enforcement officers for torturing suspects to death; in six out of these 17 cases, convicted officers were given probation while in five of them the officers were given less than three years imprisonment.<sup>ii</sup>

Amendments in March 2012 to the Criminal Procedural Law (CPL) provide some protections against torture. Those include requirements that defendants and criminal suspects "must not be forced to incriminate themselves," that suspects' confessions, witness testimonies and victim statements obtained through torture should be excluded from the criminal proceedings, and that audio or video recordings of interrogations "should cover the entire process of interrogation and should be complete."<sup>iii</sup> However, physical or documentary evidence obtained through torture is not excluded unless it was "collected in ways violating legal procedures and severely affecting judicial justice," a vague standard that is difficult in practice to enforce.<sup>iv</sup>

### **Restrictions on the freedom of expression and censorship of the media**

Despite a system of administrative regulations that ensures that only those with close ties with the authorities can run mass media companies, and that content unfavorable to the government is removed or altered, there is some limited space for critical reporting. But such gaps in the censorship system are ambiguous, and even savvy, outspoken media can be targeted by censors. For example, in January 2013, a dispute erupted between *Southern Weekly*, an outspoken Guangzhou-based newspaper, and the censors in Guangdong Province over the paper's New Year editorial. The piece, which expressed hopes for political reforms and had already been re-written numerous times following the censor's requests, was dramatically edited by the censors to support the government while the paper's staff was on vacation. The row led to outrage among journalists and the public, and illustrated the invasiveness of official censorship.<sup>v</sup>

To police the internet, the Chinese government employs multiple methods, including keyword filtering and internet censors. A powerful tool of the government is the Great Firewall, which blocks websites that carry "sensitive" information from being viewed in China. In 2011 and 2012, international media reported that the government had been trying to plug existing holes in the Firewall by blocking encrypted channels of information called virtual private networks (VPNs).<sup>vi</sup>

In recent years, the Chinese government has struggled to narrow space on the internet. For example, in mid-2009, it announced that all new computers must have a censorship and monitoring software, Green Dam Youth Escort, installed. But the plan was eventually scrapped after widespread outcry across the country. The government has also tried to implement "real-name registration system," requiring internet users register with their real names when using internet services. In 2011, the government promulgated registration requirements for microblogs, yet those have been implemented inconsistently as internet companies have resisted for fear that such measures

would negatively impact their business. Nonetheless, the government continues to push for real-name registration and passed in late 2012 the “Decision to Strengthen the Protection of Online Information” which requires internet and telecommunications providers to collect personal information about users, and to be able to connect pseudonyms to real identities when citizens post information.<sup>vii</sup>

In some cases of severe industrial pollution, Environmental Protection Ministry officials have directed local officials to enforce existing environmental regulations. In 2010-2011, however, local government officials in heavily lead-contaminated villages in Henan, Yunnan, Shaanxi, and Hunan provinces, restrict access to lead testing, withhold and falsify test results, and deny children treatment. Family members and journalists seeking information about the problem are intimidated and harassed.

### **Disappearances and arbitrary detention**

While claiming to have made “human rights advances” through the promulgation of revisions to the Criminal Procedure Law, the government has in fact taken steps that contravene its obligations under the Vienna Convention on the Law of Treaties as a signatory, yet not state party, to the ICCPR by legalizing enforced disappearances. Under the revised law’s “residential surveillance” provision (article 73), law enforcement agencies have the power to detain national security or terrorism suspects in a designated location of the agencies’ choice for up to six months. Although the agency must notify relatives within 24 hours, the notification does not require the disclosure of the detained person’s whereabouts. This measure also nullifies the guarantee that criminal suspects can have access to a lawyer within 48 hours.<sup>viii</sup>

In early 2013 the government indicated that it is considering dismantling the administrative detention system of “re-education through labor” (RTL). This system currently detains at any given time an estimated 160,000 people in 360 camps, and allows the police, without the involvement of a court, to sentence people suspected of minor crimes for up to four years. It is unclear whether the government intends to replace the RTL system with another system of administrative detention for misdemeanor offences, such as compulsory drug detoxification centers.

The Chinese government also continues to tolerate unlawful “black jails,” used to detain petitioners in Beijing and elsewhere and force them back to their home provinces. While the Chinese government denied their existence during its first UPR, several media investigations have since documented their existence. In February 2013, a court in Beijing sentenced 10 people for their role in operating a black jail in Beijing.

Yet another form of extra-legal detention is used against Party members. Called the “double designation” (*shuanggui*) system, it allows for the incommunicado detention, at the discretion only of its investigators, of any of the more than 80 million Party members suspected of “misconduct.” When party leaders announced the purge of Bo Xilai in March 2012, the government announced to the nation that his case would be handled strictly according to law. Yet, Bo has effectively been forcibly disappeared since. He did not even appear as a witness in the summary trial of his wife, Gu Kailai, who received a suspended death sentence in August 2012, at the outcome of a trial that failed to meet minimal standards of fairness.

The country’s first Mental Health Law, adopted in August 2012, introduced a number of procedural guarantees against involuntary institutionalization. Yet the law maintains a system for involuntary confinement that is devoid of court oversight and falls short of the requirements of the Convention on the Rights of Persons with Disabilities (CRPD).

### **Abuses in ethnic minority regions**

In its 2009 review, the Chinese government accepted a recommendation “to further ensure ethnic minorities the full range of human rights” but failed to take any significant measure to address the long-standing grievances of Tibetans and Uighurs, further limiting respect of guarantees specified in the Autonomy law governing those regions. Instead, it has further reinforced already stringent curbs on basic rights and freedoms.

In Tibetan areas, the government has responded to a string of 101 self-immolations protesting repressive policies since February 2009 with increased restrictions on movements, communication, expression and religion. Authorities have punished and in some cases arrested the families and communities of some protestors, treated immolations as criminal offenses, deployed paramilitary forces, and restricted communications and travel in areas where immolations have occurred.

Since November 2012, Qinghai and Tibetan Autonomous Region (TAR) officials have employed forms of collective punishment to discourage immolations. On November 14, after five self-immolations in their area in a week, officials in Huangnan (*Malho* in Tibetan) prefecture in Qinghai ordered the cancellation of all “benefits received by the households of self-immolators under public benefit policies” and announced that “all projects running on state funds in self-immolators’ villages must be stopped.”

The Chinese government has not responded to the repeated requests by UN Special Procedures—9 in total since 2008—to be allowed to visit Tibetan areas.

Many human rights violations in Xinjiang are linked to state efforts to curb what is perceived by the government as “separatist” activity. In July 2010, Gheyret Niyaz, a Uyghur journalist employed by the official Xinjiang Economic Daily, and former editor of the web site Uighur Online was sentenced to 15 years in prison for “endangering state security,” a charge based on an interview he gave to the Hong Kong-based publication Asia Weekly following the unrest that broke out in Urumqi in July 2009.

The disappearance of Uyghur individual suspected of political or religious infractions remain a serious problem. The Chinese government has yet to account for the disappearance of many individuals detained in the wake of the July 2009 ethnic riots in Urumqi, as well as provide information about the fate of individuals and families deported from neighboring countries at China’s request, including six individuals deported from Malaysia in December 2012, and twenty deported from Cambodia in December 2009.

The government only tolerates religious activities in state-controlled religious venues, conducted by state-appointed clerics. In July and August 2012 the government imposed the harshest restrictions to date on the celebration of the Ramadan. In Yarkant County in Kashgar Prefecture, a government regulation required teachers, students, party officials, and public officials to refrain from fasting and from attending religious activities. Schools were also required to hold speeches “to ensure that broad numbers of teachers and students during Ramadan do not believe in religion and do not fast, and that they consciously prevent religious thinking from penetrating schools.” Regulations banning teachers, students, university students returning home for holiday, minors, party cadres, and officials from fasting and entering mosques were issued in other places throughout the region.

#### **Recommendations:**

- Accede to the multiple outstanding requests by UN special rapporteurs to visit China, including Tibet, and extend an invitation to the High Commissioner on Human Rights.
- Ratify without further delay the International Covenant on Civil and Political Rights.
- Immediately cease all forms of harassment and persecution of human rights defenders, and release them from detention and imprisonment;
- Hold accountable government officials involved in the torture, harassment and other illegal behavior against human rights defenders.
- Amend the definition of torture in Chinese laws so that it conforms to that of the Convention against Torture and amend the Criminal Procedure Law to exclude from legal proceedings all evidence (including

physical or documentary) obtained through torture;

- Dismantle all forms of internet and media censorship mechanisms and repeal administrative regulations that restrict freedom of expression.
- Ensure that government officials who are suspected of failing to uphold environmental regulations or preventing people from accessing medical care are investigated and held accountable.
- Abolish all forms of arbitrary detention and make the necessary legislative and regulatory amendments to ensure the right to a fair trial for all suspects;
- Revise the Mental Health Law to ensure compliance with the Convention on the Rights of Persons with Disabilities, particularly with respect to involuntary commitment.
- Enact a comprehensive law against domestic violence in accordance with the good practices detailed in the [UN Handbook on Legislation on Violence Against Women](#).
- Ensure that peaceful religious observance and practice and expressions of cultural identity are not equated with or incur liability for state security or other offenses.
- Urgently engage in meaningful discussions with representatives of Tibetan and Uighur communities to address fundamental grievances.
- Allow an independent international investigation of the protests in Tibetan areas since March 2008 and of the protests in Urumqi in July 2009.
- Make known the names and whereabouts of all Tibetan and Uighur detainees arrested for protesting, for offenses related to religion, or who have been forcibly returned from other countries. Release all those held without charge or try them for legally cognizable offenses in accordance with international fair trial standards.
- End the criminalization of peaceful advocacy for autonomy or return of the Dalai Lama to China under “separatism” charges, or for Uighur autonomy.
- Ensure that peaceful religious observance and practice is neither equated with nor incurs liability for state security offenses.

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<sup>i</sup> People.com.cn, “辽宁省检披露：四位民警刑讯逼供致死被判刑,” April 9, 2011., <http://legal.people.com.cn/GB/203936/14347711.html>

<sup>ii</sup> 民主与法制时报, “刑讯逼供案件审判记” September 6, 2012, <http://www.iolawjm.org/Item/4003.aspx>

<sup>iii</sup> Article 50, 54, 83, 116 and 117 of the Criminal Procedure of the People's Republic of China, amendments passed by the National People's Congress on March 14, 2012 and became effective as of January 1, 2013. Translation courtesy of Danish Institute for Human Rights.

<sup>iv</sup> Article 54 of the CPL.

<sup>v</sup> David Pierson, “China newspaper dispute sparks protest, tests new leaders,” January 7, 2013, <http://articles.latimes.com/2013/jan/07/world/la-fg-wn-china-southern-weekly-protest-20130107>

<sup>vi</sup> Cnet, “China reinforces its 'Great Firewall' to prevent encryption,” December 17, 2012, [http://news.cnet.com/8301-1009\\_3-57559531-83/china-reinforces-its-great-firewall-to-prevent-encryption/](http://news.cnet.com/8301-1009_3-57559531-83/china-reinforces-its-great-firewall-to-prevent-encryption/); AFP, “China plugging holes in 'Great Firewall',” March 27, 2011, <http://www.independent.co.uk/life-style/gadgets-and-tech/china-plugging-holes-in-great-firewall-2254327.html>.

<sup>vii</sup> Human Rights Watch, “China: Renewed Restrictions Send Online Chill,” January 4, 2013, <http://www.hrw.org/news/2013/01/04/china-renewed-restrictions-send-online-chill>.

<sup>viii</sup> The UN Special Rapporteur Against Torture and the UN Working Group on Arbitrary Detention have repeatedly condemned both secret and incommunicado detention as a serious rights violation that should be proscribed by law, and the UN General Assembly has [denounced](#) the practice as well.