



# CHINA

## **AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 17<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, OCTOBER/NOVEMBER 2013**

### **FOLLOW UP TO THE PREVIOUS REVIEW**

While the Chinese authorities have made progress on some of the recommendations made during its first Universal Periodic Review (UPR) in 2009, they have failed to make significant progress on others, and have taken regressive steps with regard to some.

Some legal changes made since the last review would bring China closer into compliance with international law, thereby facilitating China's ratification of the International Covenant on Civil and Political Rights (ICCPR).<sup>1</sup> The new Criminal Procedure Law (CPL), in effect since 1 January 2013, incorporates into national law the exclusion of illegal evidence in criminal proceedings, potentially improving conditions for ratification of the ICCPR by diminishing the use of evidence based on torture. The new CPL also takes steps towards the recognition of the presumption of innocence and offers some enhanced procedural protections for suspects and defendants in capital cases. However, other aspects of the new CPL would create new obstacles to ratification of the ICCPR, such as Article 73 which makes enforced disappearances legally possible by removing the requirement for police to notify the family of the specific location in which an arrested or detained person is held, as well as allowing the police to detain individuals for up to six months in undisclosed locations that are not official detention centres. Ratification of the ICCPR would also be impeded by the continued widespread criminal prosecutions of individuals for exercising their rights to free expression, association and assembly, to freedom of religion and belief; the widespread use of arbitrary and illegal forms of detention; widespread use of torture and other cruel, inhuman or degrading treatment against detainees and its systematic use against certain targeted groups; and the prevalence of unfair trials and the widespread denial of the rights of detainees, including timely notification and access to legal counsel.<sup>2</sup>

China fails to protect hundreds of thousands of individuals from being forcibly evicted from their homes.<sup>3</sup> China has made no visible progress in building its national human rights institutions,<sup>4</sup> and there is no evidence that it has "stepped up" cooperation with the Human Rights Council's Special Procedures, with 14 invitations from various Special Rapporteurs still outstanding.<sup>5</sup>

Welcome developments in the Re-education Through Labour (RTL) system include reform experiments in four cities and unconfirmed statements that the authorities intend to eventually cease the use of this form of detention. However, to date the authorities have not made public a comprehensive plan for either abolishing or significantly reforming the RTL system and there is no publicly available evidence to suggest there has been any significant change in how the RTL system is functioning.<sup>6</sup> Hundreds of thousands continue to be held in illegal and arbitrary forms of detention and subjected to physical and mental torture and other ill-treatment, including forced labour.<sup>7</sup>

The continued severe repression of the rights to freedom of expression, association and assembly, religion, information, and movement of Tibetans, Uighurs, Mongolians and other ethnic minorities in China contradicts its support for the recommendation to ensure ethnic minorities "the full range of human rights".<sup>8</sup>

## THE NATIONAL HUMAN RIGHTS FRAMEWORK

The phrase “the state protects and safeguards human rights” was added to the new CPL and the concept of human rights protection has been incorporated into government work at many levels. However, effective implementation of human rights protection has lagged behind its bureaucratic promotion.

China has not made public plans for the establishment of a national human rights institution, and the authorities have not provided strong legal or effective protections to civil society and non-governmental organizations.

## THE HUMAN RIGHTS SITUATION ON THE GROUND

### **Abuses within the Criminal Justice System**

The Chinese authorities continue to criminally punish and to use illegal, arbitrary and violent methods to intimidate and persecute individuals for the peaceful exercise of their rights, including the right to freedom of expression, religion, belief, association and assembly.

### **Arbitrary and illegal forms of detention and enforced disappearances**

Hundreds of thousands are arbitrarily detained in administrative forms of detention without judicial review, often for many years, including in RTL, enforced drug rehabilitation camps, and compulsory psychiatric detention. China continues to commit hundreds of thousands to compulsory psychiatric detention and to abuse the system to incarcerate individuals on politically motivated grounds, including petitioners, human rights lawyers, Falun Gong practitioners, and political activists. According to one official source, 800,000 are admitted to psychiatric institutions every year. Human rights lawyer Jin Guanghong was forcibly incarcerated in a psychiatric institution for 10 days in 2011.

The UN estimates that compulsory drug rehabilitation camps may have held up to half a million individuals in 2009, against their will.<sup>9</sup> According to official Chinese reports, 922,000 individuals were held in drug rehabilitation camps over the past four years. Evidence obtained by Amnesty International suggests that while they may be diminishing the use of RTL camps the authorities are making increased use of drug rehabilitation camps to punish political cases.

China also operates a growing diversity of make-shift and illegal forms of detention, where thousands are held, in many cases for years, in violation to their right to judicial review, fair trial, and without protection from arbitrary detention and torture and other ill-treatment. Despite having reported their closure, the authorities continue to operate hundreds of “black jails” – make-shift detention facilities used primarily to detain petitioners seeking redress for perceived injustices, for days or months. These may be located in hotels, official hostels, mental hospitals, nursing homes, and other unofficial sites.

An increasing number of human rights defenders including their family members have been put under illegal house arrest, often for years, where they may be deprived of all means to communicate with the outside world. One such case is that of Liu Xia, wife of imprisoned Nobel Peace Prize recipient Liu Xiaobo, who has been under continuous illegal house arrest since the announcement that he had won the prize.

Dozens of others are held for days or months in incommunicado detention in unknown and unofficial locations, with no notification to family of their whereabouts.

### **Criminalizing freedom of expression**

Harsh criminal sentences continue to be imposed on writers, bloggers, journalists, academics, whistle-blowers and ordinary citizens for peacefully exercising their right to freedom of expression, including publishing articles or posting comments online that advocate democratic reform and human rights, exposing official corruption or malfeasance, distributing information on banned religious groups, or touching on a steadily expanding range of politically sensitive topics, including Tibet, Taiwan, and other topics which suddenly generate widespread attention online. Many others are intimidated and in some cases tortured or ill-treated during arbitrary detention, enforced disappearance, incommunicado

detention and other forms of illegal detention. Some of the harshest sentences, most on the charge of “inciting subversion of state power”, have been meted out to individuals who published articles or analysis on overseas websites.

Liu Xianbin, Sichuan democracy advocate, writer and signer of Charter 08, was sentenced in March 2011 to 10 years’ imprisonment for “inciting subversion of state power”, with three essays he published in 2009 being cited as “evidence” of his crime. He had previously served 12 of the last 20 years in prison before this most recent sentence in connection with his democracy activism, including trying to register an independent Democracy Party and founding the magazine *Citizens’ Forum*.

Chen Xi, veteran democracy activist from Guizhou province, was sentenced to ten years’ imprisonment in December 2011 on the same charge; 36 articles he had published on overseas websites advocating democratic reform were cited as evidence. He had earlier been sentenced to a three-year prison term for his activism during the 4 June 1989 democracy movement, and a ten-year sentence in connection with his democracy activism.

Ethnic minority writers, web managers, and intellectuals are among those most harshly punished for exercising their rights to freedom of expression. Hairat Niyaz, Uighur journalist and web editor, was sentenced in July 2010 to 15-years imprisonment for the crime of “endangering state security”. Police told his family at the time of his arrest that he had been detained for having “given too many interviews”.

Four other Uighur web editors are known to have been sentenced from five to eight year prison terms on the same charge, some after secret trials following the unrest in Urumqi in July 2009, a protest against perceived Chinese government inaction over the death of a Uighur factory worker in southern China, which turned to ethnic rioting following police violence against demonstrators. Several dozen Uighur families revealed to overseas sources in 2012 that family members remain missing since the unrest in 2009. The actual number of those missing is likely to be in the hundreds.

Several Tibetans have been sentenced to long prison terms for communicating information overseas about self-immolations of Tibetans.

Over 100 activists, bloggers and others were criminally prosecuted, detained, or placed under surveillance following “Jasmine Revolution” inspired activities which began in February 2011, during which many sought to promote democratic reforms through street gatherings, blog commentary and other forms of activism.

Wang Dengchao, a police officer in Shenzhen, Guangdong province, who has for many years advocated democratic reforms on online forums, was sentenced to 14 years imprisonment on 26 November 2012 for “embezzlement” and “disrupting official business”. His lawyer believes that authorities chose to prosecute him on trumped-up charges for economic crimes because they had failed to prove a subversion charge. He was arrested in March 2012, two days before a rally he helped plan in support of democratic reforms and other public benefits.

### **Widespread and systematic use of torture in detention**

Torture and other ill-treatment remain widespread during criminal investigations to extract forced confessions. On 6 June 2012, veteran dissident and labour rights activist Li Wangyang was found dead in hospital just days after an interview aired in Hong Kong, in which he spoke about being tortured. The authorities claimed he committed suicide by hanging himself; however, many have questioned the likelihood of this. Li Wangyang was blind, deaf and unable to walk without assistance as a result of being tortured when he was jailed after the 1989 crackdown. He had been jailed twice for a total of more than 21 years.

### **Persecuting individuals for “heretical” religious beliefs**

China continues to pursue a systematic, nation-wide, often violent campaign to eradicate the Falun Gong spiritual group, banned since 1999 as a “heretical” group. Thousands of practitioners are held in RTL camps, enforced drug rehabilitation camps, and psychiatric hospitals. Many have been held for years without due process, including the rights to a fair and public trial by a competent, independent and impartial tribunal, access to legal counsel of one’s choosing, the presumption of innocence, and the opportunity to appeal their sentence through a process of judicial review. The

authorities operate hundreds of “Legal Education Training Centres” across the country, often referred to as “brainwashing centres”, designed specifically for the “transformation” of Falun Gong practitioners, where they are coerced into renouncing their beliefs. Those who refuse are at risk of escalating levels of mental and physical torture. Amnesty International has confirmed over a dozen deaths in detention of Falun Gong practitioners in connection with torture.

Nine women Falun Gong practitioners, detained in 2012 in Jiamusi City, were sent to the Harbin Women’s Enforced Drug Rehabilitation Camp to serve their terms. Beginning in 2009 all Falun Gong practitioners held in the women’s RTL camp in Jiamusi City were transferred to the Harbin Women’s Enforced Drug Rehabilitation camp, both in Heilongjiang Province, which is now reported to hold 40-50 female Falun Gong practitioners.

The authorities continue to criminally persecute and prosecute individuals and religious groups whom the authorities have declared “illegal” or “heretical”, or who seek to operate without state sanction, including “house church” Christians, and certain Catholic, Buddhist, Muslim and other spiritual groups. These groups risk harassment, violence, illegal and arbitrary detention, long prison terms, torture and other forms of ill-treatment at the hands of the authorities.

China continues to treat harshly Uighurs who practise their religion independently of the government, including through private religious schools. In May 2012, nine Uighurs were sentenced to prison terms ranging from six to 15 years for participating in alleged “illegal religious activities”.

#### **Human rights violations of ethnic minorities**

Ethnic minorities in China, including Tibetans, Uighurs and Mongolians, continue to experience severe discrimination, and to be harshly criminally punished for what authorities label “illegal religious” and “separatist” activities, but which are often peaceful expressions of cultural identity.

Hada, an advocate for Mongolian culture, was taken into custody on 10 December 2010, the day he completed his 15 year sentence on charges of “espionage” and “separatism”, in connection with his advocacy of Mongolian culture. His wife, Xinna, and son, Uiles, have also been taken into custody a number of times, as punishment for speaking to foreign organizations about Hada’s plight. The family report that the authorities have said Hada will not be released until he admits to “wrongdoing”, which Hada refuses, and until the family stops speaking to the foreign press. His son reported in early 2013 that Hada was showing signs of mental illness.

#### **Forced evictions**

Over the past four years millions of people across China have been forced from their homes without legal protection, safeguards or legitimate consultation, in sudden and violent ways which have sometimes resulted in deaths. Evictees are often offered little or no compensation and/or inadequate alternative housing. Anyone attempting to challenge their eviction or seek redress have little hope of obtaining justice. Courts often refuse to accept eviction related appeals, and attempts to petition higher-level government agencies almost always fail. People who peacefully protest against forced eviction risk detention, imprisonment or detention in Re-education Through Labour (RTL) camps. Some resort to drastic measures, including setting themselves on fire or taking up violent forms of protest.

In January 2011, China issued regulations to outlaw the use of violence in urban evictions and granting urban owners facing evictions new protections. These regulations do not, however, provide protection to rural residents and their enforcement has been poor. Moreover, local officials continue to have a fiscal incentive to clear land for development.<sup>10</sup>

## **RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

### **Amnesty International calls on the government of the People’s Republic of China:**

#### *Criminal justice system*

- To stop criminal prosecutions, illegal and arbitrary detentions, enforced disappearances, and other forms of intimidation and harassment of individuals for peacefully exercising their rights to freedom of expression, association and assembly, religion and belief;
- To shut down all places of detention which deprive individuals of their liberty without due process, including the rights to judicial review and safeguards against torture and other ill-treatment, and to proceed rapidly with clear and transparent plans to reform and eventually abolish all forms of arbitrary detention;
- To guarantee the rights of detainees and to further amend the Criminal Procedure Law to bring Articles 73, 83 and 91 in line with international standards, including the right to be held in a recognized place of detention, prompt notification to family following arrest, and timely access to legal counsel;
- To thoroughly investigate all allegations of torture in custody, including those raised by alleged victims or their lawyers, to provide proper redress and compensation, and to end the impunity of officials who engage in torture and other ill-treatment, including by implementing the necessary institutional reforms to ensure effective enforcement of existing laws prohibiting torture;
- To ensure that provisions in the new CPL that offer greater protection in death penalty cases are fully implemented and to limit the use of the death penalty with the goal of declaring a moratorium on executions in line with UN General Assembly resolution 67/176 of 20 December 2013;
- To publish full national statistics on death sentences imposed and executions, disaggregated by region, sex, income, and other categories.

#### *Ethnic minorities*

- To grant genuine autonomy to ethnic minorities in the governance of their regions;
- To stop the persecution of Tibetans, Uighurs, Mongolians and other ethnic minorities for exercising their right to freedom of expression, religion and belief.

#### *Freedom of belief and religion*

- To stop criminal prosecution and persecution of individuals and groups for the peaceful practice of their religion and beliefs.

#### *Forced evictions*

- To halt immediately all forced evictions, to explicitly prohibit them in law, and to ensure that adequate safeguards and protections are in place in line with international standards;
- To ensure that all victims of forced eviction have access to independent and impartial adjudication of their complaints and to effective remedy;
- To develop and adopt guidelines for evictions based on the UN Basic Principles and Guidelines on Development-Based Evictions and Displacement and other international standards;
- To create alternative funding streams for local authorities in order to reduce their dependence on development-based land sales and construction that lead to mass forced evictions.

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<sup>1</sup> Report of the Working Group on the Universal Periodic Review, Addendum (A/HRC/11/25), Recommendation 1, "Create conditions for an early ratification of the International Covenant on Civil and Political Rights (ICCPR)" (Sweden); "In accordance with its imperatives dictated by its national realities, to proceed to legislative, judicial and administrative reform as well as create conditions permitting the ratification, as soon as possible, of the ICCPR" (Algeria); "Analyse the possibility of ratifying/consider ratifying/ratify ICCPR" (Argentina, Brazil, Austria).

<sup>2</sup> Ibid, Recommendation 1 (Sweden).

<sup>3</sup> Ibid, Recommendation 3, "Continue enhancing the quality of life of its people through the enjoyment of economic, social and cultural rights and pursuant to international standards" (Nicaragua).

<sup>4</sup> Ibid, Recommendation 4, "Continue its national efforts for the promotion and protection of human rights, including in the area of strengthening its national human rights architecture" (Egypt).

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<sup>5</sup> Ibid, Recommendation 9, "Invite other Special Rapporteurs dealing with economic and social rights to visit the country" (Saudi Arabia); Recommendation 10, "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).

<sup>6</sup> Ibid, Recommendation 31, "Actively and prudently push forward reform of re-education through labour according to its national realities, so that everything goes according to its system" (Sudan).

<sup>7</sup> Ibid, Recommendation 115.1, noted by China and which they indicated they pertain to measures already being implemented or which had already been implemented, "Guarantee that all detainees, regardless of their crimes, are held in facilities with decent standard and treatment" (Germany).

<sup>8</sup> Ibid, Recommendation 37, "Continue its efforts to further ensure ethnic minorities the full range of human rights including cultural rights" (Japan); Recommendation 115.3: "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).

<sup>9</sup> UNAIDS May 2009 Report, "AIDS in China: background information on the epidemic and the response," unpublished document on file with Human Rights Watch, May 2009, p.8.

<sup>10</sup> For further information see *Standing Their Ground – Thousands face violent eviction in China*, Amnesty International, Index: ASA 17/001/2012, October 2012, available online at <http://www.amnesty.org/en/library/info/ASA17/001/2012/en>.