

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

SUBMITTED BY HUMAN RIGHTS IN CHINA

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INTRODUCTION

Universal Period Review Background

1 The Universal Period Review (UPR) is a "cooperative process" created in March 2006, through UN General Assembly resolution 60/251, with the purpose of reviewing the human rights records of all UN member states.¹ By the end of 2011, the Human Rights Council will have concluded its first UPR cycle; the UN Secretary-General stated that this process "has great potential to promote and protect human rights in the darkest corners of the world."² Yet, during early debates regarding the UPR mechanism's structure and process, and during initial reviews, NGOs, human rights experts, and other stakeholders have raised concerns including:

- The risks of a highly politicized, state-driven process by which member states examine each other's domestic human rights situations (risks of "horse-trading");
- The lack of an effective accountability and implementation framework;³ and
- The over-reliance upon a given member state's voluntary acceptance of recommendations and implementation follow-up as a means of achieving progress.

These obstacles and challenges continue to hinder the potential of the UPR process to achieve its promise of advancing human rights on a substantive and concrete implementation level.

Human Rights in China and the 2009 China UPR

2 As a member state with economic, political and soft power influence, China and its UPR process underscores the limits of the UPR process and the need to reassess and strengthen this human rights process. The UN Human Rights Council's Working Group on the UPR concluded its examination of China on February 9, 2009.⁴ On June 11, 2009, the UN Human Rights Council adopted the findings without a

¹ Office of the High Commissioner for Human Rights, "Universal Periodic Review," <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>; U.N. General Assembly, "Human Rights Council," U.N. Doc. A/RES/60/251 (2006), para. 5(e), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/RES/60/251.

² U.N. Human Rights Council, "UPR Sessions," <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>.

³ Human Rights in China (HRIC), "China Rejects UN UPR Recommendations for Substantive Reform to Advance Human Rights; HRIC Summary," February 11, 2009, <http://www.hrichina.org/content/247> (hereafter, HRIC: China Rejects UPR Recommendations).

⁴ U.N. Human Rights Council, "Report of the Working Group on the Universal Period Review: China," U.N. Doc. A/HRC/11/25 (2009), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/11/25 (hereafter, UPR Report). See also HRIC, "China's UN Human Rights Review: New Process, Old Politics, Weak Implementation Prospects," February 9, 2009, <http://www.hrichina.org/content/246> (hereafter, HRIC: China's UPR).

vote.⁵ During its review, China repeatedly dismissed statements of concern over its human rights practices as “politicized statements,” and pointed instead to its efforts to advance democracy, rule of law, civil and political rights, and to provide fundamental freedoms to the Chinese people.⁶ Many governments also praised China’s human rights efforts, and supported China’s accusations that critics were politicizing the UPR process. China and its supporters also invoked cultural relativism arguments, raising concerns about their commitment to universally recognized human rights standards and norms.⁷

3 **Human Rights in China (HRIC)** actively contributed to and monitored China’s UPR. In addition to preparing and submitting a parallel NGO report in September 2008,⁸ HRIC attended China’s UPR session, met with delegations of various member states, and subsequently analyzed the report adopted by the Working Group on the UPR, the recommendations advanced by various member states, and China’s response.⁹ HRIC submits this note to contribute to the assessment of China’s progress since the 2009 UPR. This note focuses on the recommendations that China accepted or stated as already being implemented, including:

- Publication and implementation of a **National Action Plan**;
- **Cooperation with international human rights mechanisms and procedures, and ratification of ICCPR**;
- Implementation of **rule of law reforms**, including in areas of the death penalty, Reeducation-Through-Labor, extra-legal detentions, and treatment of detainees; and
- Ensuring the human rights of **ethnic minorities**, including religious, civil, political, and socio-economic rights, and substantive participation in decision-making.

4 As this note’s review of progress and developments in each of these areas suggests, there has been limited progress, and in some cases, even a deterioration of rights protection and intensification of crackdowns. The human rights challenges are indeed complex and difficult in China, and no one tool or process, including the UPR, can be assessed in isolation. However, the fact that progress has been

⁵ “Decision 11/110. Outcome of the Universal Periodic Review: China” in U.N. Human Rights Council, “Report of the Human Rights Council on Its Eleventh Session” U.N. Doc A/HRC/11/37, 57 (2009), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/11/37.

⁶ HRIC: China’s UPR, supra n. 4.

⁷ Ibid.

⁸ HRIC, *Implementation and Protection of Human Rights in the People’s Republic of China* (2008), http://hrichina.org/sites/default/files/oldsite/PDFs/Submissions/2008_HRIC_UPR_Report.pdf.

⁹ See HRIC: China Rejects UPR Recommendations, supra n. 3; HRIC, “Summary Chart of UPR Recommendations Rejected by the People’s Republic of China”, February 11, 2009, http://hrichina.org/sites/default/files/oldsite/PDFs/Submissions/Summary_Chart_of_Rejected_UPR_Recommendations.pdf; HRIC, “Summary Chart of UPR Recommendations Accepted by the People’s Republic of China,” February 13, 2009, http://hrichina.org/sites/default/files/oldsite/PDFs/Submissions/Summary_Chart_of_Accepted_UPR_Recommendations.pdf; HRIC, “Summary Chart of UPR Recommendations ‘Already Being Implemented’ by China,” February 13, 2009, http://hrichina.org/sites/default/files/oldsite/PDFs/Submissions/Summary_Chart_of_UPR_Recommendations_Already_Implemented.pdf; HRIC, “Summary Chart of UPR Recommendations to be Examined by China,” February 13, 2009, http://hrichina.org/sites/default/files/oldsite/PDFs/Submissions/Summary_Chart_of_UPR_Recommendations_to_Be_Examined.pdf.

limited on the recommendations that China accepted or stated were already implemented raises very troubling concerns about the capacity of the UPR to effectively promote or advance concrete progress.

Publication and implementation of a National Human Rights Action Plan

RECOMMENDATION ACCEPTED BY CHINA: “Proceed as soon as possible with the publication and implementation of (Algeria)/Finalise and publish at an early date and then swiftly implement its National Human Rights Action Plan for 2009-2010 (Singapore).”¹⁰

5 China’s Information Office of the State Council published the first *National Human Rights Action Plan of China (2009-2010)* (Action Plan) in April 2009.¹¹ The Action Plan outlined China’s human rights goals in five areas: economic, social, and cultural rights; civil and political rights; rights and interests of ethnic minorities, women, children, elderly people, and the disabled; education in human rights; and performing international human rights duties, and conducting exchanges and cooperation in the field of international human rights. In its introduction, the Action Plan stated:

The realization of human rights in the broadest sense has been a long-cherished ideal of mankind and also a long-pursued goal of the Chinese government and people. Since the founding of the People’s Republic of China in 1949, under the leadership of the Communist Party of China, the Chinese government, combining the **universal principles of human rights** and the **concrete realities** of China, has made unremitting efforts to promote and safeguard human rights.¹² (Emphasis added.)

6 In the *Assessment Report on the National Human Rights Action Plan of China (2009-2010)*, the Chinese government¹³ framed its assessment within a political and socialist context:

China will continue to adhere to the path of **socialism with Chinese characteristics**, while upholding the principle of putting **people first**; further improve and enhance the mechanism of safeguarding the rights and interests of the masses **guided by the Party** and the government; **improve the legal system** to safeguard human rights and **enhance social awareness** of respecting and protecting human rights; comprehensively push forward the cause of human

¹⁰ UPR Report, supra n. 4, para. 114.5.

¹¹ Information Office of the State Council of the People’s Republic of China, *National Human Rights Action Plan of China (2009-2010)* (2009), http://www.china.org.cn/archive/2009-04/13/content_17595407.htm (hereafter, Action Plan). See also Yuan Ye, “China Publishes National Human Rights Action Plan,” Xinhua News Agency, April 13, 2009, http://news.xinhuanet.com/english/2009-04/13/content_11177311.htm.

¹² Ibid.

¹³ Despite policy efforts to separate the state and the government, they are in fact, in practice linked with key Party leaders occupying key government positions. For example, Wang Chen is the Deputy Director of the Communist Party of China’s Propaganda Department and also the Director of the State Internet Information Office, before which he served as Director of the Information Office of the State Council. See “How the Chinese Authorities View the Internet: Three Narratives,” in HRIC, “‘China’s Internet’: Staking Digital Ground,” *China Rights Forum*, 2010, no. 2, <http://www.hrichina.org/crf/issue/2010.02>.

rights in China, and ensure that the basic rights and interests of all individuals are effectively safeguarded and their lives more secure dignified and happy.¹⁴ (Emphasis added.)

7 While promulgation of the Action Plan is an important first step, any effective human rights action plan needs to include concrete accountability and implementation measures. However, China's Action Plan lacks benchmarks, specific implementation timeframes, and mechanisms for monitoring and assessing progress. The overarching problems of ensorship, information control, and the comprehensive state secrets system also present transparency issues and obstacles to access to reliable, accurate, and comprehensive data on the human rights situation in China.¹⁵

8 Despite these challenges, NGOs, UN expert bodies and mechanisms, the media, and China's own citizens have documented and reported on the disparities between the Action Plan on paper and the actual human rights situation on the ground. Some specific examples, including those reflective of the areas highlighted in this note, include:

- The detention, conviction, and sentencing of **Liu Xiaobo**, recipient of the 2010 Nobel Peace Prize, to eleven years prison, for activities clearly constituting peaceful exercise of fundamental rights and freedoms¹⁶;
- Ongoing crackdowns against lawyers, activists, and rights defenders¹⁷;

¹⁴ Information Office of the State Council of the People's Republic of China, *Assessment Report on the National Human Rights Action Plan of China (2009-2010)* (2011), section I, http://www.china.org.cn/china/2011-07/14/content_22989895_2.htm (hereafter, Assessment of Action Plan).

¹⁵ China's comprehensive and non-transparent state secret system includes the 1988 *Law on Guarding State Secrets* (State Secrets Law, revised in 2009), its implementing measures, related provisions in the State Security Law, the Criminal Law, and numerous regulations or rules by different authorities on the state secret issues. The revised *Law on Guarding State Secrets*, which took effect on October 1, 2010, is a legal upgrade designed to place broader and tighter control over information flow on the Internet and any public information network, in addition to traditional forms of communication. For an English translation of the revised State Secrets Law by HRIC, see HRIC, "Nationwide State Secrets Education Campaign Launched as New Law Goes into Effect," October 1, 2010, <http://www.hrichina.org/content/842>. For more information on the state secrets system in China, see HRIC, *State Secrets: China's Legal Labyrinth* (2007), <http://www.hrichina.org/content/4082>.

¹⁶ HRIC, "Freedom of Expression on Trial in China," *China Rights Forum*, 2010, no. 1, <http://www.hrichina.org/crf/issue/2010.01>; HRIC, "Liu Xia, Nobel Peace Prize Recipient Liu Xiaobo's Wife, Under House Arrest," October 10, 2010, <http://www.hrichina.org/content/847>; Austin Ramzy, "In China, News About Nobel Winner Liu Xiaobo Is Scarce," *TIME*, October 11, 2010, <http://www.time.com/time/world/article/0,8599,2024755,00.html>; Tania Branigan, "Nobel Winner Liu Xiaobo's Wife Missing, as Couple's Home Vanishes Too," *The Guardian*, December 10, 2010, <http://www.guardian.co.uk/world/2010/dec/10/wife-of-liu-xiaobo-hidden>; Tania Branigan, "'Prejudice and Lies Will Not Stand' Says Beijing, Still Furious over Liu Xiaobo's Nobel Peace Prize," *The Guardian*, December 10, 2010, <http://www.guardian.co.uk/world/2010/dec/10/china-still-furious-over-nobel>; Tania Branigan, "China Urged to Release Wife of Jailed Nobel Peace Prize Laureate," *The Guardian*, October 4, 2011, <http://www.guardian.co.uk/world/2011/oct/04/china-dissident-wife-liu-xia>. See also See Human Rights Watch, *Promises Unfulfilled: An Assessment of China's National Human Rights Action Plan* (New York, 2011), 57, <http://www.hrw.org/sites/default/files/reports/china0111webwcover.pdf> (hereafter, Human Rights Watch).

¹⁷ Jerome A. Cohen, "Wrong Side of the Law," *South China Morning Post*, October 26, 2011, <http://www.usasialaw.org/?p=6142>; HRIC, "Lawyers Report Procedural Irregularities at Trial of Rights Activist Wang Lihong," August 13, 2011, <http://www.hrichina.org/content/5541>; Michael Bristow, "Communist Crackdown on China's Microblogs," British Broadcasting Corporation, November 2, 2011, <http://www.bbc.co.uk/news/world-asia-china-15568199>; HRIC, "Guangxi Rights Defense Lawyer Yang Zaixin Formally Arrested," July 5, 2011,

- The expanded use of torture not only as a means to coerce confessions, but as means of violent intimidation in extra-legal settings;¹⁸
- The ongoing and expanded practice of extra-legal detentions, illustrated by the ongoing house arrest and abuses against activist **Chen Guangcheng** and his family¹⁹; and
- The preliminary conclusions of the UN Special Rapporteur on the right to food following his first country visit to China, pointing out the persistence of serious human rights obstacles, especially for rural and migrant populations.

As this note points out, China's Action Plan is a limited first step. Concrete practical follow-up is necessary to promote effective implementation of its goals.

Cooperation with international human rights mechanisms, procedures and ratification of ICCPR

a. UN Special Procedures mandate holders

RECOMMENDATION ACCEPTED BY CHINA: "Invite other Special Rapporteurs dealing with economic and social rights to visit the country (Saudi Arabia)."²⁰

<http://www.hrichina.org/content/5404>; Tania Branigan, "China's Detained and Missing," *The Guardian*, June 22, 2011, <http://www.guardian.co.uk/world/china-human-rights-crackdown-interactive>; Amnesty International, *Against the Law: Crackdown on China's Human Rights Lawyers Deepens* (2011), <http://www.amnesty.org/en/library/info/ASA17/018/2011/en>; Nicolas Bequelin, "Crackdown in China," *The New York Times*, April 7, 2011, <http://www.nytimes.com/2011/04/08/opinion/08iht-edbequelin08.html>; HRIC, "Lawyers and Activists Detained, Summoned, and Harassed in 'Jasmine Rallies' Crackdown," February 23, 2011, <http://www.hrichina.org/content/4896>.

¹⁸ 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); "'Dog Torture' Used to Get Confession," *Shanghai Daily*, October 11, 2011, http://www.china.org.cn/china/2011-10/11/content_23591762.htm; HRIC, "Defense Lawyer in High-Profile Beihai Case Beaten while Police Watch," October 21, 2011, <http://www.hrichina.org/content/5587>; HRIC, "Rights Defender Guo Feixiong Released from Prison; Remains Committed to Rights Work," September 13, 2011, <http://www.hrichina.org/content/5571>; Human Rights Watch, "State Government at Odds with Rollback of Key Civil and Political Rights," January 11, 2011, <http://www.hrw.org/news/2011/01/11/china-human-rights-action-plan-fails-deliver>.

¹⁹ HRIC, "Dozens of People Beaten while Attempting to Visit Blind Legal Advocate Chen Guangcheng," October 31, 2011, <http://www.hrichina.org/content/5608> (hereafter, HRIC: Chen Guangcheng); HRIC, "HRIC Testimony at CECC Hearing on Chen Guangcheng," November 1, 2011, <http://www.hrichina.org/content/5611> (hereafter, HRIC: CECC Testimony); Jerome A. Cohen, "China's Legal Blindness," *The Wall Street Journal*, November 3, 2011, <http://online.wsj.com/article/SB10001424052970203804204577013440386484030.html> (hereafter, Cohen: Chen Guangcheng); U.S. Congressional Executive Committee on China (CECC), "Leaders of Bipartisan Commission Call on China to Release Human Rights Lawyer, Chen Guangcheng," November 1, 2011, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=166009>; "Blind Man's Bluff," *The Economist*, November 5, 2011, <http://www.economist.com/node/21536639>; Peter Foster, "Chen Guangcheng: The 'Barefoot Lawyer,'" *The Daily Telegraph*, October 27, 2011, <http://www.telegraph.co.uk/news/worldnews/asia/china/8853309/Chen-Guangcheng-the-barefoot-lawyer.html>; Andrew Jacobs, "Chinese Persist in Bids to Visit a Dissident," *The New York Times*, October 24, 2011, <http://www.nytimes.com/2011/10/25/world/asia/attempted-visits-to-chen-guangcheng-surge.html>.

²⁰ UPR Report, supra n. 4, para. 114.9.

9 China invited the **UN Special Rapporteur on the right to food**, Olivier De Schutter, to conduct an official mission from December 15 to 23, 2010.²¹ In his preliminary conclusions on the mission, the Special Rapporteur concluded that despite “impressive progress made in China in the achievement of food security,”²² ongoing serious challenges continued to persist, including:

- Poor living conditions of **those living in rural areas** and of **migrant workers**, including the discriminatory impacts of the *Hukou* household registration system;
- Inequalities related to **land tenure security** and **access** to land;
- Lack of sustainable **agriculture practices** and **policies**; and
- Challenges to **nutrition and food safety**, including accountability concerns illustrated by China’s tainted milk scandal.²³

10 Despite progress, the Special Rapporteur noted that China’s massive industrialization has led to a loss of arable land, threatening China’s ability to maintain current levels of agricultural production.²⁴ He also stated that he was “convinced that **transparency and access to information** are essential to the effective realisation of the right to food,” including as a means to ensure that authorities are held accountable and policies are improved.²⁵ (emphasis added)

11 Apart from the visit of the Special Rapporteur on the right to food, there is no publicly available information regarding whether China has extended invitations to other Special Procedures mandate holders addressing social and economic rights. Since February 2009, the following Special Rapporteurs have made requests to visit China:

- Independent Expert on **minority issues** (invitation requested in July 2009); and
- Independent Expert on **access to safe drinking water** and **sanitation** (invitation requested in March 2010).²⁶

12 The following invitation requests, made prior to China’s UPR session, remain outstanding:

- Special Rapporteur on **toxic waste** (invitation requested in 2005);
- Independent Expert on **extreme poverty** (invitation requested in 2005);
- Special Rapporteur on **health** (invitation requested in 2006); and
- Special Rapporteur on **housing** (invitation requested in 2008).²⁷

²¹ Office of the High Commissioner for Human Rights, “Country and Other Visits by Special Procedures Mandate Holders since 1998 (A-E),” <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsa-e.htm#china>. See also U.N. Human Rights Council, “Report Submitted by the Special Rapporteur on the Right to Food: Addendum: Preliminary Note on the Mission to China (15-23 December 2010),” U.N. Doc. A/HRC/16/49/Add.3 (2011) (Special Rapporteur, Olivier De Schutter), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/16/49/Add.3.

²² *Ibid.*, para. 32.

²³ *Ibid.*

²⁴ *Ibid.*, paras. 7-8.

²⁵ *Ibid.*, para. 21.

²⁶ Office of the High Commissioner for Human Rights, “Country and Other Visits by Special Procedures Mandate Holders since 1998 (A-E),” <http://www2.ohchr.org/english/bodies/chr/special/countryvisitsa-e.htm#china>.

²⁷ *Ibid.*

13 In addition to cooperating with the Special Rapporteur on the right to food to address the concerns raised in his report, China should be encouraged to respond positively to outstanding requests, and extend invitations incorporating UN terms of reference for these missions.

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).”²⁸

14 Despite its cooperation in the individual complaint review process of the UN Working Group on Arbitrary Detention (WGAD), China has continued to ignore the WGAD’s final determinations and recommendations. In its 2010 report, the WGAD also noted that specific detentions it declared as arbitrary have been ignored by Chinese authorities:

The Working Group was informed by the source that Mr. Zhang Honghai, whose detention was declared arbitrary in Opinion No. 32/2007 (China), was released on 12 March 2009, however only after having served his prison term of eight years in full.²⁹

15 Unfortunately, this is not an isolated case. China continues to detain individuals despite clear WGAD findings that their detentions were arbitrary under principles of international law, or releasing them only after they have served their full prison terms. Below are some examples:

- **Chen Guangcheng** – Opinion No. 47/2006 (China),³⁰ remained in prison and released on September 9, 2010 after serving his full sentence of four years, three months;
- **Gao Zhisheng** – Opinion No. 26/2010 (China),³¹ released after serving his full sentence of three years; however, his whereabouts remain unknown since April 2010;
- **Jin Haiké** – Opinion No. 32/2007 (China),³² remained in prison and released on March 12, 2011, after serving his full sentence of ten years;
- **Alimujiang Yimiti (Alimjan Yimit in Uyghur)** – Opinion No. 29/2008 (China),³³ remains in jail serving a prison sentence of 15 years, and is not due for release until 2023; and
- **Shi Tao** – Opinion No. 27/2006 (China),³⁴ remains in prison serving a ten-year sentence and not due for release until 2014.

²⁸ UPR Report, supra n. 4, 114.10.

²⁹ U.N. Human Rights Council, “Report of the Working Group on Arbitrary Detention,” U.N. Doc. A/HRC/13/30 (2010), para. 22, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/13/30.

³⁰ 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), 49, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/7/4/Add.1.

³¹ U.N. Human Rights Council, “Report of the Working Group on Arbitrary Detention,” U.N. Doc. A/HRC/16/47 (2011), para. 9, Table 1, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/16/47 (hereafter, WGAD 2011 Report).

³² 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/10/21/Add.1 (2009), 54, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/10/21/Add.1.

³³ U.N. Human Rights Council, “Report of the Working Group on Arbitrary Detention,” U.N. Doc. A/HRC/13/30/Add.1 (2010), 61-63, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/13/30/Add.1.

Even after these individuals are released from prison, many continue to face extra-legal restrictions on their fundamental rights.³⁵

16 In its 2011 report, the WGAD also noted the importance of follow-up visits particularly with China: “This was evident when the Working Group carried out its follow-up visit to China in September 2004. The Working Group requests the support of Member States in facilitating follow-up visits.”³⁶ Despite this explicit language, there has been limited indication that China has extended, or plans to extend, an invitation for the WGAD’s follow-up visit.

b. Ratification of the International Covenant on Civil and Political Rights (ICCPR)

RECOMMENDATION ACCEPTED BY CHINA: “Create conditions for an early ratification of the ICCPR (Sweden); In accordance with its imperatives dictated by its national realities, proceed to legislative, judicial and administrative reform as well as create conditions permitting the ratification, as soon as possible, of the ICCPR (Algeria); Analyze the possibility of ratifying/consider ratifying/ratify the ICCPR (Argentina, Brazil, Austria).”³⁷

17 China signed onto the ICCPR on October 5, 1998.³⁸ Despite extensive bilateral discussions and international technical assistance to strengthen the conditions for ratification over the past 13 years, and despite significant support among Chinese citizens and lawyers pressing the government to ratify the ICCPR,³⁹ China continues to drag its feet towards ratification. Over the past few years, China’s leaders have expressed the position that China will ratify the ICCPR when its laws are in compliance with the ICCPR and conditions of human rights are met.⁴⁰

³⁴ 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.

³⁵ For example, Chen Guangcheng, who after being released from prison, and his family have been repeatedly abused, harassed, confined to their home, and under surveillance from Chinese officials. See e.g. U.S. Congressional Executive Committee on China (CECC), “Leaders of Bipartisan Commission Call on China to Release Human Rights Lawyer, Chen Guangcheng,” November 1, 2011, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsngle=166009>.

³⁶ WGAD 2011 Report, supra n. 31.

³⁷ UPR Report, supra n. 4, para. 114.1.

³⁸ Ministry of Foreign Affairs of the People’s Republic of China, “The Signing of the International Covenant on Civil and Political Rights by the Chinese Government,” November 17, 2000, <http://www.fmprc.gov.cn/eng/ziliao/3602/3604/t18041.htm>.

³⁹ In 2007, more than 14,000 Chinese citizens appealed to the National People’s Congress to ratify the ICCPR, and as recently as August 27, 2010, Chinese lawyers lobbied, through blogs, for the ratification of the ICCPR. See Fan Yafeng et al [范亚峰等], “14,070 Chinese Citizens Urge China to Ratify the ICCPR” [14070 位中国公民敦请我国人大批准《公民权利和政治权利国际公约》], December 31, 2007,

<http://64tianwang.com/bencandy.php?fid=7&id=1311>; Li Hongguang [李红光], “Call to the National People’s Congress to Quickly Ratify the UN ICCPR” [呼吁全国人大尽快批准联合国《公民权利和政治权利国际公约》], August 27, 2010, <http://lih.m.oeeee.com/blog/archive/2010/8/27/971745.html>.

⁴⁰ Statements have been made in 2004, 2005, and in 2008: Xu Feng [许峰], “China Will Ratify the ICCPR” [我国将批准公民权利和政治权利国际公约], *Southern Weekend* [南方周末], September 22, 2005, <http://news.sina.com.cn/c/2005-09-22/11337836499.shtml>; “Wen Jiabao: We Will Ratify ICCPR as Early as Possible” [温家宝: 将尽快批准公民权利和政治权利国际公约], China Internet Information Center [中国互联网新闻中心], March 18, 2008, http://www.china.com.cn/2008lianghui/2008-03/18/content_12951814.htm.

18 However the ICCPR, under Article 2(2), does not require State Parties, as a condition of ratification, to have achieved full compliance, or to ensure immediate and full compliance at the moment of ratification.⁴¹ A commentary of the Human Rights Committee stated that Article 2(2) requires State Parties to take **necessary steps** to give effect to the ICCPR rights in their domestic order.⁴² While implementation needs to be “unqualified and of immediate effect”, the Human Rights Committee acknowledges that **implementation is an ongoing process** so long as State Parties undertake to make good faith efforts.⁴³

19 The Chinese government cannot continue to assert its lack of full prior compliance as an excuse for not ratifying the ICCPR. Instead, it should be pressed for specific ratification timeframes and commit to working towards ensuring ICCPR compliance post-ratification. This has been China’s approach in its bid for accession to another multilateral treaty and membership in the World Trade Organization (WTO). In a long process, China negotiated for WTO membership and accession first, then worked closely with domestic and international experts to implement its extensive WTO obligations, including through initiation of broad domestic legislative reforms, and international technical assistance.⁴⁴

c. Cooperation with the Office of the High Commissioner for Human Rights (OHCHR)

RECOMMENDATION ACCEPTED BY CHINA: “Continue its cooperation with OHCHR (Brazil); Facilitate an early visit by the High Commissioner for Human Rights (Canada)”.⁴⁵ **“Renew the Memorandum of Understanding (MOU) in order to intensify technical assistance and advisory services in the field of human rights (Austria)”.**⁴⁶

20 China and the OHCHR entered into a two-year Memorandum of Understanding for technical cooperation in November 2000, followed by a three-year MOU in August 2005.⁴⁷ HRIC has previously expressed concern regarding both MOUs.⁴⁸ According to a 2008 OHCHR report, under the 2005 MOU, “six projects were developed under the programme to support preparation for the ratification of the ICCPR and for implementation of the ICESCR,” and “[s]ince the expiration of the MOU on 30 August 2008, OHCHR has been undertaking an evaluation of the programme to determine how to continue supporting

⁴¹ International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, art. 2(2), *entered into force* Mar. 23, 1976 (PRC signed Oct. 5, 1998).

⁴² U.N. Human Rights Committee, “General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004), para. 13, <http://tb.ohchr.org/default.aspx?Symbol=CCPR/C/21/Rev.1/Add.13>.

⁴³ *Ibid.*, paras. 3, 14.

⁴⁴ Sharon K. Hom, “China and the WTO: Year One,” *China Rights Forum*, 2003, No. 1, <http://www.hrichina.org/sites/default/files/oldsite/PDFs/CRF.1.2003/SharonHom1.2003.pdf>.

⁴⁵ UPR Report, *supra* n. 4, para. 114.11.

⁴⁶ *Ibid.*, para. 114.12.

⁴⁷ “Robinson Satisfied with China's Human Rights Cooperation,” *China Daily*, August 19, 2002, <http://www.china-un.org/eng/chinaandun/socialhr/rqwt/t29333.htm>; Ministry of Foreign Affairs of the People’s Republic of China, “The Foreign Ministry and the UN Office of the High Commissioner for Human Rights Sign the Memorandum of Understanding on Cooperation,” August 20, 2005, <http://www.mfa.gov.cn/eng/zxxx/t210236.htm>.

⁴⁸ See HRIC, “China and UN High Commissioner for Human Rights Sign Watered-Down MOU,” November 11, 2000, <http://www.hrichina.org/content/2747>; HRIC, “Statement on UN High Commissioner for Human Rights Visit to China,” August 31, 2005, <http://www.hrichina.org/content/1645>; HRIC, “As First Year of UN-China Program on Rights Concludes, Little Progress Seen,” November 7, 2001, <http://www.hrichina.org/content/2552>.

China in its efforts to promote human rights.”⁴⁹ Since then, there has been limited public information regarding any new agreement on technical assistance between China and OHCHR, or whether the High Commissioner has been invited for a visit.

21 HRIC urges greater transparency on the scope and extent of the OHCHR’s cooperation with China, including information regarding the results of the OHCHR’s assessment of its China cooperation.

Implementation of rule of law reforms

a. 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).”⁵⁰

22 Since 2009, the Chinese government has made significant formal changes to laws related to the death penalty. On February 25, 2011, the 19th Session of the 11th National People’s Congress (NPC) Standing Committee passed an amendment, effective May 1, 2011, to the Criminal Law of the People’s Republic of China.⁵¹ The current amended provision eliminates the death penalty for 13 non-violent economic crimes,⁵² bringing the total number of crimes for punishable by death to 55.⁵³ However, since individuals are rarely charged or sentenced under the 13-eliminated crimes, it is questionable whether this amendment itself can address the problematic and overbroad use of the death penalty.

23 In February 2010, the Supreme People’s Court issued several opinions on implementing criminal law policies that mandated **strict application of death penalties**.⁵⁴ In March 2010, the head of the Supreme People’s Court, Wang Shengjun, again emphasized that the death penalty should be strictly

⁴⁹ U.N. General Assembly, “Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1: People’s Republic of China (including Hong Kong and Macao Special Administrative Regions (HKSAR) and (MSAR)) ,” U.N. Doc. A/HRC/WG.6/4/CHN/2 (2008), para. 10, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WG.6/4/CHN/2.

⁵⁰ UPR Report, supra n. 4, para. 114.30.

⁵¹ “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.

⁵² These 13 non-violent and economic crimes include: smuggling cultural relics; smuggling precious metals; smuggling rare species of wildlife and their products; smuggling general goods and articles; fraud via financial bills; fraud via receipts; fraud via letters of credit; falsely issuing exclusive value-added tax invoices to defraud export tax refunds or to offset taxes; forging or selling forged exclusive value-added tax invoices; theft; teaching another person how to commit a crime; robbing ancient cultural ruins and tombs; and excavating and robbing fossils of ancient humans and animals. (Translation by HRIC).

⁵³ “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.

⁵⁴ “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.

controlled and prudently applied, and that the **illegal evidence exclusion** rules should be seriously implemented.⁵⁵ As statistics of death penalties are still classified as “top secret” under China’s state secrets system,⁵⁶ it is difficult to accurately and comprehensively assess any rise or decline in the use of the death penalty. This includes the government’s own claims that the use of the death penalty has decreased. In order to assess progress, the government would need to make public the actual numbers of executions in the past as a benchmark.

24 With respect to the exclusion of illegally-obtained evidence, on June 25, 2010, the Supreme People’s Court, the Supreme People’s Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice formally published two sets of rules⁵⁷ regarding the use of evidence in death penalty cases and the procedure for excluding evidence obtained through illegal means such as torture.⁵⁸ In effect since July 1, 2010, these new evidentiary rules are⁵⁹:

- The *Rules Concerning Questions About Examining and Judging Evidence in Death Penalty Cases* [关于办理死刑案件审查判断证据若干问题的规定], establishing higher standards and stricter demands on the manner in which law enforcement organs handle criminal cases, especially where the death penalty can be imposed.⁶⁰
- The *Rules Concerning Questions About Exclusion of Illegal Evidence in Handling Criminal Cases* [关于办理刑事案件排除非法证据若干问题的规定], defining the scope of illegal evidence, and the procedures by which to exclude it, this includes evidence obtained through torture, violence or threats as illegally obtained and subject to exclusion.⁶¹

⁵⁵ “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>.

⁵⁶ 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).

⁵⁷ 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. For an unofficial English translation, see Dui Hua, “Translation: China’s New Rules on Evidence in Criminal Trials (Part 1 of 3),” Dui Hua Human Rights Journal, June 25, 2010, <http://www.duihuahrjournal.org/2010/06/translation-chinas-new-rules-on.html>.

⁵⁸ “Representatives from Five Government Departments Respond to Questions on Regulations on Issues in Evaluating Evidence in Death Penalty Cases” [五部门就“死刑审查判断证据若干问题规定”等答问], Xinhua News Agency [新华社], May 31, 2010, http://www.china.com.cn/policy/txt/2010-05/31/content_20149172.htm.

⁵⁹ 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.

⁶⁰ Ibid.

⁶¹ Ibid.

Despite progress on paper, it is difficult to assess whether concrete changes in practice have followed. Many of these provisions are general guidelines without specific implementation mechanisms for monitoring or accountability.

25 One example of the new evidence rules lacking practical application is **Fan Qihang's** case.⁶² Fan's lawyer made requests to the Supreme People's Court to apply the new evidence rules to investigate and exclude evidence obtained through torture. Despite evidence of torture, the Supreme People's court still approved, without notice to his lawyer, Fan's execution in September 2010. However, in a recent October 2011 trial in Beihai, Guangxi Province,⁶³ a local court spent four days examining confessions obtained through torture, and determining whether they ought to be excluded. A prominent Chinese criminal defense lawyer, Chen Youxi, commented that this was a breakthrough in the history of Chinese criminal procedure.

26 The issue of the death penalty was also addressed in the **draft amendments to China's Criminal Procedure Law (CPL)**, published on August 30, 2011.⁶⁴ The amendments were discussed by the NPC on August 24 and August 26, 2011, and later released for public comment on August 30, 2011.⁶⁵ The draft appears to include significant reforms, at least on paper, 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.⁶⁶ Under these proposed amendments, appeals to overturn death penalty rulings must undergo a full hearing or a retrial ordered by the court of first instance.⁶⁷ The progress of these pending proposals must be monitored closely as they are scheduled now for a second reading before the National People's Congress in March 2012.

27 Apart from the CPL amendments, the Supreme People's Court must approve and review all death sentences, and reviews are to be heard by a judicial panel.⁶⁸ Finally, to prevent admitting evidence illegally obtained by torture, interrogations that involve crimes carrying the death penalty must be audio visually recorded.⁶⁹ While China appears to be making formal legislative reforms with respect to death

⁶² CECC, "Supreme People's Court Approves Fan Qihang Execution despite Allegations of Torture," December 10, 2010, <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=146224>.

⁶³ Yang Jinzhu [杨金柱], "October 18 Beihai Hearing: The Fifth Day of Excluding Evidence Obtained Through Illegal Means, Beihai Intermediate Court Had the First Trial in China's Criminal Procedure History" [10月18日北海庭审: 非法证据排除第五日, 北海中院首开中国刑事审判先河!], Attorney Yang Jinzhu's Blog [杨金柱律师的 BLOG], October 18, 2011, http://blog.sina.com.cn/s/blog_4e00bcd90102duf9.html.

⁶⁴ 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) (hereafter, Sapio and Egan). See also Jerome A. Cohen and Yu Han, "Seeking Shelter," *Council on Foreign Relations*, September 28, 2011, <http://www.cfr.org/china/seeking-shelter/p26064> (hereafter, Cohen and Han). "Draft Amendment of the Criminal Procedure Law of the Peoples Republic of China and Explanation" [刑事诉讼法修正案(草案)条文及草案说明], National People's Congress [全国人民代表大会], August 30, 2011, http://www.npc.gov.cn/npc/xinwen/lfgz/2011-08/30/content_1668503.htm (hereafter, Draft CPL).

⁶⁵ Sapio and Egan, supra n. 64; Cohen and Han, supra n. 64.

⁶⁶ Ibid.

⁶⁷ Sapio and Egan, supra n. 64, para. 7; Draft CPL, supra n. 64, articles 222, 235.

⁶⁸ Sapio and Egan, supra n. 64, para. 8; Draft CPL, supra n. 64, articles 236-238.

⁶⁹ Sapio and Egan, supra n. 64, para. 8; Draft CPL, supra n. 64, article 120.

penalty laws, the lack of transparency and access to accurate statistics on the application of the death penalty present a fundamental obstacle to assessment and implementation of formal reforms.

b. 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).”⁷⁰

28 There appears to be limited progress in RTL reform, local-level RTL experiments, or steps to improve administrative detention systems and practices.⁷¹ In 2009, **the UN Committee on the Elimination of Racial Discrimination** expressed its concerns that “in practice effective judicial control of [RTL] measures is limited and that the application of [RTL] laws may disproportionately affect members of ethnic minorities.”⁷² The **UN Committee against Torture** has also raised concerns with the RTL system, noting that recent decrees have been passed by local governments permitting the use of RTL to punish cases of “abnormal petitioning.”⁷³

29 In light of the rise in petitioning activities, and the expansion of the serious complaints and problems that these petitioners raise, there are concerns that the use of RTL (and other forms of administrative detention) against petitioners amounts to punishment of individuals bringing legitimate grievances. These legitimate grievances focus on areas such as corruption, forced evictions, and lack of adequate compensation for work-place injuries. In the recent draft amendment to the CPL, illegally obtained evidence, while excluded from criminal cases, can still be used by police to decide RTL sentences.⁷⁴

30 In 2010, the NPC listed the draft *Law on the Correction of Illegal Behavior (Draft)* [违法行为矫治法(草案)] in its agenda to replace the RTL regulations.⁷⁵ However, there was no mention of this proposed law and no time frame for its implementation in the NPC’s 2011 annual report.⁷⁶ As of March 2011, there have been reports that the Legal Affairs Working Committee of the Standing Committee of the NPC is still in the process of drafting the new legislation, and some government departments have been performing RTL reform trials.⁷⁷

⁷⁰ UPR Report, supra n. 4, para. 114.31.

⁷¹ See Human Rights Watch, supra n. 17.

⁷² U.N. Committee on the Elimination of Racial Discrimination, “Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination (China),” U.N. Doc. CERD/C/CHN/CO/10-13 (2009), para. 15, <http://www.unhcr.org/refworld/docid/4adc35852.html>.

⁷³ 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. 9(c).

⁷⁴ Sapio and Egan, supra n. 64, para. 5.

⁷⁵ “Wu Bangguo Introduces NPC’s Three Major Tasks for 2010” [吴邦国介绍 2010 年三大主要任务], *People’s Daily* [人民日报], March 9, 2010, <http://2010lianghui.people.com.cn/GB/11106144.html>.

⁷⁶ See Wu Bangguo [吴邦国], *Work Report of the Standing Committee of the National People’s Congress* [全国人民代表大会常务委员会工作报告] (2010), http://www.china.com.cn/policy/txt/2010-03/17/content_19625940.htm.

⁷⁷ See Chen Liping [陈丽平], “Legal Affairs Working Committee of the National People’s Congress Is Researching and Working on a Draft Law on the Correction of Illegal Behaviors” [制定违法行为矫治法 法工委正在研究起草], *Legal Daily* [法制日报], March 2, 2011, http://www.legaldaily.com.cn/zt/content/2011-03/02/content_2492365.htm.

c. Rule of Law developments and expansion of extra-legal detentions

RECOMMENDATION ACCEPTED BY CHINA: “Continue to advance the rule of law and to deepen the reform of the judicial system (Netherlands).”⁷⁸

31 Since the 1970s, China has been building its legal order, with laws expanding and reaching out into different fields.⁷⁹ Professor Fu Hualing of the University of Hong Kong’s Faculty of Law points out that until recent years, the government had actually been encouraging the legalization of social-economic life and attempting to use legal mechanism to solve social problems.⁸⁰ However, he notes that there is now a **resurgence of “extra-extra law” in China.**⁸¹ Professor Fu and other legal experts characterize “extra-extra law” as an “informal political institution characterized by the total lack of legality” and “used to advance some predatory and repressive government policies which cannot be justified by any law.”⁸² Examples of this legal phenomenon include the **use of “black jails”**,⁸³ and recent **enforced disappearances** of human rights lawyers and rights defenders.⁸⁴ Compared to criminal punishment established under formal law, these “extra-extra law” mechanisms do not punish individuals for past offenses. Rather, they focus on the “risk” of an individual to the Party-state, regardless of whether crime was committed, and take measures against individuals “according to the specific personal profile to maximize intimidation.”⁸⁵

32 A timely example of “extra-extra law” is the persecution of **Chen Guangcheng and his family.** As a blind, self-taught “barefoot lawyer” and activist, Chen was a vocal activist for the disabled, farmers, victims of coerced population control policies, and other disadvantaged groups since the late 1990s.⁸⁶ Chen was convicted and sentenced four years and three months of imprisonment on the trumped up charge of “intentional damage of property and organizing people to block traffic” – his detention was determined to be arbitrary in November 2006 by the WGAD.⁸⁷ Since his September 9, 2010 release,

⁷⁸ UPR Report, supra n. 4, para. 114.32.

⁷⁹ Fu Hualing, “The Varieties of Law in China,” *China Rights Forum*, 2011, no. 1-2, <http://www.hrichina.org/node/5422/5422> (hereafter, Fu).

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid. See also Cohen: Chen Guangcheng, supra n. 19.

⁸³ 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. 79). See also 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.

⁸⁴ See 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>; HRIC, “Lawyers and Activists Detained, Summoned, and Harassed in ‘Jasmine Rallies’ Crackdown,” February 23, 2011, <http://www.hrichina.org/content/4896>; 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; Jerome A. Cohen, “Turning a Deaf Ear,” *South China Morning Post*, June 6, 2011, <http://www.usasialaw.org/?p=5543>; Fu Hualing, “The Varieties of Law in China,” *China Rights Forum*, 2011, no. 1-2, <http://www.hrichina.org/node/5422/5422>.

⁸⁵ Fu, supra n. 79.

⁸⁶ HRIC, “About the Individual: Chen Guangcheng,” Incorporating Responsibility 2008, <http://www.ir2008.org/02/about.php>.

⁸⁷ 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

Chen and his family have been subjected to various forms of surveillance, abuse, and restrictions to their basic freedoms – all of which have no basis in law.⁸⁸ Chen’s case is representative of the persecution and extra-legal detentions countless other human rights defenders face in China. These individuals are left entirely outside the protection of law, without recourse to procedures to challenge their detention or their ill-treatment.⁸⁹

33 The draft amendments to China’s CPL, discussed above (see para. 26), include a troubling provision on “**residential surveillance**” that would greatly expand the power of police and authorities to detain and essentially disappear individuals without any due process or protections. This “residential surveillance” provision has provoked extensive criticisms and concerns, including among Chinese legal experts.⁹⁰ Under “residential surveillance” provisions, officials would be allowed, without independent review, to detain individuals suspected of terrorism, endangering state security, and corruption for up to six months.⁹¹ Officials would be legally authorized to detain individuals in locations other than the suspect’s home and would have no obligation to inform the suspect’s family of their detention, whereabouts, or condition.⁹² This, in essence, would legalize secret detentions for a broad range of activities, especially in light of the politicized and overbroad approach of the Chinese authorities to terrorism and state security.

34 Apart from the legalization of the secret detentions, the proposed amended CPL provisions also fail to address systemic problems in China’s criminal legal system, including the use of administrative detentions, the lack of an independent judiciary, limited access to effective legal representation, crackdowns against lawyers and rights defenders, and no right to remain silent.⁹³

35 The persistence of “extra-extra law”, the ongoing crackdowns and abuses, and the proposed “residential surveillance” amendments to the CPL reflect a serious roll back on the rule of law in China.

d. Detainee Treatment

RECOMMENDATION ALREADY BEING IMPLEMENTED: “Guarantee that all detainees, regardless of their crimes, are held in facilities with decent standards and treatment (Germany).”

Detention,” U.N. Doc. A/HRC/7/4/Add.1, Opinion No. 47/2006 (2008), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/7/4/Add.1.

⁸⁸ Cohen: Chen Guangcheng, supra n. 19; CECC, supra n. 19; HRIC: CECC Testimony, supra n. 19.

⁸⁹ Ibid.

⁹⁰ Ibid. See also U.S. Department of State, “China: Criminal Procedure Law,” August 31, 2011, <http://www.state.gov/r/pa/prs/ps/2011/08/171320.htm>; Frank Ching, “Chinese Law Reform May Be a Double-edged Sword,” *The Japan Times*, October 20, 2011, <http://www.japantimes.co.jp/text/ea20111020fc.html>; Tania Branigan, “Chinese Police ‘to Detain Suspects without Telling Families,’” *The Guardian*, August 26, 2011, <http://www.guardian.co.uk/world/2011/aug/26/chinese-police-detain-suspects-families>; Dui Hua, “Separate and Unequal: CPL Revision and the Treatment of Political Prisoners in China’s Dual-track Justice System,” *Dialogue*, Fall 2011, http://www.duihua.org/work/publications/nl/dialogue/nl_txt/nl45/nl45_1a.htm.

⁹¹ See Sapio and Egan, supra n. 64; Cohen and Han, supra n. 64.

⁹² Ibid.

⁹³ Ibid.

36 In its National Human Rights Action Plan Assessment, the Chinese government claims that between 2009 and 2010, it took steps to improve the conditions of detention and ensure the rights of detainees are enforced.⁹⁴ It enumerates, among others, the following laws and regulations⁹⁵:

- “Ten Provisions on Preventing and Cracking Down on Bullies in Detention Houses” (May 2009, Ministry of Public Security);
- “Notice on the Concentration of Female Detainees for Management in Detention Houses” (May 2009, Ministry of Public Security);
- “Notice on Effectively Strengthening and Improving Medical and Health Work in Places Under the Surveillance and Control of Public Security Organs” (December 2009, Ministry of Public Security and Ministry of Health); and
- “Construction Standards for Prisons” (December 2010).

37 The Chinese government also states that an “open system of supervision and law enforcement has been basically established” – detention houses have reception rooms, complaint boxes, systems and procedures for supervision and law enforcement.⁹⁶ The government further maintains that more than 1500 detention houses have been opened for public supervision.⁹⁷

38 Despite these official statements and formal legislative reforms, serious problems regarding detainee rights and treatment continue to exist. According to the **Rapporteur for Follow-up on Conclusions and Recommendations for the UN Committee against Torture**, that committee remains concerned with reports that, “in practice, these laws are neither strictly adhered to nor enforced.”⁹⁸ The Rapporteur also noted the lack of legal safeguards for detainees, failure by Chinese authorities to notify detainees of their rights at the time of detention, and restricted access to independent doctors.⁹⁹

39 The lack of reliable, accurate, and complete data and statistics also presents obstacles in assessing accountability and implementation of these rules. As noted by the Rapporteur for Follow-up on Conclusions and Recommendations for the UN Committee against Torture, China’s statement that it will “work harder” to improve statistics and documentation is insufficient – “the Committee once again expresses dissatisfaction at the continued failure to provide the requested information, which is needed to complete a full assessment of China’s compliance” with international human rights mechanisms and standards.¹⁰⁰

40 In discussing the recent crackdown against human rights lawyers in China, Professor Jerome Cohen, of the New York University School of Law’s US-Asia Law Institute, also noted that while in captivity, detained human rights lawyers “endure humiliation, torture, and endless demands to sign statements ‘repenting’ alleged misconduct and promising ‘good behavior.’”¹⁰¹

⁹⁴ Assessment of Action Plan, supra n. 14, section III (2).

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ibid.

⁹⁸ U.N. High Commissioner for Human Rights, Letter from Felice D. Gaer, Rapporteur for Follow-up on Conclusions and Recommendations, Committee against Torture to Mr. He Yafei, Permanent Representative of the People’s Republic of China to the United Nations Office in Geneva, October 29, 2010, p. 2 (hereafter, Gaer).

⁹⁹ Ibid., p. 1.

¹⁰⁰ Gaer, supra n. 98, p. 2, p. 4.

¹⁰¹ Jerome A. Cohen, “Turning a Deaf Ear,” *South China Morning Post*, June 6, 2011, <http://www.usasialaw.org/?p=5543>.

Ensuring ethnic minorities human rights, including religious, civil, socio-economic and political rights, and participation in decision-making

RECOMMENDATION ACCEPTED BY CHINA: “Continue its efforts to further ensure ethnic minorities the full range of human rights including cultural rights (Japan).”¹⁰²

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).”¹⁰³

41 In asserting the success of its Action Plan, the Chinese government stated that “[n]ormal religious activities are protected by law,” that rules related to administration of Tibetan Buddhist temples were promulgated, and that it had invested nearly 600 million *yuan* to preserve and maintain major religious temples, including those in Tibet and Xinjiang.¹⁰⁴ As a litmus test of cultural and religious rights in China, the crackdowns on Tibetans and self-immolations among Tibetan monks and nuns raise serious human rights concerns.

42 Between March and November 2011, nine Tibetan monks and two nuns have resorted to the desperate act of self-immolation to protest the Chinese authorities’ restrictive religious policies and crackdowns on monasteries in Tibet.¹⁰⁵ The government’s policies and actions, including its responses to these immolations, have been condemned by human rights NGOs,¹⁰⁶ the European Parliament,¹⁰⁷ several UN independent experts,¹⁰⁸ and dignitaries and officials from around the world.¹⁰⁹ The European

¹⁰² UPR Report, supra n. 4, para. 114.37.

¹⁰³ Ibid., para. 115.3.

¹⁰⁴ Assessment of Action Plan, supra n. 14, section V(4).

¹⁰⁵ Stephen McDonnell, “Desperate Tibetans Turning to Self-immolation,” Australian Broadcasting Corporation, November 4, 2011, <http://www.abc.net.au/lateline/content/2011/s3356884.htm>; Andrew Jacobs, “Another Tibetan Nun Dies by Self-Immolation in China,” *The New York Times*, November 3, 2011, <http://www.nytimes.com/2011/11/04/world/asia/tibetan-nun-dies-in-self-immolation.html>; European Parliament, “European Parliament Resolution of 27 October 2011 on Tibet, in Particular Self-immolation by Nuns and Monks,” P7_TA-PROV(2011)0474, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0474+0+DOC+XML+V0//EN> (hereafter, European Parliament). See also Tania Branigan, “Dalai Lama’s Prayers for Tibetans ‘Terrorism in Disguise’, Says China,” *The Guardian*, October 19, 2011, <http://www.guardian.co.uk/world/2011/oct/19/dalai-lama-prayers-tibetans-terrorism> (hereafter, Branigan); Edward Wong, “Another Tibetan Sets Fire to Self over China Rule,” *The New York Times*, October 16, 2011, <http://www.nytimes.com/2011/10/17/world/asia/another-tibetan-sets-fire-to-self-over-china-rule.html>.

¹⁰⁶ International Campaign for Tibet, “NGOs Appeal to UN Human Rights Chief over Tibetan Self-Immolation Protests,” October 25 2011, <http://www.savetibet.org/media-center/tibet-news/ngos-appeal-un-human-rights-chief-over-tibetan-self-immolation-protests> (hereafter, NGOs Letter).

¹⁰⁷ European Parliament, supra n. 105.

¹⁰⁸ U.N. Office of the High Commissioner for Human Rights, “China: UN Experts Warn of Severe Human Rights Restrictions on Tibetan Buddhist Monasteries,” November 1, 2011, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11555&LangID=E> (hereafter, UN Experts on Tibet).

¹⁰⁹ The following individuals and signatories have signed a pledge at Enough! Global Intervention Now to Save Tibetan Lives, <http://standupfortibet.org>: Archbishop Desmond Tutu (Nobel Laureate for peace), Valja Savisaar-

Parliament noted that the “Chinese government has imposed drastic restrictions on Tibetan Buddhist monasteries” in Ngaba, Sichuan Province, including “brutal security raids, arbitrary detention of monks, increased surveillance within monasteries and a permanent police presence inside the monasteries in order to monitor religious activity.”¹¹⁰ Further, authorities have implemented “counterproductive policies and aggressive ‘patriotic education’ programmes in Tibetan-populated areas such as Sichuan, Gansu, and Qinghai, places where human rights violations have created tensions.”¹¹¹

43 On November 1, 2011, several UN independent experts collectively voiced grave concerns over reports of heavy security measures around the Kirti monastery area. These experts include:¹¹²

- The UN Special Rapporteur on freedom of religion and belief,
- The Special Rapporteur on the right to freedom of peaceful assembly and of association,
- The Special Rapporteur on the right to freedom of opinion and expression,
- The Working Group on Enforced and Involuntary Disappearances,
- The Working Group on Arbitrary Detention, and
- The Independent Expert on minority issues.

44 **The Independent Expert on minority issues** also called on the Chinese government to fully respect the rights of minorities, including the right to practice their religion and culture: “Allegations suggest that this is far from the case in this region and I urge the Government to cease any restrictive practices and refrain from any use of violence and intimidation.”¹¹³

45 As underscored by the European Parliament and UN independent experts, these self-immolations reflect the desperation Tibetans feel against the Chinese government’s restrictions on their ability to practice their religious beliefs. In the face of these desperate protests, the Chinese government has done little to loosen its tight state control over religious practices in the area. Rather, following self-immolations, Chinese armed personnel have surrounded monasteries, cut off access to food and water, imposed compulsory “patriotic education” programmes, and detained hundreds of monks in unspecific locations for weeks of political indoctrination.¹¹⁴ More recently, Chinese foreign ministry authorities have also accused the Dalai Lama’s prayers for the dead as “terrorism in disguise.”¹¹⁵

46 The Chinese government’s actions completely undermine the UPR recommendations it has accepted or has allegedly implemented with regard to treatment of minorities. Its activities in Tibet and against other minority groups reflect the restriction and erosion of cultural, religious, and political rights of ethnic minorities. HRIC supports the recommendations pressed by NGOs and other concerned members of the international community to the Chinese government, including:

Toomast (Member of the European Parliament for Estonia), Peter Stastny (Member of the European Parliament for Slovakia), Lionnel Luca (Member of French Parliament), Gianni Vernetti (Member of the Italian Parliament), Rob Anders (Member of Canadian Parliament), Peggy Nash (Member of Canadian Parliament), Denise Savoie (Member of Canadian Parliament and Deputy Speaker of the House), Elizabeth May (Member of Canadian Parliament and Leader of the Green Party of Canada), Fabian Hamilton (Member of Parliament, UK), Bob Brown (Australian Greens Leader and Senator for Tasmania), Ignazio Cassis (Member of the Swiss National Council), etc.

¹¹⁰ European Parliament, supra no. 105, para. B.

¹¹¹ Ibid., para. 1.

¹¹² UN Experts on Tibet, supra n. 108.

¹¹³ Ibid.

¹¹⁴ European Parliament, supra n. 105, para. P.

¹¹⁵ Branigan, supra n. 105.

- The withdrawal of military and armed personnel from Kirti Monastery, and allowance of an unhindered atmosphere for religious activity in the monastery;
- The end of so-called “patriotic education” programs imposed on monks;
- The clarification of the status of 300 monks who were taken away from Kirti Monastery in April 2011;
- The release of information on all those detained in Ngapa since March 16, 2011;
- The release of all Tibetan political prisoners;
- An account for the status of Tibetans “hospitalized” after self-immolation protests; and
- The end of the military siege in Ngapa.¹¹⁶

CONCLUSION

47 This note has reviewed key areas of concern regarding China’s progress on implementing its human rights commitments. Almost two years after China’s UPR assessment was completed, the Chinese government has taken some formal steps towards implementing the recommendations, including promulgating the National Action Plan on human rights and advancing legislative reforms of the criminal laws and criminal procedure law. Yet, the ongoing crackdowns on human rights lawyers and activists, a roll-back on the rule of law, a resurgence of “extra-extra law, ” and the desperate self-immolations and protests by Tibetan monks and nuns, all demonstrate the huge gap between the formal progress asserted and the human rights realities on the ground in China.

¹¹⁶ NGOs Letter, supra n. 106.