

***People's Republic of China under the Universal Periodic Review
Third Cycle***

***Li Ming-Che's case reveals
PRC's retrogressive implementation of its
human rights obligations***



March 28, 2018

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A. Background information of this report and Mr. Li Ming-Che's case

1. Established on December 10 2009 in Taiwan, the Covenants Watch is an umbrella organization of human rights groups, lawyers and scholars. The information provided in this report is primarily based on the front-line experience in handling the case of Mr. Li Ming-Che (李明哲), a Taiwanese citizen, who was forcibly disappeared immediately after entering China via Macau on the morning of March 19, 2017.
2. Li Ming-Che, a curriculum manager at the Wen-Shan Community College in Taipei, was sentenced to 5 years in prison and deprived of "political rights" for 2 years for "subversion of state power" by a PRC court in November 2017. We strongly believe Li's case is not an isolated incidence, but an indication of PRC's trend in increasingly limiting the freedom of expression. The way the PRC government has been handling this case shows that recommendations regarding the promotion and protection of civil and political rights, though accepted in the 2nd cycle of UPR, have not been fully implemented, and some even been regressed.

B. China violates Li's freedoms of belief, opinion and expression

3. The PRC government accepted Recommendations 186.55 (from Slovakia), 186.140 (from Austria), 186.136 (from Australia), 186.143 (from Italy), 186.154 (Norway), 186.155 (from Germany), 186.169 (from Chile), which were all related to the promotion and protection of freedom of belief and freedom of opinion and expression.
4. According to the indictment document submitted by the Hu-Nan (湖南) prosecutors to the court, what Li had done to cause himself such trouble was merely exercising his right to freedom of speech and expression: he delivered articles and talks regarding democracy and human rights on social media (Facebook, WeChat, and QQ) to appeal to the Chinese audiences from 2012 through 2015. Instead of revising its Criminal Code to be compatible with international human rights standards, on November 28, 2017, Li Ming-Che was sentenced to 5 years in prison and deprived of "political rights" for 2 years for "subversion of state power" under Article 105 of the Criminal Code.

C. Right to liberty and security of the person violated without due process

5. Mr. Li fell into the hands of unidentified officials (remained unclear until today) when he entered China via Macau on the morning of March 19, 2017. One week later, the Chinese authorities confirmed in a routine press conference that he was under investigation, without revealing any detail or the nature of it. It was by the end of May 2017 that the Chinese government announced with a press release before midnight that he had been "officially arrested" by the security department with the approval from the Hu-Nan Procuratorate (湖南檢察院) in suspicion of "incitement of subversion of state power". From his disappearance to the "official arrest", according to the indictment document shown to the public in September, he was under "residential surveillance" in the two-month period of time.

6. Until a couple of days before his trial on September 11, 2017, Li's family had never received any official notification from the authorities. No arrest warrant, or notice in any form that could reveal his whereabouts was provided to the family members from March on.
7. It is to be noted that the handling of Li's case violated China's own Criminal Procedure Law, which in itself is not in full compliance with international standards. As Article 91 of the said law requires the authorities to inform the family of suspect within 24 hours of the arrest, China has failed to honor its own legal obligations and no official was held accountable in this regard.
8. The PRC government's failure to cooperate with the Taiwanese government also breached its obligations under the bilateral agreements between Taiwan and China. According to the Cross-strait Joint Fight against Crime and Mutual Legal Assistance Agreement (海峽兩岸共同打擊犯罪及司法互助協議) between Taiwan and China, China should have notified the Taiwan government as soon as Li was under their control and provided information upon requests in good faith as well. However, China never replied to the inquiries from Taiwan's relevant ministries and agencies along the process.

D. Li's right to fair trial violated

9. PRC accepted Recommendation 186.55 (from Slovakia) regarding the right to a fair trial in last UPR cycle. However, the recommendation was not taken seriously. Li's right to legal counsel was not guaranteed; the Chinese authorities appointed two lawyers for him. It's doubtful that the state-appointed lawyers would have defended Li in his best interests.

E. Cruel and inhuman treatment to both Li and his family

10. As aforementioned, from the time Li lost contact on March 19 to his trial on September 11, 2017, his family didn't get any official notice from the Chinese government. It was especially challenging considering Li has no relatives and family members living in China and Taiwan has no representative mission in China to provide assistance of any kind.
11. In the last week of January 2018, Li's family got an unstamped notice from the Hu-Nan Chi-Shan Prison Management (湖南赤山監獄) that Li had been transferred to that Prison on December 28, 2017. According to that same notification, Li's family members would be allowed to visit him in prison once a month for 30 minutes.
12. Li's wife, Mrs. Li Ching-Yu, used to have a multi-entry travel document to China, which was revoked by China in early April 2017. Her applications for new travel documents to China has been constantly denied and she was rejected from boarding an aircraft to China on January 28 2018 even though the Chinese immigration regulations allow for a Taiwanese citizen with a valid Taiwanese passport to apply for visa in a China entry port upon arrival. Her presence in the court room on the trial and sentencing announcement days (September 11 and November 28 2017, respectively) was under orders of Chinese authorities. It was as late as March 24 2018 that the Chinese government "notified" Mrs. Li Ching-yu that she

could visit her husband in Chi-Shan on March 27. She took the trip to visit Ming-Che and was escorted by a couple of PRC officials all the way. Her future visits are still at the mercy of the Chinese government, for it's obvious that China is not going to grant her regular travel document and it is not the Chi-Shan Prison Management that has the discretion on her meeting with Li Ming-Che.

13. Mrs. Li was notified by the PRC government that she was allowed to visit her husband on March 27, 2018. According to him
14. Whether Mr. Li had been tortured physically remained unclear, but it is a reasonable speculation that he was under tremendous mental stress to produce dozens of versions of confession letters in detention. That China detained him incommunicado for more than one year (no one has received any information from him since March 2017 up to now), that China has intentionally barred the wife from visiting her husband in China and rejected to provide information regarding Li's whereabouts and health status, both constituted a cruel and inhuman treatment not only to Li Ming-che but also the wife and other family members.
15. China, being a State Party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), has violated its obligations under the said Convention. It should as soon as possible take measures to ensure the compatibility of its laws, regulations and practices with the CAT and implement the Concluding Observations made by the Committee against Torture.
16. These cruel and inhuman treatments have also violated peremptory human rights principles and customary laws: Despite that China has not yet ratified the International Covenant on Civil and Political Rights (ICCPR), some part of it and of the UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) has become peremptory principles and customary international laws that China as a UN member state has to comply with. Months of detention without communication with family and outside, refusal to reveal the detainee's whereabouts, no replies at all to inquiries made by the family, among others, were serious violations of universal human rights standards.

F. Lack of substantial cooperation with UN special procedures

17. In the 2nd cycle of UPR, PRC accepted Recommendations 186.60 (from Ghana), 186.69 (from Albania), and 186.71 (from France) regarding cooperation with UN human rights mechanisms, including OHCHR, treaty bodies and special procedures. Regrettably, the PRC accepted without sincere implementation.
18. Covenants Watch, on behalf of Li's family and the rescue coalition, submitted an urgent appeal to the UN special procedures on April 6 and Li's case has been with Working Group on Enforced and Involuntary Disappearances (WGEID) (Case 10007396) since then. WGEID obviously made several inquiries to the Chinese government for clarification and information. China did reply but the information provided was not sufficient for the WGEID to confirm Li's whereabouts, therefore this case will be considered again in its 115th session in April 2018.

G. Recommendations

17. We recommend that:

- (1) China should immediately release Mr. Li Ming-Che. Before his release, his health and the right of his family to regularly visit him in prison should be guaranteed.
- (2) China should ratify the ICCPR and its optional protocol on individual complaint. With or without ratifying the ICCPR, China should amend its law and regulations concerning the promotion and protection of civil and political rights to be in line with international human rights standards.
- (3) China should earnestly implement the CAT Concluding Observations and take stock of its regulations related to prison management and make sure that the law and regulations meet the Mandela Rules. Human rights education for law enforcement officials is also crucial to the improvement of the treatment of prisoners. Officials that violated human rights should be held accountable and remedies made to the victims.
- (4) China should be a responsible actor and cooperate with all UN HR mechanisms; if not, the others should stand up in solidarity to confront: China should welcome the visit requests from working groups, special rapporteurs, and treaty bodies as external assistance to the improvement of the well-being of its people instead of considering them as threats to its national stability.
- (5) China should welcome the participation of civil society organizations (CSOs) in the UN and in the domestic affairs.
- (6) Any bilateral and/or multilateral agreements with China should incorporate substantive human rights components.

Annex: An assessment of accepted recommendations related to this report

Recommendation accepted by China in the 2nd cycle	Implementation
A - 186.55. Follow the approach it took for economic, social and cultural rights with respect to civil and political rights, including freedom of religion or belief and the right to a fair trial (Slovakia);	Not implemented yet
A - 186.60. Keep up its commitment to uphold its human rights treaty obligations and engage constructively with the human rights mechanisms, including the special procedures (Ghana);	Partially and selectively implemented
A - 186.62. Ensure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subjected to reprisals (Switzerland);	Retrogressively implemented
A - 186.68. Consider the possibility of extending an invitation to special procedures to visit China taking into account the appropriate balance between economic, social and cultural rights and civil and political rights (Ecuador);	Not implemented yet
A - 186.69. Intensify the cooperation with special rapporteurs mandate holders of the United Nations (Benin); Step up cooperation with Special Procedures and mandate holders (Albania);	Not implemented yet
A - 186.71. Fully cooperate with OHCHR as well as special procedures (France);	Partially and selectively implemented
A - 186.118. Ensure that any reformed prison or compulsory care system meets international human rights standards, and abolish system of arbitrary detention, including Re-Education Through Labour (Sweden);	Not implemented yet
A - 186.125. Continue implementation of the comprehensive judicial reform which ensures that the judicial authorities exercise their powers in accordance with the law (Kyrgyzstan);	Not implemented yet
A - 186.136. Expedite legal and institutional reforms to fully protect in law and in practice freedom of expression, association and assembly, and religion and belief (Australia);	Retrogressively implemented
A - 186.140. Take effective measures to protect the right to freedom of religion or belief (Austria);	Retrogressively implemented
A - 186.143. Consider possible revision of its legislation on administrative restrictions in order to provide a better protection of freedom of religion or belief (Italy);	Retrogressively implemented
A - 186.149. Facilitate the development, in law and practice, of a safe and enabling environment in which both civil society and human rights defenders can operate free from fear, hindrance and insecurity (Ireland);	Retrogressively implemented
A - 186.154. Make further efforts towards safeguarding the freedom of expression of all citizens (Norway);	Retrogressively implemented
A - 186.155. Reform legislation and law enforcement in order to ensure freedom of opinion and expression, including on the internet (Germany);	Retrogressively implemented
A - 186.169. Continue strengthening the protection and promotion of the right of all citizens to publicly express their beliefs and opinions (Chile);	Retrogressively implemented