

UPR Submission – China 2018

Hong Kong Alliance in Support of patriotic democratic movements of China

Introduction

1. In the last UPR session the government has promised to address, inter alia, the following issues:
 - a. To take steps towards ratification of ICCPR;
 - b. Establish a National Human Rights Institution;
 - c. Implement institutional mechanism to enforce CAT and the prohibition of torture, and ensure that statements obtained under duress are not admitted in court;
 - d. Full cooperation with OHCHR as well as special procedures, facilitating a visit by the UN High Commissioner for Human Rights as soon as possible;
 - e. To immediately inform relatives about arrests and ensure effective legal representation;
 - f. Abolish system of arbitrary detention including re-education through labour (RTL);
 - g. Expedite legal and institutional reforms to fully protect in law and in practice freedom of expression, association and assembly, and religion and belief;
 - h. Allow national and international NGOs to play a full and active role in promoting and protecting human rights, specifically by expanding registration to all categories of NGOs and social organisations in China and by expanding their freedom to operate effectively;
 - i. Ensure that proper investigations are conducted in all cases of attacks on journalists, media workers and human rights defenders;;
 - j. Guarantee the rights of Chinese citizens to freely critique any state organ or functionary;
 - k. Disallow suppression of petitioners or establishment of any forms of “black jails”.
2. With the exception of the abolition of RTL, none of the above promises have been realised. And even though RTL has been formally abolished, the government simply turns to other methods of arbitrary detention, such as “education classes”, residential surveillance at designated location (RSDL), and black jails to achieve what RTL has been used for. In other areas not only have no affirmative action been taken, but steps have been taken backwards. Statements made under duress are now not only used in court, but broadcast publicly on TV; access to lawyer are routinely denied in the name of national security; reform in law has been made to further restrict freedom of association and activities of NGOs. The development of ubiquitous and high-tech surveillance scheme is a worrying trend that would further restrict citizens’ exercise of their rights.

Judicial persecution of activists

3. The Chinese government continues to use the judicial process as a mean of persecution of activists. Arrests were often made en-masse targeting specific groups. Notable examples includes the wave of arrest following the umbrella movement in 2014 (more than 100 arrested within mainland China), the 709 crackdown in 2015 (more than 270 affected), the labour NGO crackdown in late 2015 (17 arrested), and the arrest of mourners of Liu Xiaobo in 2017 (15 arrested).
4. Further, there is also unrestrained use of state security offences against activists. In the past offences such as “Inciting Subversion of State Power” were used only on dissidents or prominent activists with national fame; an (in)famous example being that of Liu Xiaobo. However since 2014 the offence has

been increasingly applied to non-political grassroots activists, NGO organisers or even religious practitioners, including Zhang Haitao (grassroot activists from Xinjiang sentenced to 19 years imprisonment for inciting subversion), Wu Gan (activist arrested during the 709 crackdown, sentenced to 8 years imprisonment for subversion), Hu Shigen (house church activist sentenced to 7.5 years for subversion), Lu Gengsong (democratic activist sentenced to 11 years imprisonment for subversion), Zhen Jianghua (NGO organiser at Human Rights Campaign in China, currently being detained incommunicado under the charge of inciting subversion).

5. The advantage to the government in using state security offences is that many rights under the Criminal Procedure Law (“CPL”) can then be curtailed, such as the right to see a lawyer (CPL Article 37), right to confront a witness (CPL 62), right to bail (CPL 79), right of family members to be notified of the detention (CPL 83), and the right to a public trial (CPL 183). The aforementioned rights have been routinely denied to activists detained under subversion or even lesser charges.
6. The most oppressive is however CPL 73, which provides that person who is under suspicion of state security offences may be placed under RSDL. This provision was widely used to effectively subject arrested persons to secret detention. There have been many reports of torture of people being held under RSDL.
7. Other abuses of the criminal system including the extensive use of “pre-arrest” detention and the abuse of the bail procedure. Under CPL 89, the police have to seek approval of arrest from the Procuratorate within three days of a person being detained. However in cases of “major suspects”, the period of police detention can be extended to 30 days. This supposedly “exception” was frequently invoked to effectively subject activist to a month of police detention without the need of going through any supervisory mechanism, as had happened in the case of the participants of the seaside memorial for Liu Xiaobo. When those detained are released on bail, they were effectively kicked out of the city they resided in and sent back to their home town or village, where they were forced to stay during the indefinite period of their bail. Such tactics have been effective in disbanding activists grouping in cities and restricting their freedom of movement, without any judicial oversight.
8. The long period of pre-verdict detention is also a cause for concern, which can last up to 2 or 3 years. The right to bail is heavily curtailed under CPL 79, which provides that anyone with the risk of endangering state security or social order should not be granted bail. Activists are easily caught under this provision, and some has faced years of jail without trial. Some of these cases eventually ended up with suspended sentences, such as the case of Li Heping. This enable the government to achieve good press in handing down a supposedly lenient sentence, while the person concerned have already been “punished” by the long period of pre-trial or pre-verdict detention. Pre-verdict detention is a particular distressing type of detention in China, since family members are not allowed to visit a suspect before the verdict is pronounced.
9. Court proceedings itself have been made into a mockery of justice. For trials involving activists, only those who are willing to “confess” and make a scripted public apology would receive a public, and sometimes televised, trial. Those who refuse to perform a scripted trial are tried in secret, away from

the watchful eyes of the public and international media.

Extrajudicial means of repression

10. The invocation of criminal process often attract public attention, and thus on a day to day basis the government relies more on extrajudicial methods to control and silence activists.
11. At so called “sensitive period”, such as the anniversary of the Tiananmen Massacre, the meeting of the People’s Congress, and the holding of any and all international and national events, the Chinese government would subject activists either to house arrest or “enforced travelling” (被旅遊), in order to pre-empt any possible protests or disruption to those events. Such restriction of personal liberty is widespread and entirely without legal basis.
12. The most famous case of extrajudicial house arrest is undoubtedly that of Liu Xia. She has been placed under house arrest ever since Dr. Liu Xiaobo was awarded the Nobel Peace Prize, and there is no sign of such illegal restriction of her freedom abating even after the death of Liu Xiaobo. Other examples include Hu Jia and Gao Zhisheng.
13. Another tactics used is the harassment of family, landlords and employers. Children of activists often found that no school would admit them. Landlords are often forced to evict activists renting their apartments or shops. Employers are forced to demoted or dismissed activist employees or their family members. Activists and their family are prevented from leaving the country even with valid travel documents.
14. With the abolition of RTL, the authorities have turned to “legal education class” (法制學習班) as a form of extrajudicial detention, targeting mostly petitioners and ethnic minorities. As such classes operates completely outside the legal framework, detainees are deprived of basic right such as legal representation and right to communicate with family. They could have no idea of how long they will be detained. Torture is rampant. Detainees are forced to “accept” the teaching of the authorities against their own conscience.
15. Another worrying trend is the use of cross border abduction. A famous case of cross border abduction was the Hong Kong booksellers case, where a member of the bookshop was abducted from Thailand and another from Hong Kong. In fact, there are already quite some numbers of Chinese dissidents disappearing or deported from Thailand, including Li Xin (former editor at Southern Metropolis Daily), Jiang Yefei and Dong Guangping. Jiang and Dong had already obtained refugee status from the UN and were about to be resettled, but were nevertheless handed over to the Chinese authorities in November 2015.

Crackdown on civil society organisations

16. The implementation of the Foreign NGO Law on 1 January 2017 is the latest of a series of measures sounding the death knell of independent civil society organisation in China. Together with the Charity

Law promulgated in 2016, NGOs now faced severe restriction in fundraising and cooperation with foreign entities, and are saddled with strict reporting requirement to the government. The Charity Law imposes direct restriction on NGOs within the country, while the Foreign NGO Law is effective in deterring foreign funders from supporting Chinese organisations for fear of breaching the law and having to report to Chinese government on their activities. Following the implementation of these laws, many NGOs are either forced to close down or go underground.

17. Suppression was particularly severe for human rights related NGOs. Since 2015, personnel from various NGOs focusing on the documentation of human rights abuses have been arrested, sentenced, kicked out of the country or simply disappeared. The list includes Huang Qi of 64tiangwang.com (arrested in November 2016), Lu Yuyu of Non News (@wickedonna) (arrested in June 2016), Liu Feiyue of Civil Rights and Livelihood Watch (arrested in November 2016), Qin Yongmin of Rose Team and his wife Zhao Suli (arrested in January 2015), Zhen Jianghua of Human Rights Campaign in China (arrested in September 2017), and Peter Dahlin (arrested in January 2016) and Wang Quanzhang (arrested in July 2015) of Chinese Urgent Action Working Group. Zhao Suli has disappeared for three years before resurfacing in early 2018, but is still under tight surveillance. Wang Quanzhang and Zhen Jianghua are still being held incommunicado. With this series of arrests independent information outlets concerning on the ground situation and human rights abuses in China has almost all but been wiped out.

Impunity for abuses

18. There is currently a complete lack of any system to address governmental abuses and to seek accountability; instead the government often adds insult to injury by persecuting victims and supporters seeking justice. The most famous example is the issue of the Tiananmen Massacre. Nearly 29 years have passed, yet the Tiananmen Massacre remains a taboo topic. Family and friends are not allowed to talk about the love ones they lost. The Tiananmen Mothers are being continuously harassed and monitored. Related phrases such as “June 4th” are censored online. Not only had there been no investigation and accountability for the killing, but instead anyone daring to discuss the issue are either silenced or jailed.
19. In May 2014, lawyer Pu Zhiqiang and about a dozen others participated in a home based “seminar” on the Tiananmen Massacre. 9 were arrested, with Pu subsequently detained for 1.5 years before being released on suspended sentence. His lawyer license was revoked. In March 2015, Chen Yunfei and 20 others went to visit the grave of a student killed in the Massacre. Chen was arrested on his way back and subsequently sentenced to four years imprisonment. In June 2016, Fu Hailu, Zhang Junyong, Luo Yufu and Chen Bing from Sichuan Province were arrested for making a Chinese liqueur with a label referencing the Tiananmen Massacre. They have been charged with inciting subversion but no trial date is yet in sight. In June 2017, Li Xiaoling and her friends went to Tiananmen Square to light a candle to commemorate the Tiananmen Massacre. She was promptly arrested and is currently still in detention.
20. The lack of accountability is also reflected in the absence of any sort of proper investigation into death in custody or in suspicious circumstances. Instead the authorities’ reaction has always been to destroy the corpse as soon as possible to prevent any proper autopsy. Such situation has happened to the death of activists Li Wangyang, Zhang Liумao and Cao Shunli. The “live broadcast” of the death of Liu Xiaobo

is another prime example; his immediate cremation, with his ashes scattered into the sea, prevent any proper investigation into what may have contribute to his premature death and freed the authorities from needing to account for his living conditions while imprisoned. Another democratic activist, Yang Tianshui, who was diagnosed with brain cancer while in custody and passed away in November 2017, suffered the same fate of being put to a sea burial.

Recommendations

- Ratify without further delay the ICCPR;
- Sign and ratify the OP CAT;
- Establish a National Human Rights Institution;
- Enact law to protect the right of privacy;
- Immediately cease all practice of forced or coerced confession, in particular televised confession;
- Abolish RSDL;
- Abolish all form of arbitrary detention including legal education classes;
- Amend the law to ensure that all detainees have access to lawyers regardless of their alleged offence;
- Immediately inform relatives about arrest;
- Ensure and enshrine in law the right of family members to visit detainees, whether before or after trial;
- Amend the definition of subversion to remove all peaceful activities from its scope, failing which the offence should be abolish;
- Remove the police's power to detain suspects for 30 days without approval from the Procuratorate;
- Ensure that suspects are granted bail before trial unless there are exceptional circumstances;
- Ensure that suspects can apply to court for bail;
- Provide in law a definite time period during which a criminal verdict must be pronounced;
- Ensure and protect citizens' right to a public trial;
- Immediately cease all forms of house arrest and enforced travelling;
- Immediately cease all forms of surveillance, house arrest and travel restriction of Liu Xia and her brother Liu Hui;
- Immediately cease all harassment of activists and their family members;
- Immediately cease all travel restriction of activists and their family members;
- Immediately cease all cross border abduction;
- Repeal the Foreign NGO Law;
- Amend the Charity Law to relax restriction on fundraising;
- Stop the suppression of human rights NGOs;
- Conduct an open and independent investigation into the Tiananmen Massacre, and demand accountability from persons responsible;
- Immediately cease to criminalise discussion and commemoration of the Tiananmen Massacre;
- Conduct proper investigations into all cases of attacks, harassment, disappearance and death of activists and human rights defenders;
- Establish a coroner's court;
- Establish a mechanism of investigation and redress for all complaints of torture;
- Hold accountable all who involved in the torture, harassment and other illegal behaviours against activists and their family members;
- Stop the practice of enforced sea burial;

- Release all human rights defenders from detention and imprisonment.