

## Introduction

1. Human rights defenders (HRDs) in China face severe restrictions on and punishment for their legitimate work in defence of human rights. Since China's last UPR examination in 2009, authorities have continued, and in certain cases increased, their repression of HRDs through legal and illegal means. In mid-2011 the Chinese government announced that it had successfully met all tasks and goals of the country's first National Human Rights Action Plan (2009-2010); a second plan was announced to cover the years 2012-2015. Despite this, HRDs have reported a reduced, rather than enlarged, space in which to work since the implementation of the plan.

2. HRDs who are targeted by the state in China work on a wide variety of issues, including: forced demolition, forced eviction, political reform, freedom of expression, freedom of religion, workers' rights and ethnic minority rights. Other activists who are targeted include both licensed lawyers and 'barefoot' lawyers<sup>1</sup>, independent election candidates and petitioners working on behalf of their communities.

3. Punishments faced by HRDs engaging in these issues range from harassment, surveillance and house arrest to enforced disappearances, physical attacks, imprisonment and unnatural death in custody. HRDs are also routinely denied permission to travel outside of China to attend human rights-related meetings and HRDs trying to organise such events inside China risk detention. While a very small number of independent, grassroots human rights organisations do exist in China, their staff and volunteers are subjected to harassment, surveillance, and detention.

## Restrictions on Freedom of Expression

4. Despite constitutional guarantees of freedom of expression (Article 33), its exercise is severely limited. HRDs who express themselves freely, including online, on issues related to human rights leave themselves open to prosecution under the country's vaguely defined state security laws. Article 105(2) of the Chinese Criminal Code states a fixed term imprisonment for anyone inciting others "to subvert the State power or overthrow the socialist system." This provision is used routinely to detain and imprison defenders who exercise their rights to free expression. Since China's last UPR examination, a number of writers have been given lengthy jail sentences on such charges, including Liu Xiaobo (11 years), Liu Xianbin (10 years), Chen Xi (10 years), Li Tie (10 years), Chen Wei (9 years), Cai Haibo (8 years) and Zhu Yufu (7 years).

5. On 11 June 2011, Qi Chonghuai was illegally charged a second time for an alleged crime which had already seen him serve four years in prison. He was sentenced to an additional eight years. Qi Chonghuai is a writer who exposed serious corruption in Tengzhou City, Shandong province and was detained, charged with 'extortion and blackmail' and imprisoned. He was allegedly tortured, and suffered two attempts on his life before being moved to a safer prison.

## Legislation of Secret Detentions

6. A 2012 amendment to the Criminal Procedure Law (CPL), which came into effect on 1 January 2013, places HRDs at further risk by legalising secret detentions. Article 73 of the revised CPL allows for people to be placed under 'residential surveillance' in locations other than their homes or formal detention centres for up to six months if they are believed to be involved in 'endangering state security', 'terrorism' or 'major bribery'. Families must be informed within 24 hours that their relative has been placed under 'residential surveillance' but police are not obliged to disclose the location or the reason for the detention if it may 'hinder the investigation'. Four days after this law came into effect, the family of HRD Zhu Chengzhi were notified that he had been placed under residential surveillance, but were not informed where he was being held. He was kept in secret detention for almost a month before being sent home on 1 February 2013 to serve out his period of

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1 'Barefoot lawyers' generally refers to lawyers without formal legal training and without licenses to practise law.

residential surveillance there.

7. Since China's UPR examination in 2009, the use of enforced disappearances to target HRDs has increased significantly, and in 2011 there occurred a particularly worrying spike where at least two dozen HRDs were disappeared for periods of up to four months. Many later reported that they were questioned about their human rights work and tortured. Human rights lawyers were particularly targeted and those disappeared included Tang Jitian, Jiang Tianyong, Jin Guanghong, Li Fangping, Li Xiongbing and at least ten others. No information was given to their families on their whereabouts during their time disappeared – it was not even acknowledged by the authorities that the HRDs were in their custody. It is of grave concern that this practice has effectively been legalised for up to six months with the 2012 amendments to the Criminal Procedure Law.

### **Internet Surveillance**

8. Freedom of expression of HRDs is further restricted by both the censoring of the internet and the targeted hacking of HRDs' electronic communications. Domestic human rights organisations Civil Rights and Livelihood Watch, Tianwang and Human Rights Campaign in China all have their websites blocked, while those of international human rights organisations are also inaccessible on mainland China.

9. The personal blogs and websites of activists are regularly shut down, while comments posted on micro-blogging sites are often deleted. HRDs also report regular hacking of their email accounts and frequent attempts to infect their personal computers with viruses and malware.

### **Restrictions on Freedom of Association**

10. In order to register as an NGO, organisations must find a government agency willing to sponsor them. Organisations working in sensitive areas must register as a business with the Ministry of Industry and Commerce if they are unable to find an agency, which is frequently the case. This exposes them to pressure from various arms of the state bureaucracy, ranging from multiple inspections by tax and fire authorities to pressure put on landlords to evict organisations from their offices and the outright shuttering of organisations. In mid-2012, several organisations working on labour rights were forced to close in Shenzhen, Guangdong province.

11. While the number of civil society organisations in China continues to grow and there are signs of a more liberal approach to registration in certain regions, organisations involved in any area of rights defence face close monitoring, harassment and the threat of being shut down, if they are able to register at all. In December 2011, the Guizhou Human Rights Forum, a weekly discussion session on human rights issues, was banned as an illegal organisation. Prominent members of the Forum face constant harassment, monitoring and restrictions on their movements. They are unable to find steady employment as a result of their human rights activities. One of the Forum founders, Chen Xi, was sentenced to ten years in prison on 26 December 2011.

12. HRDs who attempt to meet together informally are frequently prevented from doing so. They are either stopped from leaving their home or the location where they had planned to meet is raided by security forces. In October 2012 human rights lawyer Pu Zhiqiang was prevented by police from attending a meeting with other human rights lawyers in Beijing. HRDs who do manage to attend gatherings are sometimes then detained for further questioning, as was the case on 1 January 2013 when a group of activists in Guangzhou met for dinner. Lawyer Tang Jingling along with two other HRDs were detained by police for questioning. On 3 November 2012 police surrounded a conference facility where lawyers were meeting informally and monitored all of the participants for the duration of the gathering.

### **Restrictions on Freedom of Assembly**

13. Freedom of assembly is severely restricted; the 1989 Law on Assemblies, Processions and Demonstrations forbids protests without the permission of the Public Security Bureau. Those who attempt to organise demonstrations which call for greater human rights or reforms face detention, arrest or imprisonment.

14. On 26 November 2012 Wang Dengchao was sentenced to 14 1/2 years imprisonment after planning to organise a protest in Shenzhen calling for democratic reforms. Wang Dengchao was detained on 8 March 2012, two days prior to the planned demonstration and charged with embezzlement. This charge of corruption reflects a growing trend whereby the authorities level non-political charges against activists for their work in an effort to delegitimise them as HRDs and to ward off greater domestic and international scrutiny.

### **Targeting of Human Rights Defenders**

15. During politically sensitive occasions, HRDs are routinely placed under illegal house arrest and confined to their homes for a number of days. In the run-up to the 18<sup>th</sup> Party Congress of the Chinese Communist Party in November 2012, dozens of HRDs were arbitrarily placed under house arrest or forced out of Beijing for the duration of the meeting and kept under surveillance in locations outside the capital. In more extreme cases, illegal house arrest has also been used for months on end, as was the case with Shandong HRD Chen Guangcheng. In 2012 a Shanghai HRD, Feng Zhenghu, was held under house arrest for eight months in his third floor apartment while Liu Xia, wife of Liu Xiaobo, has been confined to her Beijing apartment for over two years. The example of Liu Xia is representative of a larger trend which has seen the increased targeting of family members as a way to either punish HRDs for their activism or to encourage them to stop it altogether. Family members targeted have ranged from young children to elderly parents.

### **Arbitrary detention**

16. China rejected a 2009 UPR recommendation to abolish all forms of arbitrary detention, including re-education through labour (RTL) and has since continued to rely on these facilities to detain HRDs without trial or judicial review. RTL is part of the administrative penalty system and detention in such facilities can last for up to four years. The decision to send someone to RTL is solely at the discretion of the police; it involves no judicial process and no judicial appeal is available. Independent monitors report that the number of detainees in RTL is between 160,000 and 300,000. Of these, some are HRDs detained as punishment for their activism and subjected to extreme working conditions and torture. According to the Chinese Administrative Punishment Law (1996) and The Legislation Law (2000)<sup>2</sup> RTL is illegal. On 7 January 2013 the Secretary of the Central Politics and Law Commission announced that the government would stop using RTL in 2013. In February 2013 high-ranking officials in both Yunnan and Guangdong Provinces stated that people would no longer be sent to RTL but that all currently detained individuals would have to serve out their time. While these developments are welcomed, certain regulations, such as Article 73 of the revised CPL, may create legal loopholes that result in nothing but a cosmetic change of the RTL system.

17. A further concern is the practice of 'criminal detention'<sup>3</sup>, by definition an extrajudicial form of arbitrary detention which continues to go unaddressed. The system allows for up to six months' incarceration without a court hearing, and is extensively used against HRDs. More importantly, no judicial review or appeal system exists, denying even the possibility of seeking redress.

### **Psychiatric hospitals (Ankang)**

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2 These laws states that any compulsory measures against a person's liberty must be authorized by law promulgated by the National People's Congress. No such law exist for RTL.

3 Chapter 3, Section 3, Criminal Law of the People's Republic of China

18. A first of its kind National Mental Health law came into effect on 1 March 2013. However, this law falls seriously short of acceptable minimum standards in that it selectively refuses to cover the Ankang system, the custodial psychiatric hospital network administered by the Ministry of Public Security. China's two systems of mental health, one run and supervised by the Police, one run and supervised by the Ministry of Health, have created a separate structure for the police where local police have full authority to label HRDs as mentally ill and subject them to involuntary incarceration and forced treatment. Doctors and nurses have admitted to accepting individuals with no disabilities simply because the police instructed them to do so. Grounds for committal are vague and there is no national standard. Although there are methods for filing appeal and reconsideration for wrongful committal, it is not a judicial process. These forms for redress are often obstructed or disregarded by the authorities, and patients who seek redress have been subjected to repeated arbitrary committal. Involuntarily committed HRDs who have been subjected to forced medication, beatings or electric shocks include Liu Xinjuan, Peng Yongkang, Xu Lindong. Such treatment tends to have a lasting psychological impact on HRDs who are forced to undergo it.

19. Violations are also rampant within the national mental health system administered by the Ministry of Health. In the case of Liaoning HRD Zhu Guiqin, police have alternated between detaining her in detention facilities, 'black jails', RTL facilities and in psychiatric hospitals for over 10 years. None of her detentions were ever administered following legal process.

### **Judicial Process**

20. Trials of HRDs do not comply with international fair trial standards. With the lack of independent courts, verdicts are pre-determined with a conviction rate at first instance of over 98%. Trials generally last no more than a couple of hours and lawyers for HRDs are regularly interrupted or prevented from fully presenting their defence. Independent trial observers are not permitted to attend hearings. In August 2012, lawyer Wang Quanzhang was physically attacked by a judge while presenting evidence at court in Heilongjiang. In another case for the same lawyer in September 2012, court personnel confiscated his legal materials mid-hearing.

21. Lawyers who do take on human rights cases risk having their licenses suspended or permanently revoked. In 2010, lawyers Liu Wei and Tang Jitian had their licenses permanently revoked following their decision to walk out of court in protest at the judge's constant interruptions of their defence of their clients, who were Falun Gong practitioners. Li Subin, another prominent lawyer, has had his license suspended twice after taking on the defence of Falun Gong practitioners. Other lawyers have had their licenses suspended for a number of years running for their work on human rights cases, and face harassment and intimidation.

22. The forced establishment within all law firms of 'party groups' serves to intimidate and monitor lawyers, affecting their ability to freely decide on sensitive cases. China has also failed to provide the right of lawyers to self-manage their work through independent bar associations by effectively taking control of the bar associations.

23. Since China's last UPR examination the Chinese Minister of Justice has also called for lawyers to "above all obey the Communist Party," contrary to the standards provided in the Basic Principles on the Role of Lawyers, which calls for the highest loyalty to be towards lawyers' clients. In 2012, the Ministry of Justice announced a new initiative to force all lawyers to pledge allegiance to the Chinese Communist Party through its inclusion in a lawyer's oath.

24. 'Barefoot' lawyers – mainly rights defence lawyers who do not have a license – have addressed the gap in access to legal aid left by the persecution of licensed lawyers. While some 'barefoot' lawyers are previously licensed lawyers, most of them are former petitioners or village organizers. However, they are not afforded full lawyers' rights, such as access to evidence or the right to speak with their client, thus limiting the type of cases they can manage. Although they generally take on administrative cases (e.g. suing government bodies), local authorities have recently begun to apply

the more limiting civil procedure law to impede their ability to properly represent their clients. Lack of effective supervision of the courts generally means that lawyers cannot challenge this behaviour even though it is illegal.

**25. Front Line Defenders and the Chinese Urgent Action Working Group call upon the UN to urge the Chinese authorities to prioritise the protection of human rights defenders and in doing so to:**

1. Revise regulations that violate the right to freedom of expression, enforce the protection of freedom of expression and release all individuals arrested and detained on related charges.
2. Put an immediate end to all arbitrary detention, including RTL, Ankang and use of 'criminal detention'. Release all HRDs currently detained in these facilities or begin formal, legal charges against them and provide them full access to legal counsel and appeal.
3. Ensure the protection of the right to freedom of association and assembly. Allow for the independence of organizations to interact with one another. Free all individuals arrested and detained on related charges.
4. Agree to a visit request by the Special Rapporteur on Human Rights Defenders and immediately work to put an end to the arbitrary persecution of HRDs.
5. Agree to a visit request by the Special Rapporteur on the Independence of Lawyers and Judges. Withdraw mandatory party affiliation for law firms.
6. Withdraw its reservations to the Convention against Torture and recognise the right of the Committee Against Torture to act on Chinese HRDs individual complaints.
7. Ratify the International Covenant on Civil and Political Rights signed by China in 1998, and sign and ratify its optional protocols.