

Submission for the Third Cycle 31st Session UN Universal Periodic Review of China

The Rights Practice

The Rights Practice was incorporated as a not for profit organisation in the United Kingdom in 2002, and in the United States in 2008. We have been a registered human rights charity in England and Wales (1133616) since 2010. Our charitable purpose is the promotion of human rights (as set out in the Universal Declaration of Human Rights and subsequent UN conventions and declarations). Our mission is to build the capacity of those working for human rights. We have built a programme of work that addresses three strategic themes within China: access to justice, human rights and criminal justice, and public participation. For many years we have engaged with Chinese legal scholars, lawyers and judicial officials to help prevent the use of torture. This submission is informed by stakeholder consultations and a review of Chinese law and recent cases.

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1. This submission focuses on the use of detention and the treatment of people deprived of their liberty.

Second Cycle and Recent Developments

2. During the second cycle of the UN UPR in October 2013 China accepted recommendations from Germany (186.117), France (186.117), Sweden (186.118) and Belgium (186.120) to abolish the system of re-education through labour (RETL), a form of administrative detention that allowed persons to be deprived of their liberty for up to four years without judicial oversight. The measure violated international law and was inconsistent with China's Constitution, Legislation Law and Administrative Punishment Law. In its March 2014 response to recommendations, China considered this implemented. In December 2013 the National People's Congress had approved abolition following an announcement to end RETL in January 2013.
3. China also considered that it already implemented the recommendation from Germany to prevent torture and immediately inform relatives about arrests and effective legal representation (186.117) and a recommendation from Sweden (186.118) to ensure that any form of compulsory care or prison meets international human rights standards.
4. China noted, but did not accept, other recommendations relating to detention. These included recommendations from the United States of America (186.115) and the United Kingdom (186.116) to end the use of arbitrary and extrajudicial detention, including the enforced disappearances of human rights defenders. China also did not accept recommendations from Canada (186.122) to release people in administrative detention for political reasons or the Swedish recommendation to release those detained for exercising their freedom of expression (186.152).
5. The third cycle of the UN UPR is intended to focus on the improvement of the human rights situation on the ground. Regarding the use of detention, we welcome recent regulations to tackle miscarriages of justice and the use of tortureⁱ. However, many protective measures are not applicable to those accused of one of the so-called "three types of crime": terrorism, major bribery and endangering national security, particularly during the investigation period.

Deprivation of liberty and risk of torture

6. Our submission focuses on the deprivation of liberty and how the use of detention places individuals at risk of torture and other cruel, inhuman and degrading treatment or punishment. We recognise that there are many human rights challenges in China, but consultations with Chinese civil society and our own work have revealed not only rising levels of fear of imprisonment, but also many examples of systemic ill treatment of detainees that amount to torture. We are particularly concerned with the way that police or Communist Party (CCP) decisions to accuse someone of one of the "three

types of crimes” systematically and legally deprives them of human rights protections in detention.

7. Our key concerns are: the use of unofficial places of detention; arbitrary detention; restrictions on access to lawyers; the risk of torture; televised confessions and unethical healthcare. These concerns are interrelated.

Use of unofficial places of detention

8. *All persons deprived of their liberty must be held in officially recognised places of detention. Places of detention are also required to have registers of detainees that can be accessed by family and friends, among others. This internationally accepted principle is set out, inter alia, in General Comment No. 20 on Article 7 of the International Covenant on Civil and Political Rights.*
9. China uses a range of detention facilities. The majority of persons facing criminal charges are held in pre-trial detention centres (*kanshousuo*). Under certain conditions, however, the police have the power to place a suspect in “residential surveillance in a designated location” (RSDL). For many years CCP members were subject to the much-criticised *shuanggui*, an extralegal investigation and detention procedure carried out by the CCP’s Commission on Discipline Inspection. The new Supervision Law will replace *shuanggui* with “retention in custody” and will apply to officials and CCP members suspected of bribery.
10. RSDL is a provision in the 2012 Criminal Procedure Law (CPL). It can be used when a suspect does not have a permanent domicile and may require protection or when persons are suspected of one of the “three types of crime” *and* where confinement in their own home may “impede the investigation”. Article 73 also states that the “designated location” must *not* be a detention centre; instead reports describe police use of hotels or training centres.
11. The 2018 Supervision Law is introducing a new type of detention, “retention in custody” (*liuzhi*) (Article 22). *Liuzhi* will take place outside the criminal justice system which manages pre-trial detention centres. Article 22 states that the setup, management, and oversight of the sites for *liuzhi* are to be implemented in accordance with relevant state provisions. There is speculation that this means that the Supervisory Commission will set up new, dedicated detention centres rather than deploy the informal facilities used under *shuanggui*ⁱⁱ.
12. For more than a year reports from Xinjiang describe an extensive system of ‘political education’ centres in which thousands of Uighurs and others have been detained for varying periodsⁱⁱⁱ.

Arbitrary detention

13. *No one shall be subjected to arbitrary arrest or detention. Anyone arrested or detained should be brought promptly before a judge or other judicial officer; a delay should not exceed a few days. Article 9 of the International Covenant of Civil and Political Rights.*
14. It is standard practice for suspects in criminal cases to be held for 30 days before their case is reviewed and the decision to arrest is formally authorised, within seven days, by the procuratorate. In their Concluding Observations (CAT/C/CHN/CO/5), the Committee Against Torture recommended China reduce the maximum period of police custody to 48 hours and bring detained persons promptly before a judge.
15. CPL Article 93 requires the procuratorate to continue to review the “necessity of detention” following the decision to arrest. As a starting point for reform, Chinese lawyers recommend bringing forward this procuratorate review and setting out clearer criteria for pre-trial detention.
16. There is no judicial oversight of police or CCP decisions to accuse someone of one of the “three types of crime”. The threshold for accusing someone of endangering national security is low. Many human rights defenders, such as activist Zhen Jianghua^{iv}, face such accusations for promoting free speech.
17. A decision on RSDL is made by the police and must be approved by the police at the next higher administrative level. The procuratorate have a responsibility to check the lawfulness of the decision and its enforcement (CPL Article 73).
18. When lawyer Li Heping was held in RSDL in July 2015, his wife was refused information on where he was detained and efforts to require the procuratorate to review the decision were rebuffed. His assistant was originally detained on public order charges; this was promptly changed to endangering national security, presumably to justify the use of RSDL^v.
19. The decision to place someone in *liuzhi* will be made by the Supervision Commission; a decision to extend the initial three months’ detention by another three months should be taken by the Supervision Commission at the next higher level (Article 43).
20. In neither RSDL nor *liuzhi* is the decision to detain reviewed by a judge. In both situations suspects can be held in custody for up to six months before potentially being transferred into the criminal justice system for prosecution. People sent to ‘political education’ centres in Xinjiang have not been presented with a warrant or evidence of a crime^{vi}.

Restrictions on access to lawyers

21. *A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel. Principle 18 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*

22. The 2012 CPL improved lawyers' access to their clients in detention; many lawyers now report being able to meet clients within 48 hours. However, in cases involving the "three types of crime" lawyers require approval from the investigating authorities to meet suspects (CPL Article 37).
23. In most of the cases we have been monitoring lawyers have been denied access to their clients. All of the so-called '709' cases from 2015^{vii}, were designated as national security offences and detainees were held for six months in RSDL. When detainees were transferred to detention centres a lawyer appointed by the authorities was given access. The normal Chinese practice of lawyers being appointed by family members was overruled and human rights defenders were denied representation by a human rights lawyer.
24. In consultations Chinese lawyers were unanimous in calling for the end to restrictions on access to lawyers freely chosen by the detainee or close family. Access to lawyers not only allows detainees to prepare their case for trial, but also provides the detainee with a measure of protection from the risk of torture. Pre-trial detainees in China have no right to see family or friends, and lawyers are their only contact with the outside world. Lawyers are able to file complaints about alleged ill treatment and regular contact is a form of monitoring.
25. While procuratorate pilot regulations allow lawyers to meet detainees in major bribery cases once there is no risk of obstructing the investigation, no such regulations apply in terrorism or national security cases. The Supervision Law makes no reference to the right to access lawyers during *liuzhi* and pilot projects suggest that lawyers will not be given permission to meet detainees^{viii}.

Risk of torture

26. *Article 1 of the Convention Against Torture provides the definition of torture in international law.*
27. Despite repeated recommendations from the UN Committee Against Torture Chinese law still fails to define torture in line with Article 1. In particular, laws are generally restricted to physical abuse only.
28. Anecdotal evidence from Chinese lawyers indicates a reduction in the use of physical torture in routine criminal cases. Pre-trial detention centres apply stricter rules against removing detainees from the centre and other measures that increase oversight. The draft Detention Centre Law^{ix}, published in June 2017, fails to further strengthen protective measures including the use of solitary confinement and restraints or allowing lawyers to be present during interrogations^x.

29. Former detainees under RSDL and *shuanggui* describe the use of physical and psychological torture. The law says little about RSDL except to require that facilities possess conditions for living and rest, can accommodate monitoring and ensure security. Nothing in the regulations specifies the right to rest. Article 40 of the Supervision Law prohibits ill treatment of detainees and the use of threats, enticements and other illegal means in obtaining evidence. There is no explicit reference, however, to the more commonly used forms of ill treatment including sleep and sensory deprivation and stress positions. When used over a period of time and at a level of intensity these types of ill treatment amount to torture.
30. The use of unofficial places of detention in RSDL and *shuanggui* leaves detainees vulnerable to torture. Indeed the very purpose of these arrangements would seem to be to allow investigators to use any means necessary to secure confessions. Confessions are not only seen as integral to the conviction of a suspect, but are required for legal propaganda purposes. Televised confessions by detainees, under the control of the authorities, are increasingly being used in high profile cases, including several foreigners^{xi}.
31. Lawyer Wang Quangzhang has been in custody since August 2015^{xii}. Concerns mount for his physical and mental health. The authorities have provided no explanation for his continued detention.

Unethical medical care

32. There are numerous accounts of poor quality healthcare in detention facilities. Reports describe inadequate provision and the deleterious impact on health of detention^{xiii}. There are also a number of disturbing reports of the unethical withholding of medical care as well as forced medication.
33. British prisoner, Peter Humphrey^{xiv}, has described how the prison authorities refused to allow him medical examinations and treatment for suspected prostate cancer because he had not confessed.
34. Many '709' detainees report forced medication within days of being detained in RSDL. Ostensibly for high blood pressure and other ailments, the side effects of daily dosages included painful joints and blurred vision. Former detainees insist they had no prior conditions. Doctors appear complicit in medicating detainees against their best interests.
35. The draft Detention Centre Law does not require health professionals in detention facilities to be independent of the police. Although Article 27 provides for medical check-ups there is no provision for making the results available to the detainee's lawyer and family.

36. The Istanbul Protocol, the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, is largely unknown in China. The authorities should ensure it is a required component of anti-torture training for judicial agencies, medical professionals and lawyers.

Recommendations

37. Ending the use of RSDL and preventing the establishment of new *liuzhi* facilities would represent significant steps forward in improving the human rights situation on the ground. As pre-trial detention centres improve oversight there are indications of better treatment of detainees. Observers can only conclude that the use of alternative detention sites is intended to evade scrutiny. Designating detainees as suspects in one of the “three types of crime” provides a legal justification for denying detainees adequate human rights protection.

- a. **Abolish the use of any unofficial places of detention.** Residential Surveillance in a Designated Location leaves detainees vulnerable to physical and psychological torture. It is an unregulated and unmonitored place of detention and its use should be abolished. The new measure of “retention in custody” (*liuzhi*) also places detainees at risk outside the criminal justice system.
- b. **Judicial authorities should review promptly the decision to detain someone** as part of any investigation. Judges should make greater use of bail. Only registered detention centres (*kanshousuo*) should be able to incarcerate pre-trial suspects, including those suspected of the so-called “three types of crimes”. The responsibility for overseeing detention centres should be transferred to the Ministry of Justice from the Ministry of Public Security.
- c. **Ensure all detainees have prompt access to a lawyer.** Remove the discretionary power of the investigation authorities to deny access to a lawyer in the “three types of crimes”. Ensure all detainees have the right to appoint a qualified lawyer of their choice. Ensure that the implementing regulations for the Supervision Law provide access to a lawyer for anyone “retained in custody”.
- d. **Challenge the demand for confessions.** Reform police work targets to reduce the demand for suspects’ confessions. End all use of televised confessions and show trials.
- e. **Introduce independent monitoring of detention facilities.** Establish a robust system for monitoring prison and detention centre healthcare, the use of restraints and solitary confinement. Allow independent monitors to speak in confidence with detainees. Prepare to ratify the Optional Protocol to the Convention Against Torture.

Endnotes

ⁱ For example, 2014 Ministry of Public Security “Regulations on the Recording of Interviews with Criminal Suspects” (“公安机关讯问犯罪嫌疑人录音录像工作规定”); 2015 Supreme People’s Procuratorate “Guiding opinion on the work of the procuratorate in prevention and redress of miscarriages of justice” (“关于在刑事执行检察工作中防止和纠正冤假错案的指导意见”) and 2017 “Strict Rules on Exclusion of Evidence” (“严格排除证据规定”).

ⁱⁱ Reuters. “China's new anti-graft superministry adds to concerns about suspects’ rights”. 23 February 2018. <https://www.reuters.com/article/us-china-politics-corruption-analysis/chinas-new-anti-graft-superministry-adds-to-concerns-about-suspects-rights-idUSKCN1G71AM>

ⁱⁱⁱ The Guardian. “China 'holding at least 120,000 Uighurs in re-education camps'” 25 January 2018. <https://www.theguardian.com/world/2018/jan/25/at-least-120000-muslim-uighurs-held-in-chinese-re-education-camps-report>

^{iv} International Federation of Journalists. “China: Human Rights activist detained for six months without charge”. 27 March 2018. <http://www.ifj.org/nc/en/news-single-view/backpid/30/category/resources-media-incident-monitoring/article/china-human-rights-activist-detained-for-six-months-without-charge/>

^v The Rights Practice submission to Committee Against Torture Session 56 in relation to the fifth periodic report on China, October 2015. http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1002&Lang=en

^{vi} Human Rights Watch “China: Free Xinjiang ‘Political Education’ Detainees”. 10 September 2017. <https://www.hrw.org/news/2017/09/10/china-free-xinjiang-political-education-detainees>

^{vii} Amnesty International. “China’s Crackdown on Human Rights Lawyers” July 2016. <https://www.amnesty.org/en/latest/campaigns/2016/07/one-year-since-chinas-crackdown-on-human-rights-lawyers/>

^{viii} Caixin “山西明确监察委留置期可抵刑期不许律师介入引争议” (Shanxi clarifies debate: time spent in “retention in custody” under the Supervisory Commission can be deducted from prison sentence and lawyers not allowed access) 4 September 2017. <http://china.caixin.com/2017-09-04/101140350.html>

^{ix} The Rights Practice Background Brief “Detention in China: draft detention centre law” <https://www.rights-practice.org/download-reports>

^x An English translation of the law can be found at China Law Translate <https://www.chinalawtranslate.com>

^{xi} The Diplomat. Dinah Gardner. “Why We Should Pay Attention to China’s Televised Confessions. 23 September 2017. <https://thediplomat.com/2017/09/why-should-we-pay-attention-to-chinas-televised-confessions/>

^{xii} Radio Free Asia. “Two Years After 'Disappearance,' Wang Quanzhang Denied Visits From Defense Team” 6 December 2017. <https://www.rfa.org/english/news/china/two-years-after-disappearance-wang-quangzhang-denied-visits-from-defense-team-12062017110805.html>

^{xiii} For example, “China: UN experts concerned about health of jailed rights lawyer Jiang Tianyong”. 23 March 2018. <https://www.protecting-defenders.org/en/news/china-un-experts-concerned-about-health-jailed-rights-lawyer-jiang-tianyong>

^{xiv} ‘I was locked inside a steel cage’: Peter Humphrey on his life inside a Chinese prison. Financial Times. 16 February 2018. <https://www.ft.com/content/db8b9e36-1119-11e8-940e-08320fc2a277>