



**Stakeholder Submission for the Fourth Cycle United Nations**

**Universal Periodic Review (UPR) of China**

**Submitted by The Rights Practice in July 2023**

The Rights Practice was incorporated as a not-for-profit organisation in the United Kingdom in 2002. 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 support 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 lawyers, legal scholars and human rights defenders. This submission is informed by stakeholder consultations and a review of Chinese law and recent cases.

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1. This submission analyses China's implementation of recommendations since the third cycle UPR in 2018. In particular, we focus on China's use of national security provisions to limit fair trial rights, arbitrarily deprive individuals of their liberty and restrict the right to public participation. This includes in mainland China, the Xinjiang Uyghur Autonomous Region (XUAR), and Hong Kong.

### **Recommendations**

2. Effectively implement the recommendation from the Office of the United Nations High Commissioner for Human Rights (OHCHR) to undertake a full review of the legal framework governing national security, counter-terrorism and minority rights, especially in the XUAR, and ensure they are compliant with international human rights law.
3. Provide timely and accurate information about all persons detained in China, particularly Uyghurs.
4. Guarantee fair trials including allowing access to legal counsel of choice and transparent legal procedures in China and Hong Kong. Ensure procedural rights, especially in death penalty cases in China.
5. Ensure independent and external monitoring of all detention facilities to reduce the risk of torture and ill-treatment.
6. Repeal the provisions of the Criminal Procedure Law of the PRC which allow for "residential surveillance at a designated location" (RSDL), a form of enforced disappearance.
7. Implement the recommendation of the Human Rights Committee to repeal the National Security Law (NSL) of Hong Kong.

### **National security framework**

8. ***During the third cycle of the UPR of China, China supported recommendations from both Belgium (28.152) and Austria (28.57) to ensure that legal provisions to protect national security are clearly and strictly defined and in line with international human rights law.***
9. Since the third cycle UPR in 2018, national security has remained a core concept in CCP governance and an overarching framework.<sup>1</sup> It is broadly defined and has been increasingly used to securitise Chinese civil society including human rights lawyers, in the mass deprivation of liberty of Uyghurs in the XUAR and with the introduction of the National Security Law in Hong Kong (2020).
10. ***During the third cycle, 14 Member States, including the United Kingdom (28.22), made recommendations regarding XUAR including to implement the Committee on the Elimination of Racial Discrimination (CERD) recommendations, close all "re-education centres", and ensure full transparency.***

11. Uyghurs, and other Turkic-speaking Muslims, in XUAR have been particularly targeted under broad security provisions.<sup>2</sup> There has been no improvement in the widespread and systematic deprivation of liberty and lack of transparency in the region.
12. The official pretext for the mass internment of Uyghurs is to counter terrorism and religious extremism. Chinese officials initially denied the existence of “re-education centres” and “counter-terrorism training centres” in Xinjiang.<sup>3</sup> From October 2018, XUAR authorities acknowledged the existence of ‘vocational education and training centres’ (VETCs).<sup>4</sup> Chinese officials deny that the VETCs are places of detention<sup>5</sup> and in December 2019 stated that the centres had closed and study courses ended.<sup>6</sup>
13. VETCs are extralegal detention facilities. They have no basis in Chinese law. Detainees do not have access to a lawyer or the right to challenge the lawfulness of the detention. There is a high risk of torture. The Legislation Law of the PRC, articles 11 and 12 (amended 2023) state that any measures which deprive individuals of their physical liberty must be authorised by national level laws.<sup>7</sup> Neither the National People’s Congress or its Standing Committee have approved a decision to set up VETC facilities in the XUAR.
14. ***Australia (28.158), Slovenia (28.158), and Italy (28.159) all recommended that China release public execution data, statistics and increase transparency on the death penalty. China rejected all recommendations on the death penalty.***
15. Death penalty statistics remain a state secret and are not published. China’s state secrecy system allows and promotes restrictions on freedom of expression and information.<sup>8</sup> Since the third cycle UPR, judicial transparency in China has further decreased.
16. In 2021, millions of court judgments were removed from China Judgments Online, an online database of decisions from all levels of Chinese courts.<sup>9</sup> This included all judgments related to state security and all death penalty cases at the Supreme People’s Court review stage.<sup>10</sup> China cannot claim to have reduced executions or improved criminal procedure while judicial secrecy continues.
17. ***In 2018, Australia (28.343), Canada (28.345) and France (28.205) made recommendations to uphold rights including freedom of expression, to take part in government, and rule of law in Hong Kong. China supported these recommendations.***
18. Human rights in Hong Kong have drastically deteriorated due to the adoption of a new National Security Law (NSL) on 30 June 2020.<sup>11</sup> As in mainland China, the NSL gives police wide-ranging powers in alleged cases of national security, lacks clear definitions of offences and has been used to crackdown on civil society.

### ***Deprivation of liberty***

19. ***New Zealand (28.21) recommended China implement recommendations from the CERD including by “responding to concerns about the detention of individuals who have not been lawfully charged, tried and convicted of a criminal offence”. China rejected this recommendation.***

20. Procedures to deprive a person of their liberty in China do not meet international standards. Individuals, including human rights defenders and Uyghurs, can be arbitrarily deprived of their liberty in the criminal and administrative systems. There is no prompt judicial review of the decision to detain, individuals are often denied access to lawyers, are pressured to confess and are at risk of torture and ill-treatment. Police, courts and the procuratorate all work within the system and are subject to the interests of the ruling Chinese Communist Party (CCP).
21. According to The Rights Practice research, XUAR authorities have used criminal proceedings as a significant way to control target populations, along with detention in VETCs. Criminal proceedings provide a veneer of legality but they also enable lengthy prison sentences. We estimate that the majority of 341,887 persons deprived of their liberty through criminal proceedings in Xinjiang in 2017 and 2018 (and likely 2019), were arbitrarily detained in violation of international norms.<sup>12</sup> The vast majority are likely to have been Uyghurs.
22. There is a lack of official and accurate information on the whereabouts of many of those deprived of liberty in Xinjiang. In February 2021, The Rights Practice surveyed the Uyghur diaspora. In response to a question on whether individuals knew where their relatives were detained, only nine per cent of respondents had received official information from the place of detention.<sup>13</sup> The Uyghur community is desperate for information about their relatives in XUAR.
23. ***China accepted recommendations from Sweden (29.171) “to respect the rights of all detainees under relevant human rights instruments” and claimed that it was already implemented, and from Australia (28.170) “to strengthen measures preventing torture and ill-treatment”.***
24. China has made no progress on strengthening measures to prevent torture and ill-treatment such as by repealing “residential surveillance at a designated location” (RSDL). Despite repeated calls from UN experts, including the UN Committee against Torture<sup>14</sup>, there is no definition of torture in Chinese law.
25. In China, there is no independent, external monitoring of detention centres and few outsiders have access. China continues to use state secrecy provisions to avoid publishing information on criminal justice including the death penalty, conditions in detention and torture.
26. ***Switzerland (28.176) and Germany (28.180) both specifically called on China to put an end to “residential surveillance at a designated location” (RSDL) including for human rights defenders and lawyers. China did not accept these recommendations.***
27. China has taken no steps to repeal RSDL, despite calls from UN experts.<sup>15</sup> RSDL was introduced to the Criminal Procedure Law in 2012, for crimes of endangering national security, terrorist activities, or major bribery. In 2018, major bribery cases were transferred to the jurisdiction of the newly established National Supervision Commission, through a similar coercive measure called ‘liuzhi’.<sup>16</sup>

28. Despite being legal under Chinese criminal law, RSDL is unregulated and is a form of enforced disappearance.<sup>17</sup> An individual can be detained under RSDL for up to six months before being arrested. The Criminal Procedure Law (2018), article 39, allows the accused to appoint a defence lawyer but in cases involving endangering state security or terrorism the lawyer must obtain permission from the investigating authority.<sup>18</sup> In practice, individuals detained under RSDL do not have access to a lawyer and there is a very high risk of torture.
29. Human rights defenders and lawyers have reported being subjected to torture and ill-treatment while in detention under RSDL. Human rights lawyer Chang Weiping (常玮平) was placed under RSDL on 12 January 2020 for “endangering national security” after he attended a gathering of rights lawyers in Xiamen. He was released ten days later.<sup>19</sup> In October 2020, he posted a video on YouTube detailing the torture he had been subjected to while under RSDL. On 22 October 2020, he was taken away by police again and has been detained since.<sup>20</sup>
30. On 29 December 2019, China abolished the “custody and education” system, an administrative measure aimed at the detention of sex workers.<sup>21</sup> Sex workers were usually detained in these facilities from six months to two years, without a trial or access to a lawyer. There were reports of detainees being subjected to forced labour, coercive STI testing, torture and sexual violence.<sup>22</sup> Despite the abolition of the measure, there is no available information on the current treatment of sex workers in China. Prostitution remains illegal and it is likely that the public security organs continue to use administrative detention as a tool to punish sex workers.

### ***Fair trial rights***

31. ***Czechia (28.213) recommended China guarantee fair trials, including access to legal counsel and transparent legal procedures. Brazil (28.164) specifically recommended that all those subjected to the death penalty be entitled to adequate legal representation and a fair trial. China rejected these recommendations.***
32. Fair trial rights, as outlined in the International Covenant on Civil and Political Rights (ICCPR), article 14, are not guaranteed in China. Courts are not independent of the Party-state. Defendants may be denied access to their lawyers of choice, and are subject to prolonged periods of pre-trial detention, which undermines the concept of innocence until proven guilty.
33. Chinese law states that a conviction must be based on “hard and sufficient evidence,”<sup>23</sup> however, Chinese legal practice places strong reliance on a confession for conviction in serious criminal cases. Although, the Criminal Procedure Law (2018), article 52, prohibits the extortion of confessions through torture<sup>24</sup> the use of torture and ill-treatment to elicit confession remains a systemic problem.
34. National security is used as a method to bypass procedural protections for detainees, increasing the risk of torture. Detainees accused of endangering state security can be held incommunicado under RSDL. RSDL enables police to detain and interrogate individuals without any oversight and subject them to torture to extract confession.

35. Individuals detained on national security charges are restricted access to lawyers and family members. The Criminal Procedure Law of the PRC, article 85, states that police should provide the immediate family of anyone detained in the criminal system with a criminal detention notice within 24 hours of being detained.<sup>25</sup> However, the law also notes exceptions to this if the detainee is involved in “crimes endangering State security or crimes of terrorist activities”.
36. In January 2022, China adopted a new Legal Aid Law.<sup>26</sup> It introduced the possibility of accessing legal aid at the SPC review stage of death penalty cases. It also stated that all capital defence lawyers should have three years’ experience. Due to lack of transparency it is difficult to say how this has been implemented in practice.
37. Lawyers continue to face restrictions when taking death penalty cases, as well as other politically sensitive cases. Lawyers taking death penalty cases face pressure from judicial authorities and are unable to access information, including case files, vital to provide an adequate defence for their client.<sup>27</sup> The system of annual lawyer license renewal is a form of control and enables the authorities to disbar lawyers who challenge state authority and take sensitive cases.<sup>28</sup>
38. In Hong Kong, the NSL has been used to deny bail to defendants awaiting trial. Article 42 of the law states that the judge should not grant bail unless they have sufficient grounds to believe that the suspect will not continue to commit acts endangering national security on release.<sup>29</sup> Previous presumption of bail has been reversed under these vague provisions.

### ***Public participation***

39. ***A number of countries, including France (28.205), Costa Rica (28.338) and the United States of America (28.336), recommended China guarantee rights of human rights defenders and civil society including freedom of expression and peaceful association. China supported recommendations from France and Costa Rica but rejected the recommendation from the USA.***
40. Since 2018, the space for civil society to publicly participate has diminished in both mainland China and Hong Kong. Those working to end discrimination for a wide range of groups have been targeted. This includes human rights lawyers and defenders, religious groups, women’s rights advocates, LGBTIA+ groups, Uyghurs and Tibetans.
41. In Hong Kong, the right for citizens to participate in public decision-making has diminished. In July 2023, the District Councils (Amendment) Bill 2023 was passed in the Legislative Council of Hong Kong. The bill reduces the number of democratically elected seats to only 20%, down from 452 seats in 2019 to 88 in 2023.<sup>30</sup> Candidates will also need to have national security vetting. This comes in response to a victory by the pro-democratic camp in the District Council election in 2019 and further restricts Hong Kong citizens’ right to participate.

42. ***During the last UPR of China, the United States of America (28.150) recommended that China “amend the definition of subversion to remove all exercise of an individual’s human rights and fundamental freedoms from its scope.”***
43. China did not accept this recommendation, and has taken no steps to amend the definition of subversion. In the revisions to the Criminal Law of the PRC in 2021, there were no revisions to article 105 which outlines the national security crimes of “inciting subversion of State power” and “subversion of State power”.<sup>31</sup> These offences are not clearly defined.
44. Chinese authorities have increasingly used national security offences to punish human rights defenders and rights lawyers. On 10 April 2023, human rights lawyers Xu Zhiyong (许志永) and Ding Jiayi (丁家喜) were sentenced to 14 and 12 years in prison respectively, on charges of “subversion of State power”.<sup>32</sup> They were tried in secret in June 2022 and had limited access to lawyers.<sup>33</sup>
45. Huang Xueqin (黄雪琴), an independent journalist and women’s rights defender and Wang Jianbing<sup>34</sup>, a labour rights advocate, have been detained since 19 September 2022. They were formally arrested on charges of “inciting subversion of state power” after 37 days. They have had limited access to meet lawyers, or their families. There are concerns they have been subjected to torture and are suffering ill health.<sup>35</sup>
46. Human rights lawyer Wang Quanzhang (王全璋) and his wife and son have been evicted from 13 homes over two months.<sup>36</sup> Lawyer Li Heping (李和平), his wife and daughter were prevented from leaving China to travel to Thailand on the grounds that it would “endanger national security”.<sup>37</sup>
47. In Hong Kong, article 43 of the NSL has become the legal weapon of choice for Hong Kong police to threaten civil society.<sup>38</sup> The article sets out sweeping powers that Hong Kong national security police can apply when investigating alleged offences endangering national security. They can conduct surveillance and order the suspected person to surrender travel documents, forfeit property, and answer questions relevant to the investigation.
48. Chow Hang-tung (鄒幸彤), Hong Kong lawyer and former vice chair of the Hong Kong Alliance, was arrested on 8 September 2021. She has been detained since then on a number of charges and refused bail. On 4 March 2023, she was found guilty of failing to comply with a police request for information to assist in an investigation of the Hong Kong Alliance, under article 43 of the NSL.<sup>39</sup> She has also been charged with “incitement to state subversion” (article 22).
49. At the start of 2021, 47 pro-democracy politicians were arrested and in June 2021, authorities began to target Hong Kong civil society.<sup>40</sup> Groups targeted include independent media outlets, lawyers, pro-democracy lawmakers, and NGOs. According to the Hong Kong police, as of July 2023, 260 people have been arrested under the NSL.<sup>41</sup>
50. The NSL, article 38, states that the law shall apply to offences committed “from outside the region by a person who is not a permanent resident of the region”.<sup>42</sup> The law can be applied to individuals committing vague offences from anywhere in the world. On 3 July 2023, Hong

Kong national security police issued arrest warrants and HK\$1 million rewards for eight activists, including former lawmakers, lawyers and NGO workers, living overseas.<sup>43</sup> They are accused of national security offences.

## Endnotes

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