

UN Universal Periodic Review of China. Mid-term Report.

The Rights Practice
November 2021

The Rights Practice works to promote 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, reduce the application of the death penalty and support civil society. This mid-term report is informed by stakeholder consultations and review of Chinese law and recent cases.

We are a UK registered human rights charity (England and Wales 1133616).

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I. INTRODUCTION

1. The Third Cycle 31st Session UN Universal Periodic Review (UPR) of China took place in November 2018. In this mid-term report we reflect on the recommendations made to China, China's response¹, the developments since the last UPR and our key concerns.
2. We focus on two thematic areas: the use of the death penalty and the deprivation of liberty and risk of torture, including in the Xinjiang Uyghur Autonomous Region (XUAR). These are interrelated.
3. The interests of the Chinese state and communist party influence every element of the criminal justice system. The police, procuratorate and the courts all operate within this system and share privileged information among themselves.²
4. Our key cross-cutting concerns are: obstacles to the right to a fair trial, restricted access to lawyers and the lack of judicial transparency.

II. DEATH PENALTY

5. China is estimated to be the world's leading executioner, executing thousands each year, but statistics on the death penalty are classified as a state secret. Secrecy also limits fair trial rights.
6. China currently has 46 crimes for which the death penalty can be imposed, including non-violent crimes. The last reduction in the number of capital crimes was in 2015 (ninth amendment to the Criminal Law). The majority of capital crimes do not meet the criteria of "most serious crimes."
7. A death sentence in China is either approved with 'immediate execution' or with a 'two-year suspension'.³ Increased use of the suspended death sentence has reduced executions but it is also associated with higher risks of miscarriages of justice.

2018 UPR

8. China did not support, or accept, any recommendations on the death penalty made at the last UPR.
9. Four states—Columbia (28.11), Costa Rica (28.11), Estonia (28.11) and Honduras (28.2)—recommended that China accede, ratify or make meaningful steps towards ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR). China did not accept these recommendations.
10. A total of 17 (28.158 – 28.169) other states made recommendations on the death penalty, some states made more than one recommendation. China did not accept any of these recommendations.

¹ A/HRC/40/6/Add.1

² The Rights Practice, "Respect for Minimum Standards? Report on the Death Penalty in China," October 2020. <https://www.rights-practice.org/news/respect-for-minimum-standards-report-on-the-death-penalty-in-china>

³ The Rights Practice. "Death sentences in China". October 2021. <https://www.rights-practice.org/death-sentences-in-china>

11. Specifically, states recommended that China establish a moratorium on all executions and take steps towards abolition; further reduce the number of crimes punishable by the death penalty; increase transparency and publish death penalty statistics.

Developments since UPR

12. Since the last UPR, China has made no steps towards ratifying the ICCPR and Second Optional Protocol, it has not established a moratorium nor reduced the crimes punishable by death.
13. Death penalty statistics remain a state secret and are not published. Since the last UPR, China has further moved away from judicial transparency. Since July 2021, thousands of death penalty cases, including all Supreme People's Court (SPC) review decisions, have been taken off China Judgements Online. This is an online database of decisions from all levels of Chinese courts.⁴
14. Since the last UPR, politically motivated death sentences have been imposed in China. For example, Canadian Robert Schellenberg was sentenced to death in January 2019, upheld in 2021, which coincided with Chinese pressure on Canada to release Meng Wanzhou, CFO of telecommunications company Huawei. It is widely seen as retaliation for Meng's case.⁵
15. Several prominent Uyghurs are reported to have been given two-year suspended death sentences for "separatism" in secret proceedings. These include Sattar Sawut, former Deputy Secretary of the Education and Work Committee in XUAR and Shirzat Bawudun, former head of the department of justice in the XUAR.⁶
16. In August 2021, China adopted a new Legal Aid Law. This will take effect on 1 January 2022. 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.⁷ This could be viewed as a step forward in guaranteeing the right to an effective defence in death penalty cases, but it is unclear how this will be implemented in practice, particularly in light of restrictions on the role of lawyers and distrust in state-provided legal aid.
17. In September 2021, China published a "Human Rights Action Plan" (HRAP) in which it set out the objectives and tasks related to human rights from 2021 to 2025.⁸ China stated that it will further specify the application of laws, procedures and rules for capital sentences to "ensure the death penalty is only applicable to very few criminals guilty

⁴ Dui Hua. "China: All State Security Judgments Purged from Supreme Court Site." 26 July 2021. <https://www.duihuajournal.org/2021/07/china-all-state-security-judgments.html?m=0>

⁵ Davidson, Helen. "China court upholds death sentence against Canadian Robert Schellenberg". The Guardian. 10 August 2021. <https://www.theguardian.com/world/2021/aug/10/china-death-sentence-canadian-robert-schellenberg-michael-spavor>

⁶ The Rights Practice. "Criminal Law and Deprivation of Liberty: Xinjiang Uyghur Autonomous Region" Working Paper. 31 August 2021. <https://www.rights-practice.org/Handlers/Download.ashx?IDMF=2cc37e4d-31f6-4870-b7fa-3607fa63d102>

⁷ Standing Committee of the National People's Congress, "Legal Aid Law of the People's Republic of China," 8 August 2021. <https://www.chinalawtranslate.com/en/legal-aid-law/>

⁸ State Council Information Office, The People's Republic of China. "Full Text: Human Rights Action Plan of China (2021-2025)," 9 September 2021. http://english.scio.gov.cn/scionews/2021-09/09/content_77742681.htm

of very serious crime”. No further guidance has been published and it is unclear how this will be implemented in practice.

Key concerns

18. The death penalty continues to be used for non-lethal crimes, including drug crime.
19. Lawyers face pressure from judicial authorities and are unable to access information vital to provide an adequate defence for their client in death penalty cases. Even if an individual sentenced to death has access to a lawyer, an effective defence cannot be guaranteed. There is a high risk of arbitrary execution in the use of the death penalty.
20. Lack of transparency in the application and imposition of the death penalty impacts those facing execution, their families and wider society. China cannot claim to have reduced executions or improved criminal procedure while judicial secrecy continues. China voted against the most recent Human Rights Council resolution, adopted at the 48th session in October 2021, calling for increased transparency and abolition of the death penalty.⁹
21. Suspended death sentences are subject to less rigorous review procedures than death sentences with immediate execution. There are risks that the sentence is associated with unsafe convictions and is being used politically.

III. DEPRIVATION OF LIBERTY AND TORTURE

22. Procedures to deprive someone of their liberty in China do not meet international standards. Individuals are placed at risk of torture or cruel, inhuman and degrading treatment or punishment.
23. There is no independent, external monitoring of detention facilities in China, including within the criminal justice system.
24. China officially abolished the system of ‘re-education through labour’ (RETL), a form of administrative detention, in 2014. However, China continues to use other forms of arbitrary and administrative detention including the so-called ‘vocational and education training centres’ in XUAR. These internment camps have no legal basis under Chinese law.¹⁰ Uyghur detainees are at high risk of torture and ill-treatment, including sexual and gender-based violence.¹¹
25. The 2015 Counter-Terrorism Law introduced a provision for ‘educational placements’ for prisoners following completion of a prison sentence. In XUAR these placements involve further detention in a camp and are, theoretically, open-ended.

⁹ Human Rights Council. Forty-eighth session. “48/. Question of the death penalty.” 13 September – 8 October 2021. <https://undocs.org/a/hrc/48/1.17/rev.1>

¹⁰ Donald Clarke, “No, New Xinjiang Legislation Does not Legalize Detention Centers”. Lawfare. 11 October, 2018. <https://www.lawfareblog.com/no-new-xinjiang-legislation-does-not-legalize-detention-centers>; Jeremy Daum, “Explainer on Xinjiang Regulations”, China Law Translate. 11 October, 2018. <https://www.chinalawtranslate.com/en/explainer-on-xinjiang-regulations/>.

¹¹ The Rights Practice. “Invisible Pain: sexual and gender-based violence in Xinjiang.” November 2020. <https://www.rights-practice.org/news/invisible-pain>

26. Official data from 2017-2019 shows a huge spike in the number of persons arrested and charged in XUAR. There was a 731.6% increase in arrests in 2017 over the previous year. This will have increased the risk of unfair trials and prison overcrowding.¹²
27. For individuals facing criminal charges, the police have the power to place a suspect in ‘residential surveillance in a designated location’ (RSDL) including if a person is suspected of national security crimes. It is commonly used against human rights defenders.
28. RSDL is unregulated, although legal under the Chinese Criminal Procedure Law, and is a form of enforced disappearance.¹³ It allows the police to hold an individual, prior to arrest, for up to 6 months in any location or building chosen by police, without access to a lawyer and without judicial oversight.

2018 UPR

29. China did not support, or accept, any recommendations regarding arbitrary detention including in XUAR, and RSDL, made at the last UPR. China accepted a recommendation from Sweden (28.171) to respect the rights of all detainees under relevant human rights instruments and claimed that it was already implemented. China also accepted a recommendation by Australia (28.170) to strengthen measures preventing torture and ill-treatment.
30. Three countries—Honduras (28.2), Denmark (28.13) and Estonia (28.13) —recommended China ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). China did not accept these recommendations.
31. Three countries—United Kingdom of Great Britain and Northern Ireland (28.22), France (28.23) and New Zealand (28.21) —recommended China implement the recommendations of the Committee on the Elimination of Racial Discrimination (CERD) on XUAR.
32. Fourteen countries—United Kingdom (28.22), France (28.23), Switzerland (28.35), Netherlands (28.42), Norway (28.32), Finland (28.325), Denmark (28.27), Ireland (28.24), Australia (28.317), Austria (28.34), Ukraine (28.25), Croatia (28.26), Germany (28.28), Hungary (28.28) —recommended China allow relevant UN bodies, including UN High Commissioner for Human Rights, unfettered access to XUAR, and all regions of China.
33. Seven countries recommended China ends all arbitrary detention of religious and ethnic minorities including in XUAR. China did not accept the recommendations and in response to Australia, and repeated for others, stated: “In Xinjiang Uyghur Autonomous Region, where efforts are made to fight terrorist extremism in accordance with law,

¹² The Rights Practice. “Criminal Law and Deprivation of Liberty: Xinjiang Uyghur Autonomous Region” Working Paper. 31 August 2021. <https://www.rights-practice.org/Handlers/Download.ashx?IDMF=2cc37e4d-31f6-4870-b7fa-3607fa63d102>

¹³ International Service for Human Rights, The Rights Practice, Safeguard Defenders and The 29 Principles. ‘Call on China to free defenders and #RepealRSDL’. 25 October, 2021. <https://ishr.ch/action/campaigns/call-on-china-to-free-defenders-and-repealrSDL/>

human rights are also seriously protected. There is no such problem as arbitrary detention.”

34. Two states—Germany (28.180) and Switzerland (28.176)—specifically recommended that China put an end to the practice of RSDL. China did not accept and stated “China is a country under the rule of law, and its judicial organs operate in accordance with laws and regulations.”
35. Five states—Iceland (28.181), United States of America (28.336), Czechia (28.213), Switzerland (28.176) and Australia (28.333)—specifically made recommendations to release human rights defenders that are imprisoned for their work or in arbitrary detention.

Developments since UPR

36. Since the last UPR, China has not responded to calls to grant unfettered access to XUAR for relevant UN bodies such as the UN Office of the United Nations High Commissioner for Human Rights or special procedures experts.
37. China has made no progress towards signing the OPCAT and has rejected the provision of visits to state parties. Ratification of OPCAT would require independent monitoring of all detention facilities.
38. ‘Vocational and education training centres’ in XUAR continue to be illegal under China’s domestic laws. Lack of transparency and lack of unfettered access to the region means there is no reliable data on how many individuals remain detained or the conditions of detention, it is likely that mass detentions are ongoing.
39. In August 2019, China’s State Council Information Office issued a White Paper on “Vocational Education and Training in Xinjiang” providing further details and justification of its policies in XUAR. The White Paper describes ‘education and training centres’ as an administrative punishment targeting persons accused of “terrorist or extremist activities” that “were not serious enough to constitute a crime.” None of the sources of ‘law’ cited by the 2019 White Paper give the police the authority to deprive persons of their liberty for more than twenty days without judicial oversight.¹⁴
40. The practice of ‘residential surveillance at a designated location’ (RSDL) continues to be used by police to hold individuals, including human rights defenders, incommunicado. There has been a strong increase in the use of RSDL since 2016, peaking in 2020.¹⁵
41. Incommunicado detention continues to be used against Chinese human rights defenders. In July 2019, police in Changsha detained NGO workers Cheng Yuan, Liu Dazhi and Wu Gejianxiong.¹⁶ They were held incommunicado by state security until a secret trial

¹⁴ State Council Information Office White Paper, “Vocational Education and Training in Xinjiang,” August 17, 2019, http://english.www.gov.cn/archive/whitepaper/201908/17/content_WS5d57573cc6d0c6695ff7ed6c.html.

¹⁵ International Service for Human Rights, The Rights Practice, Safeguard Defenders and The 29 Principles. ‘Call on China to free defenders and #RepealRSDL’. 25 October, 2021. <https://ishr.ch/action/campaigns/call-on-china-to-free-defenders-and-repealrSDL/>

¹⁶ The Rights Practice. “A Secret Criminal Process”. May 2020. <https://www.rights-practice.org/News/a-secret-criminal-process>

two years later resulted in a prison sentence. In October 2020, lawyer Chang Weiping was disappeared under RSDL for “inciting subversion of State power” and his whereabouts remain unknown. He has not been able to meet with a lawyer or family members and has made allegations of torture during an earlier period in RSDL.¹⁷

42. In the “Human Rights Action Plan” (HRAP), September 2021, China states that “regulations on detention house management will be improved to better protect detainees’ rights.” In June 2017 the Ministry of Public Security issued a draft Detention Centre Law for public consultation. The Detention Centre Law will update the 1990 Detention Centre Regulations. The draft law keeps detention centres under police control and there has been no progress in bringing the legislation to the National People’s Congress.
43. China also states in the HRAP that it intends to reduce the rate of pretrial detention and will “improve the mechanism for reviewing the necessity of detention, promote substantive review over the extension of the detention period, and regulate and improve supervision of non-detention measures such as release on bail pending trial.” It does not provide more detail on how this will be achieved nor is there a commitment to judicial oversight of the decision to detain.

Key concerns

44. Despite attempts by China to justify so-called ‘vocational and education training centres’ in XUAR, they remain an illegal form of detention under China’s own domestic laws. Detainees do not have access to a lawyer or the right to a fair trial. The risk of torture is high.
45. The XUAR’s massive and disproportionate use of criminal proceedings against Uyghurs enables long prison terms and provides a veneer of legitimacy. We encourage the international community to challenge the use of the legal process, particularly during Strike Hard and other political campaigns.
46. ‘Residential surveillance at a designated location’ (RSDL) is an unregulated and unmonitored form of detention that leaves detainees vulnerable to both physical and psychological torture. There is evidence that this practice is being increasingly used by police, including to target human rights defenders. RSDL should be repealed.
47. Lack of transparency over the use of detention hugely impacts researchers, lawyers and the families of those detained.

¹⁷ OHCHR. “China: Shock at continued crackdown on human rights defenders and lawyers – UN expert.” 16 December 2020. <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26612&LangID=E>