

# UPR MONITOR

International Service for Human Rights



Human Rights Monitor Series

## UNIVERSAL PERIODIC REVIEW, 4<sup>TH</sup> SESSION CHINA REVIEWED ON 9 FEBRUARY 2009, MORNING

### Overview

The Permanent Representative of China in Geneva, Mr Li Baodong, led the high-level delegation consisting of Ministers from various Government portfolios and a judge of the Supreme People's Court of China. The delegation also included representatives of the special administrative regions of Macao and Hong Kong. The delegation appeared well-prepared and, as the review progressed, responded to each question posed in a direct manner but categorically denied some key allegations.

China's review was extremely well-attended with 115 States inscribed to comment at the session. As such, many States were unable to address the delegation at the review due to time constraints. The High Commissioner for Human Rights, Ms Navi Pillay, was in attendance and was invited by the Chinese delegation to visit the country at a 'mutually convenient time'. The large majority of State comments were laudatory, in particular commending China's efforts to eradicate poverty and achieve universal education. Nonetheless, some States recommended China take steps to ratify the *International Covenant on Civil and Political Rights* (ICCPR) and work towards eliminating the use of capital punishment. A few States addressed the right of journalists and human rights defenders to express themselves freely, the right to due process, the rights of detainees and the rights of ethnic and religious minorities in Tibet and Xinjiang.

The delegation appeared co-operative, but only with issues it deemed to be within the ambit of the UPR discussion. The Chinese delegation answered questions on its 'Re-education Through Labour' (*RTL*) policy, its stance on the death penalty, the fairness of its legal system and the right to freedom of expression, notably denying the existence of any State censorship. It expressly regretted what it regarded to be the 'ill-founded politicisation' of the UPR embodied in comments concerning Tibet and the situation of the Uighur people, asserting that the rights of religious minorities were respected.

### General information on China

- China is a member of the Human Rights Council until June 2009 (1<sup>st</sup> term).
- The members of the troika for the examination of China were India, Canada and Nigeria.<sup>1</sup>
- The national report indicates that it was prepared by a Special Task Force co-ordinated by the Ministry of Foreign Affairs and comprised of various judicial, legislative and administrative arms of

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<sup>1</sup> China requested that a member of its regional group be among its troika. There were no objections by China or by the members of the troika to the selection. For a full summary of the selection of troikas, see ISHR's *Daily Update* of 8 September 2008, available at [www.ishr.ch](http://www.ishr.ch).

Government. It details that oral and written consultations were held with 20 Chinese NGOs<sup>2</sup> and academic institutions while broader public consultations were conducted through the website of the Ministry of Foreign Affairs. It is worth noting however that a cursory look at the websites of the listed NGOs with whom consultation was said to have taken place reveals substantial laudatory material, lacking discernible criticism of State policy.

### Information submitted to the Working Group

The **national report** of China<sup>3</sup> seeks to describe the status of economic, social and cultural rights as well as civil and political rights in the country. It details specific Government measures implemented, uses numerical evidence to substantiate claims of improving situations and describes the domestic legal framework supporting human rights in China. Shortcomings in respect of an effective social security system, environmental protection, food safety and work safety are admitted, though not exhaustively, in a seemingly self-critical assessment.

The OHCHR **compilation of UN information**<sup>4</sup> focuses on the persecution of religious minorities<sup>5</sup>; State restrictions on access to information and limitations on the right to freedom of expression, particularly for journalists and human rights defenders;<sup>6</sup> the extended use of administrative detention, including re-education through labour;<sup>7</sup> and the accompanying failure to investigate allegations of torture and other ill-treatment.<sup>8</sup>

A total of 46 national and international non-governmental organisations (NGOs) submitted information for the OHCHR **summary of stakeholders' information**.<sup>9</sup> The key issues include: the incidence of torture in detention and deaths in custody and a lack of transparent investigation into both;<sup>10</sup> repression of religious minorities, particularly Tibetan Buddhists, Xinjiang Uighurs and Falun Gong practitioners;<sup>11</sup> State interference in the legal process, denying Tibet Buddhists and Falun Gong practitioners access to legal representation;<sup>12</sup> the urgent need to reform administrative detention mechanisms including 're-education through labour' and 'black jail' facilities;<sup>13</sup> stringent censorship of the media and arbitrary detention of

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<sup>2</sup> All-China Women's Federation, All-China Federation of Trade Unions, China Disabled Persons' Federation, China Society for Human Rights Studies, United Nations Association of China, Law Institute of the Chinese Academy of Social Sciences, China NGO Network for International Exchanges, Red Cross Society of China, China Family Planning Association, China Centre of Tibetan Studies, China Care Association, China Ethnic Minority Association for International Exchanges, China Association of Women Entrepreneurs, China Glory Charity Programme Promotion Association, China Education Association for International Exchange.

<sup>3</sup> A/HRC/WG.6/4/CHN/1, available

at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A\\_HRC\\_WG6\\_4\\_CHN\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_WG6_4_CHN_1_E.pdf)

<sup>4</sup> A/HRC/WG.6/4/CHN/2, available at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A\\_HRC\\_WG6\\_4\\_CHN\\_2\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_WG6_4_CHN_2_E.pdf)

<sup>5</sup> Committee on Economic, Social and Cultural Rights (CESCR), Committee against Torture (CAT), Committee on the Elimination of Discrimination Against Women (CEDAW), Committee on the Rights of the Child (CRC), Special Rapporteur on freedom of religion or belief, Special Representative of the Secretary General on Human Rights Defenders, Working Group on Arbitrary Detention, the Special Rapporteur on the right to freedom of opinion and expression, the Independent Expert on minority issues, Special Rapporteur on torture.

<sup>6</sup> CESCR, Special Representative of the Secretary General on Human Rights Defenders.

<sup>7</sup> CAT, CESCR, CRC, ILO Committee of Experts on the Application of Conventions and Recommendations, Working Group on Arbitrary Detention.

<sup>8</sup> CAT, Special Rapporteur on torture.

<sup>9</sup> A/HRC/WG.6/4/CHN/3, available

at [http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A\\_HRC\\_WG6\\_4\\_CHN\\_3\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/CN/A_HRC_WG6_4_CHN_3_E.pdf)

<sup>10</sup> Chinese Human Rights Defenders (CHRD), China Society for Human Rights Studies (CSHRS), Amnesty International (AI).

<sup>11</sup> The Becket Fund (TBF), Human Rights Without Frontiers International (HRWFI), Human Rights Watch (HRW), the Falun Gong Human Rights Working Group (FGHRWG).

<sup>12</sup> China Human Rights Lawyers Concern Group (HRLCG), Lawyer's Rights Watch Canada (LRWC), HRW.

<sup>13</sup> United Nations Association of China (UNA-C), AI, CHRD, International Trade Union Conference (ITUC).

journalists and human rights defenders;<sup>14</sup> trafficking of women;<sup>15</sup> growing inequality between rural and urban areas exacerbated by the *hukou* residency system;<sup>16</sup> and the lack of an adequate social welfare framework.<sup>17</sup>

## Interactive dialogue<sup>18</sup>

### Presentation by the State

Mr Baodong delivered a relatively short introductory address of 15 minutes, broadly re-iterating the achievements outlined in the national report. He outlined the broad-based consultations the Chinese Government had undertaken to prepare the national report and spoke of their readiness for ‘responsible, open and sincere’ dialogue with the Working Group. Notably, the opening remarks failed to specifically address the questions submitted in advance by other States. In this regard, Mr Baodong did not comment on the right to freedom of expression, incidence of torture in administrative detention or reforms to address the socio-economic disparity between rural and urban areas.

### Themes and issues

Many States commended China’s **strategy to alleviate poverty**,<sup>19</sup> particularly in rural areas, and lauded its efforts to provide universal education.<sup>20</sup> Many noted with appreciation the significant decline in infant mortality rate and fighting contagious disease<sup>21</sup>, the rise in the literacy rate<sup>22</sup> and the marked reduction in poverty. A few States asked China to share its knowledge in these areas with other developing countries.<sup>23</sup> However the Phillipines, Algeria, Morocco, Sweden and Brazil reminded the delegation of the significant inequality between urban and rural areas and underscored the need to develop an effective **social welfare framework**. The delegation responded that the Government had implemented a subsidised housing scheme to assist low-income families but conceded that State social security was very basic and needed reform.

Substantial review time turned on the **right to freedom of expression**, with Australia, the United Kingdom, France and Finland, calling for an end to all instances of harassment and unlawful detention of journalists and human rights defenders. In this regard, the Chinese delegation reiterated that the Constitution expressly guaranteed freedom of expression and denied any Government censorship, stating that it encouraged the media’s role as a ‘watchdog’. Notably, the Iranian delegation declared that the ‘negative impact of the internet can never be underestimated’ and encouraged China to strengthen its internet governance to ban pornographic material and prohibit access to sites encouraging racial hatred. The delegation emphasised that no individual had been penalised for voicing his or her views and that any obstacles encountered when reporting on sensitive issues emerged from private parties with an interest in the story, not the Government.

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<sup>14</sup> International PEN (I-PEN), Reporters sans Frontiers (RSF), Hong Kong Human Rights Monitor (HKHRM), AI, Human Rights First (HRF), CHR.D.

<sup>15</sup> All-China Women’s Federation (ACWF), ITUC.

<sup>16</sup> ITUC, Asociacion Nacional de Economistas de Cuba (ANEC), HRW, Tibetan Women’s Association (TWA).

<sup>17</sup> HRW, China Economic and Social Council (CESC).

<sup>18</sup> Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at [www.ohchr.org/english/bodies/hrcouncil/form.htm](http://www.ohchr.org/english/bodies/hrcouncil/form.htm) to receive username and password. Audiovisual archives of the meetings of the Working Group ‘webcast’ are available at [www.un.org/webcast/unhrc/index.asp](http://www.un.org/webcast/unhrc/index.asp).

<sup>19</sup> Singapore, Philippines, Algeria, Bhutan, Egypt, Libya, Mexico, South Africa, Cuba, Ghana, Angola, Vietnam, Latvia, New Zealand, Venezuela, Senegal, Brazil, Malaysia.

<sup>20</sup> Singapore, Libya, Mexico, Ghana, Mozambique, Angola, Palestine, New Zealand, Portugal, Myanmar, Malaysia.

<sup>21</sup> Mexico, Ghana, Bahrain, Palestine, Portugal, Senegal, Myanmar, Brazil, Malaysia.

<sup>22</sup> Singapore, Mexico, Ghana, Brazil.

<sup>23</sup> Phillipines, Bhutan, Sri Lanka, Angola, Vietnam, Malaysia.

While China was commended for its efforts in implementing rights enshrined in the ICESCR,<sup>24</sup> a number of States encouraged China to take steps to **ratify the ICCPR** and to harmonize their domestic legislation with the provisions of the Convention.<sup>25</sup> The delegation explained that the Government is currently in the process of reconciling domestic law with the ICCPR in order to minimise reservations at the time of ratification which, it assured the Working Group, would be in the near future.

A small number of States called for the **fair treatment of detainees**, including access to legal representation, the right to receive visitors, and freedom from the abuse of authorities.<sup>26</sup> In addition, China's Re-education Through Labour (RTL) sanction attracted varied opinion; Canada and Hungary called for its abolition while Sudan sought to justify its effectiveness, recognising its roots in Chinese culture, its legal basis and its important role in long-term rehabilitation. The Chinese delegation defended the use of RTL, explaining that it facilitated the cultivation of values conducive to reintegration of criminals into society. Further, as a number of States expressed concern at reports of **torture in detention**,<sup>27</sup> the Chinese delegation strongly affirmed that China possessed a legal framework strictly prohibiting torture or any physical or oral abuse of detainees and that the number of such cases is declining. The delegation denied the existence of 'secret prisons' and expressed that if instances of torture emerged, the perpetrator is criminally responsible under Chinese law.

Many States welcomed the decline in the application of the **death penalty** and recommended that China work towards abolishing it entirely.<sup>28</sup> Australia, Canada, the United Kingdom, Germany and Austria suggested limiting the crimes to which the death penalty was applied, while Switzerland, New Zealand and Brazil called for a moratorium with a view to its early abolition. Further, China was criticised for a lack of transparency in executions, excluding such punishment from independent judicial scrutiny and making it difficult to determine exact numbers.<sup>29</sup> The Chinese delegation characterised capital punishment as a controversial issue and explained that current circumstances in China do not permit its abolition without elaborating further. Nevertheless, Mr Baodong assured the Working Group that the death penalty was only applied in very particular circumstances and in a transparent manner. Mr Baodong further explained that in many cases sentences could be commuted and that the Government was considering reducing the number of crimes that could invoke capital punishment.

A very low number of States underscored the importance of respecting religious freedoms and the rights of minorities. Australia, Switzerland, the United Kingdom and the Czech Republic drew attention to the **rights of Tibetans**<sup>30</sup> while only Switzerland and the Czech Republic mentioned **the Uighurs in Xinjiang**.<sup>31</sup> While a number of States broached the issue sensitively by merely commenting on the need to protect minority rights<sup>32</sup>, the Australian delegation notably criticised the Chinese Government for their harassment, punishment and arbitrary detention of these minority groups. Interestingly, the comments of the Australian delegation were openly regretted by other members of the Working Group<sup>33</sup>, while the Chinese delegation itself categorically rejected the comments as an 'ill-founded attempt to politicise the discussion'. Mr Baodong stressed that all of China's ethnic minorities enjoy extensive autonomous rights and that the Government had adopted substantial mechanisms to safeguard the culture of these minority groups.

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<sup>24</sup> Singapore, Philippines, Russian Federation, United Kingdom, Sudan, Japan, Qatar.

<sup>25</sup> Australia, Canada, Switzerland, Algeria, Libya, Mexico, United Kingdom, France, Japan, New Zealand, Argentina, Portugal, Austria, Sweden, Thailand, Hungary.

<sup>26</sup> Australia, Switzerland, Germany, Czech Republic, New Zealand, Sweden.

<sup>27</sup> Australia, Germany, France, Czech Republic, Argentina.

<sup>28</sup> Australia, Canada, Netherlands, Switzerland, United Kingdom, Germany, France, New Zealand, Austria, Brazil, Italy.

<sup>29</sup> Australia, Switzerland, United Kingdom, France, New Zealand, Austria, Italy.

<sup>30</sup> Australia, Switzerland, United Kingdom, Czech Republic.

<sup>31</sup> Switzerland, Czech Republic.

<sup>32</sup> Netherlands, Germany, Japan, Austria.

<sup>33</sup> Algeria, Sri Lanka, Pakistan, Myanmar.

States also engaged China in discussion on the following themes: plans to address burgeoning unemployment in the wake of the global financial crisis;<sup>34</sup> praise for its assistance to developing countries in exercising their right to development;<sup>35</sup> the promotion of gender equality;<sup>36</sup> the protection and promotion of children's rights, particularly the fight against child labour;<sup>37</sup> providing judicial officers with human rights training;<sup>38</sup> the rights of disabled persons;<sup>39</sup> and labour rights and the rights of migrant workers.<sup>40</sup>

### Adoption of the report

The Working Group adopted its draft report on China two days after the review on 11 February 2009. The troika thanked the Government of China for its commitment to the UPR process and commended what it saw as the constructive spirit underpinning the interactive dialogue.

Though he did not yet identify any recommendations that the Government had chosen to accept, Mr Baodong expressed China's acceptance of those that 'suit China's realities' and indicated the Government's plans to implement them earnestly in the future. Mr Baodong stated his belief that 'invisible recommendations which did not suit China's reality' had been clearly rejected during the review. Though he did not refer specifically to any particular recommendation, it would appear Mr Baodong was referring to recommendations to abolish the death penalty completely and to reform the RTL rehabilitative framework. Further, the delegation stated that there were some recommendations that required further examination.

China refrained from taking a position on the outstanding recommendations made to it with a view to do so at the adoption of the outcome report by the Human Rights Council at its 10<sup>th</sup> session in March 2009.

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<sup>34</sup> Ghana, Morocco, Palestine.

<sup>35</sup> Sudan, Angola, Vietnam, Mali.

<sup>36</sup> Singapore, South Africa, Uzbekistan, Mozambique, Angola, Vietnam, Palestine, Portugal, Brazil.

<sup>37</sup> Uzbekistan, Finland, Qatar.

<sup>38</sup> Netherlands, Germany, UAE, Gabon, Qatar.

<sup>39</sup> Mexico, France, Yemen, Portugal.

<sup>40</sup> Morocco, Senegal, Colombia, Brazil.

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