Second Universal Periodic Review of the People’s Republic of China: Preparatory Analysis

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Executive Summary

China accepted a total of 42 recommendations put forward by the member states of the Human Rights Council during interactive dialogue at its 2009 Universal Periodic Review. Of these 42 recommendations, a total of 12 address core concerns of the EU with regard to human rights practices in China, including a total of five recommendations put forward by EU member states.

Analysis of how ‘concrete and effective’ the measures taken by China to implement these recommendations have been revealing: a deterioration in human rights practices as they apply to ethnic minorities, particularly in Tibet, and little or no concrete progress on ratification of the ICCPR or cooperation with international human rights mechanisms and procedures. At the same time, little or no progress is identified in the areas of judicial reform and civil society, although numerous promised reforms are noted including those relating to: re-education through labour; the household registration system; the petitioning system; the independence of the judiciary and the anticipated changes to the dual-registrations system for the management of civil society organisations. Finally, significant progress is identified with regard to the use of the death penalty, although the impossibility of accurately assessing the practical impact of ongoing legal reform in the absence of reliable statistical data is also noted.

In relation to the role of civil society in preparing core UPR documentation including stakeholders’ submissions and the National Report, information provided by organisations working on the ground in mainland China would indicate that those engaging in advocacy related to the UPR face persistent pressure from the authorities. None of the independent groups contacted were aware of any new government-led initiatives aimed at making preparation of the National Report more inclusive or reflective of a broader range of views. However, it would seem that, in spite of efforts to restrict public information on the UPR process and to apply pressure to those independent organisations willing to make stakeholders’ submissions, independent civil society will contribute to the 2013 review in greater numbers than was the case in 2009.

Concern regarding gaps in the implementation of China’s human rights treaty obligations, highlighted by the concluding observations of UN treaty bodies issued since 2009, centre on a catalogue of violations in relation to the rights of ethnic minorities and concern with the ‘prevalence of the medical model of disability’ in China, as well as the ‘lack of a comprehensive disability strategy’ to implement the Convention on the Rights of Persons with Disabilities. Finally, the absence of relevant disaggregated statistical data necessary to formulate an accurate assessment of compliance with any of the six human rights treaties ratified by China is also noted.

Policy recommendations for the EU and its Member States proceeding from this analysis include: the need to provide programmatic support for UPR awareness raising and capacity building activities targeting independent civil society in China; the need for the EU Member States to focus on a limited number of core concerns at the 2013 UPR; the need to avoid focusing exclusively on recommendations accepted by China; the need to request specific information from China in relation to core concerns; and the need to raise individual cases to illustrate such concerns where possible.
Introduction

China will undergo its second Universal Periodic Review (UPR) before the UN Human Council in October 2013. The analysis presented below examines how ‘concrete and effective’ the measures taken to implement recommendations received by China at its last review in 2009 have been, the role of civil society in preparing for the 2013 review and gaps in the implementation of China’s international human rights treaty obligations.

1. Implementation of 2009 recommendations

China accepted a total of 42 recommendations put forward by the member states of the Human Rights Council during interactive dialogue at its 2009 UPR. Of these 42 recommendations, a total of 12 address core concerns of the EU with regard to human rights practices in China, including a total of five recommendations put forward by EU member states. These 12 recommendations can be broken down by subject matter into the following subcategories:

- Ratification of the International Covenant on Civil and Political Rights
- Co-operation with international human rights mechanisms and procedures
- The death penalty
- Minority rights
- Judicial reform
- Civil society

The measure taken to implement recommendations received in each of these subcategories is assessed separately below.

1.1 ICCPR ratification

Recommendations put forward by Algeria, Argentina, Austria, Brazil and Sweden calling for continued ‘legislative, judicial and administrative reform’ leading to ‘early’ ratification of the International Covenant on Civil and Political Rights (ICCPR) enjoyed the support of China at its 2009 review.
China’s second UPR will take place in October 2013, within weeks of the 15th anniversary of its signature of the ICCPR on 5 October 1998. Since that time, China’s leaders have maintained that, rather than ratify the Covenant with multiple reservations, China will ratify after its laws have been brought broadly into compliance with the provisions of the Covenant. However, consistent progress towards the realisation of this objective has not been achieved by the programme of legislative reform undertaken since signature of the Covenant in 1998.

With regard to ICCPR ratification, the most significant piece of legislation to emerge from China since its 2009 review is the March 2012 revised Criminal Procedure Law.

Major positive developments contained in the revised law include, for example, provisions restricting the use of compulsory psychiatric treatment for criminal suspects affected by a psychiatric pathology to those suspected of violent crimes. In such cases, compulsory treatment can only be ordered by a court, after psychiatric evaluation and a public hearing. In addition, significant improvements have also been made to the juvenile justice system that bring it more into line with international standards. However, in many instances, the progress made is incomplete. In relation to compulsory psychiatric treatment for example, it should be noted that a court decision is formally different from a court judgment and, in the absence of publicly available judicial interpretations and/or implementing regulations, it is not clear which remedies, if any, exist against this act.

Moreover, these developments sit alongside highly controversial new measures which legalise the detention of criminal suspects in isolation without access to family members and lawyers by amending the existing provisions relating to ‘residential surveillance’. Judicial interpretations issued by numerous government agencies in November and December 2012 regarding the precise nature of the information that must be supplied to family members in such cases are contradictory and have done little to allay concerns that the measure is open to widespread abuse.

The revised Criminal Procedure Law also fails to introduce judicial oversight of all forms of pre-trial criminal detention or to address persistent systematic problems, including the extensive use of administrative detention, the dual role of the procuratorate, unequal access to legal representation for criminal suspects and the restricted role of defence lawyers.

By introducing measures which would seem at once to both extend and undermine the rule of law, the revisions are best understood as part of an overall effort to continue to rebuild and rationalise the
Chinese legal system while at the same time protecting the ultimate power of the Party. They are not
driven by the imperative of bringing the criminal justice system more in line with international standards
and do not bring China significantly closer to the goal of ICCPR ratification but rather ensure that
ratification without multiple reservations remains impossible.

China’s rejection at its 2009 UPR of all recommendations calling for the announcement of a specific
timetable for and speedy ratification of the ICCPR would also seem to indicate that ratification remains a
long term objective for China, if indeed it can still be accepted as an objective at all.

1.2 Co-operation with international human rights mechanisms and procedures

Recommendations put forward by Austria, Brazil, Canada, Latvia, New Zealand and Saudi Arabia calling
on China to renew the Memorandum of Understanding on technical cooperation with the Office of the
High Commissioner for Human Rights (OHCHR); to continue to cooperate with the OHCHR and ‘facilitate
an early visit’; and to step up cooperation with the Human Rights Council special procedures, in
particular those dealing with on economic, social and cultural rights, enjoyed the support of China at its
2009 review.

China’s most recent memorandum of understanding with the OHCHR expired in August 2008 prior to its
last UPR. Despite early indications that it would be renewed, this has not transpired to be the case.
While neither side has issued a statement on the matter, it is highly likely that China’s displeasure with
critical statements made by High Commissioner Navanethem Pillay on human rights practices in China,
and particularly Tibet, since 2009 have contributed to this cooling of relations.

Since the OHCHR was established in 1994, every High Commissioner has made a visit to China. However,
China was the only permanent member of the UN Security Council not to host a visit of the High
Commissioner during her first term which ended in 2012. There are no indications that an invitation will
be issued in the near future and a visit is by no means assured before the end of the second term in
September 2014.

The extent of China’s cooperation with the special procedures of the Human Rights Council, beyond
mere fulfilment of its reporting and response commitments, is also questionable. For example, despite
cooperation with the individual complaint procedures of the UN Working Group on Arbitrary Detention,
China has continued to ignore the final determinations and recommendations of the Working Group and
to detain individuals after the Working Group has found their detention to be arbitrary under the principles of international law.

The only special procedure to have conducted an official mission at the invitation of China since its last review in 2009 is the UN Special Rapporteur on the Right to Food, Olivier De Schutter. The visit took place in December 2010. In the report on the mission issued in January 2012, the Special Rapporteur sets out a number of ‘serious challenges’ which remain in spite of the ‘impressive progress made by China in the achievement of food security’. In relation to the core human rights concerns of the EU, the report calls on the government to suspend the non-voluntary resettlement of nomadic herders on the Tibetan Plateau and elsewhere and to enter meaningful consultations with the populations affected. It also reminds China of its obligations under the International Covenant on Economic and Social Rights which prohibits depriving a people of its means of subsistence.

Since China’s UPR in February 2009, requests for visits have been made by the following special procedures:

- Independent Expert on Foreign Debt (2012)
- Special Rapporteur on Freedom of Association and Assembly (2011)
- Special Rapporteur on the Independence of Judges and Lawyers (2011)
- Special Rapporteur on Human Rights Defenders (2010)

A total of five requests, made prior to China’s UPR session, also remain outstanding.

The fact that China rejected all recommendations, including those from Austria, Italy, Latvia, the Netherlands and the United Kingdom, calling for the extension of open invitations to the special procedures and positive responses to outstanding requests is a clear indication that closer co-operation with the UN human rights mechanisms and procedures is not being given serious consideration.
1.3 The death penalty

A recommendation put forward by Egypt calling on China to ‘continue to implement the policy of strictly controlling and applying the death penalty’ was accepted by China at its 2009 review.

Since the late 1990s, legal scholars in China have proposed domestic abolition of the death penalty as a long term objective of legal reform but have argued that, in order to prepare for abolition, China must reduce the use of the death penalty and ensure that capital cases meet international fair trial standards.

In pursuance of this objective, numerous significant legal and policy reforms have been instituted since China’s last UPR. In 2010, rules aimed at excluding the use of illegally obtained evidence in death penalty cases were issued by the Supreme People’s Court, the Supreme People’s Procuratorate and three separate government ministries. In 2011, the number of crimes carrying the death penalty was reduced from 68 to 55 following an amendment to the Criminal Law which removed the death penalty for a total of 13 non-violent crimes. And finally, in 2012, administrative rules, regulations and judicial interpretations on the use of the death penalty issued in 2006, 2007 and 2008 were incorporated into the revised Criminal Procedure Law along with a number of other procedural innovations aimed at improving fair trial standards in capital cases such as a provision obliging the prosecutor to interview the defendant in all such cases.

Chinese scholars who work on the death penalty have stated that while numerous serious problems persist, particularly in the area of fair trial rights, as result of these and other reforms the number of executions in China has reduced by half since 2007.

The greatest impediment to formulating an accurate assessment of these claims and China’s overall progress in reducing the death penalty remains the fact that statistics on the use of the death penalty are classified as ‘state secrets’. However, at its 2009 review, China rejected all recommendations calling for publication of statistics on the use of the death penalty, including those from Austria, France, Germany, Italy and the United Kingdom, and there is no reason to believe that this position has changed since.
1.4 Minority rights

A recommendation put forward by Japan calling on China to ‘continue its efforts to further ensure ethnic minorities the full range of human rights including cultural rights’ enjoyed the support of China at its 2009 review.

The most significant development in this area has been the more than 110 self-immolations that have taken place since February 2009 in protest against repressive policies in Tibet and the strident government reaction to these desperate acts. This reaction has included an intensified campaign against the Dalai Lama, the expansion of state control over the Tibetan Buddhist religion and a more systematic and pervasive approach to the ‘patriotic education’ campaign. There is also evidence that, in some instances, reprisals have been carried out against the families and communities of those who self-immolate, including the cancellation of financial support entitlements for families and the cancellation of government funded development projects in villages where the self-immolations were carried out.

That the human rights situation in Tibet had seriously deteriorated was recognised by a total of six independent UN experts who collectively expressed their concerns over reports of heavy security measures around the Kirti monastery area in November 2011 and by the OHCHR who called on China to ‘urgently address’ ongoing rights violations in Tibet.

However, no new initiatives to address the legitimate human rights concerns of the Tibetan people were announced in the 2012-2015 National Human Rights Action Plan, which fails, in particular, to make any mention of the need to protect the rights of ethnic minorities in the context of section II.4 on freedom of religion. It is anticipated that any criticism of China’s record in Tibet received at the forthcoming review will be met with outright denial and that, as was the case in 2009, all recommendations calling for progress on specific issues will be rejected.

1.5 Judicial reform

At its 2009 review, China accepted a recommendation from Sudan calling on it to ‘actively and prudently push forward reform of re-education through labour (RTL)’. A recommendation from the Netherlands calling on China to ‘deepen the reform of the judicial system’ also enjoyed the support of China.
Following the annual meeting of the National Conference on Politico-Legal Work in January 2013, which was led by the new head of the Central Politico-Legal Commission, Meng Jianzhu, news emerged in the international media that four focal areas had been pinpointed as in need of urgent reform over the next 12 month period and beyond. These are: RTL, the household registration system; the petitioning system, and the judiciary.

The RTL system is a system of administrative detention facilities in China generally used to detain persons for minor crimes as well as religious or political dissidents. Sentences of up to three years, with the possibility of a further one year extension, are issued by public security organs and are not subject to judicial review.

The announcement in January 2013, that RTL would be abolished as a form of administrative detention in China by the end of the year, followed a previous statement released in September 2012 on the decision to pilot RTL reform in four Chinese cities. This was largely in response to public outrage over media reports of a woman sentenced to a term of RTL for petitioning about the abduction and rape of her daughter. However, despite intense speculation it remains unclear whether the proposed RTL reforms will involve the introduction of judicial oversight of the system, as demanded by the EU since the mid-1990s, or further cosmetic changes which will allow continuation of the practice under a new name.

Early indications are that the reform of the RTL system will be based on the provisions of the Illegal Behavior Correction Law, which has been on the books of the National People’s Congress since 2006 but has not been made public. Given that China rejected every recommendation calling for the abolition of all forms of administrative detention at its review in 2009, including those put forward by the Czech Republic, Germany and Sweden, it would seem unlikely that this will be achieved by the new Law.

It is also unclear whether any proposed reform will include China’s network of compulsory drug treatment centres. While compulsory drug treatment is not officially part of the RTL system, it is a form of administrative detention identical to RTL in all but name. China’s network of compulsory drug treatment centres was created in 2007 when the Drug Prohibition Law removed drug addiction from the RTL system by simply renaming the centres where drug users where held. Those campaigning for the rights of users argue that these centres must therefore be included in any effort to end the use of administrative detention in China.
Initial steps to reform the household registration system were announced in a directive issued by the State Council in February 2012. Under the directive, internal migrants will be permitted to re-register for a new personal identity card, or hukou, when moving from a traditional family home to a county-level or prefecture level city, thereby permitting access to a wide range of social programs and policies linked to the hukou. However, the directive does not apply to provincial capitals and larger cities and will therefore not enable the vast majority of China’s more than 200 million internal migrants currently living without a hukou valid in their new place of residence to access government benefits including education and healthcare. Nor does it address other challenges related to urbanisation. These include the need to develop a system of land transfer that could protect the interests of farmers by allowing market value sale of land holdings and the need to invest in social welfare.

As stated above, the necessity for wider reform of the hukou system, which was first introduced in 1958, was highlighted at the January 2013 meeting of the Politico-Legal Commission and has been confirmed by China’s leaders, including Premier Li Keqiang, on numerous occasions since. However, while further developments are anticipated later this year, the depth of the planned reform is not yet known.

The same is also true of the promised reform of the petitioning system. The national system of letters and visits, or xinfang, which allows groups and individuals to directly petition the Chinese Communist Party through letters and visits offices established throughout all government organs including the courts, has been in existence since the 1950s but was formalised in 1995 and substantially revised in 2005. Even prior to the 2005 introduction of new national regulations, the aim of which was to regularise the system, diminish some of its more coercive aspects and enhance its role as a mechanism for dispute resolution, figures from the director of the national xinfang bureau show that the total number of petitions received by the State Bureau for Letters and Calls, in addition to those received by both Party and government xinfang bureaus at the county level and higher, exceeded 8.64 million in the first nine months of 2002. This corresponds to an annual rate of 11.5 million per year, almost twice the total yearly caseload of the entire Chinese judiciary. However, as highlighted recently by scholar Yu Jianrong of the Chinese Academy of Social Sciences in a December 2012 article published in Caixin Magazine, the widespread abuse of petitioners by local governments and their agents seeking to prevent the registration of complaints in Beijing remains a prevalent feature of the system.

The results of a survey conducted by the Chinese Academy of Social Sciences in 2004 showed that over half of the petitioners surveyed were beaten or subjected to other reprisals by government officials as a result of their petitioning activities. At the same time, contrary to statements made by China during the
2009 UPR to the effect that ‘there are no black jails in the country’, illegal facilities continue to be used to detain petitioners in Beijing in particular. Hopes that the central government will act to eradicate the use of these facilities have been raised in recent years by the emergence of reports in the official media about China’s black jails and the fact that several Beijing courts have heard cases brought by detained petitioners. However, such cases remain rare and in the absence of public statements on the matter it is difficult to assess the official position. China’s treatment of the issue at its forthcoming review may thus act as a key indicator of the prospects for change.

The *xinfang* system has, over time, adopted a number of legal norms, such as procedural time limits and the requirement that decisions take the form of a written opinion issued to the petitioner, but, as a whole, it remains arbitrary in its decision making and opaque in its processes. The fact that Chinese citizens resort to the *xinfang* system to express their grievances far more often than formal legal channels says more about the weaknesses of the formal system than the strength of the alternative.

The need to assert the independence of the judiciary was recognised in China’s white paper on judicial reform released by the State Council Information Office in October 2012 and has since been confirmed as a priority for the new government under the leadership of Xi Jinping. At the January 2013 annual meeting of the Central Politico Legal Commission, Meng Jianzhu was reported to have criticised the routine interference of the Party in court proceedings through its network of political and legal affairs committees. These remarks were echoed in April 2013 by Zhou Qiang, president of the Supreme People’s Court, who, according to the official Xinhua news agency, called for the judiciary to demonstrate bravery and to ‘seize the opportunity’ to promote reform. Beyond these and other similar statements however, little detailed information has emerged as to the precise nature of the planned reforms. As is the case regarding RTL reform, reform of the *hukou* system and reform of the petitioning system, China’s forthcoming Universal Periodic Review thus represents the best opportunity to press for greater transparency on the issue.

1.6 Civil society

At its 2009 review, China accepted a recommendation put forward by Malaysia calling on it to ‘strengthen its positive engagement with civil society’.
China’s current national level Regulations on the Registration and Management of Social Organisations were passed by the State Council in 1998. These regulations provide that in order to register officially with the Ministry of Civil Affairs, all civil society organisations in China must find a professional supervising unit, generally a government or quasi-government agency, willing to act as sponsor. This so-called ‘dual registration system’ has proved a significant barrier to many organisations seeking official recognition and has also played a crucial role in curtailing the growth of critical voices within the sector.

Although numerous local level experiments allowing less rigid processes for the registration of civil society organisations have been underway for a number of years in various provinces and cities, particularly in the south of China, the announcement, in November 2011, of new provincial level regulations allowing registration without a government sponsor in Guangdong province has given rise to renewed hopes that the dual-registration system may eventually be abandoned. At the time of writing however, while it is understood that the Ministry of Civil Affairs under Li Liguo is working on new national regulations, details of which are widely anticipated before the end of 2013, there is little reason to believe that an end to the dual registration system will be the inevitable outcome of ongoing experimentation. Early indications are that changes to the dual registration system will enable four categories of organisations to register without a sponsor, including industry and commerce associations, community services, charities and NGOs promoting scientific research. If this is the case, it would seem likely that the reform will be of benefit only to apolitical groups and will do little to ease the burden of dual registration imposed on those engaging in more sensitive activities. In this regard, it must be recalled that these developments take place against a backdrop of continued harassment and intimidation of human rights defenders in China, particularly within the context of the so-called ‘Jasmine revolution’ of 2011.

2. The role of civil society in the UPR process

The principal avenue through which civil society can contribute to the preparation of core UPR documentation is provided by the Summary of Stakeholders’ Information compiled by the Office of the High Commissioner exclusively on the basis of submissions received from civil society. However, in line with Human Rights Council resolution 5/1 of 18 June 2007, which encourages States to establish a ‘broad consultation process at the national level with all relevant stakeholders’ in preparing for the UPR, in many cases civil society organisations are also invited to contribute to the preparation of the National...
Of the 45 stakeholders’ submissions received in advance of China’s 2009 UPR some 22 were contributed by organisations based in China. This list is dominated by State led mass organisations, such as the All China Federation of Trade Unions, the All China Women’s Federation and the China Disabled Persons Federation, and other organisations closely connected to the Central Government, including for example the Chinese Academy of Social Sciences and the China Society for Human Rights Studies. While a small number of independent organisations in China did submit materials, this limited group is dominated by organisations based in Hong Kong, including China Human Rights Lawyers Concern Group, China Labour Bulletin, the Hong Kong Human Rights Commission and the Hong Kong Human Rights Monitor. The number of submissions received from independent organisations based in mainland China is limited to just three, including the Beijing Aizhixing Institute, which advocates for the rights of people with HIV/AIDS, the Beijing Children’s Legal Aid and Research Center and the Beijing Legal Aid Office for Migrant Workers. It is also notable that in spite of the serious ongoing human rights violations in Xinjiang and, in particular, in Tibet following the unrest of March 2008, not a single submission focusing on the treatment of ethnic minorities was made by any independent organisation based in China.

With regard to China’s 2009 National Report, the exclusion of independent voices is even more apparent. The Report states that ‘nearly 20 non-governmental organizations (NGOs) and academic institutions’ participated in its preparation. However, none of the 15, as opposed to 20, organisations listed as contributors in Annex II of the report are in fact independent.

The purpose of these calculations is not to suggest that mass organisations or organisations working closely with the central government have no role to play in the promotion of human rights in China or that their submissions should not be taken seriously. Rather, it is to highlight the fact that the role in the 2009 UPR process of independent organisations based in mainland China was exceptionally limited.

Information provided by organisations working on the ground in mainland China would indicate that those engaging in advocacy related to the UPR face persistent pressure from the authorities. According to the Director of the Aizhixing Institute, Yan Wanhai, staff at the institute were contacted by public security personnel in February this year and pressured not to submit materials they were in the process of preparing jointly with a number of other organisations based in China addressing the human rights concerns of China’s Uyghur ethnic minority. As a direct result, the decision was taken not to cover the
Uyghur issue. At the same time, groups in Henan province with which Aizhixing had jointly prepared material on the rights of people infected with HIV/AIDS were pressured to withdraw their support for the submission. However, since in this case the materials had already been submitted it was not possible to comply. Other groups with which Aizhixing worked to prepare a submission on the rights of drug users were also contacted by public security personnel and warned that their UPR activities were ‘dangerous’ and asked to report to the local police bureau on their actions. As a direct result of the pressure applied by the public security organs, one member of the Aizhixing team in Guangzhou subsequently resigned.

Documentation obtained by Chinese Human Rights Defenders, indicates that, contrary to Human Rights Council resolution 5/1 of 18 June 2007, information pertaining to preparation of the National Report will be classified as a ‘state secret’. This documentation includes a written response from the Chinese Ministry of Foreign Affairs to a request for information on preparation of the 2009 National Report submitted by Beijing based petitioner and human rights defender Cao Shuli in October 2012. The response states that under the Law on the Protection of State Secrets, the information requested, including a list of independent civil society organisations involved in preparing the report and details of where the report was posted for public consultation, are deemed unsuitable for public disclosure.

Prior to the publication of the materials on which China’s 2013 UPR will be based, it is not possible to evaluate the information provided in the National Report about the extent of the official consultation process established to prepare the report nor to compare these claims to those made in 2009. However, it is possible to state that none of the independent groups contacted by the author were aware of any new initiatives aimed at making the preparations more inclusive or reflective of a broader range of views. It would seem however, that in spite of efforts to restrict public information on the UPR process and to apply pressure to those independent organisations willing to make stakeholders’ submissions, independent civil society will contribute to the 2013 review in greater numbers than was the case in 2009.

At the time of writing, the author is aware of eight independent groups based in China that have made stakeholder submissions to the UPR for the first time in 2013. These include: Yunnan Province Gejiu Huyangshu Self Help Group; XIYI Institute of Cultural and Social Development; the National Committee for People Infected with HIV/AIDS Due to Blood Infusion; the Committee for Women Infected with HIV/AIDS Due to Blood Infusion, Ningling County, Henan Province; the Association for HIV/AIDS
3. Gaps in the implementation of China’s human rights treaty obligations

Since China underwent its last UPR in February 2009, implementation in China of the Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities has been reviewed by the relevant UN treaty bodies.

In its concluding observations issued in September 2009, the Committee on the Elimination of Racial Discrimination raises numerous concerns regarding implementation of China’s treaty obligations including: ‘reports alleging the disproportionate use of force’ against ethnic Tibetans in March 2008 and ethnic Uyghurs in July 2009 and the ‘important’ numbers of resulting detentions; harassment of lawyers taking up cases of human rights violations introduced by members of ethnic minorities; restrictions on the freedom of religion; under-representation of minorities in public life; obstacles in accessing health care services faced by members of ethnic minorities; the high rate of unemployment among ethnic minorities; and the failure to ensure bilingual education in autonomous minority regions. The report also calls on China to: incorporate a definition of discrimination that conforms with that set out in Article 1 of the Convention; to reform the hukou national household registration system which enables discrimination against ethnic minorities; and to abolish the RTL system which ‘may disproportionately affect members of ethnic minorities’.

In the four years since these observations were issued, none of the issues raised have been comprehensively addressed.

The concluding observations of the Committee on the Rights of Persons with Disabilities, issued in October 2012, note numerous gaps in the implementation of China’s obligations under the Convention. First and foremost, the Committee expresses its concern at the ‘prevalence of the medical model of disability’ and the ‘lack of a comprehensive disability strategy’ to implement the Convention.

The prevalence of this model, which, as stated in the concluding observations, depicts persons with disabilities as ‘helpless and dependant human beings segregated from the rest of society’, is also apparent in the 2012 Mental Health Law, passed just weeks after the concluding observations were

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issued. The Mental Health Law covers civil, as opposed to criminal, mental health institutions. It provides clearer guidelines regarding the diagnosis and treatment of mental disorders, establishes the right to refuse committal in most cases and outlines and expands the processes to appeal diagnoses or decisions to commit involuntarily. However, the new law does not contain provisions for the appointment of legal counsel at any time during diagnosis or treatment, it does not impose time-limits for involuntary committal - which is still permitted on the approval of guardians where individuals suffering from severe mental disorders have committed ‘dangerous’ acts - and does not impose mandatory independent review of involuntary committal. Moreover, by equating the will of the patient with the will of the guardian, the law promotes substituted decision making and exposes patients to abuse of guardianship.

In addition to the concerns outlined in the concluding observations issued by the Committee on the Elimination of Racial Discrimination and the Committee on the Rights of Persons with Disabilities, China has also yet to address concerns expressed by the UN treaty bodies prior to 2009 in relation to implementation of the Convention on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All forms of Discrimination Against Women and the Convention Against Torture and Other Cruel Inhuman and Degrading Treatment.

One major issue raised by each of these analyses is the absence of relevant disaggregated statistical data necessary to formulate an accurate assessment of compliance. The 2010 amendments to the Law on Guarding State Secrets have done little to address the concerns set out in the 2008 concluding observations of the Committee on Torture regarding access to information. These include, in particular, the definition of state secrets, the absence of the possibility of appeal before an independent tribunal; and the use of the State Secrets law to deny detainees access to lawyers.

Other major ongoing concerns highlighted in concluding observations issued by the UN treaty bodies include: the lack of an independent national human rights institution; discrimination against women, children, persons with disabilities and members of ethnic minorities; the routine widespread use of torture; failure to meet internationally accepted fair trial standards, and restrictions on freedom of information and expression.
Policy Recommendations

In light of this analysis, it is recommended that the EU and its Member States give due consideration to:

- The need for the EU to provide financial support for UPR awareness raising and capacity building activities targeting independent civil society in China through the European Instrument for Democracy and Human Rights

- The need to ensure that EU Member States participate fully in all stages of China’s UPR including adoption of the outcome report by the Human Rights Council in plenary session.

In relation to the policy positions assumed by EU Member States at China’s 2013 UPR, it is recommended that:

- In identifying issues to be raised, EU Members States should focus on a limited number of core concerns. Core concerns should be identified by reference to the EU’s human rights guidelines, the EU human rights country strategy for China and the benchmarks for the EU-China Human Rights Dialogue and should include as an absolute priority the treatment of ethnic minorities; freedom of expression and association; and the situation of human rights defenders. Other core concerns that should be raised systematically by EU Member States include ratification of the ICCPR; covert, administrative and extra-legal detention; fair trial standards; torture; and the death penalty.

- EU Member States should not deliberately focus only on areas in which China accepted recommendations in 2009 since this would reward China for rejecting recommendations on issues it is not willing to discuss and on which it does not wish to be questioned by excluding these issues from the agenda of the 2013 review.

It is further suggested that, in relation to the policy positions assumed by the EU Member States at China’s 2013 UPR, due consideration is given to:

- The need to request specific information in relation to core concerns as well as making general recommendations for broad reform. In relation to the use of residential surveillance as a form of covert detention for example, this could include requests for:
- Information on the numbers of persons detained since January 2013
- Information on implementation of the requirement to notify families under such circumstances

- The need, where possible, to raise individual cases at the 2013 UPR to illustrate specific concerns.