



The People's Republic of China

Submission to the UN Universal Periodic Review 17th Session of the UPR Working Group

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in
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CIVICUS: World Alliance for Citizen Participation

Mr Tor Hodenfield, Email tor.hodenfield@civicus.org
Tel +27 11 8335959, Fax +27 11 8337979

Ms Renate Bloem, Email renate.bloem@gmail.com
Web www.civicus.org

1. (A) Introduction

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** In this document, CIVICUS outlines urgent concerns related to the environment in which civil society activists and human rights defenders operate in the People's Republic of China (PRC), and discusses threats faced in the exercise of the freedoms of expression, association and assembly.
- 1.3** CIVICUS is greatly concerned by legislative and extra-legal measures taken by the PRC government that drastically curb the freedom of association and civil society activism.
- 1.4** CIVICUS is deeply alarmed by undue and arbitrary restrictions on freedom expression, independence of the media and access to information.
- 1.5** CIVICUS is greatly concerned by ongoing restrictions on the free exercise of the right to freedom of assembly, including unwarranted use of excessive and sometimes fatal force to disperse nonviolent demonstrations.
 - In Section B, CIVICUS highlights concerns related to the freedom of association and restrictions on civil society activities.
 - In Section C, CIVICUS expresses concerns involving harassment and arbitrary detention of human rights defenders.
 - In section D, CIVICUS highlights concerns relating to the freedom of expression, independence of the media and restrictions on access to information.
 - In section E, CIVICUS highlights concerns regarding the freedom of assembly.
 - In section F, CIVICUS makes a number of recommendations to address the concerns listed.

2. (B) Restrictions on freedom of association and impediments to civil society activities

- 2.1** Article 35 of the 1982 Constitution of the People's Republic of China (PRC) guarantees the right to freedom of association. Moreover, Article 22 of the ICCPR, to which the PRC is a signatory, also guarantees freedom of association. However, in policy and practice this right is severely curtailed by a highly restrictive regulatory regime. Through the invocation of national and sub-national legislation, including prohibitions against certain activities and objectives and restrictions on international resources, the government wields a powerful tool to silence independent civil society.
- 2.2** Registration requirements for civil society groups are highly discriminatory, providing the government with outsized discretion to preclude the establishment of civil society organizations (CSOs) with objectives perceived to contravene the interests of the state and the ruling Communist Party of China (CPC). Of principal concern are provisions

under the 1999 Regulations on the Registration and Management of Social Organizations which proscribe the registration of groups suspected of, “Harming the unity, security or ethnic harmony of the state, or interests of the state and society, or the lawful interests of other organisations or citizens, or offend social morality.” Such excessive requirements pose a severe hindrance to the establishment of independent organizations working on sensitive issues including human rights, advocacy, legal aid, labour, religion and the environment.

- 2.3** At the sub-national level the government has imposed severe limitations on civil society organizations’ contact with international groups and access to foreign funding. Provincial and sub-provincial governments routinely require organizations to disclose international contacts. Domestic civil society groups are further required to obtain approval to meet with international groups and maintain international cooperation. It has also been reported that the authorities explicitly discourage national civil society groups from working with international groups engaged in democracy promotion and human rights.
- 2.4** In practice, international resource mobilization for civil society groups is subject to state authorization. Generally, organizations endeavouring to secure international financing must first receive approval from the local extension of the Ministry of Civil Affairs. Moreover, according to a new 2010 national regulation, the “Notice 63 on Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions,” CSOs must provide detailed information to the government prior to receiving international funding. Among other directives, CSOs are required to comply with a complex application process including providing the authorities with a letter confirming both the national and international groups’ authority; registration certificates for all concerned international and national groups; and a notarized agreement between the domestic group and the foreign organization denoting the purpose of the donation prescribed.
- 2.5** As a result of discriminatory application of national legislation and the codification of restrictions on public advocacy, China’s few independent civil society groups are forced to operate illegally, outside the legal apparatus. Accordingly, only one legal labour union, the government-controlled All-China Federation of Trade Unions, exists in China today. Furthermore, registered groups which do not abide by strict government controls are subject to dissolution. In late 2012, at least 10 NGOs supporting migrant workers’ rights in Shenzhen, Guangdong Province were expelled from their offices or forced to close.

3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders and civil society activists

- 3.1** Article 35 of the PRC Constitution guarantees the rights to freedom of speech, press, assembly, and association. However, the environment for human rights defenders in China remains one of the most hostile in world. Systematic mistreatment of activists and civic dissidents, including harassment, house arrest, arbitrary detention, forced

labour, and judicial harassment remains rampant. It is a matter of grave concern that human rights defenders and activists continue to face reprisals by state officials for exercising their fundamental rights.

- 3.2** In contravention of the PRC's constitutional and international human rights commitments, the government continues to invoke vague and overbroad legislation to suppress independent dissent and imprison human rights defenders. Article 105 of the Chinese Penal Code places severe penalties on "subversion of state power" including, proscriptions on "inciting others by spreading rumours or slanders or any other means to subvert the State power or overthrow the socialist system." Violators of the law can be sentenced of up to five years of imprisonment, while ring leaders can be sentenced to not less than 5 years in prison. In March 2012, the government made significant revisions to the Criminal Procedure Law (CPL) which virtually legalize enforced disappearances. According to the amendments, police are permitted to detain suspects of "state security, terrorism, and major corruption" in undisclosed locations for a period of up to six months.
- 3.3** While complete figures are unavailable, as a result of these and other legislative measures, it is estimated that tens of thousands of human rights defenders, including, activists, petitioners, Christians, Tibetans, and Uighurs are believed to be in prison or subjected to extrajudicial forms of detention for their political or religious views. In October 2012, the U.S. Congressional-Executive Commission on China issued a partial list of the names of over 1,400 political prisoners. Moreover, a coalition of national and international watch dog groups documented nearly 4000 cases of arbitrary detention during 2011.
- 3.4** Following several months of arbitrary, incommunicado detention, on December 25 2009, civil society activist and writer Liu Xiaobo was sentenced to 11 years imprisonment for "inciting subversion of State power". Liu, who was the one of the lead drafters of Charter 08 manifesto, a petition calling for greater respect for human rights and democratic freedoms in China, received the 2010 Nobel Peace Prize for "his long and non-violent struggle for fundamental human rights in China." Furthermore, directly following Liu Xiaobo's conviction, the UN Special Rapporteur on Human Rights Defenders documented a severe intensification of persecution of activists including over 20 cases of arrest or detention of human rights defenders, and approximately 120 other reports of restrictions on activists including house arrests, travel restrictions, forced relocations and official intimidation.
- 3.5** Mass and pre-emptive arrests of human rights defenders escalated in 2011 and 2012. In February 2011, directly following widespread calls for Arab-spring like demonstrations in China, security officials undertook the largest crackdown on human rights defenders and activists in a decade. More than 30 dissidents and human rights campaigners were detained, while many "disappeared" in detention without access to a lawyer. Another 100 concerned citizens who forwarded messages in support of the protests were held under house arrest or threatened. On 3 April 2011, prominent artist and government critic Ai Weiwei was arrested and held in an undisclosed location without access to a lawyer or contact with his family for 81 days. Following Ai

Weiwei's release, the government has continued its campaign of harassment and intimidation, barring Ai Weiwei from leaving the country, revoking the licence of one of his art companies and accusing him of tax evasion demanding \$2.4 million in back taxes and fines.

4. (D) Concerns regarding freedom of expression and access to information

- 4.1** Article 35 of PRC Constitution affords its citizens' freedom of speech and the press. However, despite these legal guarantees, China maintains one of the most restrictive media environments in the world. Dozens of journalists and "netizens" remain in prison for reporting on sensitive topics and questioning official government policy, while hundreds of others are routinely subject to harassment, intimidation and forced suspensions. Furthermore, the government continues to drastically limit access to information in the country through widespread censorship of the internet and strict controls over domestic media outlets.
- 4.2** The continued invocation of ambiguous legislation to silence independent dissent remains a matter of deep concern. At the time of drafting, at least 32 journalists are reportedly imprisoned in China, placing it third among countries with the most imprisoned journalists. Furthermore, international watchdog groups report that at least seventy-seven netizens and cyber dissidents are also jailed in China. Many of these journalists and netizens have been detained on the basis of vague "inciting subversion" clauses in the Penal Code and broad definitions of "divulging state secrets" found in the Law on Guarding State Secrets.
- 4.3** On 17 January 2012, dissident writer, Li Tei was sentenced to 10 years in prison on charges of "subversion of state power" in Wuhan, the capital of Hubei Province in c-Central China. Official notification of Li's sentence came more than 16 months after he was detained in September 2010, and 9 months after his trial in April. Li was charged as a result of his publication of 13 articles encouraging people to defend their rights, including one article titled "Human beings' heaven is human dignity," in which Li called for democracy and political reform. Additionally, Tibetan journalist and writer Kunchok Tsephel Gopey Tsang, who is also the founder of the Tibetan language website Chomei, which reports on Tibetan culture and literature, was sentenced to 15 years in prison on 12 November 2012 for 'disclosing state secrets'.
- 4.4** In an apparent attempt to control and limit the free flow of information in China, the government continues to expand its censorship over both print and internet media in the country. Restrictions on independent media include the banning of books, suspending and removing journalists, prohibitions on negative coverage of allied countries and domestic issues, forced dissolution of media outlets, preventing journalists from conducting investigations, and expelling or delaying visa applications for foreign journalists. Moreover, news outlets must follow regularly issued state directives specifying topics which can and cannot be published. Throughout 2012, the government issued on average 12 directives per day proscribing reporting on certain issues considered sensitive. Routinely censored topics include calls for greater

autonomy of Tibet, labour unrest, writings of prominent activists, and accusations of corruption levelled against CPC leaders.

4.5 In addition, the government has intensified its control over the internet, introducing wide scale restrictions on social media, micro-blogging services and instant messaging. Social media platforms including Twitter, YouTube, and Facebook are blocked in China. Alternative platform, Sina Weibo, China's largest micro-blogging service, is routinely censored and manipulated to ensure that comments and discussions conform to government policy. Employing automated programs and human censors to screen content, it is estimated that 13 percent of all posts across China's blogging services are deleted, many within 24 hours of being posted.

5. (E) Concerns regarding freedom of assembly

5.1 Article 35 of PRC constitution guarantees the right to freedom of assembly. However, in practice, assembly rights are severely restricted. Explicit permission to hold demonstrations is required in China. However, applications are consistently denied, and in some cases applicants have been detained for lodging a request. Nonetheless, official statistics estimate that there are approximately 250-500 protests each day in China, attended by anywhere from ten to thousands of participants.

5.2 Public rallies, protests and demonstrations are routinely subjected to unwarranted disruption and dispersed by security forces using excessive and sometimes deadly force. On March 31 2012, Wu Guanhuang, a blogger, was detained by police and forbidden to leave China after being charged with "illegal assembly" on grounds that he had taken pictures of protestors demanding political reform and then posting them on the internet.

5.3 In addition, on 23-24 January 2012, demonstrations erupted among Tibetan nationals in Luhuo and Serthar in Sichuan Province, calling for an end to Chinese occupation of Tibet and in solidarity with a series self-immolations in Tibet. During the demonstrations, police opened fire on demonstrators killing two and injuring 32 others.

6. (F) Recommendations to the Government of the People's Republic of China

CIVICUS calls on the Government of the People's Republic of China to create an enabling environment for civil society to operate in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made.

6.1 Regarding restrictions on the freedom of association

- The Regulations on the Registration and Management of Social Organizations should be repealed or suitably amended to ensure that restrictions on the freedom of association are removed;
- The requirement for mandatory registration of civil society organisations should be repealed;
- All undue restrictions on cooperating with international actors and obtaining international funding for CSOs under Notice 63 on Issues Concerning the Administration of Foreign Exchange Donated to or by Domestic Institutions should be removed;
- Requirements that CSOs' synchronize their mandate with national priorities should be repealed.

6.2 Regarding the arbitrary detention and harassment of civil society activists

- All due process guarantees in accordance with Article 14 of the ICCPR should be ensured to all detained persons;
- Civil society members and human rights defenders should be provided a safe and secure environment to carry out their work. All instances of violations of their rights should be independently investigated;
- All imprisoned civil society activists and human rights defenders should be unconditionally released;
- Provisions under the Criminal Procedure Law (CPL) allowing for severe penalties on "subversion of state power" and the detention of "state security, terrorism, and major corruption" in an undisclosed locations for a period of up to six months should be immediately repealed and replaced with a legal framework that duly respects due process.

6.3 Regarding restrictions on freedom of expression and access to information, and intimidation, harassment and attacks on journalists

- All journalists detained for exercising their freedom of opinion and expression should be unconditionally and immediately released. Their sentences should be reviewed to prevent further harassment;
- Attacks on and threats to journalists should be publicly condemned by senior government officials to ensure protection by law enforcement agencies;
- Broad definitions of "divulging state secrets" found in the Law on Guarding State Secrets should be repealed;

- Unfettered access to the media and online information resources should be allowed by removing restrictions on access to national and international press and social media outlets.

6.4 Regarding restrictions on freedom of assembly

- Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012) which call for simple notification rather than explicit permission to assemble;
- Recourse for judicial review and effective remedy should be provided, including compensation, in cases of unlawful denial of the right to freedom of assembly by state authorities;
- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms;
- Every case of injury caused to protestors by security forces should be subjected to mandatory and transparent investigation by an independent commission.

6.5 Regarding access to UN Special Procedures mandate holders and the ratification of international treaties

- Immediately ratify the International Covenant on Civil and Political Rights (ICCPR) with minimal reservations;
- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on Independence of Lawyers and Judges.