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Human rights situations that require the Council's attention

Written statement* submitted by the Society for Threatened Peoples, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[24 August 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Culture of impunity concerning enforced disappearances of Uyghurs remains a blot on the human rights record of the People's Republic of China

Society for Threatened Peoples is deeply concerned about the ongoing enforced disappearances of Uyghurs in the Xinjiang Uyghur Autonomous Region (XUAR), the People's Republic of China (PRC), since ethnic unrest on and following 5 July 2009 in which many Uyghurs died. During the aftermath, there were reports of grave human rights violations levelled against the PRC as it meted out a campaign to silence Uyghurs who voiced criticism and political discontent. According to these reports, thousands may have disappeared for their involvement in the peaceful protests that were brutally suppressed by the Chinese authorities. The National People's Council (NPC) recently passed widely criticised amendments to China's Criminal Procedure Law (CCL) which will have far-reaching consequences for Uyghurs. Many continue to be forcibly disappeared after having participated in 5 July's initially nonviolent protests and for having spoken out on the disappearances thereafter. It is feared that the PRC will take further reprisals when these amendments to the CCL come into force in January 2013.

Background of the events on and following the 5 July incident

On 5 July 2009, Uyghurs took to the streets in Urumqi to peacefully protest for a full, independent and comprehensive investigation into the deaths of several Uyghur migrant workers who were attacked by their Han Chinese colleagues in Shaoguan, Southern China. Whilst this event was a catalyst for the protest, the real cause was the underlying "discrimination and failure to protect minority rights", according to the UN Commissioner on Human Rights. The protest was organised and advertised as a peaceful protest on various Uyghur language news sites, such as Salkin, Diyarim and Uyghurbiz, and some of the protesters carried Chinese flags, thus repudiating charges of separatism in a demonstration of support for China's territorial integrity.

The protesters, numbering in their thousands, were subsequently met with a brutal crackdown by authorities, with widespread beatings and use of tear gas and stun batons. Witnesses also reported to Amnesty International and the Uyghur Human Rights Project of live fire being used by the authorities. The manner in which the Chinese authorities handled the protest precipitated ethnic unrest and violence between Uyghurs and Han Chinese, leaving many on either side dead. In addition, the Chinese authorities cut domestic electricity supplies for several nights, in addition to access to internet, telecommunications and email. They also closed down Uyghur-run websites and censored non-official accounts of the events.

In the ensuing months, many Uyghurs were arrested, detained, tortured and disappeared as the Chinese authorities implemented its new "strike hard campaign", reminiscent of its previous strike hard campaign in the late 1990s. According to Amnesty International, more than 200 Uyghurs were executed in the aftermath, though other NGOs and reports from the ground report that the figure could be significantly higher.

Human Rights Watch (HRW) published a report on 21 October 2009 documenting 43 cases of Uyghur men who had disappeared after being taken away during the night by Chinese security forces between 6 and 7 July 2009, though HRW Asia Director Brad Adams claimed that this was "likely to be the tip of the iceberg". Most of those who have been forcibly disappeared were reported by HRW to be young Uyghur men in their 20s, though there was evidence of boys as young as 12 also disappearing.

Since, many Uyghurs have come forward to report that members of their family or friends have disappeared, on whom reputable news outlet Radio Free Asia has reported extensively. Moreover, non-Uyghurs who have spoken out against the disappearances have also been targeted. As recently as July 2012, Radio Free Asia received reports of a forced eviction of a Pakistani national entrepreneur after he spoke out on behalf of a Uyghur employee who had disappeared in the aftermath of the 5 July unrest.

Amendments to China's criminal procedure law

In March 2012, the NPC overwhelmingly passed widely criticised and far-reaching amendments to China's CPL. Some of these amendments stand as a major cause for concern as they effectively legalise the practice of enforced disappearances which will have a major impact for certain minority groups, such as the Uyghurs. Certain amendments will continue the culture of impunity that has left forcibly disappeared Uyghurs and their families without redress, in particular during recent years.

After receiving a backlash from civil society, democratic governments and non-governmental organisations, the PRC removed and altered some of the amendments originally-tabled. The alterations to the original text markedly improved – should they be implemented in practice – the rights for ordinary criminal suspects through strengthened procedural protections and due process, such as better defined time limits for detentions, inclusion of the inadmissibility of confessions under duress, improved guarantees for access to a lawyer, requirements to notify family members of the detention within 24 hours, and greater protection for juvenile and mentally ill defendants. Whilst the STP greatly welcomes these promising alterations, the positive aspects should not hide the fact that certain clauses represent a major set-back in protections for critics of the Chinese government and human rights activists.

Under the amendments passed, law enforcement agencies have been handed the power to detain national security or terrorism suspects in a designated location for up to six months under the “residential surveillance provision” (Article 73). Whilst they are required to notify the detainee's family within 24 hours, they do not have to disclose the whereabouts of the individual nor provide access to a lawyer. This is at the discretion of the authorities should they deem it necessary.

Incommunicado detention longer than 15 days is widely interpreted to be an enforced disappearance by international experts and a violation of Article 10 of the International Covenant on Civil and Political Rights (ICCPR). Without access to a lawyer and being held incommunicado cannot guarantee that the individual will be free from torture or other degrading or inhumane treatment, thus violating internationally accepted norms on the treatment of detainees. Furthermore, Articles 6, 7 and 10 of the ICCPR provide further rights that run a severe risk of being violated as a result of these amendments, such as the right to life, liberty and security of a person, freedom from torture, freedom from arbitrary arrest and detention, and the right to a fair and public trial.

According to a joint United Nations study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism (A/HRC/13/42), the fear of this human rights abuse and its corollaries, such as torture or ill treatment, impinges a large number of other human rights, such as freedom of expression and of association.

Potential implications of the CPL amendments for Uyghurs

These new amendments represent a legalisation of enforced disappearances that will have profound consequences on minorities who attempt to exercise through peaceful means their right to freely criticise the government or voice their needs. The vaguely defined offences of “endangering state security” and “terrorism” have been widely manipulated to

crackdown on peaceful dissent, human rights activists and civil society who express opinions contrary to the CCP's policies. In March 2006, the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment stated that the "vague definition of [such crimes] leaves their application open to abuse particularly of the rights to freedom of religion, speech, and assembly," recommending to abolish such "political crimes."

The implications of the amendments to the Criminal Procedure Law have the potential to be devastating. Uyghurs who are suspected of crimes involving national security or terrorism can still be detained under residential surveillance without disclosing the whereabouts of the suspect to their family should the seriousness of the charges require so or should notification obstruct investigation or if notification is impossible. This decision is solely at the discretion of the authorities, as is the right to access a lawyer which is held by the law enforcement agency imposing the detention, thus allowing for further abuses with impunity.

The Society for Threatened Peoples calls on the Human Rights Council to urge the People's Republic of China to:

- Bring its amendments into line with accepted international legal standards;
- Ratify the ICCPR and ensure that it does not undertake any initiatives that would undermine its eventual ratification;
- Sign and ratify The International Convention for the Protection of All Persons from Enforced Disappearance;
- Allow family visits and access to lawyers of their choice to those placed under "residential surveillance, as well as the reasons behind their detention;
- Not resort to breaking its own laws in situations such as 5 July incident so as to maintain stability;
- Receive and allow access for all relevant UN Special Procedure mandate-holders to the XUAR.

The Society for Threatened Peoples calls on the Human Rights Council to urge states to:

- Press the PRC to undertake a full, transparent and comprehensive investigation into all reported cases of enforced disappearances, as well as into the events on and after 5 July 2009.
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