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**NGO Submission for the Universal Periodic Review of the People's Republic of China**  
For the 17th Session of the UPR convened by the UN Human Rights Council  
The Dui Hua Foundation  
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About Dui Hua

Founded in San Francisco in 1999, Dui Hua (the Chinese word for “dialogue”) is a nonprofit humanitarian organization that seeks clemency and better treatment for at-risk detainees through the promotion of universally recognized human rights in a well-informed, mutually respectful dialogue with China. Focusing on political and religious prisoners, juvenile justice, women in prison, and issues in criminal justice, our work rests on the premise that positive change is realized through constructive relationships and exchange. Dui Hua has had Special Consultative Status with the UN Economic and Social Council since 2005 and submitted written contributions to the UPR process for China in 2009 and for the United States in 2010. Dui Hua has operated a branch office in Hong Kong since 2005.

## Juvenile Justice

1. China agreed to Qatar's 2009 UPR recommendation to attach more importance to the protection of the rights of the child. In compliance, the National People's Congress approved revisions to the Criminal Procedure Law (CPL) in 2012 that introduced a chapter on juvenile cases.<sup>1</sup> The chapter includes records sealing, diversion,<sup>2</sup> social inquiry reports, and increased protections for female juveniles during questioning—all consistent with the Convention on the Rights of the Child (CRC), which China has ratified, and the UN Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules").<sup>3</sup> International exchanges, including those organized by Dui Hua,<sup>4</sup> played an important role in the development of these reforms.

2. Reforms are expected to reduce custodial sentences, in accord with Article 17 of China's Criminal Law, which stipulates that juveniles shall receive lenient or mitigated sentences; Article 19 of the Beijing Rules; and Articles 37 and 40 of the CRC. In 2009 and 2010, about 65 percent of juvenile offenders received custodial sentences, while only about 29 percent received suspended sentences or reprieve.<sup>5</sup>

3. Due to their residency status, migrant youth are less likely to benefit from diversion and non-custodial sentences,<sup>6</sup> in contravention of Article 2 of the Beijing Rules. In Guangdong, largely because non-residents account for a much higher percentage of juvenile offenders, the rate of non-custodial punishment is excessively low<sup>7</sup>—at around 10 percent in 2009, it was the lowest in the nation.<sup>8</sup> Despite protections in Article 13 of the Beijing Rules and Article 37 of the CRC, migrant youth may also be more likely to face extended pretrial detention due to the absence of their family members.<sup>9</sup> During a visit to Guangzhou Intermediate People's Court in November 2011, a US judge observed a trial of a migrant youth who had been held in pretrial detention for more than six months because his parents were not locatable.<sup>10</sup>

4. Overburdened judicial staff may hamper implementation of reforms. The CPL increases court involvement in the rehabilitation process by allowing it to collaborate with juvenile reformatories, juveniles' guardians, and community organizations and visit juveniles serving custodial or non-custodial sentences.<sup>11</sup> However, Dui Hua was informed in 2012 that many Chinese juvenile judges were unable to give adequate individual attention to each juvenile because they already bore too many responsibilities of the sort that would be allocated to probation officers in the United States.

5. Many diversionary measures are meant to be carried out by the procuratorate, whose duty to prosecute may conflict with the best interests of the child. The CPL empowers the procuratorate to grant diversion and supervise juveniles during the diversionary monitoring period.<sup>12</sup> Social inquiry reports prepared by the procuratorate must be considered by the court.<sup>13</sup>

6. Although there have been significant declines in recent years, juvenile arrests and indictments remain high, accounting for 8–9 percent of annual national totals.<sup>14</sup> Recidivism rates are aggregated and ill-defined, making it difficult to evaluate the success of rehabilitation. Recidivism rates given by different sources range from 1–20 percent.<sup>15</sup>

7. While generally a welcome means to non-custodial punishment and restorative justice, criminal reconciliation may fail to look after the best interests of the juvenile: some

reconciliation meetings are held in public, in contravention of Article 8 of the Beijing Rules and Article 40 of the CRC; performance evaluation measures for judges and prosecutors include the number of cases reconciled, which may create incentive for them to pressure juveniles to admit guilt (a prerequisite of reconciliation); and, in some instances, reconciliation focuses on compensation and thus excludes juveniles since parents generally control financial decisions.<sup>16</sup>

8. The CPL stipulates that juveniles in custody shall be held, managed, and educated separate from adults,<sup>17</sup> in line with Article 37(c) of the CRC and Articles 13.4 and 26.3 of the Beijing Rules. Chinese law also stipulates that juveniles in custody should receive compulsory education,<sup>18</sup> consistent with Article 40.4 of the CRC and Article 26.2 of the Beijing Rules. However, it is not uncommon for juveniles to be held with adults in detention centers.<sup>19</sup> In some locales, female juveniles serve custodial sentences in adult women's prisons, where some of them are assigned to work full days and deprived of compulsory education.<sup>20</sup>

### **Women in Prison**

9. China agreed to Mozambique's 2009 recommendation to continue efforts aimed at further enhancing the status of women. In the corrections sector, China has taken some positive steps, but has not consistently applied a gender-specific approach. Although Article 39 of the Prison Law—whose 1994 passage preceded the establishment of the majority of China's women's prisons—requires that the reform of women prisoners take into account their physiological and psychological characteristics, it does not guide implementation. In 2011 and 2012, China revised its Criminal Law and CPL to increase access to non-custodial measures for pregnant and breastfeeding women.<sup>21</sup> These measures are consistent with the UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the "Bangkok Rules"), but China has yet to officially incorporate the rules into its national policies.

10. Domestic violence is a leading cause of crime among women. The SPC has created a task force and initiated a pilot project to develop national standards for sentencing in cases involving domestic violence.<sup>22</sup> Consistent with the Bangkok Rules, the Hunan High People's Court issued the first provincial guiding opinion on domestic violence in 2009, encouraging lighter sentences and sentence reductions for women who "fight violence with violence."<sup>23</sup> However, nationwide, most women who fight back still receive severe punishment of 10 years in prison, life, death with reprieve,<sup>24</sup> and even death with immediate execution.<sup>25</sup>

11. China agreed to Germany's recommendation to improve education, training, and supervision of prison staff. However, gender-specific training appears deficient. The vast majority of officers in women's prisons lack understanding of the causes of women's crime, women's correctional systems, and international standard and practice.<sup>26</sup> Female prison police have fewer training and promotional opportunities,<sup>27</sup> in contravention of Article 11(c) of the Convention on the Elimination of All Forms of Discrimination Against Women and Articles 29 and 32 of the Bangkok Rules. Due to excessive workloads, a considerable number of women are either not willing to work in women's prisons or request transfers out of women's prisons.<sup>28</sup>

12. Overcrowding may be a problem in women's prisons.<sup>29</sup> The number of female prisoners exceeded 93,000 in 2011, up 15 percent from 2008, compared with 5 percent growth for male prisoners.<sup>30</sup> China has not released disaggregated statistics on prison capacity and occupancy.

13. Incarcerated mothers do not have legal guarantees that their children will be cared for in their absence. Although national and local authorities are working to develop relevant child-protection standards and services,<sup>31</sup> there currently exists a legal and regulatory gap for children of incarcerated parents.<sup>32</sup> As a result, these children are six times more likely to be incarcerated than other children,<sup>33</sup> and, according to a 2006 report, 95 percent of them do not receive any form of social assistance.<sup>34</sup> Under Article 9.3 of the CRC, children temporarily or permanently deprived of their family environment shall be entitled to state assistance.

### **Capital Punishment**

14. China agreed to Egypt's recommendation to continue to strictly control use of the death penalty. In compliance, China conducted fewer executions and amended its Criminal Law and CPL to reduce the scope of capital punishment and bolster protections for individuals who may be sentenced to death. An estimated 16,500 people were executed from 2009–2012,<sup>35</sup> a 39 percent decline over 2005–2008. However, appropriate acknowledgement and support of Chinese efforts towards abolition cannot be given until execution statistics are made public in accordance with Article 14.1 of the International Covenant on Civil and Political Rights (ICCPR). In 2012 and 2011, Chinese media reported on 354 and 475 executions, respectively, suggesting that only around 10 percent of executions are publically reported.<sup>36</sup>

15. Several steps were taken to reduce the use of capital punishment. The vice health minister stated that China will phase out its reliance on executed prisoners as organ donors by 2015.<sup>37</sup> (China is the only country in the world to rely on executed prisoners for organ donations.<sup>38</sup>) Moves to diversify organ donors should disincentivize use of the death penalty, as executed prisoners account for more than 90 percent of deceased donors.<sup>39</sup>

16. In 2011, the Criminal Law was amended to eliminate the death penalty for 13 non-violent, economic crimes and to generally prohibit death sentences for people ages 75 and older.<sup>40</sup> However, the impact of the revisions were largely symbolic, as most of the 13 crimes had rarely or never resulted in execution, and the number of capital cases involving people over 70 is fewer than 10 per year.<sup>41</sup> Among the 55 crimes that still carry capital punishment, many non-violent and/or economic offenses, such as illegal fundraising, remain.

17. In death penalty cases, the revised CPL provides expanded access to legal counsel and stipulates that interrogations be recorded in full and unedited, appellate hearings be mandatory, and SPC review be strengthened.<sup>42</sup> However, the law also revises trial-extension procedures that risk lengthening the period defendants are held in custody and enables indefinite incarceration.<sup>43</sup> The SPC is empowered to approve unlimited trial extensions in “exceptional circumstances.”

### **Endangering State Security**

18. Endangering state security (ESS) is among the most serious categories of crimes in China's Criminal Law, with half of the crimes punishable by life imprisonment and/or death. However, several of the crimes included in the category—namely, subversion, incitement of subversion, splittism, and incitement of splittism—are vaguely defined in their scope, procedures for determining intent,<sup>44</sup> and sentencing,<sup>45</sup> which allows for violations of freedom of expression, some of which appear ethnically motivated, in contravention of Article 5 of the Convention on

the Elimination of All Forms of Racial Discrimination. By agreeing to Austria's recommendation to ratify the ICCPR, China reaffirmed its commitment to take steps towards aligning law and practice with the covenant. Yet inconsistent with Article 14.1 of the ICCPR, courts do not make all ESS verdicts public.

19. The number of ESS arrests peaked at 1,712 in 2008 and declined annually to reach 930 in 2011.<sup>46</sup> Due to a lack of transparency, Dui Hua's Political Prisoner Database (PPDB) had information on less than 8 percent of people arrested for ESS in 2011.<sup>47</sup> As of December 31, 2012, the PPDB had information on 380 individuals believed to be serving sentences for ESS. Among them, 219 (58 percent) are believed to have been convicted of subversion, incitement of subversion, splittism, or incitement of splittism, including 136 (38 percent) for the two incitements. The PPDB indicates that, between 2009 and 2012, more people received longer sentences for subversion, incitement of subversion, splittism, or incitement of splittism than in the previous four-year period.<sup>48</sup> In 2009 and 2010, at least 36 people received sentences of 10 years or more for inciting splittism or splittism, mostly related to the riots in Tibetan regions in 2008 and in Xinjiang in 2009. In 2011, more than 100 people were detained, arrested, or disappeared related to China's "Jasmine Revolution,"<sup>49</sup> and at least 25 individuals were convicted of inciting subversion or subversion, compared with four in 2010. Seven of the 25 received sentences of 10 years or more.

20. From 2008–2010, Xinjiang, which accounts for less than 2 percent of China's population, accounted for 50 percent of ESS trials nationwide.<sup>50</sup> Although there is a severe lack of transparency,<sup>51</sup> Dui Hua believes that the great majority of these trials were against Uyghurs. Splittism is the focus of stability maintenance in Xinjiang,<sup>52</sup> and more than 90 percent of Xinjiang ESS cases in the PPDB involve Uyghurs convicted of splittism charges. These data suggest that Uyghurs, who make up less than 1 percent of China's population, account for nearly half of the nation's ESS trials. Both subversion and splittism charges may be based on the exercise of free speech, association, and assembly, but the former are more likely to be applied to Han Chinese, whereas the latter are usually applied to ethnic minorities—847 of 849 people charged with splittism or inciting splittism in the PPDB are Uyghur or Tibetan. Although inciting subversion and inciting splittism carry the same penalties in the Criminal Law, available data indicate that people charged with the latter are more likely to receive harsher sentences.<sup>53</sup> From 2009–2012, 24 people (18 Tibetans and 6 Uyghurs) are known to have received sentences of 10 years or more for inciting splittism, compared with four people for inciting subversion.

21. ESS suspects and prisoners face harsher treatment than most other suspects. ESS cases are classified as "political cases" and are investigated by a special bureau of the Ministry of Public Security or by the Ministry of State Security. As a result, more pressure is placed on "solving" these cases thereby creating an increased risk of the use of extralegal measures.

22. Measures that violate the ICCPR are used to solve political crime. The CPL stipulates that police can place suspects in cases of ESS under residential surveillance in an undisclosed location for up to six months or in criminal detention with no family notification for up to 37 days. Suspects are held incommunicado without guarantee of access to counsel or visits from family members.<sup>54</sup> ESS prisoners are less likely to receive clemency (i.e., sentence reduction and parole) than other prisoners because of requirements to "acknowledge guilt" and SPC regulations that clemency for ESS prisoners be "strictly handled."<sup>55</sup> Many ESS prisoners do not believe they

have committed a crime and therefore refuse to acknowledge guilt. Although strict handling is undefined in national regulations, in provincial regulations it entails longer waits to become eligible for clemency, shorter standard lengths for each sentence reduction, and more onerous approval procedures.<sup>56</sup> Upon completion of their prison sentences, those convicted of ESS face the supplemental punishment of “deprivation of political rights” (DPR). If police suspect that the terms of DPR might be violated, they may subject the individual to house arrest or incommunicado detention in an undisclosed location.<sup>57</sup>

23. The PPDB includes information on 70 individuals who may still be in prison for counterrevolution. China removed the crime from its Criminal Law in 1997 but failed to accord with Article 15.1 of the ICCPR by subsequently releasing those imprisoned for counterrevolution.

### **Recommendations**

24. In light of recent successes and ongoing challenges, Dui Hua recommends that the People’s Republic of China:

25. Continue juvenile justice reform in the best interests of juveniles by: reducing the use of custodial sentences for all juveniles regardless of residency status; ensuring bodies that are independent of procuratorates and courts conduct social inquiry reports and provide services related to diversion and non-custodial sentences; making public disaggregated data on recidivism, including how the concept is defined; ensuring that juveniles go through criminal reconciliation only when it is in their best interest and that their privacy is protected; and implementing laws that juveniles in custody shall be held, managed, and educated separate from adults and do so in facilities that provide programs catering to their age and needs;

26. Continue efforts aimed at enhancing the status of incarcerated women by: incorporating the Bangkok Rules into national laws and policies; exempting domestic violence survivors from the death penalty while sentencing standards are under review; increasing gender-specific training of corrections officers and improving promotional opportunities for female corrections officers; protecting the rights and interests of children of incarcerated parents by recognizing them in child-protection laws and mandating centralized and localized bodies to provide them with state assistance; mandating centralized and localized bodies to research the conditions of incarcerated women and make public research findings including the occupancy rates of women’s prisons; and engaging with the international community on relevant best practices;

27. Continue to work towards abolition by: making public death penalty verdicts and sentencing data; reducing the number of capital crimes, particularly non-violent and economic crimes; lowering the maximum age of execution to accord with criminal justice regulations that classify 60–70 year-old persons as elderly<sup>58</sup>; and ensuring that trials are not excessively long or indefinite by limiting the number of trial extensions and/or establishing maximum trial lengths;

28. Continue legal reform by: ratifying the ICCPR; clarifying standards for sentencing and establishing motive for ESS crimes; making public ESS verdicts; ensuring that ethnicity is not the basis for restricting fundamental freedoms and for discrimination in law enforcement including harsher sentencing; eliminating discriminatory barriers to clemency for ESS prisoners, including requirements to acknowledge guilt; and releasing those convicted of counterrevolution.

<sup>1</sup> Criminal Procedure Law of the People’s Republic of China, [http://www.gov.cn/flfg/2012-03/17/content\\_2094354.htm](http://www.gov.cn/flfg/2012-03/17/content_2094354.htm). Juvenile procedures are covered in Part 5 (Special Procedures), Chapter 1 (Procedures for Juvenile Cases); Supreme People’s Court, Fashi [Judicial Interpretation] (2012) No. 21, [http://www.law-lib.com/law/law\\_view.asp?id=405883&page=6](http://www.law-lib.com/law/law_view.asp?id=405883&page=6). The law took effect on January 1, 2013, but under Article 490 of this judicial interpretation, juvenile records sealing applied retroactively to cases that met the criteria specified in the revised law that were concluded prior to December 31, 2012.

<sup>2</sup> Literally “conditional non-prosecution” (*futiaojian bu qisu*)

<sup>3</sup> Other improved juvenile procedures in the revised CPL that accord with the CRC and Beijing Rules include legal aid for indigent juveniles (Article 267), stringent measures limiting arrest (Article 269), and the presence of legal representation during interrogation and trial (Article 270).

<sup>4</sup> Supreme People’s Court, “Zhongguo Shaonian Sifa Daibiao Pu Mei Jiaoliu” [Chinese Juvenile Justice Representatives Go to US for Exchange], September 29, 2012, [http://www.court.gov.cn/spyw/qtyw/snsp/201209/t20120929\\_178576.htm](http://www.court.gov.cn/spyw/qtyw/snsp/201209/t20120929_178576.htm); The Dui Hua Foundation, “Dui Hua Hosts Third Juvenile Justice Exchange with China,” *Dialogue* 49 (2012), <http://duihua.org/wp/?p=6857>.

<sup>5</sup> Annex, Figures 1 and 2.

<sup>6</sup> Junzao Mo, “Guanyu Tigao Weichengnian Zuifan Feijianjixing Shiyong Lü De Sikao” [Reflections on Raising the Rate of Non-Custodial Punishment for Juvenile Offenders], *Zhongguo Shaonian Sifa* [Chinese Juvenile Justice] no. 3 (2010), 74.

<sup>7</sup> *Ibid.*, 76.

<sup>8</sup> Ji Tong and Jian Ma, “2005–2009 Nian Weichengnianren Fanzui Feijianjin Shiyong Qingkuang Fenxi” [Analysis of the Application of Non-Custodial Punishment among Juvenile Offenders in 2005–2009], *Zhongguo Shaonian Sifa* [Chinese Juvenile Justice] no. 3 (2010), 189.

<sup>9</sup> Women.org.cn, “Qianxi Weichengnianren Fanzui De Jiben Qingkuang Yu Tedian” [Primary Analysis of Juvenile Offenders’ Basic Situation and Characteristics], July 5, 2010, [http://jtjy.china.com.cn/2010-07/05/content\\_3592560.htm](http://jtjy.china.com.cn/2010-07/05/content_3592560.htm). From 2004–2008, local juveniles were 10 times more likely than migrant juveniles to be granted bail in Shanghai’s Qingpu District; 6.5 percent of migrant juveniles were granted bail, compared with 63 percent of all juveniles.

<sup>10</sup> The Dui Hua Foundation, “Introducing Group Homes to China’s Juvenile Justice Experts,” *Dialogue* 49 (2012), <http://duihua.org/wp/?p=6855>.

<sup>11</sup> Supreme People’s Court, Judicial Interpretation, Articles 491–494.

<sup>12</sup> Criminal Procedure Law, Articles 271–272.

<sup>13</sup> Supreme People’s Court, Judicial Interpretation, Article 476; for additional information on entities conducting social inquiry reports, see Criminal Procedure Law, Article 268 and Supreme People’s Procuratorate Trial Regulations on Criminal Procedures, [http://news.jcrb.com/jxsw/201211/t20121123\\_993092.html](http://news.jcrb.com/jxsw/201211/t20121123_993092.html). “Depending on the circumstances,” public security, procuratorates, or courts may investigate the juvenile suspects’ experience growing up, the reasons for the crime, supervision, education, etc. Social inquiry reports conducted by public security must be reviewed by procuratorates, and procuratorates may retain a “relevant organization or institution” to conduct a social inquiry report.

<sup>14</sup> “Weichengnianren Jiancha Gongzuo Shenhua Fazhan De Lujing Xuanze” [Choosing the Path to Deepen Development of Juvenile Work among Procurators], *People’s Procuratorial Semimonthly*, December 5, 2011, [http://www.rmjcw.cn/jcjj/201112/t20111205\\_766463.html](http://www.rmjcw.cn/jcjj/201112/t20111205_766463.html). In 2010, the number of juvenile arrests and indictments nationwide fell 27 percent and 19.55 percent, respectively, compared with 2005; for additional data, see Tiantian Bai, “Young Offenders Given a Break,” *Global Times*, October 31, 2012, <http://www.globaltimes.cn/content/741419.shtml>; for national arrest and indictment data, see *Zhongguo Falü Nianjian* [China Law Yearbook] (2011), 1056.

<sup>15</sup> Information Office of the State Council, “Judicial Reform in China,” October 2012, [http://www.scio.gov.cn/zxbd/wz/201210/t1226405\\_3.htm](http://www.scio.gov.cn/zxbd/wz/201210/t1226405_3.htm). This source states that the juvenile recidivism rate “remained at 1–2 percent” in 2011; The Dui Hua Foundation, “Do Work-Study Schools Reduce Juvenile Crime?,” *Human Rights Journal* (blog), January 30, 2012, <http://www.duihuahrjournal.org/2012/01/juvenile-crime-past-present-and-future.html>. Juvenile justice expert Kang Shuhua, a professor at Peking University Law School, said in a December 2011 interview with the *Legal Evening News* that the juvenile recidivism rate was just over 20 percent, compared with 40 percent in the United States.

<sup>16</sup> The Dui Hua Foundation, “Not Adding Up: Criminal Reconciliation in Juvenile Justice,” *Human Rights Journal* (blog), May 21, 2012, <http://www.duihuahrjournal.org/2012/05/not-adding-up-criminal-reconciliation.html>.

<sup>17</sup> Prison Law of the PRC, [http://www.gov.cn/ziliao/flfg/2005-09/12/content\\_31186.htm](http://www.gov.cn/ziliao/flfg/2005-09/12/content_31186.htm). Article 74 states that juveniles shall serve sentences in juvenile reformatories. Law on the Protection of Minors of the PRC, [http://www.china.com.cn/policy/txt/2006-12/30/content\\_7582808\\_3.htm](http://www.china.com.cn/policy/txt/2006-12/30/content_7582808_3.htm). Article 57 stipulates that juveniles and adults in custody should be held separately.

<sup>18</sup> Article 57 of Law on the Protection of Minors and Article 75 of the Prison Law.

<sup>19</sup> “由于我国没有专门针对未成年人适用的监管场所,在羁押期限期间,未成年在押人员数量较少,并且同案人员较多,监管人员考虑到安全问题,往往与成年在押人员混押,容易造成‘交叉感染’。” [Since China does not have dedicated juvenile supervision facilities, when there are relatively few juveniles in detention and many people are involved in the same case, during the detention period, after guards have considered the issue of safety, juveniles are frequently held together with adults making it easy for ‘cross contamination.’] Fubin Jia, Zhaofeng Yang and Hongliang Zhang, “Weichengnianfanzui Tedian He Guilü Diaocha” [Investigation of the Characteristics and Patterns of Juvenile Offenders], JCRB.com, May 5, 2012,

[http://www.jcrb.com/procuratorate/theories/practice/201205/t20120502\\_853050.html](http://www.jcrb.com/procuratorate/theories/practice/201205/t20120502_853050.html); “公安机关的看守所没有对未成年人分管分押” [Police detention centers have not instituted separate management and detention for juveniles] Tingyun Deng, “Weichengnianren Xingshi Sifa Zhidu Wanshan Yanjiu” [Research on Improving the System of Juvenile Criminal Justice], September 15, 2012, <http://hnjhfy.chinacourt.org/public/detail.php?id=573>; for a local study, see Yugang Wang and Ye Wu, “Xingshi Anjian Weichengnian Beigaoren Kanshousuo Jiya Qingkuang Fenxi Yanjiu” [Research on the Situation of Juvenile Defendants in Criminal Cases Detained in Detention Centers], April 13, 2012, <http://yazy.chinacourt.org/public/detail.php?id=1198>.

<sup>20</sup> Mugao Yang, *Zhongguo Nüfan Jiaozheng Zhidu Yanjiu* [Research on China’s Corrections System for Women Offenders], (Nanjing: Nanjing University Press, 2012), 216–217. This is also a violation of Article 75 of the Prison Law, which states that labor should be tailored to the specific needs of juveniles, with vocational training as the focus. Article 26.4 of the Beijing Rules in particular calls for the fair treatment of female offenders.

<sup>21</sup> The Dui Hua Foundation, “Bridging the Legal Gap for China’s Incarcerated Women,” *Human Rights Journal* (blog), April 24, 2012, <http://www.duihuahrjournal.org/2012/04/bridging-legal-gap-for-chinas.html>.

<sup>22</sup> Wenqing, Guo. “Zuigaofa Ni Chu Wenjian Zhidao She Jiabao Xingan Shenpan” [Supreme People’s Court Plans to Release a Guiding Document on Sentencing in Criminal Cases Involving Domestic Violence], *People’s Daily*, January 16, 2013, [http://news.china.com.cn/live/2013-01/16/content\\_18208301.htm](http://news.china.com.cn/live/2013-01/16/content_18208301.htm).

<sup>23</sup> “Hunan Chutai Fanjiatingbaoli Shenli Zhidao Yijian” [Hunan Issues Guiding Opinion on Hearings Involving (Cases of) Fighting Back against Domestic Violence], Xinhua, July 3, 2009, [http://news.xinhuanet.com/politics/2009-07/03/content\\_11647744.htm](http://news.xinhuanet.com/politics/2009-07/03/content_11647744.htm); for relevant analysis, see The Dui Hua Foundation, “From Fighting Domestic Violence to Advancing the Bangkok Rules,” *Dialogue* 45 (2011), <http://duihua.org/wp/?p=1145>.

<sup>24</sup> Yun Ma, “Shaanxi Gaoyuan Jiji Canyu Guoji Jiaoliu Yantao Buduan Tuozhan Shenpan Shiye” [Shaanxi High Court Participates in International Exchange Seminar, Continues to Broaden Sentencing Vision], Shaanxi Fayuan Wang [Shaanxi Courts Website], July 5, 2010, <http://sxfy.chinacourt.org/public/detail.php?id=11720>; for relevant analysis, see Dui Hua, “Fighting Domestic Violence.”

<sup>25</sup> The Dui Hua Foundation, “Staying Execution Would Bolster Death Penalty, Women’s Rights Achievements,” February 1, 2013, [http://duihua.org/wp/?page\\_id=7221](http://duihua.org/wp/?page_id=7221).

<sup>26</sup> Mugao Yang, “Nüzi Jianyu Minjing Duiwu Jianshe Nuogan Wenti Yanjiu” [Research on Issues Concerning the Development of Police Officers in Women’s Prisons], *Jianyu Xue Luntan* [Prison Studies Forum] 2 (2012), 465.

<sup>27</sup> “对女警的培训力度不如男警……对男、女民警的提拔使用和职务普升差别太大,前者量大、机会多,后者量小、机会少” [Training efforts for female prison police officers are inferior to those for male prison police officers ... in terms of raises and promotions, the discrepancy between male and female prison police officers is too great, the former gets bigger raises and more opportunities, while the latter gets smaller raises and fewer opportunities.] Zongsu Xia and Xiaoyan Qi, “Jianyu Xitong Nüjing Duiwu Jianshe Yanjiu” [Research on the Development of Female Police Officers in the Prison System], *Fanzui Yu Gaizao Yanjiu* [Crime and Correction] 10 (2009), 62.

<sup>28</sup> Mugao Yang, Development of Police Officers, 468.



<sup>29</sup> “近年来，女性犯罪数量逐年增多，不少女子监狱容量不足，押犯数量居高不下，甚至活动室都安排女犯居住。” [In recent years the number of women prisoners has increased annually, more than a few women’s prisons have insufficient capacity and, as prisoner numbers remain high, even activity rooms have been designated as living quarters.] Ibid.; “Xin Zhonguo 60 Nian Nüfan Gaizao Gongzuo De Lishi Huigu He Zhanwang” [Historical Review and Outlook on the Correction of Women Offenders 60 Years after the Founding of the PRC], *Fanzui Yu Gaizao Yanjiu* [Crime and Corrections] 4 (2011), 43; “Women appear to face overcrowding in much of the [Asia Pacific] region.” Neil Morgan and Irene Morgan, Conference Report of the 28<sup>th</sup> Asian and Pacific Conference of Correctional Administrators held from November 23–28, 2008, [http://www.apcca.org/uploads/final\\_APCCA\\_Report\\_2008.pdf](http://www.apcca.org/uploads/final_APCCA_Report_2008.pdf). China was a participant in the conference.

<sup>30</sup> See Appendix, Table 2.

<sup>31</sup> Pinghui Zhuang, “Doctor Wants More Done for Children of Prisoners,” *South China Morning Post*, January 31, 2013, <http://www.scmp.com/news/china/article/1139666/doctor-wants-more-done-children-prisoners>.

<sup>32</sup> Hongjie Tian and Ran Wang, “Beijing Diqu Fuxing Renyuan Weichengnian Zinü Shengcun Zhuangkuang Ji Qi Jiuzhu Wenti Yanjiu” [Research on the Survival Situation and Aid Issue of Minor Children of Incarcerated Parents in Beijing District], April 16, 2012, <http://www.chinachild.org/b/yj/3417.html>.

<sup>33</sup> Pinghui Zhuang, “Doctor Wants More Done.”

<sup>34</sup> “Zhongguo Jianyu Fuxing Renyuan Weichengnian Zinü Xianzhuang Kanyou” [The Worrying Situation of Minor Children of Chinese Prisoners], *Zhongguo Qingnian Bao* [China Youth Daily], July 4, 2006, <http://old.chinacourt.org/html/article/200607/04/210299.shtml>. Due largely to financial difficulties, 82 percent of children leave school after the incarceration of a parent.

<sup>35</sup> Appendix, Table 3.

<sup>36</sup> Communication with Joshua Rosenzweig, Chinese University of Hong Kong.

<sup>37</sup> “Organ Donation Scheme to Be in Operation by 2015,” *Shanghai Daily*, November 23, 2012, [http://www.china.org.cn/china/2012-11/23/content\\_27204227.htm](http://www.china.org.cn/china/2012-11/23/content_27204227.htm).

<sup>38</sup> Shan Juan, “China to Cut Dependence on Executed [sic] Prisoners for Transplants,” *China Daily*, May 4, 2011, [http://www.chinadaily.com.cn/china/2011-05/04/content\\_12438849.htm](http://www.chinadaily.com.cn/china/2011-05/04/content_12438849.htm).

<sup>39</sup> “Organ Donation Scheme,” *Shanghai Daily*.

<sup>40</sup> Information Office of the State Council, “Judicial Reform in China,” October 2012,

[http://www.scio.gov.cn/zxbd/wz/201210/t1226405\\_4.htm](http://www.scio.gov.cn/zxbd/wz/201210/t1226405_4.htm); Criminal Law of the PRC,

<http://www.szxingshi.com/95w9.html>. Article 49 stipulates that the death sentence shall not be applied to people who have already reached age 75 at the time of trial, except in cases [where the offense involved] especially cruel methods that cause death.

<sup>41</sup> The Dui Hua Foundation, “Translation & Commentary: ‘Greater Steps Can be Taken to Reduce the Death Penalty,’” *Human Rights Journal* (blog), September 1, 2010, <http://www.duihuahrjournal.org/2010/09/translation-commentary-greater-steps.html>.

<sup>42</sup> The Dui Hua Foundation, “China’s New Criminal Procedure Law: Death Penalty Procedures,” *Human Rights Journal* (blog), April 3, 2012, [http://www.duihuahrjournal.org/2012/04/chinas-new-criminal-procedure-law-death\\_03.html](http://www.duihuahrjournal.org/2012/04/chinas-new-criminal-procedure-law-death_03.html).

<sup>43</sup> Ibid.

<sup>44</sup> Joshua Rosenzweig, “The Sky Is Falling,” in *Liu Xiaobo, Charter 08 and the Challenges of Political Reform in China*, ed. Jean-Philippe Béja, Fu Hualing, and Eva Pils (Hong Kong: Hong Kong University Press, 2012), 36.

<sup>45</sup> Ibid., 37.

<sup>46</sup> Annex, Table 4; for analysis, see The Dui Hua Foundation, “Chinese State Security Arrests Stay High, Trials Soar,” *Human Rights Journal* (blog), November 19, 2012, <http://www.duihuahrjournal.org/2012/11/chinese-state-security-arrests-stay.html>.

<sup>47</sup> Dui Hua’s PPDB included 78 ESS detentions in 2011. If all detentions resulted in arrests that were made during the same year, then that would account for 8.4 percent of the 930 ESS arrests tallied during the year.

<sup>48</sup> Annex, Table 5.

<sup>49</sup> According to Dui Hua’s PPDB, coercive measures were mostly carried out for circulating online calls for public assemblies and strolling protests inspired by Tunisia’s Jasmine Revolution.

<sup>50</sup> Annex, Table 6.

<sup>51</sup> The Dui Hua Foundation, “State Security Stats Highlight Ethnic Unrest, Lack of Names,” *Human Rights Journal* (blog), February 8, 2012, <http://www.duihuahrjournal.org/2012/02/state-security-stats-highlight-ethnic.html>.

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<sup>52</sup> “必须认识到新疆分裂和反分裂的斗争是长期的、复杂的、尖锐的……坚持维护稳定第一责任不放松。” [The struggle between splittist and anti-splittist forces in Xinjiang must be recognized as long-term, complicated, and intense ... the insistence on stability maintenance as our first responsibility must not be relaxed]. Yunyan Sui, “Xinjiang Anpai Bushu 2013 Nian Weiwen Gongzuo” [Xinjiang's Plan and Deployment for Stability Maintenance Work in 2013], *Xinjiang Ribao* [Xinjiang Daily], December 29, 2012, [http://news.xinhuanet.com/legal/2012-12/29/c\\_124165720.htm](http://news.xinhuanet.com/legal/2012-12/29/c_124165720.htm).

<sup>53</sup> Annex, Table 5.

<sup>54</sup> “Incommunicado detention of 15 days constitutes a violation of article 10 of the [ICCPR].” Human Rights Council, A/HRC/13/42, February 19, 2010, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.13.42\\_re-iss.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.13.42_re-iss.pdf).

<sup>55</sup> The Dui Hua Foundation, *Reference Materials on China's Criminal Justice System: Sentence Reduction & Parole* 7 (2010), viii–ix. This is in violation of the Basic Principles for the Treatment of Prisoners.

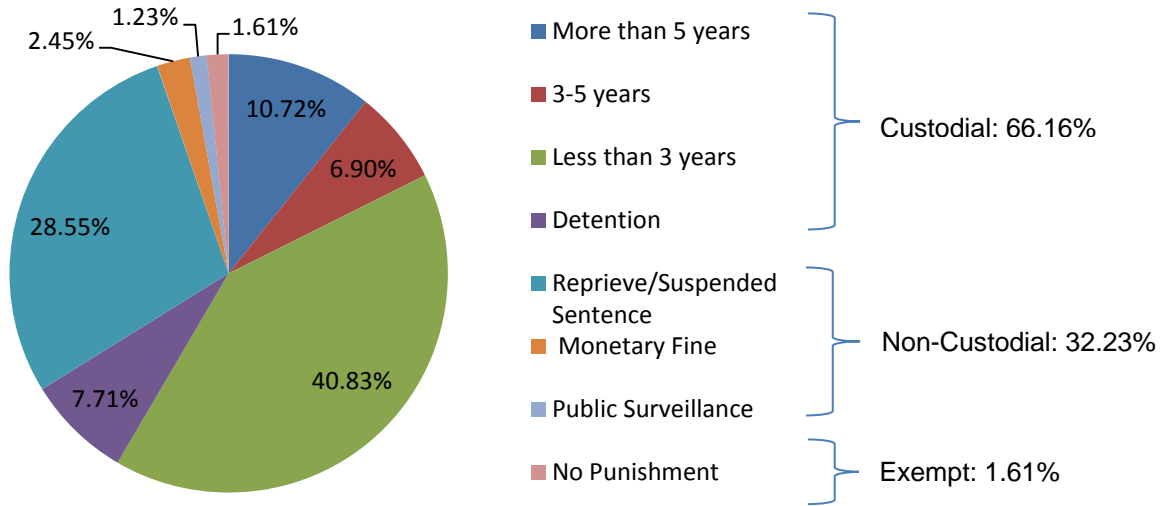
<sup>56</sup> *Ibid.*, vii–viii.

<sup>57</sup> John Kamm, “Separate and Unequal: State Security Detainees in China,” Testimony to the Committee on Foreign Affairs of the House of Representatives of the United States, November 3, 2011, [http://duihua.org/wp/?page\\_id=2558](http://duihua.org/wp/?page_id=2558). These terms include prohibitions on voting, standing for office, working for a state-owned enterprise, giving interviews, etc. In response to inquiries on political and religious prisoners prepared by Dui Hua and submitted by foreign governments, China has used the Criminal Law and the Provisions for the Management and Supervision of Criminal Subject to Public Surveillance, Deprivation of Political Rights, Suspended Sentences, Parole or Medical Parole by Public Security Organs (1995) to justify holding political prisoners under house arrest or in undisclosed locations even after they have completed their sentence.

<sup>58</sup> The Dui Hua Foundation, “Diminishing Returns: Aging in Prison,” *Dialogue* 47 (2012), <http://duihua.org/wp/?p=5730>.

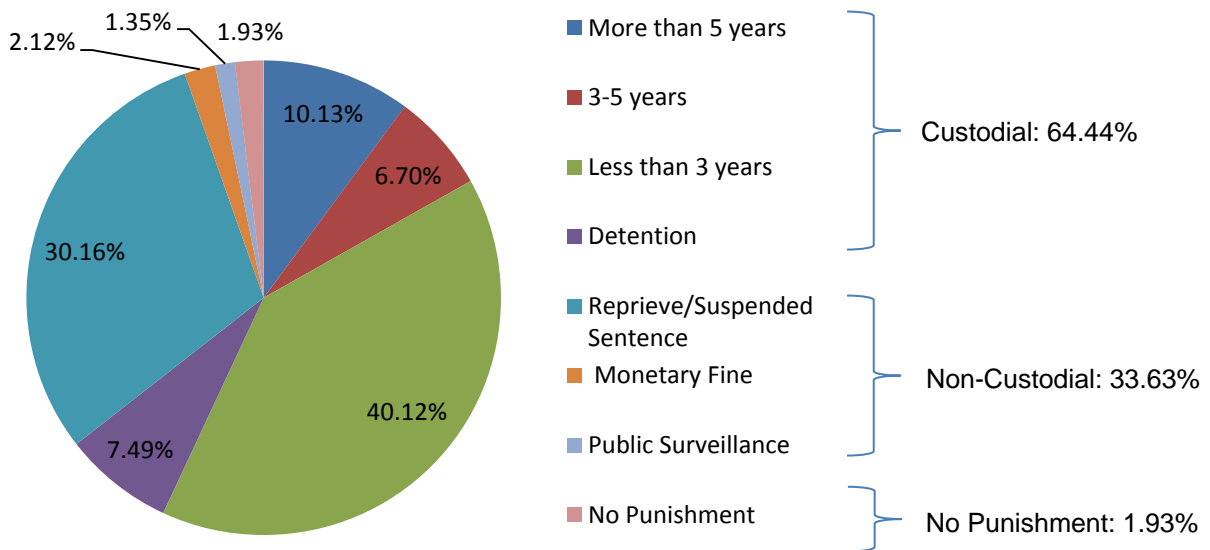
Annex

Figure 1. Sentences of Juvenile Offenders, 2009



Source: Dui Hua, Ji Tong and Jian Ma, “2009 Nian Renmin Fayuan Shenli Weichengnianren Fanzui Feijianjin Jiben Qingkuang He Tedian” [Basic Situation and Characteristics of People’s Courts Adjudications of Juvenile Offenders in 2009], *Zhongguo Shaonian Sifa* [Chinese Juvenile Justice] no. 1 (2010), 202.

Figure 2. Sentences of Juvenile Offenders, 2010



Source: Dui Hua, Ji Tong and Jian Ma, “2010 Nian Renmin Fayuan Shenli Weichengnianren Fanzui Feijianjin Jiben Qingkuang He Tedian” [Basic Situation and Characteristics of People’s Courts Adjudications of Juvenile Offenders in 2010], *Zhongguo Shaonian Sifa* [Chinese Juvenile Justice] no. 4 (2010), 193.

**Table 1. Juveniles Sentenced and Incarcerated, 2005–2011**

Year	Sentenced		Incarcerated*	
	Number	% of Total	Number	% of Total
2005	82,721	9.82%	23,957	1.54%
2006	83,697	9.41%	23,250	1.48%
2007	87,525	9.39%	21,807	1.39%
2008	88,891	8.82%	20,772	1.31%
2009	77,604	7.79%	20,662	1.27%
2010	68,193	6.78%	18,450	1.12%
2011	67,280	6.40%	16,701	1.01%

Note: "Incarcerated" refers to juveniles serving sentences in custody as of the beginning of the year.  
 Source: Dui Hua; sentencing data is from *Zhongguo Falü Nianjian* [China Law Yearbook]; incarceration data is from *Zhongguo Zhiwang* [CNKI]

**Table 2. Prisoners by Sex, 2003–2011**

<b>Year</b>	<b>Women</b>	<b>Change</b>	<b>Men</b>	<b>Change</b>
2004	75,870	6.43%	1,464,897	0.69%
2005	77,279	1.86%	1,457,275	-0.52%
2006	77,771	0.64%	1,464,690	0.51%
2007	78,334	0.72%	1,466,698	0.14%
2008	80,951	3.34%	1,487,499	1.42%
2009	85,167	5.21%	1,517,565	2.02%
2010	90,322	6.05%	1,537,821	1.33%
2011	93,051	3.02%	1,547,021	0.60%

Note: Change refers to annual change

Source: Dui Hua, *Zhongguo Tongji Nianjian* [China Statistical Yearbook]

**Table 3. Estimated Number of Executions, 2005–2012**

<b>Year</b>	<b>Executions</b>
2005	8,000
2006	7,500
2007	6,500
2008	5,000
2009	5,000
2010	4,500
2011	4,000
2012	3,000*

Note: All are Dui Hua estimates except 2012, which was estimated by Professor Schabas following a Chinese seminar on the death penalty.

Source: Dui Hua; William A. Schabas, "Reduction of Death Penalty in China through Judicial Restraint," PhD Studies in Human Rights (blog), December 18, 2012, <http://humanrightsdoctorate.blogspot.hk/2012/12/reduction-of-death-penalty-in-china.html>.

**Table 4. ESS Arrests, Indictments, and Trials, 2005–2011**

Year	Arrests	Indictments	Trials*
2005	296	349	299
2006	604	561	310
2007	742	619	306
2008	1712	1407	466
2009	1208	1095	698
2010	1045	1223	670
2011	930	974	1314†

\* China Law Yearbook disaggregates first-instance trial data by crime category, listing eight of the 10 categories enumerated in the Criminal Law (Part 2, chapters 1–10) along with a category referred to as “other.” Dui Hua believes that the unlisted categories of ESS and dereliction of military duty are combined under “other.” Since indictment statistics have indicated that dereliction of military duty generally accounts for less than 1 percent of indictments when placed in a separate category with only ESS, we believe that military dereliction trials account for a similarly low percentage of trials when combined with ESS and thus use “other” trials as a proxy for ESS trials.

† Given the discrepancy between this number and historical data, we do not include 2011 figures in our analysis.

Source: Dui Hua, *Zhongguo Falü Nianjian* [China Law Yearbook]

**Table 5. Sentences for Selected ESS Crimes, 2005–2012**

Year	Inciting Splittism			Splittism			Inciting Subversion			Subversion		
	< 5 yrs	5–9 yrs	≥10 yrs	< 5 yrs	5–9 yrs	≥10 yrs	< 5 yrs	5–9 yrs	≥10 yrs	< 5 yrs	5–9 yrs	≥10 yrs
2005	7		1			1	2				1	2
2006	5	1					4					3
2007	2	5	2		1	8	2	1				
2008	24	18	12	2	1	4	5	1	1			1
2009	18	8	14	1	3	11	2	1	1		1	3
2010	7	5	8			4	2	1			1	0
2011	5	1				3	8	2	3	5	3	4
2012	2		2		1			1			1	1

Note: Sentences of more than 10 years include fixed term imprisonment, life imprisonment, death with reprieve, and death with immediate execution.

Source: Dui Hua Political Prisoner Database

**Table 6. Concluded ESS Trials of First Instance, 2008–2011**

Year	Nationwide*	Xinjiang	
	Number	Number	% of Total
2008	466	235	50.4%
2009	698	378	54.2%
2010	670	314	46.9%
2011	1314‡	356†	27.1%

\* China Law Yearbook disaggregates first-instance trial data by crime category, listing eight of the 10 categories enumerated in the Criminal Law (Part 2, chapters 1–10) along with a category referred to as “other.” Dui Hua believes that the unlisted categories of ESS and dereliction of military duty are combined under “other.” Since indictment statistics have indicated that dereliction of military duty generally accounts for less than 1 percent of indictments when placed in a separate category with only ESS, we believe that military dereliction trials account for a similarly low percentage of trials when combined with ESS and thus use “other” trials as a proxy for ESS trials.

† Dui Hua estimate based on the assumption that 85.9 percent of combined first- and second-instance trials are trials of first instance. First-instance trials accounted for 87.7 percent of combined first- and second-instance trials in 2008, 86.5 percent in 2009, and 83.5 percent in 2010. Xinjiang did not report disaggregated trial numbers in 2011.

‡ Given the discrepancy between this number and historical data, we do not include 2011 figures in our analysis.

Source: Dui Hua; *Zhongguo Falü Nianjian* [China Law Yearbook]; *Xinjiang Nianjian* [Xinjiang Yearbook]