

**THE CHINA CHALLENGE TO INTERNATIONAL HUMAN RIGHTS:
WHAT'S AT STAKE?**

A CHINA UPR MID-TERM PROGRESS ASSESSMENT

BY HUMAN RIGHTS IN CHINA

NOVEMBER 2016



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TABLE OF CONTENTS

Pages

1-7	Executive Summary
8	Part One: Promoting International Cooperation and Compliance with International Standards
8	Engagement with the UN Human Rights system
11	UPR Mid-term Assessment
12	Treaty Bodies
13	Special Procedures and Country Visits
14	Office of the High Commissioner for Human Rights
16	Ratification of ICCPR
17	Civil Society Participation in the UPR and other International Processes
20	HRIC Recommendations
22	Part Two: Ensuring a Safe and Enabling Environment for Civil Society
23	Legal Framework Compliant with International Standards
33	Effective Access to Justice
38	Political Environment Conducive to Civil Society
40	Long-term Support and Resources for Independent Civil Society
41	HRIC Recommendations

EXECUTIVE SUMMARY

As a "cooperative process" created in March 2006, the Universal Periodic Review mechanism has the mandate to review the human rights records of all UN member states with the goal of promoting human rights through substantive and concrete implementation of UPR recommendations.¹ In accordance with Human Rights Council resolution 5/1 of June 2007, the review assesses to what extent states respect their human rights obligations contained in the *United Nations Charter*, the *Universal Declaration of Human Rights*, human rights treaties ratified by the state under review, voluntary pledges and commitments made by the state (including those undertaken when presenting the candidature for election to the Human Rights Council), and applicable international humanitarian law.²

The government of the People's Republic of China has now been reviewed under two cycles of the Universal Periodic Review (2009, 2013). In the 2013 Universal Periodic Review of China, member states submitted 252 recommendations;³ the PRC government accepted 204 of the recommendations and did not accept 48.⁴ The accepted recommendations address a comprehensive range of human rights commitments, including those relating to civil and political rights; economic, social, and cultural rights; rights of workers, ethnic minorities, and vulnerable groups such as children, women, the elderly, and persons with disabilities; as well as judicial reform, the role of lawyers and access to legal assistance; and international cooperation.

Between the UPR cycles, states are encouraged to submit follow-up UPR mid-term reports on the implementation of the recommendations. While China has not submitted an official mid-term report, regular monitoring and assessment of progress by the international community is critical to ensuring that the Universal Periodic Review is not just a formal exercise for the states under review. International attention and action are especially critical in light of the ongoing crackdowns on human rights defenders and their families, arbitrary detentions, forced disappearances, criminalization of the peaceful exercise of fundamental rights and freedoms, and overall tightening of the legal and political noose on civil society space. These alarming developments undermining fundamental rights and freedoms have been extensively reported by NGOs and the international media, and also highlighted with deep concern by the UN High Commissioner for Human Rights, UN Special Rapporteurs, and UN member states.

A rigorous mid-term review of China's implementation progress is therefore timely to address these alarming trends undermining human rights and freedoms protected by international and domestic law, and to support the defenders, their families, and other independent civil society voices under attack who continue to courageously speak out and press for accountability and respect for rights and rule of law.

¹ U.N. Office of the High Commissioner for Human Rights, "Universal Periodic Review," <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>.

² U.N. Human Rights Council, "Institution-building of the United Nations Human Rights Council," U.N. Doc. A/HRC/RES/5/1 (June 18, 2007), Basis of Review, http://ap.ohchr.org/Documents/dpage_e.aspx?b=10&se=68&t=11.

³ See U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review, "China (including Hong Kong, China and Macao)," U.N. Doc. A/HRC/25/5 (December 4, 2013), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>.

⁴ See U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: China, Addendum, "Views on conclusions and/or recommendations, voluntary commitments and replied presented by the State under review," U.N. Doc. A/HRC/25/5/Add.1 (February 27, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>.

As a constructive input into the UPR process as well as the international human rights system, Human Rights in China submits this mid-term assessment of China's implementation progress. This report focuses on relevant UPR recommendations accepted by the PRC government, outlines our implementation concerns, and advances HRIC's specific recommendations directed at the government of the PRC and UN member states.

Our assessment is organized along two key drivers for advancing concrete human rights progress on the ground:

- *Promoting International Cooperation and Compliance with International Standards*
This section reviews progress in the PRC government's implementation of UPR recommendations relating to compliance with the UN human rights system, including the Universal Periodic Review, human rights treaty body system, special procedures, and Office of the High Commissioner for Human Rights; the ratification of the *International Covenant on Civil and Political Rights*; and civil society participation in the UPR and other international processes.
- *Ensuring that civil society can operate in a safe and enabling environment*
This section reviews progress in the PRC government's implementation of UPR recommendations relating to creating a safe and enabling domestic environment for civil society; applying the key ingredients identified by the UN High Commissioner for Human Rights in his April 2016 report to the Human Rights Council: a robust legal framework compliant with international standards that safeguards public freedoms and effective access to justice; a political environment conducive to civil society; access to information; avenues for participation by civil society in decision-making processes; and long-term support and resources for civil society.⁵

Key Challenges and Concerns

The ongoing and serious deterioration of the human rights situation in China, especially since the PRC government's Universal Periodic Review in 2013, presents key challenges and raises concerns regarding the PRC government's compliance with its international human rights obligations, especially with respect to ensuring a safe and enabling environment for civil society, a key driver for promoting rights progress. These challenges and concerns include:

- an intensified, comprehensive, and ongoing campaign of attacks on defenders and independent civil society within a broader campaign of enforcing ideological conformity within the ruling Communist Party of China, by the media, and among the people;
- policy and legal domestic developments that are at odds with and undermine international human rights standards, coupled with an increasingly hostile rejection of international norms and human rights standards;
- a pattern of official formulaic reporting on progress, without concrete measures and indicators, that undercuts a meaningful assessment of progress and identification of more effective implementation measures; and

⁵ U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, "Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned," U.N. Doc. A/HRC/32/20 (April 11, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20.

- broader implications and impacts of these policies and practices on the credibility and effectiveness of international human rights processes.

Summary of HRIC Recommendations

Promoting International Cooperation and Compliance with International Standards

To strengthen China's constructive engagement with the UN human rights system, including the Universal Periodic Review process, treaty bodies, special procedures, and High Commissioner for Human Rights, we advance the following recommendations:

To China

- Prepare and submit an official UPR mid-term report, and engage constructively with all domestic and international stakeholders to respond to questions, suggestions, and concerns to promote concrete progress in implementing recommendations.
- Revise or elaborate the National Human Rights Action Plan (2016-2020) to include full civil society participation in monitoring its implementation and systematic information such as specific indicators and benchmarks to enable a meaningful assessment of progress.
- To enable a meaningful assessment of progress, include specific indicators and benchmarks in its third UPR report, and in periodic and progress treaty body reports, including the follow-up reports requested by the Committee on the Elimination of Discrimination against Women (CEDAW), due by November 5, 2016, and the Committee against Torture (CAT), due by December 9, 2016, on the steps undertaken to implement the specific recommendations identified by them.
- Respond to outstanding requests for invitations to visit China by special procedures and extend a standing (open) invitation to all special procedures; provide specific timeframes for these visits; and provide clear assurances of compliance with UN Terms of Reference for these country visits.
- Extend an invitation for a country visit by the UN High Commissioner for Human Rights with a specific timeframe for the visit; provide clear assurances of compliance with UN Terms of Reference for the country visit.
- Commit to a specific timeframe for the ratification of the *International Covenant on Civil and Political Rights*, but in no case beyond the time period of the NHRAP (2016-2020), and to working towards post-ratification compliance in accordance with legal obligations as defined in General Comment 31 issued by the Human Rights Committee.
- Ensure and demonstrate full civil society participation with actions including: immediate steps to end reprisals against citizens who participate or attempt to participate in UN human rights processes, and concrete measures to allow expanded and diverse participation and opportunities to provide input into, monitor, and engage with these processes, including the preparation of China's third UPR report, and progress reports to CEDAW and CAT due in 2016.

- Ensure that any restrictions on freedom of expression, access to information, freedom of association, and other rights comply with international standards.

To Member States

To encourage greater cooperation by the government of the PRC with international human rights processes and to address challenges it poses to universal human rights standards and values, we advance the following recommendations:

- Press the PRC government to extend invitations to Special Rapporteurs and other special procedures with outstanding requests for visits and issue an invitation to the High Commissioner for Human Rights.
- Press the PRC government to indicate a specific timeframe for ICCPR ratification in the NHRAP (2016-2020) and to working towards post-ratification compliance in accordance with the legal obligations as defined in General Comment 31 issued by the Human Rights Committee.
- Respond firmly to counter official policies and practices that seek to enforce domestic ideological conformity in violation of universal values and international human rights standards. International human rights—universal, indivisible, interrelated, interdependent and mutually reinforcing—represent core universal values that should be our *aspirational* beginning point and our *accountability* ending point.
- Press the PRC government to take immediate steps to end reprisals against citizens who participate or attempt to participate in UN human rights processes, and rigorously monitor its responses to ensure expanded and diverse civil society participation in these processes, including the preparation of China's third UPR report, and progress reports to CEDAW and CAT due in 2016.

Ensuring that Civil Society Can Operate in a Safe and Enabling Environment

To support and ensure a safe and enabling environment for civil society that is necessary for the effective exercise of fundamental rights and freedoms, and to address domestic developments that undermine informed and robust civil society action, we advance the following recommendations:

To China

- Take immediate steps to end the crackdown and reprisals against lawyers, defenders, and other citizens who are exercising rights protected by international human rights and domestic law.
- Adopt concrete measures to support diverse civil society participation (beyond that by officially affiliated groups), including providing access to information and opportunities to monitor and participate in decision-making processes that impact on the rights of individuals and their communities.
- Adopt immediate legal and policy measures to end the campaign against human rights defenders and ensure that lawyers are able to fully carry out their professional responsibilities to their clients.

- Continue current efforts to strengthen the independence of the courts by restricting the involvement of Political and Legal Affairs Committees in cases and strengthen the monitoring and implementation of steps towards removing them from any role in the judicial review and determination of cases.
- Repeal or substantially amend the *Foreign NGO Management Law* (FNGO Law) to address the concerns and recommendations expressed by diverse sectors of the international community—governments, the business, academic, and professional communities, and NGOs—including repealing the restrictive regulatory framework that places foreign civil society groups under the stringent and intrusive supervision of the police.
- Review the suite of national security laws and draft laws and undertake necessary amendments to ensure that they comply with international standards for legality and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.

To Member States

- Demonstrate high-level political support for Chinese lawyers, defenders, and a sustainable and robust civil society space through joint public statements and other public actions, and through all available engagement tools, including bilateral dialogues, high level visits, technical assistance support, and educational and cultural exchanges.
- Respond firmly to counter official policies and practices aimed at enforcing domestic ideological conformity that seeks to undermine international human rights principles and standards under the banner of an anti-Western campaign.
- In bilateral and multilateral engagement, including providing technical assistance for and exchanges with the PRC, press for the repeal or a substantial amendment of the FNGO Law to address the concerns and expressed by diverse sectors of the international community—governments, the business, academic, and professional communities, and NGOs—including repealing the restrictive regulatory framework that places foreign civil society groups under the supervision of the police.
- In bilateral and multilateral engagement, including providing technical assistance for and exchanges with the PRC, press for a review of the suite of national security laws and draft laws and necessary amendments to ensure that they comply with international standards for legality and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.

As the Human Rights Council marks its tenth anniversary and concludes the last session of the second cycle of the Working Group on the Universal Periodic Review, this is also an important opportunity to assess the effectiveness of the Universal Periodic Review process in fulfilling its potential, in the words of the UN Secretary-General, “to promote and protect human rights in the darkest corners of the world.”⁶ While this report and recommendations focus on China’s UPR mid-term progress, we hope that HRIC’s recommendations are also relevant to strengthening the third cycle of the Universal Periodic

⁶ U.N. Human Rights Council, “UPR Sessions,” <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

Review, and that they contribute to promoting more effective and credible international human rights processes.

PART 1: PROMOTING INTERNATIONAL COOPERATION AND COMPLIANCE WITH INTERNATIONAL STANDARDS

Engagement with the UN Human Rights System

Over the past two decades, the PRC government has increased its engagement with the UN human rights system, including participating in the UPR cycles, the Human Rights Council reform debates, treaty body reviews, and, most recently, hosting visits from the Independent Expert on foreign debt and the Special Rapporteur on extreme poverty and human rights.⁷ In addition, the PRC government has hosted visits by other international human rights experts such as the European Union Special Representative for Human Rights.⁸

Throughout this engagement, the PRC government has demonstrated deepened procedural sophistication, but has, at the same time, caused serious concerns in the international community about the substantive impact of this active engagement on Chinese defenders and civil society, and on the integrity and effectiveness of the international human rights system. This is especially concerning in light of the ongoing crackdowns on human rights defenders and their families, arbitrary detentions, forced disappearances, criminalization of the peaceful exercise of fundamental rights and freedoms, and overall tightening of the legal and political noose on civil society space. This steep deterioration of the domestic human rights situation has been extensively reported by NGOs and the international media, and has also been highlighted with deep concern by NGOs,⁹ the UN High Commissioner for Human Rights,¹⁰ UN Special Rapporteurs,¹¹ and UN member states.¹²

⁷ U.N. Office of the High Commissioner for Human Rights, “Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights on his mission to China,” U.N. Doc. A/HRC/31/60/Add.1 (March 1, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/60/Add.1; U.N. Office of the High Commissioner for Human Rights, “End-of-mission statement on China, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights,” August 23, 2016,

<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20402&LangID=E>.

⁸ European Union External Action, “EU Special Representative for Human Rights visits China Bruxelles,” November 16, 2015, https://eeas.europa.eu/headquarters/headquarters-homepage/5567/eu-special-representative-for-human-rights-visits-china_en.

⁹ See International Service for Human Rights, *Human rights defenders and lawyers in China: A mid-term assessment of implementation during the UPR second cycle*, 2016, <http://www.ishr.ch/news/human-rights-defenders-and-lawyers-china-assessing-upr-progress>; Chinese Human Rights Defenders, *Too Risky to Call Ourselves Defenders*, 2015 Chinese Human Rights Defenders Annual Report on the Situation of Human Rights Defenders in China, <https://www.nchrd.org/2016/02/too-risky-to-call-ourselves-defenders-chrds-2015-annual-report-on-the-situation-of-human-rights-defenders-in-china/>; Leitner Center for International Law and Justice at Fordham Law School at New York City, *Plight and Prospect: The Landscape for Cause Lawyers in China*, 2015, http://www.leitnercenter.org/files/Plight%20and%20Prospects_FULL%20FOR%20WEB.pdf; Amnesty International, “China: End relentless repression against human rights lawyers on first anniversary of crackdown” July 7, 2016, <http://www.amnestyusa.org/news/press-releases/china-end-relentless-repression-against-human-rights-lawyers-on-first-anniversary-of-crackdown>; International Federation for Human Rights, “China: Massive crackdown on human rights lawyers continues,” July 16, 2015, <https://www.fidh.org/en/region/asia/china/china-massive-crackdown-of-human-rights-lawyers-continues>; Human Rights Watch, “China’s Human Rights Crackdown Punishes Families, Too,” August 15, 2016, <https://www.hrw.org/news/2016/08/15/chinas-human-rights-crackdown-punishes-families-too>. See also, China Human Rights Lawyers Concern Group for extensive reporting on the crackdown, <http://www.chrlawyers.hk/en/content/%E9%A6%96%E9%A0%81> and Human Rights in China, *Mass Crackdown on Chinese Lawyers and Defenders*, <http://www.hrichina.org/en/mass-crackdown-chinese-lawyers-and-defenders>.

¹⁰ Noting a “very worrying pattern in China that has serious implications for civil society and the important work they do across the country”: U.N. Office of the High Commissioner for Human Rights, “UN Human Rights Chief deeply concerned by China clampdown on lawyers and activists,” February 16, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17050&LangID=E>.

While the PRC government did not submit official mid-term reports following the Universal Periodic Reviews in 2009 and 2013,¹³ 63 member states did submit these voluntary reports.¹⁴ As a constructive tool for assessing and promoting implementation of UPR recommendations, these mid-term reports also can demonstrate a commitment to implementation and constructive engagement with the UPR process.

In the absence of mid-term reports by the PRC government, we have reviewed an official document—that comes closest to a public accounting aimed at the international community—covering the PRC government’s efforts towards implementation of UPR recommendations: the most recent official National Human Rights Action Plan Assessment Report (2012-2015), a self-assessment published on June 14, 2016 of the progress made by the PRC government in implementing its second National Human Rights Action Plan (2012-2015).¹⁵ The first NHRAP was promulgated in 2010 following relevant recommendations made in the 2009 Universal Periodic Review.

The NHRAP Assessment Report (2012-2015) covers economic, social, cultural; civil and political rights; rights of vulnerable groups; human rights education; and international cooperation. While it provides some useful information on China’s human rights progress, the lack of systematic, meaningful benchmarks and context for the statistics provided undermines its usefulness as a reporting resource that meets international standards, and its credibility as a rigorous and constructive self-assessment.

Despite its critical flaws as a monitoring tool, the report, at the same time, reveals not only the PRC government’s inadequacy in promoting international cooperation and compliance with international standards but also a sharp discrepancy with deeply concerning implications for the integrity of the

¹¹ U.N. Office of the High Commissioner for Human Rights, “‘Lawyers need to be protected not harassed’ – UN experts urge China to halt detentions,” July 16, 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16241&LangID=E>.

¹² A joint statement by 12 governments issued at the UN human Rights Council in March 2016 expressed concern “about China’s deteriorating human rights record, notably the arrests and ongoing detention of rights activists, civil society leaders, and lawyers” and called for the release of those detained: “Joint Statement – Human Rights Situation in China,” March 2015, <https://geneva.usmission.gov/2016/03/10/item-2-joint-statement-human-rights-situation-in-china/>. See also statements made by governments of Canada: <http://www.canadainternational.gc.ca/china-chine/highlights-faits/2015/CanadaGravelyConcernedbyDetentionandDisappearanceofLawyersandActivistsinChina.aspx?lang=en>; Australia: <http://dfat.gov.au/news/media-releases/Pages/recent-human-rights-developments-in-china.aspx>; Germany: http://www.auswaertiges-amt.de/EN/Infoservice/Presse/Meldungen/2015/150713_MRHH_Str%C3%A4sger_verurteilt_Verhaftungswelle_China.html; United States: <http://www.state.gov/r/pa/prs/ps/2015/07/244820.htm>; European Union External Action: http://collections.internetmemory.org/haeu/content/20160313172652/http://eeas.europa.eu/statements-eeas/2015/150715_03_en.htm.

¹³ Human Rights in China actively contributed to and monitored China’s UPRs in 2009 and 2013 as well as contributed a progress note in 2011: see Human Rights in China, *Implementation and Protection of Human Rights in the People’s Republic of China* (2008), http://www.hrichina.org/sites/default/files/PDFs/Submissions/2008_HRIC_UPR_Report.pdf; Human Rights in China report, submitted to the U.N. Office of the High Commissioner for Human Rights, *Note on China’s progress since the 2009 Universal Periodic Review: A stakeholder’s submission by Human Rights in China* (2013), http://www.hrichina.org/sites/default/files/attachments/story/hric_2013_upr_submission_final.pdf; Human Rights in China also prepared thematic analyses of the recommendations and China’s responses to the recommendations, see *Summary Charts: China’s Responses to Recommendations Advanced by Human Rights Council Member and Observer States 2nd Universal Periodic Review of China*, http://www.hrichina.org/sites/default/files/upr_2013_recommendations_and_chinas_responses.pdf.

¹⁴ As at June 24, 2016, 63 States submitted UPR mid-term reports in relation to recommendations put forward during the first and second cycle: see <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>.

¹⁵ Information Office of the State Council of the People’s Republic of China, *Assessment Report on the Implementation of the National Human Rights Action Plan of China (2012-2015)*, (国家人权行动计划 2012 至 2015 年评估报告) (June 14, 2016) (Chinese: <http://www.scio.gov.cn/zxbd/wz/Document/1480082/1480082.htm>, English: http://news.xinhuanet.com/english/china/2016-06/14/c_135435326.htm) (the page numbers denote Human Rights in China’s copy/paste of the document which was located over 10 webpages).

international rights system itself: namely, a discrepancy between the PRC government's framework for human rights and that which is accepted internationally. Below is a discussion of both of these aspects of the Assessment Report.

What the PRC Government Asserts Regarding Progress Made Since 2013 in International Cooperation on Advancing Human Rights

In the 2012-2015 NHRAP Assessment Report, the PRC government asserts that it:

- participated in dialogues on its reports to a number of UN treaty bodies,¹⁶
- cooperated with the special procedures by answering letters and interacting in dialogue with them at the UN Human Rights Council,¹⁷
- attended multilateral meetings on human rights issues at the General Assembly,¹⁸
- held dialogues and exchanges on human rights in various countries,¹⁹
- jointly held a Global Leaders' Meeting on Gender Equality and Women's Empowerment with UN Women,²⁰ and
- sent Chinese NGOs for international exchange and delegations to UN Human Rights Council sessions.²¹

And in the new NHRAP, for 2016-2020, published in September 2016,²² the PRC government reiterated its commitment to participating in the work of the UN human rights mechanisms, including:

- cooperating with the special procedures by answering letters from them and inviting representatives to visit China,²³
- conducting exchanges and cooperation with the Office of the High Commissioner for Human Rights,²⁴
- "earnestly" fulfilling its obligations to international human rights conventions by submitting reports to the CEDAW, CAT, Committee on the Elimination of Racial Discrimination (CERD), Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights, and Committee on the Rights of Persons with Disabilities,²⁵
- implementing recommendations made during the first and second cycles of the Universal Periodic Review and actively participating in the third round,²⁶ and
- actively conducting international exchanges and cooperation.²⁷

¹⁶ NHRAP Assessment Report (2012-2015), pp. 31-32: China reported that it had submitted reports and participated in dialogue meetings on implementing the: *Convention on the Rights of Persons with Disabilities*, *Convention on the Rights of the Child* and the *Optional Protocol to the Convention on the Involvement of Children in Armed Conflict*, the *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*, the *International Covenant on Economic, Social and Cultural Rights*, and the *Convention on the Elimination of All Forms of Discrimination Against Women*.

¹⁷ NHRAP Assessment Report (2012-2015), p. 32.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid., pp. 32-33.

²² Information Office of the State Council of the People's Republic of China, *National Human Rights Action Plan of China (2016-20)* (国家人权行动计划(2016—2020年)), September 29, 2016 (Chinese: http://news.xinhuanet.com/politics/2016-09/29/c_129305934.htm, English: http://news.xinhuanet.com/english/2016-09/29/c_135722183.htm) (the page numbers denote Human Rights in China's copy/paste of the document which was located over a number of webpages).

²³ NHRAP (2016-2020), p. 24.

²⁴ Ibid.

²⁵ Ibid., pp. 23-24.

²⁶ Ibid., p. 24.

In addition, the PRC government pledged that it “shall continue to advance related legal preparations and pave the way for ratification of the International Covenant on Civil and Political Rights.”²⁸ It also stated that it would “support” and “promote” the participation of NGOs in international exchanges and cooperation in the field of human rights.²⁹

Where the PRC Government Has Fallen Short of Meaningful Engagement with UN Human Rights Processes

In the 2013 Universal Periodic Review, among the recommendations accepted by the PRC government were those relating to its engagement with UN human rights mechanisms,³⁰ including special procedures,³¹ the treaty body system,³² the Universal Periodic Review, and the Office of the High Commissioner for Human Rights.³³

Despite the acceptance of these 2013 UPR recommendations, the PRC government has largely failed to demonstrate concrete implementation progress as we describe below.

UPR Mid-term Assessment

In accordance with Human Rights Council resolution 16/21, “States are encouraged to provide the Council, on a voluntary basis, with a midterm update on follow-up to accepted recommendations.”³⁴ While this is not a mandatory requirement, the Universal Periodic Review is a mechanism “based on cooperation and constructive dialogue”³⁵ and its effectiveness is dependent upon the “progress achieved by the State concerned,”³⁶ and, therefore, it is important that States participate in follow-up reporting on the implementation of recommendations.

However, China has not submitted an official UPR mid-term assessment of its implementation of the 2013 UPR recommendations, or issued other constructive public reporting of progress made in that regard. In light of the alarming deterioration in China’s human right situation, a rigorous mid-term review of the PRC government’s implementation progress is critical to addressing the situation.

²⁷ Ibid., p. 23.

²⁸ Ibid., p. 24.

²⁹ Ibid.

³⁰ Recommendation 186.60: Keep up its commitment to uphold its human rights treaty obligations and engage constructively with the human rights mechanisms, including the special procedures (**Ghana**); Recommendation 186.63: Continue its constructive and cooperative dialogue with the UN human rights system (**Azerbaijan**); Recommendation 186.67: Continue to play an active role in the works of the Human Rights Council and continue to contribute in solving the issues relating to human rights in a fair, objective and non-selective manner (**Syrian Arab Republic**).

³¹ Recommendation 186.69: Intensify the cooperation with special rapporteurs mandate holders of the United Nations (**Benin**); Step up cooperation with Special Procedures and mandate holders (**Albania**).

³² Recommendation 186.65: Continue to maintain contact and constructive dialogue with the human rights treaty bodies (**Nigeria**); Recommendation 186.64: Continue to give consideration to the views of treaty bodies and other mechanisms (**Kenya**); Recommendation 186.68: Consider the possibility of extending an invitation to special procedures to visit China taking into account the appropriate balance between economic, social and cultural rights and civil and political rights (**Ecuador**).

³³ Recommendation 186.71: Fully cooperate with OHCHR as well as special procedures (**France**); Recommendation 186.73: Take the necessary concrete steps to facilitate a visit by the UN High Commissioner for Human Rights as soon as possible (**Austria**); Organize a visit of the High Commissioner in the coming future (**Slovakia**); Facilitate the visits of the UN High Commissioner and the special procedures, including to Tibetan and Uighur areas (**Switzerland**).

³⁴ U.N. Human Rights Council, “Review of the work and functioning of the Human Rights Council,” U.N. Doc. A/HRC/RES/16/21 (April 12, 2011), para. 18, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/16/21.

³⁵ U.N. Human Rights Council, “Promoting International Cooperation to support national human rights follow-up systems,” U.N. Doc. A/HRC/RES/30/25 (October 11, 2015), p. 2, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/25.

³⁶ Ibid.

Treaty Bodies

The PRC government's engagement with treaty bodies has focused on formulaic reporting that reflects inadequate responses to concrete recommendations and requests for data to assist meaningful reviews. In the face of rigorous examination and reviews of its reporting, China's representatives have also tended to exhibit a non-constructive defensiveness in the interactive process.

In addition, effective engagement requires states to constructively participate in an ongoing process, post-review, with the experts on treaty body committees, including responding to committees' concerns and requests for updates. A number of the treaty bodies, including CAT, CERD, and CEDAW have adopted formal follow-up procedures requesting that States report back in one year or, in the case of CEDAW, in two years, on measures taken in response to specific recommendations.³⁷

Both CAT and CEDAW have requested that the PRC government provide follow-up reports on the implementation of specific recommendations before the end of 2016. In its Concluding Observations in February 2016 following its review of China, CAT requested that the PRC government provide, by December 9, 2016, "follow-up information in response to the Committee's recommendations relating to: restrictions to the rights to access a lawyer and to notify custody; reported crackdown on lawyers and activists; independence of the investigations of torture allegations; State secret provisions," as well as further data and information on other specific issues.³⁸ CAT also invited China to "inform the Committee about its plans for implementing within the coming period, some or all of the remaining recommendations in the concluding observations."³⁹

Similarly, CEDAW requested in its November 2014 Concluding Observations that China provide, within two years, written information on the steps undertaken to implement specific recommendations, including ensuring effective access to justice for women, independence of the judiciary, full and equal participation in elected and appointed bodies, and investigation of allegations of violence and abuse against women who stand in elections as independent candidates.⁴⁰

In its NHRAP (2016-2020), the PRC government pledged commitment to submitting the required national reports in advance of forthcoming treaty body reviews but made no mention of follow-up reports for either CAT or CEDAW. As UPR progress is assessed within the context of the international obligations, including treaty obligations, of all of the states under review, the PRC government needs to comply, in letter and spirit, with full constructive engagement with the treaty bodies and, in particular, the requests for progress reports by CAT and CEDAW.

³⁷ Committee against Torture, "Guidelines for follow-up to concluding observations," U.N. Doc. CAT/C/55/3 (September 17, 2015), para. 10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/210/35/PDF/G1521035.pdf?OpenElement>; Committee on the Elimination of Racial Discrimination, "Guidelines to follow-up on concluding observations and Recommendations," U.N. Doc. CERD/C/68/Misc.5/Rev.1 (March 2, 2006), para. 9, http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_FGD_5554_E.pdf; Committee on the Elimination of all forms of Discrimination Against Women, "Information on the follow-up procedure" (February 26, 2013), p. 1, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_FGD_7103_E.pdf.

³⁸ Committee against Torture, "Concluding observations on the fifth periodic report of China," U.N. Doc. CAT/C/CHN/CO/5 (February 3, 2016), para. 61, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/44/PDF/G1601744.pdf?OpenElement>.

³⁹ Ibid.

⁴⁰ Committee on the Elimination of all Forms of Discrimination Against Women, "Concluding observations on the combined seventh and eighth reports of China," U.N. Doc. CEDAW/C/CHN/CO/7-8 (November 7, 2014), para. 78, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCHN%2fCO%2f7-8&Lang=en.

Special Procedures and Country Visits

China has failed to respond positively to numerous outstanding requests for visits from special procedures, or issue an invitation to the UN High Commissioner for Human Rights. While China has extended invitations to some special procedures, there are still at least 15 requests for invitations or reminders of requests pending, with seven being made since China's second cycle Universal Periodic Review.⁴¹

And unlike 117 other UN member states, the PRC government has not extended a standing (open) invitation to all thematic special procedures to indicate that it would accept requests from them to visit China.⁴²

In addition, even special procedures who *were* invited to China have faced restrictions in their access to both public officials and independent civil society actors and organizations. These restrictions raise serious concerns regarding compliance with the UN Terms of Reference for fact-finding missions, which include guarantees by the host country to provide freedom of movement "in the whole country," as well as freedom of inquiry, including "[a]ccess to all prisons, detention centres, and places of interrogation; . . . [c]ontacts with representatives of non-governmental organizations, other private institutions and the media" and "[c]onfidential and unsupervised contact with witnesses and other private persons."⁴³

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, noted in his 2005 report that his fact-finding attempts were obstructed or restricted by security and intelligence officials, reporting that his team members were followed in their hotel and surrounding areas, and that alleged victims and family members, lawyers, and human rights defenders were intimidated, placed under police surveillance, and instructed to stay away or physically prevented from meeting with him.⁴⁴ More than a decade later, the Special Rapporteur on extreme poverty and human rights, Philip Alston, cited similar interference during his mission to China in August 2016. He also told reporters that many individuals he had wished to meet with were advised by the Chinese authorities that they should be on vacation during his visit.⁴⁵

⁴¹ **Special Rapporteur on freedom of peaceful assembly and association** (requested invitation 2011, reminder October 2013); **Special Rapporteur on human rights and hazardous substances and wastes** (requested invitation November 2014); **Special Rapporteur on health** (requested invitation 2006); **Special Rapporteur on extrajudicial, summary or arbitrary executions** (requested invitation 2005, reminder 2008); **Special Rapporteur on human rights defenders** (requested invitation 2008, reminder 2010); **Special Rapporteur on housing** (requested invitation 2008, reminder July 2014); **Independent Expert on minority issues** (requested invitation July 2009, reminders 2010, 2014); **Independent Expert on access to human right to safe drinking water and sanitation** (requested invitation March 2010); **Special Rapporteur on independence of judges and lawyers** (requested invitation 2011, reminders 2013, 2014, 2015); **Working Group on enforced or involuntary disappearance** (requested invitation February 2013, reminder 2013); **Special Rapporteur on the situation of human rights defenders** (requested invitation February 2015); **Special Rapporteur on Torture** (requested invitation November 2015); **Special Rapporteur on religious freedom** (accepted request for invitation 2004, but dates still outstanding after a letter was sent confirming dates in September 2006): see "View Country visits of Special Procedures of the Human Rights Council since 1998," <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en>.

⁴² See U.N. Office of the High Commissioner for Human Rights, "Standing Invitations," <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/StandingInvitations.aspx>.

⁴³ U.N. Office of the High Commissioner for Human Rights, "Country and visits of Special Procedures," <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx>.

⁴⁴ Economic and Social Council, "Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to China," U.N. Doc. E/CN.4/2006/Add.6, (March 10, 2006), para. 10, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/117/50/PDF/G0611750.pdf?OpenElement>.

⁴⁵ "U.N. rights envoy says Chinese authorities interfered with his work" Reuters, August 23, 2016, <http://www.reuters.com/article/us-china-un-rights-idUSKCN10Y192>.

Office of the High Commissioner for Human Rights

China and the OHCHR entered into two Memorandums of Understanding for technical cooperation, in 2000 and 2005,⁴⁶ and hosted one visit by the UN High Commissioner for Human Rights, Louise Arbour, from August 29–September 2, 2005. According to a 2008 OHCHR report, under the 2005 MOU, “six projects were developed under the programme to support preparation for the ratification of the ICCPR and for implementation of the ICESCR,” and “[s]ince the expiration of the MOU on 30 August 2008, OHCHR has been undertaking an evaluation of the programme to determine how to continue supporting China in its efforts to promote human rights.”⁴⁷

On September 13, 2016, during the 33rd session of the Human Rights Council, the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, stated that “discussions with China over the past 11 years regarding an official mission by successive High Commissioners have so far failed to produce an actual commitment to move ahead with a visit.”⁴⁸ High Commissioner Zeid expressed his desire to “embark on a genuine working relationship with China in a constructive and committed manner.”⁴⁹

In the absence of any publicly available assessment of the outcomes of the previous MOUs for technical cooperation with China, a visit by the High Commissioner would be a constructive and timely opportunity to explore how to develop a “genuine working relationship.”

The PRC Government’s Approach to Human Rights is Undermining International Human Rights Standards and Processes

As enshrined in the plainest language in the *Universal Declaration of Human Rights*—the foundational document of the international human rights system that the PRC government representative, P.C. Chang, had a role in drafting —human rights are “equal and inalienable rights of all members of the human family.” That is, these rights are common to all human beings, across ethnicities, cultures, national borders, economic conditions, and political systems. International human rights—universal, indivisible, interrelated, interdependent and mutually reinforcing—represent core universal values that should be our *aspirational* beginning point and our *accountability* ending point.

However, the PRC government, as a signatory of and party to UN human rights conventions and treaties and as a member of the UN Human Rights Council, has attempted to assert, in its engagement with the international human rights system, its own, relativistic framework for human rights: that these rights are conditional upon China’s national conditions and cultural values.

In its systematic and persistent official references to “socialist human rights with Chinese characteristics” and “integrating universal principles on human rights with China’s realities,” the PRC government has in

⁴⁶ “Robinson Satisfied with China’s Human Rights Cooperation,” *China Daily*, August 19, 2002, <http://www.china-un.org/eng/chinaandun/socialhr/rqwt/t29333.htm>; “UN, China agree to cooperate on civil and political rights program,” U.N. News Centre, August 31, 2005,

<http://www.un.org/apps/news/story.asp?NewsID=15621&Cr=China&Cr1=OHCHR#.WBJLuNrlGg>.

⁴⁷ U.N. General Assembly, “Compilation Prepared by the Office of the High Commissioner for Human Rights, in Accordance with Paragraph 15(B) of the Annex to Human Rights Council Resolution 5/1: People’s Republic of China (including Hong Kong and Macao Special Administrative Regions (HKSAR) and (MSAR),” U.N. Doc. A/HRC/WG.6/4/CHN/2 (January 6, 2009), para. 10, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/WG.6/4/CHN/2.

⁴⁸ U.N. Office of the High Commissioner for Human Rights, “Opening Statement by Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights, at the 33rd session of the Human Rights,” September 13, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20474>.

⁴⁹ *Ibid.*

fact reversed the logic of the universality of human rights. That is, instead of improving domestic national conditions to meet international human rights standards, it is attempting to modify international human rights standards to fit China's conditions. It also conflates international human rights *principles* with specific *implementation* measures. While implementation measures are tailored to address realities on the ground, they must comply with international standards in both process and substantive results.

Furthermore, statements by the PRC government during its 2013 Universal Periodic Review reflect a concerning rejection and lack of understanding of a principled international review or assessment of its domestic human rights situation. Responding to serious concerns raised about human rights practices in China during China's 2013 Universal Periodic Review, Mr. Wu Hailong (吴海龙), the head of the PRC delegation, said: "Whether the shoes fit, only the person knows. . . . The Chinese are in the best position to know the situation of human rights in China."⁵⁰

This disconnect with the international human rights framework and standards can be clearly seen in the PRC government's NHRAPs. The guiding principles for the PRC government framework for human rights are delineated in all three of the government's National Human Rights Action Plans: the protection of human rights is based upon "concrete realities" and practicality, is ideologically- and politically-guided, is conditioned upon "economic, political, cultural and social progress," and is intertwined with a "China Dream" and a nation-building "cause" that are completely at odds with the protection of human rights and respect for human dignity.

Below are a few excerpts.

National Human Rights Action Plan of China (2009-2010)

"Since the founding of the People's Republic of China in 1949, under the **leadership of the Communist Party of China**, the Chinese government, combining the **universal principles of human rights** and the **concrete realities** of China, has made unremitting efforts to promote and safeguard human rights." (Emphasis added.)⁵¹

National Human Rights Action Plan of China (2012-2015)

"Due to the influences and limitations of natural, historical and cultural factors, as well as the current level of economic and social development, China still confronts many challenges in the development of its human rights cause and it has a long way to go before it attains the lofty goal of full enjoyment of human rights. . . .

"The Chinese government respects the principle of universality of human rights, but also **upholds proceeding from China's national conditions and new realities to advance the development of its human rights cause on a practical basis.**" (Emphasis added.)⁵²

National Human Rights Action Plan of China (2016-2020)

⁵⁰ Human Rights in China, "UN Rights Review of China: Citizens' Crucial Role," October 22, 2013, <http://www.hrichina.org/en/content/6991>.

⁵¹ Information Office of the State Council of the People's Republic of China, *National Human Rights Action Plan of China (2009-2010)* (国家人权行动计划(2009—2010年)(全文), April 13, 2009, (Chinese: <http://www.scio.gov.cn/ztk/dtzt/2015/33423/33432/Document/1448652/1448652.htm>, English: http://www.china.org.cn/archive/2009-04/13/content_17595407.htm).

⁵² NHRAP Assessment Report (2012-2015).

“The guiding ideology for formulating and implementing the Action Plan is as follows: . . . Upholding socialism with Chinese characteristics . . . following the guidance of **Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory**. . . . **The Chinese government combines human rights with economic, political, cultural and social progress, ecological protection and Party building** . . . and better guarantees the various rights and interests of the entire population in **the great cause of realizing the Chinese Dream of rejuvenation of the Chinese nation.**” (Emphasis added.)⁵³

Ironically, it is within its own politicized human rights framework that the PRC government characterizes any concerns raised by experts of UN human rights mechanisms and UN member states as acts of politicizing human rights or interference in domestic affairs. In light of the PRC government’s vocal criticisms of the human rights records of other states, it is time for a rejection of this political double standard.

Beyond the rhetoric, members of the international human rights system should be wary of the potential damage to international human rights standards and to the integrity of the whole system wrought by a political and economic superpower practicing “socialist human rights with Chinese characteristics” and “integrating universal principles on human rights with China’s realities.”⁵⁴

Ratification of ICCPR

More than 18 years have now passed since China signed the *International Covenant on Civil and Political Rights* on October 5, 1998. Of the 17 recommendations related to ICCPR ratification made by 29 governments during China’s second Universal Periodic Review in 2013, the PRC government accepted ten recommendations to “consider,” “take early steps,” move towards, accelerate, or continue to take steps towards ratification.⁵⁵ The seven recommendations rejected by the PRC government call for immediate or timely ratification, ratification as soon as possible, or expediting and speeding up the process, and a clear timeframe for ratification. In its comment on the rejected ICCPR recommendations, the PRC government stated it is now “prudently carrying out its judicial and administrative reform to actively prepare for the ratification” of the ICCPR and that no specific timetable for ratification could be set.

As the Human Rights Committee General Comment No. 31 states, Article 2(2) of the ICCPR requires State Parties to “take **necessary steps** to give effect to the Covenant rights in their domestic order.” (Emphasis added.)⁵⁶ While implementation needs to be “unqualified and of immediate effect,”⁵⁷ the

⁵³ NHRAP (2016-2020), p. 3.

⁵⁴ *Ibid.*, pp. 2-3.

⁵⁵ Recommendation 186.3: Consider ratifying ICCPR (*International Covenant on Civil and Political Rights*) (**Cape Verde**); Recommendation 186.4: Take steps to an early ratification of the ICCPR (**Czech Republic**); Recommendation 186.5: Take steps towards the ratification of ICCPR (**Benin**); Recommendation 186.6: Continue carrying out administrative and judicial reforms to prepare for the ratification of the ICCPR (**Egypt**); Recommendation 186.7: Continue the actions undertaken with the view to ratifying the ICCPR (**Guatemala**); Recommendation 186.8: Continue its national reforms with an aim to ratify the ICCPR (**Latvia**); 186.9. Continue to take measures towards ratification of the ICCPR (**Botswana**); Recommendation 186.10: Move towards ratification of the ICCPR at the earliest possible date (**New Zealand**); Recommendation 186.14: Accelerate administrative and legislative reforms with a view of ratifying the ICCPR (**Tunisia**); Recommendation 186.32: Consider ratifying the ICCPR and establishing a National Human Rights Institution (**Zambia**).

⁵⁶ U.N. Human Rights Committee, “General Comment No. 31 [80]: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,” U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (May 26, 2004), para. 13,

Human Rights Committee recognizes that **implementation is an ongoing process** so long as State Parties undertake to make good faith efforts to implement the Covenant.⁵⁸ As this General Comment makes clear, ICCPR Article 2(2) does not require State Parties, as a *condition* of ratification, to have achieved full compliance, or to ensure immediate and full compliance at the moment of ratification.⁵⁹

Yet, despite extensive bilateral discussions, international cooperation, and technical assistance efforts to advance domestic administrative and legal reforms, and despite ongoing calls by Chinese lawyers, defenders, and other civil society voices to ratify the treaty,⁶⁰ the PRC government is still saying that it “shall continue to advance related legal preparations and pave the way for ratification of the International Covenant on Civil and Political Rights.”⁶¹

The reality on the ground over the past two years tells a different story. The Chinese authorities have been using the security and judicial apparatus (to round up rights defense lawyers and prosecute them for “inciting subversion of state power”⁶²), legislative efforts (including the 2105 *National Security Law* which, in the view of a China law expert, “turns all interests of the political system, sovereignty integrity, economic development, food security, cybersecurity, religion, cultural exchange, environmental protection, and outer space, etc., into life- or-death questions regardless of their gravity”⁶³), and political and ideological pressure (to require news media to uphold the primacy of the Communist Party of China)—to shape a society where civilians enjoy fewer and fewer civil and political rights.

In other words, instead of demonstrating genuine political will to ratify the ICCPR, the PRC government has been paving its way further *from*, not toward, the ratification of the treaty.

Civil Society Participation in the UPR and Other International Processes

The PRC government accepted recommendations to ensure that citizens can freely engage in the Universal Periodic Review⁶⁴ and other international human rights mechanisms.⁶⁵ However, since the PRC government’s 2013 Universal Periodic Review, civil society actors attempting to participate in international human rights mechanisms have faced travel restrictions, censorship, and reprisals.

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en

⁵⁷ Ibid., para. 14.

⁵⁸ Ibid.

⁵⁹ Ibid., para. 13.

⁶⁰ On March 5, 2014, in anticipation of the second session of the 12th National People’s Congress, Hangzhou lawyer Wang Cheng launched an online signature campaign for an appeal, called “A Civil Rights Proposal,” to the current NPC Standing Committee to immediately ratify the ICCPR, <http://www.hrichina.org/en/citizens-square/civil-rights-proposal-signature-campaign-demand-iccpr-ratification>. In February 2013, a group of more than 100 prominent academics, journalists, lawyers, economists and former Party officials circulated an open letter on Chinese social media calling on the PRC government to ratify the ICCPR, “Open letter to NPR on human rights,” China Media Project, February 26, 2013, <http://cmp.hku.hk/2013/02/26/31531/>.

⁶¹ NHRAP (2016-2020), p. 24.

⁶² See Human Rights in China chronology of individuals detained, charged or prosecuted for crime of subversion of state power, <http://www.hrichina.org/en/mass-crackdown-chinese-lawyers-and-defenders>.

⁶³ See Fu Hualing, “China’s National Security Law: The Danger of an All-Encompassing National Security Framework,” August 31, 2015, <http://www.hrichina.org/en/china-rights-forum/chinas-national-security-law-danger-all-encompassing-national-security-framework>.

⁶⁴ Recommendation 186.61: Ensure that its citizens can freely engage in the UPR process (**Czech Republic**).

⁶⁵ Recommendation 186.62: Ensure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subject to reprisals (**Switzerland**).

Restrictions on citizen participation

The space for civil society and free expression in China has been shrinking, marked by concerning trends of restrictive legislation in the name of national security, harsh targeting of human rights defenders and their families, including a rash of public “confessions,” and tightening censorship online. Independent voices are also suppressed through the PRC government’s control of the Internet and censorship of the media by blocking contents critical of government policy, and shutting down sites. These domestic trends that reflect a deep hostility towards and distrust of independent civil society voices also undermine the capacity of the authorities to effectively address the range of human rights challenges China faces.

Civil society plays a crucial role in the effective functioning of the whole UN human rights system. Civil society participation “enriches the system’s responses by linking them to what is happening at the country level.”⁶⁶ Furthermore, the UN High Commissioner for Human Rights has emphasized that “access to national human rights institutions and to regional and international human rights mechanisms, is integral to a supportive legal framework for civil society actors.”⁶⁷ Specifically, with respect to the Universal Periodic Review, civil society plays an “important and constructive role” including through participation in and contribution to national human rights follow-up systems and processes.⁶⁸ The role of civil society involves consulting with governments on their national reports, submitting information to special procedures for state reviews or missions, meeting with special procedure bodies, participating in treaty body and Universal Periodic Reviews by meeting with experts and contributing to the lists of issues raised, and monitoring implementation of recommendations adopted by treaty bodies, special procedures, the Universal Periodic Review and other bodies of the Human Rights Council.

The participation of Chinese civil society in UN human rights processes is in practice very difficult and carries risks for civil society organizations that are not officially vetted and approved. Chinese civil society representation is often limited to mass organizations that are connected to the Chinese government.⁶⁹ While official mass organizations perform important domestic coordinating, research, and service-delivery functions, their structure and affiliation with the government mean that they are not in a position to be effective and independent advocates for rights, especially if their positions are not ideologically aligned with officially approved narratives. The Special Rapporteur on extreme poverty and human rights noted in his end of mission statement: “the role of civil society organizations is

⁶⁶ Ibid., para. 8.

⁶⁷ U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, “Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned,” U.N. Doc. A/HRC/32/20 (April 11, 2016), para. 21, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20.

⁶⁸ U.N. Human Rights Council, “Promoting international cooperation to support national human rights follow-up systems and processes,” U.N. Doc. A/HRC/30/L.26 (September 28, 2015), p. 2, <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G15/220/24/PDF/G1522024.pdf?OpenElement>.

⁶⁹ There are seven mass organizations commonly identified in official Chinese reports as “NGOs” consulted in its reporting before UN human rights mechanisms and other international bodies: All-China Federation of Trade Unions (ACTFU) (中华全国总工会), <http://en.actfu.org>; All-China Women’s Federation (ACWF) (中华全国妇女联合会), <http://www.women.org.cn>, <http://www.womenofchina.cn>; China Association for Science and Technology (CAST) (中国科学技术协会), <http://english.cast.org.cn>; Central Committee of the Communist Youth League of China (CYLC) (中国共产主义青年团), <http://www.cycl.org.cn>; China Disabled Persons’ Federation (CDPF) (中国残疾人联合会), <http://www.cdpc.org.cn/english>; China Youth Concern Committee (CYCC) (中国关心下一代工作委员会), <http://www.zgggw.gov.cn>; China Writers Association (CWA) (中国作家协会), <http://www.chinawriter.com.cn>.

becomingly increasingly circumscribed and those whose work goes much beyond that of being service providers for the Government are now very much under threat.”⁷⁰

Reprisals

In resolution 68/268, the U.N. General Assembly “strongly condemn[ed] all acts of intimidation and reprisals against individuals and groups for their contribution to the work of the human rights treaty bodies” and calls on States to “prevent and eliminate such human rights violations.”⁷¹ At the 2013 Universal Periodic Review, the PRC government accepted Switzerland’s recommendation to “ensure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subject to reprisals.”⁷² The PRC government stated that the activities of organizations and individuals that safeguard others’ rights and interests “are encouraged, protected and supported by the Chinese government” and that “no one suffers reprisals for taking part in lawful activities or international mechanisms.” The PRC government added that those “engaging in illegal activities in the name of safeguarding human rights . . . will be duly prosecuted by the Chinese government.”⁷³

However, the annual reports of the UN Secretary General submitted to the Human Rights Council containing a compilation and analysis of alleged reprisals against persons cooperating with UN human rights mechanisms and the OHCHR,⁷⁴ raise serious concerns. The Secretary General’s 2011, 2012, and 2014 reports recorded a number of incidents where individuals in China seeking to participate in UN human rights mechanisms and trainings have faced reprisals.⁷⁵ The tragic case of Cao Shunli who was part of a group that petitioned the government for greater public disclosure of, and civil society consultation and participation in, China’s human rights reporting to the UN, underscores the deadly consequences of demanding accountability.⁷⁶

In 2014, CEDAW expressed concern that some reports it received from Chinese NGOs had been censored by state agents and that some organizations’ representatives faced reprisals as a result of their

⁷⁰ U.N. Office of the High Commissioner for Human Rights, “End-of-mission statement on China, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights,” August 23, 2016, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20402&LangID=E>.

⁷¹ U.N. General Assembly, “Strengthening and enhancing the effective functioning of the human rights treaty body system,” U.N. Doc. A/RES/68/268 (April 21, 2014), para. 8, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/268.

⁷² Recommendation 186.52: ensure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subject to reprisals (**Switzerland**).

⁷³ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: China, Addendum, “Views on conclusions and/or recommendations, voluntary commitments and replied presented by the State under review,” U.N. Doc. A/HRC/25/5/Add.1 (February 27, 2014), p. 5, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>.

⁷⁴ Human Rights Council resolution 12/2 tasks the Secretary-General with submitting a report annually to the Council, containing a compilation and analysis on alleged reprisals against persons cooperating with UN human rights mechanisms, and the OHCHR, as well as recommendations on how to address the issues of intimidation and reprisals: see U.N. General Assembly, “Cooperation with the United Nations, its representatives and mechanisms in the field of human rights,” U.N. Doc. A/HRC/Res/12/2 (October 12, 2009), http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_12_2.pdf.

⁷⁵ See U.N. Human Rights Council, Report of the Secretary General, “Cooperation with the United Nations, its representatives and mechanisms in the field of human rights,” A/HRC/18/19 (July 21, 2011), paras. 31-36, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/150/71/PDF/G1115071.pdf?OpenElement>; U.N. Doc. A/HRC/21/18 (August 13, 2012), para. 24, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-18_en.pdf; U.N. Doc. A/HRC/27/38, (August 27, 2014), paras. 17-20, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Pages/ListReports.aspx>.

⁷⁶ See Human Rights in China, <http://www.hrchina.org/en/defenders/cao-shunli>.

submission.⁷⁷ CEDAW also raised concerns about travel restrictions on at least one woman human rights activist who intended to brief the Committee.⁷⁸ When requested to comment on these concerns during the consideration of the report, a member of the PRC delegation stated that the PRC government welcomed the efforts of non-governmental and civil society organizations to promote women's rights and that they were not subject to reprisals of any kind for their work.⁷⁹ However, simply denying that individuals were subjected to reprisals is not a constructive response to a serious problem and undermines the PRC government's credibility in its asserted commitment to ensuring civil society participation. A year on, in November 2015, CAT raised similar concerns to CEDAW, that the PRC government reportedly prevented at least seven rights advocates from leaving China to prevent them from attending the review.⁸⁰

HRIC Recommendations

To strengthen China's constructive engagement with the UN human rights system, including the Universal Periodic Review process, treaty bodies, special procedures, and High Commissioner for Human Rights, we advance the following recommendations:

To China

- Prepare and submit an official UPR mid-term report, and engage constructively with all domestic and international stakeholders to respond to questions, suggestions, and concerns to promote concrete progress in implementing recommendations.
- Revise or elaborate the National Human Rights Action Plan (2016-2020) to include full civil society participation in monitoring its implementation and systematic information such as specific indicators and benchmarks to enable a meaningful assessment of progress.
- To enable a meaningful assessment of progress, include specific indicators and benchmarks in its third UPR report, and in periodic and progress treaty body reports, including the follow-up reports requested by the Committee on the Elimination of Discrimination against Women (CEDAW), due by November 5, 2016, and the Committee against Torture (CAT), due by December 9, 2016, on the steps undertaken to implement the specific recommendations identified by them.

⁷⁷ Committee on the Elimination of Discrimination Against Women, "Concluding observations on the combined seventh and eighth periodic reports of China," U.N. Doc. CEDAW/C/CHN/CO/7-8 (November 14, 2014), paras. 32-33, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fCHN%2fCO%2f7-8&Lang=en.

⁷⁸ Ibid.

⁷⁹ Committee on the Elimination of Discrimination Against Women, "Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination Against Women Combined seventh and eighth periodic reports of China," U.N. Doc. CEDAW/C/SR.1251 (October 30, 2014), para. 61, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/191/01/PDF/G1419101.pdf?OpenElement>.

⁸⁰ Committee against Torture, "Concluding observations on the fifth periodic report of China," U.N. Doc. CAT/C/CHN/CO/5 (February 3, 2016), para. 38, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/44/PDF/G1601744.pdf?OpenElement>: "The Committee is concerned at allegations that seven human rights defenders, who were planning to cooperate with the Committee in connection with the consideration of the fifth periodic report of the State party, were prevented from travelling or were detained on the grounds that their participation could 'endanger national security.'"

- Respond to outstanding requests for invitations to visit China by special procedures and extend a standing (open) invitation to all special procedures; provide specific timeframes for these visits; and provide clear assurances of compliance with UN Terms of Reference for these country visits.
- Extend an invitation for a country visit by the UN High Commissioner for Human Rights with a specific timeframe for the visit; provide clear assurances of compliance with UN Terms of Reference for the country visit.
- Commit to a specific timeframe for the ratification of the *International Covenant on Civil and Political Rights*, but in no case beyond the time period of the NHRAP (2016-2020), and to working towards post-ratification compliance in accordance with legal obligations as defined in General Comment 31 issued by the Human Rights Committee.
- Ensure and demonstrate full civil society participation with actions including: immediate steps to end reprisals against citizens who participate or attempt to participate in UN human rights processes, and concrete measures to allow expanded and diverse participation and opportunities to provide input into, monitor, and engage with these processes, including the preparation of China's third UPR report, and progress reports to CEDAW and CAT due in 2016.
- Ensure that any restrictions on freedom of expression, access to information, freedom of association, and other rights comply with international standards.

To Member States

To encourage greater cooperation by the government of the PRC with international human rights processes and to address challenges it poses to universal human rights standards and values, we advance the following recommendations:

- Press the PRC government to extend invitations to Special Rapporteurs and other special procedures with outstanding requests for visits and issue an invitation to the High Commissioner for Human Rights.
- Press the PRC government to indicate a specific timeframe for ICCPR ratification in the NHRAP (2016-2020) and to working towards post-ratification compliance in accordance with the legal obligations as defined in General Comment 31 issued by the Human Rights Committee.
- Respond firmly to counter official policies and practices that seek to enforce domestic ideological conformity in violation of universal values and international human rights standards. International human rights—universal, indivisible, interrelated, interdependent and mutually reinforcing—represent core universal values that should be our *aspirational* beginning point and our *accountability* ending point.
- Press the PRC government to take immediate steps to end reprisals against citizens who participate or attempt to participate in UN human rights processes, and rigorously monitor its responses to ensure expanded and diverse civil society participation in these processes, including the preparation of China's third UPR report, and progress reports to CEDAW and CAT due in 2016.

PART TWO: ENSURING A SAFE AND ENABLING ENVIRONMENT FOR CIVIL SOCIETY

A robust civil society plays a vital role in facilitating each member state's achievement of the purposes and principles of the United Nations; in the promotion of good governance and accountability; and to ensure that policies are reviewed and improved.⁸¹ In addition to this vital overall role, civil society is also an important player in the multi-stakeholder approach to the Universal Periodic Review process.⁸²

Since the 2013 Universal Periodic Review of China, the PRC government has waged an intensified campaign of attacks on defenders and independent civil society groups and a ferocious political campaign of enforced ideological conformity. The developments have raised alarm among diverse sectors of the international community, including NGOs, the UN High Commissioners for Human Rights and UN member states.

This steep deterioration of rights⁸³ highlights the urgency of international action-oriented scrutiny of the PRC government's domestic laws and policies in the context of international human rights standards.

In this part of our report, we examine the progress made by the PRC government since its 2013 Universal Periodic Review on implementing specific recommendations related to ensuring a safe and enabling domestic climate for civil society—a key driver of concrete human rights progress. From that review, the recommendations the PRC government accepted or asserted as already being implemented include: “facilitating in law and practice a safe and enabling environment in which both civil society and human rights defenders can operate free from fear, hindrance and insecurity,”⁸⁴ as well as numerous more specific recommendations relating to protections for the exercise of the right to freedom of expression and association—rights critical to the effective exercise and promotion of all other civil and political and economic, social, and cultural rights.

For our assessment of the domestic climate, we use as guiding principles the five essential ingredients for creating and maintaining a safe and enabling environment for civil society identified by the UN High Commissioner for Human Rights. They are:

⁸¹ See U.N. Human Rights Council, “Civil society space,” U.N. Doc. A/HRC/32/L.29 (June 27, 2016), p. 1, 3, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/L.29; U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, “Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned,” U.N. Doc. A/HRC/32/20 (April 11, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20.

⁸² Human Rights Council Resolution 30/25 recognizes the “important and constructive role played by parliaments, national human rights institutions, civil society and other relevant stakeholders in the universal periodic review mechanism, and . . . their continued and unhindered participation in and contribution to national human rights follow-up systems and processes”: U.N. Human Rights Council, “Promoting international cooperation to support national human rights follow-up systems,” U.N. Doc. A/HRC/RES/30/25 (October 12, 2015), p. 2, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/30/25.

⁸³ This serious deterioration of the domestic human rights situation has been and even given rise to several calls for UN Member States to vote “no” to renewing China's membership on the Human Rights Council in 2017. See “Say no to China's membership on the U.N. Human Rights Council,” *Washington Post*, October 24, 2016, https://www.washingtonpost.com/news/global-opinions/wp/2016/10/24/say-no-to-chinas-membership-on-the-u-n-human-rights-council/?utm_term=.a105d6ccf30e; Chinese Human Rights Defenders, “UN Member States; Vote “No” and End China's Membership on the UN Human Rights Council,” October 25, 2016, <https://www.nchrd.org/2016/10/un-member-states-vote-no-and-end-chinas-membership-on-un-human-rights-council/>. See also Human Rights Watch, “UN: Violators Undermine Human Rights Council,” October 24, 2016, <https://www.hrw.org/news/2016/10/24/un-violators-undermine-human-rights-council>.

⁸⁴ Recommendation 186.149: Facilitate the development, in law and practice, of a safe and enabling environment in which both civil society and human rights defenders can operate free from fear, hindrance and insecurity (Ireland).

- a robust legal framework compliant with international standards that safeguards public freedoms and effective access to justice,
- a political environment conducive to civil society,
- access to information,
- avenues for participation by civil society in decision-making processes, and
- long-term support and resources for civil society.⁸⁵

We will assess:

- the extent to which the domestic legal framework is compliant with international standards, with a specific focus on recent security-related laws, Internet-related regulations on content restrictions and anonymity, and expanded and tightened regulatory control over domestic civil society groups;
- restrictions on effective access to justice, including those imposed by regulatory, political, and ideological campaigns that undermine the independence of lawyers and the judiciary—two key pillars for ensuring a rule of law necessary to protect rights;
- policies designed to enforce ideological conformity and muzzle critical voices that enfeeble, rather than strengthen, a political environment conducive to civil society; and
- restrictions on long-term support and resources for civil society by political pressure and legislative means, especially the *Law on the Management of Foreign Non-Governmental Organizations' Activities within Mainland China* that will go into effect on January 1, 2017 (FNGO Law).⁸⁶

Legal Framework Compliant with International Standards

Among the recommendations relating to the legal framework for civil society that were accepted by the PRC government in the 2013 Universal Periodic Review are those that impact on:

- Freedom of expression, including online expression and freedom of the press:
 - guarantee the right to freedom of expression and opinion on- and offline;⁸⁷
 - develop and spread Internet communication and ensure the rights of citizens are protected online;⁸⁸
 - “reform legislation and law enforcement to ensure freedom of opinion and expression, including on the Internet”;⁸⁹

⁸⁵ U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, “Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned,” U.N. Doc. A/HRC/32/20 (April 11, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20.

⁸⁶ Standing Committee of the National People’s Congress, *Law on the Management of Foreign Non-Governmental Organizations' Activities within Mainland China* (中华人民共和国境外非政府组织境内活动管理法) [effective January 1, 2017], (Chinese: <https://perma.cc/7MWD-3YHR>, unofficial English: <http://chinalawtranslate.com/2016-foreign-ngo-law/?lang=en>).

⁸⁷ Recommendation 186.154: Make further efforts towards safeguarding the freedom of expression of all citizens (**Norway**); Recommendation 186.157: Strengthen the measures aimed at guaranteeing freedom of expression and freedom of the press (**Cote D’Ivoire**); Recommendation 186.169: Continue strengthening the protection and promotion of the right of all citizens to publicly express their beliefs and opinions (**Chile**).

⁸⁸ Recommendation 186.162: Further develop and manage internet and communication sectors, ensuring the legitimate rights and interests of ordinary people enjoying safe and secure internet usage (**Vietnam**); and Recommendation 186.166: Continue the spread of internet connections through the rural areas (**Ethiopia**).

- strengthen institutional guarantees for news agencies and journalists;⁹⁰ and
- ensure proper investigations into attacks on journalists, media workers and human rights defenders.⁹¹
- Participation and freedom of association:
 - “intensify efforts to facilitate participation of NGOs, academic institutions, and the media in safeguarding human rights”;⁹²
 - expand channels of direct dialogue between the government and civil society;⁹³
 - respect its international obligations on the right to freedom of peaceful assembly;⁹⁴ and
 - “allow national and international NGOs to play an active role in promoting and protecting human rights, specifically by expanding registration to all categories of NGOs and social organizations.”⁹⁵

In accepting these recommendations, the PRC government stated that “citizens enjoy freedom of expression, the press, assembly, association, procession, demonstration, and religious belief” and that “there is no so-called issue of suppressing ‘human rights defenders.’”⁹⁶

In reality, as documented events on the ground show, instead of ensuring a safe and enabling civil society space, the PRC government has established a legal framework that does the opposite—it is a security architecture built to achieve military, political, and propaganda objectives and to carry out surveillance and media censorship. As such, the legal framework and the policy priorities underlying them raise serious concerns regarding their compliance with international standards for permissible restrictions on rights.

By international human rights standards,⁹⁷ any restrictions on the exercise of fundamental rights and freedoms must be “precise, public and transparent, and avoid providing State authorities with unbounded discretion to apply the limitation.”⁹⁸ Any restriction must be:

⁸⁹ Recommendation 186.155: Reform legislation and law enforcement in order to ensure freedom of opinion and expression, including on the internet (**Germany**).

⁹⁰ Recommendation 186.165: Strengthen institutional guarantees for the legitimate rights and interests of news agencies and journalists (**Myanmar**).

⁹¹ Recommendation 186.158: Ensure that proper investigations are conducted in all cases of attacks on journalists, media workers and human rights defenders (**Poland**).

⁹² Recommendation 186.148: Intensify efforts to facilitate the participation of NGOs, academic institutions and the media in safeguarding human rights (**Nigeria**).

⁹³ Recommendation 186.168: Expand channels and mechanism of direct dialogue between the Government and the population (**Russian Federation**).

⁹⁴ Recommendation 186.167: Refrain from impeding civil society and respect its international obligations on the right to freedom of peaceful assembly (**Germany**).

⁹⁵ Recommendation 186.150: Allow national and international NGOs to play a full and active role in promoting and protecting human rights, specifically by expanding registration to all categories of NGOs and social organizations in China and by expanding their freedom to operate effectively (**Netherlands**).

⁹⁶ U.N. Human Rights Council, Report of the Working Group on the Universal Periodic Review: China, Addendum, “Views on conclusions and/or recommendations, voluntary commitments and replied presented by the State under review,” U.N. Doc. A/HRC/25/5/Add.1 (February 27, 2014), p. 12,

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>.

⁹⁷ See Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, October 1, 1995, <https://www.article19.org/resources.php/resource/1803/en/Johannesburg%20Principles%20on%20national%20security,%20freedom%20of%20expression%20and%20access%20to%20information>.

- prescribed by law that is “accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is lawful”;⁹⁹ and
- Limitations may only be justified by the protection of specified interests: “rights or reputations of others; national security; public order; public health or morals.”¹⁰⁰

However, with regard to restrictions to protect a legitimate national security interest, the government must demonstrate the following:

- (a) The expression or information at issue poses a serious threat to a legitimate national security interest. A “vague and general reference to the interests of national security or public order, without being properly explained and documented” is not enough to justify restriction on freedom of expression.¹⁰¹ In addition, expression may not be prevented or punished on the grounds of national security “to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.”¹⁰²
- (b) The restriction imposed is the least restrictive means possible of protecting that interest.
- (c) The restriction is compatible with democratic principles.¹⁰³ The Human Rights Committee in General Comment No. 34 has stated that restrictions “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”¹⁰⁴

The following discusses the suite of security-related laws, Internet-related regulations, and expanded regulations over civil society groups enacted since China’s 2013 Universal Periodic Review.

Security-related Laws

National Security Law.¹⁰⁵ This law defines national security as the “relative absence of international or domestic threats to the state’s power to govern, sovereignty, unity and territorial integrity, the welfare

⁹⁸ U.N. Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye,” U.N. Doc. A/HRC/29/32 (May 22, 2015), para. 32, <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/CallForSubmission.aspx> citing U.N. Human Rights Committee, “General Comment No.34, Article 19: Freedom of Opinion and Expression,” U.N. Doc. CCPR/C/GC/34 (September 12, 2011), <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

⁹⁹ Economic and Social Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” U.N. Doc. E/CN.4/1996/39 (March 22, 1996), Principle 1.1(a), <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>.

¹⁰⁰ U.N. Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye,” U.N. Doc A/HRC/29/32 (May 22, 2015), para. 33, <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/CallForSubmission.aspx>.

¹⁰¹ U.N. Commission on Human Rights, “Report of the Working Group on Arbitrary Detention,” Deliberation No. 8 on Deprivation of Liberty Linked to/Resulting from the Use of the Internet, U.N. Doc. E/CN.4/2006/7 (2005), para. 43, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/166/48/PDF/G0516648.pdf?OpenElement>.

¹⁰² Economic and Social Council, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” U.N. Doc. E/CN.4/1996/39 (March 22, 1996), Principle 2(b), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/118/04/PDF/G9611804.pdf?OpenElement>.

¹⁰³ Ibid., Principle 1(3).

¹⁰⁴ U.N. Human Rights Committee, “General Comment No.34, Article 19: Freedom of Opinion and Expression,” U.N. Doc CCPR/C/GC/34 (September 12, 2011), para. 23, <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

of the people, sustainable economic and social development, and other major national interests, and the ability to ensure a continued state of security.”¹⁰⁶ In addition to a broad, vague definition of national security, the law covers activities in nearly every aspect of China’s politics, economics, and society, including political, military, economic and financial, social and cultural, nuclear, and ecological security, and, extending beyond the physical borders of mainland China, security of the seas, outer space, and cyberspace. In other words, the law considers all activities in every sector of political, economic, and social life, and their implication on the PRC government’s national security interest.

Counterterrorism Law:¹⁰⁷ This law defines terrorism as “propositions and actions that create social panic, endanger public safety, violate person and property, or coerce national organs or international organizations, through methods such as violence, destruction, intimidation, so as to achieve their political, ideological, or other objectives.”¹⁰⁸ The law also gives additional powers to public security authorities in relation to both terrorism and “extremism”—a term left undefined in the legislation—and reinforces the government’s broad discretionary powers to investigate and prevent incidents of terrorism.¹⁰⁹ The law also requires citizens and companies to assist and cooperate; imposes additional and specific obligations on companies in certain sectors (e.g., telecommunications, Internet services, and financial services sectors); and places responsibility on ICT (information and communication technologies) companies for failures to prevent transmission of terrorist content online. It also imposes significant penalties for non-compliance/non-cooperation including fines and criminal charges/detention for responsible individuals.

Third Draft Cybersecurity Law:¹¹⁰ It stresses the concept of “Internet sovereignty,”¹¹¹ contains broad prohibitions, including against the dissemination of information that would disrupt social or economic

¹⁰⁵ Standing Committee of the National People’s Congress, *National Security Law of the People’s Republic of China* (中华人民共和国国家安全法) [effective July 1, 2015], (Chinese: <http://www.hrichina.org/en/state-security-law-peoples-republic-china>, unofficial English: <http://chinalawtranslate.com/2015nsl/?lang=en>).

¹⁰⁶ *Ibid.*, Art. 2.

¹⁰⁷ Standing Committee of the National People’s Congress, *Counterterrorism Law of the People’s Republic of China* (中华人民共和国反恐怖主义法) [effective January 1, 2016], (Chinese: <https://perma.cc/XQG8-K8MT>; unofficial English: <http://chinalawtranslate.com/%E5%8F%8D%E6%81%90%E6%80%96%E4%B8%BB%E4%B9%89%E6%B3%95-%EF%BC%882015%E6%89/?lang=en>).

¹⁰⁸ *Ibid.*, Art.3.

¹⁰⁹ Local implementing regulations grant new powers of search, interrogation and seizure to security services in the event of suspected terrorist or “extremist” acts. See, e.g., *Xinjiang Implementing Measures for the People’s Republic of China Counter-Terrorism Law* (新疆〈中华人民共和国反恐怖主义法〉办法) (July 29, 2016), (Chinese: <http://npc.people.com.cn/n1/2016/0801/c14576-28601824.html>, unofficial English: <http://chinalawtranslate.com/xjcounter-terror/?lang=en>).

¹¹⁰ *People’s Republic of China Cybersecurity Law (Third Draft)* [released for public comment October 31, 2016], no official Chinese version of the law is available yet, English translation available at <http://chinalawtranslate.com/%E3%80%8A%E7%BD%91%E7%BB%9C%E5%AE%89%E5%85%A8%E6%B3%95%E3%80%8B%E8%8D%89%E6%A1%88-%E4%B8%89%E6%AC%A1%E5%AE%A1%E8%AE%AE%E7%A8%BF%EF%BC%88%E5%85%A8%E6%96%87%EF%BC%89/?lang=en>. See “China’s draft cybersecurity law gets 3rd reading,” Xinhuanet, October 31, 2016, http://news.xinhuanet.com/english/2016-10/31/c_135794643.htm; see also, “China Conducts Third Reading of Draft Cybersecurity Law,” Covington, November 1, 2016; See also, *People’s Republic of China Cybersecurity Law (Second Draft)* [released for public comment July 5, 2016], (中华人民共和国网络安全法(草案二次审议稿)), (Chinese: http://www.npc.gov.cn/npc/flcazqyj/2016-07/05/content_1993343.htm; unofficial English: <http://chinalawtranslate.com/cybersecurity2/?tpedit=1&lang=en>); *People’s Republic of China Cybersecurity Law (First Draft)* [released for public comment July 6, 2015], (中华人民共和国网络安全法(草案)), (Chinese: http://www.npc.gov.cn/npc/xinwen/lfgz/flca/2015-07/06/content_1940614.htm, unofficial English: <http://chinalawtranslate.com/cybersecuritydraft/?tpedit=1&lang=en>).

¹¹¹ *Cybersecurity Law (Third Draft)*, Art. 1.

order,¹¹² and allows for the restriction of the Internet in certain regions with approval from the State Council, in the name of public order.¹¹³ It mandates local storage of data inside mainland China,¹¹⁴ and requires real name identification for Internet users and imposes liability on the part of Internet service providers to ensure this.¹¹⁵ The bill covers construction, operation, maintenance, and usage of networks, as well as their security management, within mainland China.

In addition to the *National Security Law*, the *Counterterrorism Law*, and draft *Cybersecurity Law*, other laws and regulations related to the registration and management of domestic and foreign civil society groups also include similar national security provisions. These regulatory developments are being carried out within an overarching policy framework of comprehensive securitization that encompasses all aspects of civil society space and, in some cases, simply legalizes existing practices, in particular, those of security and armed police forces in Tibet and Xinjiang.

These security-related laws individually and collectively raise serious concerns regarding their compliance with international standards. Under the leadership of President and CPC Party Secretary Xi Jinping, the PRC government strengthened its legal framework in order to ensure preservation of the Party-state and adherence to its policies. National security legislation therefore reflects and is driven by the fear and distrust of the free flow of information and free expression—activities that can foster an independent civil society that does not support the CPC’s political aims. It is within this comprehensive national security approach and distrust of civil society that the group of new security-related laws must be understood and assessed.

As widely criticized,¹¹⁶ the vague definitions and overbroad scope of national security and terrorism are not “accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is lawful.”¹¹⁷ Under the PRC government’s “Three Evils” approach (terrorism, separatism, and extremism) the *Counterterrorism Law* also conflates a definition of terrorism with an undefined notion of extremism. These vague and broad definitions, together with their politicized application to target certain groups, result in the chilling of legitimate expression, including criticism of official policies, and punishes individuals and groups for the peaceful exercise of their fundamental

¹¹² Cybersecurity Law (Third Draft), Art. 12.

¹¹³ Cybersecurity Law (Third Draft), Art. 58.

¹¹⁴ Cybersecurity Law (Third Draft), Arts. 37.

¹¹⁵ Cybersecurity Law (Third Draft), Arts. 24, 61.

¹¹⁶ U.N. Office of the High Commissioner for Human Rights, “UN human rights chief says China’s new security law is too broad, too vague,” July 7, 2015,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16210&LangID=E#sthash.SrDTjZzb.dpuf>;

International Federation of Journalists, “National Security Law will further suppress media freedom in China: IFJ says,” June 3, 2015, <http://www.ifj.org/nc/news-single-view/backpid/33/article/national-security-law-will-further-suppress-media-freedom-in-china-ifj-says/>;

Amnesty International, “Amnesty International Urges China to Scrap Draconian New National Security Law,” July 1, 2015, <http://www.amnestyusa.org/news/press-releases/amnesty-international-urges-china-to-scrap-draconian-new-national-security-law>;

Fu Hualing (HRIC Translation), “China’s National Security Law: The Danger of an All-Encompassing National Security Framework,” August 31, 2015, <http://www.hrichina.org/en/china-rights-forum/chinas-national-security-law-danger-all-encompassing-national-security-framework>;

Tibetan Centre for Human Rights and Democracy (TCHRD), “China’s New National Security Law a Serious Setback to Human Rights in Tibet,” July 9, 2015 <http://tchrd.org/chinas-new-national-security-law-a-serious-setback-to-human-rights-in-tibet/>.

¹¹⁷ Economic and Social Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” U.N. Doc. E/CN.4/1996/39 (March 22, 1996), Principle 1.1(a),

<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx>.

rights, including that by individuals of Tibetan or Uyghur ethnicity.¹¹⁸ Not only do the vague and overbroad provisions of these security-related laws violate international requirements for legality, the clear political agenda underlying these laws raises serious concerns regarding whether rights restrictions can be justified by the government's claim of a legitimate national interest that complies with international standards. That the PRC government treats the legitimate exercise of rights and peaceful expression as a serious threat does not, ipso facto, make such exercise and expression serious threats by international standards. Vague statements or efforts to invoke national security "to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology" (emphasis added)¹¹⁹ do not constitute a legitimate national interest.

The restrictions under these broad security laws aimed at enforcing ideological conformity are also not compatible with democratic principles.

Laws Tightening Regulatory Control over and Restricting Access to Information and Freedom of Expression Online

A "free, open, safe and secure Internet" and the access it gives to information are critical for "individuals to make well-informed decisions and to mobilize people to call for justice, equality, accountability and better respect for human rights."¹²⁰

Notwithstanding the acceptance of recommendations related to freedom of expression, including online expression, by the PRC government in its 2013 Universal Periodic Review, official views of the Internet as an anarchic medium that threatens social stability and the CPC's grip on power continue to inform government policies and regulatory developments today.¹²¹ Aimed at "purifying" the environment of public opinion on the Internet¹²² and "guiding" public opinion" (舆论导向),¹²³ new regulations emphasize removal of user anonymity through real name registration,¹²⁴ grant government authorities

¹¹⁸ See International Campaign for Tibet, *China's New Counter-terrorism Law: Implications and Dangers for Tibetans and Uyghurs*, Findings from a roundtable discussion organized by the International Campaign at the Clingendael Institute, The Hague, June 7, 2016 (forthcoming report).

¹¹⁹ Article 19, The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, October 1, 1995, Principle 2(b), <https://www.article19.org/resources.php/resource/1803/en/Johannesburg%20Principles%20on%20national%20security,%20freedom%20of%20expression%20and%20access%20to%20information>

¹²⁰ U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, "Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned," U.N. Doc. A/HRC/32/20 (April 11, 2016), para. 77, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20 citing U.N. Human Rights Council, "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue," U.N. Doc. A/HRC/17/27 (May 16, 2011), para. 2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/132/01/PDF/G1113201.pdf?OpenElement>.

¹²¹ See Severin Arsene, "Global Internet Governance in Chinese Academic Literature" 2016(2) *China Perspectives* 25, 26.

¹²² ChinaFile (translation), "Communiqué on the Current State of the Ideological Sphere" [also known as Document No. 9], November 8, 2013, <http://www.chinafile.com/document-9-chinafile-translation>.

¹²³ "How Xi Jinping Views the News," China Media Project, March 3, 2016, <http://cmp.hku.hk/2016/03/03/39672/>.

¹²⁴ See, e.g., Ministry of Industry and Information Technology, *Telephone User Real Identity Information Registration Regulations* (电话用户真实身份信息登记规定) (July 16, 2013), Arts. 6, 7, (Chinese: <http://www.mit.gov.cn/n11293472/n11294912/n11296542/15513722.html>, unofficial English translation: <https://chinacopyrightandmedia.wordpress.com/2013/07/16/telephone-user-real-identity-information-registration-regulations/>); *Xinhua Beijing*, 北京: 手机号再不实名将"双停"销号 (Beijing: Cell phone numbers which have still not been real-named registered will have numbers cancelled with 'double disconnection') (October 17, 2016) (Chinese: <https://perma.cc/9F5W-UYDG>); Cyberspace Administration of China, *Internet User Account Name Management Regulations* (互联网用户账号名称管理规定), Arts. 2, 4-8, (Chinese: <https://perma.cc/BD7J-FTLT>, unofficial English translation:

broad discretion to police “criminal” acts online and “unlawful” content,¹²⁵ and give wide latitude for intensive government inspections, monitoring, and oversight.¹²⁶

These expanding regulations, including those covering real name registration, will contribute to chilling online expression and restrict the right to privacy by enabling: 1) greater criminalization of conduct taking place via Internet and telecommunications media, and 2) greater regulation over technology, its users, and public/private providers, in the telecommunications and Internet industries. The PRC government’s capacity to use big data mining technologies,¹²⁷ together with expanded name requirements and mandatory local data storage requirements, further raise concerns regarding impact on privacy that is critical to the ability to exercise the right to free expression.

In addition, the third draft of the *Cybersecurity Law* (October 2016) provides that in the event of sudden, major events that affect the safety of society, the Internet may be temporarily restricted in certain regions/areas pursuant to State Council approval.¹²⁸ Such shutdowns have already happened before the legislation was introduced, notably for ten months in Xinjiang from July 2009 to May 2010. The proposed law now enshrines the right of the state to do so.

The UN Human Rights Committee has interpreted the right to freedom of expression under the ICCPR¹²⁹ as protecting the right of access to information held by public bodies.¹³⁰ The Committee recommends

<https://chinacopyrightandmedia.wordpress.com/2015/02/04/internet-user-account-name-management-regulations/>; State Internet Information Office, *Provisions On Management Of Instant Messaging Services* (即时通信工具公众信息服务发展管理暂行规定) (August 7, 2014), Art. 6 (Chinese: <https://perma.cc/Y24P-METF>, unofficial English translation: <http://chinalawtranslate.com/provisions-on-management-of-instant-messaging-services/?lang=en>).

¹²⁵ See, e.g., Internet search service providers must not provide content prohibited by laws and regulations by providing links, abstracts, snapshots, word associations, related searches, related recommendations, etc. (Art. 7). Wherever Service Providers find search results that “apparently contain contents prohibited by laws and regulations,” they must immediately stop providing the results, keep a record, and promptly report the matter to the Cyberspace Administration of China or to local cyberspace offices (Art. 8.), see Cyberspace Administration of China, *Provisions On The Management Of Internet Search Services* (互联网信息搜索服务管理规定) (June 25, 2016), (Chinese: <https://perma.cc/Z9T6-XMN9>, unofficial English: <http://chinalawtranslate.com/searchengineregulation/?lang=en>); Regulations provide for content restrictions focused on limiting media that is counter to Communist Party of China narrative (Art. 16), see *Regulations on Audio-Visual Program Service of Private Networks and Program Distribution* (专网及定向传播视听节目服务管理规定) (April 25, 2016) (Chinese: http://www.sarft.gov.cn/art/2016/5/29/art_113_30905.html); see also State Internet Information Office, *Provisions On The Management Of Mobile Internet Applications' Information Services* (移动互联网应用程序信息服务管理规定) (June 28, 2016), (Chinese: <https://perma.cc/XU8E-6FNH>, unofficial English: <http://chinalawtranslate.com/mobile-apps/?lang=en>); *Notice Regarding Provisions Managing the Release of Information About Dangerous Articles Online* (关于印发《互联网危险物品信息发布管理规定》的通知) (February 5, 2015), Art 12, (Chinese: <https://perma.cc/T4LK-TB29>); State Internet Information Office, *Provisions On Admonishment Meetings With Internet News Information Services*, (互联网新闻信息服务单位约谈工作规定) [effective June 1, 2015], Art. 4, (Chinese: <https://perma.cc/VDZ9-DEMS>; unofficial English: <http://chinalawtranslate.com/netnewsadmonish/?lang=en>); *Xinjiang Implementing Measures for the Counter-Terrorism Law of the People's Republic of China* (新疆维吾尔自治区实施《中华人民共和国反恐怖主义法》办法) (July 29, 2016), Arts. 49-50 (Chinese: <https://perma.cc/3D99-FZJM>, unofficial English: <http://chinalawtranslate.com/xicounter-terror/?lang=en>).

¹²⁶ For a study on Chinese government surveillance, see, e.g., Gary King, Jennifer Pan, and Margaret E. Roberts, “Reverse-engineering censorship in China: Randomized experimentation and participant observation” (2014) 345 (6199), http://gking.harvard.edu/files/gking/files/experiment_0.pdf.

¹²⁷ “China’s plan to organize its society relies on ‘big data’ to rate everyone” Washington Post, October 22, 2016, https://www.washingtonpost.com/world/asia_pacific/chinas-plan-to-organize-its-whole-society-around-big-data-a-rating-for-everyone/2016/10/20/1cd0dd9c-9516-11e6-ae9d-0030ac1899cd_story.html?tid=hybrid_content_2_na.

¹²⁸ *Cybersecurity Law* (Third Draft), Art. 58.

¹²⁹ *International Covenant for Civil and Political Rights* (ICCPR), U.N. Doc A/6316 (1966), Art. 19(2): “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

that to give effect to the right of access to information, states “should proactively put in the public domain Government information of public interest” and “should make every effort to ensure easy, prompt, effective and practical access to such information” and enact necessary procedures so that citizens can access information.”¹³¹

As an enormous virtual civil society space has emerged in China over the past recent decades, which, by 2015, had 620 million mobile Internet user accounts¹³² and 688 million Internet users,¹³³ a free, open, and safe Internet is critical for promoting access to information and freedom of expression to fuel a robust civil society environment. But at the same time, new security-related laws and expanding Internet regulations and official policies are aiding the PRC government in tightening information access and control over the growing Internet and social media space. The impact of these Internet-related restrictions and the expanding criminalization of expression online is that of severely undermining a safe and enabling environment for civil society. Laws and regulations that aim at “guiding” thought online cannot be deemed a legitimate national security interest enough to justify restriction on freedom of expression.¹³⁴

These laws also run counter to the PRC government’s obligation under the ICCPR. Article 19 of the Covenant states: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” Even though it has not ratified the Convention, the PRC government, as a signatory, is bound to act in good faith and not defeat the purpose of the ICCPR.¹³⁵

It is sobering to recall that December 2016 will mark the beginning of the 9th year of imprisonment of Liu Xiaobo (刘晓波), Nobel Peace Laureate and prominent intellectual, who was detained in December 2008 and convicted a year later of “inciting subversion of state power” online.¹³⁶ His crimes were his use of “the Internet’s features of rapid transmission of information, broad reach, great social influence, and high degree of public attention as well as the method of writing and publishing articles on the Internet”¹³⁷ to call for political reform.

Expanded and Tightened Regulatory Control over Civil Society Groups

Recommendations accepted by the PRC government in its 2013 Universal Periodic Review relating to civil society participation and freedom of association include the following:

¹³⁰ U.N. Human Rights Committee, “General Comment No.34, Article 19: Freedom of Opinion and Expression,” U.N. Doc CCPR/C/GC/34 (September 12, 2011), para. 18, <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>.

¹³¹ *Ibid.*, para. 19.

¹³² China Internet Network Information Center (CNNIC) (中国互联网络信息中心), “Statistical Report on Internet Development in China,” (January 2016), p. 1, <http://cnnic.com.cn/IDR/ReportDownloads/>.

¹³³ NHRAP Assessment Report (2012-2015), p. 14.

¹³⁴ U.N. Commission on Human Rights, “Report of the Working Group on Arbitrary Detention,” Deliberation No. 8 on Deprivation of Liberty Linked to/Resulting from the Use of the Internet, U.N. Doc. E/CN.4/2006/7 (December 12, 2005), para. 43, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/166/48/PDF/G0516648.pdf?OpenElement>

¹³⁵ *Vienna Convention on the Law of Treaties*, U.N.T.S. 1155, 331 (1969), Art. 18: “A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when . . . it has signed the treaty.” China acceded to the VCLT on September 3, 1997.

¹³⁶ See Human Rights in China, *China Rights Forum: Freedom of Expression on Trial in China* (2010), <http://www.hrichina.org/en/crf/issue/2010.01>.

¹³⁷ See Human Rights in China, *China Rights Forum: Freedom of Expression on Trial in China* (2010), <http://www.hrichina.org/en/crf/issue/2010.01>; see especially Beijing Municipal High People’s Court Appeal Decision (February 9, 2010) No. 64, <http://www.hrichina.org/en/content/3211>.

- “intensify efforts to facilitate participation of NGOs, academic institutions and the media in safeguarding human rights”,¹³⁸
- expand channels of direct dialogue between the government and civil society;¹³⁹
- respect international obligations on the right to freedom of peaceful assembly;¹⁴⁰ and
- “allow national and international NGOs to play an active role in promoting and protecting human rights, specifically by *expanding registration* to all categories of NGOs and social organizations.”¹⁴¹

In addition to legal, political, and ideological restrictions on civil society, the PRC government has introduced increasingly restrictive laws and draft regulations directly pertaining to both international and domestic civil society organizations. In 2016, it enacted the *Charity Law*¹⁴² and the FNGO Law.¹⁴³ Three sets of major draft regulations have also been introduced in 2016 to expand the registration and management of civil society organizations to also include foundations,¹⁴⁴ social service agencies,¹⁴⁵ and

¹³⁸ Recommendation 186.148: Intensify efforts to facilitate the participation of NGOs, academic institutions and the media in safeguarding human rights (**Nigeria**).

¹³⁹ Recommendation 186.168: Expand channels and mechanism of direct dialogue between the Government and the population (**Russian Federation**).

¹⁴⁰ Recommendation 186.167: Refrain from impeding civil society and respect its international obligations on the right to freedom of peaceful assembly (**Germany**).

¹⁴¹ Recommendation 186.150: Allow national and international NGOs to play a full and active role in promoting and protecting human rights, specifically by expanding registration to all categories of NGOs and social organizations in China and by expanding their freedom to operate effectively (**Netherlands**).

¹⁴² National People’s Congress, *Charity Law of the People’s Republic of China* (中华人民共和国慈善法) [effective September 1, 2016], (Chinese: <https://perma.cc/SNL4-LYRZ>, unofficial English: <http://chinalawtranslate.com/2016charitylaw/?lang=en>) (hereafter, *Charity Law*).

¹⁴³ Standing Committee of the National People’s Congress, *People’s Republic of China Law on the Management of Foreign Non-Governmental Organizations’ Activities within Mainland China* (中华人民共和国境外非政府组织境内活动管理法) [effective January 1, 2017] (Chinese: <https://perma.cc/7MWD-3YHR>, unofficial English: <http://chinadevelopmentbrief.cn/articles/the-peoples-republic-of-chinas-law-on-the-management-of-the-activities-of-overseas-ngos-within-mainland-china/T>). The new law was widely criticized by NGOs and international experts of varied background. See U.N. Office of the High Commissioner for Human Rights, “China: Newly adopted Foreign NGO Law should be repealed, UN experts urge” (May 3, 2016), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19921&LangID=E>; Special Rapporteur on the promotion and protection of the right of the freedom of peaceful and of association; and the Special Rapporteur on the situation of human rights defenders” (April 16, 2015), [https://spdb.ohchr.org/hrdb/30th/public_-_AL_China_16.04.15_\(2.2015\).pdf](https://spdb.ohchr.org/hrdb/30th/public_-_AL_China_16.04.15_(2.2015).pdf); See also Human Rights in China’s Law Note: “Draft Law on Foreign NGOs Undermines Chinese Civil Society and China’s International Engagement” (May 5, 2015), <http://www.hrichina.org/en/legal-resources/hric-law-note-draft-law-foreign-ngos-undermines-chinese-civil-society-and-chinas>.

¹⁴⁴ Ministry of Civil Affairs, [Draft] *Foundations Management Regulations* (基金会管理条例(修订草案征求意见稿)) [released for public comment May 26, 2016] (Chinese: <http://www.mca.gov.cn/article/zwgk/tzl/201605/20160500000665.shtml>, unofficial English: <http://chinalawtranslate.com/foundationsdraft/?lang=en>) (hereafter, “Foundations Management Regulations”).

¹⁴⁵ Ministry of Civil Affairs, [Draft] *Regulations on the Registration and Management of Social Service Agencies* (社会服务机构登记管理条例(修订草案征求意见稿)) [released for public comment May 26, 2016], (Chinese: <http://www.mca.gov.cn/article/zwgk/tzl/201605/20160500000664.shtml>, unofficial English: <http://chinalawtranslate.com/minfei/?lang=en>) (hereafter, “Social Service Agencies Regulations”).

social groups.¹⁴⁶ In September 2016, the PRC government also issued the draft Regulations on Religious Affairs, tightening control over freedom of expression and belief.¹⁴⁷

The draft and enacted laws and regulations also contain vague definitions and provisions relating to state security and state stability, which expose civil society organizations to the risk of politicized decision-making. The *Charity Law* provides the legal basis for authorities to criminally prosecute and shut down groups deemed to “endanger state security”¹⁴⁸ and prevents charities from engaging in or funding activities that “endanger national security.”¹⁴⁹ Furthermore, the draft regulations on the registration and management of civil society organizations provide that they must not endanger national safety, unification or ethnic cooperation, and must not endanger national interests.¹⁵⁰

Another concerning trend is that foundations, social groups, and social service agencies are required to “set up Chinese Communist Party Organizations”¹⁵¹ internally, a requirement that effectively subjects them to daily political oversight and monitoring. For civil society organizations that must comply with restrictive requirements for registration, operation and oversight, vague and broad security-related legal provisions, and intrusive political requirements, the domestic environment is clearly not one that is safe and enabling.

In addition to these restrictions on domestic civil society groups, under the FNGO Law,¹⁵² a high level of state oversight and control will be exerted over all foreign NGOs by public security authorities¹⁵³ and by Chinese professional supervisory units (PSUs) (or business administration units (BADs)),¹⁵⁴ including with respect to their activities,¹⁵⁵ finances¹⁵⁶ and staff.¹⁵⁷ The Law also prohibits “endanger[ing] China's national unity, security, or ethnic unity” or “harm[ing] China's national interests,”¹⁵⁸ as discussed above in the context of the PRC government’s politicized and overbroad approach to national security.

¹⁴⁶ Ministry of Civil Affairs, [Draft] *Regulations On The Registration And Administration Of Social Groups* (社会团体登记管理条例 (修订草案征求意见稿)) [released for public comment August 1, 2016] (Chinese: <http://www.mca.gov.cn/article/zwgk/tzl/201608/20160800001364.shtml>); unofficial English: <http://chinalawtranslate.com/social-group-management/?lang=en> (hereafter, “Social Groups Regulations”).

¹⁴⁷ State Council Legal Affairs Office, [Draft] *Regulations on Religious Affairs* (宗教事务条例修订草案(送审稿)) (Chinese: <http://www.chinalaw.gov.cn/article/cazigg/201609/20160900481651.shtml>); unofficial English: <http://chinalawtranslate.com/religious-regulations/?lang=en>).

¹⁴⁸ Charity Law, Art. 104.

¹⁴⁹ Charity Law, Art. 15.

¹⁵⁰ Social Groups Regulations, Art. 5; Social Service Agencies Regulations, Art. 3; Foundations Management Regulations, Art. 3.

¹⁵¹ Social Groups Regulations, Art. 4; Social Service Agencies Regulations, Art. 4; Foundations Management Regulations, Art. 4.

See also the new draft regulations released by the Ministry of Civil Affairs in August 2016 which include a sample written undertaking in which social organizations promise to assist in the construction of the CPC within their organization, provide funds and spaces for Party members to undertake Party work and submit themselves to party discipline: see Xinhua, “Ministry of Public Security releases draft *Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-governmental Organizations within the Territory of China*,” (公安部拟出台境外非政府组织代表机构登记和临时活动备案办事指南), (October 14, 2016), http://news.xinhuanet.com/legal/2016-10/14/c_1119721678.htm.

¹⁵² Standing Committee of the National People’s Congress, *Law on the Management of Foreign Non-Governmental Organizations’ Activities within Mainland China* (中华人民共和国境外非政府组织境内活动管理法) [effective January 1, 2017], (Chinese: <https://perma.cc/7MWD-3YHR>; unofficial English: <http://chinalawtranslate.com/2016-foreign-ngo-law/?lang=en>).

¹⁵³ FNGO Law, Arts. 7, 45-47.

¹⁵⁴ FNGO Law, Arts. 11, 31.

¹⁵⁵ FNGO Law, Arts. 17, 19, 30, 31.

¹⁵⁶ FNGO Law, Arts. 22, 23, 24, 25, 31, 32.

¹⁵⁷ FNGO Law, Art 27.

¹⁵⁸ FNGO Law, Art. 5.

The FNGO Law drew wide international attention and concern, both during its drafting and after its enactment, including from international human rights experts, and from academic, foundation, professional, and business communities.¹⁵⁹ On October 12, 2016, the Ministry of Public Security and the Shanghai Municipal Public Security Bureau announced the draft *Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-governmental Organizations within the Territory of China*.¹⁶⁰ Unfortunately, the Guidelines fail to provide further information on permitted fields of activities or projects to which FNGOs can carry out inside China, and do not provide a list of the Public Security Units where FNGOs may register, or a list of BADs that will be permitted to partner with FNGOs. No clear procedure for public comment on the Guidelines has been provided.

In the absence of further clarifications or revisions, the FNGO Law will require foreign NGOs—that have been active and making constructive contributions to promoting progress in China—to decide whether and how to accept intrusive oversight by the police of their registration, monitoring, and reporting requirements for operations or activities. It appears that cooperation with government-organized non-governmental organizations (GONGOs) would likely not present additional obstacles as these groups are likely to be on an “approved” list of domestic cooperating partners.

Instead of making progress towards implementing the 2013 Universal Periodic Review recommendations relating to civil society participation and freedom of association listed above, the expanded and tightened regulatory control over civil society groups since 2013 is in fact a step backward from efforts to ensure a safe and enabling environment for civil society.

As was noted by the Special Rapporteur on extreme poverty and human rights in his August 2016 end-of-mission statement “the role of civil society organizations is becoming increasingly circumscribed and those whose work goes much beyond that of being service providers for the Government are now very much under threat.”¹⁶¹ The Special Rapporteur further noted that public participation in China means “participating in implementation of pre-determined Party policies, rather than in the formulation or monitoring of those policies.”¹⁶²

Effective Access to Justice

Lawyers and judges are two key pillars in upholding the rule of law and ensuring citizens’ rights are protected through procedural and judicial safeguards, especially to guarantee the due process rights of any individual whose freedom of opinion and expression is restricted.¹⁶³ Therefore, access to an independent judiciary and legal profession “is integral to a supportive legal framework for civil society

¹⁵⁹ For commentary on the draft FNGO Law, see “HRIC Law Note: Draft Law on Foreign NGOs Undermines Chinese Civil Society and China’s International Engagement,” May 5, 2015, <http://www.hrichina.org/en/legal-resources/hric-law-note-draft-law-foreign-ngos-undermines-chinese-civil-society-and-chinas>.

¹⁶⁰ Ministry of Public Security, [Draft] “Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-governmental Organizations within the Territory of China” (境外非政府组织代表机构登记和临时活动备案办事指南), August 2016. The official version has been publically released but is not available on a public website for download. See also *People’s Daily*, “公安部拟出台境外非政府组织代表机构登记和临时活动备案办事指南,” <http://politics.people.com.cn/n1/2016/1015/c1001-28780455.html>.

¹⁶¹ U.N. Office of the High Commissioner for Human Rights, “End-of-mission statement on China, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights,” August 23, 2016, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20402&LangID=E>.

¹⁶² *Ibid.*

¹⁶³ U.N. Human Rights Council, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye,” U.N. Doc. A/HRC/29/32 (May 22, 2015), para. 32, <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/CallForSubmission.aspx>.

actors”¹⁶⁴ and is “central to the right of an adequate and effective remedy for human rights violations.”¹⁶⁵ The PRC government accepted a number of recommendations during its 2013 Universal Periodic Review relating to the legal profession and judiciary as set forth below. However, police and prosecutorial actions against rights lawyers since 2015 as well as entrenched political interference in the judiciary have seriously undermined the independence of both, thus posing enormous obstruction to the effective access to justice.

Undermining the Independence of Lawyers

The PRC government-accepted recommendations relating to the legal profession, legal framework for lawyers, and their ability to function in an independent and professional capacity called on the government to:

- improve the *regulatory* framework for lawyers and to ensure *unhindered exercise* of their profession;¹⁶⁶
- strengthen conditions in which lawyers function;¹⁶⁷
- guarantee *effective investigations* by an independent body into allegations that *a defense lawyer’s access to his/her client* has been unlawfully obstructed;¹⁶⁸
- ensure lawyers, including human rights lawyers, can practice their profession freely and prompt *investigation into allegations of violence and intimidation* impeding their work;¹⁶⁹
- inform suspects of rights in a timely manner as well as ensure lawyers’ engagement from the start of a criminal investigation;¹⁷⁰ and
- guarantee young people access to a lawyer.¹⁷¹

The U.N. *Basic Principles on the Role of Lawyers* provide that: “lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.”¹⁷²

¹⁶⁴ U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, “Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned,” U.N. Doc. A/HRC/32/20 (April 11, 2016), para. 21, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20.

¹⁶⁵ U.N. Human Rights Council, “Report of the Special Rapporteur on the independence of judges and lawyers,” A/HRC/32/34 (April 5, 2016), para. 33, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/34.

¹⁶⁶ Recommendation 186.129: Further improve the regulatory framework for lawyers conducive to the unhindered exercise of their profession, and continue to harmonize laws and regulations with international standards (**Hungary**).

¹⁶⁷ Recommendation 186.130: Further strengthen the conditions in which lawyers exercise their functions (**Cape Verde**).

¹⁶⁸ Recommendation 186.131: Guarantee access to prompt and effective investigation by an independent and impartial body for defence lawyers alleging that their access to their clients has been unlawfully obstructed (**Finland**).

¹⁶⁹ Recommendation 176.65: Take steps to ensure lawyers and individuals working to advance human rights can practice their profession freely, including by promptly investigating allegations of violence and intimidation impeding their work (**Canada**).

¹⁷⁰ Recommendation 186.132: Inform the suspects of their rights and obligations in a timely manner in accordance with the law, as well as to actively create conditions for lawyers to get involved in a lawsuit from the stage of criminal investigation (**Timor-Leste**).

¹⁷¹ Recommendation 186.134: Continue to guarantee young people the access to legal assistance in conformity with the law (**Slovakia**).

¹⁷² U.N. Office of the High Commissioner for Human Rights, *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (27 August to 7 September 1990), para. 23, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

For the period of 2012-2015, the PRC government reports that “stringent efforts were made to guarantee lawyers’ rights to perform their duties”¹⁷³ and points to regulations such as the *Provisions on Protecting Lawyers’ Practicing Rights in Accordance with the Law*, issued in September 2015,¹⁷⁴ which according to the PRC government, clarify measures to protect lawyers’ right to practice, and improve the accountability mechanisms for ensuring the right to practice.¹⁷⁵ It also points to regulations that were in place to put a stop to and handle in accordance with the law “any insults, defamations, retaliations, and personal injuries received by lawyers while practicing law and offer protection if necessary.”¹⁷⁶

However, the reality on the ground—particularly for lawyers who represent cases deemed “sensitive”—is far divorced from the formal provisions purporting to protect them. Rights lawyers are frequently subjected to politicized interference in their ability to effectively perform their professional duties, as well as detention, prosecution, and imprisonment. Human rights lawyers and their assistants were the chief targets of the infamous, large-scale “709” crackdown that began on July 9, 2015, which affected more than 300 individuals and drew sharp condemnation from international human rights authorities and the legal communities around the world. Zhou Shifeng (周世鋒), a prominent rights lawyer, and his Fengrui Law Firm were the subjects of a smear campaign carried out in state-owned media, as was Wang Yu (王宇), another leading rights lawyer. Both were charged with “subversion of state power.” In early August 2016, Zhou was convicted and sentenced to seven years’ imprisonment and five years of deprivation of political rights, and Wang was shown to “confess” on video, on the website of a state-affiliated media outlet, accompanied by an article that announced her release on bail.

As of November 1, 2016, nearly 16 months after the crackdown, at least five lawyers are still in custody. On October 24, 2016, more than 30 family members of these lawyers issued an open letter to President Xi Jinping listing the many rights violations, including torture, denial of access to counsel of one’s choice, and guilt by association, that they and the detained lawyers have suffered throughout their ordeals and urging Xi to stop them.¹⁷⁷

In addition, the authorities have coupled criminalization of lawyers carrying out their professional practice with brand new requirements that lawyers subjugate law under politics. In the revised *Management Methods on Law Firms and Management Methods on the Legal Profession* issued by the Ministry of Justice in September (effective November 1, 2016), new provisions instruct that law firms “should make embracing the leadership of the Communist Party of China and embracing a socialist rule of law [their] basic professional requirements.” (emphasis added).¹⁷⁸ The directive further requires that law firms, with the resources, should establish in-house Party organizations and should ensure that Party organizations can participate in the decision-making and management of the law firm, so that the Party organization can play its core political role.¹⁷⁹

¹⁷³ NHRAP Assessment Report (2012-2015), p. 4.

¹⁷⁴ Information Office of the State Council of the People’s Republic of China, *New Progress in the Judicial Protection of Human Rights in China*, September 12, 2016, p. 7 (Chinese: http://news.xinhuanet.com/politics/2016-09/12/c_1119549617.htm; English: http://news.xinhuanet.com/english/china/2016-09/12/c_135681609.htm).

¹⁷⁵ Ibid.

¹⁷⁶ NHRAP Assessment Report (2012-2015), p. 18.

¹⁷⁷ The open letter was widely circulated in and outside of China on a range of social media and online news platforms. See Human Rights in China translation, “Open Letter to Mr. Xi Jinping from Families of the 709 Crackdown,” October 24, 2016, <http://www.hrichina.org/en/courageous-voices#21>.

¹⁷⁸ Ministry of Justice, *Management Methods on Law Firms* (律师事务所管理办法) [effective November 1, 2016], Art. 4 (Chinese: <https://perma.cc/RFQ5-GR43>), no English translation publicly available.

¹⁷⁹ Ibid.

The directive relating to lawyers prohibits them from making public statements that “reject the fundamental political system” of China, “endanger national security,” or “attack or slander” the judicial system.¹⁸⁰

The requirement that lawyers should uphold a “socialist” rule of law and the directive to embed the Party in law firms in decision-making and management roles are plain acts of politicization of law practices, which nullify the independence of the legal profession and undermine the ability of lawyers to ensure the protections of the rights of their clients and to contribute to a safe and enabling environment for civil society.

Undermining of the Independence of the Judiciary

The U.N. *Basic Principles on the Independence of the Judiciary* state: “The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary” and that “[t]he judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason” (emphasis added).¹⁸¹ The Basic Principles also state that “[t]here shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision.”¹⁸²

In China, it is the CPC’s political and legal affairs committees that present the key challenge to judicial independence. Political and legal affairs committees involve themselves in cases through two procedures: “case coordination” and “case inspection.”¹⁸³ Their involvement is more prevalent in “sensitive” or high-profile cases, or cases considered by the authorities to concern the preservation of social stability or state security, to have significant political or social impact, or that might result in serious political or social problems, or when they involve unlawful conduct by officials.¹⁸⁴ The Party committees may exert political influence on or control over different phases of a case, from police investigation, procuratorial vetting of the investigation, to the trial’s outcome.

Since accepting the 2013 UPR recommendations relating to the role of the judiciary—including those on strengthening and reforming the judicial system in order to enhance public security and strengthen human rights safeguards¹⁸⁵—the PRC government has reported improvements in its judicial

¹⁸⁰ Ministry of Justice, *Management Methods on the Legal Profession* (律师执业管理办法) [effective November 1, 2016], Art. 14 (Chinese: <https://perma.cc/QBG5-7KWY>, unofficial English translation: <http://chinalawtranslate.com/%E5%BE%8B%E5%B8%88%E6%89%A7%E4%B8%9A%E7%AE%A1%E7%90%86%E5%8A%9E%E6%B3%95/?lang=en>).

¹⁸¹ U.N. Office of the High Commissioner of Human Rights, *Basic Principles on the Independence of the Judiciary*, September 6, 1985, para. 2, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

¹⁸² *Ibid.*, para. 4.

¹⁸³ For a more comprehensive discussion of these procedures, see, e.g., Ling Li, “The Chinese Communist Party and People’s Courts: Judicial Dependence in China,” *The American Journal of Comparative Law*, 64, no. 1 (2016), https://www.academia.edu/10147137/The_Chinese_Communist_Party_and_People_s_Courts_Judicial_Dependence_in_China.

¹⁸⁴ See, e.g., the Yongzhou City CPC Political and Legal Affairs Committee, *Party Committee and Political and Legal Affairs Committee Rules on Case Supervision and Coordination* (党委政法委员会案件督办、协调工作制度) [effective August 10, 2011], Art. 20, (Chinese: <https://perma.cc/SXB5-5SUA>).

¹⁸⁵ Recommendation 186.124: Continue its efforts to strengthen the judicial system to enhance public security and the rule of law (**Singapore**); Recommendation 186.125: Continue implementation of the comprehensive judicial reform which ensures that the judicial authorities exercise their powers in accordance with the law (**Kyrgyzstan**); Recommendation 186.126: Continue with judicial reforms with a view of strengthening human rights safeguards (**Nigeria**).

accountability system.¹⁸⁶ These initiatives include recording deliberations of judicial committees and requiring committee members who participate and cast votes at the deliberations to sign their names in the meeting minutes.¹⁸⁷ In 2015, The CPC Political and Legal Affairs Commission issued *Provisions for the Recording, Circulating, and Holding Leaders Accountable for Interference in Judicial Actions and Meddling in Cases*, which include measures to curb political interference in case decision-making.¹⁸⁸

While these measures may be highlighted by the PRC government to suggest that the role of political and legal affairs committees is being constrained, concerns remain regarding the extent of these involvements.¹⁸⁹

Rising international concerns regarding the impact of these committees on an independent and fair judicial process have been clearly articulated by international authorities in recent years. A report in April 2016 by the Special Rapporteur on the independence of judges and lawyers pointed out plainly that judges in China do not enjoy “political insularity.”¹⁹⁰ In September 2016, the Special Rapporteur on extreme poverty and human rights also reported in his preliminary end-of-mission statement on China that “the continuing influence of the Party political-legal committees that guide the work of the courts, and their track record to date in not entertaining cases based on claims that human rights have been violated, suggest little room for optimism.”¹⁹¹ During several treaty body reviews of the PRC, questions were also raised regarding these committees and steps taken to limit or eliminate their role in judicial decision-making.¹⁹²

The *Basic Principles* state that “[t]he principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.” The continuing political interventions in judicial decision-making, in particular in “sensitive” cases, undermines the fairness of the proceedings and respect for the rights of the parties, thus undermining the rule of law conditions necessary for ensuring a safe and enabling environment for civil society.

¹⁸⁶ Information Office of the State Council of the People’s Republic of China, “New Progress in the Judicial Protection of Human Rights in China” (中国司法领域人权保障的新进展) (September 12, 2016), p. 4 (Chinese: http://news.xinhuanet.com/politics/2016-09/12/c_1119549617.htm, English: http://news.xinhuanet.com/english/china/2016-09/12/c_135681609.htm).

¹⁸⁷ Ibid.

¹⁸⁸ Central Political and Legal Affairs Commission, *Provisions for the Recording, Circulating, and Holding Leaders Accountable for Interference in Judicial Actions and Meddling in Cases* (司法机关内部人员过问案件的记录和责任追究规定), March 30, 2015, (Chinese: <http://politics.people.com.cn/n/2015/0331/c1001-26774171.html>, unofficial English, under the title of *Provisions On Recording And Pursuing Responsibility Of Judicial Organ Personnel Prying Into Cases*: <http://chinalawtranslate.com/neibusifaganyu/?lang=en>).

¹⁸⁹ Ling Li, “The Chinese Communist Party and People’s Courts: Judicial Dependence in China,” *The American Journal of Comparative Law*, 64, no. 1 (2016), https://www.academia.edu/10147137/The_Chinese_Communist_Party_and_People_s_Courts_Judicial_Dependence_in_China.

¹⁹⁰ U.N. Human Rights Council, “Report of the Special Rapporteur on the independence of judges and lawyers,” U.N. Doc. A/HRC/32/34 (April 5, 2016), para. 41, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/068/03/PDF/G1606803.pdf?OpenElement>.

¹⁹¹ U.N. Office of the High Commissioner for Human Rights, “End-of-mission statement on China, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights,” August 23, 2016, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20402&LangID=E>.

¹⁹² Committee against Torture, “List of issues in relation to the fifth periodic report of China,” (June 15, 2015) U.N. Doc. CAT/C/CHN/Q/5/Add.1, para. 28(a), http://www.hrichina.org/sites/default/files/cat_review_loi_-_english.pdf; Committee on the Elimination of Discrimination against Women, “Concluding observations on the combined seventh and eighth periodic reports of China,” (November 7, 2014) U.N. Doc. CEDAW/C/CHN/CO/7-8, para. 10, http://www.hrichina.org/sites/default/files/cedaw_concluding_observations_en_2014.pdf.

Political Environment Conducive to Civil Society

In its 2013 Universal Periodic Review, the PRC government accepted recommendations relating to providing an environment in which citizens have the rights to freely express their opinions and engage in dialogue with or critique the government—or stated that such recommendations were already being implemented—including the following:

- “Increase transparency of traditional and social media by guaranteeing the rights of Chinese citizens to freely critique any state organ or functionary”¹⁹³ ;
- “Expand channels and mechanism of direct dialogue between the Government and the population”;¹⁹⁴
- “Facilitate the development, in law and practice, of a safe and enabling environment in which both civil society and human rights defenders can operate free from fear, hindrance and insecurity”;¹⁹⁵ and
- “Continue strengthening the protection and promotion of the right of all citizens to publicly express their beliefs and opinions.”¹⁹⁶

Furthermore, the PRC government has highlighted the importance of the Internet as having “enriched channels through which citizens can have their voices heard” by “putting forward criticisms and suggestions on the work of the government at various levels and exercise supervision over the conducts of civil servants.”¹⁹⁷

But the domestic policies and actions of the PRC government since 2013 tell quite a different story. The spate of new security-related laws and draft laws and regulations restricting access to information and freedom of expression—combined with the suppression of rights defense lawyers and demands that lawyers practice politically-correct law, as discussed above—has in fact shaped a political environment that is anything but conducive to civil society growth or tolerant of any voices critical of the government.

Collectively, the restrictions on expression and information and the (mis)use of the legal profession as tools of political control are part of a society-wide campaign to fortify the rule of a Party rattled by the sense that its legitimacy is draining away in the economic slowdown.

At the broadest, general public level, the people are being led into a new Cultural Revolution exalting their top leader (Xi Jinping himself). Within the Party, Xi purges his political enemies,¹⁹⁸ and wages a “Public Opinion Struggle” for absolute loyalty to the Party,¹⁹⁹ and disciplines Party members “with

¹⁹³ Recommendation 186.170: Increase transparency of its traditional and social media by guaranteeing the rights of Chinese citizens to freely critique any state organ or functionary (**Australia**).

¹⁹⁴ 186.168. Expand channels and mechanism of direct dialogue between the Government and the population (**Russian Federation**).

¹⁹⁵ 186.149. Facilitate the development, in law and practice, of a safe and enabling environment in which both civil society and human rights defenders can operate free from fear, hindrance and insecurity (**Ireland**).

¹⁹⁶ 186.169. “Continue strengthening the protection and promotion of the right of all citizens to publicly express their beliefs and opinions,” (**Chile**).

¹⁹⁷ NHRAP Assessment Report (2012-2015), p. 22.

¹⁹⁸ See Gao Wenqian, “Mao’s Cultural Revolution Legacy and Xi Jinping’s Governance Model,” Human Rights in China, September 30, 2016, <http://www.hrichina.org/en/china-rights-forum/maos-cultural-revolution-legacy-and-xi-jinpings-governance-model>.

¹⁹⁹ Qian Gang, “Parsing the ‘public opinion struggle’,” China Media Project, September 24, 2013, <http://cmp.hku.hk/2013/09/24/34085/>.

wavering confidence in communism and socialism with Chinese characteristics” and who advocates “Western Values.”^{200 201} In February 2016, Xi Jinping admonished state-owned media that they “must be surnamed Party” and must “love the Party, protect the Party and serve the Party.”²⁰² In the education arena, in early 2015, then Education Minister Yuan Guiren (袁贵仁) trumpeted the campaign with a warning against “Western values and concepts” infiltrating China’s classrooms;²⁰³ then came scrutiny of professors holding “improper”—i.e., Western—views,²⁰⁴ and renewed emphasis on “patriotic education” in schools.²⁰⁵ In September 2016, the Ministry of Education even floated a draft of a teachers’ “Oath of Allegiance” for public comments.²⁰⁶

In April 2016, the UN High Commissioner for Human Rights put forth a set of practical recommendations for states for creating a public and political environment conducive to civil society, including:

- “Addressing threats and attacks targeting civil society actors should be part of building a tolerant culture.”²⁰⁷
- “States have an obligation to protect people from acts by private individuals or entities that would impair the enjoyment of freedom of opinion and expression.”²⁰⁸

²⁰⁰ “CPC to drill members in self-discipline, socialist values,” Xinhua [English], February 28, 2015, http://news.xinhuanet.com/english/2016-02/28/c_135138601.htm.

²⁰¹ See “New Communist Party conduct rules to keep top cadres—and their families—in line” *South China Morning Post*, October 29, 2016, <http://www.scmp.com/news/china/policies-politics/article/2041120/new-communist-party-conduct-rules-keep-top-cadres-and>; “Chinese army vows efforts on strict Party governance,” Xinhua, October 31, 2016, http://news.xinhuanet.com/english/2016-10/31/c_135792102.htm.

²⁰² “Supervising supervision,” China Media Project, June 17, 2016, <http://cmp.hku.hk/2016/06/17/39775/>.

²⁰³ Xinhua online, 教育部长：绝不能让传播西方价值观念教材进课堂 (Education Minister: Absolutely cannot allow educational materials that disseminate Western values and concepts to enter our classrooms) (January 30, 2015), <https://perma.cc/5GW7-EFY8>; Donald Clarke, “Shen Kui and his three questions” (January 31, 2015), http://lawprofessors.typepad.com/china_law_prof_blog/2015/01/shen-kui-and-his-three-questions.html.

²⁰⁴ See China Law Translate, “Dangerous Love on National Security Education Day,” April 16, 2016, <http://chinalawtranslate.com/nsed/?lang=en#CtSvSlqtXfh7Poth.99>; see also, China Courts Online, 中纪委驻教育部纪检组长：加强监督高校教师传播不当言论 (“Central Commission for Discipline Inspection team leader in the education department: strengthen discipline inspection over college professors who disseminate improper views”), (January 21, 2016), <https://perma.cc/8TQM-5L8V>, in which the Central Commission for Discipline Inspection (the CPC’s anti-graft body) stated that professors who expressed “improper opinions” (不正当的言论) would be targeted for extra discipline inspection.

²⁰⁵ “China Says Its Students, Even Those Abroad, Need More ‘Patriotic Education,’” *New York Times*, February 10, 2016, <http://www.nytimes.com/2016/02/11/world/asia/china-patriotic-education.html>; China Copyright and Media Blog, “Opinions concerning Further Strengthening and Improving Propaganda and Ideology Work in Higher Education Under New Circumstances” (January 19, 2015), <https://chinacopyrightandmedia.wordpress.com/2015/01/19/opinions-concerning-further-strengthening-and-improving-propaganda-and-ideology-work-in-higher-education-under-new-circumstances/>; see also, 中共中央办公厅、国务院办公厅印发《关于进一步加强和改进新形势下高校宣传思想工作的意见》 (January 19, 2015), <https://perma.cc/MC6Y-5T7E>; “China’s Communist Party Reminds Colleges: Keep it Clean,” China Real Time Report, *Wall Street Journal*, July 8, 2014, <http://blogs.wsj.com/chinarealtime/2014/07/08/chinas-communist-party-reminds-colleges-keep-it-clean/>.

²⁰⁶ Ministry of Education, *Notice on the solicitation of public comment for the People’s Teachers’ Oath of Allegiance* (关于对《人民教师誓词（征求意见稿）》公开征求意见的公告), September 19, 2016, http://www.moe.edu.cn/jyb_xwfb/s248/201609/t20160919_281475.html.

²⁰⁷ U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, “Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned,” U.N. Doc. A/HRC/32/20 (April 11, 2016), para. 26, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20.

²⁰⁸ *Ibid.* The acts are identified as the “[u]se of derogatory terminology to delegitimize civil society actors, for instance labelling them ‘foreign agents’, ‘moles’ or ‘unpatriotic’ in laws or in State-supported media, generally aims to deter criticism, discourage free expression, increase negative public opinion of civil society actors and distract attention from the issues at stake.”

What the PRC government is doing to cultivate the political environment in China is the polar opposite of the recommendations by the High Commissioner. It is a culture of intolerance where the authorities use laws and propaganda to render the people voiceless—the very antithesis of one that, in the High Commissioner’s words, “recognizes the value of civil society and encourages its engagement.”²⁰⁹

Judged in this context, the PRC government has failed to honor the pledge it made during the 2013 Universal Periodic Review to implement recommendations to provide a safe and enabling environment conducive to civil society.

Long-term Support and Resources for Independent Civil Society

Recommendations that the PRC government accepted during its 2013 Universal Periodic Review relating to state resources and support for civil society include:

- “[i]ntensify efforts to facilitate the participation of NGOs, academic institutions and the media in safeguarding human rights”²¹⁰; and
- “[c]ontinue the human rights awareness and training of the population.”²¹¹

While, the PRC government has clearly supported state-vetted or officially approved efforts in human rights research and education efforts—such as those carried out by the China Society for Human Rights Studies²¹² and the China University of Political Science and Law’s Institute for Human Rights²¹³—there is extremely limited space for independent NGOs to engage in human rights advocacy activities.

While certain civil society sectors—such as mass organizations affiliated with the government—may receive political and concrete support and resources, and while “privately-run schools, hospitals, homes for the aged, and other social services facilities . . . that are not for profit” have been “actively nurtured and developed” by the government,²¹⁴ independent and grassroots civil society groups in China face increasingly difficult access to support and resources, especially international support.

The ability of associations to access financial resources has been identified by the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association as a “vital part of the right to freedom of association.” In his 2013 report to the Human Rights Council, the Special Rapporteur said:

The right to freedom of association not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources – human, material and financial – from domestic, foreign, and international sources.²¹⁵

²⁰⁹ U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, “Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned,” U.N. Doc. A/HRC/32/20 (April 11, 2016), para. 26, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20.

²¹⁰ Recommendation 186.148: Intensify efforts to facilitate the participation of NGOs, academic institutions and the media in safeguarding human rights (**Nigeria**).

²¹¹ Recommendation 186.47: Continue the human rights awareness and training of the population (**Togo**).

²¹² See <http://www.humanrights.cn/>.

²¹³ See http://www.humanrights.cn/cn/rqzz/zgrqzzyjg/yjzz/t20060920_152405.htm.

²¹⁴ NHRAP Assessment Report (2012-2015), p. 22.

²¹⁵ U.N. Human Rights Council, “Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai,” U.N. Doc. A/HRC/23/39 (April 24, 2013), para. 8, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.39_EN.pdf.

More generally, the UN High Commissioner for Human Rights has identified ways in which the State can create and maintain an enabling environment for civil society, including education, awareness-raising and training, funding, and access to communications technologies and connectivity.²¹⁶ With respect to funding, the High Commissioner states that "[p]redictability of core funding is fundamental for civil society organizations to work effectively and independently, undertake long-term planning and adapt to evolving situations."²¹⁷

The enactment of the FNGO Law with its expansion of intrusive regulatory control and police oversight will certainly impact the role of foreign civil society groups, which have historically provided support and collaborated with domestic groups to make contributions to progress in health, environment, legal reform and legal education, and many other sectors. In May 2016, a group of UN experts called for the repeal of the FNGO Law and expressed concern "that it will have a detrimental impact on the existence and operations of domestic NGOs that cooperate with foreign NGOs and/or are dependent on funding from them, and which carry out activities in the field of human rights."²¹⁸

In addition to increasing legal and political restrictions on domestic civil society groups, the failure to revise or repeal the FNGO Law will also limit the long term support and resources available to domestic civil society, and weaken the foundation for a robust civil society that is critical to promoting human rights progress on the ground.

HRIC Recommendations

To support and ensure a safe and enabling environment for civil society necessary for effective exercise of fundamental rights and freedoms, and to address domestic developments that undermine informed and robust civil society action, we advance the following recommendations:

To China

- Take immediate steps to end the crackdown and reprisals against lawyers, defenders, and other citizens who are exercising rights protected by international human rights and domestic law.
- Adopt concrete measures to support diverse civil society participation (beyond that by officially affiliated groups), including providing access to information and opportunities to monitor and participate in decision-making processes that impact on the rights of individuals and their communities.
- Adopt immediate legal and policy measures to end the campaign against human rights defenders and ensure that lawyers are able to fully carry out their professional responsibilities to their clients.

²¹⁶ U.N. Human Rights Council, Report of the U.N. High Commissioner for Human Rights, "Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned," U.N. Doc. A/HRC/32/20 (April 11, 2016), pp. 14-16, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/20.

²¹⁷ Ibid., para. 72.

²¹⁸ U.N. Office of the High Commissioner for Human Rights, "China: Newly adopted Foreign NGO Law should be repealed, UN experts urge" May 3, 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19921&LangID=E>; Special Rapporteur on the promotion and protection of the right of the freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders" (April, 16, 2015), [https://spdb.ohchr.org/hrdb/30th/public_-_AL_China_16.04.15_\(2.2015\).pdf](https://spdb.ohchr.org/hrdb/30th/public_-_AL_China_16.04.15_(2.2015).pdf).

- Continue current efforts to strengthen the independence of the courts by restricting the involvement of Political and Legal Affairs Committees in cases and strengthen the monitoring and implementation of steps towards removing them from any role in the judicial review and determination of cases.
- Repeal or substantially amend the *Foreign NGO Management Law* (FNGO Law) to address the concerns and recommendations expressed by diverse sectors of the international community—governments, the business, academic, and professional communities, and NGOs—including repealing the restrictive regulatory framework that places foreign civil society groups under the stringent and intrusive supervision of the police.
- Review the suite of national security laws and draft laws and undertake necessary amendments to ensure that they comply with international standards for legality and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.

To Member States

- Demonstrate high-level political support for Chinese lawyers, defenders, and a sustainable and robust civil society space through joint public statements and other public actions, and through all available engagement tools, including bilateral dialogues, high level visits, technical assistance support, and educational and cultural exchanges.
- Respond firmly to counter official policies and practices aimed at enforcing domestic ideological conformity that seeks to undermine international human rights principles and standards under the banner of an anti-Western campaign.
- In bilateral and multilateral engagement, including providing technical assistance for and exchanges with the PRC, press for the repeal or a substantial amendment of the FNGO Law to address the concerns and expressed by diverse sectors of the international community—governments, the business, academic, and professional communities, and NGOs—including repealing the restrictive regulatory framework that places foreign civil society groups under the supervision of the police.
- In bilateral and multilateral engagement, including providing technical assistance for and exchanges with the PRC, press for a review of the suite of national security laws and draft laws and necessary amendments to ensure that they comply with international standards for legality and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.