

**Submission to U.N. Special Rapporteur on the Promotion and
Protection of the Right to Freedom of Opinion and Expression,
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By Human Rights in China

Regarding the Telecommunications and Internet Services Sectors in China

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I. INTRODUCTION

As international human rights principles clearly establish, 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.”¹ In its recent Human Rights Assessment Report, the government of the People’s Republic of China (PRC) 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 exercis[ing] supervision over the conducts of civil servants.”²

However, the PRC government’s official view and fears of an open Internet were clearly articulated in 2010 by Wang Chen (王晨), then head of the Propaganda Office of the State Council Information Office and now Secretary General of the 12th Standing Committee of the National People’s Congress:

*As long as our country’s Internet is linked to the global Internet, there will be channels and means for all sorts of harmful foreign information to appear on our domestic Internet. As long as our Internet is open to the public, there will be channels and means for netizens to express all sorts of speech on the Internet.*³

This official view of the Internet as a security threat can be seen reflected in legal developments aimed at ensuring “correct and unified thinking” online, including expanded criminalization of proscribed online expression and tightened regulation over content, transmission, and storage of information, as provided in new laws and regulations over the past two years. In addition to this increasingly restrictive domestic legal environment, the PRC government deploys sophisticated technology, including the “Great Firewall,”⁴ to monitor online communications, conduct surveillance, and block undesirable content. The steep human rights challenges resulting from these restrictions on online expression, access to information, and privacy have significant impacts for the enormous online population in China, reported at 620 million mobile Internet user accounts and 688 million Internet users by the end of 2015.⁵

¹ 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 (para. 77) 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), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/17/27 (para. 2).

² State Council Information Office, *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) (p. 22). Note the page numbers denote Human Rights in China’s copy/paste of the document which was located over 10 webpages.

³ Human Rights in China, *How the Chinese Authorities View the Internet: Three Narratives* (July 9, 2010), <http://www.hrichina.org/en/content/3240>; See, especially, State Council Information Office, *Concerning the Development and Management of Our Country’s Internet* (关于我国互联网发展和管理), Wang Chen (王晨) (April, 2010), <https://perma.cc/U9HX-7D6T> (hereafter, **NHRAP Assessment Report 2012-2015**).

⁴ The “Great Firewall” refers to the Chinese government’s censorship system, including the Golden Shield, which operates to block online content from view in mainland China. See, e.g. “Great Firewall,” *China Digital Times*, http://chinadigitaltimes.net/space/Great_Firewall.

⁵ China Internet Network Information Center (CNNIC), “Statistical Report on Internet Development in China” (中国互联网络信息中心), (January 2016), <http://cnnic.com.cn/IDR/ReportDownloads/> (p. 1).

The role of companies in the telecommunications and Internet Services sectors and their impact on the rights to freedom of expression and privacy must be examined within this domestic legal and political environment and official Internet-related policies.

As described in this submission, an expanding national security and regulatory framework creates legal, political, and operational tensions for domestic companies in the telecommunications and Internet sectors, including both state-owned enterprises (SOEs) and private sector companies. These companies must aim to achieve their own corporate goals for global leadership and success and comply with their responsibilities under emerging international guidelines and best practices for human rights obligations of business entities,⁶ and at the same time must act as enforcers of restrictive laws, regulations, and policies that undermine rights. In addition, political oversight within SOEs and private sector companies in the PRC, such as through the establishment of Communist Party of China (CPC) organizations inside these companies, exerts additional political and ideological demands and priorities that also give rise to concerning impacts on the exercise of online rights by citizens.

As a contribution to the forthcoming study on freedom of expression in the telecommunications and Internet access sector by the Special Rapporteur, Human Rights in China respectfully makes this submission to contribute information and observations regarding these particular aspects of the industry sector in the PRC. While the Special Rapporteur's specific focus at this stage is on the basic level of the digital expression infrastructure—and he has specifically identified the role of private companies—in light of the dominant role of SOEs in the telecommunications sector in China, this submission will discuss both SOEs and private sector companies in the Internet services sector.

This submission will focus on four key developments that shape and impact the role of the telecommunications and Internet services sectors companies and:

- Provide an overview of legal and political trends impacting rights in China, including crackdowns on civil society and the targeting of lawyers and defenders, an ongoing political campaign aimed at enforcing ideological conformity, and a politicized, overbroad and encompassing approach to national security.
- Review key legal and regulatory trends in the telecommunications and Internet sectors, including issues relating to regulatory impacts on freedom of expression and expanding criminalization of online expression, with a description of the role of community reporting on and monitoring of online expression.
- Outline international engagement and domestic developments related to corporate social responsibility, including engagement by China's leading Internet and telecommunications companies. While a comprehensive analysis of this engagement is beyond the scope of this submission, we identify potential openings from this engagement for domestic and international policy and operational pushback on the restrictive domestic trends.

Finally, we also advance recommendations and suggestions for the further stages of the Special Rapporteur's study and for promoting expanded international engagement with the PRC government, SOEs, and private sector information communications technology (ICT) companies.

⁶ U.N. Human Rights Council, "Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises," U.N. Doc. A/HRC/32/45 (May 4, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/45.

II. LEGAL AND POLITICAL DEVELOPMENTS IMPACTING RIGHTS

Several key trends and developments in the PRC are contributing to an overall tightening of the legal and political environment for civil society, and in particular impacting on the right to freedom of expression, access to information, and privacy. These trends include: an intensified and ongoing crackdown on civil society targeting lawyers and human rights defenders; an official campaign aimed at enforcing ideological conformity; a suite of national security-related legislation creating an overall climate of securitization; and the expanding criminalization and punishment of online expression.⁷

A. Crackdowns on Civil Society

An ongoing crackdown on human rights defenders and their families, which has included arbitrary detentions, forced disappearances, and criminalization of the peaceful exercise of fundamental rights and freedoms, continues to pose serious human rights challenges in the PRC. As documented extensively by NGOs and the international media, and has also been highlighted with deep concern by NGOs,⁸ the UN High Commissioner for Human Rights,⁹ UN Special Rapporteurs,¹⁰ and UN member states,¹¹ this steep deterioration of rights undermines citizens' rights to freedom of expression, freedom

⁷ For an assessment of the PRC's progress in implementing accepted UPR 2013 recommendations related to promoting international cooperation and compliance with international standards and in ensuring a safe and enabling environment for civil society see, Human Rights in China, *The China Challenge to International Human Rights: What's At Stake? A China UPR Mid-Term Progress Assessment* (November 2016), http://www.hrichina.org/sites/default/files/hric_upr_mid-term_assessment_11.06.2016.pdf.

⁸ See, International Service for Human Rights, *Human rights defenders and lawyers in China: A mid-term assessment of implementation during the UPR second cycle* (May 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," CHRDR Annual Report on the Situation of Human Rights Defenders in China (2015), <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 (FIDH), "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>; Human Rights in China, "Mass Crackdown on Chinese Lawyers and Defenders," <http://www.hrichina.org/en/mass-crackdown-chinese-lawyers-and-defenders>.

⁹ 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>.

¹⁰ 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>.

¹¹ 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;

of association, and access to information, as well as a safe and enabling environment for civil society, a key driver for promoting rights progress.

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 legal communities around the world. Zhou Shifeng (周世锋), 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.¹²

In addition to these restrictions on domestic civil society groups, the *Law on the Management of Foreign Non-Governmental Organizations’ Activities within Mainland China* (FNGO Law)¹³ that goes into effect on January 1, 2017, will further impact on support for independent civil society groups and voices. Under the FNGO Law, a high level of state oversight and control will be exerted over all foreign NGOs by public security authorities¹⁴ and by Chinese professional supervisory units (PSUs) (or business administration departments (BADs)),¹⁵ including with respect to their activities,¹⁶ finances,¹⁷ and staff.¹⁸ The FNGO Law also prohibits “endanger[ing] China’s national unity, security, or ethnic unity” or “harm[ing] China’s national interests.”¹⁹

The implementation of the FNGO Law with its intrusive regulatory control and police oversight will significantly restrict the role and activities of foreign NGOs, which have provided support to and collaborated with diverse domestic groups, including independent NGOs working on health, environment, women’s rights, disability rights, and capacity training.

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,

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.

¹² 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>.

¹³ 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>) (hereafter, **FNGO Law**).

¹⁴ Ibid., Arts. 7, 45-47.

¹⁵ Ibid., Arts. 11, 31.

¹⁶ Ibid., Arts. 17, 19, 30, 31.

¹⁷ Ibid., Arts. 22, 23, 24, 25, 31, 32.

¹⁸ Ibid., Art 27.

¹⁹ Ibid., Art. 5.

professional, and business communities.²⁰ 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.”²¹

On October 12, 2016, the Ministry of Public Security announced the draft *Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-governmental Organizations within the Territory of China*.²² Unfortunately, the Guidelines fail to provide further information on permitted fields of activities or projects that 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 the professional supervisory units (PSUs) (or business administration departments (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 and of their monitoring and reporting requirements for operations or activities. Cooperation with government-organized non-governmental organizations (GONGOs)²³ would likely not present additional obstacles as these groups are likely to be on an “approved” list of domestic cooperating partners.

B. Ideological Conformity Campaign

Since 2013, President and CPC General Secretary Xi Jinping has intensified a new Cultural Revolution-style ideological campaign targeting the Party itself and all sectors of society. This broad campaign to control expression and thought poses serious challenges to the protection of the rights to freedom of expression, privacy, and respect for diverse civil society voices. Within the Party, Xi has purged his political enemies,²⁴ waged a “Public Opinion Struggle” for absolute loyalty to the Party,²⁵ and disciplined

²⁰ For commentary see, Human Rights in China, “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>.

²¹ 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).

²² 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, “Ministry of Public Security tables 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,” *People’s Daily*, October 15, 2016, <http://politics.people.com.cn/n1/2016/1015/c1001-28780455.html>.

²³ 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) at <http://www.ccyll.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>.

²⁴ See, “Mao’s Cultural Revolution Legacy and Xi Jinping’s Governance Model,” Human Rights in China, Gao Wenqian, September 30, 2016, <http://www.hrichina.org/en/china-rights-forum/maos-cultural-revolution-legacy-and-xi-jinpings-governance-model>.

Party members “with wavering confidence in communism and socialism with Chinese characteristics” and those who advocate “Western Values” (西方价值).²⁶ In February 2016, Xi Jinping admonished state-owned media that they “must be surnamed Party” (媒体姓党) and must “love the Party, protect the Party and serve the Party” (爱党、护党、为党).²⁷ In the education arena, in early 2015, then Education Minister Yuan Guiren (袁贵仁) trumpeted the campaign by warning against “Western values and concepts” infiltrating China’s classrooms,²⁸ scrutinizing professors holding “improper”—i.e., Western—views,²⁹ and renewing emphasis on “patriotic education” in schools.³⁰ In September 2016, the Ministry of Education even floated a draft of a teachers’ “Oath of Allegiance” for public comments.³¹

This ideological campaign is accompanied by the targeting of a key pillar for ensuring a rule of law—an independent legal profession. In addition to criminal prosecution targeting lawyers, the authorities have introduced new requirements that place additional political controls over lawyers. Under 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).³² The *Management Methods on the*

²⁵ “Parsing the ‘public opinion struggle’,” Qian Gang, China Media Project, September 24, 2013, <http://cmp.hku.hk/2013/09/24/34085/>.

²⁶ 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. See further, “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.

²⁷ “Supervising supervision,” China Media Project, June 17, 2016, <http://cmp.hku.hk/2016/06/17/39775/>; see also, “新闻媒体坚持党性原则的根本要求,” (“The basic requirements of the principle that news media must uphold the principle of the Party character”), *China Education News* (June 2, 2016) <https://perma.cc/R5UA-VCQB>.

²⁸ “Minister: Absolutely cannot allow educational materials that disseminate Western values and concepts to enter our classrooms” “教育部长：绝不能让传播西方价值观念教材进课堂,” *Xinhua*, 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.

²⁹ 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.

³⁰ “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>; “Opinions concerning Further Strengthening and Improving Propaganda and Ideology Work in Higher Education Under New Circumstances,” China Copyright and Media Blog, 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,” *Wall Street Journal* [China Real Time Report], July 8, 2014, <http://blogs.wsj.com/chinarealtime/2014/07/08/chinas-communist-party-reminds-colleges-keep-it-clean/>.

³¹ 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.

³² Ministry of Justice, *Management Methods on Law Firms* (律师事务所管理办法) [effective November 1, 2016], (Chinese: <https://perma.cc/RFO5-GR43>) (Art. 4) no official English translation available. See also, Human Rights Watch, “China: New Rules Gag Lawyers Relentless Assault on Legal Profession Escalates,” (October 25, 2016) <https://www.hrw.org/news/2016/10/25/china-new-rules-gag-lawyers>.

Legal Profession directive prohibits lawyers from making public statements that “reject the fundamental political system” of China, “endanger national security,” or “attack or slander” the judicial system.³³

The *Management Methods on Law Firms* further direct law firms with resources to establish in-house Party organizations and 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.³⁴ The requirement that lawyers uphold a “socialist” rule of law and the directive to embed the Party in law firms’ decision-making and management, further strengthens political oversight and control, and undermines the independence of the legal profession and the ability of lawyers to effectively represent their clients’ rights.

The nationalistic and anti-Western aspects of this ideological campaign also raise significant concerns regarding its impact on the domestic implementation of the PRC’s international human rights obligations, as well as its contribution to the undermining of international standards. In its engagement with the international human rights system, the PRC government has attempted to assert 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,”³⁵ the PRC government has in 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.³⁶

The PRC government’s pressing for its concept of “Internet sovereignty” as well as a version of “human rights with Chinese characteristics,”³⁷ illustrates its approach to international standards. Although it was unsuccessful in gaining support for its 2011 *International Code of Conduct for Information Security*,³⁸ the PRC government has continued to try to assert its proposal for “Internet sovereignty” and greater

³³ Ministry of Justice, *Management Methods on the Legal Profession* (律师执业管理办法) [effective November 1, 2016], (Chinese: <https://perma.cc/QBG5-7KWY>, for unofficial English translation see: <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>) (Art. 14).

³⁴ Ministry of Justice, *Management Methods on Law Firms* (律师事务所管理办法) [effective November 1, 2016], (Chinese: <https://perma.cc/RFAQ-GR43>) (Art. 4) no official English translation available.

³⁵ Information Office of the State Council of the People’s Republic of China, *National Human Rights Action Plan of China (2016-2020)* (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) (p. 3). (hereafter, **NHRAP 2016-2020**). The page numbers denote Human Rights in China’s copy/paste of the document which was located over a number of webpages.

³⁶ See, Human Rights in China, *The China Challenge to International Human Rights: What’s At Stake? A China UPR Mid-Term Progress Assessment* (November 2016), http://www.hrichina.org/sites/default/files/hric_upr_mid-term_assessment_11.06.2016.pdf.

³⁷ NHRAP 2016-2020, p. 3.

³⁸ Shanghai Cooperation Organization, “International Code of Conduct for Information Security,” Annexure to Letter dated 9 January 2015 from the Permanent Representatives of China, Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan to the United Nations addressed to the Secretary-General (September 12, 2011), U.N. Doc. A/69/723, <https://ccdcoe.org/sites/default/files/documents/UN-150113-CodeOfConduct.pdf>.

restrictions over Internet content at UN forums.³⁹ Domestically, the concept of “Internet sovereignty” is one of the key principles set forth in the *Cybersecurity Law of the People’s Republic of China*.⁴⁰

C. National Security-related Legislation

Under the leadership of Xi Jinping, the PRC government has strengthened its legal framework in order to ensure preservation of the Party-state and adherence to its policies. Within the ideological climate described above, national security legislation also reflects and is driven by a fear and distrust of the free flow of information and free expression. In the three years since the CPC’s Fourth Plenum in 2013, the Chinese government has issued a series of laws that have, as China scholar Professor Jerome Cohen has described, turned the PRC into a “garrison state”⁴¹ and “transition[ed] [it] further into dictatorship.”⁴² These laws include the *National Security Law*,⁴³ the *Counterterrorism Law*,⁴⁴ the *Counter-Espionage Law*,⁴⁵ the *Law on the Regulation of the Activities of Foreign NGOs in Mainland China*,⁴⁶ the *Cybersecurity Law*,⁴⁷ and Amendment (9) to the *Criminal Law*.⁴⁸ We highlight and discuss below some key concerns that this overarching suite of security legislation presents, including vague definitions and overbroad provisions, and the criminalization of expression that violates international standards to protect the rights to freedom of expression and privacy.

³⁹ “At U.N., China Tries to Influence Fight Over Internet Control,” *New York Times*, December 16, 2015, http://www.nytimes.com/2015/12/17/technology/china-wins-battle-with-un-over-word-in-Internet-control-document.html?_r=0.

⁴⁰ Standing Committee of the National People’s Congress, *Cybersecurity Law of the People’s Republic of China* (中华人民共和国网络安全法) [effective June 1, 2017], (Chinese: http://news.xinhuanet.com/politics/2015-07/01/c_1115787801.htm ; unofficial English translation: <http://chinalawtranslate.com/cybersecuritylaw/?lang=en>).

⁴¹ “China National Security Law Aims to Create ‘Garrison State,’ Experts Say,” Professor Jerome Cohen, *The Wall Street Journal*, July 2, 2015, <http://blogs.wsj.com/chinarealtime/2015/07/02/china-national-security-law-aims-to-create-garrison-state-experts-say/>.

⁴² “The Dilemma Facing Rights Lawyers in China: To fight for rights using existing laws? Or try to end Communist control over the legal system?,” Professor Jerome Cohen, *The Wall Street Journal*, January 18, 2016, <http://www.wsj.com/articles/the-dilemma-facing-rights-lawyers-in-china-1453137609>.

⁴³ 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) [Passed on July 1, 2015 at the 15th meeting of the Standing Committee of the 12th National People’s Congress], (Chinese: <https://perma.cc/3Y67-7MRE>, unofficial English translation: <http://chinalawtranslate.com/2015nsl/?lang=en>) (hereafter, National Security Law).

⁴⁴ 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 translation: <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>) (hereafter, Counterterrorism Law).

⁴⁵ Standing Committee of the National People’s Congress, *Counter-Espionage Law of the People’s Republic of China* (中华人民共和国反间谍法) [effective November 1, 2014], (Chinese: <https://perma.cc/TB8T-HW2T>; unofficial English translation: <http://www.hrichina.org/en/counter-espionage-law-peoples-republic-china>).

⁴⁶ 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 translation: <http://chinalawtranslate.com/2016-foreign-ngo-law/?lang=en>).

⁴⁷ Standing Committee of the National People’s Congress, *Cybersecurity Law of the People’s Republic of China* (中华人民共和国网络安全法) [effective January 1, 2017], (Chinese: http://news.xinhuanet.com/politics/2015-07/01/c_1115787801.htm; unofficial English translation: <http://chinalawtranslate.com/cybersecuritylaw/?lang=en>) (hereafter, Cybersecurity Law).

⁴⁸ Standing Committee of the National People’s Congress, *People’s Republic Of China Criminal Law Amendment (9)*, (中华人民共和国刑法修正案(九)) [Effective November 1, 2015], (Chinese: <https://perma.cc/69JA-ES5Q>, unofficial English translation: <http://chinalawtranslate.com/%E4%B8%AD%E5%8D%8E%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9B%BD%E5%88%91%E6%B3%95%E4%BF%AE%E6%AD%A3%E6%A1%88%E6%88%E4%B9%9D%E6%89/?lang=en>).

*National Security Law.*⁴⁹ National security under the Law is defined as the: “relative absence of international or domestic threats to the state's power to govern, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major national interests, and the ability to ensure a continued state of security.”⁵⁰ 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, the security of the seas, outer space, and cyberspace.⁵¹ This all-encompassing approach to national security is reflected throughout the suite of related security laws, new criminal law amendments, and the expanded regulatory framework governing the telecommunications and Internet access sectors.

*Counterterrorism Law.*⁵² This Law's breadth derives from its expansive definition of “terrorism” and its conflation of terrorism with “extremism.” Under the Law, “terrorism” is defined 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.”⁵³ “Extremism,” is left undefined. This conflation is consistent with the PRC government's “Three Evils” approach (terrorism, separatism, and extremism), which treats all three crimes as similar despite international norms that differentiate these acts.⁵⁴ The Law gives powers to public security authorities in relation to “extremism” and reinforces the government's broad discretionary powers to investigate and prevent incidents of terrorism.⁵⁵ The Law also requires citizens and companies to assist and cooperate with law enforcement;⁵⁶ imposes additional and specific obligations on companies in certain sectors (e.g., telecommunications, Internet services, and financial services sectors);⁵⁷ and places responsibility on ICT companies for failure to prevent transmission of terrorist and extremist content online.⁵⁸ It also imposes significant penalties for non-compliance/non-cooperation including fines and criminal charges/detention for responsible individuals.⁵⁹ 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

⁴⁹ 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 translation: <http://chinalawtranslate.com/2015nsl/?lang=en>) (hereafter, National Security Law).

⁵⁰ Ibid., Art. 2. Translation, courtesy: Chinalawtranslate, <http://chinalawtranslate.com/2015nsl/?lang=en>.

⁵¹ See, Covington & Burling LLP, Ashwin Kaja, Yan Luo and Timothy P. Stratford, “China's New National Security Law,” July 7, 2015, <https://www.globalpolicywatch.com/2015/07/chinas-new-national-security-law/> National Security Law, Arts. 15-33.

⁵² 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>).

⁵³ Ibid., Art.3. Translation, courtesy: Chinalawtranslate, <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>.

⁵⁴ See, Human Rights in China, *Counterterrorism and Human Rights: The Impact of the Shanghai Cooperation Organization*, (March 2011), http://www.hrichina.org/sites/default/files/publication_pdfs/2011-hric-sco-whitepaper-full.pdf (p. 64).

⁵⁵ Counterterrorism Law, Art. 19. 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 Counterterrorism Law* (新疆〈中华人民共和国反恐法〉办法) (July 29, 2016), (Chinese: <http://npc.people.com.cn/n1/2016/0801/c14576-28601824.html>; unofficial English translation: <http://chinalawtranslate.com/xjcounter-terror/?lang=en>).

⁵⁶ Counterterrorism Law, Arts. 9, 91.

⁵⁷ Ibid, Arts. 18, 19 and 21.

⁵⁸ Ibid., Art. 84.

⁵⁹ Ibid., Arts. 80-83, 90-92.

punishes individuals and groups for the peaceful exercise of their fundamental rights, including that by individuals of Tibetan or Uyghur ethnicity.⁶⁰

Cybersecurity Law. This Law was adopted on November 7, 2016, and will come into effect June 1, 2017. The Law applies to the construction, operation, maintenance, and usage of networks, as well as their security management, within mainland China.⁶¹ In addition to the Law's emphasis on the concept of "Internet sovereignty,"⁶² the addition of activities that endanger "national honor and interests" has expanded, even further, the list of prohibited activities when using networks.⁶³ The Law also sets out a more expansive definition of "critical information infrastructure" that incorporates not only water, financial, and power infrastructure, but also a catch-all provision for infrastructure which, "if destroyed, los[es] function or leak[s] data might seriously endanger national security, national welfare and the people's livelihood, or the public interest."⁶⁴

Other specific provisions in the Law that raise concerns regarding impacts on freedom of expression and privacy include:

- Data collection, storage, and transmission: mandates local storage of personal information data and important data gathered or produced inside the PRC by "critical information infrastructure" operators,⁶⁵ and requires a security assessment for any transmission of data outside the mainland. Personal information also includes biometric data. Interestingly, the Law also requires that the collection and use of personal information shall abide by the principles of legality, propriety, and necessity.⁶⁶ Upon discovery of violations of law or regulations regarding the collection or use of private data, users may also request network operators delete or correct errors relating to their personal information.⁶⁷
- Requirements of real name identification: Network operators providing domain name registration services, stationary or mobile phone network access, or information publication or instant messaging services must ensure the collection of real identity data.⁶⁸ Where users do not provide this information, network operators must not provide them services.⁶⁹
- Broad prohibitions, including against the dissemination of "false" information that would disrupt social or economic order.⁷⁰
- Provision for temporary shut-downs of the Internet: The Law 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.⁷¹ Such shutdowns have

⁶⁰ 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, <https://www.savetibet.org/dangers-of-chinas-counter-terrorism-law-for-tibetans-and-uyghurs/>.

⁶¹ Cybersecurity Law, Art. 2.

⁶² Ibid., Art. 1.

⁶³ Ibid., Art. 12.

⁶⁴ Ibid., Art. 31. Translation courtesy Chinalawtranslate, <http://chinalawtranslate.com/cybersecuritylaw/>.

⁶⁵ Ibid., Art. 37.

⁶⁶ Ibid., Art. 41.

⁶⁷ Ibid., Art. 43.

⁶⁸ Ibid., Art. 24.

⁶⁹ Ibid., Arts. 61.

⁷⁰ Ibid., Art. 12.

⁷¹ Ibid., Art. 58.

already happened before the legislation was introduced, notably for ten months in Xinjiang from July 2009 to May 2010.⁷²

- New penalties on foreign entities which attack critical information infrastructure including freezing assets and “other necessary punitive measures.”⁷³

Telecoms are specifically referenced as part of the provisions relating to critical information infrastructures,⁷⁴ and private sector companies (e.g. ISPs, other service providers) are subject to the Law’s requirements to implement its provisions or face penalties ranging from fines, loss of business licenses or permits, shutdowns of websites, and detention for commission of illegal activities.⁷⁵

Implementing measures or guidance need to be carefully monitored, in particular for their impact on rights and compliance with international norms regarding when restrictions are permissible.⁷⁶

In addition to the *National Security Law*, the *Counterterrorism Law*, and the *Cybersecurity Law*, other laws and regulations related to the registration and management of domestic and foreign civil society groups also include similar broad national security provisions.⁷⁷ 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, such as 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. As widely criticized,⁷⁸ the vague definitions and overbroad

⁷² “China restores Xinjiang internet,” *BBC News*, May 14, 2010, <http://news.bbc.co.uk/2/hi/asia-pacific/8682145.stm>.

⁷³ *Ibid.*, Art. 75.

⁷⁴ *Cybersecurity Law*, Art. 31.

⁷⁵ *Ibid.*, Art. 67.

⁷⁶ In his August 2015 comment to the PRC government on the second draft of the *Cybersecurity Law*, the Special Rapporteur conveyed his concerns regarding undue limitations on expression and access to the Internet in China, including curbing of users’ anonymity rights, overbroad government powers to monitor and oversee private networks, and the requirement for local data storage. Unfortunately we note that many of these concerns remain for the final law. Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Draft Law on Cyber-Security (August 4, 2015), Reference: OL CHN 7/2015, [https://spdb.ohchr.org/hrdb/31st/public-OL_China_04.08.15_\(7.2015\).pdf](https://spdb.ohchr.org/hrdb/31st/public-OL_China_04.08.15_(7.2015).pdf).

⁷⁷ 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 translation: <http://chinalawtranslate.com/2016charitylaw/?lang=en>) (Arts 4, 15 and 104); 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 translation: <http://chinalawtranslate.com/foundationsdraft/?lang=en>) (Art. 3); 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 translation: <http://chinalawtranslate.com/minfei/?lang=en>), (Art. 3); 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 translation: <http://chinalawtranslate.com/social-group-management/?lang=en>) (Art. 5).

⁷⁸ 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

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.”⁷⁹

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 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”⁸⁰ 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.⁸¹ As the Human Rights Committee in General Comment No. 34 has stated, restrictions “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”⁸² 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.⁸³ 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”⁸⁴ to call for political reform.

D. Criminalization and Surveillance of Online Expression

Aimed at “purifying”⁸⁵ (净化) the environment of public opinion on the Internet⁸⁶ and “guiding public opinion” (舆论导向),⁸⁷ the *Cybersecurity Law* provisions outlined above and recent Internet regulations

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/>.

⁷⁹ 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), <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx> (Principle 1.1(a)).

⁸⁰ 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> (Principle 2(b)).

⁸¹ U.N. 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), <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/Annual.aspx> (Principle 1.3).

⁸² 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> (para. 23).

⁸³ 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>.

⁸⁴ 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>.

⁸⁵ Ibid.

⁸⁶ 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>.

⁸⁷ “How Xi Jinping Views the News,” China Media Project, March 3, 2016, <http://cmp.hku.hk/2016/03/03/39672/>.

emphasize the elimination of user anonymity through real name registration,⁸⁸ grant government authorities broad discretion to police “criminal” acts online and “unlawful” content,⁸⁹ and give wide latitude for intensive government inspections, monitoring, and oversight. The PRC government’s capacity to use big data mining technologies,⁹⁰ together with the expanded real name requirements and mandatory local data storage requirements, further raise concerns regarding their impact on privacy, which is critical to the ability to exercise the right to free expression.

The impact of these Internet-related restrictions and the expanding criminalization of expression online aimed at “guiding” online thought cannot be deemed a legitimate national security interest to justify restriction on freedom of expression.⁹¹

These laws and regulations restricting rights also run counter to the PRC government’s obligation as a signatory to the *International Covenant on Civil and Political Rights* (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.”

⁸⁸ 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), (Chinese: <http://www.miit.gov.cn/n11293472/n11294912/n11296542/15513722.html>, unofficial English translation: <https://chinacopyrightandmedia.wordpress.com/2013/07/16/telephone-user-real-identity-information-registration-regulations/>) (Arts. 6, 7); 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’) *Xinhua Beijing*, 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), (Chinese: <https://perma.cc/BD7J-FTLT>, unofficial English translation: <https://chinacopyrightandmedia.wordpress.com/2015/02/04/internet-user-account-name-management-regulations/>) (Arts. 2, 4-8); 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), (Chinese: <https://perma.cc/Y24P-METF>, unofficial English translation: <http://chinalawtranslate.com/provisions-on-management-of-instant-messaging-services/?lang=en>) (Art. 6).

⁸⁹ 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/29T6-XMN9>, unofficial English translation: <http://chinalawtranslate.com/searchengineregulation/?lang=en>) (Art. 6); 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); Other content related restrictions are set forth in, for example, 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 translation: <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), (Chinese: <https://perma.cc/T4LK-TB29>) (Art. 12); 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], (Chinese: <https://perma.cc/VDZ9-DEMS>; unofficial English translation: <http://chinalawtranslate.com/netnewsadmonish/?lang=en>) (Art. 4); *Xinjiang Implementing Measures for the Counterterrorism 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), (Chinese: <https://perma.cc/3D99-FZJM>, unofficial English translation: <http://chinalawtranslate.com/xjcounter-terror/?lang=en>) (Arts. 49 – 50).

⁹⁰ “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.

⁹¹ 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), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/166/48/PDF/G0516648.pdf?OpenElement> (para. 43).

Even though it has not ratified the Covenant, the PRC government, as a signatory, is bound to act in good faith and not defeat the purpose of the ICCPR.⁹²

Despite the PRC government's international commitments and recent self-reporting of progress it made in the Assessment Report of its 2010-2015 National Human Rights Action Plan,⁹³ as described above, key ongoing political and legal challenges remain, including:

- an intensified, comprehensive, and ongoing campaign of attacks on defenders and independent civil society, within a broader campaign of enforcing ideological conformity with 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, particularly those relating to freedom of expression, coupled with an increasingly hostile rejection of international norms and human rights standards; and
- impacts of these policies and legal developments on the PRC government's promotion of domestic compliance with and implementation of international standards and obligations.

These concerning political and legal trends are fueling an increasingly restrictive legal environment and regulatory developments relating to Internet access; tighter restrictions on telecommunications, Internet companies, and users; and the expanding criminalization of expression, which are examined in further detail below.

III. KEY TRENDS IN THE TELECOMMUNICATIONS AND INTERNET ACCESS SECTOR

Within the framework of the specific areas of input requested by the Special Rapporteur, this next section will outline several broad trends and developments that impact on the rights to online expression, access to information, freedom of association, and privacy. These trends are:

- Increased and expanded regulatory restrictions over industry sector companies, online users, data collection, and transmission and monitoring.
- Expanding criminalization of online expression.
- Increased emphasis on community reporting and monitoring.
- International and domestic CSR engagement in telecommunications and Internet access sectors.

A. Increased and Expanded Regulatory Restrictions

In addition to the broader security-related laws described above, Internet-related regulatory developments clearly reflect the CPC's stated policy intention to "purify the environment of public opinion on the Internet"⁹⁴ (净化网络环境) and "guide public opinion" (舆论导向).⁹⁵ A key plank of this "purification" effort since 2015 is that private and state-owned companies are placed at the front lines of enforcement. In the period from 2015-16, the PRC government issued or amended numerous laws and regulations setting out requirements for companies related to content monitoring, surveillance, and censorship of certain types of content on the Internet. The extensive regulations and guidelines that cover various types of companies and examples of these requirements include:

⁹² *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 Convention on September 3, 1997, <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

⁹³ NHRAP Assessment Report (2012-2015).

⁹⁴ 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>.

⁹⁵ "How Xi Jinping Views the News," China Media Project, March 3, 2016, <http://cmp.hku.hk/2016/03/03/39672/>.

- Internet search service providers⁹⁶ must not provide content prohibited by laws and regulations by providing links, abstracts, snapshots, word associations, related searches, related recommendations, etc.⁹⁷ 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.⁹⁸
- Providers of online audio-visual media, including via cellular phones,⁹⁹ must apply for permits to broadcast content and are prohibited from broadcasting a wide variety of content, including that which disrupts social order or undermines social stability.¹⁰⁰
- Mobile Internet application providers must review and manage content for the apps they produce and ensure removal of content and accounts that violate any laws or regulations.¹⁰¹
- Internet service providers must institute regular “patrols” of user information posts to ensure users do not post information regarding dangerous goods.¹⁰²
- Internet news information services will be summoned to “admonishment sessions” with the State Internet Information Office for any failure to implement adequate content management procedures, handle complaints, or properly address unlawful information posted.¹⁰³

Companies—private and public—not only play a significant role in implementing this restrictive regulatory regime, but also in toeing the censorship line. For example, regulations handed down in 2016 requiring China’s Internet search engines—Baidu, Sohu and 360 Search—to censor results, did not issue any public objections, and not surprisingly—in light of the regulatory and political framework—issued statements of compliance.¹⁰⁴ However, with the continued exponential rate of growth of both the

⁹⁶ 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 translation <http://chinalawtranslate.com/searchengineregulation/?lang=en>).

⁹⁷ Ibid., Art. 7.

⁹⁸ Ibid., Art. 8.

⁹⁹ Regulations provide for content restrictions focused on limiting media that is counter to Communist Party of China narrative (Art. 16). See, State Administration of Press, Publication, Radio, Film and Television, *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, unofficial English translation: <http://chinalawtranslate.com/nettv/?lang=en>).

¹⁰⁰ Ibid., Art. 21.

¹⁰¹ 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 translation: <http://chinalawtranslate.com/mobile-apps/?lang=en>).

¹⁰² Ministry of Public Security et. al., *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), (Chinese: <https://perma.cc/T4LK-TB29>) (Art. 12).

¹⁰³ 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], (Chinese: <https://perma.cc/VDZ9-DEMS>; unofficial English translation: <http://chinalawtranslate.com/netnewsadmonish/?lang=en>) (Art. 4).

¹⁰⁴ See for example, “Cyberspace Administration of China issues Internet information search regulations: Baidu, SoGu, 360 etc. respond” (网信办发布网络信息搜索规定: 百度搜索 360 等回应), *Global Times*, June 27, 2016, <https://perma.cc/92NG-R7XE>; See also, “Cyberspace Administration of China Issues Management Regulations on Internet Searches: Baidu responds that it will strengthen management” (网信办发布搜索管理规定: 百度回应会加强管理), *Xinhua*, June 25, 2016, <https://perma.cc/J4VV-LL4J>. The report notes that in its response to the new regulations, Baidu said “Netizens who encounter unhealthy online information via Baidu’s search engine may complain via Baidu’s user help center at help.baidu.com and Baidu will promptly handle the complaint” (“网民通过百度搜索到不良互联网信息，可进入百度用户服务中心 help.baidu.com 进行投诉，百度将及时予以处理。”)

consumer and business markets for the SOEs and the private sector companies, the pressure of consumer demands and satisfaction may generate a “third” force pushing back against some aspects of the censorship and restrictions on expression.

However, we note caution in classifying Chinese companies as “private” as this may suggest independence from the government and may obscure the extensive linkages that exist between nominally private companies and the government and the CPC. Government and CPC control is made possible, informally, through opaque shareholding structures,¹⁰⁵ more formally through State protection and support of these companies,¹⁰⁶ and through CPC organizations that must be established within private firms and SOEs.¹⁰⁷ A consequence of this is the generation of significant tension between these companies’ aspirations to become global business leaders that comply with international business standards, and their obligations under the restrictive legal and political framework and significant pressure to comply with CPC policies and priorities.

In terms of China’s telecommunications industry, three major central SOEs dominate: China Unicom, China Mobile and China Telecom. Each of these entities is ultimately owned and controlled by China’s State-Owned Assets Supervision and Administration Commission (SASAC).¹⁰⁸ A closer examination of these SOEs reveals rights-related concerns flowing from their corporate structure of control, including the incorporation of CPC organizations within each company that politically influences or controls corporate policy or practice.

In addition to internal CPC organizations/committees, top executives in SOEs have a political standing that equates to, for example, governors or vice-provincial Party secretaries—just below that of a provincial Party secretary¹⁰⁹ and are subjected to appointment and removal by the CPC’s Central Organization Department. They are therefore primarily beholden to upholding CPC policy as senior Party

¹⁰⁵ See, United Kingdom Intelligence and Security Committee, *Foreign involvement in the Critical National Infrastructure: The implications for national security* (June 2013), <https://perma.cc/WE3F-VMXD> (p. 5).

¹⁰⁶ “Online Market Access Negative List Revealed: Many Internet Finance Items Prohibited” (互联网市场准入负面清单亮相 多项互金行为遭禁), *Phoenix News Finance*, October 25, 2016, http://finance.ifeng.com/a/20161025/14960457_0.shtml.

¹⁰⁷ A significant mechanism for achieving this is the requirement that government organizations and private companies have Communist Party units within them so that CPC policy can be implemented across society, see CPC Politburo, *Regulations on the Work of Party Groups* (中国共产党党组工作条例(试行)) [effective June 11, 2015], (Chinese: <https://perma.cc/L3GE-MLVH>); “Private sector Party committees start to bloom,” *The Global Times*, July 1, 2016, <http://www.globaltimes.cn/content/991704.shtml>; “China tells workplaces they must have Communist Party units,” *Reuters*, May 30, 2015, <http://www.reuters.com/article/us-china-politics-idUSKBN0OF09X20150530>; “Politburo holds meeting to deliberate Regulations on the Work of Party Groups (for trial implementation)” (中共中央政治局召开会议审议《中国共产党党组工作条例(试行)》), *People’s Daily*, May 30, 2015, <https://perma.cc/PW3H-PN79>; “Communist Party organizations play important role in China’s private enterprises,” *Xinhua*, June 21, 2011, http://www.china.org.cn/china/CPC_90_anniversary/2011-06/21/content_22829824.htm; see also, *South China Morning Post*, “China’s largest smartphone maker Xiaomi sets up Communist Party committee: The company is the latest of several big non-state-run firms, including Baidu and Sina, to establish such a group,” June 29, 2015, <https://perma.cc/74KN-AUHT>; Baker & McKenzie, “Communist party pushes party cells in private companies,” July 4, 2012, <http://www.lexology.com/library/detail.aspx?g=9e11432b-fd7b-4239-ade8-0f8f8dc2d9e0>.

¹⁰⁸ State-Owned Assets Supervision and Administration Commission of the State Council, “央企名录,” (SOE Name List) (August 3, 2016), <https://perma.cc/NW8X-LM4H>.

¹⁰⁹ Wendy Leutert, “Challenges Ahead in China’s Reform of State-Owned Enterprises,” (2016) 21 *Asia Policy* 83, <https://www.brookings.edu/wp-content/uploads/2016/07/Wendy-Leutert-Challenges-ahead-in-Chinas-reform-of-stateowned-enterprises.pdf> (p. 87).

cadres.¹¹⁰ Under the CPC Charter, CPC members are obliged to carry out Party policies,¹¹¹ ensuring that those companies in which the CPC has established organizations will adhere to CPC policy.

As the largest mobile operator, China Mobile illustrates some of these issues. The scope, diversity, and rapid growth of its operations underscore its economic significance. China Mobile is engaged in traditional cellular services, mobile Internet services, business and home broadband services, business information systems services, and, through its associates, in the provision of banking services and telecommunications network asset services.¹¹² Its digital services have over 6,000 digital new media partners. It has established a specialized operational system for mobile Internet; the Internet of Things establishing over 60 million connections and reaching over 800 partners with its open capacity cooperation platform; and enterprise information solutions. Since it received a 4G license in December 2013, it has built the largest 4G network in the world, with 300 million 4G customers with a net addition of over 400 new customers per minute.¹¹³

In its 2015 Sustainability Report, China Mobile cites international and domestic sustainability guidelines, including Global Reporting Initiatives (GRI) Guidelines, ISO 26000, the ten principles of the United Nations Global Compact, and the Chinese Corporate Social Responsibility (CSR) Report Preparation Guidelines (CASS-CSR 3.0) issued by the Chinese Academy of Social Sciences. The 2015 Sustainability Report describes activities in implementing its triple-sided responsibilities—economic, social, and environmental—including developing an emergency phone service for elderly and children left behind in Guizhou rural areas, a tourist app to promote tourism in Yunnan, and coordinating a 31-province strategy to combat spam and improper messages.¹¹⁴

While these local CSR efforts reflect concrete efforts to address social problems and needs, the “White-list+Scientific Block” strategy aimed at preventing harassing phone calls and intercepting references to 16 types of “harmful information”¹¹⁵—“pornography, phishing, crank calls and so on”—raises concerns about what is being blocked. Within the context of the vague and encompassing national security approach; discretionary, non-transparent decision-making regarding proscribed content; and current ideological climate, there are significant risks that legitimate expression is being restricted in the name of anti-pornography, anti-spam initiatives.

China Unicom is involved in the provision of fixed and mobile communications services, including broadband and mobile Internet services, and satellite international private leased circuit services. It is also involved in what it describes as “data communications service, network access service, value-added telecom service and system integration service related to information and communications services.”¹¹⁶

¹¹⁰ Wendy Leutert, “Challenges Ahead in China’s Reform of State-Owned Enterprises,” (2016) 21 *Asia Policy* 83, <https://www.brookings.edu/wp-content/uploads/2016/07/Wendy-Leutert-Challenges-ahead-in-Chinas-reform-of-stateowned-enterprises.pdf> (p. 91); see also, Communist Party of China, *Work Regulations for Leading Party and Government Cadre Promotions and Appointments* (党政领导干部选拔任用工作条例) [effective January 15, 2014], <http://news.12371.cn/2014/01/15/ART11389784871616867.shtml> (esp. Art 7(2)).

¹¹¹ Twelfth Plenum of the Communist Party of China, *Charter of the Communist Party of China* (中国共产党章程) (passed November 14, 2012), <http://www.12371.cn/zggcdzc/zggcdzcqw/> (Art. 3(2)).

¹¹² China Mobile Limited (stock code 941), *Interim Report 2016*, (2016), <http://www.chinamobileltd.com/en/ir/reports/ir2016.pdf>.

¹¹³ China Mobile Communications Corporation, *2015 Sustainability Report*, <https://www.unglobalcompact.org/participation/report/cop/create-and-submit/active/239741>.

¹¹⁴ *Ibid.*, p. 8, 9, 12.

¹¹⁵ *Ibid.*, p. 12.

¹¹⁶ China Unicom, Corporate Profile, <http://eng.chinaunicom.com/about/Eng-gsgl/index.html>.

China Unicom's 2015 Corporate Social Responsibility Report¹¹⁷ illustrates the public role played by Party committees. For example, it describes the expectations by the regulatory authorities that China Unicom "intensify CPC organizational construction" and supports the Party's leadership by strengthening Party organizational construction inside China Unicom and through corporate reform. The Report also includes highlights and a photograph of a Party committee meeting at the China Unicom Anhui Branch.¹¹⁸

China Telecom is involved in the provision of Internet access services, mobile voice and fixed line services, mobile payment services, telecommunications network asset services, as well as cloud and big data services.¹¹⁹ By the end of September 2016, China Telecom had 97.68 million fiber-to-the-home internet users, and 212.49 million mobile subscribers, of which 107.49 million were 4G users.¹²⁰ China Telecom's issuance of a corporate governance report as a component of its annual report is an example of a potential opening for building on CSR related efforts.¹²¹ Although China Telecom's corporate governance reporting makes no reference to international standards or human rights, the company emphasizes that it maintains "integrity through abidance by relevant laws and regulations, industry regulations and business ethics."¹²² China Telecom notes that it "strives to control unhealthy network information and assist the relevant departments to fight against telecommunication and information swindles."¹²³ The CSR engagement of the SOEs and private companies will be discussed further in section C.

Real Name Registration and Impact on Users

In the PRC, telecommunications and Internet access companies are required to comply with a comprehensive scheme of real-name identification procedures for users, which predates the new *Cybersecurity Law*. These existing real name requirements were not uniformly enforced and must also be viewed within the context of the new comprehensive and expanded cybersecurity framework. These older requirements include the following:

- Beginning on September 1, 2013, fixed and cellular phone users are required to submit real identification information in order to be connected.¹²⁴
- In 2016, the Beijing government implemented real-name identification procedures for all cellular devices with Beijing SIM cards. Those not yet registered with a real identity are to be disconnected.¹²⁵

¹¹⁷ China Unicom, *Corporate Social Responsibility Report 2015*, English and Chinese versions available at <https://www.unglobalcompact.org/participation/report/cop/create-and-submit/active/224671>.

¹¹⁸ Ibid., p.15.

¹¹⁹ China Telecom Corporation Limited (stock code 728), *Interim Report 2016*, <http://www.chinatelecom-h.com/en/ir/report/interim2016.pdf>.

¹²⁰ China Telecom, "Key performance indicators – monthly" (November 7, 2016), <http://www.chinatelecom-h.com/en/ir/kpi.php>.

¹²¹ See, e.g., China Telecom Corporation Limited (stock code: 728), *Annual Report (2015)*, <http://www.chinatelecom-h.com/en/ir/report/annual2015.pdf>.

¹²² Ibid., p. 72.

¹²³ Ibid., p. 109.

¹²⁴ 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), (Chinese: <https://perma.cc/94J3-K9TM>, unofficial English translation: <http://chinacopyrightandmedia.wordpress.com/2013/07/16/telephone-user-real-identity-information-registration-regulations/>) (Arts. 6, 7).

¹²⁵ "Beijing: Cell phone numbers which have still not been real-named registered will have numbers cancelled with 'double disconnection'" (北京: 手机号再不实名将“双停”销号), *Xinhua Beijing*, October 17, 2016, <https://perma.cc/9F5W-UYDG>.

- Since March 1, 2015, account names of entities or individuals connected with blogs, microblogs, instant messaging, forums, comments and Internet information services are required to be connected with real user identities.¹²⁶
- Since August 7, 2014, real name registration is required for online instant messaging services.¹²⁷
- As of August 1, 2016, real name registration and reporting of abnormalities with any registration processes are required in Xinjiang.¹²⁸

These extensive real name requirements raise a number of privacy concerns. International standards clearly recognize that the same rights that people have offline must be respected online, including the right to privacy.¹²⁹ Anonymity may be considered “one of the basic guarantees of democracy” because it allows the expression of opinions without fear of reprisal.¹³⁰ As the Special Rapporteur has observed:

- “National laws should recognize that individuals are free to protect the privacy of their digital communications by using encryption technology and tools that allow anonymity online.”¹³¹
- “Anonymity may liberate a user to explore and impart ideas and opinions more than she would using her actual identity.”¹³²

While Chinese telecommunications and Internet access companies have reported publicly that addressing data security is a business priority, the growing technological sophistication of hackers—in addition to government pressure and demands to disclose or turn over user data—may result in data compromises and additional risks that the data collected may be obtained and misused by the authorities or malicious third-parties. For example, Citizen Lab has documented concerns with both the QQ Browser, operated by Tencent,¹³³ and Baidu’s browser.¹³⁴ In rating Tencent’s QQ and WeChat

¹²⁶ Cyberspace Administration of China, *Internet User Account Name Management Regulations* (互联网用户账号名称管理规定) [effective March 1, 2015], (Chinese: <https://perma.cc/BD7J-FTLT>, unofficial English translation: <https://chinacopyrightandmedia.wordpress.com/2015/02/04/Internet-user-account-name-management-regulations/>) (Arts. 2, 4-8).

¹²⁷ 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), (Chinese: <https://perma.cc/Y24P-METF>, unofficial English translation: <http://chinalawtranslate.com/provisions-on-management-of-instant-messaging-services/?lang=en>) (Art. 6).

¹²⁸ Xinjiang Uyghur Autonomous Region, *Xinjiang Implementing Measures for the Counterterrorism 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) [effective August 1, 2016], (Chinese: <https://perma.cc/3D99-FZJM>, unofficial English translation <http://chinalawtranslate.com/xjcounter-terror/?lang=en>) (Art. 20, 54).

¹²⁹ *Universal Declaration of Human Rights*, GA Res 217 A(III) UN Doc A/810, <http://www.un.org/en/universal-declaration-human-rights/> (Art. 12).

¹³⁰ Association for Progressive Communications (APC) and Humanist Institute for Cooperation with Developing Countries (Hivos), *Global Information Society Watch (2014): Communications surveillance in the digital age*, (2014), (Country: Argentina, per Nodo TAU: Flavia Fascendini and María Florencia Roveri) <http://giswatch.org/2014-communications-surveillance-digital-age> (p. 62), paraphrasing Argentinian lawyer Eduardo Berton.

¹³¹ 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/HR/C29/32 (May 22, 2015), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx> (p. 21).

¹³² 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/HR/C29/32 (May 22, 2015), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx> (p. 5).

¹³³ Citizen Lab, Munk School of Global Affairs, University of Toronto, “WUP! There It Is: Privacy and Security Issues in QQ Browser,” March 28, 2016, <https://citizenlab.org/2016/03/privacy-security-issues-qq-browser/>.

¹³⁴ Citizen Lab, Munk School of Global Affairs, University of Toronto, “Baidu’s and Don’ts: Privacy and Security Issues in Baidu Browser,” (February 23, 2016), https://citizenlab.org/2016/02/privacy-security-issues-baidu-browser/?mc_cid=91db808461&mc_eid=914c18024b.

messaging apps 0/100 for privacy, Amnesty International noted that Tencent was the only company “which has not stated publicly that it will not grant government requests to access encrypted messages by building a ‘backdoor.’”¹³⁵

In his 2015 comments on China’s then draft *Cybersecurity Law*,¹³⁶ the Special Rapporteur highlighted his concern related to the removal of online anonymity through mandatory real name registration. The real name registration requirements, outlined above, result in a loss of the important anonymity necessary for the safe and meaningful exercise of the right to freedom of expression. In addition, the extensive collection of personal and other data raises additional concerns regarding security and use of the data collected. Again, as the Special Rapporteur has observed, “a State’s ability to collect and retain personal records expands its capacity to conduct surveillance and increases the potential for theft and disclosure of individual information.”¹³⁷

The *Cybersecurity Law* as promulgated includes numerous provisions setting out data security and protection of privacy requirements, and requirement of consent for disclosure of personal information.¹³⁸ It remains to be seen how these provisions will be implemented, and what safeguards will be developed for ensuring protection of personal and confidential information in the implementing regulations.

Data localization requirement for collection, transmission, and storage

Prior to the data localization requirements set forth in the *Cybersecurity Law*, data localization restrictions on electronic data included requirements related to: (i) data collection, (ii) controls on data transmission of information out of China’s borders, and (iii) the technological requirements for mandatory storage of electronic data within mainland China.

Concerning trends in the past few years related to the requirement of local data storage for data collected inside the PRC include:

- requiring units which engage in online mapping services to store data within mainland China,¹³⁹
- prohibiting the storage of population health data on servers located outside mainland China,¹⁴⁰ and
- requiring units which publish books, audiovisual products, electronic products, newspapers, and periodicals and are engaged in online publishing services to locate their servers within mainland China.¹⁴¹

¹³⁵ Amnesty International, “How private are your favourite messaging apps?,” October 21, 2016, <https://www.amnesty.org/en/latest/campaigns/2016/10/which-messaging-apps-best-protect-your-privacy/>.

¹³⁶ “Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Draft Law on Cyber-Security” (August 4, 2015), Reference: OL CHN 7/2015, [https://spdb.ohchr.org/hrdb/31st/public - OL_China_04.08.15_\(7.2015\).pdf](https://spdb.ohchr.org/hrdb/31st/public_-_OL_China_04.08.15_(7.2015).pdf).

¹³⁷ Ibid.

¹³⁸ See, (Chapter IV: Network Information Security).

¹³⁹ State Council, *Mapping Management Regulations* (地图管理条例) (November 26, 2015), (Chinese: <https://perma.cc/X6ML-VUJ8>) (Art. 34).

¹⁴⁰ National Health and Family Planning Commission, *Notice Concerning the Release of “Trial Measures for the Management of Population Health Information”* (国家卫生计生委关于印发《人口健康信息管理办法（试行）》的通知) (May 5, 2014), (Chinese: <https://perma.cc/83BQ-R5SE>) (Art. 10).

¹⁴¹ Ministry of Industry and Information Technology and State Administration of Press, Publication, Radio, Film and Television, *Administrative Rules on Network Publication Services* (网络出版服务管理规定) (August 20, 2015), (Chinese: <https://perma.cc/MYN9-42GM>) (Arts. 8(3), 12(7)).

The 2016 draft *Internet Domain Name Management Measures* also propose requiring domain name root servers to be located in mainland China,¹⁴² and prohibiting ISPs from providing access to domain names not routed through domestic servers.¹⁴³

In addition to increasing risks to user anonymity, mandatory local data storage would also permit the PRC government to retain control over both “reported” and archived “truth,”¹⁴⁴ control that would impede public access to information necessary for promoting government accountability. Reports that do not reflect or echo official government narratives may be deleted and their authors punished. If citizens are only permitted to access information locally stored within China, in order to access alternative independent sources of information that are rendered inaccessible, citizens must resort to circumvention tools that are also coming under increased scrutiny.¹⁴⁵

The official treatment and punishment of persons who disseminate online information about pressing problems, suppresses information *and* undercuts the much needed effective responses to the problems identified such as corruption, government or corporate misconduct, or serious environmental hazards. Individuals are often accused of spreading “rumors,” notwithstanding that, in the face of public pressure the government may later turn around and admit that the “rumors” are in fact true.

Expanding Criminalization of Online Expression

In addition to the security-related legislative developments described above, amendments in 2015 to the *Criminal Law of the People's Republic of China* introduced new offenses relating to online conduct, targeting ISPs, web storage and hosting services, and companies and users.¹⁴⁶ These new provisions are problematic in light of the vague, overbroad definitions of national security, terrorism, and in replicating the conflation of terrorism with extremism that exists in the security-related laws. The new provisions also make possession of materials and information which one clearly knows to be advocating terrorism or extremism a crime, as well as circulating “false reports” of security alerts/disasters/danger—measures aimed at chilling online citizen reporting. The chart below outlines some of the new crimes and the range of sentences for them.

¹⁴² Ministry of Industry and Information Technology, [Draft] *Internet Domain Name Management Measures* (公开征求对《互联网域名管理办法（修订征求意见稿）》的意见) [released for public comment March 25, 2016], <http://chinalawtranslate.com/domainnamemanagementdraft/?lang=en> (Arts. 10, 37).

¹⁴³ Ibid., Art. 37.

¹⁴⁴ Historically, the Chinese government has sought to 'control' public opinion by suppressing citizen reports online of events, see, for example, SARS (see, "The SARS epidemic: Treatment; Beijing Hurries to Build Hospital Complex For Increasing Number of SARS Patients," *New York Times*, April 27, 2003, http://www.nytimes.com/2003/04/27/world/sars-epidemic-treatment-beijing-hurries-build-hospital-complex-for-increasing.html?_r=0), and, the Wenzhou train disaster (See, e.g. "History of high-speed propaganda tells all," *China Media Project*, July 25, 2011, <http://cmp.hku.hk/2011/07/25/14036/>).

¹⁴⁵ “Foreign-run VPNs illegal in China: govt,” *Global Times*, December 14, 2012, <https://perma.cc/DK5G-M943>.

146 Standing Committee of the National People's Congress, *People's Republic of China Criminal Law Amendment (9)* (中华人民共和国刑法修正案(九)) [effective November 1, 2015], (Chinese: <https://perma.cc/69JA-E5SQ>, unofficial English translation: <http://chinalawtranslate.com/%E4%B8%AD%E5%BD%8E%E4%BA%BA%E6%B0%91%E5%85%B1%E5%92%8C%E5%9B%BD%E5%88%91%E6%B3%95%E4%BF%AE%E6%AD%A3%E6%A1%88%E5%BC%88%E4%B9%9D%E5%BC%89/?lang=en>).

Crime ¹⁴⁷	Target	Sentencing Range	Article
Knowingly providing Internet access , server hosting services, web storage or communications transfer to others who use them to commit crimes.	ISPs, web storage/ hosting services	Fine/Short-term detention – 3 years' imprisonment	Art. 287(2)
Fabricating false reports of danger/disasters/security alerts and transmitting them through information networks or other media, or clearly knowing that information is false information described above and intentionally transmitting it through the information networks or other media, seriously disturbing the social order.	Users	Short-term detention – 3 years' imprisonment	Art. 291(1)
Failure to perform network security management duties as required by law. <i>Note that this offence is linked to the <u>consequences that result from failure to perform these duties</u>, not merely the failure to perform these duties per se.</i>	Network service providers	Fine/Short-term detention – 3 years' imprisonment	Art. 286(1)
Using data networks to set up websites or transmit information for purposes of fraud, conduct illegal activities or to communicate "criminal methods."	Companies and or users	Fine/Short-term detention – 3 years' imprisonment	Art. 287(1)
Unlawfully selling or providing personal information to others.	Companies and users	Circumstances serious: • Fine/Short-term detention – 3 years' imprisonment Circumstances esp. serious: • 3-7 years' imprisonment + fine	Art. 253(1)
Possessing books, audio-visual materials or other materials that one clearly knows advocate terrorism or extremism.	Companies and users	Fine/Short-term detention – 3 years' imprisonment	Art. 120(6)
Advocating terrorism or extremism through methods such as producing or distributing books or audio-visual materials, etc. that advocate terrorism; or advocate terrorism or extremism by giving instruction or releasing information; or inciting the perpetration of terrorist activity.	Users	Ordinarily: • Fine/Short-term detention – 5 years' imprisonment Circumstances serious: • 5+ years' imprisonment + fine/confiscation of property	Art. 120(3)

¹⁴⁷ Translations adapted from Chinalawtranslate.com, "People's Republic of China Criminal Law Amendment (9)," <https://perma.cc/BPN4-L8GR> ; and Chinalawtranslate.com, "It's a crime, I tell ya: Major Changes in China's Criminal Law Amendment 9," <http://chinalawtranslate.com/its-a-crime-i-tell-ya-major-changes-in-chinas-criminal-law-amendment-9/?lang=en#PI56dMw3ceHpAdHg.99> .

These 2015 amendments to the *Criminal Law* must also be read in conjunction with the suite of security-related laws discussed above. These new crimes join the expanding array of overbroad offenses by which the PRC government can punish legitimate online conduct through national security-related charges such as “inciting subversion of state power” and “subversion of state power”¹⁴⁸ and through imposition of administrative punishments, which police use to detain persons for periods of up to ten days without judicial review.¹⁴⁹

We also note the troubling trend of the criminalization of online conduct is through offenses such as “fabricating information”: the introduction of consequence-based criminal responsibility, whereby the gravity of the “offense” is linked to the number of clicks/views or transmissions of the information.¹⁵⁰

Another related development is the joint issuance in September 2016 by the Supreme People’s Court, Supreme People’s Procuratorate, and the Ministry of Public Security of new regulations concerning the use and handling of electronic data in criminal cases, which permit a broad range of electronic data to be used in the prosecution of criminal offenses in China.¹⁵¹ This is significant for contents that are proscribed on national security or counterterrorism grounds. The recently-enacted implementing measures for the *Counterterrorism Law* in Xinjiang, for example, mandate criminal penalties for possession of “extremist” or “terrorist” content,¹⁵² which is troubling in light of the PRC government’s approach to counterterrorism that treats peaceful assertions of cultural or ethnic identity or expression of religious belief that are not state-sanctioned as “extremist,” “terrorist,” or “splittist.”¹⁵³

A concerning cross-border enforcement development that calls for closer monitoring is the forced repatriation of Chinese and Taiwanese nationals accused of engaging in telecommunications and Internet crime outside of China.¹⁵⁴

¹⁴⁸ National People’s Congress, *Criminal Law of the People’s Republic of China* (中华人民共和国刑法) [amendments effective November 1, 2015], (Chinese: <https://perma.cc/4QBN-824D>); See also, Chinese Human Rights Defenders (CHRD), “Inciting Subversion of State Power”: A Legal Tool for Prosecuting Free Speech,” January 8, 2008, <https://www.nchrd.org/wp-content/uploads/2008/03/Inciting-Subversion-of-State-Power-A-Legal-Tool-for-Prosecuting-Free-Speech-in-China.pdf>.

¹⁴⁹ See e.g., “WeChat Discussions Prompt Chinese Authorities to Detain Mongolian Herders,” *Radio Free Asia*, March 24, 2016, <http://www.rfa.org/english/news/china/weshat-discussions-prompt-chinese-authorities-to-detain-mongolian-herders-03242016134553.html>.

¹⁵⁰ See e.g., Supreme People’s Court and Supreme People’s Procuratorate, *Interpretation on Several Issues Regarding the Applicable Law in Cases of Using Information Networks to Commit Defamation and Other Such Crimes* (最高人民法院、最高人民检察院关于办理利用信息网络实施诽谤等刑事案件适用法律若干问题的解释) (September 6, 2013), <https://perma.cc/2WLC-7D4R>.

¹⁵¹ See, Supreme People’s Court, Supreme People’s Procuratorate, Ministry of Public Security, *Provisions Concerning The Collection, Extraction, Review, And Judgment Of Electronic Data In The Handling Of Criminal Cases* (关于办理刑事案件收集提取和审查判断电子数据若干问题的规定) [effective October 1, 2016], http://www.spp.gov.cn/xwfbh/wsfbt/201609/t20160920_167380_1.shtml; See also, Dui Hua, “China: New Rules on Electronic Data Collection Take Effect,” October 11, 2016, <http://www.duihuahrjournal.org/2016/10/china-new-rules-on-electronic-data.html>.

¹⁵² Xinjiang Uyghur Autonomous Region, *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) [effective August 1, 2016], (Chinese: <https://perma.cc/3D99-FZJM>; unofficial English translation: <http://chinalawtranslate.com/xjcounter-terror/?lang=en>) (Art. 49-50).

¹⁵³ See, Human Rights in China, *Counterterrorism and Human Rights: The Impact of the Shanghai Cooperation Organization*, (March 2011), http://www.hrichina.org/sites/default/files/publication_pdfs/2011-hric-sco-whitepaper-full.pdf (p. 64).

¹⁵⁴ See, e.g. “北京 91 名民警赴柬埔寨执行押解任务,” *Legal Daily*, November 10, 2015, <https://perma.cc/FP2L-4YG3>, (“91 police from Beijing go to Cambodia to detain suspects”); “名跨境电信诈骗犯罪嫌疑人被押解抵沪,” *Legal Daily*, November 11,

Cases of Individuals Punished for Online Expression

Below are a few recent examples of citizens—including rights defenders, a labor activist, and a netizen—who have been disappeared, detained, or prosecuted on charges ranging from “picking quarrels and provoking troubles” to “inciting subversion of state power” in connection with expressing their opinions online, including through essays and other forms of expression.

- **Quan Ping** (权平). A 28-year old netizen in Jilin Province—and a former overseas student in the United States—who was active on Twitter and had posted pictures of himself wearing a T-shirt with messages critical of Xi Jinping. Quan was disappeared on September 30, 2016.¹⁵⁵
- **Liu Shaoming** (刘少明). First detained in May 2015 after he shared online essays he wrote on June Fourth, and charged with “inciting subversion of state power.”¹⁵⁶ Liu was scheduled to be tried on October 2, 2016,¹⁵⁷ but there have been no available updates online on his case as of November 8, 2016.
- **Su Changlan** (苏昌兰) and **Sun Feng** (孙峰). They were detained in October and November 2014, respectively, after posting messages online in support of Hong Kong’s Umbrella Movement. Both were charged with “inciting subversion of state power.” Sun was tried in August 2015, and Su was tried in April 2016, but no ruling on either has been announced as of November 8, 2016.¹⁵⁸

In addition, persons who remain imprisoned or under house arrest or surveillance for expressing their opinions despite determinations by the UN Working Group on Arbitrary Detention that their detentions are arbitrary and in violation of international standards, include:

- **Ilham Tohti** (Uyghur) (伊力哈木·土赫提) Opinion No. 3/2014. Formally arrested in January 2014; sentenced to life in prison for “separatism” in September 2014; named 2016 Martin Ennals Award laureate for his work defending Uyghur human rights.¹⁵⁹
- **Jingling Tang** (唐荆陵), **Qingying Wang** (王清莹), and **Xinting Yuan** (袁新亭) Opinion No. 49/2014. Among the more than 300 signatories to Charter 08; formally arrested in May

2015, <https://perma.cc/RQH4-4XM6> (“47 persons suspected of telecommunications fraud crimes sent back to Shanghai under escort”); “浙江警方侦破跨境通讯诈骗大案, 168 名嫌犯今成功引渡回国,” *Legal Daily*, November 10, 2015, <https://perma.cc/GN2C-9VQA>, (“Zhejiang police crack big transnational communications fraud case as 168 criminal suspects are today repatriated”); “广东警方押解 39 名在印尼实施电信诈骗犯回国,” *Legal Daily*, November 10, 2015, <https://perma.cc/MU2G-MJKZ> (“Guangdong police bring 39 criminal suspects who engaged in telecommunications fraud in Indonesia back to China”).

¹⁵⁵ “Young netizen openly critical of Xi Jinping taken into Custody” (年轻网友公开反对习近平遭秘密拘捕), *Radio Free Asia*, October 30, 2016, <http://www.rfa.org/cantonese/news/quanping-10312016091937.html>.

¹⁵⁶ Human Rights in China, “Activist Tried for “Inciting Subversion” with Essays Disseminated Online,” April 15, 2016, <http://www.hrichina.org/en/press-work/hric-bulletin/activist-tried-inciting-subversion-essays-disseminated-online>.

¹⁵⁷ “Lawyer Wu Kuiming: Case report on Labor rights activist Liu Shaoming” (吴魁明律师: 劳工维权人士刘少明案进展通报), BannedBook.Org, September 27, 2016, <https://www.bannedbook.org/bnews/weiquan/20160927/594298.html>.

¹⁵⁸ Human Rights in China, “Detentions on Mainland Related to Occupy Central Movement,” January 26, 2015, <http://www.hrichina.org/en/detentions-mainland-related-occupy-central-movement-2014>.

¹⁵⁹ U.N. Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its sixty-ninth session (22 April–1 May 2014),” No. 3/2014 (China) (July 21, 2014) U.N. Doc. A/HRC/WGAD/2014/3, <http://hrlibrary.umn.edu/wgad/3-2014.pdf>.

2014; convicted in January 2016 and currently serving sentences of five, three and a half, and two and a half years, respectively.¹⁶⁰

- **Gulmira Imin** (Uyghur) Opinion No. 29/2012. Formally arrested in July 2009; sentenced to life in prison for “leaking state secrets” and “splittism”—crimes of “endangering State security”—in April 2010.¹⁶¹
- **Qi Chonghuai** (齐崇怀) Opinion No. 36/2012. Formally arrested in June 2007; served four years for a conviction in May 2008, was supposed to be released on June 25, 2011, but was then convicted and sentenced again to eight years for continuing to write during his time in prison.¹⁶²
- **Chen Wei** (陈卫) Opinion No. 7/2012. Formally arrested in March 2011; sentenced to nine years for “inciting subversion” in December 2011 for four essays he wrote and published online.¹⁶³
- **Liu Xiaobo** (刘晓波) Opinion No. 15/2011. Formally arrested in June 2009;¹⁶⁴ sentenced to 11 years for “inciting subversion” in December 2009.¹⁶⁵
- **Liu Xia** (刘霞) (wife of Liu Xiaobo) Opinion No. 16/2011. Under house arrest since October 2010 (after the announcement that her husband had been awarded the Nobel Peace Prize).¹⁶⁶
- **Liu Xianbin** (刘贤斌) Opinion No. 23/2011. Formally arrested in July 2010;¹⁶⁷ sentenced to ten years for “inciting subversion” in March 2011 for publishing articles on human rights and democracy.¹⁶⁸

¹⁶⁰ U.N. Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its seventy-first session (17 to 21 November 2014),” No. 49/2014 (China) (February 11, 2015), U.N. Doc. A/HRC/WGAD/2014/49, <http://hrlibrary.umn.edu/wgad/49-2014.pdf>. Opinion notes that a WGAD source claims that they, as active members of the Nonviolent Citizens’ Disobedience Movement, have been detained solely on the basis of the peaceful exercise of their rights guaranteed under articles 19 and 20 of the Universal Declaration of Human Rights, namely, the right to freedom of opinion and of expression and the right to freedom of peaceful assembly.

¹⁶¹ U.N. Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session (27–31 August 2012),” No. 29/2012 (China) (November 26, 2012), U.N. Doc. A/HRC/WGAD/2012/29, <http://www.hrichina.org/sites/default/files/working-group-on-arbitrary-detention-opinion-29-2012-gulmira-imin-2012-english.pdf>.

¹⁶² U.N. Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its sixty-fourth session, 27–31 August 2012, No. 36/2012 (China) (November 23, 2012), U.N. Doc. A/HRC/WGAD/2012/7, http://www.hrichina.org/sites/default/files/working-group-on-arbitrary-detention-opinion-36-2012-qi_chonghuai-2012-english.pdf.

¹⁶³ U.N. Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its sixty-third session, 30 April–4 May 2012, Opinion No. 7/2012 (China) (July 13, 2012), U.N. Doc. A/HRC/WGAD/2012/7 at <http://www.hrichina.org/sites/default/files/working-group-on-arbitrary-detention-opinion-7-2012-chen-wei-2012-english.pdf>.

¹⁶⁴ Human Rights in China, “Freedom of Expression on Trial in China,” *China Rights Forum*, 2010, no. 1, <http://www.hrichina.org/en/crf/issue/2010.01>. See also, Congressional-Executive Commission on China, “Beijing Police Formally Arrest Liu Xiaobo on Inciting Subversion Charge,” (July 2, 2009) at <http://www.cecc.gov/publications/commission-analysis/beijing-police-formally-arrest-liu-xiaobo-on-inciting-subversion>.

¹⁶⁵ U.N. Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its nineteenth session,” (December 26, 2011) U.N. Doc. A/HRC/19/57, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-57_en.pdf.

¹⁶⁶ U.N. Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its nineteenth session,” (December 26, 2011), U.N. Doc. A/HRC/19/57, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-57_en.pdf.

- **Gao Zhisheng** (高智晟) Opinion No. 26/2010. First detained in August 2006 and sentenced to three years' imprisonment (with a five-year suspension) in December 2006;¹⁶⁹ formally arrested again in February 2009; released in August 2014 after completing his second sentence of three years, currently under near constant surveillance by the authorities.¹⁷⁰

The example cases above are likely only the tip of the iceberg¹⁷¹ in the PRC government's persecution of individuals for the peaceful exercise of their rights to freedom of expression online and offline. These individuals are paying a heavy human price for exercising a fundamental human right that is protected under domestic Chinese and international law.

B. Role of Community Reporting and Monitoring

In addition to the regulatory and legal developments described above that impact on the right to expression online, the PRC government enlists voluntary company initiatives and the online community in monitoring and censoring expression.

One example of a company effort is that of Sina Weibo, which now claims to have 282 million monthly active users.¹⁷² The company launched its Sina Weibo Community Management System in May 2012—a mechanism created to deal with Sina Weibo microblog posts that are considered harmful, false, or that generate user disputes. Under the “Sina Weibo Community Management Rules” (issued for Trial Implementation),¹⁷³ problem microblog posts covered under the rules can be identified through two ways: discovery by Sina Weibo Management or reported by a user.¹⁷⁴

These rules describe “harmful information” as including:

- Sensitive information which is harmful to social and national security such as, information which:
 - disseminates rumors, disrupts social order, or destroys social stability,
 - propagates superstitions or heresy,
 - propagates gambling, violence or instigating crime,
 - harms national unity, or sovereignty or territorial integrity, or
 - incites ethnic hatred or discrimination.¹⁷⁵

Where “harmful information” is reported, the “Community Management Rules” require that such information is handled by Sina Weibo Management in a manner which provides no transparency as to

¹⁶⁷ Chinese Human Rights Defenders, “Update on Case of Sichuan Democracy Activist, Human Rights Defender Liu Xianbin, Formally Arrested for ‘Inciting Subversion of State Power,’” July 12, 2010, <https://www.nchrd.org/2010/07/un-work-on-cases-liu-xianbin-july-12-2010/>.

¹⁶⁸ U.N. Human Rights Council, Working Group on Arbitrary Detention, “Opinions adopted by the Working Group on Arbitrary Detention at its nineteenth session,” (December 26, 2011). U.N. Doc. A/HRC/19/57, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-57_en.pdf.

¹⁶⁹ Human Rights in China, “Spotlight: Selected Case Profiles of Harassed Defense Lawyers in China,” (2008) at <http://www.ir2008.org/02/spotlight.php>.

¹⁷⁰ U.N. Human Rights Council, Working Group on Arbitrary Detention, “Communication addressed to the Government on 6 July 2010 concerning Gao Zhisheng,” Opinion No. 26/2010 (China) (July 6, 2010, <http://www.freedom-now.org/wp-content/uploads/2015/02/Gao-UNWGAD-Opinion-11.19.2010.pdf>).

¹⁷¹ See, Congressional-Executive Commission on China’s “Political Prisoner Database,” <https://www.cecc.gov/resources/political-prisoner-database>.

¹⁷² “China’s Weibo overtakes Twitter in market cap,” *Xinhua*, October 19, 2016, <https://perma.cc/UDS9-AFVX>.

¹⁷³ Sina Weibo, *Community Management Rules (for Trial Implementation)*, (新浪微博社区管理规定(试行) [effective May 28, 2012], <https://chinacopyrightandmedia.wordpress.com/2012/05/08/sina-weibo-community-management-regulations-trial/>).

¹⁷⁴ *Ibid.*, Art 12(1).

¹⁷⁵ *Ibid.*, Art. 15(1).

how many cases of “harmful” information are reported and how the decisions for handling these posts are made.¹⁷⁶ On “harmful information,” Sina Weibo Management will warn users and delete content—there is no dispute resolution process. Where there are more than five posts of harmful information, the user will be prohibited to post for 48 hours and the content will be deleted.¹⁷⁷ If “harmful information” is posted for malicious purposes, the user will be prohibited from posting for 48+ hours and his or her account may be cancelled.¹⁷⁸

Another example of the institutional promotion of public surveillance is the website “www.12377.cn,” which was created as a platform for netizens to report “unhealthy” and unlawful online conduct (互联网违法和不良信息举报中心网). By aggregating the public reports on complaints made to “www.12377.cn,” we note that, as of September 2016, the total number of online complaints regarding unhealthy and unlawful online conduct for this year has been approximately 29 million.¹⁷⁹ The PRC government has also begun praising and publicizing the work of online reporting groups such as the “Haidian Online Friends,” who, according to official Chinese government media reports, received a bounty of between one and 50 RMB as a “red packet” (*hongbao*) for each report of online “unlawful activity” that they make.¹⁸⁰

A final example of community monitoring is the use of “public commentators” known as *wumaos* (五毛)—abbreviated from the *wumaodang* (五毛党) or the “50 Cent Party”—to post comments online that are favorable of the Party and support official campaigns or nationalism, in an attempt to manipulate public opinion.¹⁸¹

The prevalence and impact of the *wumaos* and other officially encouraged online reporting platforms and the non-transparency of the Sina Weibo Community Management System in disposing of “harmful information” highlights the dangers of community reporting mechanisms in the context of an environment of state-encouraged nationalism, ideological conformity, and related discriminatory impacts on vulnerable groups—women, ethnic groups, and persons with disabilities. In addition, this kind of reporting may be viewed as a technological upgraded version of a practice during the Cultural Revolution whereby members of a family, of a community, and of the general public at large were

¹⁷⁶ Ibid., Art 18.

¹⁷⁷ Ibid., Art 21(1)(1)-(2).

¹⁷⁸ Ibid., Art 21(1)(3).

¹⁷⁹ Cyberspace Administration of China, 2016 年 9 月全国网络举报受理情况 (2016 September National Online Complaints Reporting Handling Information), <https://perma.cc/LY9W-QTRJ>; 2016 年 8 月全国网络举报受理情况 (2016 August National Online Complaints Reporting Handling Information), <https://perma.cc/EA3K-GK4G>; 2016 年 7 月全国网络举报受理情况 (2016 July National Online Complaints Reporting Handling Information), <https://perma.cc/3WYH-8BMH>; 2016 年 6 月全国网络举报受理情况 (2016 June National Online Complaints Reporting Handling Information), <https://perma.cc/9JL5-K4ET>; 2016 年 5 月全国网络举报受理情况 (2016 May National Online Complaints Reporting Handling Information), <https://perma.cc/32TB-2Q2P>; 2016 年 4 月全国网络举报受理情况 (2016 April National Online Complaints Reporting Handling Information), <https://perma.cc/TKC9-PRM3>; 2016 年 3 月全国网络举报受理情况 (2016 March National Online Complaints Reporting Handling Information), <https://perma.cc/SP2A-4ZYA>; 2016 年 2 月全国网络举报受理情况 (2016 January National Online Complaints Reporting Handling Information), <https://perma.cc/5B3D-48NW>; 2016 年 1 月全国网络举报受理情况 (2016 January National Online Complaints Reporting Handling Information), <https://perma.cc/D5UT-2XQ4>.

¹⁸⁰ “Haidian Online Friends” actively report crimes to the authorities but they don’t look for bounties”(海淀网友“积极举报不求奖励), *Legal Daily*, March 14, 2015, <https://perma.cc/QCY5-KGS5>. See e.g. “Police: Reports Made By the “Haidian Online Friends” May Receive Monetary Rewards” (警方:“海淀网友”举报可获红包奖励), *People’s Daily*, January 5, 2016, <https://perma.cc/J2M9-E4NW>. Other such groups include the “Chaoyang Masses” (朝阳群众) the “Xicheng Aunties” (西城大妈) and the “Fengtai Persuader Team” (丰台劝导队).

¹⁸¹ Gary King, Jennifer Pan and Margaret E. Roberts, “How the Chinese Government Fabricates Social Media Posts for Strategic Distraction, not Engaged Argument,” (August 26, 2016), <http://gking.harvard.edu/files/gking/files/50c.pdf>.

encouraged to report on each other—with disastrous and deadly consequences for families, communities, and all of Chinese society.

The Chinese government is also accelerating the construction of a comprehensive system of “social credit” whereby citizens will have their rights and capacity to engage in Chinese society and the Chinese economy severely circumscribed on the basis of their “social credit score.”¹⁸² The *Cybersecurity Law* also provides that conduct violating its provisions will be recorded in the credit archives/records and made public in accordance with relevant laws and regulations.¹⁸³ This social credit concept is also referenced in the *Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-governmental Organizations within the Territory of China*.¹⁸⁴ However, it is unclear how the score will be calculated and how and what data will be collected to determine this score, highlighting challenges to transparency and accountability of data security and protection.

In terms of public monitoring, the PRC government has stepped up its surveillance capability in ethnic minority regions. The authorities announced in July 2016 that Urumqi’s new train station was the first to use facial recognition software for security screenings and automated ticketing.¹⁸⁵ This capability is the expanded deployed development of an electronic surveillance program—of security video cameras—launched as early as 2008,¹⁸⁶ highlighting how this expanded technology capacity to collect biometric data is one of the surveillance legacies of the 2008 Olympics.

C. International and Domestic CSR Engagement in Telecommunications and Internet Access Sectors

In light of the concerning domestic legal, regulatory, and political trends impacting on freedom of expression and privacy, international engagement by the PRC government, by SOEs and private sector companies may provide openings to push back against these restrictive trends, especially in light of the domestic uptake of corporate social responsibility initiatives. In examining the role of SOEs and private sector companies, in addition to the extensive regulatory responsibilities relating to users and content, both types of companies are also subject to internal political oversight by CPC committees described above. However, international developments related to human rights guidelines for SOEs and domestic CSR guidelines may present potential openings for engagement to strengthen rights protection, and implementation of human rights obligations of both SOEs and private companies.

¹⁸² General Office of the CPC Central Committee and General Office of the State Council, *Opinions concerning Accelerating the Construction of Credit Supervision, Warning and Punishment Mechanisms for Persons Subject to Enforcement for Loss of Credit-Worthiness* (关于加快推进失信被执行人信用监督、警示和惩戒机制建设的意见) (September 25, 2016), (Chinese:

http://news.xinhuanet.com/politics/2016-09/25/c_1119620719.htm, unofficial English translation: <https://chinacopyrightandmedia.wordpress.com/2016/09/25/opinions-concerning-accelerating-the-construction-of-credit-supervision-warning-and-punishment-mechanisms-for-persons-subject-to-enforcement-for-trust-breaking/>).

¹⁸³ Cybersecurity Law, Art. 71.

¹⁸⁴ 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, “Ministry of Public Security tables 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,” *People’s Daily*, October 15, 2016, <http://politics.people.com.cn/n1/2016/1015/c1001-28780455.html>.

¹⁸⁵ “New Urumqi Train Station First To Use Facial Recognition Software to Fully Automate Ticketing,” (“乌鲁木齐站（新客站）首次启用人脸识别，检票可全自动”) *Urumqi Evening News*, July 4, 2016, <http://www.urumqi.gov.cn/znsx/jdxw/jrsf/277377.htm>.

¹⁸⁶ As part of a massive surveillance and censorship program known as the “Golden Shield,” China began installing surveillance cameras in Shenzhen in as early as 2008: See, e.g., Naomi Klein, “China’s All-Seeing Eye,” *Rolling Stone*, May 14, 2008, <http://www.naomiklein.org/articles/2008/05/chinas-all-seeing-eye>.

In addition, these trends provide opportunity to more critically examine the multiple roles of the State in the PRC—as owners and operators of telecommunications companies, and as the State with its responsibility to comply with its international obligations and to ensure rights are protected by private companies.

In terms of promoting the right to freedom of expression in the telecommunications and Internet sector in the PRC, several international initiatives may be relevant, including norm building efforts, voluntary initiatives, and the development of specific sectoral standards and due diligence guidelines. The May 2016 Report of the Working Group on transnational corporations and other business enterprises¹⁸⁷ specifically examined the duty to protect against human rights abuses involving SOEs.¹⁸⁸ The Working Group noted that in addition to States' duties to take appropriate steps to prevent, investigate, punish and redress human rights abuses by its businesses,¹⁸⁹ as set out in the *Guiding Principles on Business and Human Rights*, States are required to take “additional” steps to ensure that SOEs respect human rights.¹⁹⁰ These steps outlined are comprehensive, concrete, and practical, including:

- leading by example by setting expectations that SOEs respect human rights throughout their operations,
- establishing mechanisms to set and manage expectations,
- establishing strong relationships with boards of directors, including through explicit mandates to ensure monitoring and implementation of human rights standards,
- establishing oversight and follow-up mechanisms with clear and achievable targets,
- building capacity within SOEs through awareness-raising and training, as well as through encouraging participation in multi-stakeholder initiatives related to responsible business conduct and human rights,
- ensuring SOEs carry out due diligence,
- requiring disclosure, transparency, and reporting to account for human rights impacts, and
- ensuring effective remedies.¹⁹¹

¹⁸⁷ U.N. Human Rights Council, “Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises,” U.N. Doc. A/HRC/32/45 (May 4, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/45.

¹⁸⁸ The Working Group on the issue of human rights and transnational corporations and other business enterprises adopts the Organization for Economic Cooperation and Development’s (OECD) definition of SOE in its Guidelines on Corporate Governance of State-Owned Enterprises: “Any corporate entity recognized by national law as an enterprise, and in which the State exercises ownership, should be considered as a State-owned enterprise. This includes joint stock companies, limited liability companies and partnerships limited by shares. Moreover statutory corporations, with their legal personality established through specific legislation, should be considered as State-owned enterprises if their purpose and activities, or parts of their activities, are of a largely economic nature”: *OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2015 Edition* (Paris 2015), <http://www.oecd.org/daf/ca/OECD-Guidelines-Corporate-Governance-SOEs-2015.pdf> (p. 15).

¹⁸⁹ U.N. Human Rights Council, Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework,” A/HRC/17/31 (March 21, 2011), Annex, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/121/90/PDF/G1112190.pdf?OpenElement> (principles 1-3).

¹⁹⁰ Ibid., Principle 4: “States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.”

¹⁹¹ U.N. Human Rights Council, “Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises,” U.N. Doc. A/HRC/32/45 (May 4, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/45 (p. 12-20).

The Working Group has also called out examples of when China's SOEs accepted and applied international CSR and corporate governance standards. For example, the Working Group's Report highlights the prominence of Chinese SOEs in implementing due diligence and notes the development of local CSR guidelines, such as the *Guidelines to State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities* (PRC SOE Guidelines),¹⁹² and the *Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains*, which require enterprises to "observe the Guiding Principles on Business and Human Rights during the entire life-cycles of the mining project," including operations abroad.¹⁹³ However, the CSR uptake has been more evident in supply chain, environment, and some resources extraction sectors as the due diligence example reflects. While SASAC's promotion of CSR is significant, the insertion of Chinese political considerations introduces additional tensions for those ICT sector SOEs that seek status as socially responsible corporate players.

The PRC's SOE Guidelines underscore the importance of SOEs fulfilling CSR, but overlay the international standards with domestic political directives, giving rise to requirements such as applying the principle of "human-oriented and the Scientific Outlook on Development," (a reference to the core Party ideology of the Hu Jintao era).¹⁹⁴ The Guidelines highlight that CSR is an "overall social requirement" and that SOEs are the "backbone" of the PRC's economy and have a "vital bearing on *national security*" (emphasis added), realizing sustainable development, and participation in international economic cooperation.¹⁹⁵ The politicization of the Guidelines continues with references to, for example, the guiding principles of "Deng Xiaoping Theory and the Important Thought of the Three Represents," adhering "to the demands of human-oriented policy and sustainable development strategy from the Central Government of China," enhancing "awareness of social responsibility and sustainable development," and promoting "the construction of a harmonious and well-off society."¹⁹⁶ These Guidelines, if extended to the ICT sector today, would undoubtedly be subject to and be shaped by the current leadership's ideological and political priorities, including control over online expression described in this submission.

With regard to the PRC SOE Guidelines, SOEs are also tied to national security policies, which subjects them to the risk that the broad and vague definition of national security under the PRC *National Security Law*¹⁹⁷ and the over-expansive activities that the law covers, could be applied to them. Likewise, references in the guidelines to political phrases such as "scientific outlook on development" are cues for such companies to ensure their ideological conformity with the CPC.

¹⁹² State-Owned Assets Supervision and Administration Commission, *Guidelines to the State Owned Enterprises Directly Under the Central Government on Fulfilling Corporate Social Responsibilities* (关于中央企业履行社会责任的指导意见) (January 4, 2008), (Chinese: <https://perma.cc/LGM3-BJX3>, English: <https://perma.cc/T9RP-ZNMx>). Human Rights in China has come across references to a 2016 version of the Guidelines but it does not appear to be publicly available, see, e.g., "Central SASAC Report on Inspection and Reform Situation," (中共国资委委员会关于巡视整改情况的通报), *Xinhua*, August 25, 2016) (Chinese: <https://perma.cc/7KNP-SKYR>).

¹⁹³ China Chamber of Commerce of Metals, Minerals and Chemical Importers and Exporters, "Due Diligence Guidelines for Responsible Mineral Supply Chains," <https://www.oecd.org/daf/inv/mne/CCMC-Guidelines-Project%20Brief%20-%20EN.pdf> (p. 8).

¹⁹⁴ State-Owned Assets Supervision and Administration Commission, *Guidelines to the State Owned Enterprises Directly Under the Central Government on Fulfilling Corporate Social Responsibilities* (关于中央企业履行社会责任的指导意见) (January 4, 2008), (Chinese: <https://perma.cc/LGM3-BJX3>, English: <https://perma.cc/T9RP-ZNMx>) (para. 1.1).

¹⁹⁵ *Ibid.*, paras. 1.1-1.4.

¹⁹⁶ *Ibid.*, para. 7.

¹⁹⁷ 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 translation: <http://chinalawtranslate.com/2015nsl/?lang=en>).

The sector-specific due diligence guidelines, such as those for mineral supply chains, also raise concerns. The mineral and supply chain sector has a longer history of CSR and sustainability reporting to draw on for implementation and monitoring, whereas the ICT sector is relatively un-developed in terms of industry specific guidelines. Furthermore, companies within the Telecommunication and Internet sector are varied, and developing standards that would apply to the entire industry presents challenges and risks.

Almost 60% of CSR reporting in 2015 was performed by SOEs.¹⁹⁸ China Mobile Ltd, for example, has produced a Sustainability Report each year since 2006,¹⁹⁹ and Huawei has produced CSR reports since 2008.²⁰⁰ In addition to international benchmarks such as the Global Reporting Initiative's *Sustainability Reporting Guidelines*,²⁰¹ Chinese SOEs source the applicable sustainability principles from a variety of domestic sources, including:

- *Guidelines to the State-owned Enterprises Directly under the Central Government on Fulfilling Corporate Social Responsibilities* (SASAC).²⁰²
- *SOEs' Harmonious Development Strategy Implementation Outline During the 12th Five Year* (SASAC).²⁰³
- *Guidance on Chinese Enterprises' Corporate Social Responsibility* by Research Center for Corporate Social Responsibility (Chinese Academy of Social Sciences).²⁰⁴

These require, among other things, that Chinese SOEs institute regular corporate social responsibility reporting.²⁰⁵ Chinese SOEs and private sector companies also participate in the UN Global Compact. The first two principles of the UN Global Compact provide that "[b]usinesses should support and respect the protection of internationally proclaimed human rights" and "make sure that they are not complicit in human rights abuses."²⁰⁶ There are 259 private and State-owned Chinese companies that participate in the UN Global Compact with six of them being from the telecommunications sector:

- Hengtong Group Co., Ltd. (since August 29, 2016).
- Global Call Limited (since December 26, 2015).
- ZTE Corporation (since February 17, 2009).
- China Mobile Communications Corporation (since July 16, 2007).

¹⁹⁸ Sino-Swedish Corporate Social Responsibility Website, "White Paper on China Corporate Social Responsibility Report 2015 Launched in Beijing," <http://csr2.mofcom.gov.cn/article/ckts/sr/201603/20160301275443.shtml>.

¹⁹⁹ See, China Mobile Limited, Sustainability Reports from 2006-2015, <http://www.chinamobileltd.com/en/about/sd.php>.

²⁰⁰ See, Huawei Sustainability Reports from 2008-2015, <http://www.huawei.com/en/sustainability/sustainability-report>.

²⁰¹ Global Reporting Initiative, "Sustainability Reporting Guidelines" (2011). v. 3.1, <https://www.globalreporting.org/resourcelibrary/G3.1-Guidelines-Incl-Technical-Protocol.pdf>.

²⁰² *Guidelines to the State Owned Enterprises Directly Under the Central Government on Fulfilling Corporate Social Responsibilities* (关于中央企业履行社会责任的指导意见) (January 4, 2008), (Chinese: <https://perma.cc/LGM3-BJX3>, English: <https://perma.cc/T9RP-ZNMX>).

²⁰³ *SOEs' Harmonious Development Strategy Implementation Outline During the 12th Five Year* (SASAC) (中央企业“十二五”和谐发展战略实施纲要) at (Chinese: <http://www.sasac.gov.cn/n1180/n1566/n259760/n264836/14197866.html>).

²⁰⁴ *Guidance on Chinese Enterprises' Corporate Social Responsibility* by Research Center for Corporate Social Responsibility 2014 (中国 CSR 报告编写指南 3.0), <http://www.china-csr.org/bgzn/>.

²⁰⁵ *Guidelines to the State Owned Enterprises Directly Under the Central Government on Fulfilling Corporate Social Responsibilities* (关于中央企业履行社会责任的指导意见) (January 4, 2008), (Chinese: <https://perma.cc/LGM3-BJX3>, English: <https://perma.cc/T9RP-ZNMX>) (para. 18).

²⁰⁶ United Nations Global Compact, "The Ten Principles of the UN Global Compact," <https://www.unglobalcompact.org/what-is-gc/mission/principles> (Principle 1-2).

- China United Network Communications Group Company Limited (China Unicom) (November 9, 2004).
- Huawei Technologies Co. Ltd. (since November 9, 2004).²⁰⁷

Of these, only four have provided reports to the UN Global Compact. While the current CSR framework reflects a focus on environmental, labor, and social sustainability issues, which resonates with Chinese state policies on development, individual company CSR reports and Codes of Conduct do reference human rights but more generally as aspirational standards. For example:

- ZTE: “Run all of our business in an ethical and sustainable manner, and guarantee and promote human rights, health, safety, benefits, and individual progress of all those who directly and indirectly work for ZTE.”²⁰⁸
- China Unicom: “Attention is paid to protecting human rights, guaranteeing equality between men and women and between ethnic groups and respecting personal privacy of employees where labor complaint never happened.”²⁰⁹
- China Mobile: “Human right protection shows the value of a company, and reflects its basic attitude towards society and people. China Mobile adheres to the value of “Responsibility Makes Perfection” to respect and protect human rights.”²¹⁰
“We fully respect and protect internationally recognised human rights and forbid any involvement in human rights abuses and violations.”²¹¹
- Huawei: “Huawei respects and supports various human rights universally recognized by the international community.”²¹²
“The cooperation terms between Huawei and the suppliers include the requirements to the suppliers on protecting and respecting human rights.”²¹³

The reference to, or general commitment to, respect international human rights by these private and state-owned telecommunication companies in their reports may at least provide a common values point to leverage. However, these companies are far from substantively addressing the implementation of, or reporting adequately on, specific concrete progress in promoting human rights standards. At the same time, if these Chinese telecommunication companies do attempt to comply with international human rights standards, it is important to keep in mind the difficult legal and political domestic environment these companies operate in, especially as enforcers of rights restricting provisions. Implementation of

²⁰⁷ In addition to engaging in sustainability reporting, Huawei has issued its own *Code of Practice* (July 18, 2007), <https://www.unglobalcompact.org/participation/report/cop/create-and-submit/detail/6612>.

²⁰⁸ ZTE Corporation, *Tomorrow Never Waits*, 2014 Sustainability Report, https://www.unglobalcompact.org/system/attachments/cop_2015/207611/original/%E4%B8%AD%E5%85%B4%E5%8F%AF%E6%8C%81%E7%BB%AD%E5%8F%91%E5%B1%95%E6%8A%A5%E5%91%8A%E8%8B%B1%E6%96%87%EF%BC%88%E6%9C%80%E7%BB%88%E7%89%88%EF%BC%890523.pdf?1446519270 (p. 9).

²⁰⁹ China Unicom, *Corporate Social Responsibility Report 2015: Implementing New Ideas to Compose A New Chapter* (March 28, 2016), https://www.unglobalcompact.org/system/attachments/cop_2016/272211/original/%E4%B8%AD%E5%9B%BD%E8%81%94%E9%80%9A2015%E5%B9%B4%E7%A4%BE%E4%BC%9A%E8%B4%A3%E4%BB%BB%E6%8A%A5%E5%91%8A%EF%BC%88%E9%9B%86%E5%9B%A2%EF%BC%89%E8%8B%B1%E6%96%87%E7%89%880324.pdf?1459125855 (p. 58).

²¹⁰ China Mobile Communications Corporation, *2015 Sustainability Report* (May 24, 2016), https://www.unglobalcompact.org/system/attachments/cop_2016/287091/original/China_Mobile_Communications_Corporation_2015_Sustainability_Report.pdf?1464077543 (p. 49).

²¹¹ Ibid.

²¹² Huawei, *Code of Practice* (July 18, 2007), <https://www.unglobalcompact.org/participation/report/cop/create-and-submit/detail/6612> (p. 1).

²¹³ Ibid.

the UN Global Compact principles requires political will, a culture of transparency, and a welcoming culture of civil society participation. However, as described above, these companies are operating in an environment where such requirements do not exist or are being undermined.

The lack of a multi-stakeholder initiative that would allow for open discussion on business and human rights in Asia was highlighted at a recent Asia Forum on Business and Human Rights, held in April 2016.²¹⁴ Participants at the Forum, which was made up primarily of businesses and civil society,²¹⁵ recommended that “Governments should foster a climate of meaningful, multi-stakeholder engagement” and that the “development of national action plans could be used as a vehicle to achieve this.”²¹⁶ It was also noted that regional bodies, such as ASEAN, have a leadership role to play in promoting multi-stakeholder engagement.²¹⁷ The Forum highlighted that sector wide and multi-stakeholder approaches to human rights and due diligence can provide “space for vulnerable persons, such as human rights defenders who face repressive conditions, to share valuable information with companies that gives a more accurate assessment of the issues on the ground.”²¹⁸ The importance of transparency through quality reporting on human rights impacts was also emphasized.²¹⁹ Specifically in relation to human rights in the ICT sector, the Forum noted the key issues in Asia, “in particular digital surveillance, the right to privacy and freedom of expression online, and Internet access for the poor.”²²⁰ The Forum “reiterated the clear expectation—as set out in the Guiding Principles—that companies across all sectors should have in place appropriate due diligence policies to identify, assess, prevent and mitigate any adverse impacts.”²²¹

In addition, the PRC’s *Constitution of the UN Global Compact’s China Network* emphasizes the importance of taking into consideration local standards in the implementation of the ten principles.²²² While local standards may make sense in some sectors, key rights impacted by the ICT sector—freedom of expression, access to information, and privacy—must be protected under international human rights standards that are already in place and which require implementation through concrete measures.

With regard to ICT specific norm-building efforts, the Global Network Initiative (GNI) is an example of a multi-stakeholder initiative created to protect and advance freedom of expression and privacy where companies in the ICT sector “face increasing government pressure to comply with domestic laws and policies in ways that may conflict with the internationally recognized human rights of freedom of expression and privacy.”²²³ Within an international framework, GNI member companies undergo a review and assessment of their compliance with the Principles and Implementation Guidelines. The

²¹⁴ “Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the Asia Forum on Business and Human Rights,” U.N. Doc. A/HRC/32/45/Add.2 (May, 30, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/45/Add.2. (para. 36).

²¹⁵ The Forum attracted 400 participants (28% businesses, 39% civil society, 1% national human rights institutions, 3% States, 2% Trade Unions).

²¹⁶ “Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on the Asia Forum on Business and Human Rights,” U.N. Doc. A/HRC/32/45/Add.2 (May, 30, 2016), http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/32/45/Add.2. (para. 37).

²¹⁷ Ibid., para. 37.

²¹⁸ Ibid., para. 54.

²¹⁹ Ibid., paras. 61-62.

²²⁰ Ibid., para. 50.

²²¹ Ibid.

²²² See, U.N. Global Compact China Network, *Constitution of the UN Global Compact’s China Network* (全球契约中国网络章程) (March 12, 2015) at <https://perma.cc/XH65-7VVY> (Art. 3.2).

²²³ See, Global Network Initiative, <https://www.globalnetworkinitiative.org/>.

review process includes self-reporting and an independent assessment every two years.²²⁴ We note that the success of such an initiative is dependent upon a robust compliance mechanism, and there are steep challenges for exploring potential participation by Chinese private companies.

IV. RECOMMENDATIONS AND SUGGESTIONS

Collectively the domestic legal, political, and community trends described in this submission are contributing to restriction and chilling of online expression, and the undermining of citizens' rights to access to information, anonymity, and privacy. As this submission highlights, a tightening political climate emphasizing correct and unified thinking is also raising serious concerns regarding the PRC government's compliance with its international human rights obligations, including implementation of the recommendations following its Universal Periodic Review in 2013.

The urgency of the situation calls for international attention and action to address these dangerous trends undermining freedom of expression and international standards. In addition to the independent expert reviews of human rights progress by the UN special procedures and mechanisms, and the diplomacy engagement with other UN member states, the engagement of Chinese SOEs and private sector companies with voluntary multi-stakeholder initiatives and CSR guidelines and reporting norms may also provide constructive openings to address the rights challenges created by the restrictive domestic regulatory legal and political environment.

We respectfully advance the following recommendations and suggestions relating to issues for further research and investigation for the multi-year study, as well as specific steps that we encourage the Special Rapporteur to undertake with respect to the PRC:

- **Engagement with the PRC government to promote implementation of international standards and obligations:**
 - Encourage the review of the suite of national security laws and draft laws to 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.
 - Press for concrete demonstrated progress in implementing the recommendations issued by the human rights treaty bodies, and recommendations accepted by the PRC government in its 2013 Universal Periodic Review, related to the protection and promotion of the right to freedom of expression, including on the Internet.
 - Respond firmly to counter official policies and practices aimed at enforcing domestic ideological conformity that seek to undermine international human rights principles and standards under the banner of an anti-Western campaign.
 - Press for a country visit or other opportunities to examine impacts of these regulatory trends, meet with the telecom SOEs, private sector companies, and other stakeholders; and to explore ways to promote more effective compliance with international standards on restrictions on expression and other rights.

²²⁴ See, Global Network Initiative, Accountability, Policy, and Learning Framework, <https://globalnetworkinitiative.org/content/accountability-policy-and-learning-framework>.

- Request information on how the social credit score is determined for citizens and for foreign NGOs referenced in the guidelines to the new *FNGO Law*; request clarification of the personal data collection process, data security guidelines and standards, and privacy protections for the collection, transmission, and storage of this data, including biometric data and information on use of big data technologies to collect and mine the personal data.
- Press for the repeal or substantial amendment of the *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.
- Request further information from the PRC government regarding the status of cases of individuals still in detention related to the exercise of the right to free expression; press for the release of these individuals, including those on whom the Working Group on Arbitrary Detention has issued decisions finding their detention arbitrary and in contravention of international law.

➤ **Engagement with the China SOEs and the private sector ICT companies to:**

- Encourage development of concrete and strengthened human rights standards in the PRC's corporate social responsibility guidelines for SOEs and private sector companies; and encourage exploration of how these guidelines can integrate international norms such as the UN Guiding Principles on Business and Human Rights and best practices and guidelines.
- Request and review information from the PRC government and Sina regarding the Sina Weibo Community Management System disposition of information designated “harmful information,” including disaggregated data regarding the types of harmful cases, the numbers identified, and disposition for each type.
- Encourage expansion of company transparency reporting related to content take-downs, content restrictions, and other online restrictions on expression, perhaps similar to the reports currently being developed and issued by international ICT companies.
- Explore potential interest in ICT-related multi-stakeholder initiatives such as the Global Network Initiative to develop approaches for human rights impact assessments.