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

A CHINA UPR MID-TERM PROGRESS ASSESSMENT

BY HUMAN RIGHTS IN CHINA

NOVEMBER 2016
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EXECUTIVE SUMMARY

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

The government of the People’s Republic of China has now been reviewed under two cycles of the Universal Periodic Review (2009, 2013). In the 2013 Universal Periodic Review of China, member states submitted 252 recommendations; the PRC government accepted 204 of the recommendations and did not accept 48. The accepted recommendations address a comprehensive range of human rights commitments, including those relating to civil and political rights; economic, social, and cultural rights; rights of workers, ethnic minorities, and vulnerable groups such as children, women, the elderly, and persons with disabilities; as well as judicial reform, the role of lawyers and access to legal assistance; and international cooperation.

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

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

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

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

- **Promoting International Cooperation and Compliance with International Standards**
  This section reviews progress in the PRC government’s implementation of UPR recommendations relating to compliance with the UN human rights system, including the Universal Periodic Review, human rights treaty body system, special procedures, and Office of the High Commissioner for Human Rights; the ratification of the *International Covenant on Civil and Political Rights*; and civil society participation in the UPR and other international processes.

- **Ensuring that civil society can operate in a safe and enabling environment**
  This section reviews progress in the PRC government’s implementation of UPR recommendations relating to creating a safe and enabling domestic environment for civil society; applying the key ingredients identified by the UN High Commissioner for Human Rights in his April 2016 report to the Human Rights Council: a robust legal framework compliant with international standards that safeguards public freedoms and effective access to justice; a political environment conducive to civil society; access to information; avenues for participation by civil society in decision-making processes; and long-term support and resources for civil society.⁵

**Key Challenges and Concerns**

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

- an intensified, comprehensive, and ongoing campaign of attacks on defenders and independent *civil society* within a broader campaign of enforcing ideological conformity within the ruling Communist Party of China, by the media, and among the people;

- *policy and legal domestic developments* that are at odds with and undermine international *human rights standards*, coupled with an increasingly hostile rejection of international norms and human rights standards;

- a pattern of *official formulaic reporting* on progress, without concrete measures and indicators, that undercuts a meaningful assessment of progress and identification of more effective implementation measures; and

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

Summary of HRIC Recommendations

**Promoting International Cooperation and Compliance with International Standards**

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

To China

- Prepare and submit an official UPR mid-term report, and engage constructively with all domestic and international stakeholders to respond to questions, suggestions, and concerns to promote concrete progress in implementing recommendations.

- Revise or elaborate the National Human Rights Action Plan (2016-2020) to include full civil society participation in monitoring its implementation and systematic information such as specific indicators and benchmarks to enable a meaningful assessment of progress.

- To enable a meaningful assessment of progress, include specific indicators and benchmarks in its third UPR report, and in periodic and progress treaty body reports, including the follow-up reports requested by the Committee on the Elimination of Discrimination against Women (CEDAW), due by November 5, 2016, and the Committee against Torture (CAT), due by December 9, 2016, on the steps undertaken to implement the specific recommendations identified by them.

- Respond to outstanding requests for invitations to visit China by special procedures and extend a standing (open) invitation to all special procedures; provide specific timeframes for these visits; and provide clear assurances of compliance with UN Terms of Reference for these country visits.

- Extend an invitation for a country visit by the UN High Commissioner for Human Rights with a specific timeframe for the visit; provide clear assurances of compliance with UN Terms of Reference for the country visit.

- Commit to a specific timeframe for the ratification of the *International Covenant on Civil and Political Rights*, but in no case beyond the time period of the NHRAP (2016-2020), and to working towards post-ratification compliance in accordance with legal obligations as defined in General Comment 31 issued by the Human Rights Committee.

- Ensure and demonstrate full civil society participation with actions including: immediate steps to end reprisals against citizens who participate or attempt to participate in UN human rights processes, and concrete measures to allow expanded and diverse participation and opportunities to provide input into, monitor, and engage with these processes, including the preparation of China’s third UPR report, and progress reports to CEDAW and CAT due in 2016.
Ensure that any restrictions on freedom of expression, access to information, freedom of association, and other rights comply with international standards.

To Member States

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

- Press the PRC government to extend invitations to Special Rapporteurs and other special procedures with outstanding requests for visits and issue an invitation to the High Commissioner for Human Rights.

- Press the PRC government to indicate a specific timeframe for ICCPR ratification in the NHRAP (2016-2020) and to working towards post-ratification compliance in accordance with the legal obligations as defined in General Comment 31 issued by the Human Rights Committee.

- Respond firmly to counter official policies and practices that seek to enforce domestic ideological conformity in violation of universal values and international human rights standards. International human rights—universal, indivisible, interrelated, interdependent and mutually reinforcing—represent core universal values that should be our aspirational beginning point and our accountability ending point.

- Press the PRC government to take immediate steps to end reprisals against citizens who participate or attempt to participate in UN human rights processes, and rigorously monitor its responses to ensure expanded and diverse civil society participation in these processes, including the preparation of China’s third UPR report, and progress reports to CEDAW and CAT due in 2016.

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

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

To China

- Take immediate steps to end the crackdown and reprisals against lawyers, defenders, and other citizens who are exercising rights protected by international human rights and domestic law.

- Adopt concrete measures to support diverse civil society participation (beyond that by officially affiliated groups), including providing access to information and opportunities to monitor and participate in decision-making processes that impact on the rights of individuals and their communities.

- Adopt immediate legal and policy measures to end the campaign against human rights defenders and ensure that lawyers are able to fully carry out their professional responsibilities to their clients.
➤ Continue current efforts to strengthen the independence of the courts by restricting the involvement of Political and Legal Affairs Committees in cases and strengthen the monitoring and implementation of steps towards removing them from any role in the judicial review and determination of cases.

➤ Repeal or substantially amend the Foreign NGO Management Law (FNGO Law) to address the concerns and recommendations expressed by diverse sectors of the international community—governments, the business, academic, and professional communities, and NGOs—including repealing the restrictive regulatory framework that places foreign civil society groups under the stringent and intrusive supervision of the police.

➤ Review the suite of national security laws and draft laws and undertake necessary amendments to ensure that they comply with international standards for legality and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.

To Member States

➤ Demonstrate high-level political support for Chinese lawyers, defenders, and a sustainable and robust civil society space through joint public statements and other public actions, and through all available engagement tools, including bilateral dialogues, high level visits, technical assistance support, and educational and cultural exchanges.

➤ Respond firmly to counter official policies and practices aimed at enforcing domestic ideological conformity that seeks to undermine international human rights principles and standards under the banner of an anti-Western campaign.

➤ In bilateral and multilateral engagement, including providing technical assistance for and exchanges with the PRC, press for the repeal or a substantial amendment of the FNGO Law to address the concerns and expressed by diverse sectors of the international community—governments, the business, academic, and professional communities, and NGOs—including repealing the restrictive regulatory framework that places foreign civil society groups under the supervision of the police.

➤ In bilateral and multilateral engagement, including providing technical assistance for and exchanges with the PRC, press for a review of the suite of national security laws and draft laws and necessary amendments to ensure that they comply with international standards for legality and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.

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

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Review, and that they contribute to promoting more effective and credible international human rights processes.
PART 1: PROMOTING INTERNATIONAL COOPERATION AND COMPLIANCE WITH INTERNATIONAL STANDARDS

Engagement with the UN Human Rights System

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

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


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

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

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

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

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14 As at June 24, 2016, 63 States submitted UPR mid-term reports in relation to recommendations put forward during the first and second cycle: see http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx.
international rights system itself: namely, a discrepancy between the PRC government’s framework for human rights and that which is accepted internationally. Below is a discussion of both of these aspects of the Assessment Report.

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

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

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

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

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


\(^{18}\) Ibid.

\(^{19}\) Ibid.

\(^{20}\) Ibid.

\(^{21}\) Ibid., pp. 32-33.


\(^{24}\) Ibid.

\(^{25}\) Ibid., pp. 23-24.

\(^{26}\) Ibid., p. 24.
In addition, the PRC government pledged that it “shall continue to advance related legal preparations and pave the way for ratification of the International Covenant on Civil and Political Rights.” It also stated that it would “support” and “promote” the participation of NGOs in international exchanges and cooperation in the field of human rights.

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

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

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

UPR Mid-term Assessment

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

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

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27 Ibid., p. 23.
28 Ibid., p. 24.
29 Ibid.
30 Recommendation 186.60: Keep up its commitment to uphold its human rights treaty obligations and engage constructively with the human rights mechanisms, including the special procedures (Ghana); Recommendation 186.63: Continue its constructive and cooperative dialogue with the UN human rights system (Azerbaijan); Recommendation 186.67: Continue to play an active role in the works of the Human Rights Council and continue to contribute in solving the issues relating to human rights in a fair, objective and non-selective manner (Syrian Arab Republic).
31 Recommendation 186.69: Intensify the cooperation with special rapporteurs mandate holders of the United Nations (Benin); Step up cooperation with Special Procedures and mandate holders (Albania).
32 Recommendation 186.65: Continue to maintain contact and constructive dialogue with the human rights treaty bodies (Nigeria); Recommendation 186.64: Continue to give consideration to the views of treaty bodies and other mechanisms (Kenya); Recommendation 186.68: Consider the possibility of extending an invitation to special procedures to visit China taking into account the appropriate balance between economic, social and cultural rights and civil and political rights (Ecuador).
33 Recommendation 186.71: Fully cooperate with OHCHR as well as special procedures (France); Recommendation 186.73: Take the necessary concrete steps to facilitate a visit by the UN High Commissioner for Human Rights as soon as possible (Austria); Organize a visit of the High Commissioner in the coming future (Slovakia); Facilitate the visits of the UN High Commissioner and the special procedures, including to Tibetan and Uighur areas (Switzerland).
36 Ibid.
Treaty Bodies

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

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

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

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

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

39 Ibid.
Special Procedures and Country Visits

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

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

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

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


Office of the High Commissioner for Human Rights

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

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

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

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

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

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

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

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

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

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

Below are a few excerpts.

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

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


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

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

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

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

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

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

Ratification of ICCPR

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

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

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54 Ibid., pp. 2-3.
55 Recommendation 186.3: Consider ratifying ICCPR (International Covenant on Civil and Political Rights) (Cape Verde); Recommendation 186.4: Take steps to an early ratification of the ICCPR (Czech Republic); Recommendation 186.5: Take steps towards the ratification of ICCPR (Benin); Recommendation 186.6: Continue carrying out administrative and judicial reforms to prepare for the ratification of the ICCPR (Egypt); Recommendation 186.7: Continue the actions undertaken with the view to ratifying the ICCPR (Guatemala); Recommendation 186.8: Continue its national reforms with an aim to ratify the ICCPR (Latvia); 186.9. Continue to take measures towards ratification of the ICCPR (Botswana); Recommendation 186.10: Move towards ratification of the ICCPR at the earliest possible date (New Zealand); Recommendation 186.14: Accelerate administrative and legislative reforms with a view of ratifying the ICCPR (Tunisia); Recommendation 186.32: Consider ratifying the ICCPR and establishing a National Human Rights Institution (Zambia).
Human Rights Committee recognizes that implementation is an ongoing process so long as State Parties undertake to make good faith efforts to implement the Covenant. As this General Comment makes clear, ICCPR Article 2(2) does not require State Parties, as a condition of ratification, to have achieved full compliance, or to ensure immediate and full compliance at the moment of ratification.

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

The reality on the ground over the past two years tells a different story. The Chinese authorities have been using the security and judicial apparatus (to round up rights defense lawyers and prosecute them for “inciting subversion of state power”), legislative efforts (including the 2015 National Security Law which, in the view of a China law expert, “turns all interests of the political system, sovereignty integrity, economic development, food security, cybersecurity, religion, cultural exchange, environmental protection, and outer space, etc., into life- or death questions regardless of their gravity”), and political and ideological pressure (to require news media to uphold the primacy of the Communist Party of China)—to shape a society where civilians enjoy fewer and fewer civil and political rights.

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

Civil Society Participation in the UPR and Other International Processes

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

57 Ibid., para. 14.
58 Ibid.
59 Ibid., para. 13.
64 Recommendation 186.61: Ensure that its citizens can freely engage in the UPR process (Czech Republic).
65 Recommendation 186.62: Ensure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subject to reprisals (Switzerland).
Restrictions on citizen participation

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

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

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

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66 Ibid., para. 8.
becomingly increasingly circumscribed and those whose work goes much beyond that of being service providers for the Government are now very much under threat.”

Reprisals

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

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

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

72 Recommendation 186.52: ensure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subject to reprisals (Switzerland).
CEDAW also raised concerns about travel restrictions on at least one woman human rights activist who intended to brief the Committee. When requested to comment on these concerns during the consideration of the report, a member of the PRC delegation stated that the PRC government welcomed the efforts of non-governmental and civil society organizations to promote women’s rights and that they were not subject to reprisals of any kind for their work. However, simply denying that individuals were subjected to reprisals is not a constructive response to a serious problem and undermines the PRC government’s credibility in its asserted commitment to ensuring civil society participation. A year on, in November 2015, CAT raised similar concerns to CEDAW, that the PRC government reportedly prevented at least seven rights advocates from leaving China to prevent them from attending the review.

**HRIC Recommendations**

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

**To China**

- Prepare and submit an official UPR mid-term report, and engage constructively with all domestic and international stakeholders to respond to questions, suggestions, and concerns to promote concrete progress in implementing recommendations.

- Revise or elaborate the National Human Rights Action Plan (2016-2020) to include full civil society participation in monitoring its implementation and systematic information such as specific indicators and benchmarks to enable a meaningful assessment of progress.

- To enable a meaningful assessment of progress, include specific indicators and benchmarks in its third UPR report, and in periodic and progress treaty body reports, including the follow-up reports requested by the Committee on the Elimination of Discrimination against Women (CEDAW), due by November 5, 2016, and the Committee against Torture (CAT), due by December 9, 2016, on the steps undertaken to implement the specific recommendations identified by them.

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78 Ibid.


80 Committee against Torture,” Concluding observations on the fifth periodic report of China,” U.N. Doc. CAT/C/CHN/CO/5 (February 3, 2016), para. 38, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/017/44/PDF/G1601744.pdf?OpenElement: “The Committee is concerned at allegations that seven human rights defenders, who were planning to cooperate with the Committee in connection with the consideration of the fifth periodic report of the State party, were prevented from travelling or were detained on the grounds that their participation could ‘endanger national security.’”
Respond to **outstanding requests for invitations** to visit China by special procedures and extend a standing (open) invitation to all special procedures; provide specific timeframes for these visits; and provide clear assurances of compliance with UN Terms of Reference for these country visits.

Extend an invitation for a country visit by the UN High Commissioner for Human Rights with a specific timeframe for the visit; provide clear assurances of compliance with UN Terms of Reference for the country visit.

Commit to a specific timeframe for the ratification of the *International Covenant on Civil and Political Rights*, but in no case beyond the time period of the NHRAP (2016-2020), and to working towards post-ratification compliance in accordance with legal obligations as defined in General Comment 31 issued by the Human Rights Committee.

Ensure and demonstrate full civil society participation with actions including: immediate steps to **end reprisals against citizens** who participate or attempt to participate in UN human rights processes, and concrete measures to **allow expanded and diverse participation** and opportunities to provide input into, monitor, and engage with these processes, including the preparation of China’s third UPR report, and progress reports to CEDAW and CAT due in 2016.

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

**To Member States**

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

Press the PRC government to extend invitations to Special Rapporteurs and other special procedures with outstanding requests for visits and issue an invitation to the High Commissioner for Human Rights.

Press the PRC government to indicate a specific timeframe for ICCPR ratification in the NHRAP (2016-2020) and to working towards post-ratification compliance in accordance with the legal obligations as defined in General Comment 31 issued by the Human Rights Committee.

Respond firmly to counter official policies and practices that seek to enforce domestic ideological conformity in violation of universal values and international human rights standards. International human rights—universal, indivisible, interrelated, interdependent and mutually reinforcing—represent core universal values that should be our *aspirational* beginning point and our *accountability* ending point.

Press the PRC government to take immediate steps to **end reprisals against citizens** who participate or attempt to participate in UN human rights processes, and rigorously monitor its responses to ensure expanded and diverse civil society participation in these processes, including the preparation of China’s third UPR report, and progress reports to CEDAW and CAT due in 2016.
PART TWO: ENSURING A SAFE AND ENABLING ENVIRONMENT FOR CIVIL SOCIETY

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

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

This steep deterioration of rights 83 highlights the urgency of international action-oriented scrutiny of the PRC government’s domestic laws and policies in the context of international human rights standards.

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

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


84 Recommendation 186.149: Facilitate the development, in law and practice, of a safe and enabling environment in which both civil society and human rights defenders can operate free from fear, hindrance and insecurity (Ireland).
- a robust legal framework compliant with international standards that safeguards public freedoms and effective access to justice,
- a political environment conducive to civil society,
- access to information,
- avenues for participation by civil society in decision-making processes, and
- long-term support and resources for civil society.  

We will assess:

- the extent to which the domestic legal framework is compliant with international standards, with a specific focus on recent security-related laws, Internet-related regulations on content restrictions and anonymity, and expanded and tightened regulatory control over domestic civil society groups;

- restrictions on effective access to justice, including those imposed by regulatory, political, and ideological campaigns that undermine the independence of lawyers and the judiciary—two key pillars for ensuring a rule of law necessary to protect rights;

- policies designed to enforce ideological conformity and muzzle critical voices that enfeeble, rather than strengthen, a political environment conducive to civil society; and

- restrictions on long-term support and resources for civil society by political pressure and legislative means, especially the *Law on the Management of Foreign Non-Governmental Organizations’ Activities within Mainland China* that will go into effect on January 1, 2017 (FNGO Law).  

**Legal Framework Compliant with International Standards**

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

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

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

\(^88\) Recommendation 186.162: Further develop and manage internet and communication sectors, ensuring the legitimate rights and interests of ordinary people enjoying safe and secure internet usage (*Vietnam*); and Recommendation 186.166: Continue the spread of internet connections through the rural areas (*Ethiopia*).
• **Participation and freedom of association:**
  - “intensify efforts to facilitate participation of NGOs, academic institutions, and the
  media in safeguarding human rights”;
  - expand channels of direct dialogue between the government and civil society;
  - respect its international obligations on the right to freedom of peaceful assembly;
  - “allow national and international NGOs to play an active role in promoting and
  protecting human rights, specifically by expanding registration to all categories of NGOs
  and social organizations.”

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

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

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

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89 Recommendation 186.155: Reform legislation and law enforcement in order to ensure freedom of opinion and expression,
including on the internet (Germany).
90 Recommendation 186.165: Strengthen institutional guarantees for the legitimate rights and interests of news agencies and
journalists (Myanmar).
91 Recommendation 186.158: Ensure that proper investigations are conducted in all cases of attacks on journalists, media
workers and human rights defenders (Poland).
92 Recommendation 186.148: Intensify efforts to facilitate the participation of NGOs, academic institutions and the media in
safeguarding human rights (Nigeria).
93 Recommendation 186.168: Expand channels and mechanism of direct dialogue between the Government and the population
(Russian Federation).
94 Recommendation 186.167: Refrain from impeding civil society and respect its international obligations on the right to
freedom of peaceful assembly (Germany).
95 Recommendation 186.150: Allow national and international NGOs to play a full and active role in promoting and protecting
human rights, specifically by expanding registration to all categories of NGOs and social organizations in China and by expanding
their freedom to operate effectively (Netherlands).
conclusions and/or recommendations, voluntary commitments and replied presented by the State under review,” U.N. Doc.
97 See Article 19, The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, October 1,
prescribed by law that is “accessible, unambiguous, drawn narrowly and with precision so as to enable individuals to foresee whether a particular action is lawful”,99 and

- Limitations may only be justified by the protection of specified interests: “rights or reputations of others; national security; public order; public health or morals.”100

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

(a) The expression or information at issue poses a serious threat to a legitimate national security interest. A “vague and general reference to the interests of national security or public order, without being properly explained and documented” is not enough to justify restriction on freedom of expression.101 In addition, expression may not be prevented or punished on the grounds of national security “to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest.”102

(b) The restriction imposed is the least restrictive means possible of protecting that interest.

(c) The restriction is compatible with democratic principles.103 The Human Rights Committee in General Comment No. 34 has stated that restrictions “may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”104

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

Security-related Laws

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

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103 Ibid., Principle 1(3).

of the people, sustainable economic and social development, and other major national interests, and the ability to ensure a continued state of security.”\(^{108}\) In addition to a broad, vague definition of national security, the law covers activities in nearly every aspect of China’s politics, economics, and society, including political, military, economic and financial, social and cultural, nuclear, and ecological security, and, extending beyond the physical borders of mainland China, security of the seas, outer space, and cyberspace. In other words, the law considers all activities in every sector of political, economic, and social life, and their implication on the PRC government’s national security interest.

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

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

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\(^{107}\) Ibid., Art. 2.

\(^{108}\) 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/XQGB-K8MT](https://perma.cc/XQGB-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%E5%91%8A%E8%82%B2%E9%9B%84/?lang=en](http://chinalawtranslate.com/%E5%8F%8D%E6%81%90%E6%80%96%E4%B8%BB%E4%B9%89%E6%B3%95-%EF%BC%882015%E5%91%8A%E8%82%B2%E9%9B%84/?lang=en).

\(^{109}\) Ibid., Art. 3.


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

\(^{111}\) Cybersecurity Law (Third Draft), Art. 1.
order,\textsuperscript{112} and allows for the restriction of the Internet in certain regions with approval from the State Council, in the name of public order.\textsuperscript{113} It mandates local storage of data inside mainland China,\textsuperscript{114} and requires real name identification for Internet users and imposes liability on the part of Internet service providers to ensure this.\textsuperscript{115} The bill covers construction, operation, maintenance, and usage of networks, as well as their security management, within mainland China.

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

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

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

\textsuperscript{112} Cybersecurity Law (Third Draft), Art. 12.
\textsuperscript{113} Cybersecurity Law (Third Draft), Art. 58.
\textsuperscript{114} Cybersecurity Law (Third Draft), Arts. 37.
\textsuperscript{115} Cybersecurity Law (Third Draft), Arts. 24, 61.
rights, including that by individuals of Tibetan or Uyghur ethnicity.\(^{118}\) Not only do the vague and overbroad provisions of these security-related laws violate international requirements for legality, the clear political agenda underlying these laws raises serious concerns regarding whether rights restrictions can be justified by the government’s claim of a legitimate national interest that complies with international standards. That the PRC government treats the legitimate exercise of rights and peaceful expression as a serious threat does not, ipso facto, make such exercise and expression serious threats by international standards. Vague statements or efforts to invoke national security “to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology” (emphasis added)\(^{119}\) do not constitute a legitimate national interest.

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

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

A “free, open, safe and secure Internet” and the access it gives to information are critical for “individuals to make well-informed decisions and to mobilize people to call for justice, equality, accountability and better respect for human rights.”\(^{120}\)

Notwithstanding the acceptance of recommendations related to freedom of expression, including online expression, by the PRC government in its 2013 Universal Periodic Review, official views of the Internet as an anarchic medium that threatens social stability and the CPC’s grip on power continue to inform government policies and regulatory developments today.\(^{121}\) Aimed at “purifying” the environment of public opinion on the Internet\(^{122}\) and “guiding” public opinion (舆论导向),\(^{122}\) new regulations emphasize removal of user anonymity through real name registration,\(^{124}\) grant government authorities

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

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

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

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

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

129 International Covenant for Civil and Political Rights (ICCPR), U.N. Doc A/6316 (1966), Art. 19(2): “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”
that to give effect to the right of access to information, states “should proactively put in the public domain Government information of public interest” and “should make every effort to ensure easy, prompt, effective and practical access to such information” and enact necessary procedures so that citizens can access information.”

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

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

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. 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” to call for political reform.

**Expanded and Tightened Regulatory Control over Civil Society Groups**

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

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131 Ibid., para. 19.


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


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

In addition to legal, political, and ideological restrictions on civil society, the PRC government has introduced increasingly restrictive laws and draft regulations directly pertaining to both international and domestic civil society organizations. In 2016, it enacted the **Charity Law**\(^{142}\) and the **FNGO Law**\(^{143}\).

Three sets of major draft regulations have also been introduced in 2016 to expand the registration and management of civil society organizations to also include foundations\(^{144}\), social service agencies\(^{145}\), and

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

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

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

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


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

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

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

In addition to these restrictions on domestic civil society groups, under the FNGO Law, a high level of state oversight and control will be exerted over all foreign NGOs by public security authorities and by Chinese professional supervisory units (PSUs) (or business administration units (BADS)), including with respect to their activities, finances and staff. The Law also prohibits “endangering China’s national unity, security, or ethnic unity” or “harming China’s national interests,” as discussed above in the context of the PRC government’s politicized and overbroad approach to national security.

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148 Charity Law, Art. 104.

149 Charity Law, Art. 15.

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

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

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


154 FNGO Law, Arts. 7, 45-47.

155 FNGO Law, Arts. 11, 31.

156 FNGO Law, Arts. 17, 19, 30, 31.

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

158 FNGO Law, Art. 27.

159 FNGO Law, Art. 5.
The FNGO Law drew wide international attention and concern, both during its drafting and after its enactment, including from international human rights experts, and from academic, foundation, professional, and business communities. On October 12, 2016, the Ministry of Public Security and the Shanghai Municipal Public Security Bureau announced the draft Guidelines for the Registration and Temporary Activities of Representative Offices of Overseas Non-governmental Organizations within the Territory of China. Unfortunately, the Guidelines fail to provide further information on permitted fields of activities or projects to which FNGOs can carry out inside China, and do not provide a list of the Public Security Units where FNGOs may register, or a list of BADs that will be permitted to partner with FNGOs. No clear procedure for public comment on the Guidelines has been provided.

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

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

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

### Effective Access to Justice

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

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

**Undermining the Independence of Lawyers**

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

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

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

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

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

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

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

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

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

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

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

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

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

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175 Ibid.
176 Ibid.
179 Ministry of Justice, Management Methods on Law Firms [律师事务所管理办法] [effective November 1, 2016], Art. 4 (Chinese: https://perma.cc/RFQ5-GR43), no English translation publicly available.
179 Ibid.
The directive relating to lawyers prohibits them from making public statements that “reject the fundamental political system” of China, “endanger national security,” or “attack or slander” the judicial system.\(^{180}\)

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

**Undermining of the Independence of the Judiciary**

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

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

Since accepting the 2013 UPR recommendations relating to the role of the judiciary—including those on strengthening and reforming the judicial system in order to enhance public security and strengthen human rights safeguards\(^{185}\)—the PRC government has reported improvements in its judicial

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


\(^{182}\) Ibid., para. 4.


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

\(^{185}\) Recommendation 186.124: Continue its efforts to strengthen the judicial system to enhance public security and the rule of law (*Singapore*); Recommendation 186.125: Continue implementation of the comprehensive judicial reform which ensures that the judicial authorities exercise their powers in accordance with the law (*Kyrgyzstan*); Recommendation 186.126: Continue with judicial reforms with a view of strengthening human rights safeguards (*Nigeria*).
accountability system. These initiatives include recording deliberations of judicial committees and requiring committee members who participate and cast votes at the deliberations to sign their names in the meeting minutes. In 2015, The CPC Political and Legal Affairs Commission issued Provisions for the Recording, Circulating, and Holding Leaders Accountable for Interference in Judicial Actions and Meddling in Cases, which include measures to curb political interference in case decision-making.

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

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

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

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187 Ibid.
Political Environment Conducive to Civil Society

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

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

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

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

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

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

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

\(^{194}\) 186.168. Expand channels and mechanism of direct dialogue between the Government and the population (Russian Federation).

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

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


wavered confidence in communism and socialism with Chinese characteristics” and who advocates “Western Values.”

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

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

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

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203 Xinhua online, education minister: “State should not permit anyone to create Western values and concepts to enter our classrooms” (January 30, 2015), https://perma.cc/5GW7-EFY8; Donald Clarke, “Shen Kui and his three questions” (January 31, 2015), http://lawprofessors.typepad.com/china_law_prof_blog/2015/01/shen-kui-and-his-three-questions.html.
208 Ibid. The acts are identified as as the “[u]se of derogatory terminology to delegitimize civil society actors, for instance labelling them ‘foreign agents’, ‘moles’ or ‘unpatriotic’ in laws or in State-supported media, generally aims to deter criticism, discourage free expression, increase negative public opinion of civil society actors and distract attention from the issues at stake.”
What the PRC government is doing to cultivate the political environment in China is the polar opposite of the recommendations by the High Commissioner. It is a culture of intolerance where the authorities use laws and propaganda to render the people voiceless—the very antithesis of one that, in the High Commissioner’s words, “recognizes the value of civil society and encourages its engagement.”

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

### Long-term Support and Resources for Independent Civil Society

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

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

While, the PRC government has clearly supported state-vetted or officially approved efforts in human rights research and education efforts—such as those carried out by the China Society for Human Rights Studies\(^{212}\) and the China University of Political Science and Law’s Institute for Human Rights\(^{213}\)—there is extremely limited space for independent NGOs to engage in human rights advocacy activities.

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

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

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

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

\(^{211}\) Recommendation 186.47: Continue the human rights awareness and training of the population (Togo).

\(^{212}\) See [http://www.humanrights.cn/](http://www.humanrights.cn/).

\(^{213}\) See [http://www.humanrights.cn/cn/rqzz/zgrqzyjg/yjzz/t20060920_152405.htm](http://www.humanrights.cn/cn/rqzz/zgrqzyjg/yjzz/t20060920_152405.htm).


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

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

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

HRIC Recommendations

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

To China

➢ Take immediate steps to end the crackdown and reprisals against lawyers, defenders, and other citizens who are exercising rights protected by international human rights and domestic law.

➢ Adopt concrete measures to support diverse civil society participation (beyond that by officially affiliated groups), including providing access to information and opportunities to monitor and participate in decision-making processes that impact on the rights of individuals and their communities.

➢ Adopt immediate legal and policy measures to end the campaign against human rights defenders and ensure that lawyers are able to fully carry out their professional responsibilities to their clients.


217 Ibid., para. 72.

- Continue current efforts to strengthen the independence of the courts by restricting the involvement of Political and Legal Affairs Committees in cases and strengthen the monitoring and implementation of steps towards removing them from any role in the judicial review and determination of cases.

- Repeal or substantially amend the Foreign NGO Management Law (FNGO Law) to address the concerns and recommendations expressed by diverse sectors of the international community—governments, the business, academic, and professional communities, and NGOs—including repealing the restrictive regulatory framework that places foreign civil society groups under the stringent and intrusive supervision of the police.

- Review the suite of national security laws and draft laws and undertake necessary amendments to ensure that they comply with international standards for legality and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.

**To Member States**

- Demonstrate high-level political support for Chinese lawyers, defenders, and a sustainable and robust civil society space through joint public statements and other public actions, and through all available engagement tools, including bilateral dialogues, high level visits, technical assistance support, and educational and cultural exchanges.

- Respond firmly to counter official policies and practices aimed at enforcing domestic ideological conformity that seeks to undermine international human rights principles and standards under the banner of an anti-Western campaign.

- In bilateral and multilateral engagement, including providing technical assistance for and exchanges with the PRC, press for the repeal or a substantial amendment of the FNGO Law to address the concerns and expressed by diverse sectors of the international community—governments, the business, academic, and professional communities, and NGOs—including repealing the restrictive regulatory framework that places foreign civil society groups under the supervision of the police.

- In bilateral and multilateral engagement, including providing technical assistance for and exchanges with the PRC, press for a review of the suite of national security laws and draft laws and necessary amendments to ensure that they comply with international standards for legality and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.