



Submission to the UN Committee on the Elimination of Racial Discrimination

**The People's Republic of China
Combined 14th to 17th Periodic Reviews**

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The International Service for Human Rights
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Introduction and Executive Summary

ISHR is an independent international human rights NGO headquartered in Geneva, Switzerland, and focused on the global promotion and recognition of human rights defenders. ISHR has engaged with and supported Chinese human rights defenders (HRDs), including those seeking to engage with the United Nations (UN) for over a decade.

In this time, we have seen the space for civil society activism and public participation in policymaking, including but not limited to human rights, shrink and, in many places and on many issues, shut down entirely. The corollary of this is that the UN and its human rights mechanisms are increasingly important contributors to open and accessible debate and dialogue on the human rights situation in the country – and that activists, defenders and academics therefore see the role of such UN bodies as essential in efforts to hold the Chinese government accountable to its international human rights obligations.

It is in this spirit that ISHR presents the following report to the UN Committee on the Elimination of Racial Discrimination (CERD), addressing challenges to implementation of China's treaty obligations in the areas of:

I. The situation of civil society organisations in China and restrictions on their activities (p. 2)

This section focuses particularly on the issues raised in paragraph 4 of the List of Themes published by the Committee, namely the Overseas NGO Management (Foreign NGO) Law. It also notes a second problematic law, the Charity Law, which has a parallel effect of restricting the funding and operations of domestic NGOs.

II. The development of the legal profession in China and challenges to its independence (p. 5)

This section, in line with paragraph 24 of the List of Themes, addresses the amendments to the Law on Lawyers as well as additional laws and regulations on the work of lawyers. It will also highlight how the current environment is not conducive to lawyers' ability to protect against human rights violations or promote human rights norms.

III. Reprisals against defenders for engagement with the UN (p. 8)

This section will highlight how, according to numerous reports from UN human rights bodies and civil society organizations, Chinese HRDs have repeatedly been, and continue to be, the subject of harassment, stigmatization, intimidation and related forms of abuse and reprisals.

Each section concludes with a short series of suggested questions, through which the Committee can seek more detailed information from the State Party, and a list of key issues to address in the Committee's concluding observations.

I. Challenges of Implementation: The situation of civil society in China (List of Themes, para. 4)

Overall, the non-governmental (NGO) sector has developed rapidly in mainland China. By the end of 2017, the number of registered organizations, according to official sources of information, approached 800,000. However, organizations engaged in work related to anti-racial discrimination are extremely rare. This section presents profiles of a few organisations who have worked on anti-discrimination in the country; describes the kinds of threats or challenges they may face; and provides some background for how **both the Overseas NGO Management Law and the Charity Law** have had a negative impact on the environment for civil society organisations, including those seeking to promote equality and non-discrimination.

A. Development of NGOs working in anti-discrimination and poverty alleviation

In the past decade, a few NGOs worked on a broad anti-discrimination platform, including disability, gender, sexual orientation and origin (especially as regards rural migrants). However, since 2014, these groups and, individually, their founders and staff have been under strong pressure from the government. For example, the Beijing office of well-respected NGO Yirenping was inspected and closed in 2015. Many of the staff were also questioned or detained, and several have left the country to seek asylum or space to work abroad. The director of Zhongyixing, an organisation based in Guangzhou that advocated equal opportunity and anti-discrimination, was arrested on charges of “illegal business operations” in June 2015. Although he was not convicted, the organization took the decision to suspend its operations indefinitely.

NGOs working in ethnic minority areas or working for ethnic minorities are often associated with public and acceptable efforts at cultural conservation, poverty alleviation and disaster relief. These organizations have received government support, and indeed are doing important work. In his report on China, for example, the UN Special Rapporteur on Extreme Poverty and Human Rights notes that the extreme poverty rate in western China (10%), where ethnic communities are concentrated, are more than five times the rate along China’s well-off eastern seaboard (estimated at 1.8%). Among ethnic minority groups, he adds that official statistics indicate extreme poverty is strikingly high, at 12.1%.¹ In addition, it should also be noted that his trip to Yunnan Province, with a high mix of ethnic minority populations, was ‘organized entirely by the Government and in ways that defeated the Special Rapporteur’s goals of meeting with people living in poverty, representatives of civil society groups not beholden to the Government, and scholars able to speak freely.’²

Unfortunately, despite clear indications of a link between poverty and ethnic heritage, very few of these organisations have a mandate to address, or even discuss, racial discrimination. In preparing this report, several long-established organisations were consulted, but none could provide information about civil society groups working in the field of racial discrimination. On the contrary, anti-discrimination speech has been in at least one case considered criminal: in 2015, human rights lawyer Pu Zhiqiang was accused of ‘inciting ethnic hatred’ for criticizing the government’s policies toward ethnic communities in Xinjiang.³ Individual human rights defenders and networks seeking access to government data on ‘sensitive’ issues in ethnic minority regions risk criminal charges of

¹From A/HRC/35/26/Add.2, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/076/79/PDF/G1707679.pdf>

² Ibid.

³ Among many public citations, please see <http://america.aljazeera.com/articles/2015/5/15/china-charges-pu-zhiqiang-with-provoking-trouble.html>

'leaking state secrets'. More recently, in February 2018, a Chinese court sentenced a Tibetan language rights advocate to prison on charges of 'incitement to separatism', a move that was publicly denounced by a group of UN Special Procedures⁴.

Given this context, it would be fair to state that, even were an organisation engaged in work to protect the rights of ethnic minority individuals and to combat discrimination, the harsh environment for those engaged in rights defence may discourage public disclosure of its work.

B. Legal reform? The Overseas NGO Management Law

Historically, the role of the international NGO sector was crucial in helping to train and build capacity for nascent civil society organisations in China; connect them to international networks and opportunities, including at the UN; and assist in implementation of human rights projects on everything from the death penalty to environmental protection. However, the adoption of the **Overseas NGO Management (or Foreign NGO) Law** in 2016 further hampers the emergence of local anti-racial discrimination organizations and cooperation with international community.

In the past, non-Chinese NGOs relied heavily on connections and sponsorship to ensure their access to decision-makers in China; registration as an NGO was burdensome but possible, while registration as a business became an alternative, especially for smaller or local-based NGOs. According to an official spokesperson, more than 7,000 overseas NGOs were operating in China at the time of adoption of this law.

As of its entry into force on 1 January 2017, the Overseas NGO Management Law requires that 'foreign' NGOs (including those based in Hong Kong, Macau and Taiwan) operating in China are subjected to dual management by the public security department and the 'professional supervisory unit'. A group of UN Special Procedures mandate holders also focused on the law's 'overly broad restrictions' on areas of work connected to national unity – a euphemism for inter-ethnic relations; the extensive powers provided to the public security organs; and the lack of an appeals mechanism.⁵

As of July 2, 2018 – roughly 18 months after the law was applied – only 385 overseas NGOs successfully registered and established a representative office in China. Of these registered organizations, 199 are trade organizations and chambers of commerce. According to publicly available data, only 5 registered NGOs do work related to ethnic minorities; none specifically mention efforts to combat racial discrimination in their registered scope of service.

Once successfully registered, NGOs must still submit themselves to strict scrutiny by their PSU. This includes an annual review of activities, in addition to financial audits. Several foreign organisations have raised concerns that this may impeded the effective management of their activities (as it is quite time intensive); infringe on the right to privacy of individual beneficiaries; and limit the full independence of the organisation to undertake its work and to take appropriate action when violations and abuses by government actors are observed.

The foreign NGOs that are unable to register are not necessarily forced to stop their activities in China. Among those not yet officially registered, for example, it is possible to apply to carry out temporary activities. Approximately 800 temporary activities had been conducted since 1 January 2017. However, the criteria for registering and receiving approval for temporary activities create a high bar for organisations and require significant time and human resources. As a result, many foreign NGOs have

⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22683&LangID=E>

⁵ China: Newly adopted Foreign NGO Law should be repealed, UN experts urge. 3 May 2016. Available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19921&LangID=E>

withdrawn their work completely, at least until their registration is approved. Anecdotally, even organisations established over decades and with deep connections to public and academic institutions have faced significant delays.

Without meeting the letter of the Overseas NGO Management Law, no organisation is able to legally send money into China, or receive it from outside China. Small grassroots organizations, especially NGOs working with marginal groups that were already struggling to survive on limited funding available before 2016, now find themselves in desperate conditions. One small NGO announced in early 2018 stating that its operations would be stop soon because its foreign funders were forced to leave due to unable to obtain registration.

C. Failures to facilitate local civil society capacity

Logically, limitations on foreign funding could be mitigated by adopting a more favourable domestic funding environment. However, this has not been the case.

The Charity Law, which came into effect in 2016, stipulates that several types of charitable organizations can register directly. However, in the implementation, the threshold for registration of NGOs is being raised. Grassroots organization still find it impossible to register due to the requirement of attaining a professional supervisory unit – a new form of monitoring introduced with the Charity Law, and akin to those required under the Overseas NGO Management Law. This requirement has been applied retroactively; some registered organizations were asked to find professional supervisory units or to apply for cancellation of registration, in order to bring them under the new system.⁶

These individual cases are supplemented by data from the Chinese government itself. The 2017 Blue Book of Charity issued by the Chinese Academy of Social Sciences indicated that, compared with previous years, the growth rate of social organizations has had a precipitous drop. Additionally, from the entry into force of the law until July 2018, more than 48,000 local social organizations nationwide have had their registrations removed.

Finally, operating outside of the registration process is, in effect, criminalized – even if there is not financial transaction implied at all. Human rights defenders who attempted to meet together informally were frequently prevented from doing so by either being stopped from leaving their home, or their location being raided by security forces. Such tactics were used repeatedly against members of China’s political reform advocacy group the New Citizens’ Movement, whose members were arrested en masse, kept in incommunicado detention, and imprisoned. In January 2014 Xu Zhiyong, one of the movement’s founders, was convicted of ‘gathering crowds to disrupt public order’ and sentenced to four years’ imprisonment.

This demonstrates the extent to which efforts to demand transparency from and exert control over foreign NGOs have damaging effects on domestic civil society engaged in the full range of human rights promotion activities. Without the development of local civil society and the cooperation and support from international community, the emergence and development of anti-discrimination NGOs will not be possible.

D. Questions

- Poverty alleviation is a key challenge for the Chinese government, insofar as it should be done from a human rights based approach and with full respect for public participation, including

⁶ ‘Views of the Yunnan provincial government civil affairs office, regarding the reform of the social management system and relevant policies’. Available at <http://www.ynmz.gov.cn/preview/article/6123.jhtml>

from ethnic minority communities and other vulnerable groups. **How will you take forward the Special Rapporteur’s recommendations, in particular to ‘develop a comprehensive set of policies designed to ensure that human rights considerations are prominent in, rather than absent from, all aspects of its policymaking’?**

- Please describe in detail the engagement with CSOs, including those working in the area of racial discrimination, in the process of drafting the Overseas NGO Management Law.
- Please explain in more detail how the Chinese government responded to concerns that the Overseas NGO Management Law was not in line with international norms, including those raised by the Special Procedures mandateholders?
- The administrative elements required by central, provincial and local governments under the Overseas NGO Management Law and Charity Law appear to be quite burdensome. **How are registration and monitoring activities resourced, and can you disclose the budget allocations for the implementation of both laws?**

E. Recommendations

- Improve transparency of registration procedures for foreign NGOs.
- Facilitate the direct registration of local NGOs
- Provide a baseline and, within one year, an update on the number of NGOs (foreign and local) who apply for registration in China; the number who are officially registered; and the geographic and sectoral distribution.

II. Challenges of Implementation: The context for lawyers and the legal profession (List of Themes, para. 24)

The concerns raised by the Committee in this paragraph are complex, and – insofar as human rights defenders are concerned – woven throughout this submission.

It would be important to note, as regards journalists, that the Chinese government is ranked 176th in the world on the Reporters without Borders Press Freedom Index. China has the second highest number of detained journalists globally, at approximately 41, after only Turkey.⁷ Of those included in a database maintained by the NGO Committee to Protect Journalists, 14 are of Uyghur origin. An additional 4 are of Tibetan origin. In total, this means **approximately 44% of imprisoned or detained journalists in China are from ethnic minority groups**. For comparative purposes, ethnic Uyghurs make up approximately one percent of China’s population, while Tibetans make up less than one percent.

However, this section will focus briefly on the specific nature of abuses against lawyers, as a key group active in trying to protect human rights (including prisoners of conscience and imprisoned journalists). It will then shift to consider the Law on Lawyers and on the increasing framework of regulations that restrain or limit the independence of the legal profession, under the guise of efforts to provide more consistency. It should be clear that legal amendments, rather than seeking to bring practices more in line with international norms such as the UN Basic Principles on the Role of Lawyers, instead seek to legalize government efforts to restrict freedom of expression and association.

⁷ Media coverage of the CPJ report can be found here:

<https://www.nytimes.com/2017/12/13/world/europe/journalists-jailed-committee-to-protect-journalists.html>

A. The challenges to Chinese human rights lawyers

As explained by two prominent Chinese lawyers, the rule of law in China and the evolution of the legal profession is marked by not insubstantial advancements in ‘normal’ activities, largely private law, corporate law, etc. However, human rights and public interest cases are ‘carved out’ and subject to a much higher degree of scrutiny and suppression.⁸ As the majority of cases involving ethnic minorities are of the second category, or even further relegated to the area of ‘endangering national security’, this is particularly salient for the Committee to consider.

Trials of Chinese human rights defenders frequently last no more than a few hours, during which time the defendants’ lawyers are regularly interrupted or prevented from fully presenting their defence.⁹ In some cases lawyers have been physically removed from courtrooms by court police, resulting in minor to moderate injury. Independent trial observers are not permitted to attend hearings. Trials are frequently rescheduled or held secretly to avoid public observation, including by the international diplomatic community.¹⁰

Some of the most outspoken and skilled Chinese human rights lawyers are, unfortunately, unable to practice for one simple reason – they are in prison. Starting on 9 July 2015, the Chinese government and security apparatus initiated a crackdown on rights defence which continues until today. According to the most authoritative civil society estimates, at least 321 individuals – lawyers, legal assistants, and human rights activists or NGO workers – have been harassed, intimidated, detained or tried as a result of their human rights work.

B. Legal frameworks governing lawyers’ and law firms’ ability to carry out their work

The quickly deteriorating situation of the human rights lawyers in China can be traced to a number of causes, including two Ministerial regulations, namely the Measures for the Administration of Law Firms and the Measures on the Administration of Lawyers’ Practice. In force since 1 November 2016, these revised regulations are the framework for professional supervision of lawyers and law firms in China.

To practise law, lawyers in China need to have a license. This license must be renewed annually. The two regulations, one for individual lawyers, one for law firms, contain stricter rules for obtaining and renewing licenses to practise. While this is nominally intended to ‘improve the development of the legal profession’, the measures seek to ensure that lawyers and law firms have the correct ideology or political position when handling ‘major and difficult’ cases – which, unsurprisingly, usually have political implications.¹¹

One of the regulations, the Measures for the Administration of Law Firms, stipulates that lawyers are prohibited from expressing online or offline opinions that may ‘endanger national security’ or ‘incite people’s irritation against the Chinese Communist Party’. They must also refrain from expressing opinions or ‘distorting the facts’ that could lead to people to ‘disturb the public order’. Lawyers are also not allowed to demonstrate or participate in any petitions or showing any support to such

⁸ Professor Fu Hualing and lawyer and activist Teng Biao on ‘The Future of China’s Legal System’. Available at <https://www.inkstonenews.com/china/three-years-after-709-crackdown-what-future-chinas-legal-system/article/2155159?tid=324881>

⁹ Front Line Defenders – The International Foundation for the Protection of Human Rights Defenders. China 2018 Report. P 2. Retrieved from. <https://www.frontlinedefenders.org/en/statement-report/upr-submission-china-2018>.

¹⁰ Ibid.

¹¹ China Human Rights Lawyers Concerned Group. 2017 Annual Report.

demonstrations or petitions or ‘shout slogans’ to ‘maliciously hyping a case’ that could cause insult to others. Violations of this regulation could have administrative and criminal penalties.

Although Article 35 of the Chinese Constitution and Article 23 of the UN Basic Principles of the Role of Lawyers state that lawyers are entitled to freedom of speech and expression, lawyers in China are also being sanctioned for their speech *outside* their professional capacity, including online. Since the beginning of 2018, four lawyers have been punished for their online criticisms of the Communist Party of China and China’s judicial system;¹² this includes lawyer Yu Wensheng, who wrote an article shared online about the risks of Xi Jinping amending the Constitution to remove presidential term limits (which, in March 2018, he did). Lawyer Yu is currently detained on suspicions of ‘inciting subversion of state power’, and has limited access to lawyers and no access to his family.

Another law firm was pressured by the authorities to dismiss a lawyer for his regular comments on current affairs and politics online. Three lawyers had their licenses revoked or invalidated in retaliation for their public announcements about quitting the officially-run All-China Lawyers’ Association.¹³ It is worth noting that membership in the All-China Lawyers’ Association, a party-affiliated mass organisation, is a prerequisite for applying for a license to practice law.

In theory, while the desire to ensure consistency of development of the legal profession may have some logical basis, the restrictions on freedom of expression not only fail to meet the requirements of necessity and proportionality. They further limit the ability of the lawyers to achieve an outcome based on the facts, and on the protection of individual rights, as opposed to the maintenance of the current status quo – courts in China, while nominally part of an independent judiciary, are largely subsidiary to the Political-Legal Committees of the Chinese Communist Party. This brings to mind the Committee’s review of Azerbaijan, in which the Committee recognised that ‘speech protecting or defending the human rights of individuals and groups should not be subject to criminal or other sanctions’.

Besides the fact that these provisions are not in line with human rights standards, the prohibitions are vague and broadly formulated. Due to this, practically all activities of human rights lawyers working on sensitive cases could be seen as a violation of these prohibitions.

As a result of these regulations, many human rights lawyers have had requests to renew their licenses rejected. The Chinese authorities also put pressure on the law firms where the lawyers concerned work by threatening that the firm itself may not pass the annual review should the firm not discharge the lawyers concerned. This means that human rights lawyers not only run the risk of losing their license, but also their job and their income.

The threats inherent in these regulations are not theoretical. According to the China Human Rights Lawyers Concerned Group:

In the past 8 months, 17 human rights lawyers and 3 law firms from 9 different provinces have been deprived of the rights to practise as lawyers due to the revocation and invalidation of their practising licenses. In the past month alone, 6 human rights lawyers have already received notice from the Bureau of Justice that their licenses were to be revoked or invalidated. The sole human rights law firm in Guangxi, the Nanning Baijuming Law Firm, was also forced to be immediately shut down by the Nanning Municipal Bureau of Justice.¹⁴

¹² China Human Rights Lawyers Concerned Group. “A Joint Statement to Strongly Condemn the Chinese Government’s Suppression against Human Rights Lawyers through Revocation and Invalidation of Lawyers’ Licenses.” 7 June 2018. Available at: <http://www.chrlawyers.hk/en/content/%E3%80%90-joint-statement-strongly-condemn-chinese-government%E2%80%99s-suppression-against-human-rights>

¹³ Ibid.

¹⁴ Ibid.

These official state sanctions create significant disincentives to law firms to hire public interest lawyers, or even lawyers who engage in pro bono human rights defence. The chilling effect on the legal profession is widespread, and complements the official Chinese government statements that many of the “so-called” human rights lawyers’ are in fact troublemakers or criminals. In conjunction with limits on NGOs described in Section I, it further shows the decreased availability of lawyers to take on cases which support the anti-discrimination effort, or to partner with civil society on policy advocacy to ensure laws to promote internationally-recognized human rights, including those enshrined in the CERD.

C. Questions

- Please provide the average time, disaggregated by ethnicity and by province, of criminal trials.
- Please describe the process by which the revisions to the 2016 Regulations on Lawyers and Law Firms were drafted. **Was civil society included, and if so, was there representation from ethnic minority individuals or groups?**
- Please clarify the provision of ‘prohibited speech’ in the context of safeguarding the legal profession. **What criteria are applied to determine whether speech constitutes a threat to national security, and what appeals mechanisms are in place for lawyers who are accused of such speech?**

D. Recommendations

- Release lawyers unjustly or arbitrarily detained for their human rights work.
- Halt and prohibit extended pre-trial detention and detention without due process guarantees.
- Review decisions related to the right to practice of individual lawyers, including those listed above.
- Ensure that lawyers can be independent, including taking up sensitive cases.
- Duly uphold the legal rights of Chinese lawyers, in line with the UN Basic Principles on Lawyers.
- Consider means of revising all other law and regulation that hampers lawyers’ work.

III. Challenges of Implementation: Dangers of Engagement with the UN mechanisms

The sections above noted the legal environment shaping the ability for civil society organisations and members of the legal profession. They also provided details of the practical challenges facing defenders and civil society organisations engaged in the promotion of human rights, including non-discrimination and rights of minority communities, in China.

A. Cases and illustrative examples of reprisals against Chinese human rights defenders

Chinese human rights defenders, especially those who cooperate with the UN, face acts of reprisals by the government. Pattern of reprisals by the government focus on those human rights defenders who question the accountability and transparency mechanisms and call for political-legal reforms in the

country.¹⁵ Before the 2013 UPR Review of China, several activists had been detained, harassed, intimidated, arrested and banned from leaving the country.¹⁶

Perhaps the best such example is Cao Shunli. Ms Cao was an active participant in protests against the Chinese government's lack of transparency regarding its engagement with UPR – despite making a pledge to do so, upon its election to the Human Rights Council in 2009.¹⁷ She was punished for her activism by being sent to a reeducation-through-labour facility, arrested several times for 'unlawful assembly' and 'creating a disturbance', and was briefly taken into custody by police in Beijing when she was preparing to submit an application to help draft the Chinese government's 'Human Rights Action Plan 2012-2015'.

In September 2013, she was detained by the Chinese government officials from travelling to Geneva to attend a training on UN human rights mechanisms and a session of the Human Rights Council, and ultimately died on March 14, 2014 as a direct result of the conditions of her detention and refusal to provide adequate medical care.¹⁸ Her family and friends believe she was also a victim of torture. Despite her case being raised by the Human Rights Council president and several member states, both during her detention and following her death, as well as in the Secretary General's annual report on cooperation with the UN and its mechanisms (the 'reprisals report'), there has been to date no investigation. The Chinese government maintains that her detention was justified on the basis of her criminal activities.

While having never reached this level of impunity, similar reports of intimidation and reprisal have been repeated before the reviews of China by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women, in 2014, and by the Committee against Torture in 2015.¹⁹

Authorities imposed travel ban on human rights defenders alleged to have participated in UN overseas activities, claiming that such an activity 'endangers national security'. Police have repeatedly questioned aggressively several human rights defenders who have attended international human rights training with these activists being warned from 'participating in sensitive activities', their passports confiscated and destroyed by border police and some of them even being banned from travelling overseas for an 'unspecified amount of time'.²⁰ Not all intimidation succeeds at preventing participation, however. At least two individuals who participated in the CAT review, providing direct inputs to the Committee in its briefings, are currently in detention in China, under charges of 'picking quarrels and provoking troubles' and 'inciting subversion of state power'.

Finally, following the visit by the UN Special Rapporteur on Extreme Poverty and Human Rights to China in August 2016 (cited above), there have also been allegations of reprisals. Beijing-based lawyer Jiang Tianyong, who met with the Rapporteur, went missing in November 2016 en route from Changsha, Hunan province.²¹ After being held without access to his family or lawyers, he was charged with subversion. In March 2017, Jiang appeared on Chinese state media to 'confess' that he fabricated the

¹⁵ Repression and Resilience. CHR Annual Report 2017. P 8. Retrieved from. https://www.nchr.org/wp-content/uploads/2018/02/CHR-2017-Annual-Report-of-Situation-of-HRDs-in-China_Feb-2018.pdf.

¹⁶ Ibid.

¹⁷ Chinese Human Rights Defenders. Chinese Government Must Be Held Accountable for Death of Activist Cao Shunli. Retrieved from. <https://www.nchr.org/2014/03/chinese-government-must-be-held-accountable-for-death-of-activist-cao-shunli/>

¹⁸ Ibid.

¹⁹ E/C.12/CHN/CO/2; CEDAW/C/CHN/CO/7-8; CAT/C/CHN/CO/5

²⁰ Repression and Resilience. CHR Annual Report 2017. P 8. Retrieved from. https://www.nchr.org/wp-content/uploads/2018/02/CHR-2017-Annual-Report-of-Situation-of-HRDs-in-China_Feb-2018.pdf.

²¹ See <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20987&LangID=E>

accounts of torture of another lawyer, Xie Yang, to ‘smear the Chinese government.’ Jiang’s participation in overseas human rights trainings, contact with foreign officials, and receipt of overseas funds were considered credible evidence by the government to convict him and sentence him to prison.²² His family are concerned about his health and well-being in prison.²³

The Special Procedures have been adamant in treating this as a case of reprisals, and spoken out on four occasions in defence of Jiang’s freedom and integrity. In his most recent report on reprisals²⁴, UN Assistant Secretary General Andrew Gilmour notes that two other human rights defenders, Li Wenzu and Wang Qiaoling, also met with the Special Rapporteur on Extreme Poverty and Human Rights and have since been subject to surveillance and harassment.

Mr Gilmour’s report also cited the case of Mr. Dolkun Isa. Mr Isa was attending the annual Permanent Forum on Indigenous Peoples at the United Nations headquarters in New York, and he was escorted from the premises pending further examination following the receipt of information from representatives of the People’s Republic of China alleging ‘security reasons’. As a result, Mr. Isa could not resume his participation.

B. Best practices for raising concerns of reprisals in the treaty body system

The Committee on the Elimination of Racial Discrimination has made important efforts to emphasize the work of human rights defenders to contribute to the protection and promotion of rights enshrined in the CERD, as evident in:

- Reviews of Argentina, Kyrgyzstan, Mauritania, Paraguay and Peru²⁵, when the Committee noted explicitly the cases of human rights defenders by name. This is an essential part of drawing attention to those facing attacks for their human rights work.
- The review of Kyrgyzstan, recognizing that governments should ensure accountability for attacks on defenders, ‘take effective measures to ensure that CSOs, human rights defenders and journalists, including those working on the rights of ethnic minorities, are able to carry out their work effectively without fear of reprisals’, and ‘Refrain from placing organisations promoting and protecting human rights on the list of extremist organisations and materials’.²⁶
- The review of Pakistan, which clearly recognizes that lawyers and journalists can be human rights defenders, and often face similar risks.²⁷

These country-specific efforts have been strengthened in recent months by the adoption, by the chairs of the UN treaty bodies and the Special Rapporteur on the Situation of Human Rights Defenders, of a statement²⁸ recognizing the role of defenders in promoting the respect, protection and fulfillment of rights. Specifically, we wish to emphasise the view, expressed in that document, that

‘Creating a safe and enabling environment, including by promoting respect and support for the activities of human rights defenders, is essential for the promotion, protection and defence of human rights. The Treaty Bodies consider any interference, intimidation, abuse, threat, violence, reprisal or undue restrictions against human rights defenders as constituting

²² CHRD Annual Report 2017.

²³ See <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22437>

²⁴ A/HRC/36/31

²⁵ Respectively, CERD/ARG/CO/21-23; CERD/KGZ/CO/8-10; CERD/MRT/CO/8-14; CERD/PRY/CO/4-6; CERD/PER/CO/22-23.

²⁶ Para 9a,b, and d.

²⁷ CERD/PAK/CO/21-23, para. 39-40.

²⁸ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23154&LangID=E>

violations of States parties' obligations towards the realization of rights set out in the Treaties.'²⁹

Since the adoption of the San José Guidelines in 2015, the treaty body system has continually sought to improve its ability to prevent and respond to reprisals against NGOs and defenders who engage with it. These and other efforts have been adopted by the treaty body system as a whole. In fact, the joint statement mentioned above continues, concluding that governments should protect defenders against reprisals 'and any other negative consequence that they might experience in association with their actions to promote the realization of rights, **including by cooperating and engaging with the human rights Treaty Bodies**'.³⁰

The letter sent on 10 May 2018 by the Chairperson and the focal point on reprisals to the government of Russia, following cases of serious reprisals against two indigenous activists, is a strong example of follow-up by the Committee and prevention of future reprisals.

C. Questions

- What steps has the State Party taken to investigate the long list of past reprisals noted by UN human rights mechanisms?
- What is the State Party doing to ensure that reprisals are prevented, including through a clear message by the central government that actions to prevent or punish engagement with the UN and its mechanisms will not be tolerated?
- What is the current status of the investigation into the death of Cao Shunli, as well as other human rights activists who have died while in custody since the last treaty body review of China in November 2015. Specifically, this refers to Li Baiguang, Chen Shenqun, Yang Tongyan, Peng Ming, Zhang Liумao, and Nobel Prize winner Liu Xiaobo.
- Please provide written updates on the current location and status of all prisoners of conscience in China, disaggregated by ethnic origin and by type of crime.

D. Recommendations

- Increase awareness of the Committee's work, by dissemination and avoiding censorship.
- Create a safe and enabling environment for human rights activities
- Ensure accountability for reprisals

²⁹ Ibid.

³⁰ Ibid, emphasis added.