STAKEHOLDER SUBMISSION BY HUMAN RIGHTS IN CHINA

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the Third Universal Periodic Review
of the People’s Republic of China

HRIC is an international, Chinese, nongovernmental organization, founded in March 1989 with a mission to promote international human rights and advance the institutional protection of these rights in the People’s Republic of China. Key program areas include: case and policy advocacy; research, translation and other communication activities to promote awareness and effective actions to address systemic and individual human rights issues.

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INTRODUCTION

1. As a “cooperative process,” the Universal Periodic Review (UPR) assesses each United Nations (UN) member state’s implementation of its human rights obligations contained in the United Nations Charter, the Universal Declaration of Human Rights, human rights treaties, voluntary pledges and commitments, and applicable international humanitarian law. The explicit focus of the Third UPR on implementation of prior UPR recommendations presents a timely opportunity for member states and all stakeholders to advance concrete recommendations for the state under review to address challenges to meaningful progress.

2. The government of the People’s Republic of China (PRC) was reviewed under two previous UPR cycles (2009, 2013). In its National Human Rights Action Plan (2016-2020) (NHRAP), the PRC government reiterated its commitment to participating in the work of UN human rights mechanisms, including implementing recommendations made during its first two UPR cycles and actively participating in the third, and conducting international exchanges and cooperation.

3. However, concerning domestic developments reflect serious human rights abuses including ongoing crackdowns by the authorities on lawyers, rights defenders, and their families; restrictions on peaceful civil society actions including women’s rights activism; retaliation against rights defenders; and abuses in detention, including denial of medical care. Under the justification of combating “terrorism,” “separatism,” and “splittism,” the authorities have increased their military presence and issued new regulations that severely restrict the peaceful exercise of religious, linguistic, and cultural rights in Tibet and Xinjiang. These developments have raised alarm in the international community, including among NGOs, the UN High Commissioner for Human Rights, UN Special Rapporteurs, and governments.

4. Internationally and within UN bodies, China’s aggressive engagement also presents structural challenges to meaningful implementation of China’s international obligations, including UPR recommendations. A robust Third UPR is therefore critical to addressing alarming developments and trends that plainly undermine meaningful implementation and the integrity, credibility, and effectiveness of the UN human rights system, including the UPR.

5. As constructive input into China’s Third UPR, this submission by Human Rights in China (HRIC) highlights two key structural challenges presented by current domestic developments and China’s aggressive international engagement: the negative impact of (1) legal and political developments on a safe and enabling environment for civil society; and (2) China’s international efforts to advance new concepts, terms, and models on the foundation of the international human rights system: accountability of states, and the universality of human rights norms.
6. The continued deterioration of domestic human rights in China in recent years underscores the critical importance, in the upcoming UPR, of rigorous scrutiny, constructive criticism, and concrete recommendations, backed by effective actions to uphold the international human rights framework.\textsuperscript{14}

7. In its Second UPR, the PRC government accepted 204 of the 252 recommendations\textsuperscript{15} that 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; judicial reform; rights of lawyers and access to legal assistance; and international cooperation.\textsuperscript{16}

8. In addition to a review of the implementation challenges and progress on substantive rights, China’s Third UPR must examine systemic legal and political developments fueling human rights abuses and undermining prospects for genuine and sustainable human rights progress, as well as the related challenges posed by China’s mounting efforts to undermine international norms in an escalating ideological battle to replace them with its authoritarian version.

\textit{Legal and political developments undermine a safe and enabling environment for civil society.}

9. A robust civil society plays a vital role in facilitating each member state’s achievement of the purposes and principles of the UN, in the promotion of good governance and accountability, and in ensuring that policies are reviewed and improved.\textsuperscript{17} It is also an important player in the multi-stakeholder approach to the UPR\textsuperscript{18} through input into the state report, written civil society submissions, monitoring of the actual review, and implementation of recommendations and progress. All three UPR cycles allow for remote monitoring of public sessions through a live webcast and archived videos.

10. According to the national reports that China submitted for its previous UPRs, oral and written consultations were held with nearly 20 NGOs and academic institutions, and broad public input on the report was sought via the website of the Ministry of Foreign Affairs.\textsuperscript{19} But HRIC’s research of relevant official websites, including those of the Ministry of Foreign Affairs and the State Council, found little or no information regarding public consultation for those reports. (See App’x A.) Based upon HRIC’s preliminary survey of written submissions in China’s first and second UPR cycles, the participation of domestic civil society organizations was quite limited compared to overall submissions. (See App’x B.)

11. China has stated that its goal is to become a world leader in the areas of technology and the Internet, investing billions of dollars in this pursuit, including expanded “informatization” for greater citizen access to public services.\textsuperscript{20} Yet with more than 700 million people online, and this enormous technology capacity, China has the ability to do much more to raise public awareness of UN human rights mechanisms, including the UPR, to increase civil society participation in these processes. What is lacking is the political will necessary to create a safe and enabling domestic environment.
12. However, related recommendations the PRC government accepted or asserted as already being implemented in its Second UPR 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,” as well as numerous others (see App’x C) that protect the exercise of the rights to freedom of expression and association—rights that are critical to the effective exercise and promotion of all other civil and political, and economic, social, and cultural rights.

13. To ensure a safe and enabling environment for civil society, the UN High Commissioner for Human Rights has identified five essential elements: 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.

14. However, as we concluded in our mid-term assessment following China’s second UPR, key legal and political developments in China in recent years exacerbate an already hostile and restrictive political environment that severely restricts peaceful exercise of rights, access to information, participation, and long-term support and resources. A UN expert has observed that even where China prioritizes implementation of economic, social, and cultural rights, it has rejected a rights-based framework that is widely recognized as critical to sustainable, effective development, raising serious concerns about the government’s respect for rule of law and rights in its poverty alleviation efforts.

15. Instead of adhering to a legal framework compliant with international standards, the Chinese government uses the Cybersecurity Law and implementing regulations to severely curtail freedom of expression, access to information, a free press, and privacy—steps aimed at obscuring and stamping out the diverse views that exist in civil society. This regulatory framework intensifies Internet censorship, bans virtual private networks, requires real-name registration for online accounts, creates peer monitoring and reporting channels, penalizes service providers for hosting “illegal” content, and tightens restrictions on news media and news websites. Foreign journalists working in China also face increasingly difficult restrictions; even foreign journalists outside will encounter China’s retaliation for stories deemed critical by the authorities.

16. As its implementation to date demonstrates, the Law on the Management of Overseas Non-Governmental Organizations’ Activities Within Mainland China is severely limiting access to long-term support and resources. Treating foreign organizations as a security risk, the ONGO Law restricts Chinese civil society groups’ access to foreign support and cooperation to only officially-sanctioned foreign groups—those mostly in the trade, social services, or education sectors and able to navigate the systematic supervision and monitoring by the police. Conspicuously missing are groups engaged in rights defense or independent grassroots work.

17. Most significant among major legal and political changes that further limit citizen participation and exercise of rights, is the elimination of the two-term limit for the president and vice president from the Party and State Constitutions, a change that allows the concentration of unaccountable power. President Xi Jinping—also chairman of the Central Military Commission and Secretary General of
the Party, and head of all the key national leading groups, including the Cybersecurity Leading Group—is now potential president for life.

18. “Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era” is now also enshrined in the Party and State Constitutions. The comprehensive ideological guidance (“14 Upholds”) set out by Xi Jinping Thought treats an uncontrolled civil society as a threat under its all-encompassing approach to national security and requires upholding “absolute Party leadership over the people’s forces.”31 Instead of a rule of law, China now clearly pursues a “rule/govern-by-law” model, the key tenets of which are also outlined in Xi Jinping Thought.32 Despite the reference to people as “masters of the country,” the Chinese model of “democracy” is—in law, fact, and policy—a one-party dictatorship with one powerful leader without term limits: it is, in any light, a mockery of any claims of respect for fundamental rights and freedoms.33

19. As has been cogently articulated by the Special Rapporteur on Extreme Poverty, “The most difficult and complex challenge in this respect is to understand how the leading role of the Communist Party can co-exist with the recognition of individual rights and the provision of meaningful accountability mechanisms which are an indispensable element in a human rights framework.”34

*China’s efforts to replace international norms and language marginalize accountability, enable impunity, and threaten the integrity and effectiveness of the international human rights system.*

20. On the 70th Anniversary of the *Universal Declaration of Human Rights*, it is timely to reaffirm the fundamental principle that human rights are “equal and inalienable rights of all members of the human family,” common to all human beings, across ethnicities, cultures, national borders, economic conditions, and political systems. Respect for and protection and promotion of international human rights—universal, indivisible, interrelated, interdependent and mutually reinforcing35—must be upheld as the core standard for assessing human rights progress.

21. However, as China continues to invoke “human rights with Chinese characteristics” to deflect and reject international scrutiny of its human rights record, and assert concepts and terms such as “judicial sovereignty,” “Internet sovereignty,” “rule/govern by law,” and China’s “model of democracy,” China’s engagement in the international human rights system presents challenges to universal human rights norms, values, and principles. Xi Jinping’s message of China’s national rejuvenation and readiness to retake the center of the global stage raises additional concerns, especially when viewed within the context of characterization by the president of the nation’s highest court that judicial independence and constitutional democracy are “erroneous” ideas from the West.36

22. Specific approaches being advanced by China internationally include: a “governance” approach to rights, a people-centered development model, and a focus on international “cooperation” among states. Common to these state-centric approaches is the marginalization of state accountability for ensuring respect, protection, and promotion of human rights, and a rejection of the “Universality” of rights in favor of the “localization” of rights as equal to and a replacement for international standards. Foreign Minister Wang Yi has articulated this view:
There is no one-size-fits-all approach in human rights practices. No one path of human rights development should be regarded as the only choice, nor should we mechanically follow the paths of other countries. Instead of imposing either eastern or western models, we need to advocate diversity and localization, and work for a rebalancing of human rights models. No one path or system is superior to others as each has its own distinctive features.  

23. China’s “human rights with Chinese characteristics” also reflects a deep distrust of an uncontrolled civil society, as was evident in its proposal of 31 amendments to a resolution on human rights defenders that sought to replace every mention of “human rights defenders” with “individuals, groups and organs of society.” As China increasingly attempts to insert its domestic policies and approaches into the international human rights arena—including through the manipulation of language—more effective, results-oriented responses must be advanced by member states as highlighted by a recent example.

24. At the 37th session of the Human Rights Council, China sponsored a resolution (with eighteen other states) entitled, “Promoting Mutually Beneficial Cooperation in the Field of Human Rights.” The resolution’s use of terms taken directly from Xi Jinping Thought, such as “community of shared future” and “mutually beneficial cooperation,” drew statements of concern from member states. States also noted that the resolution reflected a shift away from an established UN accountability framework under the guise of “respect,” “common ground,” and “constructive cooperation.” Some states delivered oral statements against the resolution and cited concerns about its undefined and vague terms, its overemphasis on states at the expense of individuals, and that the proposed approach would ultimately fail to hold states accountable. But despite these concerns, the resolution passed with 28 yes votes, 17 abstentions, and only one no vote. In the face of China’s true intention behind “mutually beneficial cooperation” regarding human rights protection, the only principled stance is to unequivocally say no to these normative attacks led by China.

25. At a moment when China’s global economic and political influence is increasingly more powerful, a rigorous implementation-focused Third UPR of China is a critical test of the effectiveness of this “cooperative” mechanism and of the political will of Human Rights Council member states to ensure the legitimacy, credibility, and effectiveness of the system itself. This is not to “politicize” the process, but to ensure that authoritarian power politics do not destroy the purpose of the system—to ensure peace, stability, and human rights. As the High Commissioner for Human Rights has warned: ‘For it is the worst offenders’ disregard and contempt for human rights which will be the eventual undoing of all of us. This, we cannot allow to happen.”
RECOMMENDATIONS

Recommendations to China

26. The government of the PRC must demonstrate more effective cooperation with the UN human rights system, including consideration and adoption of the following steps prior to, during, and following its Third UPR:

- Include systematic assessment information in China’s Third UPR state report, such as specific indicators and benchmarks to enable a meaningful assessment and promotion of progress.

- Draw upon its advanced and considerable technology capacity to promote greater awareness and diverse participation by widely disseminating information:
  - on official websites of all relevant government ministries and subnational government departments, and mass organizations regarding China’s international human rights obligations and outcomes of UPR cycles; and
  - on opportunities for civil society to provide input into, monitor, and engage with China’s Third UPR and upcoming treaty body reviews (CEDAW, CAT, and CERD), including opportunities to monitor and engage remotely.

- Review the NHRAP (2016-2020) to ensure compliance with the international human rights framework and adopt and implement concrete measures to ensure full civil society participation in monitoring its implementation and the progress of UPR recommendations China has accepted or will accept.

Recommendations to Member States

27. The international community must use the opportunity of China’s Third UPR to address more effectively the root causes of the systemic human rights abuses and ongoing impunity by China. HRIC urges member states to take clear, principled stances backed up by effective actions including:

- Continue to demonstrate and expand high-level political and concrete support for human rights defenders and independent civil society through joint and individual government actions, including mainstreaming of a rights-based framework in bilateral engagement, technical assistance, and exchange programs.

- Call out the human rights abuses fueled by domestic Chinese policies and practices aimed at enforcing ideological conformity and comprehensive social control, and express concrete support for a safe and enabling environment for civil society.

- Press for review of the suite of national security and cybersecurity laws and regulations to promote compliance with international standards for legality, and that any restrictions on fundamental freedoms and rights are necessary, proportionate, and related to a legitimate government interest.
➢ Adopt clear principled responses, including constructive criticism and concrete recommendations to counter any international efforts to replace international norms with Chinese concepts and models on development, human rights, and governance.

➢ Urge China, within the explicit focus of the Third UPR on implementation, to commit to a specific timeframe for the ratification of the *International Covenant on Civil and Political Rights*, but not beyond the time period of the NHRAP (2016-2020).


4 Ibid.

5 Ibid.


7 Office of the High Commissioner for Human Rights, “China: UN Experts Concerned About Health of Jailed Rights Lawyer Jiang Tianyong,” March 23, 2018, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22890&LangID=E; Office of the High Commissioner for Human Rights, “Press Briefing Note on Turkey, China, and Cambodia,” July 7, 2017, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21852&LangID=E (“We are very concerned at reports that Liu Xiaobo’s health has seriously deteriorated over the past 24 hours. As you know, we have been engaging with the Chinese authorities about the situation of Liu Xiaobo and his wife, Liu Xia. However, we have received no further information from the Chinese Government regarding them for more than 24 hours. The welcome request for medical support for Liu Xiaobo should be responded to urgently, and amid these latest reports of the deterioration of his health, we believe the UN should be
granted access to both Liu Xiaobo and Liu Xia. The High Commissioner, given the urgency and seriousness of the situation, will continue to follow developments regarding Liu Xiaobo and Liu Xia closely.


14 Ibid.


16 See App’X C.


22 Ibid.


30 As of January 2018, 322 representative offices have been established, with over 160 engaged in work described as “trade,” and over 80 as “education.” The next highest categories include international relations, youth, health, and disaster relief. During this same period, 543 temporary activity permits were approved (240 in education, 90 in youth, and over 50 in health categories.) Jessica Batke, “Visually Understanding the Data on Foreign NGO Representative Offices and Temporary Activities,” ChinaFile, March 2, 2018, http://www.chinafile.com/ngo/analysis/visually-understanding-data-foreign-ngo-representative-offices-and-temporary-activities.


32 These are: Ensure Party leadership over all work (坚持党对一切工作的领导); continue to comprehensively deepen reform (坚持全面深化改革); Exercise full and rigorous governance over the Party (坚持全面从严治党); Ensure that the people run the
country as masters of the country; Ensure every dimension of governance is law-based; and Uphold core socialist values.

33 The Universal Declaration of Human Rights guarantees “the right [of everyone] to take part in the government of his country, directly or through freely chosen representatives.” U.N. General Assembly, “Universal Declaration of Human Rights” (December 10, 1948), Art. 21.


40 U.N. General Assembly, “Result of the Vote: L.36 as Orally Revised—Promoting Mutually Beneficial Cooperation in the Field of Human Rights,” March 23, 2018, https://extranet.ohchr.org/sites/hrc/HRCSessions/RegularSessions/37thSession/Resolutions/A_HRC_37_L.36/Result%20of%20the%20vote.pdf. Some states (United States, Australia, Slovakia on behalf of the European Union, Japan, Switzerland, and the Republic of Korea) delivered oral statements against the resolution and cited concerns about the resolution’s undefined and vague terms, its overemphasis on states at the expense of individuals, and that the proposed approach would ultimately fail to hold states accountable.