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Human rights defenders and lawyers in China:

A mid-term assessment of implementation during the UPR second cycle

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Cover image: This image was created by Badiucao, a Chinese activist working outside the country. It represents the range of human rights violations addressed by UPR recommendations to China, including surveillance, harassment,torture, death in custody and violent suppression of dissent.

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DISCLAIMER

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'The second and subsequent cycles of the review should focus on, *inter alia*, the implementation of the accepted recommendations and the development of the human rights situation in the State under review.'

A/HRC/RES/16/21, 12 April 2011

'China will earnestly fulfil its obligations set out in the international human rights conventions to which it has acceded, submit reports on implementation in a timely manner, and receive considerations by relevant treaty bodies, including the Committee on Economic, Social and Cultural Rights. China will be ready for the second round of the universal periodic review and engage in constructive dialogue with other countries.'

A/68/90, Note verbale from the Permanent Mission of China to the UN expressing its desire to join the membership of the Human Rights Council, 6 June 2013

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I. Overview

On 22 October 2013, the UN Human Rights Council conducted the second Universal Periodic Review (UPR) of the People's Republic of China, and on 4 December 2013 released the report of the Working Group, including the 'conclusions and recommendations' from the review. In total, the Chinese government received 252 recommendations from a broad range of countries.

Of these 252 recommendations, only eight addressed the need to protect human rights defenders. The Chinese government noted five, and accepted a paltry three, recommendations in this critical area. The situation for lawyers, another population increasingly under pressure from Chinese authorities, was addressed through an additional four recommendations, all of which were accepted by the government.

Now, more than two years after this review, the mid-term point of the UPR can be an important moment for reflection: as regards human rights defenders and rights defence lawyers, how has the Chinese government fared in implementing accepted recommendations? Have they, or haven't they, lived up to their commitments? And – perhaps most importantly – has the legal and operational environment for lawyers and human rights defenders in China improved?

The following report aims to answer these questions and provide a mid-term assessment of recommendations related to these two key stakeholder groups. It further suggests a way forward for the UN Human Rights Council and its members to improve follow-up to the UPR in China.

II. Rights defence lawyers

Recommendations, responses and commitments

The four commitments China undertook related to lawyers were accepted without elaboration. These included:

1. Recommendation 186.29 (Hungary)
   "Further improve the regulatory framework for lawyers conducive to the unhindered exercise of theirn profession, and continue to harmonise laws and regulations with international standards."

2. Recommendation 186.30 (Cape Verde)
   "Further strengthen the conditions in which lawyers exercise their functions."

3. Recommendation 186.31 (Finland)
   "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."

4. Recommendation 186.32 (Finland)
   "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."

Despite the alacrity with which these were accepted, actual implementation of the recommendations tells a different story. The professional environment for lawyers, in both law and practice, does not reflect the commitments the Chinese government has made. To the contrary, the ability of lawyers to perform their professional duties is more restrained now than in 2013; many rights defence lawyers have even been detained.

Restrictions on lawyers' right to freely associate

For a long time, the ability for the legal profession to operate according to law has been vulnerable to abuses by the judicial system at multiple levels, starting from the grassroots level at the professional 'bar association'. Every year the administrative branches of the judicial system conduct 'annual reviews' of lawyers and law firms; membership in the officially organised 'bar association' is mandatory, as is the payment of membership fees.

In 1997, China adopted a Law on Lawyers. Article 45 states that lawyers and law firms must join local bar associations; each of these associations, in turn, is a member of the All-China Lawyers Association. This provision appears to be in contradiction to the 35 article of the Chinese Constitution, which affords all citizens the right to freedom of association. It furthermore does not comply with the spirit or principles of the regulations for the registration of social groups, which state that 'Social groups can be formed voluntarily by Chinese citizens.'

Human rights lawyer **Zou Lihui**, the director of Fujian-based Yeyang Law Firm, objected to this system, harshly criticising the haphazard, mandatory, and non-transparent collection of fees and calling into question the legality of this function of the bar association. Because of this dissent, both the bar association and the local judicial authorities retaliated by suspending Zou's right to practice law for three years. On 17 November 2015, while Zou was representing a Falun Gong practitioner in court, the judge defamed the lawyer. When she appealed to higher levels for censure of the judge's behaviour, she was detained on the basis of violating professional ethics.

In October 2015, over 50 lawyers in mainland China signed a petition calling for the revision of the Law on Lawyers. One of these, a lawyer named **Wang Longde**, was refused approval by the judicial authorities after withdrawing from the bar association. Two months later, without receiving any reply or follow-up to their request, the lawyers sent a letter directly to the National People's Congress demanding the revision of Article 45 on the ground that it does not comply with the Constitution.

In December 2015, the Chinese government put one more nail in the coffin of an independent legal profession with the publication of the 'Opinion on Improving the Unified Qualifications in the Legal Profession'. This Opinion calls for the application of standards for lawyers across three areas – political thought, expert study, and legal qualifications – and is likely to increase the severity of control by the Party over the legal profession.

Limits on access to information

On 16 September 2015, five major bodies – including the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security, and the Ministry of Justice – released a joint regulation titled 'Provisions on Ensuring Lawyers' Procedural Rights'. In this formulation, the term 'ensuring' is a euphemism for increased monitoring and management. According to Chinese rights defence lawyer **Li Fangping**, these regulations do represent slight progress, but at the same time mark a huge step back and, for many actually violate the Criminal Procedure Law. Li continues:

> ‘For those cases related to so-called ‘State Secrets’, the agreement of both the procuratorate and the court is required for a reading, which basically means that if one of the two bodies argues that the content is a ‘state secret’, lawyers would not be able to access the file and effectively represent the defendant.’

It could also be a barrier to the ability to appeal cases, as both bodies must agree to put the case on record before a lawyer can read the file – which infringes on the ability of the lawyer to carry out his or her professional duties. When the case information is not disclosed in the situation of violations of rights, even where a lawyer has access it appears that the new regulations restrict the disclosure of that information in the courtroom. Li Fangping adds:

> ‘These are effectively regulatory refinements of the Criminal Procedure Law. By restricting lawyers’ right to disclose information, the government makes it easier to cover up the truth [about these cases].’

Limits on access to counsel

Lawyers’ access to meetings with their clients is difficult, especially in cases that touch on human rights. When they seek to meet with a detained defendant, they often come up against unnecessary obstructions or excuses. On 11 October 2014, Beijing lawyer **Yu Wensheng** went to the Fengtai police station to meet his criminally-detained client, Zhang Zonggang. Because of his vocal support for the Hong Kong protests, Zhang had been detained by the local authorities for ‘picking quarrels and provoking troubles’. On the day of Lawyer Yu’s visit, the officers at the police station refused to allow the meeting, violating the rights of the detained to access counsel, and the right of Yu himself to conduct his work. Yu filed a complaint, but the authorities never responded to the case; instead, Lawyer Yu himself was taken into custody on 13 October 2014, and held for 99 days. During his detention, he reportedly endured interrogations that lasted up to 17 hours, and was subjected to physical abuse.[1] Neither his family members nor his lawyer received any official notification about his detention or were able to get in touch with him. After being released on bail, the police warned him not speak about his detention, under threats that they could detain him again at any time.[2]

This is especially salient in cases linked to violations against members or practitioners in churches in southeastern China. For example, lawyer Zheng Xiang was continually prevented from accessing his client, a pastor at a church in Zhejiang province. Lawyer **Zhang Kai**, who was well-known for defending the rights of Christians and members of house churches, was detained in Wenzhou on 25 August 2015 along with his two assistants. The authorities charged them with disturbing public order and ‘providing state secrets to foreign intelligence’. Zhang was put under, and as of late January 2016 remained in, residential surveillance in a designated location, while the application of crimes ‘endangering national security’ has allowed the authorities to block legal forms of assistance and to prevent his lawyers and family members from notification of his status.

On 23 March 2016, Zhang Kai was released by the police after being detained for seven months[3] and was sent back to his birthplace in the northern region of Inner Mongolia. The news of his release was made on his main Chinese social network account, where he mentioned being back home: ‘I have returned to my home in Inner Mongolia safely… thank you to all my friends for your concern, caring and

1 NY Times. China Targeting Rights Lawyers in a Crackdown. 22 July 2015. www.nytimes.com/2015/07/23/world/asia/china-crackdown-human-rights-lawyers.html?_r=0

2 NY Times. Chinese Human Rights Lawyer Is Unexpectedly Freed a Day After Being Detained. 8 August 2015. www.nytimes.com/2015/08/09/world/asia/yu-wensheng-chinese-rights-lawyer-is-unexpectedly-freed.html

3 Amnesty International. China: Lawyer defending Churches in China Released : Zhang Kai. 25 March 2016. www.amnesty.org/en/documents/asa17/3715/2016/en/

giving consolation to my family during this time. And thanks to the Wenzhou police, who have taken care of me during this time'.[4] Unfortunately, his release and freedom are likely to come with conditions, according to his defense lawyer Li Guisheng.[5] Li still hasn't been able to access any official documents regarding Zhang's case, but it is likely that regular surveillance of Zhang's activities will continue. Further details on the conditions of his release are still unknown.

Crackdown on human rights lawyers

For human rights lawyers in China, the situation has not improved since the October 2013 UPR review. In fact, it has gotten significantly worse, with lawyers becoming the primary targets of repression by the authorities.

The impact of the crackdown which worsened on 9 July 2016 (the '709 crackdown') has been to discourage support to those lawyers who seek to defend human rights, and to isolate them from mainstream lawyers and other parts of Chinese society. As of 4 March 2016, 317 lawyers, legal assistants, human rights defenders, and family members had been 'asked to tea', briefly detained, prevented from leaving the country, kept in 'soft detention' or 'residential surveillance', criminally detained, or forcibly disappeared. In January 2016, lawyers who had been under 'residential surveillan**ce**' for six months **– Li Heping**, **Xie Yanyi**, **Wang Yu**, **Bao Longjun**, **Zhou Shifeng, Wang Quanzhang**, **Li Shuyun**, **Liu Sixin**, **Zhao Wei**, **Gao Yue**, **Xie Yang**, and **Li Chunfu** – were suddenly charged with criminal activity, including many cases of subverting the state or incitement to subversion. They were transferred directly into formal, criminal detention.

The Communications report of the UN Special Procedures, made available before the March 2016 Human Rights Council, documents the efforts of UN human rights experts to halt the crackdown. A Joint Urgent Appeal was sent to the Government of China on 15 July 2015 regarding the arbitrary arrest and detention (in some cases incommunicado) or the questioning of 140 lawyers, including law firm employees, legal staff and human rights defenders, which included Wang Yu and her husband Bao Longjun. A Government reply had been received on 9 October 2015 and, at the time of publication by the OHCHR in February, was still being translated.[6]

4 Ibid.
5 RFA. Status of Released Christian Rights Lawyer Still Unknown. 25 March 2016. www.rfa.org/english/news/china/status-03252016104848.html?searchterm:utf8:ustring=Zhang+Kai
6 CHN 6/2015.

Specifically regarding Wang Yu's case, her defence lawyer Li Yuhan finally received word from Tianjin city police after months of seeking information. The authorities said that Wang had 'confessed' to charges of subversion on March 2016; they refused Li's request to meet with her client to confirm this confession. Representatives o three detained lawyers – Wang Quanzhang, Li Heping, and Xie Yang – were told that their detention had been extended for another month. According to articles 154 and 156 of the Criminal Procedure Law, the two-month detention period can be extended twice with the approval of the procuratorate, or public prosecutor's office – one month for the first application and two months for the second application. On 3 April 2016, Human Rights Watch published a report noting that 'under Chinese law, the procuratorate has until April 8-9, 2016, to decide whether to again extend their pre-trial detentions'.[7]

A recent and worrying trend is the increase of reports of detainees allegedly 'dismissing' their defence lawyers and 'requesting' new ones, appointed by state authorities.[8] Of the 11 cases documented by the Network of Chinese Human Rights Defenders (CHRD), ten are linked to the July crackdown. Family members and legitimate defence lawyers are unable to independently confirm these decisions, and in at least one case claim to have seen 'evidence' of the decision that was blatantly falsified. In an open letter sent on 5 March 2016, family members of the detained lawyers asked the National People's Congress to set up a special committee to investigate the detentions.[9] Lawyer Wang Shaoguang, who represents **Zhou Shifeng**, explained that he couldn't confirm the status of his client, who is said by police to have 'confessed' to the charges against him.[10]

The harassment also continues on a much lower profile with other cases, including many that involve the protection of economic, social, and cultural rights. **Shu Xiangxin**, a human rights lawyer from Shandong province, was known locally for his engagement on human rights cases, his representation of land owners falsely charged with 'extorting the government,' and his reporting on illegal land seizures by government officials.

On 2 January 2016, Shu was formally arrested on suspicion of 'defamation'.[11] He was reportedly subjected to torture and other forms of ill-treatment in a detention centre on 4 January 2014. His two lawyers were denied access to visit him at first, but were permitted to visit him on 4-5 January at Jinan City No. 2 Detention Center in Shandong Province. Shu described to his lawyer Cai Ying being subjected to torture and degrading treatment, as well as being handcuffed, severely beaten, deprived of food and water, and forbidden from using the toilet.[12] Medical examinations conducted from 6-8 January 2016 describe the deterioration of his physical health while in pre-trial detention, exacerbated by a lack of access to proper medical care.

On 8 January, the Jinan City court sentenced Shu Xiangxin to six months in jail. During the proceedings, the court refused to approve defence lawyers seeking to work on the case, and Shu's daughter – who was waiting outside the courthouse – was reportedly beaten by the son of the plaintiff. The local police, while they did not actively participate, did not intervene to protect her.[13] Mr Shu's daughter was transferred to the hospital by ambulance. There has been no report of any investigation being conducted

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7 Human Rights Watch. China: Detained Lawyers, Activists Denied Basic Rights. 3 April 2016. www.hrw.org/news/2016/04/03/china-detained-lawyers-activists-denied-basic-rights

8 CHRD. Forced 'Switch' to police-appointed lawyers further erodes protections for detained rights defenders. China Human Rights Briefing, 15-21 March 2016. https://chrdnet.com/2016/03/chrb-forced-switch-to-police-appointed-lawyers-further-erodes-protections-for-detained-rights-defenders-315-321-2016/

9 敦请第十二届全国人大第四次会议各参会代表、主席团、代表团就"709"大抓捕事件成立特别调查委员会的建议. Available at http://wqw2010.blogspot.ch/2016/03/709.html. Accessed 4 April 2016.

10 RFA.Two More Fengrui Detainees Formally Arrested For Subversion. 14 January 2016.

11 CHRD. Torture of Chinese Human Rights Lawyer Emblematic of Persistent Pattern of Official Reprisal & Abuse. 8 January 2016. https://chrdnet.com/2016/01/chrb-torture-of-chinese-human-rights-lawyer-emblematic-of-persistent-pattern-of-official-reprisal-abuse-11-7-2016/

12 CHRD. Torture of Chinese Human Rights Lawyer Emblematic of Persistent Pattern of Official Reprisal & Abuse. 8 January 2016. https://chrdnet.com/2016/01/chrb-torture-of-chinese-human-rights-lawyer-emblematic-of-persistent-pattern-of-official-reprisal-abuse-11-7-2016/

13 www.boxun.com/news/gb/china/2016/01/201601090052.shtml#.Vw2eSdR97eM

by the authorities into the beating. This kind of local retaliation is common for lawyers, in particular in China's second- and third-tier cities and in rural areas.

III. Human rights defenders

Recommendations, responses and commitments

The three commitments China undertook related to human rights defenders were, it claimed upon adoption of the report in March 2014, either already implemented or currently in implementation. These included:

1. Recommendation 186.62 (Switzerland)
   'Ensure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subjected to reprisals.'

   Response (China)
   'Accepted and have already implemented. There are a large number of organisations and individuals that safeguard others' rights and interests in China. Their activities receive the encouragement, protection, and support of the government. No one has suffered reprisals because of their involvement in legal activity or their participation in international mechanisms. As for those individuals or organisations who engage in illegal or criminal activities under the banner of 'rights defence', they will be duly prosecuted by the Chinese government and punished in accordance with the law.'

2. Recommendation 186.149 (Ireland)
   '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.'

   Response (China)
   'Accepted and being implemented. In accordance with China's Constitution and relevant national laws, citizens enjoy freedom of speech, the press, assembly, association, movement, demonstration, and religious belief. The Chinese government guarantees citizens' ability to exercise these rights in accordance with the law. The Chinese judicial organs will address any behaviour that violates citizens' personal or democratic rights impartially and in accordance with the law. No so-called 'crackdown on human rights defenders' exists.'

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

   Response (China)
   'Accepted and being implemented. See 186.149.'

Throughout the responses of the Chinese government, civil society is concerned that the language used is the typical sophistry and elides the specificity of the recommendations with false argumentation. On the one hand, the responses seem to refute the existence of any pressure on human rights defenders; on the other, the government justifies its efforts to pressure human rights defenders by defaming them as 'criminals'.
It could be possible that the situation is in fact the way the Chinese government describes, that there is

no crackdown on or reprisals against human rights defenders. It could be that they are in fact providing a safe and enabling environment for human rights defenders and their work, and that cases of violence or attacks against human rights defenders are objectively investigated and resolved.

However, the overwhelming evidence of government law and practice over the last two years, when compared against the commitments undertaken by the acceptance of these three recommendations, tells a very different story to the Chinese government response.

Restrictions on the activities of human rights defenders and cases of reprisals: Assessing implementation of Recommendation 186.62

Despite claims that this recommendation is already implemented, in reality the opposite is clearly true. Not only has it not been implemented in law or in practice in China, but the cases of individual defenders targeted by reprisals continue to grow. Two cases are particularly emblematic of reprisals by the Chinese government – those of **Ms Cao Shunli** and **Mr Zhou Weilin**.

When China was elected as a member of the Human Rights Council in 2013, the government had already committed to cooperate with the Council and its mechanisms, including the UPR. However, on 14 September 2013, Chinese human rights defender **Cao Shunli** – who was en route to Geneva to participate in training and advocacy around the UPR - was stopped by local police at the Beijing airport. She was held in detention without charge until 21 October 2013, when the government arrested her formally on charges of creating a disturbance. In prison, Cao Shunli was tortured, fell ill and was denied access to adequate health care. She died in a military hospital on 14 March 2014.

Similarly, Anhui human rights defender **Zhou Weilin** planned to come to Geneva in September 2013 for training and attendance at the UN Human Rights Council. However, he was criminally detained before he could leave. He remained in detention without charge until December 2013, when he was found guilty of 'gathering a crowd to disturb public order' by the Hefei City court and sentenced to 18 months in prison. He was released in February 2015.

The cases of Cao and Zhou reflect the lengths to which the Chinese government, far from facilitating cooperation with the UN mechanisms, will go to limit the ability of defenders to access these mechanisms. For their legitimate activities raising awareness among civil society about the UPR, Cao and Zhou were charged with inflated and inappropriate criminal penalties as direct reprisals for their work.

In fact, even those who are not seeking to participate at the UN, but who conduct work around an international calendar – for example, International Women's Day – have been targeted. On 6 and 7 March 2015, **five feminist activists** – **Wu Rongrong**, **Li Tingting**, **Wang Man**, **Zheng Churan**, and **Wei Tingting** – were detained by the authorities for their work to organise actions to oppose sexual harassment on International Women's Day, 8 March. After a five-week incarceration, which included ill treatment, medical neglect and harassment, the five women were released on bail last April, after being detained on suspicion of 'picking quarrels and provoking troubles'.[14] At least one of the five, Wu Rongrong, was allegedly tortured while in detention.

At the end of February 2016, lawyers for the 'Feminist Five' issued a joint statement addressed to the Supreme People's Procuratorate and the National People's Congress, calling the case a miscarriage of justice and asking why the prosecution had not withdrawn it. To date, no government entity has

14 RFA. One Year On, China's Five Feminists Remain Under Tight Surveillance. 1 March 2016. www.rfa.org/english/news/china/surveillance-03012016110929.html?searchterm:utf8:ustring=Wu+Rongrong

answered their questions and there has been no move from the police to drop the case.[15]

Over one year after their detention, the five women are still not free to live a normal life. Zheng remarked in an interview, 'It's hard for us to go about our lives or our work'.[16] The police continue to interfere in their personal lives. Fellow activist Wu mentioned that she is constantly under police surveillance and these restrictions make it hard for her to seek work. Moreover, because the authorities never formally dropped

the charges against the five women, they are now in a kind of 'legal limbo'. Without clarification of their current legal status, and until all charges are formally dropped, the women can be considered by the authorities as criminal suspects who can be arrested and indicted.[17] This constitutes an effective threat against carrying out additional human rights work.

An enabling environment for civil society and rights defence: Assessing implementation of Recommendation 186.149

In its response to this recommendation from Ireland, the Chinese government declared that it was already implementing an enabling environment for civil society. Not only has this commitment not been fulfilled, but recent actions show the Chinese government backpedalling on protection of freedom of association and the ability for NGOs to operate freely. In both law and practice, the restrictions on the working environment for civil society and human rights defenders have increased.

1. Shrinking space for freedom of expression

   In September 2013, the Supreme Peoples' Court and Supreme Procuratorate issued the 'Interpretation of Issues regarding applicable law in cases of using information networks to commit defamation and other crimes' (also referred to as Legal Interpretation No. 21, 2013). This interpretation justifies the use of efforts to suppress online speech in cases of 'combatting online rumours'. As one commentator noted at the time, 'Not only in terms of procedure, but also in terms of substance, this [law] comes about at the cost of freedom of speech.'

   On mainland China, with the exception of online media content, all newspapers, magazines, television shows and stations – effectively all publications – are controlled by the government. This has meant that online space has become a critical, and sometimes the only, outlet for public discussion of human rights. Against the backdrop of Legal Interpretation No. 21, human rights defenders who post on the web can be accused of rumour-mongering; and if that post is read more than 5000 times, or reposted more than 500 times, the blogger can be accused of 'picking quarrels and provoking troubles' (xunxin zishi).

   In short, the application of this law to online speech muzzles the voice of human rights defenders and those seeking accountability for violations. Moreover HRDs are among those most likely to face persecution for posting comments and sharing information in cyberspace, which has become the main platform for rights advocacy. No better case demonstrates this risk than that of well-known human rights lawyer **Pu Zhiqiang**. On 4 May 2014 he was arrested as a result of seven Weibo posts, in which he questioned the 'excessively violent crackdown' on Uighurs in

15 NY Times. Year After Detentions, Chinese Feminists Mark Setbacks and Progress. 7 March 2016. www.nytimes.com/2016/03/08/world/asia/china-feminists-women-domestic-violence.html?_r=0
16 RFA. One Year On, China's Five Feminists Remain Under Tight Surveillance. 1 March 2016. www.rfa.org/english/news/china/surveillance-03012016110929.html?searchterm:utf8:ustring=Wu+Rongrong
17 HRW. China: Drop All Charges Against Feminist Activists. 14 April 2015. www.hrw.org/news/2015/04/14/china-drop-all-charges-against-feminist-activists

the western province of Xinjiang and the record of the Chinese Communist Party. In December 2015 he was tried and found guilty of 'inciting ethnic hatred' and 'picking quarrels and provoking troubles'; he received a suspended sentence of three years in prison, and will never be able to return to practicing law in China. State news agency Xinhua said that during his sentencing Mr Pu had 'acknowledged the reality of his crimes', apologised, and accepted his sentence. However, his lawyers said he had not pleaded guilty. Amnesty International has called the sentence 'a deliberate attempt by the Chinese authorities to shackle a champion of freedom of expression'.[18]

2. Freedom of association under pressure

On 3-4 December 2015, a number of **labour rights NGOs** in Guangdong province were targeted by authorities, including the Sunflower Women Workers Centre, Haige Labour Centre, Panyu Migrant Worker Service Centre, all based in Guangzhou, and Foshan-based Nanfeiyan Social Worker Centre. Over 20 NGO workers were detained, including the heads of Nanfeiyan (**He Xiaobo**) and of Panyu Migrant Worker Service Centre (**Zeng Feiyang**) and Panyu staff **Zhu Xiaomei** and **Meng Han**. They were held on various charges, from 'gathering crowds to disturb social order' to 'embezzlement' and 'misappropriation of funds'.[19]

After the detentions, state news outlets began a campaign to defame Zeng, the most high-profile of the four, accusing him of hiring prostitutes, stealing from workers and conspiring with hostile foreign forces.[20] State media further claimed that Zeng and fellow activists 'seriously disrupted social order' and 'trampled' workers' rights by becoming involved in labour disputes.[21]

On 1 February 2016, Zhu Xiaomei was released on bail and returned home.[22] According to lawyer Wu Kuiming, Zhu's release was likely because she had a very young child at home who was breastfeeding and in need of care: 'The authorities would have come under a lot of pressure if they didn't release her'.[23]

He Xiaobo was released on bail after four months, on 8 April 2016. Colleagues Zeng and Meng remain in the Guangzhou No. 1 Detention Center; although Meng Han has been able to communicate with his lawyers on at least two occasions, Zeng Feiyang's lawyer has been consistently barred from meeting with him.[24]

Despite having previously received support from local government and party organs, these organisations are now being targeted – despite their services being badly needed in China's manufacturing south, following a peak number of strikes and work stoppages in 2015, as reported by China Labour Bulletin. The International Trade Union Confederation announced in late February 2016 that they would file a case against China at the International Labour Organisation's Committee of Freedom of Association.

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18 BBC News. Pu Zhiqiang: China rights lawyer gets suspended jail sentence. 22 December 2015. www.bbc.com/news/world-asia-china-35157525

19 Human Rights Watch. China: Persecution of Labor Activists Escalates. 13 January 2016. www.hrw.org/news/2016/01/13/china-persecution-labor-activists-escalates

20 New York Times. Labor Protests Multiply in China as Economy Slows, Worrying Leaders. 14 March 2016. www.nytimes.com/2016/03/15/world/asia/china-labor-strike-protest.html?_r=0

21 Ibid.

22 Ibid.

23 Ibid.

24 'Detained labour activist Meng Han unbowed and unrepentant.' China Labour Bulletin. Available at www.clb.org.hk/content/detained-labour-activist-meng-han-unbowed-and-unrepentant. Accessed on 4 April 2016.

3. Unfair application of criminal law to human rights defenders' activities

In China, 'pocket crimes' (or koudai zui) refer to criminal charges that can be applied against any behaviour or activity, despite them not being explicitly illegal according to the law. If the authorities wish, these provisions can be manipulated to capture or hold defenders for anything – thus, the image of a 'pocket' into which anything (or anyone) can be stuffed. The provisions themselves often lack sufficient legal definitions, or are vulnerable to interpretation and broad application by a court or procuratorate.

In the past, Criminal Law provisions that have been used as koudai zui included 'gathering a crowd to disrupt social order', 'picking quarrels and provoking troubles' and extortion or blackmail

(qiaozha lesuo). However, alongside and perhaps exacerbated by the most recent Criminal Law amendments, which went into effect on 1 November 2015, the use and abuse of 'pocket crimes' has increased.

- **'Disturbing public order'** is commonly used by authorities to charge activists. On 20 March 2014, four human rights lawyers arranged a joint visit to the **Jiansanjiang** legal re-education centre to demand the release of those illegally detained. Defenders considered this centre, and others like it, to be 'black jails' where Falungong practitioners were held without official oversight. The following day, local police stopped them and detained them on charges of 'illegal behaviour that endangers society', resulting in administrative detentions ranging in length from 5 to 15 days and fines from 200 to 1000 RMB.

- **'Picking quarrels and provoking troubles'** has, over the past few years, been regularly abused by authorities around the country. On 5 November 2015, human rights defenders from Henan **Jia Lingmin** and **Liu Diwei** were found guilty of this crime by the Henan Gongyi court, and sentenced to four years and one year imprisonment respectively. They were found guilty by the Gongyi District People's Court of 'spreading false information online' and 'obstructing a normal demolition and eviction operation'.[25] Jia's trial hearings in April and June 2015 were tarnished by many procedural violations. According to analysis made publicly available by their defence lawyer and legal experts, this charge was levied as a result of Jia's work to support litigation by citizens whose houses had been demolished. The right to petition the government and pursue litigation are provided to citizens by national law and by the Chinese Constitution.

  A Joint Urgent Appeal regarding Jia Lingmin's case was sent to China on 11 June 2015 by the UN Working Group on Arbitrary Detention, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders.[26] The experts expressed concerns at the incommunicado detention of Ms Jia, as well as the lack of due process apparent in her case, and requested information on the legal grounds for her charges and pre-trial detention and their compatibility with international norms and standards. As of the publication of the most recent Communications report (March 2016), there had been no response from the government.

- **Extortion/blackmail** is also a charge that lends itself easily to abuse of human rights defenders. Woman human rights defender from Heilongjiang province, **Ge Limei**, was

25 CHRD. China Jails Two Zhengzhou 10 Activists Over Eviction Challenge. 05 November 2015. www.rfa.org/english/news/china/china-zhengzhou-11052015141118.html?searchterm:utf8:ustring=Liu+Diwei+

26 Communications report of Special Procedures A/HRC/31/79, Case: CHN 5/2015.19 February 2016. p.19

accused of extorting the government in June 2015. In order to dissuade Ge from appealing to higher levels of government regarding the 2010 death of her husband in prison, she was provided with funds from local government officials. Based on receipt of these funds, Ge was found guilty in November 2015 of 13 counts of blackmail and sentenced to three years in prison.

Jilin disability rights defender **Guo Hongwei** and his 73-year old mother, Xiao Yunling, were the subject of judicial proceedings by local government officials, on charges of 'extorting' the government, public security, and courts. Authorities held Guo and his mother at Siping City Detention Centre after their arrest in March 2015. Guo reportedly was subjected to torture during his detention, and had to be hospitalized in October 2015.[27] On 1 February 2016,

the court sentenced Guo and his mother to harsh prison terms of 13 years and six years respectively on combined charges of 'extorting the government' and 'picking quarrels and provoking trouble'.[28]

4. Impact of new laws on the security of rights defence activities

The Ninth version of China's Criminal Law was adopted in August 2015 and went into effect on 1 November 2015. Immediately following this, the Supreme People's Court and Supreme

Procuratorate published a set of supplementary regulations to support the new amendments. This included the addition of 20 new crimes, most if not all of which clearly target the activities of human rights lawyers and the efforts of human rights defenders to monitor and publish information on human rights. They include:

- Deliberately spreading false or fabricated information
- Preparing to engage in terrorist activity
- Advocating terrorist or extremist ideologies and incitement to commit terrorist acts
- Forcing others to wear clothing or symbols of terrorist or extremist ideologies
- Disrupting the orderly conduct of state organs (authorities)
- Organising or funding illegal assemblies
- Disclosing case information that should not be public
- Revealing or reporting on case information that should not be public
- Filing lawsuits on 'concocted facts'

To summarise, in China – where the judicial system by its very nature lacks independence and impartiality – the Chinese government is almost boundless in its ability to target human rights defenders for 'criminal behaviour' and justify the use of 'criminal sanctions, according to law'. The proliferation of 'pocket crimes' and other vague and broadly defined laws have only expanded the toolset available to procuratorates and courts that continue to be motivated by political means. And the increasingly frequent recourse to crimes 'endangering state security' permits the violation of human rights and fundamental freedoms by the judicial system itself.

Despite China's response to Ireland, and the international community, that it was 'already implementing' the recommendation to provide an enabling environment for civil society and human rights defenders, the opposite is the case. The passage of restrictive legislation, purposeful use of pre-existing 'pocket crimes', trial by media and new restrictions on the legitimate

27 Ibid.
28 CHRD. Government Reprisals: Assault, Imprisonment, Torture & Cancellation of a Lawyer's License (1/28-2/3/2016) February 3rd 2016 https://chrdnet.com/2016/02/chrb-government-reprisals-assault-imprisonment-torture-cancellation-of-a-lawyers-license-128-242016/

activities of human rights lawyers and defenders have all resulted in a significantly more challenging environment – and a huge uptake in personal risk – for those doing the important work of defending human rights.

Accountability for attacks: Assessing implementation of Recommendation 186.158

Although the official government response to this recommendation from Poland was the same as for the earlier recommendation by Ireland, the failure of the government to take any meaningful action to investigate violent attacks against human rights defenders and journalists is stark.

1. Failure to investigate cases of reprisals or harassment of human rights defenders

   It is impossible not to return to the case of **Cao Shunli** when discussing the need for accountability for violence against defenders. Despite multiple calls from civil society, the requests of the Human Rights Council and its experts, and mention by the UN Secretary General, Chinese authorities have launched no official investigation into Cao's death and have held no individuals accountable. On 17 March 2014, spokesperson for the Chinese Ministry of Foreign Affairs Hong Lei announced that the government had provided Cao with 'active and serious medical care', and that her death was a result of a chronic disease from which she suffered. He added that China opposed any infringement of judicial sovereignty on the basis of human rights concerns. In the Human Rights Council session that immediately followed her death, Chinese diplomats resorted to procedural tactics in order to block NGOs in Geneva from observing a moment of silence in remembrance of her.[29]

   The second anniversary of Cao's death, 14 March 2016, was commemorated by Chinese human rights defenders and acknowledged by civil society actions and a side event at the UN Human Rights Council. And yet, there has still been no public investigation into the circumstances surrounding the continued denial of her requests for better medical treatment, nor has any official been held publicly accountable.[30] Her family and her supporters face close police monitoring, constant intimidation, and are unable to seek accountability.[31]

   The Jiansanjiang lawyers – **Tang Jitian**, **Jiang Tianyong**, **Wang Cheng**, and **Zhang Junjie** – and several others who were detained in Heilongjiang reported torture and ill-treatment while in administrative detention. According to defenders, four lawyers between them counted a total of 24 broken bones. According to statements by the Chinese delegation at the UN Committee against Torture review, there was 'no so-called "assault
   and torture" during the detention of these persons'.[32] Despite extensive documentation of the case, as of today no public authorities have been the subject of investigations or have been otherwise held accountable.

2. Defamation of human rights defenders

29 Ibid.
30 Front Line Defenders. 2nd anniversary of the death of Cao Shunli. 14 March 2016.
www.frontlinedefenders.org/en/statement-report/2nd-anniversary-death-cao-shunli-front-line-defenders-reiterates-its-call-those
31 CHRD. "Too Risky to Call Ourselves Defenders": CHRD Annual Report on the Situation of Human Rights Defenders in China (2015). 15 February 2016. https://chrdnet.com/2016/02/too-risky-to-call-ourselves-defenders-chrds-2015-annual-report-on-the-situation-of-human-rights-defenders-in-china/
32 CHRD. China's Response to UN Torture Investigation: Nothing to See Here. 24 December 2015.
https://chrdnet.com/2015/12/chinas-response-to-un-torture-investigation-nothing-to-see-here/

In recent years, defamation (or 'character assassination') has become a new method for authorities to pressure human rights defenders. The authorities use their own news media outlets to slander, defame, and vilify defenders, and even in some cases to extort forced confessions from them. This has been prominently displayed on Central China Television, or CCTV, and constitutes an attempt to discredit the work of human rights defenders and control public narratives about government-perceived 'political threats'. These confessions violate both Chinese Criminal Procedure Law and international human rights norms.[33]

Individuals caught up in the '709 crackdown' – the terminology used by Chinese activists to describe the wide-scale detentions and harassment of human rights lawyers and other defenders

that began on 9 and 10 July 2015 – provide a good example. Lawyers **Zhou Shifeng** and **Wang Yu**, activist **Zhai Yanmin**, dissident bookseller **Gui Minhai**, and others targeted by the Chinese authorities have been forced to appear on CCTV, in Xinhua news, and other national media. In the absence of a formal judicial process, these 'confessions' have become means of undermining and convicting, in the public eye if not in the eyes of the law, human rights defenders.

On 25 February, a likely-coerced confession by **Zhang Kai**, the Beijing lawyer who defended Christian congregations facing cross removal and church demolition, aired the day after he finished serving six months of residential surveillance.[34] He admitted to various crimes, including disturbing social order and endangering national security. He also mentioned that he worked with foreign groups to stir up trouble over religion. Finally, he confessed to having received payment from the U.S.-based group China Aid and alleged that the group was trying to 'change China's political system'.[35]

In the case of Wu Gan, he was at first detained last year and handed a 10-day administrative sentence, before being placed under criminal detention on suspicion of 'picking quarrels and stirring up trouble,' 'libel,' and 'incitement to subvert state power'.[36] After he was taken into custody, official news agency Xinhua vilified Wu's campaigns, ensuring that critical articles about him appeared in China's tightly-controlled state media.[37] Although he has not been forced to confess, the undermining of his work in official media serves much the same purpose.

IV. Conclusion

Since the October 2013 UPR review of China, the government – rather than taking action to implement State recommendations it accepted, including those related to human rights defenders – has instead further intensified its crackdown on the rights defence community. The situation currently facing grassroots human rights defenders and human rights lawyers has significantly worsened.

In 2015, the persecution of human rights defenders by the authorities followed a trajectory of increasing

33 CHRD. China: Forced TV Confessions Violate Principle of Presumed Innocence Before Trial, Constitute Cruel & Degrading Punishment. 12 March 2016. https://chrdnet.com/2016/03/china-forced-tv-confessions-violate-principle-of-presumed-innocence-before-trial-constitute-cruel-degrading-punishment/
34 RFA. Status of Released Christian Rights Lawyer Still Unknown. 25 March 2016. www.rfa.org/english/news/china/status-03252016104848.html?searchterm:utf8:ustring=Zhang+Kai
35 New York Times. Chinese Lawyer Who Was Detained While Defending Churches Is Released. 24 March 2016. www.nytimes.com/2016/03/25/world/asia/china-lawyer-zhang-kai-released.html?_r=1
36 RFA. Case of Chinese Free Speech Activist 'The Butcher' Moved to Tianjin. 02 February 2016. www.rfa.org/english/news/china/wu-gan-moved-02022016121145.html?searchterm:utf8:ustring=Zhou+Shifeng
37 CHRD. Wu Gan Profile. 31 March 2016. https://chrdnet.com/2016/03/wu-gan-吴淦/

severity.[38] The authorities escalated assaults on fundamental liberties and reduced the space for civil society, while targeting human rights defenders and their work in a more aggressive manner, punishing them for seeking justice. Says the grassroots NGO CHRD, '2015 will go down in history as the year that Chinese authorities launched an unprecedented attack on China's human rights lawyers'.[39]

Yet, despite these uncomfortable truths, the Chinese government continues to repeat to the international community, and specifically to the UN, that it will diligently fulfil its human rights commitments and engage with the Human Rights Council and its mechanisms in a cooperative and productive manner. It is able to do so in part because other States hesitate to press the issue.

Mid-2016 marks the mid-term of China's second cycle of the UPR. It is high time that the Chinese government demonstrated to the international community its willingness to be a legitimate player in the international arena as regards human rights. In this regard, the Chinese government should:

- Fully and faithfully implement accepted human rights recommendations in consultation with civil society, including in relation to ensuring a safe and enabling environment for human rights defenders and lawyers
- Conduct a meaningful assessment of progress towards implementation, for example in the form of a UPR Mid-Term report
- If a UPR Mid-Term report is not feasible, they should provide relevant information prepared for other UN reports and lay out a plan for measuring implementation through the remainder of the cycle, including efforts to permit civil society to contribute to the process
- Uphold the right of all persons to safe and unhindered access to and communication with the United Nations and prevent, investigate, remedy and ensure accountability for any form of intimidation or reprisal against those who cooperate or seek to cooperate with the UN

Should China continue to turn a deaf ear and blind eye to the inquiries of the international community, this would provide a compelling reason to believe that the government is failing to meet its obligations as a member of the UN, and in particular as a member of the Human Rights Council.

In response, countries that maintain a bilateral human rights dialogue with China – such as the US, UK, EU, and others – should use those channels to press for public recognition of the concerns of the international community that are not being addressed through implementation of UPR recommendations. This would include the recommendations highlighted above, in the context of timely cases such as the crackdown on human rights lawyers and on independent civil society organisations engaged in the protection and promotion of human rights. It would also include frank conversations about government actions that violate domestic Chinese laws, such as exceeding the number of days of pre-trial detention, considering 'confessions' made outside a court of law, and using official media to defame and slander individuals and organisations engaged in rights defence.

Finally, the UN human rights system, including the Human Rights Council and the treaty bodies, should consider leveraging their influence in the international system and with the Chinese government. Their private messages should not merely encourage the Chinese government to take prompt and concrete action to uphold their obligations, but should also trigger a public response should the government fail to do so.

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38 CHRD. "Too Risky to Call Ourselves Defenders": Annual Report on the Situation of Human Rights Defenders in China (2015) 16 February 2016. https://chrdnet.com/2016/02/too-risky-to-call-ourselves-defenders-annual-report-on-the-situation-of-human-rights-defenders-in-china-2015/

39 CHRD. "Too Risky to Call Ourselves Defenders": Annual Report on the Situation of Human Rights Defenders in China (2015) 16 February 2016. https://chrdnet.com/2016/02/too-risky-to-call-ourselves-defenders-annual-report-on-the-situation-of-human-rights-defenders-in-china-2015/

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Human rights defenders and lawyers in China:

A mid-term assessment of implementation during the UPR second cycle

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