

 International Service
for Human Rights

WHEN COOPERATION IS A 'CRIMINAL ACT'

Submission to the UN Secretary-General on trends and recent cases of reprisals in the People's Republic of China.

MAY 2023 – BRIEFING PAPER

About the International Service for Human Rights

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FOREWORD

In the thirteen years since the adoption of Human Rights Council resolution 12/2, Chinese foreign policy has experienced a sea change. The early years of this period were marked by reticence or conservative approaches to the multilateral system. However, since 2017 the Chinese authorities, under the leadership of CCP chair Xi Jinping, have deepened and expanded their reach, investment in and influence over UN fora and processes. Alongside this embrace of 'responsible global leadership' and multilateralism, we have also seen an increase in the belligerence of Chinese authorities in UN spaces and in their interest in ensuring that 'China's story is told well'. This involves targeting NGOs in particular, and engaging in both policy and practice to undermine advances that would protect human rights defenders and other stakeholders from safely and effectively engaging in the UN system.

This submission will:

- provide a summary of official state positions on the issue of reprisals, and contrast this with data covering allegations of reprisals by China over the period 2010-2022;
- document reprisals occurring in the 2022-2023 reporting period, with impacts on those engaging and seeking to engage with the UN mechanisms;
- analyse extant cases, namely to demonstrate the extent to which impunity for perpetrators of reprisals and lack of access to remedy for victims continues; and
- conclude with recommendations for how the Assistant Secretary General - in the preparation of this report and in its presentation to the 54th session of the Human Rights Council - could more effectively address the systemic patterns of reprisals by Chinese authorities.

HISTORICAL OVERVIEW: A STRATEGY AND PATTERN OF REPRISALS

At the Human Rights Council (HRC) – the primary fora in which States, including China, are confronted with questions about their record on reprisals – the Chinese government has adopted a series of shifting positions over time. From an initial silence in the early years of the Council, and the Reprisals Report itself, China eventually sought to challenge the resolution establishing the mandate of the Assistant-Secretary General and to undermine the systems put in place throughout the UN mechanisms to improve monitoring, documentation and prevention of reprisals.

An earlier version of this submission, with extensive discussion of China's official positions on reprisals, was released by ISHR as [a briefing paper of the same title in May 2022](#).

While the absence of a vote on the 2021 HRC resolution on reprisals was a welcome change from the three previous sessions where the resolution was considered, it should not be construed as signalling a change in China's position on the issue. To the contrary, China's decision - alongside Russia and Venezuela - to dissociate from the resolution demonstrates the extent to which China does not see this as a worthy concern of the international community.

Although the Chinese representative at the Council's 48th session (2021) stated explicitly - during the voting process - that his country 'opposes all acts of intimidation and retaliation against those who cooperate with the UN', he added a significant caveat:

Crimes committed under the guise of human rights must be punished by law; we oppose abusing UN mechanisms to cover up criminal behaviour. [The resolution's] content still lacks balance, and does not duly respect the legitimacy of States punishing criminal acts according to law.

This demonstrates that, far from acknowledging the rights enshrined in the UN Declaration on Human Rights Defenders, which was adopted by a consensus that included China, Chinese official views continue to consider acts of promotion of human rights that involve, seek to involve, or make reference to the UN and its mechanisms as 'criminal'. Chinese authorities do not see facilitating engagement of their citizens with the UN as their responsibility, nor investigating reprisals as their duty. Rather, Chinese authorities investigate their citizens for engagement with the UN and facilitate reprisals and intimidation through messaging of Foreign Ministry officials and others, as well as through the direct actions of local law enforcement, judicial authorities, and other government and Party organs.

China's position on the issue of reprisals, and indeed on the mandate of the Assistant Secretary General to collect and act on allegations of reprisals, is driven by a clear interest: a staunch defence of their own human rights record. An ISHR research paper published earlier this year outlined key trends in the UN's handling of intimidation and reprisals cases and demonstrated that China is one of the most consistent perpetrators of reprisals over time, and one of the most egregious perpetrators in terms of the sheer number of individuals targeted.

Over the period covered by the research paper (2010-2020), China accounted for the fourth largest number of reprisals cases and situations reported (37) by the Secretary-General, only after Bahrain, Venezuela and Vietnam. Additionally, China, along with Saudi Arabia, is the country most often mentioned in the Secretary-General's report since 2019, cited in 10 of the 12 annual reports between 2010 and 2021. In the 2020 report, notably, China was listed among the 11 countries cited for engaging in 'patterns of reprisals.' Over the 2016-2018 period, the Secretary-General's report listed a handful of high-profile cases from China (four to five annually), that have been the subject of annual follow-up as outstanding, unresolved cases. The individuals concerned were mostly related to the 2015 nationwide '709 crackdown' against human rights lawyers and legal professionals who, in various capacities, had engaged or sought to engage with the UN Human Rights Council, the Committee Against Torture, and the Special Rapporteur on extreme poverty and human rights. Acts of reprisals mentioned in the report included travel bans, surveillance, detention, ill-treatment and torture.

The consistent work of CSOs and activists to document reprisals has led to a rich body of information about cases that support a denunciation for perpetrating a 'pattern' of reprisals, pointing to key trends that are instrumentalised by the Chinese state, which are laid out in the subsequent sections of this report.

Justification of reprisals in the interest of national security or regular legal proceedings

Over the past decade, Chinese human rights defenders have been repeatedly subjected to various forms of reprisals related to engagement with the UN, ranging from harassment, physical assaults, intimidation, travel bans, and police investigation, to torture and ill-treatment, arbitrary detention and enforced disappearance – including under 'Residential Surveillance at a Designated Location' (RSDL) –, and lengthy jail sentences. The authorities justify these measures as 'legitimate law enforcement' against 'criminals'. Civil society at large, and human rights defenders in particular, are accused of national security crimes, which bypass basic due process, allowing for blanket denials of access to legal counsel, and enforced disappearance under RSDL.

A shift from targeting high profile individuals to a more pervasive criminalisation of ill-defined activities

The government has often targeted individuals who had been the subject of a Special Procedures communication, or had their cases otherwise raised by UN bodies or mechanisms. They retaliate against those engaging with the UN or merely seeking to engage. Yet recently, we see this ad hoc and individualised approach being replaced with restrictive and retaliatory measures that are nominally legal. As noted in the 2022 Reprisals Report, the promulgation of the National Security Law in Hong Kong in July 2020 – in particular its ill-defined crime of 'collusion with foreign forces' – has created a chilling effect, as Hong Kong civil society representatives have since consistently declined to engage further with, or to have their cases raised by, UN human rights mechanisms."

An appetite for impunity

According to ISHR's 2021 study on the impact of the Secretary-General's report on reprisals, 'for the period between 2010 and 2019, among the seven countries with the most named cases, China is the only one with above-average numbers of follow-up, which are unusually high at 15 out of 19 cases (or a follow-up rate of 79 percent).[8] This tracks with the Chinese governments approach to Special Procedures Communications as well, in the context of which very few Communications are ignored or fail to receive and official response. However, the quality and nature of the responses matter here far more than the quantity; in the text of responses, the Chinese authorities deny the allegations, ignore arguments on their merits, repeat information about individuals named in the report with the intent to damage or discredit them as human rights defenders, and further lash out at the mandate.

NEW CASES OVER THE REPORTING PERIOD: SAME GOALS, NEW TRICKS

Chilling engagement related to the Universal Declaration of Human Rights

In 2022, the Chinese government took its targeting of NGOs engaging in the UN system one step further. A November 2022 leaked directive from the Cyberspace Administration of China - China's internet czars – informed offices responsible for content moderation that, among other sensitive topics, 'December 9 is International Anti-Corruption Day; and December 10 is International Human Rights Day' and directed them to '[P]ay careful attention to these and other sensitive dates, maintain strict controls, and strengthen preliminary content audits.'

Declaring officially-recognised UN holidays as 'sensitive days' is akin to blacklisting the content they promote, and sends a clear chilling message to anyone seeking to share information about, or recognise, these dates in their human rights advocacy work.

Intimidation and harassment for engagement with the Committee on Economic, Social and Cultural Rights (CESCR)

During the fourth periodic review of China by the CESCR in Geneva, two individuals experienced reprisals for their engagement. There was little similarity between the profiles: one individual had focused on the domestic situation, while the other was working on extraterritorial issues. One was told explicitly that engagement with the UN was 'prohibited', while the other understood only that their engagement had raised attention that could complicate their future work and ability to partner effectively with colleagues in the PRC. One individual was in mainland China at the time of the review, where they reside, while the other had travelled to Geneva from their home in a third country. One was directly targeted, while the other was indirectly targeted via official outreach to friends and colleagues, in China and in a third country.

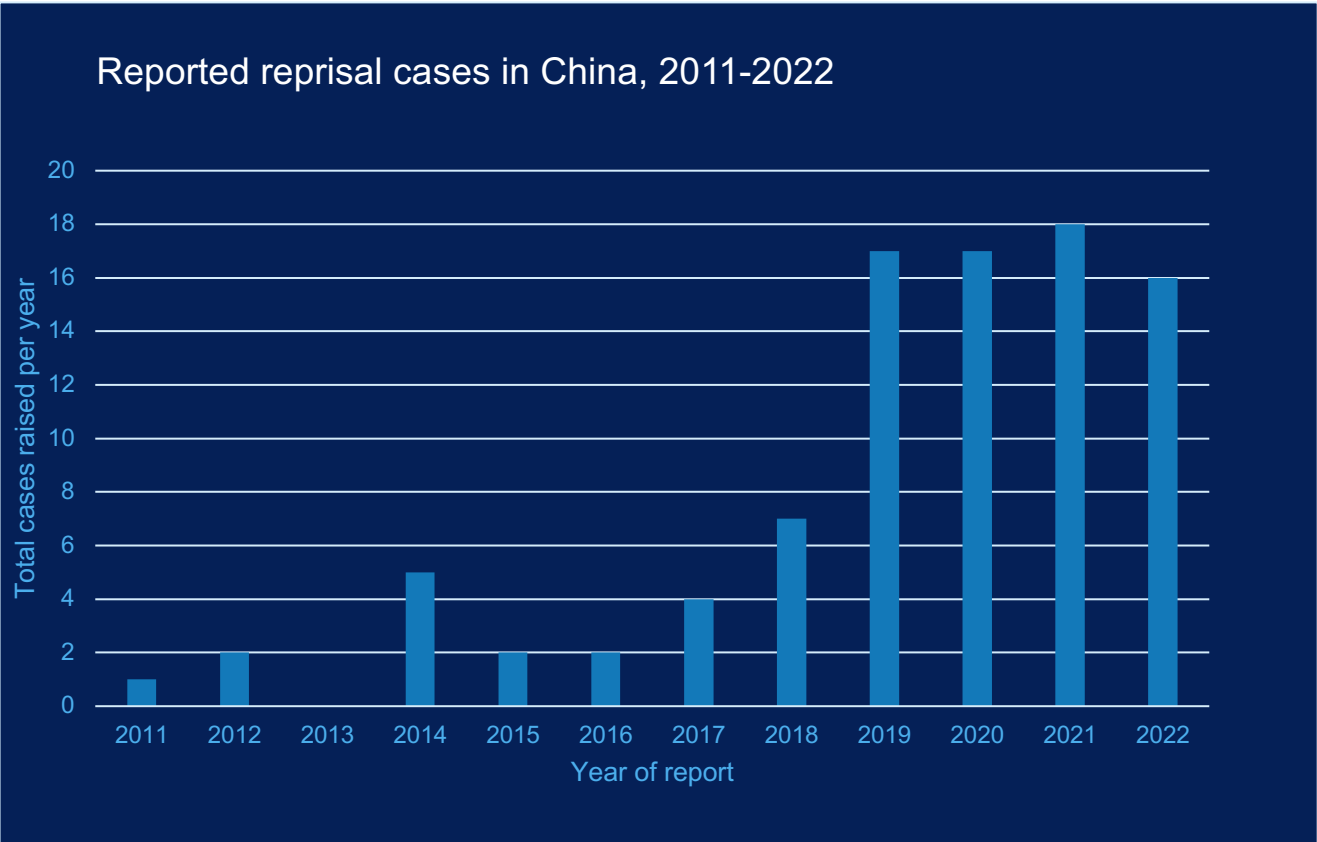
What is common between the two cases is the intention of the intimidation: to demonstrate that even where measures to ensure confidentiality are taken - as was the case for both individuals - the Chinese state has the ability to monitor and track UN engagement. And that such engagement is deemed 'criminal' behaviour, and arbitrarily subject to sanction under Chinese law.

The CESCR-related cases have been reporting in more detail to the Committee, and in [a separate omnibus submission](#) to the Assistant Secretary-General.

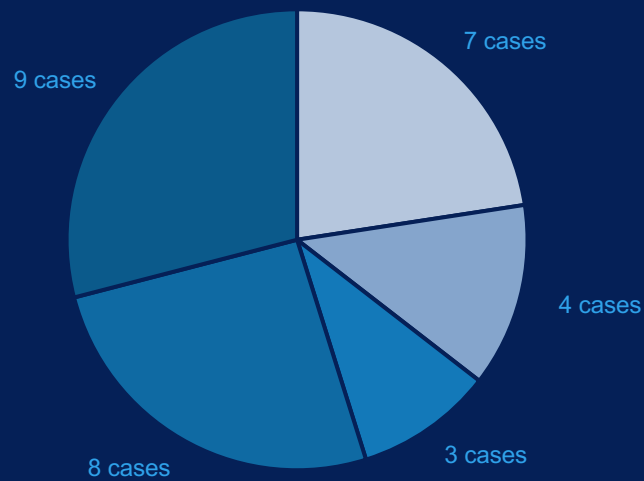
EXTANT CASES: NEITHER EVOLUTION NOR REVOLUTION

Much as we can learn from new cases that are submitted each year to the mandate, it is also important to reflect on the continuity of cases from one report to another. Below in Table I, extant cases are listed by reference and years included in the report (both as new cases, and as the subject of follow-up). The accompanying charts analyse that data and describe some concerning trends.

First, we saw a clear increase in cases covered by reports starting in 2019, doubling the number from 2018 and staying quite high in years 2020-2022.



Years included in Reprisals Report



■ One year ■ Two years ■ Three years ■ Four years ■ Five or more years

However, many of these cases are considered as follow-up, included in the 'Annex II' of the report – and more than half of those have remained in the report for four or more years. This indicates that there is a reluctance by the Chinese State to seriously act on allegations of reprisals, whether to cease harassment of human rights defenders or to investigate cases and hold those responsible accountable. This reluctance is maintained despite nominal engagement of the Assistant Secretary-General (ASG) and the public coverage, including from a number of States in the Interactive Dialogues with the ASG during Human Rights Council sessions.

Table I also shows that there has been at least 49 individuals (both named and unnamed) who have been the targets of reprisals by the Chinese government, and at least two named organisations (one of which was subject to reprisals on two separate occasions). In many reports, references to individuals associated with the cases but not themselves targeted paint a picture of the broader climate for rights defence in China.

Importantly, the 2022 report also recognises the important impact of reprisals and intimidation – in this case, through the entry into force of the National Security Law (NSL), on civic space in Hong Kong. This impact is visible even in the reports themselves, as the very first Hong Kong case was only reported in 2021 – as a direct result of the implementation of the NSL. The cases appearing in the report are only the tip of the iceberg; the Hong Kong Free Press, as of late June 2022, documented some 58 organisations who had dissolved or disbanded as a result of the NSL.

Case	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
15 individuals										x		
7 HRDs engaging with CAT						x						
4 persons engaged in training with CHRDR		x										
1 WHRD and others engaging with CEDAW					x							
Cao Du	x											
Cao Shunli				x	x	x		x	x			
Figo Hun-wu Chan / CHRF											x	x
Chen Jianfang				x					x	x	x	x
Ge Zhihui				x								
Hong Kong civil society											x	x
Dolkun Isa							x		x			
Jiang Tianyong							x	x	x	x	x	x
Li Heping										x	x	x
Li Kezhen								x	x	x	x	x
Li Qiaochu											x	x
Li Wenzu							x		x	x	x	x
Li Xiaoling									x	x		
Li Yuhan									x	x	x	x
Liu Zhenqing									x	x	x	
Mi Chongbiao								x	x	x	x	x
Network of Chinese human rights defenders		x							x	x		
Peng Lanlan				x								
Qin Yongmin								x	x	x	x	
Shen Youlian											x	x
Wang Qiaoling							x		x	x	x	x
Wang Quanzhang											x	x
Ti-Anna Wang				x								
Wang Yu								x	x	x	x	x
Xu Yan									x	x	x	x
Yu Wensheng												x
Zhao Suli								x	x	x	x	
Zhen Jianghua									x	x		

Table I: A blue X indicates a first/new mention of a case, while a purple X indicates inclusion of follow-up information.

CONCLUSION AND RECOMMENDATIONS

- Unfortunately, in 2021 and 2022, the Secretary-General's report ceased a previous practice in 2019 and 2020 of denouncing certain States for perpetrating a pattern of reprisals. This decision risks perpetuating a view of reprisals as ad hoc, or exceptional, when in fact we see that the pattern of reprisals constitutes a particular tactic in the government's overall efforts to isolate and suppress independent civil society from human rights work, including the documentation and reporting that is critical to the work of the UN mechanisms.
Assessments of trends, patterns and intentional use of reprisals, by China and others, should be returned and strengthened in the 2023 and future reports on reprisals from the Secretary General.
- The Assistant Secretary-General should engage regularly and proactively to inquire about the status of cases of reprisals and intimidation brought to the attention of the reprisals focal point, and communicate publicly about the nature of responses. This is a key step to **ensure that China, as a Human Rights Council member, is held to the highest human rights standards, including with regard to the prevention and investigation of reprisals.**
- Throughout the year, and in particular on key dates or anniversaries, the Secretary-General and Assistant Secretary General should emphasise the critical importance of follow-up on reprisals cases, in particular by using public and social media communications tools. **For example, senior UN officials should note explicitly that 2023 marks the 10th anniversary of the disappearance (deprivation of liberty) – and subsequent death, on 14 March 2014 – of Chinese human rights defender Cao Shunli. Despite both direct and indirect inclusion or mentions throughout reprisals reports from 2014 onwards, no progress has been made with respect to Ms. Cao's case. The implications of this non-action are serious, as it sends the message that reprisals can be carried out with impunity.**
- The Assistant Secretary General should urge the UN human rights bodies and mechanisms, including the Special Procedures and Treaty bodies, to support the mandate of the Assistant-Secretary General in ensuring **regular and sustained follow up on cases of reprisals in China**, and to document and disclose publicly their efforts to do so.
- The UN DESA NGO Branch and all UN offices, including UNOG and the Headquarters of the UN in New York, should ensure that access to UN premises is fully and safely guaranteed to civil society for relevant UN meetings and events. Efforts by States to a) constrain this access, in particular through the creation of policy or working methods of various offices, agencies and programmes, or b) manipulate this access so as to ensure a robust presence of state-affiliated or 'government-organised' non-government organisations are an impediment to the full and free engagement of civil society with the UN. **Any form of State behaviour that undermines the safe guarantee of access to civil society should be identified and documented through a dedicated sub-section under the relevant country profile in the annual Reprisals Report.**