

THE SITUATION OF HUMAN RIGHTS DEFENDERS IN

CHINA

UPR Briefing Paper – March 2018

The ISHR and the Committee to Protect Journalists (CPJ) have jointly prepared this briefing paper for the purpose of assessing China's implementation of recommendations concerning freedom of expression and opinion, in particular as regards journalism and the media. In light of this assessment, the ISHR and the CPJ seek to provide guidance to States regarding recommendations to be presented to China in its upcoming third cycle of review.

SECOND CYCLE UPR RECOMMENDATIONS

1. There were approximately nineteen (19) recommendations made to China regarding journalism and the media at its second UPR, held in October 2013. Of these, China accepted 11 and noted 8. The most pertinent of the accepted recommendations include:
 - a. 186.148. Intensify efforts to facilitate the participation of NGOs, academic institutions and the media in safeguarding human rights. – **Nigeria.**
 - b. 186.154. Make further efforts towards safeguarding the freedom of expression of all citizens. – **Norway.**
 - c. 186.155. Reform legislation and law enforcement in order to ensure freedom of opinion and expression, including on the internet. – **Germany**
 - d. 186.157. Strengthen the measures aimed at guaranteeing freedom of expression and freedom of the press. – **Côte d'Ivoire.**
 - e. 186.158. Ensure that proper investigations are conducted in all cases of attacks on journalists, media workers and human rights defenders. – **Poland.**
 - f. 186.169. Continue strengthening the protection and promotion of the right of all citizens to publicly express their beliefs and opinions. – **Chile.**
 - g. 186.170. Increase transparency of its traditional and social media by guaranteeing the rights of Chinese citizens to freely critique any state organ or functionary. – **Australia.**
2. Noted recommendations primarily focused on the need to create a 'favourable climate' for, and cease detention of, human rights defenders and journalists; to amend national security and 'state secrets' laws; and to guarantee freedom of

expression and the removal of obstacles to freedom of information on the Internet.

ASSESSMENT OF IMPLEMENTATION

1. In the period following the acceptance of these recommendations, the Chinese government has not only failed to safeguard the freedom of expression and strengthen guarantees for the work of journalists and the media, it has explicitly used policies and regulations to engage in an expansion of its authoritarian reach into these forums.
2. In its 2017 Annual Report, the Network of Chinese Human Rights Defenders stated that Chinese authorities have 'promoted "cyberspace sovereignty" and further tightened restrictions on freedom of expression and information online', having ramped up 'highly sophisticated cyber controls on free speech' (1).
3. China is the world's second worst jailer of journalists, with 41 journalists in prison at the end of 2017, according to research by the Committee to Protect Journalists. Furthermore, a number of journalists in prison have been denied proper medical care.
4. This corresponds with information provided by free speech watchdog Reporters Without Borders, which ranked China 176th of 180 countries in its World Press Freedom Index.
5. The Chinese government has pursued this policy with a combination of technocratic tools, including a series of laws and regulations limiting or criminalising certain kinds of speech and dissent from mainstream party ideology, and 'sharp power' – which includes threats, harassment, intimidation and arbitrary detention of citizen journalists and others, both Chinese and foreign.

6. In addition, the disbarment and detention of human rights lawyers – particularly since July 2015 – has made it difficult for journalists facing charges or in prison to obtain adequate legal representation. This is the primary focus of a UPR mid-term UPR Report, published by the International Service for Human Rights in May 2016 (2).
7. These developments have resulted in concerning ramifications for the protection of freedom of expression and media freedoms in China.

LEGAL RESTRICTIONS ON FREE SPEECH AND ACCESS TO INFORMATION

1. The law with arguably the greatest impact on free speech online is the Cyber-Security Law, which has been in effect since June 2017, and is enforced by the Cyberspace Administration of China. The law imposes, amongst other requirements:
 - a. Real name registration obligations
 - b. Criminal sanctions for activities related to national security, terrorism, incitement of hatred, and dissemination of ‘violent, obscene, or sexual information’ as well as ‘false information to disrupt the economic or social order’
 - c. Fines for internet service providers who fail to cooperate with censors
 - d. Data retention and user activity logging requirements.
 - e. Fines for the promotion of ‘user generated news’ on social media platforms
2. Another notable governmental policy, the ‘Notice on Clean-up of the Standards for the Internet Network Access and Service Market’ – was published by the Ministry of Industry and Information Technology in January of 2017. This bars Internet Service Providers, corporations and individuals from using VPNs outside of limited circumstances, and prohibits cross-border business activities without prior approval and unless in compliance with usage restrictions.
3. The Chinese government has further restricted access to VPNs by banning its major telecommunication companies (China Mobile, China Unicom and China Telecom) from allowing their users to utilise VPNs.
4. Measures to criminalise VPN use have also implicated the foreign private sector. For instance, Apple removed a number of VPN applications from its AppStore, further inhibiting access to foreign media outlets and, indeed, the free flow of information (3).

5. All popular modes of communication, even end-to-end encryption services, are susceptible to monitoring by the authorities. Since the summer of 2017, access to messaging services like WhatsApp, Line and Skype have been temporarily unavailable or restricted in their operations.
6. Since the last UPR, journalists and human rights defenders have increasingly relied on VPNs and internet and mobile messaging to access and share information about a range of current events, in China and abroad. The restrictions listed above make this exercise of freedom of expression both more difficult and more dangerous.

‘SHARP POWER’: CRIMINALISATION OF DISSENT AND FREEDOM OF EXPRESSION

1. Under President Xi Jinping, public opinion in China has become simplified, constrained in its diversity, and increasingly aligned with Chinese Communist Party objectives. Protections for freedom of opinion and expression have suffered as a result. This is also reflected in the treatment of the issue by the international human rights system. By way of demonstration, since November 2013, the UN Special Rapporteur on Freedom of Opinion and Expression has joined Communications to China no fewer than 36 times.
2. Speech which is seen as sensitive or critical, and individuals with a history of human rights activism, are constantly monitored by the government’s gatekeepers. But even ordinary citizens have begun to comment on the regular deletion of social media posts and the surveillance of private or semi-private speech online.
3. The reining in of criticism also happens within the newsroom, and is reflected in the reduction of traditional news-media journalists, with official statistics placing the nation-wide number of these professionals at only 175 as of 2017.
4. This reduction has many factors, including the challenges of running commercially-viable traditional media outlets in the Internet age; however, the shrinking space for independent journalism has also resulted in closures (as is the case for well-known magazine *Yanhuang Chunqiu*) and in frustration by seasoned media workers.
5. The regulation of online media outlets also contributes to a lack of independent voices. At the end of January 2018, according to research by the Committee to Protect Journalists, the

- Cyberspace Administration of China listed 462 authorized online news sites, while announcing fines of up to 30,000 Chinese yuan for establishing unauthorized sites.
6. Among human rights defenders, the decrease in information about human rights, including for example ‘mass incidents’, is to a large extent attributable to the detention, imprisonment, intimidation and coercion that many activists are subjected to in China.
 7. Since China’s last UPR, the Chinese authorities have engaged in practices including extensive surveillance and monitoring; extended pre-trial detention or ‘residential surveillance’; ‘preventive’ detention; refusal of access to legal counsel; the harassment and punishment of journalists and media activists’ family members; and the conviction of journalists and free speech activists of crimes ranging from ‘picking quarrels and provoking troubles’ to ‘subverting state power’. In situations of deprivation of liberty, torture and withholding of adequate medical care are significant concerns.
 8. Foreign correspondents are also subjected to various measures intended to create a chilling effect on their expression. The 2018 report of the Foreign Correspondents Club of China shows that ‘reporting conditions in China are deteriorating... borne out by the marked increase in the number of journalists who think conditions are worsening compared to the year before’ (4). Nearly half of this study’s respondents reported some form of interference, harassment or violence, whilst the vast majority of respondents – some 79-94% – stated that they were ‘very’ or ‘quite’ concerned about governmental surveillance and invasions of privacy on their phones and internet, and in their homes and offices.

ILLUSTRATIVE CASES

1. Cases we have documented, and which underpin our assessment and suggested recommendations, include:
 - a. **Gao Yu** – A well-known journalist and contributor to Western outlets, Gao was imprisoned in 2014 and ‘released’ into house arrest in 2015. As of writing, she remains under regular surveillance.
 - b. **Huang Qi** – As of writing, Huang is awaiting trial on charges of ‘illegal leaking of state secrets’ for reporting on human rights information on his website, *64Tianwang*. Huang suffers from a serious kidney ailment and has been denied proper medical care.

- c. **Liu Feiyue** – Taken into custody on 17 November 2016, Liu has been charged with inciting subversion of the state. As of writing, he has not yet been tried by a court.
- d. **Lu Yuyu and Li Tingyu** – Lu was sentenced to four years’ prison in 2017, while his partner Li has been regularly harassed. They ran a website and Weibo/Twitter accounts reporting on ‘mass incidents’, such as strikes or protests.
- e. **Zhen Jianghua** – A young activist and advocate for internet freedom, as well as manager of a well-regarded online network for human rights promotion, Zhen has been held incommunicado and without access to a lawyer since September 2017.

CONCLUSION

These developments demonstrate the failure of the Chinese government to honour the commitments made at the closing of its second cycle of UPR, including its acceptance of recommendations to guarantee the freedom of expression and safeguard the rights of journalists and the media, to reform laws preventing freedom of opinion on the internet, to allow the free critique of state organs and functionaries by both traditional and social media, and to investigate all cases of violations of the human rights of journalists and media workers.

Amidst the ongoing crackdown on civil society in China under President Xi Jinping, increasing restrictions on independent reporting exacerbate a range of human rights violations. The unwillingness to allow critical coverage of everyday matters – everything from corruption to environmental degradation to assistance to vulnerable populations to housing – allow such violations, wherever they occur, to continue with impunity. With the official removal of the Chinese Constitution’s presidential term limits on 11 March 2018, the trend toward authoritarianism seems ever clearer. In this context, the importance of both an independent and robust media and respect for and protection of the freedom of expression and opinion for China’s journalists are as crucial as ever.

(1) <https://www.nchr.org/2018/02/2017hrd-report/>

(2) <http://www.ishr.ch/news/human-rights-defenders-and-lawyers-china-assessing-upr-progress>

(3) <https://cn.nytimes.com/china/20170730/china-apple-censorship/>

(4) *Access Denied*, available at <http://www.fccchina.org/>

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Suggested Recommendations to the Government of the People's Republic of China:

- Ensure a safe and enabling environment in which human rights defenders, journalists and other civil society actors can carry out their work without hindrance or fear of reprisal.
- Repeal Article 73 of the Criminal Procedure Law, and related legislation, permitting 'residential surveillance in a designated location', which has been used to target human rights defenders, including journalists and media workers.
- Prohibit the excessive use by Procuratorates and other judicial organs of rights-related online speech (e.g., blogs, emails, WeChat or Weibo posts) as evidence in criminal trials.
- Allow unimpeded access to VPNs by internet users within the Chinese government's jurisdiction, including in ethnic minority autonomous regions.
- Request technical assistance from the relevant Special Procedures and other independent, international experts to review and establish a timeline for repealing or amending legislation which places restrictions on freedom of information and expression that go beyond what is permitted in international human rights law.
- Establish a transparent process, in line with international best practices, for appealing the removal of online content, and ensure that anyone who engages in the process is protected from harassment or intimidation.

About this Briefing Paper: This briefing is a result of both compilation of public information and direct information and experiences of ISHR, its partners, and CPJ. ISHR and CPJ encourage States to consult UPR submissions by local activists and regional networks engaged in the protection and promotion of human rights, and particularly support to human rights defenders, in China. For additional information, please contact Sarah M Brooks, s.brooks@ishr.ch or Steven Butler at sbutler@cpj.org.