

Human Rights in China Submission to the
Special Rapporteur on Human Rights Defenders
June 15, 2012

INTRODUCTION

For human rights defenders and independent civil society voices, the ongoing deterioration of the overall human rights climate in the People's Republic of China ("China") presents serious challenges and difficulties, including:

- Rampant and systemic **corruption**, especially related to land rights;
- **Crackdowns**, censorship, surveillance, detention, enforced disappearances, or physical violence;
- **Rule of law roll-backs** and concerns presented by recent legal amendments to the criminal procedure law, the revised lawyer's oath, and the state secrets law;
- A **resurgence of extra-extra-law**,¹ an "informal political institution characterized by the total lack of legality" and "used to advance some predatory and repressive government policies which cannot be justified by any law."²

QUESTION 1

a) **Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.**

- China does not have specific legal framework, laws, or regulations that specifically aim to facilitate or protect human rights defenders' activities or work.
- However, provisions in the 2004 *Constitution of People's Republic of China* ("Constitution")³ and in the recently revised *Criminal Procedure Law of the People's*

¹ Fu Hualing, "The Varieties of Law in China," *China Rights Forum*, 2011, no. 1-2, <http://www.hrichina.org/crf/article/5422>.

² Ibid. See also Jerome A. Cohen, "China's Legal Blindness," *The Wall Street Journal*, November 3, 2011, <http://online.wsj.com/article/SB10001424052970203804204577013440386484030.html>.

³ Constitution of the People's Republic of China (hereafter, Constitution) [中华人民共和国宪法], adopted by the National People's Congress, promulgated December 4, 1982; amended April 12, 1988, March 29, 1993, March 15, 1999, and March 14, 2004, <http://www.people.com.cn/GB/shehui/1060/2391834.html>. Official English translation available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/05/content_1381903.htm.

Republic of China (CPL)⁴ have explicit language to respect and protect human rights generally.

- **Article 33 of the Constitution:**⁵ All citizens of China are “equal before the law” and are “entitled” to rights. “The State respects and preserves human rights.”
- **Article 2 of the CPL:**⁶ The aim of the CPL is to ensure procedural fairness, “to respect and protect human rights, to protect the citizens’ personal rights... democratic rights and other rights.”
- **Articles 54 to 58** under the revised CPL set forth **rules for excluding confessions or evidence** collected under torture, violence, extortion, threats, or other illegal means.⁷

b) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.

- The specific provisions cited above are normatively consistent with international human rights standards on their face.
- However, whether these provisions are, in practice, consistent with international standards must be assessed within the larger implementation framework in China (see below).

c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.

- Even where laws on their face include legal or administrative safeguards, these provisions are often ineffective to protect human rights defenders.⁸

⁴ Criminal Procedure Law of the People's Republic of China (hereafter, CPL) [中华人民共和国刑事诉讼法], issued by the National People's Congress [全国人民代表大会], promulgated July 7, 1979, effective January 1, 1980; amended March 17, 1996, effective January 1, 1997; revised March 14, 2012, effective January 1, 2013, http://www.gov.cn/flfg/2012-03/17/content_2094354.htm. Official English translation of the 1996 CPL available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384067.htm.

⁵ Constitution, Art. 33: “All persons holding the nationality of the People's Republic of China are citizens of the People's Republic of China. All citizens of the People's Republic of China are **equal before the law**. **The State respects and preserves human rights**. **Every citizen is entitled to the rights** and at the same time must perform the duties prescribed by the Constitution and other laws.”

⁶ CPL, Art. 2: “The aim of the Criminal Procedure Law of the People's Republic of China is: to ensure accurate and timely ascertainment of facts about crimes, correct application of law, punishment of criminals and protection of the innocent against being investigated for criminal responsibility; to enhance the citizens' awareness of the need to abide by law and to fight vigorously against criminal acts in order to safeguard the socialist legal system, **to respect and protect human rights**, to protect the citizens' personal rights; their property rights, democratic rights and other rights; and to guarantee smooth progress of the cause of socialist development.”

⁷ CPL, Art. 54-58.

- Authorities have **broad discretionary powers and misuse ambiguous and overbroad** laws to target human rights defenders⁹ (see **Question 5a** for more details).
- China **lacks an independent judiciary**¹⁰ and independent **bar associations**.¹¹

The **Central Political and Legal Committee** of the Communist Party of China (CPC) and local party counterparts ‘coordinate’ the work of the courts, the procuratorates, the Ministry of Justice, the legal profession, and the secret police.¹²

- **Enforcement of constitutional rights** is vested in the Standing Committee of the National People’s Congress (NPC), not the courts. The NPC has been reluctant to exercise its legislative powers to enforce constitutional rights.¹³

QUESTION 2

a) **Please describe the measures taken, if any, to ensure that your country’s national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.**

- Instead of protective measures, vague and ambiguous state security provisions¹⁴ (in conjunction with China’s criminal laws) are often used to restrict and punish human rights defenders. This is elaborated below in **Question 3a**.

⁸ Cases includes the detention, prosecution, and conviction of major political dissidents, like **Liu Xiaobo**, and also alleged spies, organized crime figures, unregistered religious worshippers, **human rights defenders**, lawyers, etc. See Jerome A. Cohen, “China’s Hollow ‘Rule of Law,’” January 1, 2010, <http://www.usasialaw.org/?p=2566>.

⁹ Committee to Support Chinese Lawyers, *Legal Advocacy and the 2011 Crackdown in China: Adversity, Repression, and Resilience* (U.S.: Committee to Support Chinese Lawyers, 2011), , page 12,17-19, <http://www.csclawyers.org/letters/Legal%20Advocacy%20and%20the%202011%20Crackdown%20in%20China.pdf>.

¹⁰ Congressional-Executive Commission on China, *Annual Report 2005* (Washington: U.S. Government Printing Office, 2005), 89, <http://www.cecc.gov/pages/annualRpt/annualRpt05/CECCannRpt2005.pdf>.

¹¹ Elizabeth M. Lynch, “I Pledge Allegiance to the CCP....Chinese Lawyers’ New Oath Requirements,” *China Law & Policy*, March 22, 2012, <http://chinalawandpolicy.com/tag/all-china-lawyers-association/>.

¹² Jerome A. Cohen, “The PRC Legal System At Sixty,” October 2, 2009, <http://www.usasialaw.org/?p=58>; Michel Oksenberg, “China’s Political System: Challenges of the Twenty-First Century,” *China Journal*, no. 45 (2001), 22.

¹³ Jerome A. Cohen, “The PRC Legal System At Sixty,” October 2, 2009, <http://www.usasialaw.org/?p=58>

¹⁴ *State Security Law of the People’s Republic of China* [中华人民共和国国家安全法], issued by the Standing Committee of the National People’s Congress [全国人民代表大会常务委员会], promulgated and effective February 22, 1993, http://www.gov.cn/ziliao/flfg/2005-08/05/content_20927.htm. Official English translation available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383844.htm.

b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

- As noted above, China's current Constitution allows citizens to enjoy basic political freedoms.¹⁵ However, in practice, national security laws have been used to punish those who exercise these fundamental rights and freedoms, for example, publishing articles online, contacting or liaising with overseas human rights organizations, or speaking with foreign journalists.
- One case example is **Liu Xiaobo [刘晓波]**, the 2010 Nobel Peace Prize laureate and veteran democracy advocate. He was convicted of “**inciting subversion of state power**” and sentenced to 11 years in prison in December 2009 for his role in drafting the *Charter 08*, a public appeal for sweeping political reform, as well as for articles he had previously published.¹⁶ His wife, **Liu Xia [刘霞]**, was put under house arrest following his detention; although recently, authorities permitted her to visit her parents and Liu Xiaobo.¹⁷

QUESTION 3

a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

- Specific crimes set forth in the *Criminal Law of the People's Republic of China* (“Criminal Law”)¹⁸ are vague on their face and frequently misused by government officials against human rights defenders. Individuals are often targeted with crimes of **endangering national security**, divulging or holding **state secrets**, or **disturbing social order**.
 - **Crimes of Endangering National Security** include: treason;¹⁹ splittism;²⁰ inciting splittism;²¹ armed rebellion or rioting;²² subversion of state power;²³

¹⁵ Constitution, Art. 35: “Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.”

¹⁶ Human Rights in China, “Liu Xiaobo Wins Nobel Peace Prize,” October 8, 2010, <http://www.hrichina.org/content/845>.

¹⁷ “Liu Xiaobo's Wife Allowed Visits to Husband and Family: Boxun,” Want China Times, June 9, 2012, <http://www.wantchinatimes.com/news-subclass-cnt.aspx?id=20120609000030&cid=1101>.

¹⁸ Criminal Law of the People's Republic of China [中华人民共和国刑法], issued by the National People's Congress [全国人民代表大会], promulgated July 6, 1979, effective January 1, 1980; revised in 1997, 1999, 2001, 2002, 2005, 2006, 2009, and 2011, http://www.china.com.cn/policy/txt/2012-01/14/content_24405327.htm. Official English translation of the 1997 revision available at: http://www.npc.gov.cn/englishnpc/Law/2007-12/13/content_1384075.htm.

¹⁹ Criminal Law, Art. 102.

²⁰ Criminal Law, Art. 103(1).

²¹ Criminal Law, Art. 103(2).

²² Criminal Law, Art. 104.

inciting subversion of state power;²⁴ funding activities that endanger state security;²⁵ turning traitor;²⁶ defection;²⁷ spying;²⁸ stealing, gathering, procuring, or illegally providing state secrets or intelligence for (to) those outside of the country;²⁹ and aiding the enemy.³⁰

- **State Secrets Crimes** include: infringement of commercial secrets;³¹ illegally obtaining state secrets;³² illegally holding state secrets;³³ intentional disclosure of state secrets;³⁴ negligent disclosure of state secrets;³⁵ illegally obtaining military secrets;³⁶ stealing, gathering, procuring, or illegally providing military secrets for (to) those outside of the country;³⁷ intentional disclosure of military secrets;³⁸ and negligent disclosure of military secrets.³⁹
- **Other vague and overbroad crimes** include, but are not limited to, gathering a crowd to disturb social order,⁴⁰ gathering a crowd to disrupt public order or traffic,⁴¹ picking quarrels and provoking trouble,⁴² and defamation.⁴³
- Below are case examples of human rights defenders targeted by the relevant categories of crimes.
 - **Cases of Endangering National Security** include: **Liu Xiaobo** (above) and **Huang Qi [黄琦]**, a long-time activist from Sichuan Province, was convicted of “**inciting subversion of state power**,” and imprisoned between 2000 and 2005 for publishing articles on his website.⁴⁴ Other cases include **Hu Shigen [胡石根]** (see below at **Question 4b**) and several ethnic minorities in China (see below at **Question 3b**).

²³ Criminal Law, Art. 105(1).

²⁴ Criminal Law, Art. 105(2).

²⁵ Criminal Law, Art. 107.

²⁶ Criminal Law, Art. 108.

²⁷ Criminal Law, Art. 109.

²⁸ Criminal Law, Art. 110.

²⁹ Criminal Law, Art. 111.

³⁰ Criminal Law, Art. 112.

³¹ Criminal Law, Art. 219.

³² Criminal Law, Art. 282(1).

³³ Criminal Law, Art. 282(2).

³⁴ Criminal Law, Art. 398.

³⁵ Criminal Law, Art. 398.

³⁶ Criminal Law, Art. 431(1).

³⁷ Criminal Law, Art. 431(2).

³⁸ Criminal Law, Art. 432.

³⁹ Criminal Law, Art. 432.

⁴⁰ Criminal Law, Art. 290.

⁴¹ Criminal Law, Art. 291.

⁴² Criminal Law, Art. 293.

⁴³ Criminal Law, Art. 246.

⁴⁴ Human Rights in China, “Authorities Obstruct Huang Qi’s Appeal Attempts,” December 1, 2009, <http://www.hrichina.org/content/352>.

- **Cases of State Secrets Crimes** include: **Huang Qi** was convicted of “**illegal possession of state secrets**” and sentenced to three years in prison on December 1, 2009. The “state secrets” that resulted in Huang’s conviction consisted of two documents issued by a city in Jiangsu Province and one confidential document issued by the Central Political Committee of the CPC. These documents were found during a search of Huang’s organization, the Tianwang Human Rights Center, where Huang also temporarily resided. The defense counsel argued that all three documents were in the public domain.⁴⁵
- **Cases of Other Crimes** include:
 - **Chen Guangcheng** [陈光诚], a Shandong-based blind, self-taught lawyer who helped people in Linyi, Shandong Province file a class-action lawsuit against the city over its policy of forced abortions and sterilizations. In August 2007, Chen was sentenced to four years and three months in prison on charges of “**intentional destruction of property**” and “**gathering a crowd to disrupt traffic**.”⁴⁶
 - **Wang Lihong** [王荔蕪], a Beijing rights activist, was sentenced to nine months in prison on September 9, 2011, on charges of “**picking quarrels and provoking troubles**” by organizing a protest in support of the Three Netizens of Fujian before the court where they were being tried.⁴⁷
 - **Mao Hengfeng** [毛恒凤] is a human rights activist who has petitioned the authorities since 1989 on family planning and other issues. She was ordered twice to serve re-education-through-labor for petitioning, and was sentenced to two and a half years in prison in January 2007 on the charge of “**intentional destruction of property**.” Authorities alleged that Mao had broken two table lamps while detained for several days before the 2006 anniversary of the Tiananmen crackdown.⁴⁸
 - **Xu Kun** [许坤], the elected chief of Baihutou Village in Beihai, Guangxi Zhuang Autonomous Region, led a long-term fight against the local government’s expropriation of village land in 2006 for tourism development. He was convicted in April 2011 of “**illegal business activity**” and sentenced to four years in prison. His conviction was based on an allegation that Xu had

⁴⁵ Ibid.

⁴⁶ Human Rights in China, “Blind Lawyer Chen Guangcheng Released after More than Four Years in Prison,” September 9, 2010, <http://www.hrichina.org/content/837>.

⁴⁷ Human Rights in China, “About Wang Lihong”, *China Rights Forum*, 2011, no. 3, <http://www.hrichina.org/crf/article/5689>; Human Rights in China, “Wang Lihong, Zheng Yichun, Bo Xiaomao Released”, December 20, 2011, <http://hrichina.org/content/5724>. See also Human Rights in China, “Wang Lihong’s Criminal Verdict,” September 9, 2011, <http://www.hrichina.org/content/5565>.

⁴⁸ Human Rights in China, “Mao Hengfeng Sentenced to 2-1/2 Years for Breaking Lamps,” January 15, 2007, <http://www.hrichina.org/content/905>; Human Rights in China, “Mao Hengfeng Held in Abusive Conditions, Appeal Denied,” April 16, 2007, <http://www.hrichina.org/content/938>.

unlawfully gathered people to vote for villagers operating a parking lot on a disputed plot of land.⁴⁹

- Provisions of the current **CPL** (as amended in 1996), provide procedural safeguards, but these are often ignored in practice.⁵⁰
- Provisions in the revised CPL (as amended in 2012, effective 2013) allow non-custodial coercive measures including **residential surveillance** to be executed in two distinct forms depending upon the location where it is being carried out. The ordinary form, as the name suggests, restricts freedom of movement by limiting targets to an area in and about their “domiciles,” during which time they may not leave their place of residence or meet with others without permission from the police unit enforcing the measure. Under certain circumstances, if there is no domicile or the individual engaged in endangering national security, terrorist activities, or extremely serious corruption, residential surveillance may also be carried out in a “designated residence.” Regardless of where residential surveillance is to be carried out, the measure may be imposed for up to six months.⁵¹
 - **For residential surveillance, family members must be notified** within 24 hours, unless notification is not possible, or in “cases involving crimes of endangering state security, terrorist activity, or major bribery.” However this notice does not include information about the family member’s whereabouts or potential charges. Individuals suspected of **terrorist activities** or **endangering national security** may be **detained in secret locations** for up to 38 days without family notification and without access to lawyers.⁵²
 - The unregulated and isolated nature of the custodial environment creates the potential that this exceptional form of residential surveillance creates a perfect environment for physical and psychological abuse.⁵³ Additionally, lawyers must

⁴⁹ Human Rights in China, “Court Upholds Four-year Term for Guangxi Village Chief Who Fought Land Expropriation,” August 3, 2011, <http://www.hrichina.org/content/5519>.

⁵⁰ China’s CPL was enacted in 1979 (effective 1980). The 1996 amendments introduced procedural protections for suspects and defendants. However, an HRIC study documented that many of these protections were often ignored in practice. For an analysis of the implementation of the procedural protections of the 1996 CPL, see Human Rights in China, *Empty Promises: Human Rights Protections and China’s Criminal Procedure Law* (New York: Human Rights in China, 2001), <http://www.hrichina.org/content/4637>.

⁵¹ CPL Art. 67, 77.

⁵² Pursuant to CPL, Art. 83(2), individuals taken into custody should be promptly delivered, within 24 hours, to a detention facility. Family members should be informed within 24 hours, **unless notification is not possible, or unless the individual is being investigated for terrorist activities or endangering national security and notification may impede the investigation**. After a suspect is criminally detained, the investigative organs have a maximum period of 30 days to submit the arrest application to the procuratorates. The procuratorates need to approve or deny the arrest application within seven days. If the arrest is approved, the investigative organs are obliged to inform the family within 24 hours. This, in total, adds up to 38 days under secret detention. See also CPL, Art 89.

⁵³ Rosenzweig, Joshua, Flora Sapio, Jiang Jue, Teng Biao, and Eva Pils, “The 2012 Revision of the Chinese Criminal Procedure Law: (Mostly) Old Wine in New Bottles,” *Centre for Rights and Justice Occasion Papers Series* (2012), <http://www.law.cuhk.edu.hk/research/crj/papers.php>.

seek approval before meeting clients detained for endangering national security, terrorist activities, or extraordinary major crimes of bribery.⁵⁴

b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

- There are no specific legal or administrative safeguards to ensure that human rights defenders, specifically, are not discriminated against in the administration of justice.
- **However, in practice, ethnic minorities, such as Tibetans, Uyghurs, and Mongolians,** face discrimination and disproportionate sentences for exercising and advocating for fundamental rights and freedoms (including cultural, economic, and social rights, and freedom of expression and religion).⁵⁵
- **Examples of heavy sentences** imposed against members of ethnic minority groups are set out below:
 - **Alimujiang Yimiti [阿里木江]** is a **Uyghur** Christian house church leader in Kashgar, Xinjiang Uyghur Autonomous Region (XUAR). In August 2009, after a prolonged criminal detention and trial, he was convicted of “illegally delivering state secrets and intelligence outside China.” He was sentenced to **15 years of imprisonment** with five years of deprivation of political rights. This conviction was based on **two conversations** he had with an American Christian businessman about governmental investigations on his religious preaching. He is currently serving his long term of sentence at the No. 3 Prison of XUAR.⁵⁶
 - **Gheyret Niyaz (Hailaitie Niyazi [海来提•尼亚孜 or 海莱特•尼亚孜])** is a **Uyghur** journalist. In July 2010, he was sentenced to **15 years of imprisonment** for “endangering state security.” The conviction was based on **an interview** with the Hong Kong-based news weekly, *Yazhou Zhoukan*. During the interview,

⁵⁴ CPL, Art. 37(4).

⁵⁵ Ngawang Choephel Drakmargyapon, “UN Committee Fears Alteration of Demographics in ‘Minority Areas’ of China,” Unrepresented Nations and Peoples Organization, September 1, 2009, 2-3, <http://www.unpo.org/article/9994>; “Written statement to UN submitted by the Mouvement contre le racisme et pour l’amitié entre les peuples (MRAP), a nongovernmental organization on the roster,” U.N. Doc. A/HRC/19/NGO/27 (2012), <http://www.savetibet.org/files/documents/G1210456.pdf>; Society for Threatened People (STP), *Enemies of the State-Persecuted Writers in China* (2012), 3, http://www.gfbv.de/show_file.php?type=download&property=download&id=206; “Q&A: China and the Tibetans,” British Broadcasting Corporation, August 15, 2011, <http://www.bbc.co.uk/news/world-asia-pacific-14533879>.

⁵⁶ China Aid, “Xinjiang’s Higher People’s Court Rejects Christian Prisoner Alimujiang’s Appeal,” March 3, 2011, <http://freealim.com/free-news/news-articles/item/168-xinjiang%E2%80%99s-higher-people%E2%80%99s-court-rejects-christian-prisoner-alimujiang%E2%80%99s-appeal.html>; Free Alim, <http://freealim.com>.

Niyaz discussed his efforts to alert the authorities in XUAR about a possible outbreak of violent ethnic conflict in Urumqi on July 5, 2009.⁵⁷

- **Hada [哈达]** is a **Mongolian** political rights activist. He was convicted of “separatism” and “espionage” and sentenced to **15 years of imprisonment** in 1996. The conviction was based on Hada’s **involvement in a Mongolian organization** whose chief mission was opposing Han colonization and striving for self-determination. Immediately after his release in December 2010, Hada was rearrested and remains under extrajudicial custody.⁵⁸
- **Tsering Tenzin [泽让旦真]**, a **Tibetan** monk, was sentenced to **13 years of imprisonment** for **plotting, instigating, and assisting** a fellow monk, Rigzin Phuntsog, to self-immolate. The monk set himself on fire to protest China’s heavy-handed controls on Tibetans.⁵⁹
- **Government authorities have pressured Han Chinese lawyers and their law firms** to withdraw from representing ethnic minorities.⁶⁰
- **Article 306 of Criminal Law**⁶¹ provides that defenders may be prosecuted for fabrication of false evidence if the client changes his or her testimony. This provision has been invoked to target lawyers in cases where the client may change testimony due to pressures from authorities. This situation therefore raises concerns about the provision’s chilling effect on lawyers and their ability to represent their clients. Article 306 is also redundant and unnecessary as other provisions in the Criminal Law address the same issues.⁶² Experts and Chinese lawyers have called for the abolition of Article 306.⁶³

⁵⁷ Human Rights In China, “Heavy Prison Term for Uyghur Advocate of Inter-ethnic Understanding, July 23, 2010, <http://hrichina.org/content/832>.

⁵⁸ Unrepresented Peoples and Nations Organization, “Inner Mongolia: Activist Remains Illegally Detained despite Worsening Health Issues,” May 7, 2012, <http://www.unpo.org/article/13988>; Human Rights in China, “Hada,” Summer 2001, <http://www.hrichina.org/crf/article/4601>.

⁵⁹ “Tibetan Monks Sentenced over Death of Colleague Who Set Himself on Fire,” The Telegraph, August 31, 2011, <http://www.telegraph.co.uk/news/worldnews/asia/tibet/8732238/Tibetan-monks-sentenced-over-death-of-colleague-who-set-himself-on-fire.html>.

⁶⁰ U.S. State Department, *2009 Human Rights Report: China (includes Tibet, Hong Kong, and Macau)* (2010), available at <http://www.state.gov/j/drl/rls/hrrpt/2009/eap/135989.htm>; Jim Yardley, “Beijing Suspends Licenses of 2 Lawyers Who Offered to Defend Tibetans in Court,” *The New York Times*, June 4, 2008, <http://www.nytimes.com/2008/06/04/world/asia/04tibet.html>.

⁶¹ Criminal Law, Art. 306: “If, in criminal proceedings, a defender or agent ad litem destroys or forges evidence, helps any of the parties destroy or forge evidence, or coerces the witness or entices him into changing his testimony in defiance of the facts or give false testimony, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years. Where a witness’s testimony or other evidence provided, shown or quoted by a defender or agent ad litem is inconsistent with the facts but is not forged intentionally, it shall not be regarded as forgery of evidence.”

⁶² Criminal Law, Art. 307: “Whoever, by violence, threat, bribery or any other means, obstructs a witness from giving testimony or instigates another person to give false testimony shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years. Whoever helps any of the parties

QUESTION 4

a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.

- **All civil society groups** must be registered under a complex regulatory framework. “Non-governmental organization (NGO)” **is not a technical legal category of civil society organization**. The general term used is *minjian zuzhi* [民间组织] (translations vary, including “**civil organization**”). This category includes:⁶⁴
 - Social organizations [社会团体]
 - Foundations [基金会]
 - Private non-enterprise entities [民办非企业单位]
- Several laws and key regulations issued from 1998 onward have attempted to clarify official classifications of “**civil organizations**” in the Chinese context.⁶⁵ The

destroy or forge evidence, if the circumstances are serious, shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. Any judicial officer who commits any of the crimes mentioned in the preceding two paragraphs shall be given a heavier punishment.”

⁶³ Congressional-Executive Commission on China, “Defense Lawyers Turned Defendants: Zhang Jianzhong and the Criminal Prosecution of Defense Lawyers in China,” http://www.cecc.gov/pages/news/zhang_052703.php.

⁶⁴ Official website of the Ministry of Civil Affairs (MOCA) [中华人民共和国民政部], China Civil Organizations Web [中国民间组织网] hosted by one of MOCA’s sub-entities, the PRC State Civil Organizations Management Bureau [国家民间组织管理局], and official websites of branch offices of MOCA, <http://www.mca.gov.cn> and <http://www.chinanpo.gov.cn>.

⁶⁵ Regulations for the Registration and Management of Social Organizations [社会团体登记管理条例] (hereafter “Social Organizations Regulations”), issued by the State Council of People’s Republic of China [国务院], promulgated and effective October 25, 1998, http://www.law-lib.com/law/law_view.asp?id=399. An unofficial English translation by Congressional-Executive Commission on China available at: <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingl=51018>. Regulations for the Management of Foundations [基金会管理条例] (hereafter “Foundation Regulations”) issued by the State Council of People’s Republic of China [国务院], promulgated March 8, 2004, effective June 1, 2004, http://www.gov.cn/zw/gk/2005-05/23/content_201.htm. Official English translation available at http://www.novexc.com/management_of_foundations.html. The Provisional Regulations on the Registration and Management of Popular Non-Enterprise Work Unit [民办非企业单位登记管理暂行条例] (hereafter “Private Non-Enterprise Unites Provisional Regulations”) issued by the State Council of People’s Republic of China [中华人民共和国国务院], promulgated and effective October 25, 1998, <http://www.mca.gov.cn/article/zwgk/fvfg/mjzzgl/200709/20070900001726.shtml>. Other related laws include Public Welfare Donations Law of the People’s Republic of China [中华人民共和国公益事业捐赠法], issued by the Standing Committee of the National People’s Congress [全国人民代表大会常务委员会], promulgated June 28, 1999, effective September 1, 1999, <http://www.gqb.gov.cn/node2/node3/node5/node9/userobject7ai1270.html>. Official English translation available at: http://www.novexc.com/welfare_donations99.html, Civil Non Profit Organizations Accounting System [民间非营利组织会计制度], issued by the Ministry of Finance [财政部], promulgated August 18, 2004, effective January 1, 2005, <http://stj.sh.gov.cn/Info.aspx?ReportId=eda26a5c-779c-4566-a633-2d4fc8f01224>. Provisional Measures on Closing Illegal Civil Society Organizations [取缔非法民间组织

regulations focus on the **classifications of different kinds of organizations, funding requirements, registration requirements, and oversight of organizations.**

- To be registered, **civil organizations** must first **acquire approval and sponsorship** (colloquially, find a “**mother-in-law**”⁶⁶) from a Party or government department or state-affiliated organization in the similar field of activity.
- **Not all civil organizations can secure sponsorship**, especially those working on issues **deemed too politically sensitive**. As a result:
 - Many organizations operate illegally as **unregistered organizations**.⁶⁷
 - Many groups have also attempted to avoid the bureaucracy by **registering as businesses**, even though this obliges them to pay corporate taxes.⁶⁸
- **Consequences of operating without proper registration licences** include:
 - Shutdown by local registration authorities.⁶⁹
 - Confiscation and auctioning of assets; detention or fines against the leader(s) of the organization; where this constitutes a crime, criminal responsibility determined in accordance with the law.⁷⁰
- In March 2010, the State Administration for Foreign Exchange issued the *Circular on Relevant Issues Concerning the Administration of Donations in Foreign Exchange by Domestic Institutions* to impose tighter regulatory control and oversight over foreign donations.⁷¹

暂行办法], issued by the Ministry of Civil Affairs, promulgated and effective April 6, 2000, http://gov.ce.cn/home/gwygb/2000/34/200606/12/t20060612_7309209.shtml.

⁶⁶ The term “业务主管单位” has been translated as “competent authority,” “supervisory unit,” “sponsoring department” and “professional leading unit.” See U.S. Embassy Beijing, *Chinese NGO’s—Carving a Niche Within Constraints* (2003), <http://beijing.usembassy-china.org.cn/report0103ngo.html>.

⁶⁷ Wu Zongzhi, “NGOs—Providing a Link,” *Beijing Review*, May 26, 2005, <http://www.bjreview.com.cn/En-2005/05-26-e/china-1.htm>. See also Lin Lihong, “A Study of the Legal Issues of the Registration of Civil Society Organisations” [民间组织登记之法律问题研究], *Human Social Science* [湖北社會科學], no.2 (2005), <http://www.cprdc.org/show.asp?ID=230>.

⁶⁸ CENTRA Technology, Inc., and Scitor Corporation, *China: The Impact of Climate Change to 2030 Geopolitical Implications*, (National Intelligence Council, 2009), http://www.dni.gov/nic/PDF_GIF_otherprod/climate_change/cr200909_china_climate_change.pdf.

⁶⁹ Provisional Measure on Closing Illegal Civil Society Organizations [取缔非法民间组织暂行办法]. See also Social Organizations Regulations, Art. 35, Foundation Regulations, Art. 40, and Private Non-Enterprise Unites Provisional Regulations, Art. 27.

⁷⁰ MOCA, Provisional Measure on Closing Illegal Civil Society Organizations [取缔非法民间组织暂行办法], 2000. Art.35 of the Social Organizations Regulations, Art. 40 of Foundation Regulations, and of Private Non-Enterprise Unites Provisional Regulations, Art. 27.

⁷¹ Human Rights in China, “HRIC Briefing Note: Tighter Regulation of Foreign Funding Support of Chinese Civil Society Groups,” May 27, 2010, <http://www.hrichina.org/content/403>.

b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.

- Notwithstanding Article 35 of the Constitution that protects freedom of association, China's legal framework in practice restricts the free association of groups and individuals.
- Citizens who organize independent groups, such as independent political parties or workers groups, face harsh crackdowns. An example is the case of **Hu Shigen** [胡石根]. Hu is a veteran democracy advocate who served 16 years of his 20 years sentence for “carrying out counterrevolutionary propaganda and incitement” and “organizing a counterrevolutionary group” after he planned activities to commemorate the government's Tiananmen crackdown, called for a reassessment of the government's actions, and established the China Freedom and Democracy Party and the Preparatory Committee of the Free Labour Union of China.⁷²

QUESTION 5

a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?

- Human rights defenders who undertake activities on an individual basis face criminal, administrative, or extra-legal sanctions. As described above, any individual who participates in an unregistered organization is at risk of legal or administrative sanctions.
- **Criminal sanctions** vary based on the nature and circumstances of the crime.
 - For **crimes of endangering national security**, individuals can be sentenced to criminal detention, public surveillance, deprivation of political rights, a fixed term of imprisonment, or the death penalty,⁷³ depending on the specific crime, the degree of severity, and whether overseas groups or individuals were involved.⁷⁴
 - For **state secrets crimes**, sentences vary depending on crime and connection to overseas actors, and can include criminal detention, public surveillance, deprivation of political rights, a fixed term of imprisonment, or the death penalty.⁷⁵

⁷² Human Rights in China, “Imprisoned Democracy Activist Hu Shigen Released”, August 26, 2008, <http://hrichina.org/content/194>

⁷³ Criminal Law. Art. 102-113.

⁷⁴ Criminal Law, Art. 106.

⁷⁵ Criminal Law, Arts. 219, 220, 282, 398, 431, 432.

- One of the most notorious **administrative sanctions** is **re-education-through-labor** (RTL).⁷⁶ RTL is often used against activists and petitioners⁷⁷ who engage in the peaceful exercise of their fundamental rights and freedoms.⁷⁸ Below are several problems with RTL:
 - There is **limited judicial supervision**.⁷⁹ Public security officials have discretionary power to impose the RTL on individuals for up to four years.
 - The law is **vague** on who can be punished under RTL.⁸⁰
 - **Reform** of the RTL system has been **slow and ineffective**.⁸¹
- **Chinese government officials often use extra-legal measures** against human rights defenders.⁸² Measures include “black jails,”⁸³ enforced disappearances,⁸⁴ torture, and

⁷⁶ Fu Hualing, “Dissolving Laojiao,” *China Rights Forum*, 2009, no.1, <http://www.hrichina.org/crf/article/3701>. See also Human Rights in China, “Arbitrary & Disproportionate Punishment-Reeducation Through Labor,” *China Rights Forum*, Spring 2001, <http://www.hrichina.org/crf/article/4593>.

⁷⁷ U.N. Committee Against Torture, “List of Issues Prior to the Submission of the Fifth Periodic Report of China,” U.N. Doc CAT/C/CHN/Q/5 (2011), para. 9(c).

⁷⁸ *Ibid.*

⁷⁹ U.N. Committee on the Elimination of Racial Discrimination, “Consideration of Reports Submitted by States Parties under Article 9 of the Convention: Concluding Observations of the Committee on the Elimination of Racial Discrimination (China),” U.N. Doc. CERD/C/CHN/CO/10-13 (2009), para. 15, <http://www.unhcr.org/refworld/docid/4adc35852.html>.

⁸⁰ Decision of the State Council on the Issue of the Reeducation through Labor [关于劳动教养问题的决定], issued by the Standing Committee of the National People’s Congress [国务院], promulgated August 3, 1957, <http://news.sina.com.cn/c/2003-07-11/13521324955.html>; Supplemental Regulations on the Issue of Re-education Through Labor [关于劳动教养的补充规定], issued by the State Council [国务院], promulgated and effective November 29, 1979, <http://review.jcrb.com/200803/ca683855.htm>; Notice on Circulating the Provisional Measures of the Ministry of Public Security on Re-education Through Labor [关于转发公安部制定的《劳动教养试行办法》的通知], issued by the State Council [国务院], promulgated January 21, 1982, <http://www.jincao.com/fa/06/law06.01.htm>.

⁸¹ The NPC internally discussed a *Law on the Correction of Illegal Behavior (Draft)*. In 2010, the NPC again included the draft law in its legislative agenda and dozens of NPC representatives attempted to accelerate the drafting process. However, no mention was made of the proposed law in the NPC’s 2011 and 2012 annual reports, nor was a timeframe for its passing and implementation. In March 2011, there were reports that the NPC Standing Committee’s Legal Affairs Working Committee is still drafting the legislation, and that some government departments have been performing RTL reform trials. See Fu Hualing, “Dissolving Laojiao,” *China Rights Forum*, 2009, no.1, <http://www.hrichina.org/crf/article/3701>; Chen Zhenkai [陈振凯], “NPC Representatives Advocate for Speeding Up the Drafting of the Law on the Correction of Illegal Behaviors” [代表委员：呼吁加快《违法行为教育矫治法》制定], March 10, 2010, <http://2010lianghui.people.com.cn/GB/180673/11112685.html>; “Wu Bangguo Introduces NPC’s Three Major Tasks for 2010” [吴邦国介绍 2010 年三大主要任务], *People’s Daily* [人民日报], March 9, 2010, <http://2010lianghui.people.com.cn/GB/11106144.html>; Chen Liping [陈丽平], “Legal Affairs Working Committee of the National People’s Congress Is Researching and Working on a Draft Law on the Correction of Illegal Behaviors” [制定违法行为矫治法 法工委正在研究起草], *Legal Daily* [法制日报], March 2, 2011, http://www.legaldaily.com.cn/index_article/content/2011-03/02/content_2492007.htm.

⁸² Fu Hualing, “The Varieties of Law in China,” *China Rights Forum*, 2011, no. 1-2, <http://www.hrichina.org/crf/article/5422>.

⁸³ These are used by government officials to detain peasants defiant against illicit taxes, petitioners in Beijing airing their grievances, and Tibetan monks who challenge the official policy on religions. See Fu Hualing, “The Varieties

house arrests. Extra-legal measures focus on the “risk” of an individual to the Party-state, regardless of whether crime was committed, and take measures against individuals according to their “specific personal profile to maximize intimidation.”⁸⁵

- Civil society organizations who undertake public interest work deemed by the authorities as sensitive or political are cancelled⁸⁶ or shut down.⁸⁷

b) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide details.

- The prevalence of formal and extra-legal sanctions restricts the freedoms of expression, association, and movement of rights defenders. These practices create a chilling effect on the exercise of these fundamental rights and freedoms among the general population.
- Actions of individuals held under the CPL’s **residential surveillance** provisions (see above) are heavily restricted:

Article 75. A criminal suspect or defendant under residential surveillance shall observe the following provisions:

1. not to leave the place where the residential surveillance is executed without permission from the executing organ;
2. not to meet or communicate with others without permission of the executing organ;
3. to be present in court in good time when summoned;
4. not to interfere in any form with the witness when the latter gives testimony;
5. not to destroy or falsify evidence or tally confessions; and
6. surrender his or her passport and other entry or exist permits, identity cards, and driving license to the executing organ.

of Law in China,” *China Rights Forum*, 2011, no. 1-2, <http://www.hrichina.org/crf/article/5422>; U.N. Committee Against Torture, “List of Issues Prior to the Submission of the Fifth Periodic Report of China,” U.N. Doc CAT/C/CHN/Q/5 (2011), para. 12.

⁸⁴ Human Rights in China, “Dozens Put Under House Arrest as Chinese Authorities Intensify Crackdown Following Nobel Peace Prize Announcement,” October 28, 2010, <http://www.hrichina.org/content/849>; Human Rights in China, “Lawyers and Activists Detained, Summoned, and Harassed in ‘Jasmine Rallies’ Crackdown,” February 23, 2011, <http://www.hrichina.org/content/4896>; Keith B. Richburg, “Chinese Artist Ai Weiwei Arrested in Latest Government Crackdown,” *The Washington Post*, April, 3, 2011, http://www.washingtonpost.com/world/chinese-artist-ai-wei-wei-arrested-in-latest-government-crackdown/2011/04/03/AFHB5PVC_story.html; Jerome A. Cohen, “Turning a Deaf Ear,” *South China Morning Post*, June 6, 2011, <http://www.usasialaw.org/?p=5543>; Fu Hualing, “The Varieties of Law in China,” *China Rights Forum*, 2011, no. 1-2, <http://www.hrichina.org/crf/article/5422>.

⁸⁵ Fu Hualing, “The Varieties of Law in China,” *China Rights Forum*, 2011, no. 1-2, <http://www.hrichina.org/node/5422/5422>.

⁸⁶ Human Rights in China, “Women’s Rights NGO Responds to Cancellation by Peking University”, April 7, 2010, <http://hrichina.org/content/387>.

⁸⁷ Human Rights in China, “Gongmeng Officially Shut Down, Founder Formally Arrested”, August 18, 2009, <http://hrichina.org/content/333>.

- Individuals sentenced to **deprivation of political rights**, after release from prison, are restricted from exercising basic freedoms such as expression and association. Restrictions are set out under Article 12 of the *Regulations on the Supervision and Administration by Public Security Organs of Criminals Who Have Been Put Under Surveillance, Deprived of Political Rights, Given Reprieve, Given Parole, or Released on Bail for Medical Treatment*:⁸⁸

Article 12. Public security organs shall announce to the criminal whose political rights are being deprived that he must abide by the following provisions during the deprivation period:

- Abide by national laws and regulations and relevant Ministry of Public Security regulations;
- Shall not enjoy the right to vote or stand for election;
- **Shall not organize or participate in any gatherings, marches, demonstrations, or forming associations;**
- **Shall not accept interviews or give speeches;**
- **Shall not issue, publish, or distribute discussions, books, or recordings which are detrimental to the state's honor and interests or otherwise endanger society domestically or abroad;**
- Shall not hold a position in any state organ;
- Shall not hold a leadership position in any enterprise, state-run institution, or civic organization;
- Abide by the specific supervision and administration measures set out by the public security organs.

QUESTION 6

Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

- The overarching framework of information control and surveillance in China includes laws, regulations,⁸⁹ propaganda and security apparatus, and a state-of-the arts technology infrastructure.

The *Law of the People's Republic of China on Guarding State Secrets* (“State Secrets Law”)⁹⁰ addresses the classification, holding, and dissemination of an all encompassing

⁸⁸ Human Rights in China, “Writer Lü Gengsong Released from Prison; Refuses Conditions of Deprivation of Political Rights,” November 24, 2011, <http://www.hrichina.org/content/5557>.

⁸⁹ For further information, see Human Rights in China, *State Secrets: China's Legal Labyrinth* (New York: Human Rights in China, 2007), 125-185, <http://www.hrichina.org/content/4082>.

⁹⁰ Law of the People's Republic of China on Guarding State Secrets (hereafter, “State Secrets Law”) [中华人民共和国保守国家秘密法], issued by the Standing Committee of the National People's Congress [全国人民代表大会常务委员会], promulgated September 5, 1988, effective May 1, 1989; revised April 29, 2010, effective October 1,

universe of information, including any information determined to harm or threaten national security, and engages state interests in areas of politics, the economy, and national defense. The 2010 revised State Secrets Law reflects the government’s ongoing policy to **expand and tighten information control in the digital age**, and expands the scope of the law to include all public information networks, e.g. the Internet, traditional media, and the full range of sectors (hardware, software, service providers, etc.).⁹¹

- The definition of “state secrets”⁹² is still not clearly defined and together with the retro-active classification of what constitutes a state secret (based upon “consequences” and degree of harm to the state), gives officials wide discretion to target and prosecute legitimate activities.
- On May 15, 2012, the State Council published the *Draft Measures for Implementation of the Law on Guarding State Secrets (Draft SSL Implementation Measures), open for comment until June 15, 2012*.⁹³ The draft measures enumerate similar categories as existing laws and regulations on the definition of “state secrets,” including:⁹⁴
 1. Those which endanger state sovereignty and security, territorial integrity, the consolidation of the regime, and defense capability;
 2. Those which endanger national unity, ethnic unity, and social stability;
 3. Those which jeopardize the state’s diplomatic affairs and activities;
 4. Those which weaken the national economy or strength of its science and technology sector;
 5. Those which jeopardize the security of significant national defense targets and objectives;
 6. Those which jeopardize the effective implementation of the state’s methods and measures of handling the incidents and anti-terrorism efforts;
 7. Those which jeopardize the protection of national intelligence sources and intelligence activities;
 8. Those which jeopardize the investigation in accordance with the law of activities which could harm state security or major crimes;
 9. Those which result a decrease in the reliability of national secret protection measures or which cause those measures to rendered ineffective.
- The State Secrets Law and Draft SSL Implementation Measures are **silent on procedures to challenge classifications of state secrets**. They also continue to allow authorities to

2010, http://www.gov.cn/flfg/2010-04/30/content_1596420.htm. An unofficial translation of the State Secrets Law by Human Rights in China available at: <http://hrichina.org/sites/default/files/oldsite/PDFs/PressReleases/20101001-StateSecretsLaw-EN.pdf>.

⁹¹ State Secrets Law, Art. 28. See also, Human Rights in China, “China Sharpens Legal Weapon for Information Control,” April 29, 2010, <http://www.hrichina.org/content/394>.

⁹² State Secrets Law, Art. 9.

⁹³ On May 15, 2012, the State Council published a draft to revise *the Measures for Implementing the Law on the Protection of State Secrets* and sought public opinions by June 15, 2012. The draft in Chinese is available at <http://www.chinalaw.gov.cn/article/cazjgg/201205/20120500367762.shtml>.

⁹⁴ “Measures for Implementing the Law on the Protection of State Secrets of the PRC” [中华人民共和国保守国家秘密法实施办法], Art. 9. Translation by Human Rights in China.

retroactively classify information as state secrets irrespective of whether the information was already in the public domain.⁹⁵

QUESTION 7

a) **Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.**

- Defamation is a punishable crime under **Article 246** of the Criminal Law.⁹⁶

b) **How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?**

- Article 246, on its face, does not target human rights defenders. In practice, authorities have used defamation to target human rights defenders.
- An example of this is the case of **Fan Yanqiong** [范燕琼], **Wu Huaying** [吴华英], and **You Jingyou** [游精佑], commonly known as the Three Netizens of Fujian. They were sentenced from one to two years in prison for “**defamation**” in December 2009, after writing essays and releasing videos online to help expose a police cover-up of a rape and murder case in June 2009.⁹⁷

QUESTION 8

Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.

- The *Lawyers Law of the People’s Republic of China* (“Lawyers Law”) sets out the responsibilities legal counsel in protecting the interests of their clients.⁹⁸ The 2007 version imposes mandatory obligations on lawyers **to protect the lawful rights and interests of parties, ensure the correct implementation of law, and safeguard fairness and justice of society.**⁹⁹

⁹⁵ State Secrets Law, Art. 20.

⁹⁶ Criminal Law, Art. 246.

⁹⁷ Human Rights in China, “Dissident Liu Xianbin Arrested on Suspicion of Inciting Subversion of State Power,” July 6, 2010, <http://www.hrichina.org/content/411>.

⁹⁸ Lawyers Law of the People’s Republic of China (hereafter, “Lawyers Law”) [中华人民共和国律师法], issued by the Standing Committee of the National People’s Congress [全国人民代表大会常务委员会], promulgated May 15, 1996, effective January 1, 1997; amended and effective December 29, 2001; revised October 28, 2007, effective June 1, 2008, http://www.gov.cn/flfg/2007-10/28/content_788495.htm.

⁹⁹ Ibid.

- However, on March 21, 2012, China’s Ministry of Justice issued a notice regarding a new Lawyer’s Oath system which required that all newly licensed lawyers **swear loyalty to the CPC and the socialist system.**¹⁰⁰ The full text of the Lawyer’s Oath is:

我志愿成为一名中华人民共和国执业律师，我保证忠实履行中国特色社会主义法律工作者的神圣使命，忠于祖国，忠于人民，拥护中国共产党的领导，拥护社会主义制度，维护宪法和法律尊严，执业为民，勤勉敬业，诚信廉洁，维护当事人合法权益，维护法律正确实施，维护社会公平正义，为中国特色社会主义事业努力奋斗！¹⁰¹

I pledge to be a practicing lawyer of the People’s Republic of China. I swear to faithfully fulfill the sacred mission of a **legal worker of the socialist system** of laws with Chinese characteristics, to be loyal to the motherland, to be loyal to her people, **to support the leadership of the Communist Party of China, to support the socialist system**, to uphold the dignity of the Constitution and the law, to practice for the people, to work diligently and with honesty and integrity, to protect the lawful rights and interests of parties, to ensure the correct implementation of law, to safeguard fairness and justice of society, and to strive hard for the cause of socialism with Chinese characteristics!¹⁰²

- Between March and early June 2012, several oath-taking ceremonies have been held, including:
 - March 31 – An undefined number of newly licensed lawyers took the oath in **Kashgar**, Xinjiang Uyghur Autonomous Region.¹⁰³
 - April 12 – 200 newly licensed lawyers took the oath in **Beijing**.¹⁰⁴
 - April 17 – The Yintan Municipal Bureau of Justice of **Jiangxi** Province held its first oath ceremony for newly licensed lawyers;¹⁰⁵

¹⁰⁰ Zhao Yang [赵阳], “Ministry of Justice Issues a Notice to Subsidiaries on Establishing an Oaths System for Lawyers, New Lawyers Must Swear an Oath” [司法部下发建立律师宣誓制度决定的通知 进入律师队伍必须进行宣誓], *Legal Daily* [法制日报], March 20, 2012, http://www.moj.gov.cn/index/content/2012-03/21/content_3445267.htm.

¹⁰¹ Notice on Printing the Decision on Establishing a System of Oaths for Lawyers [关于印发《关于建立律师宣誓制度的决定》], issued by the Ministry of Justice [司法部], promulgated February 3, 2012, http://www.szlawyers.com/Outlook/news_view.aspx?newsid=142310.

¹⁰² Notice on Printing the Decision on Establishing a System of Oaths for Lawyers [关于印发《关于建立律师宣誓制度的决定》], issued by the Ministry of Justice [司法部], promulgated February 3, 2012, Art. 6, http://www.szlawyers.com/Outlook/news_view.aspx?newsid=142310. English translation by HRIC.

¹⁰³ “Kashgar Lawyers Association Held Newly Licensed Lawyer Oath Ceremony” [喀什律协开展新执业律师宣誓活动], April 1, 2012, http://www.xjlx.org/news_show.aspx?id=998&name=%B9%A4%D7%F7%B6%AF%CC%AC&tj=%B9%A4%D7%F7%B6%AF%CC%AC.

¹⁰⁴ “First Oath-taking Ceremony Held for Lawyers,” *China Daily*, April 12, 2012, http://www.chinadaily.com.cn/china/2012-04/12/content_15035437.htm.

¹⁰⁵ “Municipal Judicial Bureau Held the First Lawyers Oath Ceremony” [市司法局举行首届律师宣誓仪式], April 17, 2012, http://www.yingtian.gov.cn/dttx/gzdt/bmdt/201204/t20120417_177043.htm.

- April 20-22 – The Chengde Municipal Bureau of Justice and Chengde Lawyers Association of **Hebei** Province held an oath ceremony for newly licensed lawyers;¹⁰⁶
 - April 28-29 – Almost 300 newly licensed lawyers took the oath in Ji'an, **Jiangxi** Province;¹⁰⁷
 - May 10 – Approximately 60 lawyers took the oath at the **Qinghai** Provincial Department of Justice;¹⁰⁸
 - May 12 – 67 new lawyers took the oath in Liaocheng, **Shandong** Province;¹⁰⁹
 - May 16 – 149 new lawyers took the oath at Xinxiang, **Henan** Province;¹¹⁰
 - June 1 – 228 new lawyers took the oath at the **Tianjin** Municipal Lawyers Association.¹¹¹
- The new Lawyer's Oath raises serious concerns about undermining the independent and professional role and responsibility of a lawyer in representing their clients, particularly rights defenders suspected of or charged with terrorism, national security, or state secrets crimes. The current legal framework provides no concrete guidance on how to resolve the apparent conflicts between the obligations of lawyers to the party versus their clients.
 - Chinese authorities also use the **lawyers' annual license renewals** to obstruct human rights counsel from continuing their work. For example, in 2012, the government did not renew the license to practice of several human rights lawyers: **Liu Xiaoyuan** [劉曉原] of Beijing,¹¹² **Chen Wuquan** [陈武权] of Guangzhou,¹¹³ and **Wang Cheng** [王成] of Hangzhou.¹¹⁴

¹⁰⁶ “2012 Lawyer's Business and Professional Ethical Training Session held by Chengde Municipal Judicial Bureau and Chengde Municipal Lawyers Association” [承德市司法局 承德市律师协会举办 2012 年律师业务暨律师职业道德执业纪律培训班], May 3, 2012, <http://www.cdsf.gov.cn/ReadNews.asp?NewsID=1047>.

¹⁰⁷ “An Afterthought on the Lawyer's Training Session, Part 2—How Does a Lawyer Train Oneself” [律协培训有感之二—律师如何历练自己], April 28-29, 2012, <http://www.jxzsqqls.com/ShowArticle.shtml?ID=2012552130892093.htm>.

¹⁰⁸ “Provincial Judicial Department Held the First Lawyers Oath Ceremony for the New Practicing Lawyers” [省司法厅举办首次新执业律师宣誓仪式], May 11, 2012, <http://www.qhsf.gov.cn/NewsDetail.aspx?id=8032111D741E5F1D>.

¹⁰⁹ “Liaocheng Grandly Holds First Lawyers Oath Ceremony for the New Practicing Lawyers” [聊城市隆重举行首期新执业律师宣誓仪式], May 14, 2012, http://www.lclsw.cn/List_Content.asp?articleid=2438.

¹¹⁰ “Xinxiang Municipal Judicial Bureau and Xinxiang Municipal Lawyers Association Held Lawyers Oath Ceremony for New Lawyers” [新乡市司法局、新乡市律师协会组织举行新律师宣誓仪式], May 21, 2012, <http://www.hnlawyer.org/index.php/Index-article-id-2360>.

¹¹¹ “Tianjin Held the First Lawyers Oath Ceremony for the New Practicing Lawyers” [天津市举行首次新职业律师宣誓仪式], June 1, 2012, <http://news.enorth.com.cn/system/2012/06/01/009353441.shtml>.

¹¹² Liu Xiaoyuan reported to Ai Weiwei on Twitter that his lawyer's license expired on May 31, 2012, and that he was awaiting his 2012 annual review; he also stated that his employing firm had not passed their 2011 annual review, thereby preventing the firm from applying to undergo a 2012 review. Liu Xiaoyuan [刘晓原], May 31, 2012, http://twitter.com/liu_xiaoyuan/status/208366633729798144.

¹¹³ Chen Wuquan informed Reuters that the Guangzhou Lawyers Association had confiscated his license “temporarily” during a standard annual renewal in May 2012. Sui-Lee Wee, “Lawyers for China Dissident's Nephew Say They Face Threats,” Reuters, May 11, 2012, http://articles.chicagotribune.com/2012-05-11/news/sns-rt-us-china-lawyersbre84a06f-20120510_1_chen-wuquan-ren-zongju-chen-guangcheng.

¹¹⁴ German broadcaster Deutsche Welle reported that Wang Cheng has participated in human rights activism and stood for election to the municipal people's congress as an independent candidate and was therefore pressured to

CONCLUSION

This note has reviewed key areas of concern regarding China's treatment of human rights defenders. The timing and focus of this report on human rights defenders comes at an especially critical time for Chinese defenders. In the lead up to the CPC's 18th Party Congress in October 2012, the State mechanism has taken extreme measures to maintain stability and ensure a smooth leadership transition. This political imperative of the leadership has fueled increased crackdowns on rights defenders, serious roll-backs on the rule of law, and the resurgence of extra-legal measures. The role of defenders in this climate is crucial to protecting fundamental rights and freedoms as well as advancing a more open and accountable government.

leave his law firm; further, The Hangzhou Municipal Bureau of Justice is imposing hurdles on his transition to a new law firm. Wang informs Deutsche Welle that his license to practice law will very likely be revoked. "Hangzhou Rights Defense Lawyer Wang Cheng's Difficult Transition to a New Law Firm" [杭州維權律師王成轉所遇刁難], Deutsche Welle [德国之声], April 7, 2012, <http://www.dw.de/dw/article/0,,15865730,00.html>.