



# CHINA'S OFFICIAL POSITIONS ON REPRISALS: **WHEN COOPERATION WITH THE UN IS A 'CRIMINAL ACT'** 2022

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# CHINA'S OFFICIAL POSITIONS ON REPRISALS: WHEN COOPERATION WITH THE UN IS A 'CRIMINAL ACT'

In October 2021, the UN Human Rights Council adopted its fifth [resolution](#) on the issue of 'cooperation with the UN, its representatives and mechanisms in the field of human rights', more generally referred to as the 'reprisals resolution'.<sup>1</sup> In an important step, the resolution lays the groundwork for the annual report by the UN Secretary-General to be discussed not only at the UN Human Rights Council, but also at the UN General Assembly. While in 2013, 2017 and 2019 the resolution was put to a vote at the Council, in 2021 the resolution enjoyed sufficient consensus to be adopted without a vote – in theory, marking broader acceptance of its concerns about the situation and its calls on States and the UN.

Complicating the success, however, was the decision by China, Russia and Venezuela to 'dissociate' from the resolution. Although the Chinese representative stated explicitly 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. China will therefore dissociate itself from the consensus on the resolution.*

Using available public materials and internal documents, this report aims to:

- Trace the evolution of China's public stance on the issue of reprisals at the UN;
- Summarise the growing body of information provided by the UN on China's practices of reprisals, including on individual cases;
- Provide insight into how the Chinese delegations in Geneva and New York have engaged with both the substance and procedural dynamics of the issue, in particular the role of the Assistant Secretary-General for Human Rights (hereafter ASG) as senior UN official on reprisals;
- Raise awareness of the ways in which Chinese official multilateral policies pose a risk to civil society and in particular human rights defenders' ongoing engagement with the UN; and
- Make recommendations to ensure everyone can access and communicate with international bodies, safely and effectively.

<sup>1</sup> The resolution is a continuation of a resolution adopted annually by the Commission on Human Rights beginning in 1990: 'Commission on Human Rights Resolution on Cooperation with representatives of United Nations Human Rights Bodies' (7 March 1990), UN Doc E/CN.4/1990/76

# 1. A hardening of China's public positions on reprisals in dialogues at the Human Rights Council

At first blush, Chinese representatives at the UN are happy to 'talk the talk' when it comes to reprisals against individuals for engagement with UN human rights bodies and mechanisms. Their interventions in 'interactive dialogues' with the UN Assistant-Secretary General for Human Rights (ASG), held each September upon the presentation of the reprisals report to the Human Rights Council, are crafted to maintain a fine balance: to rebuke criticism and question the ASG's reporting prerogatives, without appearing to oppose the right to safely cooperate with the UN.

China's approach to the UN senior official has shown a hardening over time. This can be tracked, or at least approximated, by following the evolution of China's interventions in the annual dialogues on the reprisals report, repeatedly condemning the UN for 'interfering in China's judicial affairs' and 'backing up criminals.'

In 2018,<sup>2</sup> the Chinese delegation [fully rejected](#) the Secretary-General's report on reprisals. China strongly condemned the report for allegedly providing 'unproven information, being biased and 'not up to standard.' It argued that China's authorities took legitimate action 'in accordance with law' to prosecute 'criminals', and condemned the UN officials for 'interfering in China's sovereignty' and 'emulating impunity'.

In the interactive dialogue in 2019,<sup>3</sup> China continued to voice fierce opposition to the report and its methodology. It expressed its 'regret and opposition' to the report, recalling that the resolution emphasised that the information provided to the UN for the report must be credible, reliable and verified and corroborated. China regretted that the report 'disregarded facts on the ground' and cited unverified and false information, and openly backed illegal acts and criminal offenders while vilifying national judicial proceedings as reprisals, and giving criminals a protective shield to commit crimes with impunity. China characterised such actions as gross violations of the principles and purposes of the UN Charter and of the Human Rights Council resolution. China went on to say that on many occasions they have provided authoritative information that was not taken into account. China said that along with many other member States, they have repeatedly expressed concern with the report but the ASG has refused to listen and responded by blaming member States for reprisals and issuing reports to exert pressure. China called it 'highly irresponsible' and said it undermined the credibility of the UN human rights mechanisms.

The former ASG, Andrew Gilmour, shared that States deny with outrage and "shock" having carried out reprisals and that some, including China, even publicly accused him of "violating the UN Charter" by carrying out this mandated task.<sup>4</sup>

In 2020,<sup>5</sup> the Chinese delegation started by acknowledging the significance of having different social actors contributing to the promotion of human rights. But the tone changed abruptly as it lashed out at the UN for smearing Chinese authorities' investigations against human rights defenders as reprisals. The authorities continued to criticise the UN for openly backing up the mischaracterised 'criminals,' stating it was ludicrous to direct allegations at China without disclosing the details of the alleged cases to China 'at the pretext of preventing further reprisals.'

<sup>2</sup> UN WebTV: <https://media.un.org/en/asset/k17/k17o1s6vsj> (2:07:36)

<sup>3</sup> UN WebTV: <https://media.un.org/en/asset/k1e/k1e7l3bdwr> (1:07:10)

<sup>4</sup> <https://www.ft.com/content/e339fe22-1a66-11ea-81f0-0c253907d3e0>

<sup>5</sup> UN WebTV: <https://media.un.org/en/asset/k1a/k1aa5futu8> (01:53:25)

In 2021,<sup>6</sup> China took an even more aggressive and confrontational attitude to explicitly and strongly refute the allegation of reprisals as a 'slandering campaign', saying it seriously interfered in China's judiciary and sovereignty. China also criticised the UN for refusing to disclose information about reported cases of reprisals to China, and accused the UN of being 'suspicious' and 'untrustful' with member States. The authorities justified the reprisals as 'lawful investigations.' China also explicitly condemned the UN for characterising the people 'aiming to incite subversion and secession of State power'<sup>7</sup> as 'people who cooperate with the UN.'

## 2. The Secretary-General's annual 'reprisals report': Sustained rebuttal at mounting concerns on patterns of reprisals

China's reactions are driven by a clear interest: a staunch defence of its 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 9 of the 11 annual reports between 2010 and 2020 (China was also mentioned in the [2021 report](#)). In the [2020 report](#), China was listed among the 11 countries cited for engaging in 'patterns of reprisals.' Very unfortunately in 2021, the Secretary-General's report did not include a denunciation of certain States perpetrating a pattern of reprisals.

The consistent work of civil society organisations and activists to document reprisals has led to a rich body of information about cases, pointing to four key trends:

1. **Grave acts of reprisals are committed in the name of national security and law enforcement** – 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.

<sup>6</sup> UN WebTV: <https://media.un.org/en/asset/k11/k11e7n524h> (1:09:56)

<sup>7</sup> The charges of 'inciting subversion of State power', 'subversion of State power', 'inciting separatism' and 'separatism' are national security crimes carrying long jail sentences under Chinese Criminal Law. UN experts and civil society have [widely reported their systematic use by the government to target human rights defenders](#).



2. **Civil society at large is at risk of reprisals** – 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. Chinese authorities retaliate against those engaging with the UN – such as [against lawyer Jiang Tianyong](#) for his meeting with Special Rapporteur Philip Alston during his visit to China in 2016 – or merely *seeking* to engage – such as women defender Cao Shunli who paid the highest cost for her [intended visit to Geneva ahead of China's October 2013 UPR](#). Cao Shunli was detained as she was about to board her plane in Guangzhou, and died in detention in March 2014. Of particular concern recently are the increasingly restrictive and retaliatory measures against Hong Kong civil society organisations. The promulgation of the National Security Law 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.
3. **Impunity for perpetrators remains unaddressed** – The vast majority of cases of reprisals remain unresolved year after year, as demonstrated by the consistently high number of outstanding follow-up cases in the annex of the Secretary-General's annual report. According to ISHR's 2021 study, '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)'.<sup>8</sup> However, the Chinese authorities deny the allegations, and have not undertaken any independent investigations.
4. **Blunt rejection of criticism** – The government systematically rejects allegations of reprisals as 'gross interference' with, or 'seriously trampling with judicial sovereignty.' They have refuted the findings in the Secretary-General's report as 'unconfirmed information' and 'biased and groundless accusations.'

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, as they sought to engage with the UN Human Rights Council, the Committee Against Torture, the Special Rapporteur on extreme poverty and human rights, or participate in the annual Permanent Forum on Indigenous Peoples. Acts of reprisals mentioned in the report included travel bans, surveillance, detention, ill-treatment and torture.

Since 2019, the number of Chinese cases has been on a steady rise<sup>9</sup>: in 2019, the report documented 6 new cases and 11 follow up cases involving China. In the 2020 report, China was one of the 'top perpetrators' in terms of the number of reported cases, out of the 40 countries cited in the report, with 15 new cases. In terms of the number of ongoing cases, China ranked first with follow up information on 16 cases of reprisals targeting individuals and one reported case targeting a civil society organisation. Those affected included activists, human rights defenders and lawyers who reported to OHCHR that they had been targeted for attending training sessions, including with United Nations staff, or engaging with the United Nations human rights mechanisms. A significant portion of cases involve defenders working on gender-based violence and labour right issues. The 2021 report gives particular attention to the impact of Hong Kong's new National Security Law on civil society's ability to freely cooperate with the UN, despite its long history of engagement with UN mechanisms.

<sup>8</sup> The annual report's 'follow-up' annex only includes outstanding cases of reprisals that remain unaddressed by the authorities. China's unusually high follow-up rate may relate to the severe and long-lasting nature of reprisals cases perpetrated by the authorities.

<sup>9</sup> Including both new cases and outstanding cases

### 3. Voting records: From constructive engagement to confrontation in negotiations on the reprisals resolution

China's engagement on the issue of reprisals goes further than efforts to dispel specific allegations. China was a member of the nascent Human Rights Council in 2009, when the first reprisals resolution (A/HRC/12/2) was adopted without a vote. However, China was not a Council member in 2013, when a far more advanced resolution (A/HRC/24/24) called on the Secretary General to appoint a senior focal point within the UN system charged with prevention of and response to reprisals. China did have a chance to vote on the issue several weeks later in the General Assembly when it sponsored and voted in favour of a resolution on the 'Report of the Human Rights Council' that set aside the Council resolution and resulted in the deferral of the focal point appointment.<sup>10</sup> The senior official on reprisals was ultimately appointed by the Secretary-General in 2016 using his 'good offices' powers.<sup>11</sup>

When the resolution was again negotiated at the Council in 2017 and 2019, China abstained from the votes, walking a fine line between refusing support, but not being outright obstructive to the Council's work to protect those who engage with it. In 2017, 19 States abstained, while none actually voted 'no'; similarly, in 2019, there were zero 'no' votes and a decreased number – 11 – of abstentions.

In those two sessions of the Council, China also backed amendments to the reprisals resolution that would have hampered or limited the work of the UN and the ASG, or that sought to carve out exceptions for the obligations placed on States as a function of their 'national conditions.' The 2017 resolution was subject to 19 hostile amendments – ranging from the mundane to the fundamental – of which one was withdrawn and three adopted. Support for the amendments among China and likeminded countries on the issue was as follows:

	China	Russia	India	Venezuela	Egypt	Outcome
<a href="#">Amendment #1</a> – Host country obligations		X				REJECTED
<a href="#">Amendment #2</a> – Recalling institution-building of HRC	X	X	X	X		WITHDRAWN
<a href="#">Amendment #3</a> – Scope of cases of intimidation and reprisals	X	X	X	X	X	REJECTED
<a href="#">Amendment #4</a> – Principles of cooperation and genuine dialogue	X	X	X	X	X	ADOPTED
<a href="#">Amendment #5</a> – Designation of Assistant Secretary-General	X	X	X	X	X	REJECTED
<a href="#">Amendment #6</a> – UN mandate on reprisals	X	X	X	X	X	REJECTED
<a href="#">Amendment #7</a> – Work done by the Special Procedures	X	X	X	X		REJECTED

<sup>10</sup> <http://archived2021.ishr.ch/news/un-general-assembly-turns-its-back-human-rights-defenders>; [https://www.un.org/en/ga/third/68/docs/voting\\_sheets/L.75.pdf](https://www.un.org/en/ga/third/68/docs/voting_sheets/L.75.pdf);

<sup>11</sup> <https://ishr.ch/latest-updates/ban-ki-moon-appoints-high-ranking-official-combat-reprisals-against-human-rights-defenders/>. Each year the Third Committee of the General Assembly negotiates and adopts a resolution on the 'Report of the Human Rights Council'. Until now the 2013 resolution on reprisals remains the only one to be set aside by the General Assembly through this annual resolution.

	China	Russia	India	Venezuela	Egypt	Outcome
<a href="#">Amendment #8</a> – Role of regional human rights mechanisms	X	X	X	X	X	REJECTED
<a href="#">Amendment #9</a> – States Members' obligations at HRC	X	X	X	X		REJECTED
<a href="#">Amendment #10</a> – Role of national human rights institutions (NHRIs)	X	X	X	X		REJECTED
<a href="#">Amendment #11</a> – Allegations of reprisals with political purposes	X	X	X	X	X	REJECTED
<a href="#">Amendment #12</a> – Verification of allegations	X	X	X	X	X	REJECTED
<a href="#">Amendment #13</a> – Recognition of UN mechanisms in the field of human rights	X	X	X	X	X	REJECTED
<a href="#">Amendment #14</a> – Credibility and reliability of information provided by stakeholders	X	X	X	X	X	ADOPTED
<a href="#">Amendment #15</a> – Role of UN Secretary-General in addressing reprisals	X	X	X	X	X	REJECTED
<a href="#">Amendment #16</a> – Necessity to address allegations	X	X	X	X		REJECTED
<a href="#">Amendment #17</a> – Deletion of the Human Rights Council President's role	X	X	X	X		REJECTED
<a href="#">Amendment #18</a> – States' response to allegations	X	X	X	X	X	ADOPTED
<a href="#">Amendment #19</a> – Replacing the interactive dialogue by a general debate	X	X	X	X		REJECTED

China justified its abstention on the overall resolution by stating:

*[China] encourage[s] more delegations to constructively and actively take part in work and to engage in genuine dialogue and cooperation. We are against reprisals against those cooperating with the mechanisms. My delegation would like to thank the cosponsors for engaging other delegations and for considering their concerns. At the same time, we still see room for improvement. Despite the fact that the resolution is amended: first, the mandate of the Human Rights Council President and the Bureau should not go beyond provisions of the Institution-Building Package; second, at a time when resources are limited, the Human Rights Council should make best use of the existing [Council's] agenda to discuss matters, instead of setting up a new dialogue mechanism; third, the reference on obligations of Human Rights Council members should be in line with [Council resolution] 60/251, in view of that, we cannot support the resolution.*

***Human Rights Council, 36th session, 41st meeting, at 2:02:00***



In 2019, the number of hostile amendments proposed was lower – only four. Russia submitted all of them and they were either withdrawn (1) or rejected (3) before the ultimate passage of the resolution by vote.

Similar to 2017, China spoke publicly (and first among Council members) to clarify its position during the voting process. However, it went one step further in requesting, on behalf of Russia, Egypt and Eritrea, a vote on the resolution, stating:

*We regret the amendments were not adopted. We support the mechanisms to work in their mandates and engage in constructive dialogue and cooperation, we are opposed to any and every intimidation or reprisal against people who engage. We also wish to emphasise that all people who violate the law must be held accountable. Anyone who violates under the pretext of defending rights will be sanctioned under the law. Along with many States, we participated actively, and made constructive proposals. We appreciate the approach of the main sponsors to incorporate part of our proposals, in particular that information provided to the UN should be credible, reliable, and thoroughly checked and corroborated. Regrettably, the current resolution remains unbalanced, and mentions only the prevention and dealing with intimidation and reprisals, while ignoring States' judicial sovereignty to deal with acts that violate the law and that use cooperation with the UN to escape punishment by the law. This runs contrary to the spirit of law and cannot be accepted by States. We are also concerned that the report by the Secretary-General used a large amount of uncorroborated, wrong information by States, slandering national bodies as [engaging in] reprisals... we are opposed to such elements. We believe the substantive drawbacks do not help the UN to be impartial and cannot lead to abuse of efforts to oppose reprisals. We cannot support. China requests on behalf of Russia, Egypt and Eritrea a vote, and will vote against it.*

*Human Rights Council 42nd session, 41st meeting, at 32:00*

A brief analysis of these two interventions shows that, between the two sessions, **China's role evolved (from co-sponsoring action to formally calling for a vote), and the language used to justify the non-support moved from a procedural argument to a principled – and far more confrontational – argument.** In 2017, recourse to an argument based on the Institution-Building Package, budgetary concerns, and the Council's founding document (UN General Assembly resolution 60/251) appears to give the impression that China's opposition is not counter to its Council membership. Rather, it attempts to ground opposition in a commitment to being a responsible member. Many of the same arguments are used by advocates and other State delegations alike to push back on initiatives with which they disagree.

In 2019, however, we see a much more robust response; one that more clearly outlines perceived mis-stepping or overstepping by UN officials and mandates, as well as concerns about the content of information being provided to the UN system. **This is in line with a harsher approach taken toward activists and a more muscular assertion that many of these activists are 'criminals' seeking to shield themselves from sanction by appealing to the international system.** This system, in turn, is portrayed as infringing on State (or 'judicial') sovereignty, interfering in governments' legitimate actions to ensure rule of law.

Both interventions emphasised, to a greater degree over time, the importance of dialogue being 'constructive' and for cooperation between States and the UN.

In 2021, nine amendments were tabled by Russia on the resolution on reprisals. The outcomes were as follows for likeminded countries on the issue:

	China	Russia	India	Venezuela	Outcome
<a href="#">Amendment #1</a> – Usefulness of cases	X	X	X	X	WITHDRAWN
<a href="#">Amendment #2</a> – Development of legislative frameworks	X	X	X	X	REJECTED
<a href="#">Amendment #3</a> – UN mandate on reprisals	X	X	X	X	WITHDRAWN
<a href="#">Amendment #4</a> – Work done by the Special Procedures	X	X	X	X	REJECTED
<a href="#">Amendment #5</a> – States Members' obligations at HRC	X	X	X	X	REJECTED
<a href="#">Amendment #6</a> – Allegations of reprisals with political purposes	X	X	X	X	REJECTED
<a href="#">Amendment #7</a> – Significance of unhindered access and communication with the UN	X	X	X	X	REJECTED
<a href="#">Amendment #8</a> – Denial of entry visa	X	X		X	REJECTED
<a href="#">Amendment #9</a> – Mandate of Assistant Secretary-General	X	X	X	X	REJECTED

China supported all of the amendments that were voted (including the 8th, which received the lowest amount of support overall, implicitly targeting the US for visa denials as a UN host country). China joined countries like Brazil, Eritrea, India, Indonesia, Pakistan, Russia, Uzbekistan and Venezuela – although only Eritrea, Russia, Uzbekistan and Venezuela joined China to vote 'no' on all amendments.

**China and Russia have maintained a similar position in relevant discussions at the UN Security Council.** In 2019, during the negotiations on the resolution on Women, Peace and Security (WPS) [2493](#), China and Russia strongly resisted the inclusion of language on women human rights defenders facing reprisals, which ultimately did not make it explicitly into the text. Negotiations eventually led to the compromise in the sixth operative paragraph, in which the Security Council "encourages Member States to create safe and enabling environments for civil society, including formal and informal community women leaders, women peacebuilders, political actors, and those who protect and promote human rights, to carry out their work independently and without undue interference, including in situations of armed conflict, and to address threats, harassment, violence and hate speech against them". Nevertheless, in their statement after the vote, China distanced itself from the language, reserving 'its positions vis-à-vis paragraph 6'.<sup>12</sup>

A similar position was also voiced by China in February 2020, when Security Council members discussed reprisals and intimidation against women human rights defenders and peacebuilders in an Arria Formula meeting. China declared that women human rights defenders should not be treated as 'a special group' enjoying 'special rights and legal status.' China continued to state that 'many so-called human rights defenders are supported and financed by external forces, and that they have become political tools to tarnish the image of the countries concerned and even subvert their governments.'

<sup>12</sup> <https://www.securitycouncilreport.org/monthly-forecast/2022-01/women-peace-and-security-open-debate-on-protecting-womens-participation.php>; <https://www.womenpeacesecurity.org/blog-analysis-of-the-2019-women-peace-and-security-open-debate/>

## 4. Outside the negotiation room: Sustained efforts to deflect public criticism

China has consistently dismissed allegations of reprisals, instead pointing to UN report findings as 'unproven', 'biased', 'not up to standard', and 'incorrect.' Yet, it should be noted that China has not granted UN officials or Special Procedures unfettered access to the country so that these allegations can be further investigated.

**The government adopts a denialist approach in all official responses to Special Procedures communications containing allegations of reprisals against human rights defenders.** It characterises them as 'criminals' or 'terrorists', and glosses over the alleged acts of reprisals as 'legitimate criminal investigations' and 'judicial proceedings.'

- **Liu Ximei:** In April 2019, three Special Rapporteurs [wrote to China](#) to inquire about reported acts of harassment and intimidation against human rights defender Liu Ximei after she and her husband went to the United Nations in Geneva to denounce human rights violations against AIDS patients in rural China. The Permanent Mission of China [replied in writing](#) in May 2019, refuting the claims, and further stating that 'it is completely against the facts to claim that her freedom of speech and movement were restricted or that she faced reprisals for participating in events related to the UN' without providing further evidence.
- **Dolkun Isa:** In July 2018, six Special Rapporteurs [wrote to China](#) regarding alleged reprisals against World Uyghur Congress President Dolkun Isa, and the Society for Threatened Peoples (STP), of which he is a member, for his engagement with UN human rights bodies. In April 2017, [Dolkun Isa was expelled](#) by UN security guards from the UN Permanent Forum on Indigenous Issues held at the UN headquarters in New York, despite being an accredited NGO participant. Isa was provided with no explanation for his expulsion. The following April, a [similar attempt](#) was made to block Isa's attendance to the Forum by denying him a pass, being eventually granted one following a reported intervention by Germany and the U.S. The following month, China used its membership on the ECOSOC Committee on NGOs (the Committee) to seek the withdrawal of ECOSOC accreditation from the STP on the basis that it had enabled Isa – who they accused of terrorism – to participate in the Forum. States, including Germany and the U.S., made strong statements rejecting China's accusations, but Isa himself was not given an opportunity to respond. With the Committee session webcast live, the accusations made against him were widely disseminated. They were never retracted. The Special Rapporteurs pointed out that these actions may constitute reprisals. China replied that the UN should not 'facilitate the participation of Dolkun Isa, an individual designated as a terrorist in China.'

Of particular concern, is that **former UN Under-Secretary-General and Head of the UN Department for Economic and Social Affairs (UNDESA) Wu Hongbo** smugly admitted, in an [interview on Chinese public television](#) one year later, that he was the one who gave the order to expel Isa because he was a 'separatist' and a 'criminal.' He spoke openly of disregarding letters of concern from the Assistant-Secretary-General and senior official on reprisals who he described in a disrespectful tone as a 'lower-ranking official.' He also noted that 'when it comes to Chinese national sovereignty and security, [Chinese UN officials] will undoubtedly defend our country's interests'. This statement would seem to violate terms of

the UN Charter,<sup>13</sup> as well as the Standards of Conduct for the International Civil Service,<sup>14</sup> which seek to insulate UN staff from the influence of Member States.

- **Cao Shunli:** One of the most notorious cases of reprisals against defenders seeking to engage with the UN, Cao Shunli was detained by Chinese authorities in September 2013 as she was about to board a flight to attend a training and meetings in Geneva in the context of China's second Universal Periodic Review (UPR) in October 2013. Cao had consistently called on the Chinese government to consult with civil society in drafting the State's report to the UPR. Following her death in custody, [ISHR sought to use its speaking slot](#) at the Human Rights Council's March 2014 session for a moment of silence in honour of Cao. However, this attempt was [blocked by several points of order requested by China](#), who [alleged a 'violation of rules of procedure'](#) which would set a 'dangerous precedent': this was supported by 12 likeminded governments<sup>15</sup>, and opposed by Canada, the EU, the UK, the US, Germany, Estonia, France, Austria, and Ireland. China called a vote on the ruling suggested by the Council's President to refer the matter to the Human Rights Council Bureau at a later stage: 13 delegations voted in favour of the ruling, 20 opposed it, and 12 abstained.<sup>16</sup> The President therefore did not refer the matter, and ISHR's speaking time was interrupted.
- **Jiang Tianyong:** Human rights lawyer Jiang Tianyong met with the Special Rapporteur on extreme poverty and human rights Philip Alston during his visit to China from 15 to 23 August 2016. After the meeting, Jiang was arbitrarily detained and later charged with 'subversion of State power.' The Special Rapporteur made a specific reference to Jiang during the presentation of his [country mission report](#) to the Human Rights Council. He stated that the charges against Jiang were 'the equivalent of a legal sledgehammer and should have no place in such contexts.' The Special Rapporteur ensured sustained follow-up on Jiang's situation, issuing four press releases from the time of his disappearance in December 2016 to March 2018. He also sent [a joint communication](#) with three other mandate-holders to China regarding the alleged disappearance of Jiang. In [China's replies](#), the authorities did not directly address the substance of the allegations, instead pointing to generic 'coercive measures by public security authorities.' In China's official written response to Alston's report, China reiterated its achievement on eradicating poverty and ignored the allegations.



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<sup>13</sup> United Nations Charter, Article 100: 'Each member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.'

<sup>14</sup> [Standards of Conduct for the International Civil Service](#) (reviewed in 2013, approved by UNGA resolution 67/257), Paragraph 8: If the impartiality of the international civil service is to be maintained, international civil servants must remain independent of any authority outside their organisation; their conduct must reflect that independence. In keeping with their oath of office, they should not seek nor should they accept instructions from any Government, person or entity external to the organisation. It cannot be too strongly stressed that international civil servants are not, in any sense, representatives of Governments or other entities, nor are they proponents of their policies. This applies equally to those on secondment from Governments and to those whose services have been made available from elsewhere. International civil servants should be constantly aware that, through their allegiance to the Charter and the corresponding instruments of each organisation, member States and their representatives are committed to respect their independent status.

<sup>15</sup> Cuba, Saudi Arabia, Algeria, Vietnam, Morocco, South Africa, Iran, Pakistan, Egypt, Venezuela, Russia, Maldives.

<sup>16</sup> The UK, the US, Austria, Czechia, Estonia, France, Germany, Ireland, Italy, Japan, Mexico, the Republic of Korea and Romania *voted in favour*. South Africa, the UAE, Vietnam, Algeria, Benin, China, Congo, Cuba, Ethiopia, India, Indonesia, Kazakhstan, Kuwait, Maldives, Morocco, Namibia, Pakistan, Russia, and Saudi Arabia *voted against*. Argentina, Botswana, Brazil, Burkina Faso, Chile, Costa Rica, Côte d'Ivoire, Gabon, Montenegro, Peru, the Philippines, and Sierra Leone *abstained*. Macedonia and Kenya were absent from the vote.

## 5. Conclusions and recommendations

While China initially adopted a more prudent approach in the early years of the Human Rights Council's resolution on reprisals, since 2017 the government has shifted towards active opposition, in coordinated efforts with likeminded governments. This position evolved alongside increased public reporting on patterns of reprisals against human rights defenders by the Chinese authorities, with the country ranking as one of the top perpetrators in the Secretary-General's annual reprisals report. China reinforced a denialist position, framing human rights defenders as 'criminals,' criticising the methodology of UN reports as 'biased,' and attacking the UN's reprisals architecture as an interference in the 'judicial sovereignty' of States. Discursive and procedural tactics to deflect public criticism regarding mounting allegations of reprisals have gone hand in hand with a firmer 'obstructionist' position in negotiations of the resolutions on reprisals.

These findings are cause for serious concern, in particular given China's renewed membership as a Human Rights Council member. Members have a duty to 'uphold the highest human rights standards.' These findings are also cause for serious concern vis-à-vis the ability of Chinese human rights defenders to freely engage with UN bodies and representatives, a right that is protected in international law. Of particular concern recently is the ability of Hong Kong's civil society to engage, in light of the implementation of the new National Security Law, and related mischaracterisation of human rights activism and UN advocacy as a danger to national security.

### Recommendations to the Chinese government

- Immediately put an end to its practice of intimidation and reprisals against those who cooperate or seek to cooperate with the UN or regional human rights bodies and mechanisms;
- Ensure all allegations are subject to a full, independent and impartial investigation, and ensure that perpetrators are held accountable, and victims are provided with effective remedies;
- Fully, substantively and promptly cooperate with the UN's human rights mechanisms and bodies in cases of alleged intimidation or reprisals, including by providing good faith undertakings to prevent and investigate cases and to report back to the relevant body or mechanism — including the Human Rights Council, its Special Procedures, the General Assembly and the Assistant Secretary-General — as to investigative, protective, prosecutorial and remedial steps taken.

### Recommendations to UN bodies

- The Presidency and the Bureau should take a more proactive role in investigating and following up on cases of intimidation and reprisals.
  - The HRC President and Bureau should adopt a two-step approach, based on that of UN Special Procedures communications, depending on the urgency of the case: Urgent Appeals could be sent to States privately and then published after 48 hours in a public communication database, and Letters of allegations could be sent to States privately and then published after 60 days in the public communication database.
  - The President of the HRC should publicly denounce individual acts of intimidation or reprisals and publish allegation letters on the extranet if victims give consent. The HRC Presidency should provide short oral updates on cases of alleged intimidation or reprisal, including actions taken, at the start of the Item 5 General Debate of each Human Rights Council session and provide States concerned with the opportunity to respond.



- The Bureau of the HRC should resume the past practice of discussing reprisals and intimidation during meetings and reporting on those discussions publicly.
- The Presidency and Bureau should consider maintaining a publicly accessible register of cases of alleged acts of intimidation and reprisals on the Extranet.
- UN human rights bodies and mechanisms, including the ASG, the OHCHR's reprisals unit, Special Procedures and Treaty bodies, should:
  - Ensure sustained follow up on cases of reprisals;
  - Document and report on 'patterns' of reprisals by State authorities, giving due attention to legislation and other policy whose enactment and implementation restricts or hinders civil society's engagement with the UN, or else sustains an atmosphere of fear and inhibition that deters such engagement.
- The UN should study and report on the impact of the use of quiet diplomacy in cases of reprisals and intimidation by UN bodies and mechanisms.
- 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.
- Ensure that defenders engaging at UN premises can do so safely, free from intimidation, including unwanted filming and photography of their participation in meetings.

## Recommendations to States

- States should step up support to human rights defenders and civil society organisations targeted by intimidation, harassment or other retaliatory acts by Chinese authorities, including through:
  - Public positions in the face of Points of Order and intimidating statements in UN fora; and
  - Inclusion in public statements of individual cases of reprisals, and patterns of reprisals by State authorities as documented by the Secretary-General's annual report, giving due attention to legislation and other policy whose enactment and implementation restricts or hinders civil society's engagement with the UN, or else sustains an atmosphere of fear and inhibition that deters such engagement.
- States should also include individual cases and patterns of reprisals, including legislation and policy, in bilateral dialogues and other exchanges with the Chinese authorities.
- Diplomatic representations across China should facilitate safe in-person and virtual exchanges of human rights defenders and civil society organisations with UN representatives, including through the provision of safe meeting spaces and IT support in diplomatic premises.
- States, including all Members of the General Assembly as States electing the members of the Human Rights Council should make non-cooperation more politically costly, for instance, by opposing the election of uncooperative States to the Human Rights Council or other human rights-related bodies, including the Council's Bureau, and the Consultative Group for the appointment of Special Procedures mandate-holders.
- States should provide OHCHR with adequate resourcing to strengthen its capacity to document and report on reprisal and for data collection and analysis on cooperation.



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#### **GENEVA OFFICE**

Rue de Varembé 1, 5th floor, P.O. Box 16,  
CH-1211 Geneva 20 CIC, Switzerland

#### **NEW YORK OFFICE**

777 UN Plaza, 7th floor, New York,  
NY 10017, USA