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BRIEFING PAPER

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**ABUSE OF NATIONAL SECURITY TO CURTAIL
HUMAN RIGHTS IN THE
DEAD END OF CHINA**

Contact

Raphaël Viana David
International Service for
Human Rights
r.vianadavid@ishr.ch

1. This submission to the 4th Universal Periodic Review (UPR) of China addresses the Chinese government's misuse of ill-defined national security legislation as a structural abuse and common root cause of systematic and widespread violations against Uyghurs, Tibetans, and human rights defenders and lawyers in mainland China and Hong Kong. Following China's 3rd UPR in November 2018, former UN High Commissioner for Human Rights Michelle Bachelet identified priority areas for implementation of recommendations in a [letter](#) to former

Chinese Foreign Minister Wang Yi, including:

Ensuring that any legal provision to protect national security is clearly and strictly defined in conformity with international human rights law and standards. This includes amending the definition of subversion with a view to removing from its scope the legitimate exercise of all human rights and fundamental freedoms.

2. During its [last review](#), the Government of China accepted recommendations from Austria (28.57) and Belgium (28.152) to review and ensure national security legislation are in conformity with international human rights law; however, a [joint UPR mid-term report](#) released by five organisations, including ISHR, concludes that these recommendations were not implemented, and that measures contrary to the recommendations have instead been taken since. The Government also rejected recommendations from the United States (28.150) to amend the definition of ‘subversion of State power,’ and from Switzerland (28.176) and Germany (28.180) to put an end to ‘Residential Surveillance at a Designated Location’ (RSDL).

3. ISHR analysed a series of recommendations issued by UN human rights bodies since January 2018, including at least 40 letters ([‘communications’](#)), [press releases](#) and [legal opinions](#) from UN ‘Special Procedures’ human rights experts, and recommendations from the [Office of the High Commissioner for Human Rights](#) (OHCHR), and the UN Committees on the [Elimination of Racial Discrimination](#) (CERD), on [Economic, Social and Cultural Rights](#) (CESCR), and on the [Elimination of Discrimination Against Women](#) (CEDAW), as well as, for Hong Kong and Macau, the UN [Human Rights Committee](#). On the basis of these documents and of civil society reporting, ISHR has found that:

- The authorities systematically invoke national security to target human rights defenders, having a chilling effect on civil society as a whole;
- Critical or dissenting opinions are characterised as threats to national security, justifying far-reaching restrictions to freedom of expression;
- National security legislation bypasses basic due process, allowing for blanket denials of access to legal counsel, and enforced disappearance under [‘Residential Surveillance at a Designated Location’ \(RSDL\)](#);
- In doing so, China contravenes its obligations under international human rights law, as national security-motivated restrictions fail to meet the standards of legality, necessity and proportionality.

4. The Chinese government has consistently failed to provide substantive responses to concerns and recommendations of UN human rights bodies; instead it reiterates that ‘China is a country under the rule of law,’ that ‘all its citizens are equal before the law and no one is above the law,’ and that ‘the request to release those who are under compulsory measures or serving sentences in accordance with law is an interference in China’s judicial sovereignty.’

CHINA’S NATIONAL SECURITY LEGAL FRAMEWORK

5. In its [assessment](#) of human rights in the Xinjiang Uyghur Autonomous Region (XUAR), the OHCHR explains that ‘China has developed what it describes as an “anti-terrorism law system” composed of specific national security and counter-terrorism legislation, general criminal law and criminal procedure law, as well as formal regulations pertaining to religion and “de-extremification”. Most of these laws and regulations, at both national and XUAR level, have been adopted or revised between 2014 and 2018, in the context of the “Strike Hard” campaign.’
6. China’s 2015 National Security Law provides for an all-encompassing understanding of national security, defined as ‘the relative absence of international or domestic threats to the state’s power to govern, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major national interests, and the ability to ensure a continued state of security.’ China’s [Criminal Law](#) further provides four ill-defined crimes under its Chapter on Crimes of Endangering National Security that carry sentences of up to life imprisonment: ‘collusion with foreign forces’ (Article 102), ‘separatism’ (Article 103), ‘subversion of State

power (Article 105) and ‘stealing or providing State secrets’ (Article 111).

7. On 30 June 2020, the Chinese central authorities imposed on the Hong Kong Special Administrative Region, without any meaningful consultation, a National Security Law that mimics mainland China’s national security architecture. UN Special Rapporteurs have repeatedly analysed the law’s in compliance with the International Covenant on Civil and Political Rights, which is legally-binding on Hong Kong, while the UN Human Rights Committee explicitly [called](#) for its repeal (§14(a)).

WHO IS AFFECTED?

8. UN Special Rapporteurs’ [letters](#) reveal that various groups have been affected by China’s abuse of national security legislation. The experts are ‘[concerned](#)’ by the repeated use of national security legislation [that] may have a chilling effect on civil society in China, hindering the basic exercise of human rights’ and that ‘despite China’s legal obligations and commitments, multiple laws, decrees and policies, in particular those concerning national security and terrorism, [deeply erode](#) the foundations for the viable social, economic and political development of the society.’

This includes:

9. **Tibetan** human rights defenders or individuals simply exercising their rights to freedoms of religion, of expression, and to cultural life, charged for ‘ethnic separatism’ or for ‘inciting’ it: this includes the UN-[documented](#) case of nine Tibetans from Ngawa sentenced in December 2016 for participating in celebrations for the Dalai Lama’s 80th birthday and advocating for cultural and religious rights.
10. Human rights defenders, journalists and other individuals in **Hong Kong** – such as barrister [Chow Hang-tung](#) and media owner [Jimmy Lai](#) – who suffer from the ‘continued practice of invoking national security provisions under the National Security Law to impermissibly impinge on the rights to freedom of expression, of association, and of peaceful assembly’ [according](#) to UN Special Rapporteurs.
11. **Human rights defenders and lawyers in mainland China**, subjected to arbitrary detention and lengthy prison sentences for national security crimes, enforced disappearances, torture to extract confessions, ‘exit bans’ and other restrictions to freedom of movement on national security grounds. This includes:
 - a. Chang Weiping, Ding Jiaxi, Xu Zhiyong, Yu Wensheng and other cases caught in the most recent ‘[709 Crackdown 2.0](#)’ against

[human rights lawyers](#)

- b. [feminist journalist Huang Xueqin and labour rights activist Wang Jianbing](#)
 - c. the ‘[Changsha Funeng](#)’ anti-discrimination activists
12. **Uyghurs** and Muslim populations who are exposed to ‘mass surveillance used to monitor, track, and ultimately detain them’ [according](#) to UN Special Rapporteurs. The Government [claims](#) such surveillance is justified under China’s Constitution under the pretext of national security and criminal investigation. UN Special Rapporteurs have ‘[repeatedly raised concerns](#)’ about widespread violations of the rights of Uyghurs and other Muslim minorities on the basis of religion or belief and under the pretext of national security and preventing extremism’, including under the [2018 XUAR Regulation on De-extremification](#). The OHCHR concluded in August 2022 that the Government of China is committing possible crimes against humanity against Uyghurs and other Muslim minorities; while the Government continues to claim it combats ‘extremism and terrorism.’
 13. UN Special Rapporteurs [point to](#) a ‘broader pattern of restrictions on space for discussion and debate in China, whereby critical or dissenting opinions are characterised as threats to national security. As such, there appears to be a systematic stifling of dissent and targeting of those who exercise their right to freedom of expression, as well as those who promote public freedoms.’

NATIONAL SECURITY LEGISLATION BYPASSES DUE PROCESS

14. UN Special Rapporteurs [report](#) that ‘China’s Criminal Procedure Law provides for explicit exemptions and restrictions to legal provisions guaranteeing due process for national security crimes, such as notification of family members of arrest within 24 hours, or access to a lawyer within 48 hours,’ under Articles 85 and 39, respectively.
 - a. On the case of [Xu Zhiyong](#), the UN Working Group on Arbitrary Detention determined that ‘such a blanket denial of access to legal counsel without due process of law constitutes non-observance of international law on the right to a fair trial’.
 - b. The UN Committee Against Torture [recommended](#) the repeal of these provisions during China’s 2015 review (§13(c), 13(d)).

15. Prior to formal arrest, human rights defenders and lawyers are systematically disappeared under '[Residential Surveillance at a Designated Location](#)' (RSDL), a provision defined in Article 75 of the 2018-revised Criminal Procedure Law. RSDL, in conjunction with above-mentioned restrictions to due process, authorises the police to hold an individual in custody for up to six months in any location or building chosen by the police – with the explicit exclusion of detention facilities –, without any obligation to disclose such location to family members, with limited or no access to legal counsel, and with very limited possibilities for judicial review.
16. Human rights lawyers believe this provision was adopted to provide a semblance of legality to preexisting practices of secret interrogation in 'illegal' locations (hotels, restaurants, disaffected buildings) to extract confessions and use it in court. Human rights organisations [consider](#) that at least 57'000 individuals have been subjected to RSDL since 2013.
17. The UN Working Groups on [Enforced Disappearances](#) and on [Arbitrary Detention](#) have called for the repeal of RSDL – so did also the [Committee Against Torture](#) (§15) – : they coincide that, as secret detention, it is 'a form of enforced disappearance' that 'may *per se* amount to cruel, inhuman or degrading treatment or punishment, or even torture, and additionally may expose [those held under RSDL] to an increased risk of further abuse, including acts of torture.'

VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND STANDARDS

18. UN human rights bodies have documented how the Government's severe restrictions to fundamental freedoms do not meet the tests of legality, necessity, and proportionality, required under all circumstances by international human rights law.
19. **Legality** (any restriction should be defined by unambiguous, narrow, and accessible legal provisions) – In 2015, the Committee Against Torture [determined](#) national security crimes to be 'broadly-defined' and recommended a more precise definition in line with international law (§36, 37). UN Special Rapporteurs further determined that:
 - a. The crime of '[inciting subversion of State power](#)' is a 'vague and imprecise offence' and called 'upon the government to repeal article 105 (2) of the Criminal Law';
 - b. The 'reportedly frequent application of article 103 (2) of the Criminal Law on

['incitement to separatism'](#) suppresses freedom of expression, religion, assembly and association and the cultural rights of the Tibetan minority, as well as quashes any human rights advocacy with regard to the protection and promotion of these rights.' The CERD raised concern that 'unclear definition of separatism [...] could potentially lead to the criminalisation of peaceful civil and religious expression and facilitate the criminal profiling of ethno-religious minorities' (§36).

- c. 'The lack of an upper limit on the length of imprisonment in articles 105(2) [on 'inciting subversion'] and 120 (a) [on [terrorist activities](#)] does not meet the principle of legal certainty and allows for the imposition of long sentences'
20. **Necessity** (there is not another less restrictive tool that exists that can achieve the intended purpose, which can only be to protect public order, health or morals, or national security) – The 1996 '[Johannesburg Principles](#)' clarify that invoking national security 'is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force.' This excludes 'protecting a government from embarrassment or exposure of wrongdoing.'
 - a. In a [letter](#) on the case of Tibetan linguistic and cultural rights activist Tashi Wangchuk, UN Special Rapporteurs 'regret[ed] to note that [the government] failed to clarify why Mr. Wangchuk's statements about linguistic rights were deemed to amount to the crime of "incitement to separatism", [and that the government's] reply failed to explain how, in accordance with the applicable international human rights norms, the restriction of free speech in this context pursues a legitimate objective, and how it is necessary and proportional to achieve such objective.'
21. **Proportionality** (the severity of the restriction and its scope are appropriate, and the least intrusive, for the intended purpose, the severity of the risk and the number of persons impacted) – National security crimes under China's Criminal Law carry lengthy sentences of up to life imprisonment for 'ringleaders', or of up to five years for any act of 'incitement' of the alleged crime. UN Special Rapporteurs determined that:
 - a. 'The [length of imprisonment](#) stipulated in articles 105 and 120 of the Criminal Code, among others, raise concerns about proportionality. The concepts of

“ringleader”, “major crime”, and “serious circumstances” are broad and vague.’

- b. ‘While cognizant of the security situation that China may face, [...] the [disproportionate emphasis](#) placed by the authorities on the repression of rights of minorities risks worsening any security risk’.

RECOMMENDATIONS TO THE GOVERNMENT OF CHINA:

Based on recommendations issued by UN human rights bodies, ISHR urges the Government of China to:

- Fully review the legal framework governing national security – including China’s National Security Law, national security crimes under the Criminal Law, and provisions restricting the right to legal counsel and to notification of the family under the Criminal Procedure Law – to ensure they are in line with international human rights law and standards; (*OHCHR Xinjiang Assessment §151(iii)*)
- Put an immediate end to the misuse of national security as a justification to arbitrarily detain, forcibly disappear, extract confessions through torture, impose lengthy imprisonment, harass, and restrict the right to freedom of movement, including to leave the country, of human rights defenders, lawyers and all individuals exercising their basic human rights;
- Repeal the National Security Law in Hong Kong;
- Repeal Articles 74 to 79 of the Criminal Procedure Law allowing for ‘Residential Surveillance at a Designated Location’ (*UN Working Group on Enforced Disappearances and other UN ‘Special Procedures’ experts*)
- End all forms of enforced disappearance provided by law or carried out extra-legally; (*UN Working Group on Enforced Disappearances and other UN ‘Special Procedures’ experts*)
- Repeal Article 105 providing for the crimes of ‘subversion of State power’ and ‘inciting subversion’, and Article 103 providing for the crimes of ‘separatism’ and ‘inciting separatism’, under China’s Criminal Law; (*UN Working Group on Arbitrary Detention and other UN ‘Special Procedures’ experts*)
- Ensure that any surveillance online and offline, including for national security matters, complies with international human rights law, including standards of legality, necessity and proportionality. (*OHCHR Xinjiang Assessment §151(iv)*)

¹ In particular the August 2022 OHCHR [Assessment of human rights in the Xinjiang Uyghur Autonomous Region](#); the November 2022 CERD [Decision 1 \(108\)](#) under its Early Warning and Urgent Action Procedure; the February 2023 [Concluding Observations](#) of the CESCR; and the May 2023 [Concluding Observations](#) of the CEDAW.