



ALN's Observations and Analysis of China's 4th UPR Review in Relation to Lawyers' Rights

2 February 2024

1. Introduction and Background on China's UPR Session

On 23 January 2024, the session for China's fourth UPR cycle was held at the Human Rights Council in Geneva. The session was video recorded, and one can watch it from the link in the following footnote.¹

Very briefly, the Universal Periodical Review (UPR) is an administrative process under the UN's Human Rights Council to review the human rights record of all states on a four-and-a-half year cycle, administered by the UPR Working Group (WG) of states. A state under review submits a National Report to the WG on their human rights activities and record, NGOs submit associated shadow reports, and other states offer advance questions to the state under review. During the session itself, the state under review will give a presentation and answer the advance questions, and other states will offer it recommendations. The state under review later comments on the recommendations—e.g., rejecting, noting, accepting, and/or otherwise commenting on them—and states and NGOs will typically track the state's record vis-à-vis these recommendations. All of this material is compiled and summarized in a report by the WG and released on the relevant UPR site.²

There is a perennial debate about how effective the UPR process is in actually pressuring states committing serious rights abuses to end their violations and ensure accountability. This statement will consider this issue more at the end. However, even aside from its direct effectiveness, participating states and civil society view it as an important process for greater transparency and setting the foundations for diplomacy and advocacy surrounding human rights issues.

This statement summarizes the NGO shadow reports, advance questions, state recommendations, and China's response to all of these relevant to the human rights situation of lawyers in China.

2. The Context of China's UPR Process

It is worth describing the political context in which China's latest UPR session occurred. There are been reports that the Chinese government heavily lobbied non-Western governments to praise its human rights record for the session.³ One sign of this effort during the UPR session was the common pattern of developing states praising particular Chinese human rights "accomplishments" (typically economic development), often with the same template-like wording, often followed by appreciation to China for assisting developing states with aid or other support, barely hiding a *quid pro quo*. The Chinese government is also known to populate international forums and associated meetings with sympathetic

¹ HRC, "45th Session of the UPR: China Review", 23 Jan. 2024, <https://webtv.un.org/en/asset/k1z/k1z43db5bt>.

² Materials for China's Fourth UPR session are available on this site: <https://www.ohchr.org/en/hr-bodies/upr/cn-index>

³ Emma Farge, "Exclusive: China lobbies countries to praise its rights record ahead of UN review - diplomats", Reuters, 22 Jan. 2024, <https://www.reuters.com/world/china/china-lobbies-countries-praise-its-rights-record-ahead-un-review-diplomats-2024-01-22/>

voices, both “independent” and GONGOs, government operated NGOs.⁴ At the same time, foreign critics often face denunciations of “false information” and “distorted narratives” from Chinese representatives, and sometimes further forms of intimidation.⁵ The Chinese government has taken steps to limit civil society input to the UPR, submit fabricated information on its rights record, and block the UPR live stream in mainland China.⁶ Activists from China contributing to the UPR process have reason to be especially concerned, given the high rates of detention or disappearances for human rights defenders in China. Even Chinese activists living abroad can become targets of harassment, arrest, or bounties, or their family still inside China may be harassed.

Despite these efforts, civil society critical of China’s rights record has also become increasingly assertive and organized in international forums, and the Chinese government’s influence efforts are often ineffectual.⁷ In the context of the UPR session, one can see all of these dynamics play out as a larger set of developing states were more apologist on China’s human rights record than in the past at the same time a larger set of civil society organizations participated with greater organization than in the past, in conjunction with the strong criticisms from Western democratic states. Many states often also fell in between critical and apologist, walking a diplomatic tightrope to make a stand on issues important to their interests without unduly antagonizing China’s government.

3. NGO Shadow Reports Summarizing the Rights Situation of Lawyers in China

Several NGO shadow reports mentioned the arbitrary arrest and harassment of lawyers,⁸ but four submissions in particular gave more extensive focus on the issue, the reports of (1) Law Society of England and Wales (LSEW) and (2) Chinese Human Rights Defenders (CHRD) and the joint reports of (3) Human Rights Now (Tokyo) and Judicial Reform Foundation (Taiwan) and (4) Lawyers for Lawyers (Amsterdam) and the International Bar Association’s Human Rights Initiative. ALN also posted an overview of human rights violations faced by lawyers in China that repeats many of their themes.⁹ Briefly, repeated criticisms of China’s treatment of rights lawyers by NGOs include:

- The arbitrary detention, arrest, and conviction of rights lawyers, including enforced disappearances, increasingly extended detention periods, incommunicado detention, torture during detention, and denial of medical services during detention;
- Retaliations for and interference with lawyers’ work, such as being removed from work on politically-sensitive cases and reports of being forced to sign Non-Disclosure Agreements;

⁴ William Nee, "How China Tries to Bamboozle the United Nations", 11 Feb. 2023, <https://thediplomat.com/2023/02/how-china-tries-to-bamboozle-the-united-nations/>

⁵ Anouk Wear and Megan P. Khoo, "China tried, but failed, to prevent UN scrutiny of its human rights violations", RFA, 23 Jan. 2024, <https://www.rfa.org/english/commentaries/china-rights-upr-01232024151835.html>.

⁶ Id.

⁷ William Yang, "Analysts: UN Rights Review Shows Limits of China’s Global Influence Campaign", VOA, 29 Jan 2024, <https://www.voanews.com/a/analysts-un-rights-review-shows-limits-of-china-s-global-influence-campaign/7461568.html>; RFA, supra, note 5.

⁸ NGO Shadow Reports for China’s UPR are collected at: <https://www.ohchr.org/en/hr-bodies/upr/cn-index>

⁹ ALN, "Eight Ways that Rights Lawyers in China and Hong Kong Continueto Face Arbitrary Detention, Harassment, and Repression", 29 Dec. 2023, <https://www.asianlawyers.net/statements/2023-12-29-eight-ways-rights-lawyers-in-china-and-hong-kong-face-repression>.

- Administrative penalties such as disbarment and abusive use of annual inspections, and
- Harassment of lawyers and their families including travel restrictions and exit bans; evictions and denial of services (such as water and electricity); police trailings, calls, visits, interrogations, and surveillance; hindering children from attending school; and other harassments.

4. Advance Questions for the UPR Mentioning Lawyers

Six states mentioned lawyers in their advance questions submitted to China's UPR, as follows.

- **Australia** asked how lawyers are protected.
- **Belgium** asked if there had been research on violations against lawyers.
- **Germany** asked how many lawyers are still detained and/or subjected to a list of harassments.
- **The UK** asked what steps have been taken to protect lawyers.
- **The US** asked what the status of certain lawyers is, and the plan to cease violations against them.

Three of the states, Switzerland, UK, and US, each gave a list of several names of detained human rights defenders that included rights lawyers and legal activists, asking for the justification for their detention consistent with human rights law, the steps being taken to protect them from a list of violations, and their location and status, respectively. The Chinese delegation claimed to respond to these questions in their UPR presentations, described below, but avoided answering or properly responding to any of them.

The advantage of advance questions is that states can go into more specific detail on particular issues than they can in their UPR recommendations. This is particularly important for an issue like protection of lawyers, which is rarely mentioned in UPR recommendations, and even then often in passing, whereas advance questions allows states to bring more detailed attention to lawyers and their specific status.

5. State Recommendations on Lawyers

During the UPR session itself, seven states mentioned lawyers explicitly in their recommendations to China:

- **Czech Republic (at 37:20 in the video)** recommended that Hong Kong authorities end attacks on lawyers and journalists under the National Security law;
- **Finland (47:45)** recommended that protection be guaranteed for lawyers against harassment, violence, or any attempt to interfere with their defense of clients;
- **Greece (1:10:05)** recommended that the targeting and harassment of civil society, human rights defenders (HRDs), journalists, and lawyers be ended;
- **Hungary (1:11:20)** recommended that lawyers' right to practice be reinforced;
- **Jamaica (1:18:35)** recommended that lawyers' right to practice law and their participation in the litigation system be protected;
- **Lichtenstein (1:28:40)** recommended that HRDs, journalists, and lawyers, including in Hong Kong, not be targeted for their expression, associations, and participation in assemblies.
- **UK (2:43:05)** recommended the protection of an impartial judiciary and a cease to the harassment of lawyers.

Three of these recommendations (Czech Republic's, Greece's, and Lichtenstein's) simply added lawyers to a list of other rights defenders, calling for their collective protection.¹⁰ The other four highlighted particular vulnerabilities specific to lawyers, the first three focusing on the practice of lawyers—Finland (defense of clients) and Hungary and Jamaica (lawyers' ability to practice)—and the UK focusing on the harassment of lawyers in the same context as an impartial judiciary. Hungary is notable to the extent it is an authoritarian-leaning state that was otherwise apologetic in tone towards China in its statement, but its delegate still recommended reinforced protection for lawyers' practice.

6. Perverse Mentions of Lawyers during the UPR Session

As mentioned above, the governments of China and some other states supporting China made statements and/or recommendations perverse to the protection of human rights in China, some of which directly mentioned lawyers, with others carrying implications for their situation.

a) Perverse Statements in the Chinese Delegation's UPR Presentations

The Chinese delegation mentioned its treatment of lawyers explicitly in two places during its presentations, which were ostensibly aimed to answer the Advance Questions and issues brought up in states' recommendations, but instead served to give a perversely positive spin on issues brought up without directly answering or addressing the human rights concerns raised.¹¹ A consistent theme in China's perverse defense of its abysmal human rights record as pro-rights is its "rule by law" approach, that economic development and forceful police action against civil society "by law" or as part of a "legal order" improve welfare and create social harmony, which in their perverse view advances human rights per se.

- **A representative of the Ministry of Justice (56:30)** mentioned the adoption of rules that explicitly protect lawyers, providing them with relief and protection, following up with the observation that over the last 10 years, the number of lawyers grew—a telling figure about lawyers' right to practice law. The delegate finished with an offhand remark that of course lawyers must abide by the law in their professional activities, a nod to the rule by law approach.

A major criticism to this line of defense is that accounts of practicing lawyers in China report that the rules protecting lawyers are simply not applied for rights lawyers working on politically sensitive cases. A simple example, mentioned in a previous ALN statement,¹² is that lawyers engaged in politically sensitive cases may be penalized by having their licenses cancelled because, for example, they have not practiced at a law firm in the province for more than six months, ensured by authorities threatening all law firms

¹⁰ At least 12 other states mentioned the protection of human rights defenders, closely associated with rights lawyers, without taking the opportunity to explicitly include lawyers as part of the category: Canada, Chile, Denmark, Estonia, Germany, Ireland, Marshall Islands, Norway, Romania, Spain, Sweden, US. Relatedly, eighteen states recommended ratification of the ICCPR, a central pillar of civil and political rights: Brazil, Canada, Croatia, Estonia, Gabon, Greece, Iceland, Ireland, Israel, Japan, Latvia, Lichtenstein, Luxembourg, New Zealand, Poland, Portugal, South Korea, and Romania.

¹¹ Amnesty International, "China attempts to 'gaslight' international community at UN human rights review", 23 Jan. 2024, <https://www.amnesty.org/en/latest/news/2024/01/china-attempts-to-gaslight-international-community-at-un-human-rights-review/>.

¹² *Supra*, note 9.

in the province to not hire the lawyer. While there is an appeals procedure ostensibly designed to protect lawyers from such abuses of the system, it has been reported that appeal requests may simply be ignored.

As for the fact that the number of lawyers has increased, this may be easily countered by the fact that lawyers' behavior on the whole can easily be controlled by (1) only a few facing arrest and (2) use of preemptive measures such as the annual inspections system for lawyers and law firms, police harassment, administrative penalties, dismissals from cases, NDAs, and other measures which may hold lawyers in line short of arrest. Again, a small number of rights lawyers being penalized does much to chill the behavior of countless others against rights work.

- **A representative of the Supreme People's Court (2:01:10)** explained that the system for lawyers to practice was improved, and that defense lawyers were provided for all cases.

A major criticism to this defense is that lawyers are often handpicked by the state for politically sensitive cases, generally making the lawyer an agent for the state's interest over the client's, but also not helping address the vulnerabilities of rights lawyers, such as being unable to work on rights-related cases due to dismissal, arrest, harassment, or fear of them.

There was one other notable instance where a member of China's delegation did not mention lawyers directly but spoke on issues relevant to lawyers.

- **A Hong Kong official (12:57)** explained that the common law and independent judicial power were protected in Hong Kong by its Basic Law and **(13:01)** that the judiciary is well regarded by the international community.

All of these claims are patently false. The very first case under Hong Kong's National Security Law (NSL), Tong Ying Kit, already made clear that common law protections such as a right to bail did not apply to national security cases. The rejection of other common law protections such as a right to jury trial, right to a lawyer of one's own choosing (which extends to the right of lawyers to practice without interference), freedom of speech analysis, interpreting ambiguity in a law in favor of a defendant, and other rights soon followed. The pool of judges is also handpicked and foreign lawyers and judges rejected for national security cases, in both cases for their respective political views, making judicial power in Hong Kong far from independent.¹³ Hong Kong's judiciary has also been severely criticized by the international community, in particular UN bodies and authorities, for these and other failures, including its authoritarian enforcement of the NSL, criminalizing peaceful expression, assembly, and association, and denying established rights to defendants.¹⁴

¹³ Frances Mao, "Hong Kong: Jimmy Lai's trial highlights rule of law concerns", BBC News, 18 Dec. 2023, <https://www.bbc.com/news/world-asia-china-67700498>.

¹⁴ OHCHR, "Top rights experts urge repeal of Hong Kong's national security law", 27 Jul 2022, <https://news.un.org/en/story/2022/07/1123432>; Reuters, "Hong Kong should ditch China-imposed national security law: UN panel", 27 Jul. 2022, <https://www.reuters.com/world/china/hong-kong-security-law-imposed-by-china-denounced-by-west-must-be-repealed-says-2022-07-27/>; for specific criticisms of the judiciary's role, see, e.g., Holmes Chan, "Inside the Surreal Trial of the 'Most Benevolent Terrorist in the World' ", Vice News, 20 Sept 2021, <https://www.vice.com/en/article/93y47p/hong-kong-national-security-trial-tong-ying-kit>; Amnesty

b) Perverse Recommendations by Other States

At least eight states gave recommendations to China that can appear to advocate practices that are the source of threat to HRDs and lawyers by generally reinforcing China's "rule by law" approach of forceful police action against civil society: Belarus, DPRK, Dominica, Eritrea, Ethiopia, Russia, Venezuela, and Zambia. There were not any direct mentions of lawyers in these perverse recommendations, however.

7. The Role and Potential Effectiveness of the UPR Process Generally and for Lawyers

While criticism of the ineffectiveness of the UPR process is justified, particularly for a government such as China's that flagrantly violates rights as part of its ideology, there are reasons why the process is still important for long-term advocacy and can even be effective for certain issues.

First the UPR process provides a continuing cost to China for its violations by helping to coordinate the strategy of international civil society towards addressing China's violations, such as by creating widespread agreement on the most significant human rights violations on the baseline of which states may implement sanctions, trade restrictions, and denial of diplomatic and business opportunities. The UPR Process may also help drive down China's influence in the region and in international affairs

The process may also lead to quiet changes in China's policy and behavior. There are several cases where the government of China has quietly improved certain human rights issues following international pressure campaigns, and the UPR Process arguably provides more pressure on human rights issues than any other process. For example, when concern is expressed by influential actors for specifically named detained persons, those persons later reported their conditions of detention improving. Similarly, following pressure campaigns, China quietly ended the death penalty for smaller crimes, ended its reeducation through labor program (although it was shortly thereafter reinstated for Turkic Muslims from Xinjiang), and changed its criminal procedural rules to exclude evidence extracted from torture (although torture still occurs and evidence rules are still routinely ignored). Such reforms are still entirely insufficient against rampant and serious human rights violations that continue, but they show that the UPR Process can sometimes have some limited effect to improve certain issues in some cases.

For longer-term effects, it is worth noting that the human rights situation in China was markedly better before Xi Jinping's administration began in 2013 and in particular for lawyers before the 709 Crackdown in 2015. This suggests that the rights situation has the potential to improve after his administration ends. The UPR process helps establish the direction of such future potential improvements. There are also signs that the younger generation in China may be more assertive in calling for rights, indicated by the recent White Paper Movement of protests led by young people in 2022. Similarly, there are signs that developing countries may be increasingly turning against China in the future, including the tepid enthusiasm of developing countries towards China in the latest UPR session even after China's heavy lobbying. Thus, China's strategy of lobbying developing countries to be sympathetic voices may be

International, "Hong Kong: Conviction of children's book publishers an absurd example of unrelenting repression", 7 Sept. 2022, <https://www.amnesty.org/en/latest/news/2022/09/hong-kong-conviction-of-childrens-book-publishers-an-absurd-example-of-unrelenting-repression/>.

reaching its limits, leading to China being increasingly isolated and pressured in international affairs in the future, with the UPR Process arguably being the most influential forum for this dynamic to play out.

The UPR Process also provides support, motivation, direction, and content for more liberal factions within the Chinese government that may have more influence in the future and to human rights defenders documenting violations inside of China. Importantly, the UPR Process is also one of the most important processes for documenting and centralizing the human rights record of a country for the future. If or when the government of China ever makes a decision to address its past rights violations in a Transitional Justice process in the future, the material brought together by UPR reviews from the past will prove critical for that process to be successful.

In light of reasons such as these, it is important that advocacy surrounding the UPR Process continue to press for the rights of lawyers in China, as rights lawyers will always play a central role in ensuring human rights protections in virtually all areas. Furthermore, as discussed, there is no international forum more promising over the long-term to improvements in China's human rights record than the UPR process, despite how ineffectual it may unfortunately appear in the meantime.