

IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN CHINA



The EU and China have a long and fraught relationship as regards human rights, plagued by many tensions around the annual EU-China human rights dialogue; conflicting interests leading to divisions among EU member states; proactive Chinese efforts to divide and counter EU efforts; and persistent challenges in mainstreaming EU engagement on human rights, including if and how individual cases are raised at summits and high-level visits.

However, in recent years, the EU has developed relatively strong public positions on human rights in China. Together with existing human rights policies of the EU, including the HRD Guidelines, this positioning represents a solid point of departure for more strategic and effective engagement on human rights in China. Now, as always, the challenge is to deliver on these commitments, in particular on the defence of the universality, interdependence and indivisibility of human rights; working towards making an impact on

individual cases; and maintaining EU member state unity and consistent mainstreaming of EU human rights concerns across a wide range of exchanges with China.

1.1 BACKGROUND AND MAIN CHALLENGES FACED BY HRDS

China continues to repress severely a range of human rights, including the rights to:

- freedom of expression;
- seek, receive and impart information;
- freedom of association and peaceful assembly;
- freedom of thought, conscience, religion and belief;
- fair trial and freedom from arbitrary detention, torture and other ill-treatment; and
- equality and non-discrimination.

In recent years, human rights defenders in China have faced increasing intimidation, harassment, arbitrary detention and attacks.¹ The government has enacted several national security laws that present serious threats to the protection of human rights and HRDs.² Police often arbitrarily detain HRDs outside formal detention facilities, sometimes without access to a lawyer for long periods, thereby exposing them to the risk of torture and other ill-treatment.³ HRDs interviewed for this report referred to the systematic targeting of the “new five black” categories⁴ of defenders: human rights lawyers, representatives of religious minorities, political dissidents, online activists and advocates for disadvantaged social groups. HRDs active in remote and minority regions such as the Xinjiang Uighur Autonomous Region and Tibet remain particularly at risk.

Beginning on 9 July 2015, almost 250 lawyers and activists were questioned or detained by state security agents in an unprecedented government crackdown on human rights lawyers and activists, sometimes referred to as the “709” crackdown.⁵ At least 12 of those detained – including prominent human rights lawyers Zhou Shifeng, Sui Muqing, Li Heping, Xie Yang and Wang Quanzhang – were held in “residential surveillance in a designated location”, which allows the authorities to detain individuals suspected of involvement in state security crimes for up to six months outside the formal detention system without access to legal counsel or families.

On 28 January 2019, Wang Quanzhang, the last lawyer awaiting a verdict in connection with the 2015 mass crackdown, was sentenced to four and a half years in prison for “subverting state power”.⁶ Police originally detained Wang Quanzhang on 3 August 2015. It was only in July 2018 that a lawyer informed his family that he was alive and being held in Tianjin. His trial on 26 December 2018 followed more than three years in pre-trial detention. Wang Quanzhang worked on issues considered sensitive by the Chinese government, such as defending religious freedom and representing members of the New Citizens’ Movement, a network of

¹ Amnesty International, *Amnesty International Annual Report 2016/17*, China, p. 118,

<https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>; *Amnesty International Annual Report 2015/16*, p. 117, <https://www.amnesty.org/download/Documents/POL1025522016ENGLISH.PDF>.

² Amnesty International, *Submission to the NPC Standing Committee’s Legislative Affairs Commission on the Criminal Law Amendment (9) (second draft)*, (Index: ASA 17/2205/2015), 5 August 2015, <https://www.amnesty.org/download/Documents/ASA1722052015ENGLISH.pdf>; “Scrap draconian new national security law” (News, 1 July 2015), <https://www.amnesty.org/en/latest/news/2015/07/china-scrap-draconian-new-national-security-law/>; *Submission to the NPC Standing Committee’s Legislative Affairs Commission on the draft “Cyber Security Law”* (Index: ASA 17/2206/2015), 5 August 2015, <https://www.amnesty.org/download/Documents/ASA1722062015ENGLISH.pdf>; *Submission to the NPC Standing Committee’s Legislative Affairs Commission on the second draft Foreign Non-Governmental Organizations Management Law* (Index: ASA 17/1776/2015), 2 June 2015, <https://www.amnesty.org/download/Documents/ASA1717762015ENGLISH.pdf>; *Submission to the NPC Standing Committee’s Legislative Affairs on the draft “National Intelligence Law”* (Index: ASA 17/6412/2017), 5 June 2017, <https://www.amnesty.org/download/Documents/ASA1764122017ENGLISH.pdf>; “Why China must scrap new laws that tighten the authorities’ grip on religious practice” (News, 31 August 2017), <https://www.amnesty.org/en/latest/news/2017/08/china-must-scrap-new-laws-tighten-authorities-grip-on-religious-practice/>.

³ Amnesty International, *China: No end in sight: torture and forced confessions in China* (Index: ASA 17/2730/2015), 11 November 2015, <https://www.amnesty.org/download/Documents/ASA1727302015ENGLISH.PDF>; “China: New supervision law a threat to human rights” (News, 20 March 2018), <https://www.amnesty.org/en/latest/news/2018/03/china-new-supervision-law-threat-to-human-rights/>; *China: Submission to the NPC Standing Committee’s Legislative Affairs Commission on the draft “Supervision Law”* (Index: ASA 17/7553/2017), 6 December 2017, <https://www.amnesty.org/download/Documents/ASA1775532017ENGLISH.pdf>.

⁴ China Digital Space, “New five black categories”, https://chinadigitaltimes.net/space/New_five_black_categories.


⁵ Amnesty International, “Third Anniversary of the lawyers crackdown in China: Where are the human rights lawyers?” (News, 9 July 2018), <https://www.amnesty.org/en/latest/campaigns/2018/07/china-human-rights-lawyers-crackdown-third-anniversary/>.

⁶ Amnesty International, “China: Disgraceful 4 and a half years prison term for human rights lawyer Wang Quanzhang” (News, 28 January 2019), <https://www.amnesty.org/en/latest/news/2019/01/china-disgraceful-prison-term-fo-human-rights-lawyer-wang-quanzhang/>.

grassroots activists promoting government transparency and exposing corruption. Due to his role in representing such cases, he had faced frequent intimidation prior to his detention.

In addition to raids on their homes and offices, HRDs' family members have also been subjected to police surveillance, harassment and restrictions on their freedom of movement, in an attempt to exert pressure on defenders to end their activities.⁷ In 2016 and 2017, the authorities televised "confessions" and arranged interviews of detained lawyers and HRDs by mainland state media and two pro-government Hong Kong media outlets, undermining their right to the presumption of innocence and greatly diminishing their chance for fair trials. The authorities have also disbarred human rights lawyers as a tactic to curb their work.⁸



 ↑ Illustrations of eight lawyers who were detained or went missing in July 2015 as part of a nationwide crackdown. They are: Top (left to right): Wang Quanzhang, Liu Shihui, Liu Sixin, Li Heping. Bottom (left to right): Sui Muqing, Liu Xiaoyuan, Wang Yu, Zhou Shifeng. @badiucao

Other human rights activists have been arbitrarily detained solely for exercising their right to freedom of expression, accused of "leaking state secrets",⁹ "inciting subversion of state power"¹⁰ and other vague and overly broad charges such as "picking quarrels and stirring up trouble".¹¹ Advocates for Tibetan language education,¹² anti-corruption,¹³ anti-discrimination,¹⁴ women's rights,¹⁵ workers and labour rights¹⁶ and pro-

⁷ See, for example: *The Guardian*, "Detained Chinese lawyer's 16-year-old son disappears while trying to flee to US", 10 October 2015, <https://www.theguardian.com/world/2015/oct/10/detained-chinese-lawyers-16-year-old-son-disappears-while-trying-to-flee-to-us>; Amnesty International, "Prominent blogger's family detained over letter lambasting President Xi" (News, 25 March 2016), <https://www.amnesty.org/en/latest/news/2016/03/china-prominent-bloggers-family-detained-over-letter-lambasting-president-xi/>; Amnesty International, *China: Further Information: Poet Under Illegal House Arrest 'Prepared to Die': Liu Xia* (Index: ASA 17/8361/2018), 8 May 2018, <https://www.amnesty.org/download/Documents/ASA1783612018ENGLISH.pdf>.

⁸ Human Rights Watch, "China: Free Rights Lawyers, Reinstate Law Licenses", 5 July 2019, <https://www.hrw.org/news/2018/07/05/china-free-rights-lawyers-reinstate-law-licenses>; *Jurist*, Patrick Poon, "Disbarment, Suspension and Harassment", 30 March 2018, <https://www.jurist.org/commentary/2018/03/patrick-poon-outcast-lawyers-in-china/>.

⁹ Amnesty International, *China: Immediately and Unconditionally Release Huang Qi & Ensure Access to Prompt Medical Care for all Detained Human Rights Defenders* (Index: ASA 17/9358/2018), 5 November 2018, <https://www.amnesty.org/download/Documents/ASA1793582018ENGLISH.pdf>.

¹⁰ Amnesty International, *Website founder Faces an Additional Charge: Liu Feiyue* (Index: ASA 17/6980/2017), 24 August 2017, <https://www.amnesty.org/download/Documents/ASA1769802017ENGLISH.pdf>; Amnesty International, *Torture fears for detained HRD: Zhen Jianghua* (Index: ASA 17/717/2017), 27 September 2017, <https://www.amnesty.org/download/Documents/ASA1771782017ENGLISH.pdf>.

¹¹ Amnesty International, *China: Two singer-songwriter activists criminally detained: Xu Lin and Liu Sifang* (Index: ASA 17/336/2017), 25 October 2017, <https://www.amnesty.org/download/Documents/ASA1773362017ENGLISH.pdf>.

¹² Amnesty International, "China: Tibetan activist handed grotesquely unjust 5 year prison sentence after featuring in New York Times video" (News, 22 May 2018), <https://www.amnesty.org/en/latest/news/2018/05/china-tibetan-activist-uniust-sentence-nyt-video/>.

¹³ Amnesty International, "Anti-corruption activist to be freed but relentless crackdown goes on" (News, 14 July 2017), <https://www.amnesty.org/en/latest/news/2017/07/china-anti-corruption-freed-but-relentless-crackdown-goes-on/>.

¹⁴ Amnesty International, *Activists remain in detention in China*, 6 July 2015, <https://www.amnesty.org/download/Documents/ASA1720052015ENGLISH.pdf>; Amnesty International, *Two activists released in China*, 15 July 2015, <https://www.amnesty.org/download/Documents/ASA1720972015ENGLISH.pdf>.

¹⁵ Front Line Defenders, "Su Changlan released after completing three-year sentence", 27 October 2017, <https://www.frontlinedefenders.org/en/case/case-history-su-changlan>.

¹⁶ See, for example: Amnesty International, *Chinese labour activist held incommunicado* (Index: ASA 17/0264/2019), 26 April 2019, <https://www.amnesty.org/download/Documents/ASA1702642019ENGLISH.pdf>.

democracy activists¹⁷ have also been targeted in a systematic campaign to silence dissent about Chinese government policies.

Introduced in 2017, the Foreign NGO Management Law imposes increased restrictions on foreign and domestic NGOs in terms of registration, reporting, banking, hiring requirements and fundraising.¹⁸ The wide discretion granted to the police to oversee and manage the work of foreign NGOs working with Chinese civil society creates the possibility for authorities to intimidate and prosecute HRDs and NGO staff. Foreign NGOs that have not yet registered could face a freeze of their bank accounts, shutting down of premises, confiscation of assets, suspension of activities and detention of staff.¹⁹

At the global level, China remains ambiguous in its commitment to a rules-based international order. While China has signed and ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and signed the International Covenant on Civil and Political Rights (ICCPR), it has yet to ratify the latter over 20 years on, despite repeatedly stating its intention to do so.²⁰ The Constitution of the Peoples' Republic of China was amended in 2004 to include a reference to respecting and preserving human rights, such as the rights to freedom of expression and freedom of religious belief, yet also includes undue limitations on exercising these rights.²¹

In international fora, Chinese authorities are keen on changing the narrative and creating alternatives to the current international human rights framework.²² One recent example was seen at the UN HRC in March 2018, where China presented a resolution on "Promoting the International Human Rights Cause through Win-Win Cooperation". This resolution proposed an alternative to the established human rights system, promoting cooperation and mutual respect while eschewing universal and indivisible rights and signaling China's ever more assertive role in multilateral fora.²³

1.2 ASSESSMENT OF ACTION BY THE EU AND EU MEMBER STATES

Over the past decade, EU-China relations have grown in importance, progressing from a primarily trade-oriented relationship towards one covering a broad spectrum of issues, reflecting the EU's growing foreign policy role and China's increased financial power and global influence. Formal EU-China relations encompass an annual summit at the highest political level, ministerial meetings and more than 60 sectoral dialogues, including an annual dialogue on human rights. Interactions continue to expand into new areas, as exemplified by the 2016 launch of the EU-China Legal Affairs Dialogue, aimed at enhancing exchanges on best practices relating to the rule of law.²⁴

EU policy documents outlining its approach towards China contain numerous commitments on human rights, of varying strength. Jointly adopted with China in 2013, the EU-China 2020 Strategic Agenda for Cooperation governs the overall EU-China relationship and contains relatively weak statements on deepening "exchanges on human rights at the bilateral and international level on the basis of equality and mutual respect" and strengthening the human rights dialogue with "constructive discussions on jointly agreed key priority areas"²⁵ – language consistent with the worrying "win-win" discourse presented by China on the global stage.

By contrast, in 2016, the Foreign Affairs Council adopted strongly worded Council Conclusions on China:

[T]he promotion of human rights and the rule of law will continue to be a core part of the EU's engagement with China. The ongoing detention and harassment of human rights defenders, lawyers, journalists and labour rights defenders and their families remains a major concern.

¹⁷ Amnesty International, "China: Release supporters of Hong Kong pro-democracy protests" (News, 28 September 2015), <https://www.amnesty.org/en/press-releases/2015/09/china-release-supporters-of-hong-kong-protests/>; "China: Callous guilty verdicts against supporters of Hong Kong pro-democracy protests" (News, 31 March 2017), <https://www.amnesty.org/en/latest/news/2017/03/china-callous-guilty-verdicts-supporters-of-hong-kong-pro-democracy-protests/>.

¹⁸ For further information, see Amnesty International, *Submission to the NPC Standing Committee's Legislative Affairs Commission on the second draft Foreign Non-Governmental Organizations Management Law*.

¹⁹ Amnesty International, *Laws Designed to Silence*.

²⁰ The status of ratification of other international human rights instruments is available on the OHCHR website: <https://indicators.ohchr.org/>.

²¹ *Constitution of the People's Republic of China*, 14 March 2004, http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm; an unofficial translation by NPC Observer with amendments in 2018 on lifting the term limit of the presidency, 11 March 2018, <https://npcobserver.com/2018/03/11/translation-2018-amendment-to-the-p-r-c-constitution/>.

²² *China Change*, Andrea Worden, "China Pushes 'Human Rights With Chinese Characteristics' at the UN", 9 October 2017, <https://chinachange.org/2017/10/09/china-pushes-human-rights-with-chinese-characteristics-at-the-un/>; *Inkstone News*, William Nee, "With the US gone, the world must keep an eye on China's human rights".

²³ Human Rights Watch, "China's 'Win-Win' Resolution Is Anything But", 5 March 2018, <https://www.hrw.org/news/2018/03/05/chinas-win-win-resolution-anything>; *Inkstone News*, William Nee, "With the US gone, the world must keep an eye on China's human rights".

²⁴ EEAS, *Factsheet on EU-China Relations*, 9 April 2019, https://eeas.europa.eu/sites/eeas/files/factsheet_eu-china_09_04_2019_0.pdf.

²⁵ *EU-China 2020 Strategic Agenda for Cooperation*, 2013, <https://eeas.europa.eu/sites/eeas/files/20131123.pdf>.

*The EU will continue to urge China to fulfil its international obligations, to abide by international standards, and to respect its own constitutional safeguards and stated commitment to upholding the rule of law. The EU continues to call on China to ensure a safe and enabling environment for civil society – including foreign NGOs – and to protect the rights of people belonging to minorities, not least in Tibet and Xinjiang.*²⁶

The Joint Communication of the HR/VP and European Commission released ahead of these Conclusions urges the EU member states to use “the full range of diplomatic, advocacy and other tools at both bilateral and multilateral level” to promote the respect of human rights in China.²⁷

Most recently, the European Commission issued a joint communication ahead of a European Council discussion on EU-China relations (21-22 March 2019) and the EU-China summit of 9 April 2019.²⁸ This communication establishes several key lines and concerns for EU engagement with China on human rights:

The EU acknowledges China's progress in economic and social rights. However, in other respects, the human rights situation in China is deteriorating, notably in Xinjiang and regarding civil and political rights, as witnessed by the continuing crackdown on human rights lawyers and defenders. The human rights of EU and other foreign citizens in China must be protected.

The EU will strengthen cooperation with China to meet common responsibilities across all three pillars of the United Nations – Human Rights, Peace and Security, and Development.

[China's] investments [in third countries] frequently neglect socioeconomic and financial sustainability and may result in high-level indebtedness and transfer of control over strategic assets and resources. This compromises efforts to promote good social and economic governance and, most fundamentally, the rule of law and human rights.

Despite these stated commitments to human rights and HRDs, the EU's work to implement its HRD Guidelines in China faces multiple constraints, including:

- the lack of coherence among EU and member states policies in their approach to China;
- EU and member states political, trade, investment, security and other interests which compete for airtime with human rights issues; and
- China's multiple government-to-government meetings, ministerial encounters and dialogues with the EU and its member states, which challenge unity in EU positioning across all levels of relations with China.²⁹

China has also spearheaded a separate cooperation format with central and eastern European nations, the 16+1,³⁰ in what some see as an attempt to connect more closely with both EU member states and non-EU countries and to undermine overall EU unity.³¹ Even if the EU attends as an observer,³² China is also involved in the infrastructure and finance sectors throughout the EU, in particular in southern Europe.³³ Most recently, in March 2019, Italy signed a memorandum of understanding on China's Belt and Road Initiative, as the first G7 member and first EU member state to do so.³⁴

²⁶ European Council, *EU Strategy on China – Council conclusions (18 July 2016)*, <http://data.consilium.europa.eu/doc/document/ST-11252-2016-INIT/en/pdf>.

²⁷ *Joint communication from the HR/VP and the European Commission, Elements for a new EU strategy on China*, 22 June 2016, http://eeas.europa.eu/archives/docs/china/docs/joint_communication_to_the_european_parliament_and_the_council_-_elements_for_a_new_eu_strategy_on_china.pdf.

²⁸ European Commission, *Joint Communication to the European Parliament, the European Council and the Council: EU-China – A strategic outlook*, 12 March 2019, <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>.

²⁹ EEAS, *EU-China dialogue architecture*, November 2015, https://eeas.europa.eu/sites/eeas/files/2015_november_eu-china_dialogue_architecture.jpg; and European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*, 1 December 2017, pp. 21-22, https://www.ecfr.eu/publications/summary/china_eu_power_audit7242#.

³⁰ This cooperation format has evolved into a “17+1” format with the invitation of Greece to the initiative. *The Diplomat*, Emilian Kavalski, “China's ‘16+1’ Is Dead? Long Live the ‘17+1’”, 29 March 2019, <https://thediplomat.com/2019/03/chinas-161-is-dead-long-live-the-171/>.

³¹ The March 2019 joint communication on EU-China relations expresses this concern explicitly (bold in original): “Neither the EU nor any of its Member States can effectively achieve their aims with China without **full unity**. In cooperating with China, **all Member States, individually and within sub-regional cooperation frameworks**, such as the 16+1 format, have a responsibility to ensure consistency with EU law, rules and policies.” European Commission, *Joint Communication to the European Parliament, the European Council and the Council: EU-China – A strategic outlook*, p. 2. See also on 16+1 and its implications for the EU: European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*.

³² European Parliamentary Research Service, *China, the 16+1 format and the EU*, September 2018, [http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625173/EPRS_BRI\(2018\)625173_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625173/EPRS_BRI(2018)625173_EN.pdf).

³³ European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*, p. 7.

³⁴ *South China Morning Post*, “Italy becomes first Western European nation to sign up for China's belt and road plan”, 23 March 2019,

Divergent interests of EU member states have had a tangible effect on EU unity and its jointly agreed human rights policy towards China. In a watershed move in June 2017, Greece blocked an EU statement on human rights violations in China at the UN HRC.³⁵

Diplomats interviewed by Amnesty International referred to the presumed risks of openly defying China as exemplified by the case of Norway. Following the award of the Nobel Peace Prize to Chinese dissident and HRD Liu Xiaobo, Norway's relations with China were frozen for over six years between 2010 and 2017, with some impact on trade.³⁶ However, despite numerous statements on human rights and HRDs in China, the EU and its individual member states have not faced similar repercussions, suggesting that concerns based on Norway's experience are unfounded and that sustained, critical and public engagement on individual cases remains possible without substantial negative fallout for EU-China relations.

EU diplomats interviewed for this report also stressed the unpredictability of the decisions of the Chinese government on individual HRD cases. Most were cautious about how much the EU could influence the human rights situation in China, with any positive outcomes most likely the result of a mix of international pressure, media attention and domestic considerations.

Still, in recent years, the EU has developed a body of relatively strong and public positions on human rights in China.³⁷ The scope and robustness of these statements, which name specific human rights defenders and often explicitly ask for their release, would be extraordinary for an EU stance in any country, but even more so for a key strategic partner like China. Unfortunately, however, these explicit statements are not always followed up consistently across various exchanges with China, even in the case of Liu Xia, where vocal EU and member state advocacy demonstrated concrete results.

In July 2018, shortly before the EU-China summit, Liu Xia, poet, artist and widow of HRD and Nobel Peace Prize laureate Liu Xiaobo, was released and allowed to travel to Germany after nearly eight years under house arrest.³⁸ EU and member state officials had regularly appealed for her release both in private and in public, showing that sustained, committed and high-level pressure can produce positive results. In a statement after the EU human rights dialogue with China, the EU welcomed the release of Liu Xia and linked it with other HRD cases but failed to use the EU-China summit just days later to echo the same messages publicly at the highest level.³⁹

On occasion, the EU and member states have mainstreamed discussion on human rights issues into other exchanges with China on trade or economic and legal affairs. A notable example is the European Commissioner for Trade mentioning the protection of the right to freedom of expression as a prerequisite for a favourable business climate. In a speech delivered during the EU-China Business Summit in 2017,⁴⁰ EU Trade Commissioner Cecilia Malmström made a strong link between trade and economic development and the need for "respect for the rule of law, with independent lawyers and judges who can operate freely and independently". The Commissioner further highlighted that "limits to online freedom also affect peoples' lives and the business climate", delivering a message that EU commitments to human rights and a rules-based international order will remain closely interlinked with its economic and trade stances.

On another occasion, German Chancellor Angela Merkel underlined the importance of regular dialogue with China, ranging from human rights to cooperation in the areas of science and technology, while also expressing

<https://www.scmp.com/news/china/diplomacy/article/3002986/china-wants-invest-ports-maritime-transport-italy-xi-jinping>; *POLITICO*, "Silk Road opens a rift in Italy's government", 17 March 2019, <https://www.politico.eu/article/italy-comes-to-silk-road-juncture-with-chinese-mou/>.

³⁵ *The Guardian*, "Greece blocks EU's criticism at UN of China's human rights record", 18 June 2017,

<https://www.theguardian.com/world/2017/jun/18/greece-eu-criticism-un-china-human-rights-record>.

³⁶ Human Rights Watch, "Which Norway will visit China?", 5 April 2017, <https://www.hrw.org/news/2017/04/05/which-norway-will-visit-china>.

³⁷ See, for example, EEAS, "The European Union and China held their 37th Human Rights Dialogue", 3 April 2019,

https://eeas.europa.eu/topics/external-investment-plan/60561/european-union-and-china-held-their-37th-human-rights-dialogue_en; "EU Delegation to China Statement on International Human Rights Day", 9 December 2018, https://eeas.europa.eu/delegations/china/55020/eu-delegation-statement-international-human-rights-day_en;

"Statement by the Spokesperson on the recent conviction of Chinese human rights defender Tashi Wangchuk", 23 May 2018, eeas.europa.eu/headquarters/headquarters-homepage/45089/statement-spokesperson-recent-conviction-chinese-human-rights-defender-tashi-wangchuk_en; and "Statement by the Spokesperson on the verdicts of Wu Gan and Xie Yang in China", 27 December 2017, https://eeas.europa.eu/delegations/china/37921/statement-spokesperson-verdicts-wu-gan-and-xie-yang-china_en.

For a full list of EU statements from 2014 to April 2019, see Appendix III.

³⁸ Amnesty International, "China: Liu Xia free and on her way to Germany" (News, 10 July 2018),

<https://www.amnesty.org/en/latest/news/2018/07/china-liu-xia-free-on-way-to-germany/>.

³⁹ EEAS, "The European Union and China held their annual Human Rights Dialogue", 10 July 2018,

https://eeas.europa.eu/delegations/iran/48217/european-union-and-china-held-their-annual-human-rights-dialogue_en; EEAS, "Joint statement of the 20th EU-China Summit", 17 July 2018,

https://eeas.europa.eu/delegations/china_en/48424/Joint%20statement%20of%20the%2020th%20EU-China%20Summit.

⁴⁰ European Commission, *Speech by European Commissioner for Trade Cecilia Malmström, EU-China Business Summit*, 2 June 2018,

http://trade.ec.europa.eu/doclib/docs/2017/may/tradoc_155609.pdf.

concerns about the case of Liu Xia.⁴¹ Other examples of mainstreaming include bringing human rights issues into the EU-China legal affairs dialogue, and member states with closer trade and economic relations more vocally raising human rights concerns with China.⁴²

Still, the EU and its member states remain challenged to raise human rights concerns with China against the backdrop of a complex relationship fraught with conflicting interests, EU disunity, increasing repression in China, and challenges in achieving impact for HRDs.⁴³ At the same time, a body of strong EU statements and evolving efforts towards mainstreaming point the way towards meaningful engagement with China on human rights. A consistent, fully mainstreamed and strategic approach will be key to the EU engaging China effectively on human rights in the future. As the European Commission itself notes in its 2019 Joint Communication, doing so will be “an important measure of the quality of the bilateral relationship”.⁴⁴

1.3 EU EFFORTS TO IMPLEMENT ITS HRD GUIDELINES

CLOSED-DOOR DIPLOMACY

Since 1982, an annual human rights dialogue provides the primary formal framework for closed-door discussions between the EU and China. During the exchange, the EU has the opportunity to raise concerns about HRDs and to hand over a list of persons of concern, especially those detained, to their Chinese counterparts. For the EU, the dialogue is a crucial moment to link its closed-door diplomacy with its public positioning as the dialogue winds up with an EU press release. The dialogue could also feed into wider exchanges at the EU-China summit held in the same period – an opportunity that has never yet been fully used.

Indeed, the EU-China human rights dialogue is proverbial for being an often-politicized process that risks sectioning off human rights issues from wider political discussions between the EU and China, despite EU commitments to human rights mainstreaming. The EU-China human rights dialogue has regularly been delayed or cancelled by the Chinese authorities,⁴⁵ while the European Parliament⁴⁶ has highlighted the need to strengthen it and academics⁴⁷ and human rights organizations⁴⁸ fundamentally question the dialogue in its current form. Unlike EU dialogues with many other third countries, where an exchange with civil society is envisaged,⁴⁹ China has not participated in such exchanges, despite specific opportunities to meet civil society, including at the 2019 human rights dialogue.⁵⁰ Since 2017, Amnesty International and other NGOs have jointly called on the EU to suspend the dialogue in line with the 2016 Council Conclusions rather than further weaken its credibility by participating in an exercise marked by “a lack of clearly articulated benchmarks for progress, vulnerability to Chinese pressure, and exclusion of independent Chinese voices”.⁵¹

⁴¹ *Radio Free Europe*, “Merkel In China To Press For Dialogue On Human Rights”, 24 May 2018, <https://www.rferl.org/a/merkel-in-china-to-press-for-dialogue-on-human-rights/29246831.html>.

⁴² European Think-tank Network on China, *Political values in Europe-China relations*, December 2018, http://pure.diiis.dk/ws/files/2551241/ETNC_full_report_2018.pdf. This report observes that “[t]he higher China’s share in a country’s overall trade, the more active and vocal that state tends to be in promoting democracy, human rights and the rule of law in its relations with China”, p. 16.

⁴³ Amnesty International Netherlands, *A ritual dance with the dragon? Dutch government’s response to crackdowns on human rights defenders in China*, June 2016, p. 39, <http://nl.dayoftheendangeredlawyer.eu/wp-content/uploads/sites/2/2015/01/AI-16-20-China-Report-A-Ritual-Dance-with-the-Dragon.pdf>.

⁴⁴ European Commission, *Joint Communication to the European Parliament, the European Council and the Council: EU-China – A strategic outlook*, p. 2.

⁴⁵ European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*, p. 25.

⁴⁶ European Parliament news, “EU-China Human Rights Dialogue should be strengthened, says DROI Chair on the occasion of the 35th dialogue”, 22 June 2017, <http://www.europarl.europa.eu/news/en/press-room/20170622IPR78107/eu-china-human-rights-dialogue-to-be-strengthened-says-droi-chair>.

⁴⁷ Katrin Kinzelbach and Hatla Thelle, ‘Talking Human Rights to China: An Assessment of the EU’s Approach’, *The China Quarterly* 205, March 2011, 60-79, https://www.jstor.org/stable/41305194?seq=1#page_scan_tab_contents.

⁴⁸ Amnesty International and other NGOs, “Re: The EU, China and Human Rights”, 13 March 2019, https://amnestyeu.azureedge.net/wp-content/uploads/2019/03/Joint-NGO-letter-EU-China-human-rights_13-03-2019_EU.pdf; “Re: 2018 EU-China Summit”, 13 June 2018, <https://amnestyeu.azureedge.net/wp-content/uploads/2018/10/ASA1786242018ENGLISH.pdf>; “EU: Suspend China Human Rights Dialogue”, 19 June 2017, <https://www.amnesty.eu/news/eu-suspend-china-human-rights-dialogue-1052/>; “Re: EU-China summit”, 22 May 2017, https://amnestyeu.azureedge.net/wp-content/uploads/2018/10/EU_China_letter_May_22nd.pdf.

⁴⁹ *EU Guidelines on human rights dialogues with third countries*, https://eeas.europa.eu/sites/eeas/files/eu_guidelines_on_human_rights_dialogues_with_third_countries.pdf.

⁵⁰ “The Human Rights Dialogue continued on 2 April with a meeting with the civil society organizations. The Chinese delegation did not participate in this meaningful exchange of views.” EEAS, “The European Union and China held their 37th Human Rights Dialogue”.

⁵¹ Human Rights Watch, “EU: Suspend China human rights dialogue”, 19 June 2017, <https://www.hrw.org/news/2017/06/19/eu-suspend-china-human-rights-dialogue>.

Beyond the annual human rights dialogue, EU diplomats reported that they attempt to observe trials (see below) and also raise individual HRD cases with the Ministry of Foreign Affairs, the Ministry of Public Security and other government bodies. In response to arrests, diplomats reported calling detention centres to ask for clarification within the first 24 hours of an HRD's arrest. Sometimes, EU diplomats call for HRDs to be guaranteed the right to access legal representation or that they be allowed to leave the country. At other times, diplomats say interventions are simply intended to let the authorities know that there is international attention for an individual case. EU diplomats reported joint efforts between the EU and its member states for the release of Liu Xia from house arrest and the release of lawyers detained in the "709" crackdown.

In addition to EU exchanges with China, Germany, France, Sweden, the Netherlands and the UK conduct bilateral human rights dialogues with China. EU efforts towards mainstreaming are echoed by similar efforts among member states that still appear ad hoc in nature. The UK's Foreign and Commonwealth Office reports UK diplomats maintaining contacts with HRDs and their families in China and the UK, with ministers raising human rights concerns and individual cases in bilateral meetings with their Chinese government counterparts.⁵² Denmark uses its trade and economics dialogue with China to raise human rights concerns.⁵³ Dutch state representatives are reported to have repeatedly raised their concerns about the treatment of HRDs in China.⁵⁴

Chinese HRDs reported that authorities in China are responsive to international pressure, especially when it comes from a variety of sources and channels. The combination of media attention with international and domestic pressure, said one HRD, "has effected positive change [on the Chinese authorities], even though they seem not to care".

PUBLIC ACTION

EU statements referring to individual Chinese HRDs are predominantly made outside the country, at headquarters level by the spokesperson of the HR/VP,⁵⁵ following the annual human rights dialogue or in multilateral fora such as the UN HRC.⁵⁶ From January 2014 to late April 2019, the EU made between six and 10 statements on HRDs annually, usually including names of individuals. There was a total of 46 EU statements in this period explicitly mentioning HRDs, activists or human rights lawyers. Of those:

- 38 mentioned the names of individuals, 35 specifically used the term "human rights defender";
- 35 asked for their release, an end to their detention and harassment and/or welcomed a release;
- 19 called for access to a lawyer, family and/or medical care, and occasionally for diplomatic visits or trial observation; and
- 12 explicitly mentioned allegations or reports of torture – all these statements date after the UN Committee Against Torture review of China in December 2015.

In a relatively exceptional local initiative, on International Human Rights Day (10 December) in 2016, 2017 and 2018, the EU delegation issued statements⁵⁷ expressing deep concern about the situation of the rights to freedom of information, expression and association in China, naming several detained HRDs and calling for an end to their detention and harassment.

⁵² UK Foreign and Commonwealth Office, *Human Rights and Democracy: the 2017 Foreign and Commonwealth Office report*, <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2017/human-rights-and-democracy-the-2017-foreign-and-commonwealth-office-report>.

⁵³ European Council on Foreign Relations, François Godement and Abigaël Vasselier, *China at the gates: A new power audit of EU-China relations*, p. 86.

⁵⁴ Amnesty International Netherlands, *A ritual dance with the dragon? Dutch government's response to crackdowns on human rights defenders in China* p. 25.

⁵⁵ See, for example: "Statement by the Spokesperson on the recent conviction of Chinese human rights defender Tashi Wangchuk", 23 May 2018, www.eeas.europa.eu/headquarters/headquarters-homepage/45089/statement-spokesperson-recent-conviction-chinese-human-rights-defender-tashi-wangchuk_en.

⁵⁶ See, for example, "40th session of the UN HRC – EU Statement: Human Rights situation that require the Council's attention", 12 March 2019, https://eeas.europa.eu/headquarters/headquarters-homepage/59657/hrc-40-eu-statement-human-rights-situation-require-councils-attention_en.

⁵⁷ "European Union Statement on International Human Rights Day," 9 December 2016, https://eeas.europa.eu/headquarters/headquarters-homepage_en/16949/European%20Union%20Statement%20on%20International%20Human%20Rights%20Day; "Local Statement by the Delegation of the European Union on International Human Rights Day", 8 December 2017, https://eeas.europa.eu/delegations/china/37014/local-statement-delegation-european-union-international-human-rights-day_en; "EU Delegation to China Statement on International Human Rights Day", 9 December 2018, https://eeas.europa.eu/delegations/china/55020/eu-delegation-statement-international-human-rights-day_en.

In a speech delivered to the European Parliament in April 2019,⁵⁸ the HR/VP described the human rights situation in China, including the continued arrest and detention of HRDs. She then stressed the imperative of the EU passing a clear and unified message on human rights to China at a time when few other global actors may do so:



"[We are] passing the clear message that for Europeans, human rights are not less important than economic interests. On the contrary, they are as if not more important than our economic interests..."

I stress how important it is for us to be consistent and coherent across the European Union institutions on these messages because there might be a tendency in our interlocutors – not only when it comes to China but also with others when we talk about human rights – of thinking that it is the European Union institutions that raise human rights issues and that Member States or individual Members of Parliament do business. I think it is very important that we are consistent in the messages that we pass. And I think that we are possibly making some progress in this consistency and this unity; that our Chinese interlocutors see that this is important for every single European, every single European Member State, every single political family of this hemicycle...

No other global power is doing this in the world today. The global trend on human rights is not encouraging at all. I believe this is exactly one more reason for us not to give up. We cannot afford, as Europeans, to stop engaging. We will continue to advocate for the respect of human rights, be it in China or all around the world."

This speech was a rare instance of a high-level EU official making an explicit push for EU mainstreaming of human rights in exchanges with China across all areas of relations (with economic and human rights concerns juxtaposed) and all European institutions, including the EU and member states. Crucially, this effort is linked to the situation of HRDs and is placed squarely in the context of a changing world with shifting allegiances to human rights and the multilateral order.

Despite this wide range of statements and debate about EU messaging, the EU has a disappointing record of raising human rights publicly at EU-China summits. In 2019, a strongly worded EU press release after the EU-China human rights dialogue,⁵⁹ including a long list of individual cases, found little echo at the EU-China summit just one week later.

By contrast, the joint statement issued by the EU and China following the summit acknowledges that "all human rights are universal, indivisible, interdependent and interrelated" but then goes on to highlight how EU-China human rights discussions take place outside the remit of the summit – within the framework of the human rights dialogue and at UN or other multilateral fora, "on the basis of equality and mutual respect".⁶⁰ The language on universality of rights is crucial and picks up on the EU press release after the human rights dialogue referring to the "importance of the universality, indivisibility and interdependence of human rights". Yet this affirmation is ultimately undercut by jointly agreed language of "equality and mutual respect", suggesting acceptance for the alternative vision of human rights that China actively promotes at international level internationally.

Still, following the 2019 summit, European Council President Donald Tusk affirmed that "human rights are – from our European point of view – as important as economic interests" and that he had "underlined the need to maintain the EU-China Human Rights Dialogue... expressed again the EU's serious concerns as regards human rights, and raised a number of individual cases".⁶¹

In 2018, official communications at the summit⁶² included little reference to human rights, despite the release of Liu Xia and a strongly worded EU press release following the human rights dialogue mentioning individual

⁵⁸ Speech by HR/VP Federica Mogherini at the European Parliament urgency debate on China, notably the situation of ethnic and religious minorities, 18 April 2019, https://eeas.europa.eu/delegations/china/61227/speech-high-representativevice-president-federica-mogherini-european-parliament-urgency-debate_en. See also: Speech by HR/VP Mogherini at the plenary session of the European Parliament on the state of EU-China relations, 11 September 2018, https://eeas.europa.eu/delegations/china/50337/speech-hrvp-mogherini-plenary-session-european-parliament-state-eu-china-relations_en.

⁵⁹ EEAS, "The European Union and China held their 37th Human Rights Dialogue".

⁶⁰ "Joint statement of the 21st EU-China summit", 10 April 2019, https://eeas.europa.eu/delegations/china_en/60836/Joint%20statement%20of%20the%2021st%20EU-China%20summit

⁶¹ "Remarks by Donald Tusk after the EU-China summit in Brussels", 9 April 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/04/09/remarks-by-president-donald-tusk-after-the-eu-china-summit-in-brussels/>. This was just two weeks after Tusk told the European Parliament: "And of course, I can't imagine not having human rights on the agenda. I may be old fashioned, but I still think that human rights are at least as important as trade." ("Report by President Donald Tusk to the European Parliament on March European Council meetings", 27 March 2019, <https://www.consilium.europa.eu/en/press/press-releases/2019/03/27/report-by-president-donald-tusk-to-the-european-parliament-on-march-european-council-meetings/>).

⁶² EEAS, "Joint statement of the 20th EU-China Summit", 11 July 2018, https://eeas.europa.eu/delegations/china_en/48424/Joint%20statement%20of%20the%2020th%20EU-China%20Summit.

cases just days before.⁶³ Yet, according to media accounts, European Commission President Jean-Claude Juncker privately raised the issue of the arbitrary detention of human rights lawyers and defenders during the summit.⁶⁴

By contrast, in 2017, European Council President Donald Tusk raised human rights concerns and went much further. He publicly stated: “our concern about freedom of expression and association in China, including the detention of human rights lawyers and defenders, as well as the situation of minorities such as Tibetans and Uighurs”.⁶⁵

By reverting solely to closed-door diplomacy during the EU-China summits in 2018 and 2019, the EU leadership lost out on the opportunity to mainstream human rights discussions, reiterate human rights messages at the highest level and build on hard-earned progress on cases like that of Liu Xia and others raised at the human rights dialogue. This lack of consistency surely did not go unnoticed by Chinese counterparts and other observers of EU-China relations.

Chinese HRDs expressed concern about such practices. One stated:

There was criticism of the “709” crackdown but [EU member states] still do business in China. If your partner can give you money to soothe criticism, the pressure resulting from the criticism drops.

Such separation of discussions into “human rights” and “other” topics raises concern that human rights may be marginalized to facilitate strategic conversations during summits and other high-level strategic meetings.

The challenge remains of backing up EU public statements consistently across all EU-China relations. EU-China relations see some of the most charged debates about the merits of the EU speaking out on human rights, and the merits of individual member states speaking out or working through jointly agreed EU positions. The EU and member states can meaningfully engage China on human rights with a consciously strategic and ambitious use of public diplomacy. The EU and member states should take full advantage of the interplay between bilateral and multilateral engagement, allowing for initiatives by individual member states as well as a round-robin approach through joint EU statements on human rights.

Chinese HRDs interviewed for this report welcomed EU public action, affirming that EU statements on detained HRDs are likely to improve their situation and make them less susceptible to torture and other ill-treatment, even if they almost never lead to a release before the end of a sentence. In a few instances, however, public international support has led to the release of HRDs, such as the five women’s rights activists released on bail weeks after being detained before International Women’s Day 2015, and the release of Gao Yu on medical parole later that year.⁶⁶

TRIAL MONITORING

EU diplomats reported attempting to observe trials of HRDs, but said that Chinese authorities usually refuse requests, often saying that the courtroom is full. At times, diplomats reported waiting outside the courthouse to obtain information at the close of a hearing.⁶⁷ Media reports confirm instances of diplomats being physically pushed back from courtrooms, as during the trial of human rights lawyer Pu Zhiqiang.⁶⁸

Still, the EU rarely publicizes and denounces Chinese authorities’ regular refusal of trial observation even if it is common knowledge among diplomats. While both the UK’s Foreign and Commonwealth Office⁶⁹ and the EU⁷⁰ denounced the treatment of diplomats attempting to monitor the trial of Pu Zhiqiang, such statements have been the exception (3 of 46 statements between January 2014-April 2019). Explicit and consistent EU

⁶³ EEAS, “The European Union and China held their annual Human Rights Dialogue”, 10 July 2018,

https://eeas.europa.eu/delegations/iran/48217/european-union-and-china-held-their-annual-human-rights-dialogue_en.

⁶⁴ POLITICO Brussels Playbook, 16 July 2018, <https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-foes-and-friends-all-eyes-on-asia-vestager-vs-google-again/>.

⁶⁵ “Remarks by President Donald Tusk after the EU-China summit in Brussels”, 2 June 2017, <https://www.consilium.europa.eu/en/press/press-releases/2017/06/02/tusk-remarks-eu-china-summit-june/>.

⁶⁶ Amnesty International Netherlands, *A ritual dance with the dragon? Dutch government’s response to crackdowns on human rights defenders in China* p. 44-45.

⁶⁷ Amnesty International Netherlands, *A ritual dance with the dragon? Dutch government’s response to crackdowns on human rights defenders in China* p. 48.

⁶⁸ The Guardian, “Scuffles outside Beijing court as human rights lawyer Pu Zhiqiang goes on trial”, 14 December 2015, <https://www.theguardian.com/world/2015/dec/14/violence-outside-beijing-court-as-human-rights-lawyer-pu-zhiqiang-goes-on-trial>.

⁶⁹ The Guardian, “UK criticizes ‘unacceptable’ treatment of diplomats at China trial of human rights lawyer”, 17 December 2015, <https://www.theguardian.com/world/2015/dec/17/uk-criticises-unacceptable-treatment-of-diplomats-at-china-trial-of-human-rights-lawyer>.

⁷⁰ EEAS, “Statement by the Spokesperson on the sentencing of Chinese Human Rights lawyer, Mr. Pu Zhiqiang”, 22 December 2015, https://eeas.europa.eu/delegations/china/3015/statement-spokesperson-sentencing-chinese-human-rights-lawyer-mr-pu-zhiqiang_en.

positioning on the lack of diplomatic access to trials, as well as on fair trial and due process, could be a powerful avenue to highlight overall concerns on the Chinese criminal justice system and how that system is used to target and harass HRDs – while also giving visibility to the EU’s practical engagement on their behalf.



Despite all these obstacles, Chinese HRDs stressed the importance of sustained EU efforts towards trial observation in China, noting how diplomatic missions’ continued requests to observe trials put pressure on local courts and may improve HRDs’ situation.

ENGAGEMENT WITH HRDS

Both EU diplomats and HRDs reported having regular exchanges. HRDs meet diplomats one-on-one, as well as at events and meetings with staff from the EU delegation and member state embassies. One HRD told Amnesty international that they have been able to “deliver testimonies when invited to meetings arranged by [NGOs] who know the human rights officers of the embassies”. Other HRDs reported meeting EU member states’ foreign ministers in person during their visits to China. Diplomats reported that their interactions with HRDs consisted mainly in offering moral support, arranging meetings with other diplomats or media representatives and alerting them to relevant opportunities. EU diplomats also reported being in regular contact with, and providing support to, family members of detained HRDs.

During her visit to China in October 2015, German Chancellor Angela Merkel met a group of Chinese HRDs.⁷¹ She expressed German support for human rights in China and raised the legitimacy of the defenders’ work. However, similar attempts are not always successful. In April 2016, Chinese authorities prevented the EU delegation and Canadian, French, German and Swiss diplomats from visiting Ni Yulan, an HRD under house arrest.⁷²



  China housing rights activist Ni Yulan and her husband Dong Jiqing forcibly evicted from their newly-rented house in April 2017. Since then, they have been camping out, moving from place to place, in Beijing, relying on their supporters to provide them with food and other necessities. @Private

⁷¹ Radio Free Asia, “Germany’s Angela Merkel Meets with Rights Activists, Dissidents During China Trip”, 30 October 2015, <https://www.rfa.org/english/news/china/merkel-10302015132820.html>.

⁷² The Guardian, “Chinese rights lawyer Ni Yulan placed under house arrest”, 25 April 2016, <https://www.theguardian.com/world/2016/apr/25/chinese-rights-lawyer-ni-yulan-under-house-arrest>.

While the EU delegation maintains contact mainly with HRDs based in or near Beijing, EU member states have explored a good practice of using their consulates in other regions for outreach to HRDs outside the capital.

Despite exchanges with the EU delegation and member states, Chinese HRDs interviewed for this report mentioned hurdles in engaging with them. Many were largely unaware of the EU Guidelines on HRDs and the EU's specific commitments and potential actions on HRDs. They reported not having enough knowledge on how to communicate with the EU or member state missions and not knowing how to acquire this information. The reasons cited for this included: being based outside of Beijing; the information blockade put in place by the Chinese state; and HRDs' limited communication skills in English. This means there is room for improvement to address these hurdles, boost EU awareness raising on the Guidelines, and reinforce outreach to HRDs outside the capital and non-English speaking HRDs.

ENABLING ENVIRONMENT

The EU reports that it continues to urge China to ratify the ICCPR,⁷³ which China signed in 1998 and committed to ratifying during the Universal Periodic Review (UPR) processes in 2009 and 2013. EU diplomats further reported raising systemic issues impacting on HRDs, such as undue restrictions on the right to freedom of expression and media freedoms, the crackdown on civil society and restrictive legal reforms, including the Foreign NGO Management Law.⁷⁴

EU member states have also used human rights prizes to highlight the situation of HRDs at risk. The 2016 Franco-German Prize for Human Rights and the Rule of Law was awarded to Wang Qiaoling, an HRD and wife of imprisoned human rights lawyer Li Heping, for her work in defending the rights of detained lawyers' families. Likewise, Ni Yulan received the Dutch Human Rights Tulip award in 2011.

The EU delegation and EU missions also use cultural activities to promote the recognition and respect of human rights. In 2016, the EU delegation launched a series of art exhibitions focused on human rights.⁷⁵ Chinese HRDs reported appreciating similar initiatives organized by the French embassy in Beijing, such as a film screening with a human rights theme. One said:

I hope to see more support for similar activities, such as support for film screenings or reading groups, applying, through films and literary works, a lighter touch to promoting civil and human rights to ordinary people and students.

Chinese HRDs reported overall feelings of isolation and being cut off from the global human rights community by the restrictive environment in China. They see an important role for the EU in strengthening links and communication between HRDs, both within the country and internationally. One HRD told Amnesty International that it was "important to let Chinese HRDs feel a sense of recognition for their profession and their persistence in pursuing human rights".

At the same time, HRDs criticized the lack of a strong, visible EU reaction to new legal restrictions on the operation of NGOs. They wanted the EU to take a more explicit stance on legislation with such far-reaching symbolic and pragmatic importance for their work.

FINANCING, TRAINING AND CAPACITY BUILDING

Chinese HRDs are confronted by challenging working and living conditions, as they rely on the public welfare system and low wages paid by NGOs, which often fail to provide health and social insurance. Chinese HRDs interviewed for this report referred to the personal challenges they face due to the inability to register NGOs legally. One said:

The NGOs I work for are not registered. Therefore, they cannot give me an employment contract and they cannot buy medical and labour insurance for me. My work is completely insecure, unprotected.

⁷³ For example, at the 2019 human rights dialogue, where the EU asserted that it "expects China to expedite the process of ratifying the International Covenant on Civil and Political Rights, signed by China in 1998", https://eeas.europa.eu/topics/external-investment-plan/60545/european-union-and-china-held-their-37th-human-rights-dialogue_en.

⁷⁴ The EU raised the Foreign NGO Management Law at several junctures, including in human rights dialogues (2018, 2019), in EU item 4 statements at the HRC (HRC 31, 33) and in the EU local statement for International Human Rights Day 2017.

⁷⁵ EEAS, "EU launches series of art exhibitions focused on human rights (22/02/2016)", http://eeas.europa.eu/archives/delegations/china/press_corner/all_news/news/2016/20160224_en.htm.

Organizations and individuals working directly with victims of human rights abuses have been described as particularly at risk.

Other needs that Chinese HRDs have highlighted include English language training to access and influence global debates; training on non-violent direct action and social leadership; occupational training and psychological counselling for human rights defenders at risk; training and outreach to journalists to encourage them to cover human rights violations; and financial support and protective measures for families of HRDs as they are often threatened because of their relatives' human rights work.

China remains a highly restrictive setting for CSOs to maintain their registered status, to access foreign and international funding, and even to continue their activities or maintain a physical presence in the country. In response, the EU is challenged to meet a need for greater and more flexible funding for Chinese HRDs and NGOs without placing them at risk.

The EU and other international actors will need to innovate to support Chinese HRDs, as they face restrictive NGO legislation that imposes new and burdensome registration requirements and restricts their ability to seek, receive and utilize funding from abroad. One solution may be to develop flexible modalities such as core-funding and confidential grants to avoid putting beneficiaries at risk.⁷⁶

ENGAGEMENT AT INTERNATIONAL FORA

The EU regularly makes statements at the UN HRC on individual cases of HRDs at risk and has cooperated with UN Special Procedures during their visits to China. It also advocates with China to accept the many pending requests from UN Special Procedures.⁷⁷ At the same time, the EU reports that it has provided guidance for HRDs at risk on how to get in touch with different UN Special Rapporteurs who can raise their situation in a wider international context.

Still, the EU faces a key challenge in linking HRDs with UN Special Procedures due to the extensive reprisals suffered by Chinese HRDs who engage with international mechanisms, as recently documented in an OHCHR report in August 2018.⁷⁸ In March 2014, Beijing activist and prominent campaigner Cao Shunli died from organ failure after months in custody during which she was denied appropriate medical treatment. She was taken by police at Beijing airport in September 2013 while on her way to Geneva to attend a human rights training programme and the UPR. She had pressed hard for the public to be allowed to contribute to China's UPR report. In June 2013, with her efforts repeatedly denied, she organized a protest outside the Ministry of Foreign Affairs in Beijing for over a month. The Chinese authorities detained her for "picking quarrels and provoking trouble". The EU issued two statements – one upon her initial enforced disappearance and one after her death⁷⁹ – just days before an EU-China summit on 31 March 2014, at which her case was mentioned neither publicly nor privately despite the statement issued just days before.

Such reprisals will continue to challenge the EU to champion human rights and HRDs at the international level and to deliver on its stated commitment in the Strategic Framework – to "step up its efforts against all forms of reprisals".

VERTICAL AND HORIZONTAL COORDINATION

On a working level, EU diplomats reported close coordination between the EU delegation and member state missions on HRDs at risk in China. The EU delegation coordinates regular meetings, both formal and informal, to exchange information about ongoing trials, defenders at risk, detention of individuals, harassment of family members, disbarment of lawyers, surveillance and other topics of concern. EU member states with a

⁷⁶ ProtectDefenders.eu, *Funding Available for Human Rights Defenders*, 2018, https://www.hrfn.org/wp-content/uploads/2018/01/hrd-funding-study_final.pdf.

⁷⁷ As of early 2018, the 14 mandate holders with pending requests are the UN Special Rapporteurs on extrajudicial, summary or arbitrary executions, rights to water and sanitation, minority issues, the right to health, toxic wastes, freedom of expression, torture, freedom of assembly, the situation of human rights defenders, the right to housing, independence of judges and lawyers, freedom of religion or belief and human rights and counter-terrorism, as well as the Working Group on Enforced or Involuntary Disappearances. Amnesty International, *China: Human rights violations in the name of "national security": Amnesty International submission for the UN Universal Periodic Review, 31st session of the UPR working group (November 2018)*, (Index: ASA 17/8373/2018), 1 March 2018, <https://www.amnesty.org/download/Documents/ASA1783732018ENGLISH.pdf>.

⁷⁸ UNGA, *Annual report of the United Nations High Commissioner for Human Rights*, 13 August 2018, p. 8, 19-20, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/247/10/PDF/G1824710.pdf?OpenElement>.

⁷⁹ EEAS, "Statement by EU High Representative Catherine Ashton regarding the case of missing Chinese Human Rights defender, Ms Cao Shunli", 20 October 2013, http://eeas.europa.eu/archives/docs/statements/docs/2013/131020_01_en.pdf; EEAS, "Statement by EU High Representative Catherine Ashton regarding the death of Chinese Human Rights defender, Ms Cao Shunli", 21 March 2014, http://eeas.europa.eu/archives/docs/statements/docs/2014/140315_02_en.pdf.

diplomatic presence outside of Beijing use their wider networks of contacts with HRDs to provide updates on the situation in more remote regions.

Still, there is tension between the EU's common policy towards China and the bilateral relations of individual member states with China. Ultimately, the EU is often charged with taking on the task of raising human rights on behalf of member states in a kind of round-robin approach that addresses human rights concerns jointly but exposes no single member state. Maintaining EU unity on human rights in China thus remains one of the greatest challenges for the effective implementation of the EU Guidelines on HRDs in China – along with the ongoing challenges of working in country and of making human rights mainstreaming a reality for EU relations with China more broadly.

1.4 CONCLUSIONS AND RECOMMENDATIONS

Given the complex relations with vast interests at stake, along with the many challenges of engaging China on human rights, the EU has made significant headway with good and even innovative practices in using public diplomacy, exploring how to put mainstreaming into practice and seeking alternate courses of meaningful practical action for HRDs (such as outreach through consulates). All of these could be useful elsewhere in EU human rights work globally.

At the same time, the experience in China opens up areas for further consideration:

- How to act strategically for the release of arbitrarily detained HRDs?
- How to ensure better follow up on human rights concerns and individual cases through practical action, political intervention and sustained follow up, once these are raised through public diplomacy?
- How to step up engagement on the restrictive legal environment in China, including through more visible engagement on new laws, more flexible funding to HRDs and facilitation of safe contacts with international human rights bodies?
- How to engage with Chinese challenges of human rights norms at the international and multilateral levels?
- How to promote wider engagement of Chinese HRDs with international human rights mechanisms in a context of increasing reprisals against those who do so?
- How best to make a positive out of the potential liability of EU disunity, exploring how to strategically use both bilateral and multilateral actions by EU and member states?



TO IMPROVE IMPLEMENTATION OF THE EU GUIDELINES ON HRDS IN CHINA, THE EU AND MEMBER STATES SHOULD:

- **Mainstream human rights engagement throughout all relations with China**, including in political, legal, security and trade-related exchanges – establishing concrete mechanisms to mainstream human rights messages in all EU exchanges with China, and linking up meaningful work being done across the European institutions.
- **Adopt a more ambitious approach to EU divergences**, exploring how joint EU actions can best be used strategically in coordination with bilateral actions by EU member states.
- **Develop innovative approaches to trial observation**. Broaden the scope of trial observation efforts in China to attend those dealing with charges against NGOs. Arrange briefings with journalists who may have better access to trials. Explore alternative ways of supporting HRDs on trial. Adopt a consistent strategy of public communication when access to trial observation is refused. Ensure the full consent of the people involved, and that all actions are undertaken based on an assessment of potential risks, while maintaining a proactive approach to trial observation.
- **Counter isolation of Chinese HRDs** by providing information on the EU Guidelines on HRDs as well as on global human rights rules and networks in Mandarin and other languages spoken in China. Promote networks and exchange of information between Chinese HRDs based in different regions, and between them and their international counterparts. Provide scholarships to HRDs to attend European universities to build their capacities and enhance their networks. Develop safeguards and consistent strategies for communication about reprisals against HRDs engaging with international human rights mechanisms.
- **Work closely with the UN system**. Ensure HRDs are aware of the mechanisms they can address at the multilateral level and support them in doing so safely. Facilitate communications between and contribution to, relevant Special Procedures.
- **Support family members of targeted HRDs**. Protect and financially support the families of targeted individuals, who are often used as leverage on HRDs.
- **Develop strategies for follow up on public statements** with practical actions (such as prison visits, support to lawyers or families) and political engagement (such as reiterating individual cases at summits or high-level meetings).

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