19 April 2022

UN High Commissioner must uphold principled and coherent response to China's human rights crisis

UN High Commissioner for Human Rights Michelle Bachelet announced on 8 March that she has secured a visit to China 'foreseen to take place in May'. Her announcement in an update to the UN Human Rights Council comes three and a half years after she publicly requested unrestricted access to China for the first time. Over this period, the undersigned organisations consider that she did not take adequate public diplomacy steps, including official statements, to respond to allegations of serious rights violations in the country in a timely manner.

In contrast, nongovernmental organisations, UN Special Procedures[1] and Treaty Bodies[2] have collected a diverse and extensive body of information detailing grave human rights violations that could amount to crimes against humanity, or even genocide. In June 2020, 50 Special Procedures experts called for 'decisive measures to protect fundamental freedoms in China', including the establishment by the Human Rights Council of 'an impartial and independent United Nations mechanisms to closely monitor, analyse and report annually on the human rights situation in China.' They reiterated grave concern at a range of issues including forced labour, the 'collective repression of the population, especially in Xinjiang and Tibet, the detention of lawyers and prosecution and disappearances of human rights defenders across the country' and 'the repression of protest and democracy advocacy in Hong Kong.'

In her report to the Human Rights Council on secret detention in the context of countering terrorism, UN Special Rapporteur Fionnuala Ní Aoláin underscored the 'pressing need for independent human rights assessment and accountability for violations of international law' in the context of mass arbitrary, and secret detentions and forced labour in Xinjiang, the Uyghur region.

We express deep concern that the High Commissioner's 8 March announcement did not include any mention of the expected release of the Office of the UN High Commissioner for Human Rights (OHCHR) report on serious human rights violations in Xinjiang, the Uyghur region. In September 2021, 'regret[ting] not be[ing] able to report progress' on negotiations for access, Bachelet had confirmed that her Office was 'finalising its assessment of the available information on allegations of serious human rights violations in [Xinjiang], with a view to making it public.' In December, a spokesperson for OHCHR stated the report would be released 'in a matter of a few weeks.'

We regret the perceived lack of coherence in the High Commissioner's approach to addressing the human rights crisis in China, which poses a risk to the credibility of the OHCHR, and its perceived ability to tackle serious allegations against a major power.

We are also concerned that the High Commissioner has remained silent on the human rights crisis in Tibet, in contrast with her predecessors.

[1] *Communications CHN 13/2018; CHN 21/2018; CHN 18/2019; CHN 14/2020; CHN 18/2020; CHN 21/2020; CHN 4/2021; CHN 5/2021. Press release from 29 March 2021.*

[2] *CERD, Concluding Observations (2018) and Follow-up Letter (2020). CESCR List of Issues (2021). CEDAW List of Issues (2021).*

We take note that an 'advanced OHCHR team' would depart to China in April to prepare her stay, 'including onsite visits to Xinjiang and other places', and that 'preparations will have to take into account Covid-19 regulations.' The country, now facing its highest peak of infections ever, has put in place highly restrictive measures under its 'zero-Covid' policy, including localised and city-wide lockdowns implemented with little notice, and a 21-day quarantine for international visitors.

We express concern that the High Commissioner's update to the Human Rights Council does not provide any indication as to whether the conditions negotiated with the authorities allow for unhindered access, for which she has previously called. A number of factors prompt significant concerns about the likelihood that such conditions – the details of which remain undisclosed – are effectively met, despite China's commitments.

China is, alongside Saudi Arabia, the country most often mentioned in the UN Secretary-General's annual report on 'reprisals' against individuals and groups cooperating, or seeking to cooperate with the UN. In the 2020 report, China was listed among the 11 countries cited for engaging in 'patterns of reprisals', and later identified as one of five countries with 'serious issues with the detention of victims of reprisals and intimidation.'

Following his country visit to China in 2016, then-Special Rapporteur on extreme poverty and human rights Philip Alston detailed in his report to the Human Rights Council measures that made him 'unable to meet with the great majority of civil society actors with any degree of freedom or confidentiality', including that the Government 'advised him not to make direct contact with civil society organisations to arrange meetings, and requested full details of any private meetings held', while also warning him 'not to meet with individuals it considered 'sensitive'' and 'regularly follow[ing him with] security officers posing as private citizens, thus making it virtually impossible to meet privately with civil society organisations and individuals.' One of the only activists he could meet with, lawyer Jiang Tianyong, was detained for nearly three years following his encounter, and remains today arbitrarily held under *de facto* house arrest, and strict surveillance.

China's government has also regularly recalled its position that it would only allow for a 'friendly visit' by the High Commissioner aimed at 'promoting exchanges and cooperation', and not 'a so called 'investigation' with presumption of guilt.'

In this context, the undersigned civil society organisations consider that the following core minimum conditions must be met in order for any visit to China by the High Commissioner to be credible.

- **Release the OHCHR report on serious human rights violations in Xinjiang, the Uyghur region, promptly and ahead of her visit to China, and brief the Human Rights Council on its contents, as a matter of urgency. This will assist to ensure that negotiations regarding a visit cannot be used as a tactic to further unacceptably delay the release of a critical report and will also assist to ensure that any subsequent visit to China is substantive and meaningful;**

- **Meet safely with independent civil society organisations, human rights defenders and victims from, or working in relation, to China, including groups in the diaspora, in advance of the visit;**

- **Make inquiries about, and secure confidential and unsupervised meetings with, human rights defenders and others who have been forcibly disappeared, or are arbitrarily detained, including serving sentences or in pre-trial detention, in order to assess their well-being and the compliance of their deprivation of liberty and conditions of detention with international standards;[3]**

- **Ensure transparency with respect to measures taken to date to ensure access to China is effectively unfettered, including but not limited to diplomatic reassurances, and steps to mitigate and respond to any breach of agreement by the Chinese authorities;**

- **Include among the visit team relevant Special Procedures mandate-holders, including the Special Rapporteur on human rights and counter-terrorism;**

- **Ensure respect for a set of minimum standards for independent, unfettered access; publicly report on, and interrupt the visit in case of a breach of agreement by the Chinese authorities. These standards should include[4]:**
  - Fully unhindered access to all areas including Uyghur and Tibetan regions and Hong Kong, which entails:
    - Freedom of movement in the whole country, including the Xinjiang Uyghur Autonomous Region (XUAR), the Tibet Autonomous Region (TAR) and other restricted areas[5];
    - Freedom of inquiry, which requires:
      - Unhindered access to all detention facilities across the territory, including prisons, detention centers, so-called 'vocational training centres' and forced labour facilities;
      - Confidential and unsupervised contact with human rights defenders, witnesses and other private persons, including persons deprived of their liberty; and
      - Full access to all documentary material, including documents from governmental sources at all levels;
  - Guarantees that any official security protection, including on grounds of 'counter terrorism', and other forms of accompaniment, including in the name of 'Covid-19 prevention', are provided in ways which do not prejudice the security, privacy, confidentiality or freedom of movement and inquiry;

[3] This should include: A-nya Sengdra, Chang Weiping, Chen Jianfang, Cheng Yuan, Chow Hang-tung, Ding Jiaxi, Go Sherab Gyatso, Gulshan Abbas, He Fangmei, Huang Xueqin, Hushtar Isa, Gao Zhisheng, Ilham Tohti, Lee Cheuk Yan, Li Yuhan, Li Qiaochu, Lhamo Khyab, Lobsang Lhundup, Qin Yongpei, Rahile Dawut, Rinchen Tsultrim, Tashpolat Tiyip, Wang Jianbing, Xu Zhiyong, Yalqun Isa, Yang Maodong, Yeshe Choedron, Wu Gejianxiong, Zhang Haitao and Zhang Zhan, as well as individuals among the '47 pro-democracy activists' case. [4] These standards draw on, among other resources, the 'Terms of Reference for Fact-Finding Missions by Special Rapporteurs/Representatives of The Commission on Human Rights' [E/CN.41998/45 Appendix V], [5] This should include at least two locations across historic Tibet (now TAR, and Tibetan Autonomous Prefectures in Qinghai, Gansu, Sichuan and Yunnan provinces), including Ngaba; the Chushur (Qushui) and Drapchi detention centers (TAR); the Damzhung County Complete Elementary School (TAR) and Batan Ranch Complete Elementary Boarding School (Qinghai) boarding schools; the Kashgar Educational Transformation School, the Ghulja City Yingyeer Vocational Skills Education and Training Center, the Xinjiang United Vocational Training School, and the Aqsu City No. 1 Education and Training Center political reeducation (as located in the XUAR by the Uyghur Transitional Justice Database).

- Robust risk assessment and mitigation measures to minimise the possibility that any individual, group or organisation suffers threats, harassment, punishment, or any other form of intimidation or reprisal, as a result of cooperation and communication with the visit team in any way;
- No information on any parts of the visit program involving meetings with civil society are shared with state authorities, including guarantees that no state officials, including law enforcement officials, are present during interviews with victims or other actors. Interviews should be exclusively conducted in UN or diplomatic premises, with interpretation if needed, provided solely through UN-recruited or -selected independent interpreters, to ensure the protection of victims or witnesses. For individuals held in detention facilities, interviews should be confidential with UN-recruited or -selected interpreters, and without state officials' presence.
- Ensure meaningful and safe participation by a diverse pool of independent civil society organisations, human rights defenders, individuals and victims, during the preparatory phase of any visit through separate, dedicated meetings for different regions and communities, and undertake broad consultations during and after the visit in a safe and confidential manner; and
- Ensure that field investigations use existing UN information, such as Special Procedures communications and Treaty Body reviews, as a foundation for inquiry.

Signatories:

Adelaide - Stand with Hong Kong

Amnesty International

Asia Democracy Network

Australian Uyghur Tangritagh Women's Association

Campaign for Uyghurs

China Against the Death Penalty

China Aid Association

China Alarm

Chinese Human Rights Defenders

CIVICUS: World Alliance for Citizen Participation

Comité de Apoyo al Tíbet – CAT – Spain

Cornell Society for the Promotion of East Asian Liberty (SPEAL)

CSW (Christian Solidarity Worldwide)

DC4HK (Washingtonians Supporting Hong Kong)

Dutch Uyghur Human Right Foundation

East Turkistan Australian Association

ECOTibet Ireland

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ECPM- Ensemble contre la peine de mort

FIDH - International Federation for Human Rights

Freedom House

Freedom United

Front Line Defenders

Hong Kong Committee in Norway

Hong Kong Democracy Council

Hong Kong Forum, Los Angeles

Hong Kong International Alliance Brisbane (HKIA Brisbane)

Hong Kongers in San Diego

Hong Kong Liberation Coalition

Hong Kong Professional Network

Hong Long Social Action Movements in Boston

Hong Kong Watch

Human Rights Foundation

Human Rights in China

Human Rights Watch

Human Rights Without Frontiers

Ilham Tohti Initiative e. V.

International Bar Association's Human Rights Institute (IBAHRI)

International Campaign for Tibet

International Service for Human Rights (ISHR)

International Society for Human Rights, Munich section

International Tibet Network

Judicial Reform Foundation

Justice for Uyghurs

Lawyers' Rights Watch Canada

No Business With Genocide

Students for a Free Tibet

The 29 Principles

Tibet Justice Center

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Tibet Solidarity

Tibet Support Group Ireland

Tibet Youth Association in Europe

US Tibet Committee

Unrepresented Nations and Peoples Organization (UNPO)

Uyghur Academy Europe

Uyghur Association of Victoria, Australia

Uyghur Human Rights Project

Uyghur Rights Advocacy Project

Uyghurischer Verein Schweiz

Victims of Communism Memorial Foundation

Victoria Hongkongers Association (Australia) Inc.

World Uyghur Congress