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## Human Rights Council

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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the International Fellowship of Reconciliation, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 May 2017]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.17-08556(E)



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## **Independence of Judges and Lawyers: the case of the Tibet Autonomous Region (TAR), China**

A major barrier to human rights protection in the “Tibet Autonomous Region” (TAR) and in Tibetan-peopled areas in the People’s Republic of China (PRC) is the total lack of judicial independence within the Chinese legal system. Politically-motivated jurisprudence and inconsistent application of constitutional protections have led to significant inconsistencies in law enforcement. Tibetans do not benefit from consistent application of the rule of law: their enjoyment of fundamental rights is conditional on submission to the rule of the Chinese state.

The PRC’s Constitution includes provisions that are consistent with international law. Nevertheless, the appropriate Chinese authorities do not respect these provisions. Many of the protections contained within the Constitution are taken away by a host of affirmative duties imposed on citizens to safeguard the security, honour, and interests of China and uphold the socialist system.

Without respect for the rights associated with the judicial and criminal process, any individual is at risk of abuse by manipulated law enforcement agencies.

There are several examples of how the lack of judicial independence has led to systematic human rights violations upon the Tibetan people.

First, Tibetans are frequently arrested following peaceful protests, are sentenced without due process, and subsequently undergo torture in official or unofficial detention centers.

The situation has become so unbearably oppressive that many Tibetans resort to self-immolation protests. Between 2009 and the present, 145 known Tibetans have self-immolated.

Chinese authorities force families of Tibetan self-immolators to sign documents stating that the self-immolators set themselves on fire due to domestic problems - not in protest against Chinese policy.

Secondly, there are a number of structural barriers to judicial independence in the Chinese legal system compared to international standards on the independence of judges and lawyers.

Rights associated with the protections afforded to an individual in the criminal process are routinely denied and flagrantly violated. These rights are minimum requirements necessary to guarantee a fair and just treatment of a criminal suspect. Without respect to these rights during the criminal process, an individual is susceptible to abuse and is at the mercy of the law enforcement agencies.

Article 4 of the UN’s “Basic Principles on the Independence of the Judiciary” (BPIJ) provides that States must not inappropriately interfere with the judicial process or revise judicial decisions outside of the process of judicial review, mitigation, or commutation by competent authorities in accordance with the law.<sup>1</sup> Also, article 10 of the UN’s “Guidelines on the Role of Prosecutors” (GRP) states that “the office of prosecutors shall be strictly separated from judicial functions.” Both the BPIJ and GRP are declaratory in nature, but are legally binding because they restate and expound on the international legal standards contained in Article 14, paragraph 1 of the ICCPR. The PRC’s legal system violates both of these standards.

Chinese courts are overseen by Adjudication Committees, which have the power to overrule court decisions. These committees are unique to the PRC’s judicial system and are in no way consistent with international legal standards. Moreover, these Adjudication Committees are often led by administrators rather than by working judges.

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<sup>1</sup>“Basic Principles on the Independence of the Judiciary,” *UN*, 1985, *available at*:  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>.

An analysis of minutes from one first-instance Court revealed that the Adjudications Committee reviewed 96% of criminal cases, modifying almost 41% of them.<sup>2</sup> These modifications almost always resulted in an increase of the defendant's penalty.

Article 4 of the BPIJ indicates that revisions can only be made under judicial review, mitigation or commutation. The Adjudication Committee's power to impose harsher penalties violates that agreement.

In addition, Article 10 of the GRP requires that the office of the prosecution be separate from the judiciary. However, some of the officials on these committees are also responsible for overseeing police, prosecution and judiciary.

In summary, these structural barriers to judicial independence continue to violate United Nation standards.

Thirdly, the PRC's Criminal Procedure Law also limits a defendant's access to justice when he or she is accused of committing crimes "endangering state security." Chinese authorities increasingly use this in order to issue charges of a vague and overly broad nature in order to silence and detain people involved with dissent and criticism in Tibet.

The PRC's counter-terrorism law promulgated on 1<sup>st</sup> January 2016, includes disproportionate penalties for crimes that have nothing to do with terrorism, because of a tendency to equate religious extremism with terrorism. This law combined with national security strategies will continue to have severe consequences for freedom of expression, peaceful assembly and religious expression.

Under Amendment 9 of the PRC's Criminal Law which took effect on November 1st, 2015, acts such as advocating or promoting 'terrorism' through books or materials, as well as wearing apparel or emblems, were made punishable by law and could result in three to five year prison sentences. This effectively legitimizes and legalizes the suppression of religious and cultural expression of minority nationalities in the name of anti-terrorism.

International observers consider this vague new law as having nothing to do with outside threats to China; but rather to be directed towards the expansion of restrictions against Tibetans and other perceived threats to the state.

The definition is so broad that all people exercising their human rights may be branded as "terrorists". With such a wide range of interpretations available, PRC officials can manipulate the law in ways that serve a political motive.

A fourth example of judicial manipulation is that defendants lack access to meaningful legal representation, and are often not provided with the opportunity to seek legal counsel. This violates the provisions made in the Chinese Procedural Law, which states that a defendant should be able to see a lawyer within 48 hours of requesting one. It also violates Article 10 of the United Nations "Basic Principles on the Role of Lawyers" (BPRL), which requires that access to a lawyer be provided to all persons without distinction of any kind, such as race, ethnic origin, religion, or political opinion.

Finally, defence lawyers acting on behalf of accused of committing so-called national security crimes face limitations in access to evidence, and the right to be heard.

Lawyers who attempt to uphold the rule of law by defending Tibetans risk arbitrary arrest, loss of licence to act, or even criminal proceedings without any supporting evidence. It is dangerous for Chinese lawyers to take on politically sensitive cases.

Furthermore, under Article 37 of the PRC's Criminal Procedure Law, a lawyer must obtain permission from governmental authorities before being allowed to meet with a suspect accused of committing crimes said to endanger state security.

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<sup>2</sup>Xin Frank He, "China and its Adjudication Committees," *East Asia Forum*, 3 Dec. 2011, available at: <http://www.eastasiaforum.org/2011/12/03/china-and-its-adjudication-committees>.

Additionally, article 83 serves to deny defendants proper legal representation. It stipulates that police are not required to inform a suspect's family until 24 hours after taking into custody. This denies them the opportunity even to seek appropriate legal representation..

Article 150 requires investigators to keep evidence involving state secrets confidential. This prevents lawyers from preparing an adequate defense for the accused.

All of these practices violate Article 16 in the United Nation's "Basic Principles on the Role of Lawyers" (BPRL). According to Article 16 of the BPRL, governments are required to ensure that lawyers are able to perform all of their professional functions without intimidation, harassment, or improper interference. They also have the right to not suffer or be threatened for doing their job.

Such violations undermine international principles, deny citizens their right to a fair trial, and expose lawyers to unjust and dangerous treatment.

Without the creation of an independent judicial system and consistent application of the rule of law, citizens of the PRC and Tibetans in particular will continue to lack access to basic human rights protections.

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