

## Annex 1. Guide to the Accompanying Table

To present our assessment of China's implementation of the second UPR recommendations, we have "graded" China's performance in the accompanying Table (see Annex 2, NGO Assessment: "Grading" China's Implementation of 2nd Universal Periodic Review Recommendations before 3rd UPR Session in 2018 (hereafter referred to as "the Table"))

The Table is arranged by recommending States in alphabetic order, as shown in the second column. We hope the organization of the table makes it convenient for representatives of recommending States to view whether and how their governments' recommendations to China have been implemented, which should in turn inform States' efforts to assist in the full implementation by China of their recommendations. The table lists the original texts of the recommendations (third column) as well as China's position (whether or not to accept/implement them) and its official explanation of the its position (fourth column).

In the fifth column, we present our own assessment—whether and to what extent China has implemented the specific recommendations. We assign one of four "grades" to China's performance: "Implemented," "Partially Implemented," "Not Implemented," and "Assessment Unavailable."

In this column, we also "grade" the *quality* of the recommendations made by UN Member States. When we give the grade "Assessment Unavailable" to a recommendation, we have assessed the recommendation as "inappropriate."

*Inappropriate recommendations* are those that undermine, or are counter-productive to, achieving the "ultimate aim" of the UPR—"to improve the human rights situation in all countries and address human rights violations wherever they occur" by reviewing "the fulfilment by each State of its human rights obligations and commitments" under the UN Charter and Universal Declaration of Human Rights.<sup>1</sup> By identifying certain recommendations as "inappropriate," we emphasize that these recommendations are made in such a manner that they do not directly concern human rights issues, or are clearly not in line with the basis of the review as established in UN guidelines.<sup>2</sup>

For instance, Saudi Arabia recommended China "[s]trengthen legislation to prevent the unlawful from undermining other people's interests in the name of human rights defenders" (186.146). This recommendation overrides protection of human rights defenders (HRDs) with a dubious claim of "other people's interests," and supports China's legislation that legitimizes persecution of HRDs in the name of "national security." Such a recommendation is not based on human rights principles; instead, it is opposed to the protection and promotion of human rights.

In another example, Uzbekistan recommended China "[s]tep up measures to bring to justice persons who instigate others to commit acts of self-immolation" (186.238). Uzbekistan, in effect, urged China to systematically persecute ethnic Tibetans whom the government has accused of "inciting self-immolation." Such a recommendation is not oriented to address

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<sup>1</sup> See: UN Office of the High Commissioner for Human Rights (OHCHR), Universal Periodic Review, <http://ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>; UN General Assembly, Resolution 60/251 Human Rights Council (created UPR), 15 March 2006, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251\\_En.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf).

<sup>2</sup> According to the president of the Human Rights Council, "All recommendations should focus on the human rights issues and comply with the basis of review as defined in HRC rec. 5/1." UN Human Rights Council, "Letter from President of the Human Rights Council on rules and practices of the Universal Periodic Review Working Group," 18 September 2013, <http://ohchr.org/Documents/HRBodies/UPR/HRCPresidentLetterOnUPR.pdf>.

human rights abuses at the roots of the ethnic repression, cultural destruction, deprivation of religious freedom, exploitation of natural resources, and ecological and environmental degradation in Tibet, which ultimately led to this desperate form of protest. Rather, it advocates further political repression.

Such recommendations are *inappropriate* for the UPR and they cannot be meaningfully assessed without, at the same time, compromising the human rights principles that guide the UPR, which UN Member States are obligated to uphold. Such recommendations essentially contradict the mission and objectives of the UPR and perpetuate human rights violations. Making such recommendations is thus counterproductive to achieving stated UPR goals. The Chinese government “accepted”—and can be said to have in some sense “implemented”—the recommendations from Saudi Arabia and Uzbekistan noted above. But such performances clearly should not count toward China’s achievement in promoting and protecting human rights. We can only give the “grade” “assessment unavailable” to all 16 of such *inappropriate recommendations*.

The 16 *inappropriate recommendations*—all of which China “accepted”—were made by governments of these countries: Bangladesh (186.163, 248), Comoros (141), Democratic Republic of Congo (43, 251), Cuba (164), Lebanon (249), Myanmar (176), Oman (99), Pakistan (237, 239), Saudi Arabia (146), Sierra Leone (252), Sri Lanka (240), Uzbekistan (238), and Vietnam (162). (See details in the Table, Annex 2)

UPR recommendations should be in line with the UPR’s mission and objectives. If many or most of the recommendations made to a country undergoing a UPR review are inappropriate, it hinders an accurate and meaningful assessment of the impact of the UPR. A high acceptance rate of inappropriate recommendations by the reviewed State clearly does not indicate the state’s cooperation with the UPR, nor does it show the State’s willingness to promote and protect human rights. This is because, as seen in the cases of Saudi Arabia and Uzbekistan, inappropriate recommendations urge China to take essentially anti-human rights policies or actions.

We have used another measure to assess the quality of recommendations: some recommendations are *poor* if they make vague suggestions for actions that are not specific (i.e., they lack concreteness or a measurable benchmark), to the extent that it is difficult or impossible to assess whether the recommended courses of action have been effectively implemented. We also assess a recommendation as *poor* if it is based on unsound, controversial, or false presuppositions, such that the recommended courses of action are confusing or misleading.

For example, some States recommend that China “consider” or “explore options” or “look into the possibility” of taking a certain course of action (such as “ratifying ICCPR”).<sup>3</sup> However, it is difficult to assess something that is essentially subjective—whether the government has “considered” or “explored options.” Such formulations of the recommendations may allow the government to claim it has “implemented” these recommendations while, in actuality, it has not taken substantive action. Or it allows the government to use the country’s “state secrets” law in refusing to disclose information necessary for assessing actions that lack visible outcomes or measurable benchmarks.

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<sup>3</sup> For example, Cape Verde asked China to “consider ratifying ICCPR” (186.3), which the government accepted. This recommendation is proposing an action with no measurable benchmark.

As another example, some States have urged China to “continue,” “maintain,” “keep up,” or “strengthen” or “make further efforts towards” or “further enhance,” “expand” or “develop further” certain practices, policies, efforts or “achievements,” where there is a lack of clear or solid evidence that the Chinese government has already adopted such practices, policies, or made such efforts or achievements, or at least where its track record has been inconclusive and/or controversial.<sup>4</sup> Norway, for instance, recommended China “make further efforts towards safeguarding the freedom of expression of all citizens” (186.154), but no such efforts have clearly been made by the Chinese government in the years prior to the 2013 UPR and freedom of expression had been increasingly curtailed. (See Section 2.5 in the report.) This type of *poor* recommendation has the effect, even if unintended, of praising China for efforts or progress that the government has not made or achieved.

Despite the difficulties in assessing the implementation of *poor* recommendations, we have tried, instead, to assess the general situation in the relevant areas of human rights. Of the 55 poor recommendations (out of the 236 *appropriate* recommendations), China “accepted” 46, and claimed to have “accepted and already implemented” another 7. We graded 44 of the total number of “poor” recommendations as “not implemented,” thereby highlighting the need for States to give strong recommendations to ensure human rights are protected in these areas and hold the government to account.

For reasons discussed above, it is questionable to consider a high rate of “acceptance” of UPR recommendations by a State under review as an indication of its willingness to cooperate with the UPR. China has cited its high rate of acceptance of the 2013 UPR recommendations—204 out of 252, or 81 percent—to support its claim that it has a good record in “international human rights cooperation.”<sup>5</sup> However, of the appropriate and strong recommendations that China accepted (a total of 132 recommendations), we graded 102 as “not implemented” in our NGO assessment ahead of the 3<sup>rd</sup> UPR, indicating a lack of genuine cooperation and progress in protecting human rights.

To the UN Human Rights Council, we recommend that making good—appropriate and strong—recommendations be adopted as a requirement of all UN Member States participating in the UPR. This standard would help make the UPR process more effective in advancing its stated objectives. Our assessments of the quality of recommendations are intended to challenge and encourage States to make recommendations that are useful and effective for protecting and promoting human rights inside the country under review, thereby holding such States accountable for constructive participation in the UPR. The lack of consequences for UN Member States that made poor or inappropriate recommendations to China in 2013—some of which were not based on human rights principles or in fact stand opposed to human rights—has contributed to, and helps to explain, the ineffectiveness of the UPR process in China’s case.

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<sup>4</sup> For instance, Chile recommended China “continue strengthening the protection and promotion of the right of all citizens to publicly express their beliefs and opinions” (186.169), which is asking China to “continue” doing something that it has not been doing (i.e., “strengthening” protection of freedom of expression).

<sup>5</sup> *People’s Daily*, “Excerpts of Speeches from NHRAP (2012-15) Implementation Evaluation Concluding Conference” (《国家人权行动计划(2012—2015年)》实施评估总结会议发言摘登) June 16, 2016, <http://politics.people.com.cn/n1/2016/0616/c1001-28448543.html>.