

End-of-mission statement on China, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights

Beijing, 23 August 2016.

1. Introduction

China's achievements in alleviating extreme poverty in recent years, and in meeting highly ambitious targets for improving social well-being, have been extraordinary. Although its leadership continues to grapple with enormous challenges in terms of slower growth rates, dramatic inequality, deep-rooted environmental degradation, and a struggle to define the rule of law, its determination to build a 'moderately prosperous society' free of extreme poverty cannot be doubted. This political will is impressive and all too uncommon in today's world.

My visit to China has provided me with an opportunity both to see firsthand many of these accomplishments and to understand them through the lens of China's obligations under the body of international human rights law which it has helped to shape. In an international setting in which all too little attention is paid to economic, social and cultural rights, I welcome the importance China accords to them.

In this statement, I want to underline the magnitude of China's achievements, but also to take note of some of the continuing challenges that it faces. There is no shortage of reports on China's human rights situation, both from the side of the Government and from other participants and observers. My role is not to go over well-trodden ground, but rather to reflect, in light of the mandate that I have from the UN Human Rights Council, on the relationship between poverty alleviation and human rights in the context of China.

In this regard it is important to draw a distinction between the achievement of development objectives and the respect for human rights obligations. The two are mutually reinforcing, but they are not synonymous. China's development attainments are unquestioned, but my task is to consider whether they also translate into ensuring full respect for the human rights of its people.

The most difficult and complex challenge in this respect is to understand how the leading role of the Communist Party can co-exist with the recognition of individual rights and the provision of meaningful accountability mechanisms which are an indispensable element in a human rights framework. The challenge was well captured in the President's report to the 18th Party Congress in which he said that in order to "strengthen social development" what is needed is "a law-based social management system featuring Party committee leadership, government execution, nongovernmental support and public participation." The reconciliation of these different dimensions is not easy.

2. Achievements

Over the past three decades, and with particular speed in recent years, China has lifted hundreds of millions of people out of poverty. This is a staggering achievement and is a credit to those responsible. Although precise figures are often given, it is surprisingly difficult to know exactly

what the numbers are. This is partly because different time periods are used, different criteria are applied, and different sources are used. Figures from official institutions and from the World Bank range between 500 million and 767 million. Officials now tend to use the figure of 700 million. Equally impressive is the fact that progress has not only been made in terms of addressing income-based poverty, but also in terms of meeting a diverse array of social goals.

A few examples must suffice. In 2003, only 10% of the population had health insurance. By 2013, some 95% were covered, including most of the rural poor and the vulnerable urban groups. In 2009 only 240 million people were covered by pension schemes and 58 million were actually receiving pensions. By 2014, coverage was up to 842 million and recipients up to 229 million. Far-reaching social assistance programmes have been introduced such as Wubao for the elderly, people with disabilities and juveniles and Dibao to provide cash or in-kind support to poor households living below a locally defined poverty line. Between 2000 and 2012 the infant mortality rate fell by 60 per cent and the maternal mortality rate fell by 49 per cent. Life expectancy at birth rose from 69 to 75 years from 1990 to 2012.

If there are lessons to be drawn by other countries from China's achievements, the principal ones would seem to be that (i) a well-functioning market economy is capable of generating large financial returns, including for the state, (ii) governmental intervention to improve the situation of the relatively large numbers of people whom the market inevitably bypasses is essential, and (iii) genuine political will to alleviate poverty is arguably the most important ingredient of all.

The challenge ahead

Government statistics indicate that 5.7% of China's population were still living in extreme poverty at the end of 2015. Rates vary significantly from as high as 10% in Western China, to only 1.8% in Eastern China. Certain groups are especially vulnerable, such as ethnic minorities for whom the rate is 12.1% and the elderly and youth for whom it is above 9%.

President Xi Jinping has promised to eliminate extreme poverty by 2020, so that no-one shall be left behind. In practice, this means lifting 55.75 million rural people out of extreme poverty defined by reference to an income-based standard of \$2.30 per day or 2,800 yuan per year. The goal is enshrined in the 13th Five-Year Plan (2016-2020) and all levels of government and the Party have been instructed to give it the highest priority. All indications are that it will be met, even ahead of time.

Again, this is an impressive and admirable goal, but several observations are in order. First, comprehensive elimination is not anticipated, since for administrative purposes the goal will be considered to have been met as long as rates across the board are below a 3% threshold. Second, the program is aimed at the rural poor, and does not include specific measures directed at eliminating extreme poverty in urban areas. Third, some experts suggest that the 'tyranny of indicators' has compelled officials to focus too narrowly on income-based approaches to poverty alleviation, thus paying insufficient attention to the multi-dimensional aspects of poverty. Fourth, experts have also questioned whether the elimination of extreme poverty is sustainable in the medium-term in the absence of a broader array of measures which are currently being greatly overshadowed by the imperative need to meet the Party's goals prior to the 100th anniversary of its founding.

Fifth, and most importantly in terms of the present preliminary statement, is whether the current approach is being carried out in a manner that conforms to human rights obligations and in particular whether it provides for meaningful accountability mechanisms.

The importance of accurate data

As noted earlier, there is no single authoritative figure that captures the number of people who have been lifted out of extreme poverty in recent years in China. In some contexts, the differences in the available estimates would not matter, but the precision of the future poverty alleviation targets sets by the Government highlight the importance of getting a clear picture of what measurement standards are used and what sources are relied upon. A recent analysis of official statistics argues that poverty rates at the national, rural, and urban levels are “much higher than the official estimates.”¹ While there can be no question that the Government’s achievements are immense, the disparate figures and the challenges to the accuracy of official sources raise the question of the importance of accurate and transparent data. The research study referred to suggests that “the data collection process in official surveys lacks transparency” and it became clear to me in the course of my own visit to China that there are also significant problems with data availability. Detailed information on sources and collection procedures, beyond references to the household surveys that are undertaken, was sparse. Examples were given of presumably negative data being withheld from publication (such as data on household catastrophic health expenditure from the 2013 National Health Services Survey) and of the unavailability of disaggregated statistics, relating especially to issues such as gender. Similarly, in monitoring China’s compliance with its two main conventions on child labour (Conventions 138 and 182) the ILO Committee of Experts has expressed concern over the absence of official data on these issues.

3. Principal challenges

The final report will address a variety of issues that are too detailed to be dealt with in the present statement. The report will include sections dealing specifically with:

Poverty alleviation goals

The importance of an integrated approach to social development

Equality-related challenges

Gender

Rights of persons with disabilities

Rights of LGBTI persons

Rural land takings

The right to education

The right to health

¹ Chunni ZHANG, Qi XU, Xiang ZHOU, Xiaobo ZHANG, and Yu XIE, “ Are poverty rates underestimated in China? New evidence from four recent surveys,” 31 China Economic Review (2014) 410

Inequality

China's great progress in poverty alleviation has been accompanied by the emergence of very high levels of inequality. This is illustrated by the degree of conspicuous consumption in some circles, but much more importantly by the urban/rural differentials. The "Chinese dream" which the Government often extols is not one in which there is radical inequality. Between 1981 and 2007, the Gini coefficient in distribution of net household income grew from 0.28 to 0.49.² Although income distribution trends since 2007 are unclear because of the lack of independent data, the most recent official source reports an income Gini coefficient of 0.462 in 2015. This would still put China in the top 30 of most unequal countries in terms of income distribution. Independent research has argued that China reached a Gini of 0.61 in 2010, and 0.6 in 2014, which would make it one of the most unequal countries on earth.³ As a result, the richest 1% of households owns one-third of the country's wealth, while the poorest 25% own just 1%. The State Council acknowledged in 2013 that income inequality was a problem and identified 35 measures to be taken. It is not clear, however, that resulting Government policies have made significant inroads.

Inequality rates between rural and urban areas are problematic. The ratio of urban to rural family income was 4:1 in 2007. It has declined to 2.53:1 in 2014.⁴ This is a positive trend and it is to be hoped that the gap will be further closed if rural incomes continue to grow faster than urban incomes. But it is also true that government spending has consistently favoured urban elites, to the detriment of rural dwellers and migrant workers (rural to urban migration). This is partly a result of China's decentralized fiscal system which leads to large disparities in public social services expenditure per capita on a regional basis.⁵

Another problem seems to lie in disparities in the treatment of urban and rural *hukou* holders. The *hukou* system is a household registration system formally introduced by the Chinese government in the 1950s that persists to this day. Chinese citizens have (i) an urban, non-agricultural registration, (ii) an urban, agricultural registration, (iii) a rural, agricultural registration, or (iv) no registration at all. Those with rural, agricultural registration are at a major disadvantage in many respects. While the 200 million migrant workers from the countryside constitute up to 30% of some large cities, they have been described as a 'subordinate caste', who are treated unequally in access to social services like education, health care, and social security.⁶

Research indicates that public transfers reinforce pre-existing inequalities, by benefiting the rich more than the poor, and the urban population more than the rural population.⁷ An unpublished

² Martin King Whyte, 'Soaring Income Gaps: China in Comparative Perspective', *Daedalus* (Spring 2014).

³ Martin King Whyte, 'Soaring Income Gaps: China in Comparative Perspective', *Daedalus* (Spring 2014), p. 41; see also: *The Economist*, 'Up on the Farm', 14 May 2016; *The Economist*, 'Up on the Farm', 14 May 2016.

⁴ Shen Ke et al., 'A Benevolent State Against an Unjust Society? Inequalities in Public Transfers in China' (unpublished, 2016), p. 7.

⁵ The World Bank and the Development Research Center of the State Council, P. R. China, 'China 2030: Building a Modern, Harmonious, and Creative Society' (2013), p. 271

⁶ Martin King Whyte, 'Soaring Income Gaps: China in Comparative Perspective', *Daedalus* (Spring 2014), p. 47..

⁷ Shen Ke et al., 'A Benevolent State Against an Unjust Society? Inequalities in Public Transfers in China' (unpublished, 2016), p. 19.

study shows that the public pension system “is highly regressive, with lower income groups entitled to much less pension benefits.”⁸

There continues to be powerful resistance from urban dwellers to *hukou* reforms that would provide an easier path to regularization for migrant workers. The consequences of the system as it currently operates are highly problematic for many migrant workers, but more thoroughgoing reforms would only be feasible if accompanied by additional resource allocations from the Government.

An assessment of China’s record in relation to economic and social rights

China ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2001, and is a party to various other international treaties recognizing economic and social rights (economic and social rights). In White Papers on human rights and in its National Human Rights Action Plans, China has consistently emphasized its commitment to guaranteeing these rights.

In order to understand what is required if these rights are to be treated as human rights, rather than as broad development goals, it is helpful to understand the three types of measures that Governments should take. These involve recognition of the rights in legislative or other form, the creation of institutions to promote their realization, and the provision of accountability mechanisms to ensure redress for violations.⁹

Recognition of economic and social rights

China’s 1982 Constitution was amended in 2004 to provide that “the state respects and protects human rights” (Art. 33). Chapter II of the Constitution lists ‘the fundamental rights and duties of citizens’, and contains various provisions dealing with the subject-matter of the ICESCR. For the most part, the formulation of the relevant Constitutional rights is different from the formulation in the Covenant, and some of the rights contained in the latter have no counterpart in the Constitution. The Chinese Constitution is silent on the domestic status of treaties, including human rights treaties, and their hierarchy in the domestic legal system. The Government has interpreted this silence as meaning that these treaties can only be applied by courts after being transformed into domestic law through legislative procedures.

None of the domestic implementing laws make specific reference to the treaties. Scholars have also concluded that Covenant-based economic and social rights are not dealt with in specific human rights terms in Chinese legislation.¹⁰ Reference is often made in general terms to the Constitution, but never explicitly to the Covenant in general, to specific Covenant rights, or to specific economic and social rights provisions in the Constitution. The legislative framework for recognizing economic and social rights is thus very weak.

⁸ For instance, the top quartile received almost 80% of the public pension funding in 2009, in contrast to only 1.5% for the bottom quartile. Shen Ke et al., ‘A Benevolent State Against an Unjust Society? Inequalities in Public Transfers in China’ (unpublished, 2016), p. 20.

⁹ For a detailed elaboration of this framework, see the Report of the Special Rapporteur on extreme poverty and human rights, A/HRC/32/31/Add.1 (2016).

¹⁰ GUO Sanzhuan, ‘Implementation of Human Rights Treaties by Chinese Courts: Problems and Prospects’, *Chinese Journal of International Law* (2009), p. 167-171.

Institutionalization

Many countries around the world have created a National Human Rights Institution (NHRI). There is one such institution in Hong Kong. These institutions generally offer advisory opinions to the government, advising how to harmonize domestic practices with international legal norms, cooperate with the United Nations monitoring mechanisms / human rights mechanisms and regional bodies to advance domestic human rights, and publicize human rights initiatives to enhance transparency.¹¹ China informed the Committee on Economic, Social and Cultural Rights that although it has not established a NHRI, numerous departments within the government already perform comparable functions.¹² In its concluding observations, the Committee expressed its concern about the absence of such an institution and noted that governmental institutions cannot effectively carry out the same roles as a NHRI.¹³

In the absence of a NHRI, the responsibility to promote awareness and understanding of economic and social rights as human rights falls upon Government ministries and other agencies. In China, it became clear from my conversations with officials that these bodies consider much of what they do to be devoted to the goals reflected in economic and social rights but that they generally refrained from using rights-specific language and did not consider accountability mechanisms to be relevant or necessary.

As noted earlier, the 18th Party Congress stressed the need for a “law-based social management system” that included “nongovernmental support and public participation”. But the role of civil society organizations is becomingly increasingly circumscribed and those whose work goes much beyond that of being service providers for the Government are now very much under threat, as described below.

Public participation, on the other hand, is a notion to which Chinese officials continue to subscribe, but it is invariably described very much in terms of participating in the implementation of pre-determined Party policies, rather than in the formulation or monitoring of those policies. This is problematic since participation in decision-making is a well-established principle of human rights, and also helps to improve outcomes by creating a bottom-up information channel that enables the government to change or amend policies that are not working.

Accountability

The principle of accountability provides the overarching rationale for the recognition of human rights obligations. It primarily requires that governments are accountable to their citizens and other rights holders. The right to a remedy is recognized in the Universal Declaration of Human Rights and international human rights law has attached particular importance to developing an understanding of the right to adequate, effective, timely and appropriate remedies, including reparations. The UN Committee on Economic, Social and Cultural Rights stated in its General Comment No. 9 that “appropriate means of redress, or remedies, must be available to any

11 UN General Assembly Resolution 48/134 of 20 December 1993, *Principles relating to the Status of National Institutions (the Paris Principles)*

12 Replies of China to the LOIs, to the United Nations Committee on Social, Cultural and Economic Rights, February 10, 2014, 1.

13 Concluding Observations to China, from the United Nations Committee on Social, Cultural and Economic Rights, 2.

aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place” (para. 2).

There are very many contexts in which the economic and social rights of those living in poverty, as well as other citizens, might potentially be violated through governmental action or inaction. They include, in particular, cases relating to land expropriation, environmental degradation, workers rights, access to education, and social security entitlements. The extent of the crackdown on corruption undertaken by President Xi Jinping illustrates the extent to which Party and governmental officials have engaged in corrupt conduct, which is very often prejudicial to the rights of individuals. This in turn highlights the need for effective accountability mechanisms.

But when the importance of accountability is acknowledged, as has been the case in relation to violations of pollution laws, the Government tends to rely almost entirely on top-down processes. The recent announcement that some 2,000 public officials had been punished following inspections in eight provinces and regions demonstrates this approach. However, officials carrying out sporadic control checks over other officials is no substitute for providing avenues for citizens to complain and seek remedies for relevant abuses.

The problem is that it is extremely difficult to identify any effective mechanisms of this sort, despite the plethora of procedures that exist in theory. The first port of call for an aggrieved individual is the relevant Government agency. Since it will generally be responsible for the violation, and will have no independent officials monitoring its work, the only real resort in a case which challenges official authority is the so-called letters and visits, or petitioning, procedure. According to the information I have received, this is an opaque process, dealt with by offices that are systematically understaffed, and has significant structural shortcomings. Despite its central importance, no meaningful statistics are available as to the number of petitions submitted, to which offices, in relation to which issues, or achieving what outcomes. While relatively recent rules oblige the offices to send a response of some sort, many interlocutors suggested they would be surprised if even 1% of cases was resolved in a manner that the petitioner would consider satisfactory. It is not surprising that outcomes are often reported as leading to violence against or by petitioners.

Another possibility is provided for under Article 90 of the Legislation Law according to which Chinese citizens may submit written suggestions to the Standing Committee of the National People's Congress requesting a review of whether “administrative regulations, local regulations, autonomous regulations or separate regulations contradict the Constitution.” This seems like a promising avenue on paper, but I was informed by the relevant official that out of perhaps 100 communications received (in a population exceeding 1.3 billion), he could recall only a couple of instances over the past few years in which action had formally been taken.

The next option is to hire a lawyer. In straightforward cases of official misconduct or flouting the law, a local lawyer might be able to obtain relief. But if the matter requires the public airing of policy considerations, the crackdowns on human rights lawyers and labour lawyers,¹⁴ combined

¹⁴ On 15 February 2016, the International Trade Union Confederation (ITUC) filed a complaint (Case No. 3184) against the Government of China with the ILO Governing Body Committee on Freedom of Association concerning

with the strengthening of what have been termed control mechanisms for lawyers,¹⁵ have made it very difficult for lawyers to be other than governmental facilitators.

Legal aid programs provided by the Government are growing rapidly and increasingly available to citizens in need. But they rarely, if ever, take on cases that challenge government policies.

Recent reforms to the Administrative Litigation law, and measures designed to enhance the independence of the judiciary from local political influences offer some prospect that the courts might start to play a more robust and detached role in reviewing challenges to government conduct. But the continuing influence of the Party political-legal committees that guide the work of the courts, and their track record to date in not entertaining cases based on claims that human rights have been violated, suggest little room for optimism. As one commentator has put it, in recent years, “the authorities have sought to close down rhetoric (constitutionalism), channels (court trials), and social forces (lawyers) that activists had used to mobilize greater changes.”¹⁶

Given the reluctance of the courts in relation to human rights issues, the role to be played by NGOs is potentially even more important. But starting in 2017, the Law on the Management of Foreign NGOs will regulate the operations of such foreign-based groups in China, requiring their registration with the Ministry of Public Security and greatly restricting the financing and other types of assistance they can provide in China. Registration may be revoked and criminal sanctions applied for damaging “national interests” or “society’s interests,” two phrases which are very problematically open-ended and discretionary. The result in practice will be that groups that work on issues such as disability, women’s rights, health and employment, and economic and social rights in general, will no longer be able to rely on technical or financial assistance from abroad. Many such groups will close, thus further restricting the space for any meaningful policy dialogue that does not follow the Party’s guidance. In addition, the Charity Law, which regulates domestic NGOs is already in place and additional implementing regulations are currently being considered. These too are moving in the direction of strongly limiting advocacy work around policy issues.

Overall, there is a sense of a carefully designed law and order Pincer Movement.¹⁷ The result is to significantly reduce the options for seeking redress or letting off steam through any legal or administrative mechanisms. This will generate increasing pressure for mass protests, which are generally met with repressive measures. The challenge therefore is to develop mechanisms which enable genuine accountability to be sought by private citizens alleging violations of their rights.

the arrest and detention of eight advisors and paralegals who have provided support services to workers and workers’ organizations in the defence of workers’ rights.

¹⁵ Eva Pils, *China’s Human Rights Lawyers* (2015), p.154-169.

¹⁶ Carl Minzner, ‘The Turn Against Legal Reform’, *Journal of Democracy* (January 2013), p. 67 & 69.

¹⁷ A dictionary definition of a Pincer Movement is “a military maneuver in which simultaneous flank movements are used to converge upon an enemy force, and cut it off from support and supplies.”