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7. Subsistence, poverty alleviation and right to development: between discourse and practice

Wim Muller*

7.1 INTRODUCTION

Subsistence, poverty alleviation and the right to development are at the heart of China's human rights discourse. They play a central role in the Communist Party's legitimization of its own rule as well as its developing ideology. As a subject for research and study, challenges arise as these rights are the substantive area where international human rights meet a 'Chinese' conception of rights that does not correspond perfectly with international human rights. Apart from the political and ideological meaning attached to these areas, Chinese rights discourse and international human rights discourse may differ regarding the nature and content of these rights as well as the nature of the duty bearers. This also impacts on the understanding of the legal consequences of these rights, the importance of which is borne out by international human rights law as well as Chinese constitutional and domestic law. Their codification in domestic law does not ensure their justiciability.

In the international catalogue of human rights, subsistence rights are a subset of economic and social rights, reflected in the right to food, itself part of the right to an adequate standard of living. In Chinese rights discourse, the right to subsistence (*shengcunquan*) occupies an important symbolic place. The duty of the state to provide for a minimum of subsistence to its citizens—or subjects—is older than the Chinese human rights discourse. In imperial China, it was traditionally seen as the task of the emperor to ensure that his subjects were fed (Perry 2006). As such, being able to provide for a minimum level of subsistence provided, and continues to provide, the ruler with legitimacy.

The Chinese Communist Party (CCP) has an additional reason to promote subsistence rights to underline its legitimacy. Socialist states can be expected to emphasize the importance of economic and social rights rather than civil and political rights, and this has indeed been the approach of the People's Republic of China (PRC) from the moment it was established. In particular, since the PRC started developing its public diplomacy in human rights as well as its policies, from the 1991 White Paper on *Human Rights in China* (SCIO 1991), the importance of subsistence rights has been a staple of China's human rights discourse. This is also the area where the Chinese government has claimed its greatest successes in improving human rights, as part of its wider claim to development and its repeated assertions of having 'lifted millions out of poverty'.

* The views presented in this chapter are the author's own. All website references are current as of August 2018 unless indicated otherwise.

This claim brings us to the area of poverty alleviation, which in international human rights discourse is not a right as such but is, like subsistence rights, closely associated with the right to an adequate standard of living. To secure an adequate standard of living, a society needs to have reached a certain level of development. The content of development and the associated ‘right to development’, accepted as part of the international human rights catalogue as a so-called ‘third generation’ right, remains subject to change and controversy (Marks and Malhotra 2017; Arts and Tamo 2016). Chinese views on development (*fazhan*) may or may not be shared by relevant international organs such as the United Nations Development Programme (UNDP).

This chapter therefore examines China’s approach to subsistence and developmental rights at two levels. The first part is devoted to the importance placed in these rights in China’s human rights discourse.¹ It tracks the importance of subsistence and developmental rights in official documents on human rights issued by the Chinese government and shows how in recent years the emphasis has switched from subsistence to development, in the sense that the latter is now given more prominence than the former.

It remains to be seen to what extent China’s essentially defensive discourse is going to have a meaningful impact on the development of international human rights discourse. Generally speaking, China has been diplomatically cooperative but ultimately a regressive force in the UN human rights organs, and its recent tendency towards illiberalism does not bode well for the promotion at the UN level of a holistic and universalistic approach to human rights, or an approach in which results matter more than rhetoric. However, China has been an important political messenger promoting the right to development and interests of the developing world within the United Nations fora. In addition, in recent years, under the leadership of Xi Jinping, the Chinese government has explicitly indicated that it wants to strengthen its ‘discourse power’ (*huàyǔquán*), exemplified by his speech on ‘building a global community with shared future for humankind’ (Xi Jinping 2017). Peace and development are essential ingredients of this vision of a shared future and the Chinese government explicitly promotes this as a human rights-oriented discourse.

This necessitates a closer look at the content of China’s discourse and contributions so far, and the extent to which they have influenced and are continuing to influence international human rights discourse. For international human rights to achieve their aspiration of universality, it is also important that all perspectives are taken into account, even if they should be assessed more critically than the Chinese government would probably like.

The second part of this chapter briefly directs our gaze to China itself and explores to what extent China has acted on its words. It examines China’s legislation as well as its practice regarding subsistence rights and the right to development. If ‘socialism with Chinese characteristics’ is going to be a model of a Chinese approach to human rights to the world, it is most likely to be in this area. But is this indeed the case? A complicating factor here is that, given the sensitive nature of the terminology of human rights, the Chinese government often prefers to use developmental language rather than human rights language (see e.g., Pils 2018, pp. 100–101).

¹ This chapter focuses on the China’s human rights discourse since 1991. For earlier human rights discourses, see e.g., Xin Chunying (1995).

7.2 DEVELOPMENT BEFORE FREEDOM

7.2.1 International Human Rights

7.2.1.1 An adequate standard of living

In international human rights law and discourse, subsistence, poverty alleviation and the right to development are part of a wider palette of economic and social rights. In the *Universal Declaration of Human Rights* (UDHR), Article 22 provides that everyone ‘has the right to social security and is entitled to realization ... in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality’. In addition, Article 25(1) provides for the right to ‘a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control’. The International Bill of Rights was subsequently laid down in the two Covenants of 1966: the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR).

Article 11 ICESCR elaborates on Article 25(1) of the UDHR and codifies the right to an adequate standard of living, which includes ‘adequate food, clothing and housing’ and ‘continuous improvement of living conditions.’ Paragraph 2 of the same article recognizes ‘the fundamental right of everyone to be free from hunger’ and obliges states to take measures:

- (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Subsistence is therefore seen as part of a wider package of socioeconomic rights guaranteed within a programmatic model of progressive realization. Under Article 2(1) ICESCR, each state is required to ‘take steps ... to the maximum of its available resources, with a view to achieving progressively the full realization of the rights’ guaranteed in the Covenant. The traditional view was that this entailed a legal obligation of due diligence, consisting of ‘positive obligations’, contrary to civil and political rights which were seen as ‘negative obligations’ in which states were mainly to refrain from interference in their citizens’ freedoms such as those of religion, expression and assembly. In the parlance of the UN International Law Commission as adopted by the Committee on Economic, Social and Cultural Rights (CESCR), these are ‘obligations of conduct and obligations of result’ (CESCR General Comment 3, paragraph 1). Since then, it has come to be understood that civil and political rights also entail positive state obligations, while many socioeconomic rights also contain a ‘minimum core’ of obligations of result (CESCR General Comment 3, paragraph 10; Limburg Principles 25 and 72). As such, claims have been made both in scholarship as

well as UN treaty bodies that, at least as far as this minimum core is concerned, socioeconomic rights may be justiciable (see, e.g., CESCR General Comment 3, paragraph 1; Ssenyonjo 2009, pp. 344–6; Sepúlveda 2003; Scheinin 2001; Craven 1995, pp. 106–52).

7.2.1.2 From conduct to result

A programmatic approach to the realization of socioeconomic rights also seems like a natural fit for poverty alleviation and the right to development, as both reflect goals and aspirations that can be raised once a certain level of wealth or development is reached. At first glance, neither seems very suitable for definition as a ‘right’. Poverty alleviation is necessary to secure socioeconomic rights, including the right to food (see, e.g., CESCR General Comment 12, paragraph 4); development is necessary to relieve poverty and to achieve a higher standard of living (hopefully eventually going far beyond what may be considered ‘adequate’), but originally neither was construed as a ‘right’ (see, e.g., UNDP 2003). However, against the background of decolonization and the emergence of the ‘third world’ as a political force within the UN, as well as the dawning realization that existing human rights were not sufficient to guarantee equal opportunities for development to all nations, a discourse of ‘third generation’ rights emerged that finally led to the recognition of a human right to development.² Morally and politically, there was a clear case for the recognition of development as a human right which implied that nations should have equal opportunities for development just like individuals did, although the legal status of this right remained more contested (Alston 1980; Rajagopal 2003).

Particularly during the Cold War, it remained a question of debate whether the ‘first generation’ civil and political rights or the ‘second generation’ socioeconomic rights should receive more protection by the state. In debates about development, the argument sometimes appeared to be that a certain level of socioeconomic development was necessary before political freedom could be introduced. International human rights discourse has long provided an answer to this question. The UDHR does not distinguish between the rights associated with the freedom from want and those associated with the freedom from fear, freedom of worship and freedom of speech. The UN came full circle normatively when this holistic approach was affirmed by the UN General Assembly in 1985 (GA Res 40/114).³ It was subsequently reaffirmed in the 1993 *Vienna Declaration and Programme of Action* adopted after the World Conference on Human Rights. This declaration consolidated the so-called first, second and third generations of human rights by proclaiming that all human rights are ‘universal, indivisible and interdependent and interrelated’ (paragraph 5). It also reaffirmed the right to development ‘as a universal and inalienable right and an integral part of

² Although the UN Commission on Human Rights affirmed the existence of a right to development in the late 1970s, its first recognition in a legal document was its codification in Article 22 of the *African Charter on Human and Peoples’ Rights* (Banjul Charter), adopted 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3 rev. 5, ILM 21 (1982). The UN General Assembly adopted it in Declaration on the Right to Development, GA Res 41/128, 4 December 1986, UN Doc A/RES/41/128.

³ GA Res 40/114, Indivisibility and interdependence of economic, social, cultural, civil and political rights, 13 December 1985.

fundamental human rights.' It noted that '[w]hile development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights' (paragraph 7).

This holistic approach to human rights and development has become the foundation on which international developmental discourse and practice are based. It influenced the notion of 'human security', a holistic approach to security, based on rights and needs and introduced by the United Nations Development Programme in 1994 (UNDP 1994), the Millennium Development Goals (MDG), and the notion of sustainable development, which gave rise to the Sustainable Development Goals (SDGs) or '2030 Agenda'.

7.2.2 China's Contribution to the Right to Development

Although the Chinese government often claims to have been a major contributor to the emergence of the right to development, it appears that its main contribution has consisted of political support at the time that the recognition of the right was emerging within the United Nations, rather than to the substantive formulation of the right. The emergence of the right to development coincided with China's 'learning period' after it joined the UN in the 1970s, when it was also seeking to take a leading position among the developing world (currently the G77). Contemporary accounts of the emergence of the right to development do not give a particularly prominent place to the role played by the PRC. However, Schachter (1976, p. 16) does note that China championed economic self-help rather than reliance on foreign trade within the UN (see also Alston 1980). Indeed, the PRC played a major role in shaping the developmental discourse within the UN, in the form of the New International Economic Order championed by the developing world in the 1970s. Its alignment with the developing world has been well documented (Kim 1979). When development was brought into the remit of human rights, at the same time as the increased prominence of human rights themselves, it was therefore logical for China to align with this approach as well (Kim 1990, p. 200; Muller 2013, pp. 66–8).

On the occasion of the 30th anniversary of the UN Declaration on the Right to Development, China published a White Paper on the right to development outlining its current approach, casting development as 'an inalienable human right, symbolizing dignity and honor'. It goes on to state:

The rights to subsistence and development are the primary, basic human rights. Poverty is the biggest obstacle to human rights. Without the production and supply of material goods, it is difficult or even impossible to realize any other human right (SCIO 2016c).

Development is very much connected with economic self-determination in the PRC's approach. The report reiterates how China's development was undermined during its century of victimhood at the hands of the imperialist powers and touts the achievements of the PRC since 1949. It emphasizes that development has both individual and collective dimensions. In addition, development must be sustainable. The White Paper blends Marxist and Maoist ideology with contemporary awareness of environmental issues, insisting that China is still the world's largest developing country, that it is still

in the primary stage of socialism, and that sustainable development is a matter of intergenerational equity.

The inadequacy in meeting the ever-growing material and cultural needs of the people because of backward social production will remain the principal social problem. As a major developing country, China faces challenging problems and heavy tasks in development. ... Unbalanced, uncoordinated and unequal development reflects unsustainable development, as does an extensive development model. ... China now follows a sustainable and resilient socio-economic development path so as to meet the needs of both present and future generations. China has a development mindset of balance and sustainability, regarding the harmonious development between humanity and nature, between economy and society, as a new means of realizing and protecting the right to development (SCIO 2016c).

It is this model of development that the PRC now promotes at the international stage as well, including the UN Human Rights Council.

7.2.3 China's Obligations Under International Law

It has been argued that the international bill of rights and the rights protected by the Universal Declaration have become customary international law (Hannum 1995/96). For the present discussion, whether this is in fact the case is less relevant, given that China has bound itself to the core rights underpinning issues of subsistence, poverty alleviation and development by becoming party to various international human rights treaties. It acceded to the ICESCR on 27 October 1997, when it was already party to the *Convention on the Elimination of All forms of Discrimination against Women* (CEDAW) and the *Convention on the Rights of the Child* (CRC). Although it made substantive reservations to the ICESCR regarding the freedom of assembly for labor unions (Article 8(1)(a)) and to the CRC regarding the one child policy (Article 6), these have limited, if any, impact on its legal obligations in the areas of subsistence, poverty alleviation and development. China differs with the mainstream understanding of human rights in the (limited) extent to which its treaty obligations translate into directly justiciable obligations of the state under domestic law.

7.2.4 China's Human Rights Discourse

The starting point for the PRC's current human rights discourse remains the 1991 White Paper on *Human Rights in China* (SCIO 1991), drawn up at a time when the country's human rights record was, in the wake of the Tiananmen tragedy of 4 June 1989, subject to major international scrutiny, including in the human rights bodies of the United Nations. China's attitude since then, aptly described as 'engagement and resistance' (Peerenboom 2007, p. 83), has remained largely defensive. This defensiveness manifests itself in an emphasis on states' sovereign right to determine their own human rights trajectories in light of their 'national conditions', 'objectivity' rather than politicization, and an emphasis on non-interference, and therefore dialogue rather than confrontation in human rights diplomacy. This is already set out in the Preface to the 1991 White Paper:

The Chinese government has ... highly appraised the Universal Declaration of Human Rights, considering it the first international human rights document that has laid the foundation for the practice of human rights in the world arena. However, the evolution of the situation in regard to human rights is circumscribed by the historical, social, economic and cultural conditions of various nations, and involves a process of historical development. Owing to tremendous differences in historical background, social system, cultural tradition and economic development, countries differ in their understanding and practice of human rights. From their different situations, they have taken different attitudes towards the relevant UN conventions. Despite its international aspect, the issue of human rights falls by and large within the sovereignty of each country. Therefore, a country's human rights situation should not be judged in total disregard of its history and national conditions, nor can it be evaluated according to a preconceived model or the conditions of another country or region. ... From their own historical conditions, the realities of their own country and their long practical experience, the Chinese people have derived their own viewpoints on the human rights issue and formulated relevant laws and policies (SCIO 1991).

The 1991 White Paper has also defined the substance of the alternative human rights discourse that China has put forward, which prioritizes socioeconomic and developmental rights, especially subsistence. In recent years, China has become more active in promoting its sovereignty-based stance by invoking its own history, culture and tradition and generally supporting arguments based on countries' own cultures and traditions, not only in human rights but also in wider international legal discourse (see further, Kent 1993, 1999; Muller 2011; Sceats and Breslin 2012; Xue 2012). Recent examples of this include resolutions co-sponsored with Russia and Saudi Arabia in the UN Human Rights Council, as well the Beijing Declaration adopted by the First South-South Human Rights Forum on 8 December 2017 (*China Daily* 2017).

The 1991 White Paper defined this approach, which has been repeated in every Chinese human rights report since, including its National Human Rights Action Plans and its reports under the Universal Periodic Review (UPR) procedure of the UN Human Rights Council, discussed in the next two sections. This approach is characterized by a number of features, all of which derive from the sovereignty-oriented stance taken by China and its general approach to international law, which emphasizes dialogue and mutual non-interference. This affects the Chinese perception of the reach of human rights norms. Under international law, it appears that China understands all human rights as existing within a programmatic framework. Human rights treaties are treated in the same way as other international treaties, primarily a multilateral contractual agreement among states in which they promise each other to do their best to improve the human rights specified in the treaties. China's positions suggest that *all* rights, including civil and political rights such as the prohibitions against torture and arbitrary detention, or the freedom of speech, are seen in a model of progressive realization and therefore only obligations of conduct or due diligence. In this view, the only direct international obligations are procedural, such as the obligation to file periodic reports to UN human rights treaty bodies. In the 1991 White Paper, this is asserted as follows:

As a developing country, China has suffered from setbacks while safeguarding and developing human rights. Although much has been achieved in this regard, there is still much room for improvement. It remains a long-term historical task for the Chinese people and

government to continue to promote human rights and strive for the noble goal of full implementation of human rights as required by China's socialism (SCIO 1991).

As a consequence, international human rights law has not penetrated domestic Chinese law to a meaningful extent. The principle of sovereignty acts as a bulwark against penetration of the Chinese system by international norms, to which China can then selectively adapt (Potter 2007). China's stance therefore potentially results in dilution or erosion of these norms at the international level, as governments that do not favor the limiting effects that human rights have on their freedom of action align with China in their understanding of these norms (Kinzelbach 2012, p. 332; Muller 2011). In addition, as a matter of policy, China de-emphasizes the importance of civil and political rights and prioritizes socioeconomic rights, especially subsistence rights, and the right to development.

7.2.4.1 Subsistence in the 1991 White Paper

The emphasis on subsistence rights is immediately apparent in any statement China has made on human rights between 1991 and the present. In the 1991 White Paper (SCIO 1991), the Chinese government asserts that the 'human rights enjoyed by the Chinese citizenry' not only include 'survival, personal and political rights, but also economic, cultural and social rights. The state pays full attention to safeguarding both individual and collectiv[e] rights'. Here it is noteworthy that 'survival' is included as a human right, immediate in nature; this theme is elaborated upon in the first chapter of the White Paper, entitled 'the right to subsistence—the primary human right the Chinese people have long fought for'.⁴ The first chapter of the White Paper begins with an account of the China's 'century of humiliation' from a Marxist-Leninist-Maoist point of view.

It is a simple truth that, for any country or nation, the right to subsistence is the most important of all human rights, without which the other rights are out of the question. The Universal Declaration of Human Rights affirms that everyone has the right to life, liberty and the security of person. In old China, aggression by imperialism and oppression by feudalism and bureaucrat-capitalism deprived the people of all guarantee for their lives, and an uncountable number of them perished in war and famine. To solve their human rights problems, the first thing for the Chinese people to do is, for historical reasons, to secure the right to subsistence (SCIO 1991).

The chapter then proceeds with a version of the official narrative of the PRC on Chinese history, recounting the 'century of humiliation' from 1840 to 1949 and the atrocities inflicted on China by the outside world. 'With their state sovereignty impaired and their social wealth plundered or destroyed, the Chinese people were deprived of the basic conditions for survival.' In this narrative, the 'Chinese people' only achieved national independence in 1949 with the establishment of the PRC and

⁴ In the official translation: 'The Right to Subsistence—the foremost human right the Chinese people long fight for' (*shengcunquan shi Zhongguo renmin changqi zhengqu de shouyao renquan*).

only independence provides a guarantee for survival, and therefore protection of human rights. It asserts:

National independence has protected the Chinese people from being trodden under the heels of foreign invaders. However, the problem of the people's right to subsistence can be truly solved only when their basic means of livelihood are guaranteed (SCIO 1991).

The rest of the first chapter of the White Paper details claims of a linear improvement in living conditions achieved in China since the establishment of the PRC. It describes how both the emperors and the Nationalist government failed to guarantee subsistence and how since 1949, 'the Communist Party of China and the Chinese government have always placed the task of helping the people get enough to wear and eat on the top of the agenda', ignoring some of the less savory episodes in the PRC's early existence (see Dikötter 2010; Yang 2013). At the beginning of the reform era in 1979, it is claimed, China switched its focus to 'economic construction' and 'further expanded the social productive forces and enabled the nation to basically solve the problem of feeding and clothing its 1.1 billion people'. The White Paper expresses particular pride that China has done this 'by its own efforts' and against Western skepticism.

The White Paper also notes further challenges, notably China's still relatively low standard of living compared to that of developed countries and its limited resources per capita: 'The people's right to subsistence will still be threatened in the event of a social turmoil or other disasters.' (SCIO 1991). Further development is therefore necessary.

The account of China's approach to subsistence rights in the 1991 White Paper is high on propaganda and low on specifics. It is expressed as the challenge to meet the minimum demands of feeding and clothing 1.1 billion people, which is presented as the main reason why patience is needed to achieve the long-term aim of guaranteeing other human rights, both socioeconomic and elsewhere. The developmental argument underlying China's approach to human rights is already present here; in subsequent years, every report issued by China on human rights, be it in the form of White Papers or reports to the human rights bodies of the United Nations, would repeat this language on subsistence as well as the argument about the importance of allowing China to define its own path in human rights, and how safeguarding human rights is dependent on the developmental stage of the country. However, in recent years there has been a shift of emphasis. Whereas subsistence was always mentioned first and development second, the emphasis has slowly turned to place development first.

7.2.4.2 From subsistence to development: subsequent reports

The importance of subsistence and development is present in every official report, national human rights action plan and white paper that the Chinese government has issued since the 1991 White Paper. Recognizing the importance of human rights diplomacy and discourse, and in order to counter international criticism, it has maintained a website in both Chinese and English to disseminate officially sanctioned 'Chinese' views on human rights.⁵ The website also contains all White Papers issued by

⁵ See www.humanrights.cn; the English version is at www.chinahumanrights.org.

the Chinese government on human rights.⁶ China's white papers, national human rights action plans as well as its UN reports on human rights—both to treaty bodies, including the core documents common to those reports and reports under the Universal Periodic Review of the Human Rights Council, have repeated the language on subsistence and development.⁷ However, subtle changes can be observed, in particular the shift in emphasis from subsistence to development since the middle of the 2010s.⁸

A few examples illustrate this point. From 1995, the Chinese government published regular white papers documenting the 'progress of human rights' in China. In each of these periods, human rights were cast in the overall framework of the leadership of the time—'reform and opening up' (*gaige kaifang*) from the 1990s, joined by 'scientific development' (*kexue fazhan guan*) and a 'harmonious society' (*hexie shehui*) in the Hu Jintao era, and the building of a 'moderately prosperous society' (*xiaokang shehui*) in the early years of Xi Jinping's leadership. Each of these reports had good news to report in light of China's rapid economic growth, which also 'raised the level of China's overall social development' which in turn improved the right to subsistence and development (SCIO 1995). They opened with economic growth figures and other numbers, documenting GDP and per capita income growth, both of the urban and rural population, and reiterated progressive drops in the Engel coefficient, which indicates the ration of food expenses to other items of consumption. Reports also highlighted specific programs aimed at providing food, housing and clothing to people in the poorest rural areas (see, e.g., SCIO 1997, ch. 1; SCIO 1999, ch. 1).

The 2009 report followed the adoption in the same year of China's first National Human Rights Action Plan (2009–10) (SCIO 2009). National human rights action plans are a recommended method of promoting and 'mainstreaming' the implementation of human rights from the 1993 *Vienna Declaration and Programme of Action*, along with the creation of national human rights institutions. Although China's plan also discussed socioeconomic rights before civil and political rights, the first section of that chapter immediately proceeded to a discussion of the right to work and then the 'right to basic living conditions'. However, in by now familiar language, the introduction again stated that 'the Chinese government in the light of the basic realities of China, gives priority to the protection of the people's rights to subsistence and development, and lawfully guarantees the rights of all members of society to equal participation and development on the basis of facilitating sound and rapid economic and social development' (SCIO 2009). The section on basic living conditions included specific annual disposable income targets for both the urban and rural populations, as well as citing specific policy measures taken for poverty alleviation.

Like the first National Human Rights Action Plan, China's second National Human Rights Action Plan (2012–15) devoted the first two sections of its chapter on

⁶ www.chinahumanrights.org/html/PR/WP/.

⁷ English and Chinese language versions of white papers can be found on the websites referred to above, fn. 5 and 6. Both the core documents and UPR reports are available on the website of the UN High Commissioner on Human Rights: www.ohchr.org/EN/countries/AsiaRegion/Pages/CNIndex.aspx.

⁸ In identifying this shift, the author has benefited greatly from conversations on this point with Professor Sun Shiyan of the Institute of International Law of the Chinese Academy of Social Sciences.

socioeconomic rights to the right to work and the right to basic living standards, after reiterating that the ‘Chinese government will continue to give priority to the protection of the people’s rights to subsistence and development’ (SCIO 2012). In the year after the plan was published, a new progress report was also issued after a three-year hiatus. The 2012 Progress Report also stood out in other ways. Rather than the traditional categorizations used in earlier white papers, this report was divided in chapters on protection of human rights in ‘economic construction’, ‘political construction’, ‘cultural services’, ‘social development’ and ‘ecological progress’. In its foreword, it noted that ‘[t]he cause of human rights in China has entered a stage of planned, sustainable, steady and comprehensive development’. It still noted the prioritization of subsistence and development, but the remaining structure suggests an effort to cast human rights in a governance and developmental framework, and in this way it was an early indicator that the role of the right to subsistence would become less important (SCIO 2013). The progress reports of 2013 and 2014 returned to a structure based on rights rather than governance (or ‘construction’). Interestingly, both reports devote their first chapters to the right to development, ostensibly encompassing the entire spectrum of socio-economic rights. While the 2013 report mentions the ‘right to subsistence and development’ once, the word ‘subsistence’ is nowhere to be found in the 2014 report (SCIO 2014).

Between 2008 and 2013, China was subjected twice to the Universal Periodic Review of the UN Human Rights Council. In its first report, submitted in 2008, the Chinese government reiterated the points about China’s history and current situation found from the 1991 White Paper onwards, and discussed ‘the right to subsistence and the right to development’ in the first section of the part on socioeconomic rights.

The Chinese Government attaches top priority to realizing the people’s right to subsistence and right to development. Since 1953, the Chinese Government has formulated and implemented 11 five-year national economic and social development plans. These plans have been essential in raising the Chinese people’s living standards and promoting social progress. With the introduction of the policy of reform and opening up in 1978, the Chinese economy has registered an average annual growth of 9.8 per cent and a tenfold real growth in per capita gross domestic product (GDP). Living standards have achieved two historic leaps: from poverty to subsistence and from subsistence to relative prosperity (UN Doc A/HRC/WG.6/4/CHN/1, paragraph 19).

In its second UPR report, China showed the first signs of an aspiration to promote a ‘Chinese model’ of sorts, couched in developmental terms but still emphasizing the right to subsistence as well.

The Chinese Government is working to explore paths for human rights development, establishing a robust system of human rights safeguards, and continuously enriching the theory of human rights, all within the framework of socialism with Chinese characteristics. It strongly advocates a scientific outlook on development, emphasizes ‘putting people first’, and takes the furtherance and protection of the right to subsistence and the right to development as first principles. It coordinates and promotes the safeguarding of civil, political, social, and cultural rights as well as the rights of special groups, develops a broader, fuller and sounder people’s democracy, and comprehensively promotes the coordinated development of rights of all kinds. It fosters a fairer and more harmonious society, and works to ensure that every

citizen enjoys a life of ever-greater dignity, freedom and well-being (UN Doc A/HRC/WG.6/17/CHN/1, paragraph 5).

The section on socioeconomic rights duly started with three paragraphs on China's achievements regarding the right to subsistence, before turning to the right to work (UN Doc A/HRC/WG.6/17/CHN/1, paragraphs 23–25).

Under the Xi Jinping leadership, China's aspirations have become more pronounced. The third and current National Human Rights Action Plan (2016–20) signals that 'the cause of socialist human rights with Chinese characteristics has moved up to a new level' and posits a 'guiding ideology for formulating and implementing the Action Plan' (SCIO 2016a).

Upholding socialism with Chinese characteristics, fully implementing the guiding principles of the 18th National Congress of the Communist Party of China (CPC) and the third, fourth and fifth plenary sessions of the 18th CPC Central Committee, following the guidance of Marxism-Leninism, Mao Zedong Thought, Deng Xiaoping Theory, the important thought of the Three Represents, and the Scientific Outlook on Development, implementing the spirit of a series of important speeches made by General Secretary Xi Jinping, following the strategic arrangement of building China into a moderately prosperous society in an all-round way, advancing reform in an all-round way, comprehensively promoting law-based government, and running the Party with strict discipline, and sticking to the innovative, coordinated, green, open and sharing development concept. The Chinese government combines human rights with economic, political, cultural and social progress, ecological protection and Party building, adheres to the people-centered development approach, puts the protection of people's rights to subsistence and development in the first place, takes the people's well-being and all-round development as both the starting point and ultimate goal of China's human rights work, safeguards social fairness and justice, and better guarantees the various rights and interests of the entire population in the great cause of realizing the Chinese Dream of rejuvenation of the Chinese nation.

The first chapter of the Action Plan, devoted as usual to economic, social and cultural rights, again opens with the right to work and then the right to basic living standards. Apart from being mentioned in the quoted section on the guiding ideology, the right to subsistence is not mentioned anywhere else, apart from the usual discussion on entitlements to subsistence allowances for poor families.

7.2.4.3 Concluding remarks on PRC discourse

As has been noted above, since the 1991 White Paper the Chinese government has emphasized the prioritization of socioeconomic rights and within those, the rights to subsistence and development, while most recently the emphasis has shifted decidedly towards development, of which poverty alleviation remains an important component, rather than subsistence. In addition, the discussion above demonstrates that Chinese human rights discourse is always made subservient to the guiding ideology of the CCP. Although the importance of this guiding ideology diminished in importance, as it was dominated by platitudes and generalities at the service of pragmatic market reforms in the Jiang Zemin and Hu Jintao eras, it has returned to the center of attention in the Xi Jinping era. The content of this ideology, however, remains elusive.

The most recent National Human Rights Action Plan asserts that the Chinese government 'combines' human rights with just about every other important state

function: economic, political, cultural, and social progress as well as ecological protection. It subsumes the human rights dimension of these obligations into a more generic developmental discourse. Internationally, it also appears that the Chinese government prefers the language of development over the vocabulary of human rights. As a result, official Chinese human rights discourse continues to be indeterminate, general and vague and does not recognize the legal and institutional dimensions of international human rights obligations, even if some domestic reform has translated international human rights discourse into concrete measures. The discussion of national measures and statistics in the official human rights report described in the current section (7.2.4) suggests that those measures would have been taken even if there were no such thing as human rights. Since it is couched in general terms, it also avoids discussion of situations in which promoting development may clash with individual human rights and the real dilemma's the Chinese government is facing. These kinds of difficulties are acknowledged in general terms, but not explored in detail.

A wide gap between Chinese and international human rights discourse remains, and it is up to researchers both from within and outside China to bridge or explain this divide. It would, however, be unfair not to acknowledge that Chinese championing of socioeconomic, subsistence and development rights has had a positive impact on their prioritization in international human rights discourse in a general way, and has undoubtedly contributed to increased recognition of the importance of these rights. The critique here is aimed at the specifics. For this reason, a brief overview of Chinese practice in the area of subsistence, poverty alleviation and development is necessary, measured against international standards.

7.3 CHINESE PRACTICE

7.3.1 Legal and Policy Framework

Economic development and poverty alleviation have been at the heart of China's reform era. As is also apparent from the discussion of China's rights discourse in the previous section, discussing the relevant legal and policy framework can therefore encompass all legislative and administrative measures that China has taken since the beginning of economic reforms in the late 1970s, particularly because the PRC's legal system was built up with the explicit aim of promoting economic growth. Indeed, the discussion of legislative and policy measures in Chinese human rights reports specifically herald the PRC's success in guaranteeing subsistence rights, reducing poverty and stimulating economic development in those terms. Since these achievements are ostensibly the result of government programs and treated at a macro level, it is difficult to fit these policies into a genuine rights framework, with bearers of rights and obligations and judicial remedies in case of failure. In terms of official documentation, the policies are well documented in five-year plans and specific legislation, while provincial and local governments may have their own programs.

To those who wish to explore specific measures and policies that have been successful in providing for subsistence and reducing poverty, the government's official reports do serve as a good starting point, as well as the data provided by the China

National Bureau of Statistics. The same applies to the reports submitted by China to UN human rights treaty bodies under the various human rights treaties that it is party to. As long as the discussion is of a technocratic nature, focusing on achievements and overcoming challenges, official Chinese government sources provide useful empirical data to begin an investigation.

In academic and policy literature, meanwhile, the body of scholarship and analysis of Chinese policies, achievements and failures has been growing. A large part of this scholarship is associated with the World Bank (Yao 2000; Zhang, Huang and Rozelle 2003; Battasali, Li and Martin 2004; Montalvo and Ravallion 2010). In recent years, scholarship has further proliferated, often but not exclusively by Chinese scholars. The debate centers on the question of which measures and drivers really explain growth, and to what extent the benefits of China's economic growth have trickled down to all its citizens. It has also been argued that China's model has been unique and cannot really be replicated elsewhere, which does not bode well for the promotion of a 'China model' (Wu 2016; Donaldson 2017). Questions about inequality and sustainability remain as well.

The 2016–20 National Human Rights Action Plan recalls the CCP's ambitious aim to eradicate poverty by 2020, referring to the Decision of the CCP Central Committee and the State Council on Eradicating Poverty in China, and implementing the strategy of precision poverty-reduction and poverty-eradication. This fits in a pattern established in recent decades in which the CCP and the government set ambitious targets in five-year plans and other measures, which are then reached and exceeded. Although often there needs to be no doubt whether the targets have indeed been met, the significance of certain milestones as well as the reliability of the data cited by the government are not always easily verified.

7.3.2 Actors and Stakeholders

In both the PRC's discourse of development as well as its human rights discourse, the state is the primary actor. This sets China's approach to human rights apart from human rights discourse elsewhere, which developed as a way to help individuals stand up against the power of the state. The PRC's approach to human rights rather emphasizes that the government knows best how to implement human rights; the international corollary of this is that the human rights issues '[fall] by and large within the sovereignty of each country' (SCIO 1991). This paternalistic model leaves little space for other institutional actors to shape Chinese human rights discourse. The state and the Party are the main political decision-makers, while substantive input has mostly been provided by academics, with a limited role for rights lawyers and civil society organizations, and then only those whose work does not run afoul of the state. Other stakeholders need to move carefully to promote human rights in general, including approaches to the rights discussed in this chapter when the approach differs from that of the state. How they do this, remains a topic for study from legal, sociological, political, anthropological and interdisciplinary perspectives.

7.3.3 International Scrutiny of China's Rhetoric

The observations in the previous paragraphs lead us to ask to what extent the PRC's practice has in fact lived up to the rhetoric about the prioritization of subsistence and developmental rights and poverty alleviation. The empirical difficulties are clear, as well as the absence of a diversity of actors within China. It is therefore imperative to refer to international actors, both civil society actors such as human rights NGOs, institutional actors such as the World Bank and the UNDP, and, most important for the discussion in this chapter, UN human rights institutions. The present section highlights two of these: treaty bodies and the special procedures of the Human Rights Council.

7.3.3.1 Treaty bodies

As a state party to the ICESCR, the CRC and CEDAW, China is obliged to report regularly to the treaty bodies on its implementation and compliance with those treaties. China has a fairly good record in the field of procedural compliance. It tends to submit its reports more or less on time and dispatches large delegations consisting of representatives of various government ministries to the exchanges with the treaty bodies in Geneva and New York. These exchanges have generally been constructive. Problems typically only arise in exchanges with treaty bodies when politically sensitive issues are raised. In the area of subsistence rights, poverty alleviation and development, this has not really occurred (Kent 1999; Muller 2011). An overview of the reporting cycles to ICESCR, CRC and CEDAW can be found in Table 7.1 at the end of this chapter.

The concluding observations of the Committee on Economic, Social and Cultural Rights offer a good starting point when trying to assess to what extent the PRC has genuinely lived up to its rhetoric about the prioritization of these rights. The most recent observations followed the PRC's second reporting cycle and were published in 2014 (UN Doc E/C.12/CHN/CO/2). At the institutional level, the committee expressed concern about the lack of harmonization of domestic legislation with the ICESCR and a lack of justiciability of its provisions (*ibid.*, paragraph 9). Substantively, the Committee also addressed poverty reduction and subsistence rights. With regard to poverty reduction, it acknowledged China's 'significant progress' in alleviating poverty but noted that large disparities in living standards between regions as well as between urban and rural areas persisted. It also expressed concern about the poor living conditions of rural-to-urban migrants. It specifically requested that China include disaggregated and comparative data by year and urban region in its next report, suggesting that it would like to have more extensive figures than the general ones supplied by China (UN Doc E/C.12/CHN/CO/2, paragraph 28). The Committee also called on China to strengthen its efforts to protect the right to adequate food, expressing concern about food insecurity in some of the poor rural areas, particularly in the west. It also noted persisting child malnutrition in Tibet and expressed concern about compliance with food safety laws (UN Doc E/C.12/CHN/CO/2, paragraph 29).

7.3.3.2 Special procedures

Apart from the treaty bodies, independent human rights experts have also had opportunities, albeit limited, to report on China's compliance with international human

rights through the special procedures of the Human Rights Council. China's engagement with these procedures has been limited, but in recent years two special rapporteurs with mandates particularly relevant for this chapter visited the country.

From 15 to 23 December 2010, the Special Rapporteur on the right to food, Olivier De Schutter, visited China. Like the CESCR two years later the Special Rapporteur on the right to food found that China had made impressive progress in the achievement of food security, but that serious challenges remained, particularly in rural areas and regarding rural migrant workers (UN Doc A/HRC/19/59/Add.1, paragraphs 40–6).

From 15 to 23 August 2016, the Special Rapporteur on extreme poverty and human rights, Philip Alston, followed. The report of this visit makes for essential reading not only because of its substantive content, but also because it documents the extent to which independent experts can realistically perform their duties, as Alston documented how far the government went in attempts to control the information that he received during his visit. This included efforts to prevent him from meeting any representatives of civil society, some of whom were intimidated or even disappeared during his visit (UN Doc A/HRC/35/26/Add.2, paragraphs 6–11). The kind of measures Alston describes will be familiar to anyone who has engaged with more 'sensitive' topics related to human rights in China, and any researcher wishing to engage with these topics should be prepared to deal with these kinds of occurrences.

On substance, the report strikes a balance between genuinely acknowledging the PRC's achievements in reducing extreme poverty, whilst drawing attention to the problems in assessing the veracity of some of its claims as well as recognizing existing challenges. Referring to the White Paper on China's progress in poverty reduction and human rights, issued just before his visit (SCIO 2016b), Alston notes that 'China has lifted hundreds of millions of people out of poverty ... although precise figures are often given, it is surprisingly difficult to know exactly what the numbers are' (UN Doc A/HRC/35/26/Add.2, paragraph 12).

The report recognizes that China's human rights record is well documented both by its government and its critics. Highlighting the specific methodology required to fulfil the Special Rapporteur's mandate, it emphasizes the importance of 'drawing a clear distinction between achieving development objectives and respecting human rights obligations'. As the report explains:

The two are mutually reinforcing, but they are not synonymous. The development attainments that China has made are unquestioned, as specifically highlighted by the Special Rapporteur in his end-of-mission statement at the conclusion of his visit to China. But the task of the Special Rapporteur is also to consider whether these achievements have ensured full respect for human rights in China (UN Doc A/HRC/35/26/Add.2, paragraph 15).

In a separate section on China's record on socioeconomic rights, the Special Rapporteur again differentiates treating these rights as human rights from treating them as 'broad development goals' (UN Doc A/HRC/35/26/Add.2, paragraph 61). The report therefore highlights the importance of the rule of law and accountability mechanisms. It critically highlights a number of key areas where poverty reduction and human rights intersect. This includes different approaches to poverty, not just based on income but also 'multidimensional poverty', inequality, the importance of accurate data, rural land policy, health policy and education policy.

The constructive criticism provided by Alston's report makes it essential reading for any student of China's record on subsistence rights, poverty alleviation and development. It highlights the blind spots of the Chinese government and the limitations of China's approach to these matters, amplifying some points found in the current chapter and more and ultimately calls for the introduction of more liberal elements into China's authoritarian system of governance.

Academics have written that China is in a state of 'rigid stability', which approaches every form of protest or dissent against violations of rights as a major problem, and have claimed that the Chinese approach is paradoxical, given the many investments by China in improving the legal system as well as the often-repeated recognition of the importance of the rule of law. As Amartya Sen has pointed out in regard to the approach taken by China, there is 'a serious fragility in any authoritarian system of governance, since there is little recourse or remedy when the government leaders alter their goals or suppress their failures'. The current Chinese approach, which denies individuals meaningful access to accountability mechanisms for violations of their economic and social rights, not only contradicts the country's international human rights treaty obligations, but is also an unsustainable approach to resolving the inevitable discontent that will ultimately undermine stability. The challenge for the Government, working together with civil society actors and individual citizens, is to develop meaningful avenues for complaints about rights violations that fit within the Chinese domestic context and to enable individuals to hold all levels of government to account when individual rights are violated. Rather than conflicting with the preservation of stability, the protection of rights is an important basis for stability (UN Doc A/HRC/35/26/Add.2, paragraph 75).

7.3.4 Greater China

Although the present discussion focuses on the PRC, it should be noted that from both a legal and policy perspective, the three other jurisdictions in Greater China present different approaches to development and its connection to human rights. The Special Administrative Regions of Hong Kong and Macau were already economically advanced when they were returned to Chinese sovereignty, while China has continued to adhere to the human rights treaties which applied there under British and Portuguese rule, including the reporting duties.⁹

Taiwan presents another special case. Despite its *de facto* independence since 1949, in international law, as the Republic of China (ROC), it is still in dispute with the PRC government over the legitimacy of its claim to represent all of China. When the ROC was still representing 'China' in the UN, it signed the ICESCR, which it helped to negotiate, in 1967. In 2009, its parliament, the Legislative Yuan, ratified the ICCPR and ICESCR, although its subsequent notice to the UN Secretary-General as depositary of the treaties could not be accepted. The Taiwanese government has since organized two rounds of state reports under the Covenants to *ad hoc* committees of recognized human rights experts and is also acceding to other human rights treaties.¹⁰ As such, Taiwan's human rights practice retains the potential to present an alternative 'Chinese' model.

⁹ See the relevant entries in Table 7.1. See also Chapter 26 by Titus C. Chen in this volume.

¹⁰ For more information, see the website of the Taiwanese Ministry of Foreign Affairs, accessed at www.humanrights.moj.gov.tw/mp-205.html.

7.4 CONCLUSION AND FURTHER RESEARCH

In Chinese human rights discourse, there is a direct and logical line from safeguarding subsistence, through poverty alleviation, to continued development. In the almost 70 years of existence of the People's Republic of China, the Communist Party has maintained its position as the ultimate arbiter determining which step China currently occupies on the developmental ladder. The CCP is also the only authority that decides how far 'the Chinese people' are allowed to look up, to see which rights are aspired to at the current phase. Under Xi Jinping this is a 'moderately prosperous' society, a step which has graduated from the objective of fulfilment of basic needs. The obvious problem with this approach when contrasted with international human rights discourse and law is that it disregards the immediacy and the individuality of many human rights guarantees, both civil and political as well as socioeconomic. It also belies the reality of China's human rights record since 1949, which is characterized by remarkable progress in the area of subsistence and socioeconomic development and limited progress and, especially in the last decade, regression in civil and political rights. China's alternative human rights discourse remains preoccupied with control and uses subsistence and development as the excuse to downplay problems in other areas and to restrict criticism, including constructive criticism, of its record. Communist Party control is also what prevents a more unqualified appraisal of China's developmental achievements, since political imperatives distort the reliability of its statistical records and, ironically, puts an asterisk to the 'objectivity' which the CCP and the Chinese government hold so dear in their rhetoric.

Researchers interested in human rights in China therefore need to maintain a healthy skeptical attitude towards official rhetoric and policy statements, and especially towards official figures. Including Philip Alston's report as Special Rapporteur on extreme poverty in their essential readings would be a good start. They should also take to heart that the fundamental critique underlying CCP propaganda is sound: Western human rights discourse did, for a long time, discount socioeconomic and developmental rights and was overly focused on civil and political rights; it underestimated the importance of community and emphasized individuality. The hyperbolic and emotive language in which China has referred to its past humiliations reflects a real experience. The irony of the present day is that at the international level, both the West, dominated by neoliberal capitalism, and China, with its state capitalism, now are preoccupied with trade and commerce, while human rights concerns have receded to the background, only warranting lip service but not nearly enough meaningful engagement.

Table 7.1 China's treaty reports: CEDAW, ICESCR and CRC

<i>Treaty and report</i>	<i>Due date</i>	<i>Received</i>	<i>Document number</i>	<i>Examined</i>	<i>Concluding observations</i>
Committee on the Elimination of Discrimination against Women (CEDAW)					
Initial	3 September 1982	25 May 1983	CEDAW/C/5/ Add.14	29 March 1984	A/39/45
2nd	3 September 1986	22 June 1989	CEDAW/C/13/ Add.26	23 January 1992	A/47/38
3rd and 4th	3 September 1990 3 September 1994	29 May 1997 25 November 1998 (HKG)	CEDAW/C/CHN/ 3-4 Corr.1 and Add.1 CEDAW/C/CHN/ 3-4/Add.2 (HKG)	1 February 1999	A/54/38/Rev.1
5th and 6th	3 September 1998 3 September 2002	4 February 2004	CEDAW/C/CHN/ 5-6 Add.1 and Add.2	10 August 2006	CEDAW/C/CHN/CO/ 6
7th and 8th	3 September 2010	20 January 2012	CEDAW/C/CHN/ 7-8, CEDAW/C/ CHN-HKG/7-8 and CEDAW/C/CHN- MAC/7-8	23 October 2014	CEDAW/C/CHN/CO/ 7-8
Committee on Economic, Social and Cultural Rights (CESCR)					
Initial (HKG)	30 June 1999	4 July 1999	E/1990/5/Add.43	27 April 2001	E/2002/22
Initial	30 June 2002	27 June 2003	E/1990/5/Add.59	27 April 2005	E/C.12/1/Add.107
Additional (HKG)	30 June 2003				
2nd; 2nd (MAC) 3rd (HKG)	30 June 2010	30 June 2010	E/C.12/CHN/2 E/C.12/ CHN-MAC/2 E/C.12/ CHN-HKG/3	23 May 2014	E/C.12/CHN/CO/2
Committee on the Rights of the Child (CRC)					
Initial	31 March 1994	27 March 1995	CRC/C/11/Add.7	28 May 1996	A/53/41
Additional	1 December 1997				

<i>Treaty and report</i>	<i>Due date</i>	<i>Received</i>	<i>Document number</i>	<i>Examined</i>	<i>Concluding observations</i>
2nd	31 March 1999	27 June 2003	CRC/C/83/Add.9 (parts I-II)	19 September 2005	CRC/C/CHN/CO/2
3rd and 4th	31 March 2009	16 July 2010	CRC/C/CHN/3-4 CRC/C/CHN-HKG/2 CRC/C/CHN-MAC/2	4 October 2013	CRC/C/CHN/CO/3-4
5th and 6th	31 March 2019				
OPAC: initial	20 March 2010	17 November 2010	CRC/C/OPAC/CHN/1	4 October 2013	CRC/C/OPAC/CHN/CO/1
OPSA: initial	3 January 2005	11 May 2005	CRC/C/OPSA/CHI/1 (and part II)	19 September 2005	CRC/C/OPSC/CHN/CO/1

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