



**RECOMMENDATIONS RESPECTFULLY SUBMITTED TO
THE TRUMP ADMINISTRATION REGARDING
U.S. POLICIES AND ACTIONS IN ASIA**

The New York City Bar Association (the “City Bar”) writes to offer its recommendations to the President Trump’s Administration regarding the policies and actions of the United States in Asia. The Asian region, accounting for 60% of the world’s 7.5 billion people and 40% of the global economy, remains the engine of global economic growth.¹ It is a complex and diverse area — incorporating some of the world’s most repressive regimes, and some of its newest and most dynamic democracies. It contains the world’s two most populous countries, and also some of its smallest. Today, and tomorrow, US Government policies and actions in Asia will impact people worldwide.

It is the City Bar’s primary recommendation that the new administration make a commitment to the rule of law and human rights. These should operate as guiding principles for its engagement with the Asian region. These principles must also thread through the incoming administration’s approach to trade, defense, and the pursuit of the national interest. In the following sections, the City Bar outlines areas of concern that it wishes to highlight for the attention of the administration’s attention.

RULE OF LAW

The City Bar welcomes positive rule of law developments in the region over recent years, including the peaceful resolution of border issues between Bangladesh and India, following the decision of the Permanent Court of Arbitration in 2014. The City Bar strongly urges the new U.S. administration to support the use of judicial and treaty-based mechanisms for the resolution of disputes, including those in the South China Sea.

The City Bar notes with concern that efforts to achieve the rule of law in the Asian region are severely threatened by crackdowns on lawyers and activists — most notably in China, Malaysia, and Thailand. Further, we are concerned at the state’s abuse of criminal law relating to state security, such as using charges of sedition in Malaysia and “subversion of state power” in

¹ Christine Lagarde, “Asia’s Advancing Role in the Global Economy,” International Monetary Fund, March 12, 2016, available at <https://www.imf.org/en/News/Articles/2015/09/28/04/53/sp031216>; see also “Regional Economic Outlook: Asia and Pacific: Building on Asia’s Strengths during Turbulent Times,” International Monetary Fund, April 2016, available at <http://www.imf.org/external/pubs/ft/reo/2016/apd/eng/areo0516.htm>. (All websites last visited March 3, 2017.)

China to prosecute activists and lawyers engaging in their work as professionals.² As the UN's High Commissioner for Human Rights has stated, “lawyers should never have to suffer prosecution or any other kind of sanctions or intimidation for discharging their professional duties.”³

The City Bar urges the administration to:

1. Promote and support rule of law and treaty-based dispute resolution mechanisms, and the use of tribunals and courts operating under international law; and
2. Condemn attacks and crackdowns on lawyers and activists whose work is instrumental to the rule of law.

HUMAN RIGHTS

The Asian region is a vast and complex area, and its successes and challenges in achieving progress in human rights are too numerous to treat at length in this memorandum. Only sustained commitment and investment in the region will enable the administration to best support the continued growth of human rights in countries across Asia. The City Bar highlights some areas where it believes the U.S. can play an important role in facilitating regional progress on human rights:

1. Condemnation of, and a serious engagement with, the use of extra-judicial killings in the Philippines of up to 6,000 so-called “drug dealers” and “drug users,” without trial or due process of law.⁴ These extra-judicial killings have led to the deaths of numerous completely innocent people, and should be condemned.
2. A concerted strategy to address efforts led by the Chinese government to restrict internet freedom and promote state sovereignty over the internet.⁵ The free flow of information is among America’s core values and its promotion is of vital importance to this country’s interests abroad. The free flow of information promotes transparency in government, efficiency in the markets, and cultural and political

² See *i.e.*, “Mass Crackdown on Chinese Lawyers and Defenders,” Human Rights in China, June 10, 2016, available at <http://www.hrichina.org/en/mass-crackdown-chinese-lawyers-and-defenders>; “Malaysia: Drop charges against lawyer N. Surendran,” Amnesty International, June 29, 2016, available at <https://www.amnesty.org.au/malaysia-drop-charges-surendran-anwar-ibrahim/>; and “Thai military junta steps up crackdown; student activist describes being abducted by hooded soldiers,” Australian Broadcasting Corporation 7.30 Report, March 17, 2016, at <http://www.abc.net.au/7.30/content/2015/s4427197.htm>.

³ “UN Human Rights Chief deeply concerned by China clampdown on lawyers and activists,” UN Office of the High Commissioner for Human Rights, Feb. 16, 2016, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17050&LangID=E>.

⁴ “The president of the Philippines boasts about personally killing drug suspects,” *The Economist*, Dec. 17, 2016, available at <http://www.economist.com/news/asia/21711935-and-rodrigo-duterte-charge-philippine-police-president-philippines-boasts>.

⁵ Shannon Tiezzi, “China Vows No Compromise on 'Cyber Sovereignty,’” *The Diplomat*, Dec. 16, 2015, available at <http://thediplomat.com/2015/12/china-vows-no-compromise-on-cyber-sovereignty/>.

dialogue. The internet, as the primary medium of transmission in our day, should remain open, connected, and vibrant. The City Bar urges the administration to combat efforts to restrict internet freedom and the creation of “sovereign” intranets that cut populations off from the global information ecosystem.

CIVIL SOCIETY

While the City Bar welcomes events such as Myanmar's first openly contested election in 25 years—in November of 2015—the Committee is also concerned at a rise in attacks on civil society and religious minorities in the region.⁶ For example, we note the use of excessive force against protesters exercising their rights to association, assembly and freedom of speech — notably in Papua New Guinea,⁷ Hong Kong⁸ and Myanmar⁹ (for example, the Rohingya).¹⁰

A healthy civil society is integral to the development of human rights and the rule of law in the Asian region. The City Bar encourages the new administration to continue U.S. Government support for civil society actors across the region: financially, politically, and through its support for media organizations which offer a counterpoint to domestic authoritarian government narratives. In this context, the City Bar remains gravely concerned at the rise of laws aimed at restricting civil society actors in their capacity to engage with, and advocate for, issues, notably through the introduction of the foreign NGO law in China.¹¹ We note the appearance of similarly troubling legislation in other parts of the region, most recently in Bangladesh, where, for example, a new law allows an NGO to be suspended or terminated for making derogatory remarks about “constitutional bodies.”¹² We also note with concern the enactment of a law heavily regulating NGOs in Cambodia in 2015,¹³ and the use of licensing to politicize access to funding for NGOs in India, preventing those engaged in “anti-national activities” from accessing

⁶ Patrick Boehler, “A Brief Guide to Myanmar’s Elections,” *The New York Times*, Nov. 5, 2015, available at http://www.nytimes.com/2015/11/06/world/asia/myanmar-election-president-aung-san-suu-kyi-explainer.html?_r=0.

⁷ Editorial: “No call for bloody crackdown in PNG,” *The Age*, June 11, 2016, available at <http://www.theage.com.au/comment/the-age-editorial/no-call-for-bloody-crackdown-in-png-20160531-gp867g.html>.

⁸ Venus Wu and James Pomfret, “Violent protests in Hong Kong as police and activists clash over Beijing crackdown,” *The Sydney Morning Herald*, Nov. 7, 2016, available at <http://www.smh.com.au/world/violent-protests-in-hong-kong-as-police-and-activists-clash-over-beijing-crackdown-20161106-gsjb20.html>.

⁹ “Myanmar: New report finds police used excessive force during crackdown on protesters in Letpadan,” *Harvard Law Today*, Oct. 14, 2015, available at <http://today.law.harvard.edu/myanmar-new-report-finds-police-used-excessive-force-during-crackdown-on-protesters-in-letpadan/>.

¹⁰ “Who are the Rohingya refugees?,” Amnesty International Australia, Dec. 8, 2016, available at <https://www.amnesty.org.au/who-are-the-rohingya-refugees/>.

¹¹ Tom Phillips, “China passes law imposing security controls on foreign NGOs,” *The Guardian*, April 28, 2016, available at <https://www.theguardian.com/world/2016/apr/28/china-passes-law-imposing-security-controls-on-foreign-ngos>.

¹² David Bergman, “Concerns raised over new Bangladesh NGO law,” *Aljazeera*, Oct. 21, 2016, available at <http://www.aljazeera.com/news/2016/10/concerns-raised-bangladesh-ngo-law-161020121856969.html>.

¹³ John Juenemann, “Cambodia’s NGO Law: Legislation with Chinese characteristics,” Center for Strategic and International Studies, June 30, 2015, available at <http://cogitasia.com/cambodias-ngo-law-legislation-with-chinese-characteristics/>.

foreign funds.¹⁴ The administration must continue to lobby and engage governments in the Asian region to abide by their international law commitments to support freedom of association and assembly.¹⁵

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¹⁴ Vidhi Doshi, "India accused of muzzling NGOs by blocking foreign funding," *The Guardian*, Nov. 24, 2016, available at <https://www.theguardian.com/global-development/2016/nov/24/india-modi-government-accused-muzzling-ngos-by-blocking-foreign-funding>.

¹⁵ *Asia-Pacific Regional Security Assessment 2016*, The International Institute for Strategic Studies, available at <https://www.iiss.org/en/publications/strategic%20dossiers/issues/asia-pacific-regional-security-assessment-2016-2288>.