

Submission to the United Nations' Office of the High Commissioner for Human Rights Concerning China's Universal Periodic Review in February 2009

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A number of human rights lawyers (or rights defense lawyers) and legal rights defenders have been subject to severe crackdowns and harassments for defending the rights of forcibly evicted residents, rights defenders, dissident writers and journalists and other underprivileged groups in mainland China. Even some lawyers who are less vocal in criticizing the government but have taken up some cases being considered "highly politically sensitive", which involved defending some famous mainland activists, are consistently under close surveillance.

As to mainland legal practitioners' general views on the violation of human rights in mainland China, our group's Mainland Affairs Secretary Mr. Cheung Yiu-leung, a barrister in Hong Kong who has frequent contacts with mainland legal practitioners, noted that "since the re-opening of the courts in the early 80s, the number of lawyers has been growing by year with dozens of new laws enacted each year. All this in conjunction with the fast economic growth and its integration with the international order means a credible legal system is becoming not only a national goal, but that it is generally felt that it is needed."¹

We believe that only a credible legal system and an independent judiciary can ensure that mainland Chinese lawyers can practice their profession without government intervention. Below, we want to highlight a few problems and threats facing mainland Chinese human rights lawyers and legal rights defenders:

1) Imprisonment of legal rights defenders, house arrest of human rights lawyers and harassment of lawyers and their family members

A number of human rights lawyers and legal rights defenders are either being imprisoned or under 24-hours surveillance. Their families have been subject to suppression as well. Blind "barefoot" lawyer **Chen Guangcheng**, who provided legal assistance to his fellow villagers in Linyi, Shandong province, to expose the local government's forced abortion policy, was sentenced to four years and three months imprisonment in August 2006 on charges of destroying property and organizing a mob to

¹ Cheung Yiu-leung, "Chinese Lawyers' Perception of the Rule of Law: Speech delivered at the CHRLCG seminar on 'China Human Rights Lawyers and Rule of Law' on 28 July 2007", 31 May 2007, <http://www.chrlcg-hk.org/?p=162>

disrupt traffic. According to his family, on 16 June 2007 Chen was severely kicked by six to seven people in prison. His ribs and his legs were injured. He was also pressed on the floor and his head was shaved. Chen's wife **Yuan Weijing** has been under 24-hours surveillance in her home village in Shandong after she was brutally taken back to the village from the Beijing International Airport in August 2007 when she was at the custom checkpoint and about to fly to Manila to receive the Magsaysay Award on behalf of her husband.

Guangdong legal rights defender **Yang Maodong, aka Guo Feixiong**, was sentenced to 5 years' imprisonment in November 2007 on the charge of "illegal business operations" for publishing a book which exposed the corruption of the mayor of Shenyang in northeastern China in 2001. The prosecution produced no concrete evidence on how Guo was involved in publishing the book, except a short introduction written by Guo in the book. Guo complained to his lawyers Hu Xiao and Mo Shaoping, both famous Beijing human rights lawyers, that his reproductive organ was beaten by electrical batons when he was in the detention centre. In 2005, Guo provided legal assistance to villagers of Taishi Village in Panyu, Guangdong Province, in their village election and helped them to expose the corruption of village officials. He was later detained for more than three months and was frequently attacked and harassed by unidentified thugs. Guo's wife **Zhang Qing** has been staging hunger strike every Wednesday since Guo was imprisoned in Meizhou prison in Guangdong. Their daughter should have gone on to secondary school but was not allowed to be enrolled in the school near their home in Guangzhou.

Beijing human rights lawyer **Gao Zhisheng** used to be one of the top ten lawyers in China. But after he sent out three open letters to President Hu Jintao and Premier Wen Jiabao in 2005 demanding the government stop oppressing liberal religious believers, he was sentenced to three years' imprisonment, suspended for five years, in December last year on charges of "inciting subversion". His family has been under severe surveillance. His family and his own whereabouts are currently unknown to the public.

Shanghai human rights lawyer **Zheng Enchong** should have resumed his political rights on 5 June 2007, but is still under close surveillance and has been taken away by the Shanghai public security officers for interrogation for more than 20 times after he was released from prison on 5 June 2006. Lawyer Zheng legally represented more than 500 residents of Dongbakuai in Jing'an District in Shanghai to sue Shanghai tycoon Zhou Zhenyi, who was later imprisoned for stock market fraud, and the Jing'an District government for conspiracy to obtain their lands by illegal means in 2003. Later that year, he was sentenced to 3 years' imprisonment for the offence of unlawfully providing secret information to an overseas entity.

Li Heping, a Beijing-based human rights lawyer, was abducted and assaulted by a group of unidentified thugs on 29 September 2007. Lawyer Li was hooded and bundled into a car and taken to an unknown location. He was held in the basement of a building where he was stripped to his underwear. He was beaten with electrical batons and bottles filled

with water. He was warned he should leave Beijing or risk further attack. He was then dumped in the woods in a suburb outside Beijing about eight hours later at around 1am on 30 September. Lawyer Li was harassed again a few months later. At 7:20am on 7 March 2008, his car crashed with a police car which was following him when he drove his seven-year-old son to school near Dongxihuan Road in Beijing. The crash destroyed his car's trunk. Li said there were three people inside the car that ran into his car. He recognized them as the public security officers who had been following him since the arrest of prominent human rights defender Hu Jia on 27 December 2007. He believed the crash was a warning to him but he was not sure about the reason. Luckily, Li said he and his son were not injured except that he felt pain at his waist after the crash.

Also on 7 March 2008, Beijing human rights lawyer **Teng Biao**, who is a lecturer at the China University of Political Science and Law, was taken away by officers of the Beijing Public Security Bureau, according to his friends. After he was taken away, he was hooded and did not know where he was taken to. His friends said that he was not treated with violence. They asked him questions about some of his articles and the interviews he did with journalists. Teng was released 41 hours later.

Comments and recommendation:

The above are more well-known cases about mainland Chinese human rights lawyers and legal rights defenders being illegally and unreasonably harassed by mainland Chinese authorities. But they are only the tip of the iceberg. We are sure there are many more cases involving less-known human rights legal practitioners. These lawyers were targeted because they took up cases regarded by many fellow legal practitioners as "highly politically sensitive", such as defending political dissidents, rights defenders and Falun Gong practitioners. Falun Gong is banned in China. Indeed, these lawyers are only exercising their professional skills to help people in need. They shouldn't be subjected to any suppression by the authorities. If the Chinese government is truly committed to developing the universally accepted principles and practice of the rule of law, it should stop harassing and attacking these legal rights defenders and human rights lawyers. Only an independent judiciary and a credible legal system can ensure that these abuses won't happen again.

2) Suspension of legal practice license of rights defense lawyers due to arbitrary annual assessment registration process

In late May 2008, media reports said that more than 10 law firms in Beijing encountered difficulties in their annual registration, affecting more than 500 lawyers. Just a few days after a group of affected Beijing lawyers issued an online appeal on 25 May 2008, many of them were suddenly able to pass the registration. Some of them, however, still cannot have their licenses renewed. It is believed that they could not renew registration because they had offered to provide legal assistance to the Defendants of the "Tibet Incident" on 14 March 2008. However, the lawyers did not know exactly why they could

not pass the annual registration. Lawyers in other provinces are also currently undergoing the annual renewal registration process and there are different deadlines for the registration in different cities and provinces. According to some sources, some lawyers in Shaanxi, Shandong and Guangdong also have problems in renewing their practice licenses this year.² After much international pressure, many lawyers have been able to pass the annual registration, but at least a few prominent human rights lawyers remained unable to pass it as of the end of August 2008, including Beijing human rights lawyer **Teng Biao**, who is a lecturer of China University of Political Science and Law, Qingdao human rights lawyer **Li Jianqiang**, Xi'an human rights lawyer **Zhang Jiankang**, Guangzhou human rights lawyers **Tang Jingling** and **Guo Yan**.

Comments and recommendations:

The annual assessment of lawyers' practicing licenses is arbitrarily carried out by the Ministry of Justice and local justice bureau without any lawful reasoning and due process. Lawyers and law firms are under pressure and feel they would not be able to renew their legal practice licenses if they continue to take up "sensitive cases". We believe that the legal profession should be monitored by the legal practitioners themselves, like the lawyers associations in the world, and should be completely free from any government interference.

3) Article 306 of the Criminal Law of the People's Republic of China

Article 306 of the Criminal Law of the People's Republic of China says: "If, in criminal proceedings, a defender or agent ad litem destroys or forges evidence, helps any of the parties destroy or forge evidence, or coerces the witness or entices him into changing his testimony in defiance of the facts or give false testimony, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years." This article has been widely criticized by legal academics and lawyers inside and outside China for being a trap for lawyers. Lawyers can easily be accused of "fabricating" evidence in the course of collecting evidence to support their clients' cases.

Comments and recommendation:

This provision has posed a serious threat to the mainland Chinese lawyers. It is against the spirit of the rule of law and fair trials and should be abolished.

4) Article 37 of the amended Law on Lawyers of the People's Republic of China

² CHRLCG Press Release: Protest Against Mainland Authorities for Delaying Registration of Lawyers' Practice Licenses; Concerns over Implementation of New Lawyers Law Amendments, 30 May 2008, <http://www.chrlcg-hk.org/?p=286>

The newly amended Law on Lawyers of the People's Republic of China, which came into force on 1 June 2008, provided more legal protection for lawyers in some areas, such as in regard to lawyers' consultation with criminal suspects and defendants, access to and photocopying of case files and documents, but Article 37 of the new law posted a new trap for lawyers. As many mainland legal practitioners pointed out - including three human rights lawyers, Beijing human rights lawyer Teng Biao (who is also a lecturer at China University of Political Science and Law), Beijing human rights lawyer Li Heping and Xi'an human rights lawyer Zhang Jiankang who wrote commentaries on this newly amended law - that Article 37 would pose a serious threat to lawyers, especially criminal lawyers. Article 37 says, "The personal rights of a lawyer in practicing law shall not be infringed upon. The representation or defense opinions presented in court by a lawyer shall not be subject to legal prosecution, however, except speeches compromising the national security, maliciously defaming others or seriously disrupting the court order." The first part of the article is on lawyers' immunity from liability in practicing law is useful, but the last bit on the exception of "speeches compromising the national security" has raised much concern among mainland legal practitioners. It means that lawyers could be subject to prosecution for saying anything deemed to be "damaging national security". "National security" is an ambiguous concept in mainland China. Anybody makes any comments against the government or the Communist Party could be considered "damaging national security", such as famous Beijing activist Hu Jia, who was imprisoned for 3.5 years for writing five articles criticizing the government and conducting interviews with foreign media. As Teng Biao noted, it would affect lawyers' professional practice: "In order to fulfill the duties set out above, lawyers must do their best to collect evidence favourable to their client and rebut the arguments and evidence presented by the other party in the course of the litigation process. In this process of gathering evidence, challenging the other side's evidence and making a case for their client lawyers will inevitably come in conflict with the other side, and possibly even with the official ideology of the State. If a lawyer's performance of his role can be regarded as giving rise to tortious or criminal liability, this will have tremendously adverse effects on the legal profession."³

Comments and recommendation:

Article 37 of the newly amended PRC Law on Lawyers would pose a serious trap for lawyers when they represent their clients in court. The meaning of "national security" is so vaguely defined that any comments against the Communist Party could be interpreted as "damaging national security". This provision seriously undermines lawyers' professional practice and should be abolished.

³ "Translations: Three Mainland Human Rights Lawyers on the Amended PRC Law on Lawyers, 30 May 2008", <http://www.chrlcg-hk.org/?p=292>