



PLIGHT AND PROSPECTS: The Landscape for Cause Lawyers in China



Leitner Center

for International Law and Justice
AT FORDHAM LAW SCHOOL, NEW YORK CITY

COMMITTEE TO SUPPORT
CHINESE LAWYERS



中国律师之友

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Photo Caption: A plainclothes policeman holds onto Zhang Qingfang (张庆方), the lawyer of Xu Zhiyong (许志永), to put him into a police car as journalists follow him after Xu Zhiyong's trial, near the Beijing No. 1 Intermediate People's Court in Beijing on January 26, 2014.

Photo Credit: REUTERS/Kim Kyung-Hoon

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EXECUTIVE SUMMARY

"Don't you see? Our power is limitless... You're on our blacklist, we can detain you anytime."

—State security officer to a rights lawyer¹

"They create these laws, but they don't even bother to follow them."

—Rights lawyer²

In July 2015, Chinese authorities undertook a coordinated and widespread attack against rights defense lawyers, advocates, and other human rights defenders by subjecting them to detentions, harassment, arrests, interrogations, disappearances, abuse, and intimidation in cities across China. (See *Spotlight: The Summer of 2015—A New and Chilling Crackdown on China's Cause Lawyers* on pages 5-6.) Over 270 lawyers and legal activists were targeted, and a number remain in detention, are held in unknown locations, were disappeared, or have been levied with criminal charges. (See *Spotlight: "Whereabouts Unknown"—Individuals Currently Disappeared or Detained at Undisclosed Locations*, on pages 61-62.) Rights lawyers in China are familiar with crackdowns, but in the past, they were more haphazard and reactive; the campaign is now strategic and with direction, purpose, and mission to restrict civil society and silence the lawyers that defend it.

The wave of detentions and other abuses in June and July was especially alarming because of the number of individuals targeted in the short time span, but the space for lawyers and legal advocates who take on clients and causes that are unpopular with the government has been consistently shrinking since the change in leadership between fall 2012 and spring 2013. Increases in efforts to silence and control lawyers that represent politically sensitive clients and causes reflect a broader constriction of civil society. Authorities in China have resorted to a range of measures in the past two years in an attempt to reign in lawyers as well as public opinion leaders, scholars, journalists, and activists.

Assaults on lawyers and legal advocates in China are comprehensive and aim to destabilize individuals' personal and professional lives. The Chinese authorities deploy a broad spectrum of tactics to silence and control lawyers. These tactics are wide-ranging and tend to intersect, but can be broadly categorized into law-based and extra-legal measures.

The use of law-based measures to neutralize cause lawyers is on the rise. First, the law is used as a tool to limit how lawyers can discharge their professional

1 Interview with an anonymous lawyer, Jul. 29, 2014.

2 Interview with an anonymous lawyer, Jul. 23, 2014.

duties. Laws and regulations limit access to clients and case development and constrain in-court representation. Second, regulation of the legal profession through the licensing and annual assessment process is used as a means to prevent lawyers and law firms that undertake a certain types of clients. Lawyers are even told by authorities that if they agree to stop work on certain types of cases, they will have no trouble with their license. If they do not, they may not be able to renew their license. Third, lawyers themselves become targets and are charged with offenses ranging from offenses that carry a three-year sentence, to more serious state security crimes

Extra-legal tactics, however, are also well-documented and used against lawyers who become unpopular with officials because of the cases and causes they represent. Lawyers are arbitrarily detained and disappeared, sometimes for months, or longer. Lawyers disappeared in July of 2015 remain in detention in an unknown location at the time of this report's publication. Lawyers have also been tortured and subjected to cruel, inhuman, and degrading treatment or punishment, as well as casual violence by local authorities. Lawyers have been subjected to constant surveillance and monitoring, in and outside of their homes and offices. Family, friends, and neighbors, too, are harassed and pressured for association with cause lawyers. An official state media campaign has also aimed to paint lawyers as criminals, or an organized gang, elements that threaten state security.

At the time of this report's publication, many lawyers remain in detention or subject to other restrictions. Other lawyers, having left China in 2014 and 2015 due to pressures from the government, are unable to return home for fear that they, too, will be detained. Moreover, the chilling effect on other lawyers willing to undertake the work of rights defense in this landscape cannot be denied. Government targeting of rights lawyers is an effective way to leave other Chinese civic actors, vulnerable citizens, activists, and other individuals accused of political offenses, susceptible and exposed.

In spite of these tightening controls and the impacts they have, there are still some reasons to remain optimistic about the strengthening of Chinese civil society and the lawyers that work in that space. The ways in which lawyers have been responding to these restrictions—by organizing on- and off-line, conducting community trainings, documenting cases of abuse themselves, and creating wider networks of rights lawyers—demonstrates their resilience as a community and movement for justice.

Fundamental human rights and liberties can only thrive in a system where lawyers enjoy freedom from political interference and pressure. Rights and freedoms are contingent on access to counsel when they are threatened, and lawyers must be free to provide that counsel even where the case or cause they represent is unpopular. Lawyers must be able to do their jobs without fear of

reprisal in order to ensure a well-functioning legal system and non-discrimination in the administration of justice.

In 2011, the Committee to Support Chinese Lawyers (“the Committee”) produced an in-depth report on the draconian tactics used against lawyers at the time, as well as the effects of the crackdown on this small but highly visible community. This report examines developments since that time, identifying legal and extra-legal constraints placed on lawyers, and examining the ways that lawyers are responding to these attacks. In its analysis, the Committee assesses the measures taken by the Chinese government against their international legal obligations to ensure that lawyers do their jobs without intimidation or hindrance.

This report is divided into six sections:

- The first section provides an **overview** of the context of the report and the background to the research.
- The second section provides an overview of the basic international legal framework governing the **independence of lawyers**.
- The third section addresses the **background of the crackdown**, providing a historical perspective as well as an analysis of the origins and triggers of the latest crackdown.
- The fourth section describes the specific **government practices** being used in the crackdown, including law-based measures to control and restrict the work of lawyers inside and outside the courtroom, and extra-legal measures, including illegal detentions, enforced disappearances, and physical attacks, and other persecution tactics, including direct harassment of lawyers and pressure exerted on their friends and families.
- The fifth section sketches an outline of **the ways forward** that these lawyers are exploring and the movement for the rule of law in China more broadly, and explains how both legal training and advocacy can help bolster the movement going forward.
- The final section contains the Committee’s **conclusions** and a series of **recommendations** to the Chinese government, both in terms of changes to current practice, legislative and other legal reforms, and individual cases, and to the international community.

I. INTRODUCTION

"At every step along the way, you're unsure of what will happen next."
—Rights lawyer³

A. Overview

On July 9, 2015, lawyer Wang Yu (王宇), a well-known Chinese rights lawyer with the Beijing Fengrui Law Firm (北京锋锐律师事务所), was detained and taken to an undisclosed location. Wang Yu had a history of taking on cases as a defense attorney in cases unpopular with the government of the People's Republic of China ("PRC" or "China"), and had been especially active in well-known cases in 2014 and into 2015. (See *Spotlight: Wang Yu (王宇)—A Potent Symbol of China's Cause Lawyering Community* on pages 9-10.) The day after her disappearance, over a hundred Chinese lawyers signed an open letter calling for her release, intensifying a nationwide crackdown against these lawyers and others.⁴ (See *Spotlight: The Summer of 2015—A New and Chilling Crackdown on China's Cause Lawyers* on pages 5-6.)

The crackdown was coordinated and widespread, impacting lawyers in cities across China.⁵ Over 270 lawyers and legal activists were targeted in detentions, harassment, disappearances, criminal charges, interrogations, and other forms of interference with the professional duties of lawyers.⁶ Individuals not held in detention were reportedly given warnings against voicing support for lawyers that remained in detention.

This escalation of measures taken to control the activities of human rights lawyers—including its sheer scale and sophistication—should signal alarm among the professional community of lawyers across the globe. (See *Spotlight: Lawyers Supporting Lawyers—Global Solidarity with Chinese Colleagues* on page 14.) Yet

³ Interview with an anonymous lawyer, Aug. 14, 2014.

⁴ Amnesty International, *China: Dozens of Human Rights Lawyers Targeted in Nationwide Crackdown*, Jul. 11, 2015, <https://www.amnesty.org/en/latest/news/2015/07/china-lawyers-targeted/>; Committee to Support Chinese Lawyers, *Sweeping Attack on Rights Defense Lawyers Threatens China's Entire Legal Profession*, Jul. 13, 2015, <http://cslawyers.org/events/72/>; Human Rights in China, *Mass Suppression of Lawyers Reveals True Nature of Xi's "Rule by Law"*, Jul. 14, 2015, <http://www.hrichina.org/en/press-work/mass-suppression-lawyers-reveals-true-nature-xis-rule-law>.

⁵ For map showing where lawyers were detained or disappeared, see Human Rights in China, *Mass Crackdown on Chinese Lawyers and Defenders*, *supra* note 4.

⁶ For up-to-date monitoring of the status of detained individuals, see Amnesty International, *China: Latest Information on Crackdown against Lawyers and Activists*, Sept. 22, 2015, www.amnesty.org/en/press-releases/2015/08/china-list-of-lawyers-and-activists-targeted/; China Human Rights Lawyers Concern Group, "709 Crackdown" *Lawyers' Case Update*, Sept. 18, 2015, chrlawyers.hk/en/content/709-crackdown-lawyers-case-update-12-september-2015-19-september-2015.

the space for lawyers who take on clients and causes that are unpopular with the government has been consistently shrinking for at least two years as part of an overall constriction of civil society, and authorities have resorted to a range of measures in an attempt to reign in not only lawyers, but also public opinion leaders, scholars, journalists, and activists.

In 2011, the Committee to Support Chinese Lawyers ("the Committee") produced an in-depth report on the draconian and often extra-legal tactics used against lawyers at the time, as well as the effects of a crackdown on this small

SPOTLIGHT:

SUMMER 2015—THE LATEST CRACKDOWN ON CHINA'S CAUSE LAWYERS

In what many have called "unprecedented" in both scope and intensity, the Chinese government in the summer of 2015 launched a brutal and sweeping attack against an unequivocally identified target—China's small but increasingly powerful community of rights lawyers. It began on July 9, 2015 with the rapid seizures of lawyers and staff connected to the well-known Fengrui Law Firm, including Wang Yu (王宇) and Zhou Shifeng (周世锋). (See *Spotlight: Fengrui Law Firm—How Rights Lawyers Become "Criminals" in Xi Jinping's China* on pages 43-44 and *Spotlight: Fengrui Law Firm—Affected Individuals* on page 38.) Since then, the number of lawyers and activists targeted for intimidation, detention, and in some cases disappearance, has ballooned 245—and counting. At the time of this report's publication, 30 lawyer and legal activists are either missing or in police custody, including eight individuals currently held under residential surveillance at undisclosed locations and three individuals who have disappeared, not seen since July 10, 2015. (See *"Whereabouts Unknown"—Individuals Currently Disappeared or Detained at Undisclosed Locations.*)

The extravagant nature of the charges against those detained is illustrative of the Chinese Communist Party's latest campaign, under the leadership of Xi Jinping, to disparage the rights defense movement. For instance, as outlined in a People's Daily report, widely distributed through state media, the Fengrui detainees have been outlandishly cast by official leaders as "a group of shadowy, vicious manipulators" who, "while proclaiming to be for 'rights defense,' 'justice' and the 'public interest' ... gravely disrupted social order and attempted to achieve its sinister ends."¹ In their nonsensical attempts to brand Fengrui as a "major crime syndicate" aiming to cause "social chaos," officials ironically highlighted some of the rights defense movement's most effective—and entirely lawful—advocacy techniques.² For instance, the report noted that "in sensitive cases, these bullheaded

lawyers would openly confront the court inside the courtroom and on the Internet, and behind the scenes would instruct the leading provocateurs to organize petitioners to offer support and provoke trouble outside the courthouse and online.”³ It further underscored the rights defense movement’s success in professional development and shared learning among the legal community, noting that lawyers “organized regular gatherings and dinners to discuss their ‘experiences and lessons learned’ and to plan further action,” as well as “instant communication tools to liaise, engage in agitation and planning, and carry out training, including WeChat, QQ groups and Telegram.”⁴

Troublingly, under unknown circumstances, Fengrui lawyers Zhou Yifeng and others appear to have publicly “confessed” to the criminal charges, the latest example of the growing use of public confessions—common throughout the Cultural Revolution—under the leadership of Xi Jinping.⁵ These confessions have also prompted widespread concern, among Chinese lawyers and international observers alike, that detainees have been subjected to coercion, torture, or other cruel, inhuman or degrading treatment or punishment, which also amplifies concerns that the detainees will not receive a fair trial under international law standards.

Notes

- 1 Chris Buckley, “People’s Daily Details Allegations Against Lawyers Detained in China,” *NEW YORK TIMES*, Jul. 13, 2015, sinosphere.blogs.nytimes.com/2015/07/13/peoples-daily-details-allegations-against-detained-lawyers/ (quoting translations of the People’s Daily).
- 2 *Id.*
- 3 *Id.*
- 4 *Id.*
- 5 See Lucy Hornby, “Chinese Media Publishes Lawyer’s Confession,” *FINANCIAL TIMES*, Jul. 19, 2015, www.ft.com/intl/cms/s/0/d74ae90a-2e1b-11e5-91ac-a5e17d9b4cff.html#axzz3lFtX7Dze; Rishi Iyengar, “Alleged Confessions From Detained Chinese Lawyers Prompt Fears of an Unfair Trial,” *TIME*, Jul. 19, 2015, time.com/3963913/china-lawyers-detained-confession-beijing-fengrui-zhou-shifeng/.

but highly visible community.⁷ Since that time, the Committee has documented the onset of a new wave of harassment and intimidation by authorities, culminating in June and July 2015, and continuing at the time of this report’s publication. In this latest onslaught, authorities have employed both previously utilized methods, as well as new strategies, which conform on paper with a renewed official emphasis on legal reform and the rule of law. The latter, however, are procedural and regulatory obstacles that severely hinder the ability of lawyers to represent their clients. And while prior methods, such as physical abuse, forced

7 COMMITTEE TO SUPPORT CHINESE LAWYERS, *LEGAL ADVOCACY AND THE 2011 CRACKDOWN IN CHINA: ADVERSITY, REPRESSION, AND RESILIENCE* (Nov. 2011) (*hereinafter* CSCL 2011 REPORT), <http://csclawyers.org/letters/Legal%20Advocacy%20and%20the%202011%20Crackdown%20in%20China.pdf>.

disappearance, and 24-hour surveillance, are still in use, they are increasingly being replaced by law-based measures. Some of these law-based measures are tools that grow out of recent legal reforms aiming to legitimize previously extra-legal tactics. Moreover, a new media campaign has aimed to paint rights lawyers as criminals who threaten national security; many of them have been prevented from leaving the country for fears of national security concerns.⁸

These attacks on public interest and rights lawyers have been accompanied by sharper limitations on the freedom of speech, as well as intensified efforts at restricting informational dissemination and ideological control.⁹ Since March 2013, the administration of President Xi Jinping (习近平) has launched a systematic nationwide tightening of space for lawyers and civil society. Lawyers are facing changing rules for how they can conduct themselves professionally and interact with the public. In the past, crackdowns of this sort were more haphazard and reactive, but now there seems to be more of a strategic campaign with a clear direction, purpose, and mission. The authorities are using multiple tactics at the same time and imposing restrictions on lawyers from many different directions. Both the “usual suspects” of rights defense lawyers and more moderate legal practitioners have been targeted. The authorities have deployed a range of different tactics, including criminal legal procedures, extra-legal harassment, electronic surveillance, and reprisals against lawyers and their families. In the most serious cases, lawyers have been disappeared, physically abused and attacked, and charged with serious criminal offenses.

In spite of this crackdown, there are still reasons to remain optimistic about the strengthening of Chinese civil society and the lawyers that work in that space. The ways in which lawyers have been responding to the restrictions have shown their resilience as a movement, and the international community has a number of tools at its disposal to continue to assist this movement going forward.

B. Lawyers in China: A Note on Terminology

The rapidly shrinking space for lawyers who take on unpopular cases in China should cause alarm among lawyers in every field, both inside and outside of China. A legal system where lawyers can be detained for doing his or her job—however unpopular his or her client may be—can be used to constrain the work of any lawyer carrying out his or her professional obligations as an advocate.

8 Yang Fan and Luisetta Mudie, “Police Prevent Top Chinese Rights Attorneys from Leaving the Country,” RADIO FREE ASIA, Aug. 20 2015, www.rfa.org/english/news/china/police-prevent-top-chinese-rights-attorneys-from-leaving-country-08202015095944.html.

9 Groups have called attention to a number of recently passed laws and recent draft legislation that further curb freedom of expression. See, e.g., Human Rights Watch, *China: Proposed Cybersecurity Law Will Bolster Censorship*, Aug. 4 2015, www.hrw.org/news/2015/08/04/china-proposed-cyber-security-law-will-bolster-censorship.

At the end of 2014, there were approximately 270,000 lawyers in China, and some expect that number to hit 300,000 by the end of 2015.¹⁰ This is a dramatic increase from the mere hundreds of licensed lawyers in China in 1979. However, in this report, the Committee is principally concerned with the constraints faced by lawyers that work on politically sensitive and unpopular cases or causes. The contours that define this group are not static. Some lawyers in this group identify themselves as “human rights lawyers” (人权律师), or rights defense lawyers (维权律师), or civil rights lawyers, while others prefer to stay away from that terminology and simply identify the field they work in (e.g., criminal justice lawyers, environmental lawyers, domestic violence lawyers, labor lawyers, etc.). Some will work on very sensitive cases (including freedom of religion and expression cases, and cases of Tibetan and Uyghurs detained in protests in recent years), and others do not. Some are referred to as a group of “die hard” defense lawyers (死嗑派), who have been detained on numerous instances. The number of lawyers identifying as the core group may be as small as one hundred and until very recently has been concentrated in Beijing; there is a larger group of lawyers that have begun to focus on broader public interest issues in networks across the country.¹¹ Over the past several years, new types of lawyers emerged throughout China with innovated ideas for legal advocacy beyond the courtroom, with more and more lawyers identifying themselves as doing human rights work, including documentation of human rights violations. Through this organically-developed phenomenon, lawyers work on a diverse range of human rights issues, which speaks to their importance within the broader community of human rights activists and human rights defenders. Some are finding a political identity within the system, while others have become important figures in the political opposition.¹²

This report will use the terms “human rights lawyers,” “rights lawyers,” “*wei-quan* lawyers,” and “cause lawyers” interchangeably to refer to the group of lawyers that works in this broad field of public interest. Government authorities have targeted many of them. It should also be noted that while many of the lawyers in this group are or have been licensed to practice law and are consequently members of the official lawyers’ associations, others working in this field have had their licenses taken away, or have never held a license, instead working as legal advocates without formal qualification.¹³ Although the rights lawyer community is a comparatively small part of China’s legal community, they play a fundamental role within its legal system. They often represent the “only source of legal resistance” to the capriciousness and iniquity of the

10 “Number of Licensed Lawyers Expected to Reach 300,000 by Year-end,” XINHUA, Aug. 20, 2015, http://news.xinhuanet.com/english/2015-08/20/c_134538882.htm.

11 For more on the origins of the human rights lawyer movement, see EVA PILS, CHINA’S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE 47 (2015).

12 Eva Pils, “‘Let us be Citizens!’: Human Rights Lawyers and the Democratic Opposition in China,” forthcoming in *Contesting Civil Society*, special issue of CHINA QUARTERLY, guest-edited by Chloë Froissart and Anthony Spires (on file with the Committee to Support Chinese Lawyers).

13 These lawyers are sometimes referred to as “barefoot lawyers.”

SPOTLIGHT:

WANG YU (王宇)—A POTENT SYMBOL OF CHINA'S CAUSE LAWYERING COMMUNITY

Accomplished, persevering, and quietly determined, commercial lawyer-turned-civil rights advocate Wang Yu (王宇) has been hailed by many as symbolic of China's rights defense community, not only for her commitment to the public interest, but for the way she has been targeted by Chinese authorities due to her effectiveness as a lawyer. Indeed, Wang Yu's disappearance in the early hours of July 9, 2015, after a chilling social media post describing the shutting off of her home's electricity and the sounds of someone breaking in, was the first incident in a crushing wave of detentions, arrests, disappearances, and related abuses of over 280 lawyers—and counting—in the summer of 2015.¹ Wang Yu's husband, rights lawyer Bao Lungjun (包龙军), was detained the same day, and by the end of that week, her colleagues at Beijing's Fengrui Law Firm were all in detention.² (See *Spotlight: Fengrui Law Firm—How Rights Lawyers Become "Criminals" in Xi Jinping's China* on page 43-44.) Although authorities state that both Wang Yu and Bao Longjun are being held under "residential surveillance" on suspicion of incitement to subvert state power, their exact whereabouts remain unknown and visitation attempts by their lawyers have been denied.³

Wang Yu started her career in 2004 practicing commercial law, with a focus on patent disputes.⁴ But like many of China's rights defense champions, it was a personal experience with authoritarian injustice that ignited Wang Yu's passion for rights lawyering. In 2008, after being prevented from boarding a train at the Tianjin Railway Station despite having a valid ticket, an argument with authorities ended with her being violently beaten by several station officials.⁵ After lodging an official complaint, local authorities responded not by arresting those responsible for her attack, but by arresting Wang Yu herself. Incredibly, she was charged with the "intentional assault" of three railway employees, for which she was eventually imprisoned for two-and-a-half years. Upon her release, her license to practice law was suspended, not to be renewed until late 2012.

Some lawyers might have returned to a safe and uncontroversial commercial law practice following a retaliatory two-and-a-half year sentence—but not Wang Yu. Instead, since 2012, Wang Yu has dedicated her career to fighting injustice, with a reputation for taking on the most sensitive cases, regardless of the political consequences. Her client roster reads like a "who's who" of China's most marginalized and vulnerable communities.

For instance, she has represented imprisoned Uyghur writer and intellectual Ilham Tohti on charges of separatism and the late rights activist Cao Shunli (曹顺利), along with evicted landowners, people with disabilities, and children who were victims of sexual abuse. She is also widely known for taking up Falun Gong cases throughout China, including most recently in Heilongjiang Province, after her client's previous lawyers were attacked and detained, along with a group of citizen demonstrators, following their protest of a "legal education base" in the city of Jiansanjiang that is widely believed to be a black jail facility housing Falun Gong and other detainees.⁶ (See *Spotlight: Jiansanjiang's Black Jail—Anguish and Resilience in Heilongjiang* on pages 73-74 and *Spotlight: Tang Jitian (唐吉田)—Battered but Undaunted* on pages 67-68.) Indeed, it was in Heilongjiang Province in 2014 that Wang Yu protested her lack of client access by posting a widely disseminated photo on Weibo of herself and colleague with a sign stating "Lawyers demand the right to meet with clients" while standing outside a police bureau office.⁷ It is precisely this type of advocacy—courageous, clever, and powerfully effective—that has made Wang Yu emblematic of the tenacious rights defense movement, and has now placed her in the crosshairs of Chinese officials' targets this recent crackdown.

Notes

- 1 Yang Fan and Luisetta Mudie, "Beijing Rights Lawyer 'Missing,' Believed Detained: Lawyer," RADIO FREE ASIA, Jul. 10, 2015, www.rfa.org/english/news/china/beijing-rights-lawyer-missing-believed-detained-07102015102944.html.
- 2 Chris Buckley, "Chinese Authorities Detain and Denounce Rights Lawyers," NEW YORK TIMES, Jul. 11, 2015, www.nytimes.com/2015/07/12/world/asia/china-arrests-human-rights-lawyers-zhou-shifeng.html.
- 3 Yang Fan and Luisetta Mudie, "Chinese Rights Lawyer Wang Yu Held For 'Subversion' As Crackdown Continues," RADIO FREE ASIA, Aug. 7, 2015, www.rfa.org/english/news/china/rights-lawyer-wang-yu-held-for-subversion-as-crackdown-continues-08072015104914.html; Human Rights in China, *Bao Longjun under Residential Surveillance on Suspicion of 'Incitement' and 'Picking Quarrels,' Family Yet to Be Notified*, Aug. 24, 2015, www.hrichina.org/en/citizens-square/bao-longjun-under-residential-surveillance-suspicion-incitement-and-picking-quarrels.
- 4 Anna Fifield, "She Was a Quiet Commercial Lawyer. Then China Turned Against Her," WASHINGTON POST, Jul. 18, 2015, www.washingtonpost.com/world/she-was-a-quiet-commercial-lawyer-then-china-turned-against-her/2015/07/18/fe45876c-2b3d-11e5-960f-22c4ba982ed4_story.html.
- 5 China Human Rights Lawyers Concern Group, *Wang Yu*, Aug. 4, 2015, www.chrlawyers.hk/en/content/wang-yu; China Human Rights Defenders, *Prisoner of Conscience – Wang Yu*, Jul. 23, 2015, chrinet.com/2015/07/prisoner-of-conscience-wang-yu/.
- 6 Human Rights in China, *Lawyers and Citizens Report Abuses by Jiansanjiang Authorities*, Apr. 1, 2014, www.hrichina.org/en/press-work/case-update/lawyers-and-citizens-report-abuses-jiansanjiang-authorities.
- 7 Anna Fifield, "She Was a Quiet Commercial Lawyer. Then China Turned Against Her," *supra* note 4.

Chinese legal system.¹⁴ Government targeting of these lawyers is an effective way to leave other Chinese civic actors, vulnerable citizens, activists, and other individuals accused of political offenses, susceptible and exposed.

C. Methodology

Researchers at the Committee undertook desk and field research between July 2014 and August 2015 in Beijing, Shenzhen, Guangzhou, Hong Kong, and the United States. The research included examination of English- and Chinese-language sources, including official publications, domestic and international legal materials, media accounts, NGO reports, UN documents, and academic materials. It also included 30 in-depth in-person interviews with Chinese lawyers, legal experts, rights activists, and other advocates with firsthand knowledge of issues considered in this report, as well as additional ongoing discussions over phone, video communication, and other web- and mobile-based technology. In addition, our researchers engaged in discussions with experts, academics, and professionals inside and outside China.

The Chinese government does not welcome scrutiny of its human rights and rule of law practices by international human rights and professional organizations, and limits contact between those organizations and Chinese individuals and organizations. Consequently, the Committee's research is limited and was conducted in that challenging landscape. To protect the safety of the individuals interviewed, names are withheld unless otherwise noted.

D. Acknowledgements

This report was drafted and edited by members of the Committee to Support Chinese Lawyers. The Committee is grateful to the individuals and organizations that facilitated our research, in particular the work of the people who aided in coordinating our interviews on the ground. The Committee is also grateful to the Chinese and international legal and policy experts and professionals who have provided invaluable comments and suggestions on working drafts of this report.

14 Paul Mooney, "Silence of the Dissidents," SOUTH CHINA MORNING POST, Jul. 4, 2011, www.scmp.com/article/972521/silence-dissidents; CSCL 2011 REPORT.

II. INTERNATIONAL NORMS ON THE INDEPENDENCE OF LAWYERS

Fundamental human rights and liberties can only be ensured in a system where lawyers and advocates enjoy freedom from political interference and pressure. These individual rights and freedoms are contingent on effective access to counsel and therefore on lawyers being free to take on any kind of case—even unpopular ones—without fear of reprisal. The independence of lawyers is not only an essential prerequisite for the protection of human rights; it is also necessary to ensure a well-functioning legal system and non-discrimination in the administration of justice. The important function that lawyers play is therefore protected in numerous international treaties, customary international law, and other soft law standards.¹⁵

Most importantly, the United Nations Basic Principles on the Role of Lawyers (“Basic Principles”) provides a detailed examination of the rights and duties that lawyers have, in addition to the human rights that everyone is entitled to. These include provisions protecting the rights of lawyers as practitioners and the rights of detained persons and other persons facing legal proceedings to unhindered access to counsel. A number of provisions contained within the Basic Principles deserve special attention in the context of considering the place of lawyers operating in a rights restricting environment.

- *Non-Discrimination*: There must be no discrimination against lawyers to enter into the legal profession or continue to practice law based on the grounds of “race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status” (Art. 10)
- *Freedom from interference*: All lawyers must be able to practice law without “intimidation, hindrance, harassment or improper interference,” must be able to travel and to consult with their clients “within their country and abroad,” and must not “suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”

15 See, e.g., UN General Assembly, Universal Declaration of Human Rights (*hereinafter* UDHR), 217 A (III), art. 10, *adopted* Dec. 10, 1948; International Covenant on Civil and Political Rights (*hereinafter* ICCPR), 999 U.N.T.S. 171, art. 14(1), *adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976; UN General Assembly, *Basic Principles on the Role of Lawyers* (*hereinafter* Basic Principles), *adopted* by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27 to Sept. 7, 1990. + + + 1966, *entered into force* 14(1)s on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27 to Sept.

(Art. 16) State authorities should also protect lawyers when they are "threatened as a result of discharging their functions." (Art. 17)

- *Non-identification with clients:* Lawyers should not be identified with their "clients or clients' causes." (Art. 18)
- *Freedom to discharge duties in court:* Lawyers should not be refused the right of a lawyer to appear in court for his or her client unless he or she has been disqualified from the practice of law in accordance with national law and practice and in conformity with the Basic Principles. (Art. 19) Further, lawyers enjoy immunity for good faith written or oral statements made in their professional appearances in court. (Art. 20)
- *Freedom to discharge representation of their clients:* Lawyers should be provided with all files and documents enabling them to represent their clients. (Art. 21) Further, authorities must respect that communications between lawyers and their clients are confidential. (Art. 22)
- *Freedom of expression and association:* Like all citizens, lawyers have the right to "freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession." (Art. 23)

Despite these protections, State authorities across the globe frequently identify lawyers with the individuals and causes they represent, and in many cases lawyers themselves become targets of State repression.¹⁶

16 The UN Special Rapporteur on the Independence of Judges and Lawyers regularly sends communications to states alleging violations of human rights in the context of that mandate. Between March 1, 2014 and February 28, 2015, for example, the UN Special Rapporteur on the Independence of Judges and Lawyers Gabriela Knaul sent 117 such communications to 54 countries. Eighty-six of those were urgent appeals. UN Human Rights Council, *Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul*, UN Doc. A/HRC/29/26 ¶17 (April 1, 2015).

SPOTLIGHT:

LAWYERS SUPPORTING LAWYERS—GLOBAL SOLIDARITY WITH CHINESE COLLEAGUES

The following international associations of professional lawyers and jurists have issued powerful and compelling statements condemning the Chinese government's crackdown against rights lawyers and activists—their professional colleagues in the practice of law—in the summer of 2015.

Amsterdamse Orde Van Advocaten¹

Asociación Libre de Abogados²

Association of Libertarian Jurists³

Bar Council of Ireland⁴

Bar Human Rights Committee of England and Wales⁵

Council of Bars and Law Societies of Europe⁶

Day of the Endangered Lawyer⁷

Deutscher Anwaltverein⁸

European Democratic Lawyers⁹

Hong Kong Bar Association¹⁰

International Association of People's Lawyers¹¹

International Bar Association's Human Rights Institute¹²

International Commission for Jurists¹³

Japan Federation of Bar Associations¹⁴

Judges for Judges¹⁵

Law Council of Australia¹⁶

Law Society of England and Wales¹⁷

Law Society of Upper Canada¹⁸

Lawyers For Lawyers¹⁹

Lawyers' Rights Watch Canada²⁰

New York City Bar Association²¹

New Zealand Law Society²²

Norwegian Bar Association²³

Ordre des Avocats de Genève²⁴

Solicitors' International Human Rights Group²⁵

Syndicats des Avocats de France²⁶

Taipei Bar Association²⁷

Taiwan Bar Association²⁸

Notes

- 1 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, Jul. 21, 2015, www.advocaten-vooradvocaten.nl/wp-content/uploads/Letter-Objecting-to-Chinese-lawyers-arrests-21-July-2015.pdf.
- 2 *Id.*
- 3 *Id.*
- 4 *Id.*
- 5 Bar Human Rights Committee of England and Wales, *Open Letter: Arrest and Detention of Lawyers and Human Rights Activists in China*, Jul. 17, 2015, http://barhumanrights.org.uk/sites/default/files/documents/biblio/open_letter_to_president_of_peoples_republic_of_china.pdf.
- 6 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 7 *Id.*
- 8 Der Deutsche Anwaltverein, *DAV Demands Clarification by Chinese Authorities*, Jul. 17, 2015, http://www.twitlonger.com/show/n_1sn3gj0;
- 9 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 10 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 11 Hong Kong Bar Association, *Statement of the Hong Kong Bar Association on Reports of Multiple Arrests Made of Mainland Legal Professionals*, Jul. 18, 2015, [www.hkba.org/whatsnew/press-release/Press_Statement_on_Jul_18_\(Eng\).pdf](http://www.hkba.org/whatsnew/press-release/Press_Statement_on_Jul_18_(Eng).pdf).
- 12 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 13 International Bar Association's Human Rights Institute, *Open Letter to His Excellency Mr. Xi Jinping*, President of the People's Republic of China, Jul. 22, 2015, www.ibanet.org/Article/Detail.aspx?ArticleUid=fbd9f17b-5a7e-4111-bec3-fb5ad75066df.
- 14 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 15 Japan Federation of Bar Associations, 中国の弁護士の一斉連行を憂慮し、弁護士職務活動の保障等を求める会長声明, Jul. 24, 2015, www.nichibenren.or.jp/activity/document/statement/year/2015/150724.html.
- 16 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 17 Law Council of Australia, *Law Council Deeply Concerned with "Crackdown" against Lawyers in China*, Jul. 17, 2015, http://www.lawcouncil.asn.au/lawcouncil/images/1533_-_Law_Council_deeply_concerned_with_crackdown_against_lawyers_in_China.pdf.
- 18 Law Society of England and Wales, *Law Society Urges China to Release Lawyers Arrested in Crackdown*, Jul. 16, 2015, <http://communities.lawsociety.org.uk/human-rights/news-and-events/law-society-urges-china-to-release-lawyers-arrested-in-crackdown/5050047.article>;
- 19 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 20 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 21 New York City Bar Association, *Letter to His Excellency Mr. Xi Jinping*, Jul. 28, 2014, www.hrichina.org/sites/default/files/nyc_bar_association-letter_to_h.e_xi_jinping_re_chinese_lawyers_7.28.15.pdf.
- 22 New Zealand Law Society, *NZ Law Society Says Chinese Human Rights Set Back by Lawyer Arrests*, Aug. 3, 2015, www.lawsociety.org.nz/news-and-communications/news/nz-law-society-says-chinese-human-rights-set-back-by-lawyer-arrests.
- 23 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, *supra* note 1.
- 24 *Id.*
- 25 *Id.*
- 26 *Id.*
- 27 Taipei Bar Association, 台北律師公會針對大陸政府大規模逮捕維權律師之聲明, Jul. 17, 2015, www.tba.org.tw/member_message_detail.asp?id=1246.
- 28 Taiwan Bar Association, 就中國大陸對維權律師進逮捕等之全聯會聲明書, Jul. 2015, www.twba.org.tw/News_detail.asp?N_id=899.

III. BACKGROUND AND CONTEXT OF THE REPRESSION OF CAUSE LAWYERS

"Lawyers in China don't have any independence today."
—Rights lawyer¹⁷

Crackdowns on civil society actors in China are cyclical and perpetual, and their levels of severity change over time. In each phase, the authorities are responding to a different set of perceived threats. In some cases, their responses may be driven by local-level concerns, while in others, policies are dictated by high-level political or economic interests. Rights advocates and public interest lawyers operate in a grey zone between legal permissibility and political prohibition, and must be aware of the boundaries. The unwritten rules that guide their work, however, appear to be undergoing constant revision as the space they work in tightens.

A. Cycles of Detentions

Prior to 2013, when the Chinese leadership within the Communist Party of China ("CPC", 中国共产党) was still in transition, public interest lawyers and other rights defenders experienced a lull in arrests and harassment since 2011.¹⁸ In 2011, the Committee documented the forced disappearance of at least 24 individuals and the criminal detention of at least 52 more from 2010 to 2011.¹⁹ This earlier crackdown, which began in late 2010, coincided with the identification of Xi Jinping as the successor to President Hu Jintao (胡锦涛).

The New Citizens' Movement (新公民运动), a loose coalition of civil rights activists founded by lawyer Xu Zhiyong (许志永) who came together in 2010 to promote constitutionalism in China, faced numerous attacks on its membership. The assaults against that movement prompted many of China's rights lawyers to identify themselves as a cohesive group and a unified political movement. Early on, the movement's leaders made a conscious decision to avoid targeting China's top leaders. This was based on their perception of a figurative "red line" insulating high level officials, and they pursued this strategy as a way to protect their movement. The increasing politicization of the movement as well as the rising prominence of its leaders, including Xu Zhiyong and Liu Xiaoyuan (刘晓原), ultimately led to an escalation by the au-

¹⁷ Interview with an anonymous lawyer, Jul. 29, 2014.

¹⁸ Interview with an anonymous lawyer, Aug. 27, 2015.

¹⁹ CSCL 2011 REPORT, *supra* note 7, at i.

thorities in targeting the activists.²⁰ (See *Xu Zhiyong* (许志永)—*Paying a Harsh Penalty for Playing by the Rules* on pages 17-18.)

As activists grew bolder, they became more outspoken. But a new round of detentions began in 2013. On March 31, 2013, four Chinese citizens were criminally detained after unfurling a banner in Xidan, a busy commercial area of Beijing, calling on officials to disclose their financial assets.²¹ The topic of wealth among China's top leadership is largely off-limits for public discourse, rivaling the sensitivity of issues such as June Fourth and Tibet.²² The Chinese public has long clamored for information on the financial assets of high-ranking government officials—and the methods and connections through which they acquired such wealth²³—although these types of investigations are well outside the purview of state-run media. When, in 2012, the *New York Times* and *Bloomberg* published exposés on the family wealth of Wen Jiabao (温家宝)²⁴ and Xi Jinping,²⁵ their websites were blocked and their journalists faced difficulties in obtaining visa renewals. By April 18, 2013, seven individuals, including several lawyers, had been criminally detained for demanding asset disclosure by Chinese officials in connection with the Xidan banner incident.²⁶

In addition to the banner display, activists also issued a public petition on government transparency that had garnered thousands of signatures, and submitted it to the National People's Congress. After the detentions, prominent rights lawyers, including Xu Zhiyong, Wang Gongquan (王功权), Teng Biao (滕彪), Liu Weiguo (刘卫国), Li Xiongbing (黎雄兵), Liang Xiaojun (梁小军), Li Fangping (李方平), and Xiao Guozhen (肖国珍), released a joint statement condemning the repression. This incident marked the beginning of a renewed tightening on civil

20 Freedom House, *China Continues to Target "New Citizens' Movement" With Arrest of Xu Zhiyong*, Jul. 18, 2013, <https://freedomhouse.org/article/china-continues-target-new-citizens-movement-arrest-xu-zhiyong>; Human Rights in China, *Four More New Citizens Movement Advocates Convicted, Sentenced to Between Two and Three-and-a-Half Years*, Apr. 18, 2014, www.hrichina.org/en/press-work/case-update/four-more-new-citizens-movement-advocates-convicted-sentenced-between-two-and.

21 Xu Zhiyong, Xiao Shu, Teng Biao, et al., *Appeal to Immediately Free Seven Citizens Criminally Detained for Calling Attention for Asset Disclosure*, CHINA CHANGE, Apr. 18, 2013, <http://chinachange.org/2013/04/18/appeal-to-immediately-free-seven-citizens-criminally-detained-for-calling-for-asset-disclosure/>.

22 Barbara Demick, "The Times, Bloomberg News, and the Richest Man in Asia," NEW YORKER, May 5, 2015, <http://www.newyorker.com/news/news-desk/how-not-to-get-kicked-out-of-china>.

23 See, e.g., Michael Caster, "The Contentious Politics of China's New Citizens Movement," OPEN DEMOCRACY, Jun. 6, 2014, <https://www.opendemocracy.net/civilresistance/michael-caster/contentious-politics-of-china-s-new-citizens-movement>.

24 David Barboza, "Billions in Hidden Riches for Family of Chinese Leader," NEW YORK TIMES, Oct. 26, 2012, <http://www.nytimes.com/2012/10/26/business/global/family-of-wen-jiabao-holds-a-hidden-fortune-in-china.html>.

25 Michael Forsythe, Shai Oster, Natasha Kahn and Dune Lawrence, "Xi Jinping Millionaire Relations Reveal Fortunes of Elite," BLOOMBERG, Jun. 29, 2012, <http://www.bloomberg.com/news/articles/2012-06-29/xi-jinping-millionaire-relations-reveal-fortunes-of-elite>.

26 Xu Zhiyong, Xiao Shu, Teng Biao, et al., *Appeal to Immediately Free Seven Citizens Criminally Detained for Calling Attention for Asset Disclosure*, *supra* note 21.

society, which has been punctuated by the arrest or detentions of hundreds of individuals, many of them lawyers, through to the date of this report's publication.²⁷

Another major round of detentions occurred in early 2014. That spring, dozens of activists calling for greater transparency, freedom of expression, and other fundamental rights, were questioned, detained, harassed, or placed under house arrest in the lead-up to the 25th anniversary of the 1989 Tiananmen Square crackdown.²⁸ Over a three-week period in June and July of 2014, over sixty activists were detained, including pro-democracy rights advocates, journalists, scholars, and artists.²⁹ Rights lawyers Pu Zhiqiang (浦志强), Tang Jingling

27 Teng Biao, "Beyond Stability Maintenance – From Surveillance to Elimination," CHINA CHANGE, Jun. 22, 2014, <http://chinachange.org/2014/06/22/beyond-stability-maintenance-from-surveillance-to-elimination>.

28 Amnesty International, *China: Persecution of Tiananmen Activists Exposes President Xi's Reform Lies*, May 28, 2014, <https://www.amnesty.org/en/latest/news/2014/05/china-persecution-tiananmen-activists-exposes-president-xi-s-reform-lies/>.

29 Teng Biao, *From Stability Maintenance and Control to Wiping Out*, Jul. 25, 2014, translation by

SPOTLIGHT:

XU ZHIYONG (许志永) – PAYING A HARSH PENALTY FOR PLAYING BY THE RULES

"For each and every Chinese national to act and behave as a citizen ... To take seriously the rights which come with citizenship, those written into the Universal Declaration of Human Rights and China's Constitution... And also to take seriously the responsibilities that come with citizenship, starting with the knowledge that China belongs to each and everyone one of us, and to accept that it is up to us to defend and define the boundaries of conscience and justice."¹ These words describe the principles underlying the New Citizens' Movement, a campaign founded by prominent rights lawyer Xu Zhiyong (许志永) to pursue justice by working within the parameters of China's legal system, while encouraging the public to embrace the rights and responsibilities of citizenship. Sadly, these words, part of his final statement to the Beijing No. 1 Intermediate People's Court following a one-day trial are among the last the public may hear from Xu Zhiyong for several years.² The court eventually convicted him of "assembling a crowd to disrupt order in a public place" and sentenced him to four years in prison, where he remains today.³

For years, Xu Zhiyong, a former law lecturer at Beijing University of Post and Telecommunications, dedicated himself to social justice causes that were often directly in line with government priorities, including representation of

victims in the 2008 tainted milk scandal. Nonetheless, he has been targeted by officials as a result of his work. 2009, for instance, he was detained on charges of tax evasion in connection with foreign funding received by the Open Constitution Initiative, a legal advocacy center he co-founded.⁴ Before the case came to trial, however, he was released later that year.⁵

Xu Zhiyong's current imprisonment stems from charges in connection with peaceful demonstrations he helped organize in 2012 and 2013 calling for transparency in official spending and equal access to education for rural children.⁶ He was arrested and detained with several other members of the New Citizens' Movement—including Zhao Changqing (赵常青), Ding Jiaxi (丁家喜), Yuan Dong (袁冬), Hou Xin (侯欣), Li Wei (李蔚), Zhang Baocheng (张宝成).⁷ Notably, many monitors noted major procedural irregularities during Xu's one-day trial, including intimidation of witnesses, prohibitions against independent observers from attending proceedings, and repeated obstructions of Xu's defense lawyers, Zhang Qingfang (张庆方) and Yang Jinzhu (杨金柱).⁸ Sadly, it appears that even those lawyers committed to working within China's legal system are subject to official backlash. As Zhang Qingfang ironically noted, "Xu Zhiyong created a path for citizens to push for social progress within the legal framework because he has always been against the past revolutionary practices of overthrowing or subverting [the system] to promote society's progress."⁹

Notes

- 1 Human Rights in China, "For Freedom, Justice, and Love"—Xu Zhiyong's Final Statement at Trial, Jan. 22, 2014, www.hrichina.org/en/citizens-square/freedom-justice-and-love-xu-zhiyongs-final-statement-trial.
- 2 *Id.*
- 3 Jonathan Kaiman, "China Upholds Four-Year Sentence of Activist Xu Zhiyong," Apr. 11, 2014, THE GUARDIAN, www.theguardian.com/world/2014/apr/11/china-upholds-sentence-activist-xu-zhiyong.
- 4 Michael Wines, "Without Explanation, China Releases 3 Activists," Aug. 23, 2009, NEW YORK TIMES, www.nytimes.com/2009/08/24/world/asia/24china.html.
- 5 *Id.*
- 6 Jonathan Kaiman, "China Upholds Four-Year Sentence of Activist Xu Zhiyong," *supra* note 3.
- 7 *Id.* See also Human Rights in China, *Citizen Activists on Trial 2013-2014: Schedule/Status and Essays*, May 8, 2015, www.hrichina.org/en/citizen-activists-trial-2013-2014-schedulestatus-and-essays.
- 8 *Id.* See also Human Rights in China, *Xu Zhiyong Trial Ends without Verdict, Foreign Journalists Attacked*, Jan. 23, 2014, www.hrichina.org/en/press-work/case-update/xu-zhiyong-trial-ends-without-verdict-foreign-journalists-attacked.
- 9 Sui-Lee Wee, "Prominent Chinese activist scorns court as jail term upheld," REUTERS, Apr. 11, 2014, www.reuters.com/article/2014/04/11/us-china-activist-idUSBREA3A04M20140411.

(唐荆陵), Liu Shihui (刘士辉), Xia Lin (夏霖), and Yu Wensheng (余文生) were also detained.³⁰ (See *Spotlight: Pu Zhiqiang* (浦志强)—*Telling Truths in the Face of Official Lies* on pages 23-24 and *Spotlight: Tang Jingling* (唐荆陵)—*Light against Darkness* on pages 20-22.) Also targeted was the anti-discrimination organization Yirenping (益仁平), whose Zhengzhou offices were raided in June 2014. (See *Spotlight: Yirenping—Strategic Advocacy and the Consequences of Success* on page 28.) Yirenping's lawyer Chang Boyang (常伯阳) was detained on charges of "gathering a crowd to disrupt public order." Under pressure from government authorities, numerous NGO leaders also left China during the summer of 2014 to wait out the crackdown in voluntary exile. Detentions and harassment continued into the fall and spring, culminating in the detentions of at least 270 legal activists and lawyers in the summer of 2015.

The criminal detention of five feminist activists in Beijing, Guangzhou, and Hangzhou, from March to April of 2015,³¹ surprised some observers, given that their topic of protest—sexual harassment on public transportation—seemed to pose a minimal challenge to the central leadership. (See *Spotlight: The Five Feminists—Fighting to Inspire a Growing Women's Rights Movement* on pages 31-32.) Furthermore, they were criminally detained on an official rather than informal basis, which is more often the case in these situations. Whereas activists of this status may have had casual "chats" with their handlers or other public security officials in the past, it is unlikely that they would have been further singled out, much less criminally detained. The length of detentions of the five women's rights activists, which lasted over a month, further demonstrated a new standard of severity in the response to rights-related challenges to government authorities.

In summary, the situation facing rights lawyers in China is part of a general tightening of controls on civil society, with a concerted pushback by the authorities against not only lawyers, but public opinion leaders, scholars, and journalists as well. This has been accompanied by progressively more severe restrictions on the freedom of expression and information dissemination. The summer 2015 crackdown is an escalation of these trends that attempts to silence and control a broad range of rights lawyers. As explained in more detail below, the origins and triggers to this phase of the crackdown stems from a combination of factors, including changes prompted by the recent leadership

Human Rights in China available at www.hrichina.org/en/china-rights-forum/stability-maintenance-and-control-wiping-out.

30 *Id.*

31 Tania Branigan, "Five Chinese Feminists held over International Women's Day Plans," Mar. 12, 2015, THE GUARDIAN, <http://www.theguardian.com/world/2015/mar/12/five-chinese-feminists-held-international-womens-day>. The women were conditionally released "pending further investigation" on April 13, 2015. They remain subject to limits on their political rights. See Human Rights in China, HRIC Law Note: Five Detained Women Released On "Guarantee Pending Further Investigation", Apr. 13, 2015, <http://www.hrichina.org/en/legal-resources/hric-law-note-five-detained-women-released-guarantee-pending-further-investigation>.

transition, and increased activism and strategic coordination by lawyers and other human rights advocates.

SPOTLIGHT:

TANG JINGLING (唐荆陵)—“LIGHT AGAINST DARKNESS”

A bona fide veteran of the cause lawyering movement, Tang Jingling (唐荆陵) has experienced almost every type of attack against rights lawyers that Chinese officials have devised—and yet his resolve to fight for democracy and rule of law appears only to have strengthened. His career began in 2000 with the Guangdong Huazhijie Law Firm, where he gained prominence for his 2005 representation of citizens from the village of Taishi, who famously sought to recall their village chief amid allegations of corruption.¹ However, as is common for firm-affiliated lawyers handling cases causing embarrassment for public officials, Tang’s employment contract was prematurely terminated by his firm, and no other firms were willing to hire him.² As a result, his license to practice law was officially suspended, and has been ever since. However, Tang continued to provide legal assistance on a wide range of human rights cases, and eventually founded the “Non-Violent Citizens’ Disobedience Movement,” a dynamic campaign for legal and social reform supported by a network of like-minded activists.³

In connection with his pro-democracy work, Tang was arrested in February 2011 and held in a secret “black jail” on charges of “inciting subverting the state power.” While in detention, Tang endured a number of serious rights violations, including psychological abuse, sleep deprivation, and physical beatings amounting to torture. Though eventually released, Tang and his wife, Wangyang Fang (汪艳芳) have since been regularly harassed and intimidation, including through periods of house arrest.

Most recently, Tang was detained on May 16, 2014, on suspicion of “picking quarrels and provoking troubles,” part of the broader roundup of rights defenders in the lead up to the 25th anniversary of June Fourth.⁴ He was seized along with fellow activists Yuan Xinting (袁新亭) and Wang Qingying (王清莹), key players in Guangzhou’s vibrant community of activists, which had come under increasing scrutiny in recent years. The men, known as the “Guangzhou Three,” were formally arrested on June 20, 2014, on elevated charges of “inciting subversion of state power.”⁵ Tang was initially tried on June 19, 2015, but the trial suspended when his family dismissed his defense counsel to protest procedural irregularities.⁶ The trial reopened eventually concluded on July 24 without a verdict, and Tang has remained in detention ever since.⁷

In an eloquent show of defiance, Tang drafted a final statement for submission during his trial, which resonated strongly with rights defenders in China and worldwide. "This is a trial of darkness against light, a trial of destruction of hope," his statement read.⁸ "However, even if temporarily defeated, justice is far more powerful than evil ... Even though we are incapable of stopping the havoc wrought by evil, we can persevere in our pursuit of freedom and justice."⁹

Notes

- 1 China Human Rights Defenders, *Tang Jingling* (唐荆陵), www.chrlawyers.hk/en/content/tang-jingling.
- 2 *Id.*
- 3 *Id.*
- 4 Human Rights in China, *Excerpts from Tang Jingling's Self Defense and Final Statement at Trial*, Jul. 24, 2015, www.hrichina.org/en/citizens-square/excerpts-tang-jinglings-self-defense-and-final-statement-trial (translation by Human Rights in China).
- 5 Chinese Human Rights Defenders, *Submission to UN on Tang Jingling, Wang Qingying, and Yuan Xinting – July 9, 2014*, Aug. 19, 2014, chrnet.com/2014/08/submission-to-un-on-tang-jingling-wang-qingying-and-yuan-xinting-july-9-2014/.
- 6 Human Rights in China, *Excerpts from Tang Jingling's Self Defense and Final Statement at Trial*, *supra* note 4.
- 7 *Id.*
- 8 *Id.*
- 9 *Id.*

B. The Leadership Transition

The leadership transition at the top levels of the CPC, which took place between late 2012 and early 2013, is frequently cited as one of main factors behind the recent crackdown on civil society in China.³² Many rights lawyers, as well as other non-governmental entities, have pointed to Xi Jinping's rise to power as a turning point, citing increased pressure from the public security apparatus since he came to power. Under Xi and Premier Li Keqiang (李克强), the government has initiated a sweeping anti-corruption campaign³³ and has also conducted a purge of the public security apparatus.³⁴ These steps have been widely interpreted as a show of force by the new leadership. Xi Jinping has demonstrated a willingness to make waves early on and to take political risks, but has also exhibited a hard-line approach to maintaining control and stability.³⁵

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- 32 Gerry Shih, "China Targets Rights Lawyers as Crackdown on Activists Widens," REUTERS, Jun. 12, 2015, www.reuters.com/article/2015/07/12/us-china-rights-crackdown-idUSKCN0PM06E20150712.
 - 33 Dingding Chen, "China's Anti-Corruption Campaign Enters Phase Two," THE DIPLOMAT, Jul. 2, 2015, <http://thediplomat.com/2015/07/chinas-anti-corruption-campaign-enters-phase-two/>.
 - 34 Kerry Brown, "Why Zhou Yongkang Had to Go," THE DIPLOMAT, Aug. 4, 2014, <http://thediplomat.com/2014/08/why-zhou-yongkang-had-to-go/>.
 - 35 Chris Buckley, "China's New President Nods to Public Concerns, but Defends Power at Top," NY TIMES, Mar. 14, 2013, <http://www.nytimes.com/2013/03/15/world/asia/chinas-new-leader-xi-jin-ping-takes-full-power.html>.

In particular, his stance on anti-corruption has been unforgiving, as demonstrated by the CPC's investigations into Zhou Yongkang (周永康), the retired but once powerful security chief, now convicted on corruption charges,³⁶ as well as the bribery conviction of Liu Tienan (刘铁男),³⁷ who had been a senior economic official who served as deputy director of the National Development and Reform Commission. Xi's anti-corruption campaign has been described as the "most fearsome" in more than thirty years, and a key goal of his political strategy.³⁸ Xi's ongoing agenda was first laid out in full at the Third Plenary Session of the 18th Central Committee of the Communist Party of China ("Third Plenum"), which took place in November 2013. Comprised of sixty points and dozens of pages, the definitive document of the Third Plenum, the "Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform" ("the Decision"),³⁹ has been hailed by academic observers and business analysts alike as the most pro-market reforms ever announced in the history of the PRC, surpassing even those made by Deng Xiaoping (邓小平) in 1976 and 1993.⁴⁰

Although it focused primarily on the economy, the Decision also emphasized that strengthening Party power at the top, and reigning in lower-tier officials, as the only way to the "rejuvenation of the Chinese nation."⁴¹ Internal review processes have been revised to curb corruption,⁴² and Xi has also created and now leads two new institutional mechanisms, the National Security Committee and the Central Deepening-Reform Leading Group, which will further centralize his

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- 36 Benjamin Kang Lim, "'Tiger' Zhou Yongkang: Did China's Former Security Chief Murder his First Wife?", THE INDEPENDENT, Sept. 12, 2014, <http://www.independent.co.uk/news/world/asia/tiger-zhou-yongkang-did-chinas-former-security-chief-murder-his-first-wife-9730309.html>.
- 37 "Liu Tienan: Top Chinese Economist Jailed over Bribery," BBC NEWS, Dec. 10, 2014, <http://www.bbc.com/news/world-asia-china-30408032>.
- 38 Minxin Pei, "Xi Jinping has Much to Learn from Deng's Example of Winning Over Allies," SOUTH CHINA MORNING POST, Aug. 4, 2014, www.scmp.com/comment/article/1566229/xi-jinping-has-much-learn-dengs-example-winning-over-allies.
- 39 *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform* [中共中央关于全面深化改革若干重大问题的决定], adopted at the Third Plenary Session of the 18th Central Committee of the Communist Party of China Nov. 12, 2013, published Jan. 16, 2014, http://www.china.org.cn/chinese/2014-01/17/content_31226494.htm.
- 40 Knowledge@Wharton, *Road to the Chinese Dream? Xi Jinping's Third Plenum Reform Plan*, Dec. 10, 2013, <http://knowledge.wharton.upenn.edu/article/road-chinese-dream-xi-jinpings-third-plenum-reform-plan>; Wayne Ma, "Third Plenum: The Analysts' Take," WALL STREET JOURNAL, Nov. 12, 2014, <http://blogs.wsj.com/chinarealtime/2013/11/12/third-plenum-the-analysts-take/>.
- 41 *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform*, supra note 39. See Section 16, "Strengthening and Improving the Party's Leadership in the Course of Comprehensively Deepening the Reform" [加强和改善党对全面深化改革的领导], http://www.china.org.cn/chinese/2014-01/17/content_31226494_16.htm.
- 42 Heng Shao, "The Political Messages Buried In Xi Jinping's Reforms," FORBES, Nov. 21, 2013, <http://www.forbes.com/sites/hengshao/2013/11/21/third-plenums-message-on-central-local-relations-views-from-america-singapore-and-china/>.

power.⁴³ The agenda for consolidating control within the Party is complemented by a social policy that has severely curtailed political freedoms in a manner similar to the crackdowns under Hu Jintao in 2011. Indeed, some have taken Xi's visit in August 2014 to a historical site where Mao Zedong (毛泽东) undertook one of his own rectification campaigns to ensure party discipline in the 1950s as a turn towards a more conservative political agenda.⁴⁴ While comparisons to Deng were common in the lead-up to Xi taking office, commentators later began drawing similarities to Mao instead. Chinese liberals, activists, and foreign observers alike have been vocal in their disappointment.

43 Within just six months of his rise to the post of General Secretary of the CPC's Central Committee in November of 2012, Xi Jinping had also assumed the other top Party, government, and military positions. In contrast, his previous two predecessors, Hu Jintao and Jiang Zemin, spent several of their first years in office alongside their predecessors.

44 Chris Buckley, "China Takes Aim at Western Ideas," NEW YORK TIMES, Aug. 19, 2013, <http://www.nytimes.com/2013/08/20/world/asia/chinas-new-leadership-takes-hard-line-in-secret-memo.html?pagewanted=all>.

SPOTLIGHT:

PU ZHIQIANG (浦志强)—TELLING TRUTHS IN THE FACE OF OFFICIAL LIES

Notwithstanding the ever-worsening reality for China's rights defense movement, even veteran lawyers were surprised when their colleague Pu Zhiqiang (浦志强) was seized by authorities on May 6, 2014 for "picking quarrels and provoking troubles" in the days leading up to the 25th anniversary of June Fourth.¹ Politically savvy and highly charismatic, Pu had a knack for being bluntly critical of the Communist Party of China without invoking angry retaliation. As he once wrote, "from top to bottom, the Communist Party cannot survive without telling lies."² But Pu's detention, which followed his participation in a small academic discussion on the impact of June Fourth in a colleague's private home, serves as a chilling reminder that no rights lawyer is free from the government's grip on China's civil society. Eventually, Pu was also charged with "inciting separatism" and "inciting ethnic hatred," for which he is still awaiting trial, having been detained since May 2014.³

Pu's has a strong record of representing victims of injustice who have faced severe consequences for calling out government misconduct and ineptitude. Past clients include Tang Hui (唐慧), who was sentenced to Reeducation-Through-Labor ("RTL") after her campaign to rescue her young daughter from kidnapping and forced prostitution became an embarrassment to the government, and Tan Zuoren (谭作人), who was imprisoned for "incitement to subvert state power" after exposing corruption in connection with poorly constructed schools destroyed by the 2008 Sichuan earthquake, killing thousands of schoolchildren.⁴ Pu also represented Tibetan environmentalist

Karma Samdrup and controversial artist Ai Weiwei (艾未未), and was instrumental in the campaign to abolish the RTL system.⁵

Troublingly, it is unclear when—or if—Pu will ever stand trial. In September 2015, 16 months after his detention, officials once again postponed the start of trial, this time for three months, the latest in a series of delays.⁶ In the words of Pu's lawyer Mo Shaoping (莫少平), a celebrated cause lawyer in his own right, "no one should be regarded as a criminal before being convicted, but he has now been locked up for over a year—this is against the spirit of the rule of law."⁷

Notes

- 1 Teng Biao, "What Will This Crackdown on Activists do to China's Nascent Civil Society?," *THE GUARDIAN*, Jan. 24, 2015, <http://www.theguardian.com/commentisfree/2015/jan/24/crack-down-activists-china-nascent-civil-society-pu-zhiqiang>.
- 2 Verna Yu, "Chinese Human Rights Lawyer Pu Zhiqiang Indicted for 'Inciting Ethnic Hatred'; Faces up to 8 Years' Jail," *SOUTH CHINA MORNING POST*, May 15, 2015, www.scmp.com/news/china/policies-politics/article/1798074/chinese-human-rights-lawyer-pu-zhiqiang-indicted?page=all.
- 3 *Id.*
- 4 Chinese Human Rights Defenders, *Pu Zhiqiang*, www.chrdnet.com/2014/06/prisoner-of-conscience-pu-zhiqiang/.
- 5 *Id.*
- 6 Verna Yu, "Chinese Rights Lawyer Held for Over a Year Without Trial Refused Bail After Court Postpones Case for Three Months," *SOUTH CHINA MORNING POST*, Sept. 8, 2015, www.scmp.com/news/china/policies-politics/article/1856201/chinese-rights-lawyer-held-over-year-without-trial.
- 7 *Id.*

1. NEW RULES FOR CIVIL SOCIETY

Some developments in the regulatory structure of social organizations had indicated the advent of positive changes in the relationship between civil society actors and government in 2013. The China Development Brief reported in January of 2014⁴⁵ that new terminology, "social governance" (社会治理) had replaced the old phrase "social management" (社会管理) in high-level speeches and documents. The latter term, which focused on the necessity of managing social organizations, had been phased out in favor of the new description, which "more liberal-minded advisors [had] advocated for because it places society and social organizations more on par with government."⁴⁶ Furthermore, the "notion of 'social governance' recognizes that social actors have a part to play in governance alongside the government and business, and that there needs to be greater cooperation between these different stakeholders if China's development is to

45 China Development Brief, *Policy Brief No. 14: The Third Plenum Brings a Chilly Spring for China's Civil Society*, Feb. 7, 2014, <http://chinadevelopmentbrief.cn/articles/policy-brief-no-14-january-2014-the-third-plenum-brings-a-chilly-spring-for-chinas-civil-society-3/>.

46 *Id.*

become more sustainable and inclusive.”⁴⁷ Section XIII of the Decision from the Third Plenum discusses social governance in depth: for example, it addresses interaction between the government and social organizations, “strengthening legal guarantees,” and “resolv[ing] social conflicts in line with the thought and approaches of the rule of law.”⁴⁸ Its discussion of social organizations, however, is indicative of the service-oriented roles that Xi believes social organizations ought to play—the document mentions public service, volunteer service, and philanthropic organizations.

However, the draft PRC Non-Mainland Non-Governmental Organization Management Law (“Draft Foreign NGO Management Law”)⁴⁹ seeks to undercut social justice organizations with ties to any NGOs or individuals outside of China. The law, currently undergoing its second reading, would require a broad range of foreign non-profit organizations to be vetted by Chinese authorities and subject to penalties for threats to the national interest.⁵⁰ Most alarmingly, the law could subject local groups and individuals to criminal penalties for any activities in cooperation with any foreign NGOs whose activities were not properly approved by the government.⁵¹ The law clearly targets organizations that have sought to develop a stronger public interest base, including local human rights organizations.

The Draft Foreign NGO Management Law, which does not clearly define the scope of entities outside of China that are targeted, has a potentially expansive breadth.⁵² The law could apply to any non-profit entity undertaking exchanges in China or with Chinese counterparts, such as judicial and legal exchanges, academic exchanges, and artistic exchanges. Significantly, it could put strict limits on the ability of organizations working on social justice, public interest, and human rights causes to function. Specifically, the proposed law substantially jeopardizes the ability of organizations to receive international support, to exchange views with networks of lawyers and other experts from other countries, and to hold events, conferences, meetings, or have any cooperation with any entity or individual based outside of China. It would further place a wide range of onerous administrative requirements

47 *Id.*

48 *Decision of the Central Committee of the Communist Party of China on Some Major Issues Concerning Comprehensively Deepening the Reform* [中共中央关于全面深化改革若干重大问题的决定], Section XIII, *Making Innovations in Social Governance System* [创新社会治理体制], http://www.china.org.cn/chinese/2014-01/17/content_31226494_13.htm.

49 People’s Republic of China Non-Mainland Non-Governmental Organization Management Law (Second Reading Draft) [境外非政府组织管理法（草案二次审议稿）], (*hereinafter* Draft Foreign NGO Management Law) Draft dated June 4, 2015, English Translation Available at China Law Translate, <http://chinalawtranslate.com/foreign-ngo-draft-2/?lang=en>.

50 *Id.* at Arts. 5, 6.

51 *Id.* at Art. 64.

52 *Id.* at Art. 2 (“This law applies to foreign NGOs conducting activities within the territory of China. ‘Foreign NGOs’ as used in this law refers to not-for-profit, non-governmental social organizations formed outside mainland China.”).

on NGOs operating in China.⁵³ The punishments for individuals in China that improperly cooperate with foreign NGOs are ill defined but potentially serious.

The Draft Foreign NGO Management Law is being considered at a time when other laws impacting human rights and the work of cause lawyers are being drafted or passed. A Draft Cybersecurity Law will further restrict speech and expression on the Internet. A recently adopted and sweeping National Security Law states its aim as to counter terrorism and related threats, but its provisions can be used to further stifle dissenting voices, including those of cause lawyers.⁵⁴

2. A SOCIALIST RULE OF LAW WITH CHINESE CHARACTERISTICS

Xi Jinping has also renewed the discourse on “ruling the country according to the law” (依法治国), yet discussions have not produced substantive legal reforms. In October 2014, the CPC held its Fourth Plenum (the fourth plenary session of the 18th Central Committee). At the time, official statements announced that “governing the country according to law” would be a focus of this meeting,⁵⁵ and the state run Xinhua News Agency reported the following about a Politburo statement:⁵⁶

[T]he rule of law is an intrinsic requirement of socialism with Chinese characteristics and crucial to modern governance. Governing according to law holds the key to the CPC's leadership, the people's well-being, deepening reform and long-term stability. The statement emphasized, that governing according to law has become more significant in the entire agenda of the Party and the nation, due to new circumstances.

Despite this promising language, the corresponding efforts by authorities to exert control through the law speak again to a *rule by law* rather than a *rule of law*, and are tied to “Chinese characteristics.” Xi’s re-popularization of Mao’s

53 See *id.* at Art. 24.

54 National Security Law of the People's Republic of China [中华人民共和国国家安全法], adopted Jul. 1, 2015 at the 15th meeting of the Standing Committee of the 12th National People's Congress. For commentary on the law see, e.g., Human Rights Watch, *China: Proposed Cybersecurity Law Will Bolster Censorship*, Aug. 4 2015, www.hrw.org/news/2015/08/04/china-proposed-cybersecurity-law-will-bolster-censorship; Chun Han Wong, *China Adopts Sweeping National-Security Law*, WALL STREET JOURNAL, July 1, 2015, <http://www.wsj.com/articles/china-adopts-sweeping-national-security-law-1435757589>.

55 Shannon Tiezzi, “Zhou Yongkang and the Rule of Law With Chinese Characteristics,” THE DIPLOMAT, Jul. 30, 2014, <http://thediplomat.com/2014/07/zhong-yongkang-and-the-rule-of-law-with-chinese-characteristics/>.

56 “CPC to Hold Key Session on Rule of Law,” XINHUA, Jul. 29, 2014, http://news.xinhuanet.com/english/china/2014-07/29/c_133518570.htm. See also CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward [党的领导和社会主义法治是一致的，社会主义法治必须坚持党的领导，党的领导必须依靠社会主义法治], Oct. 28, 2014, available at http://news.xinhuanet.com/politics/2014-10/28/c_1113015330.htm.

"mass line" rhetoric is just one significant indication of his intention to harden the state line. The emphasis on the use of law also reflects how law is increasingly being reformed to ensure that the state can control non-governmental entities and public interest advocates.

The administration's political agenda continues to be focused on maintaining social stability. In terms of the administration's policies toward the legal system in general, there has been increased focus on professionalization, while at the same time being very wary of networking by legal professionals. There is virtually no progress being made on judicial independence, as the system continues to be focused on bureaucratic procedure. Xi's concept of the "rule of law" is one that is subservient to the Party. Part of Xi's "Four Comprehensives" (四个全面) policy promulgated in 2014 includes a commitment to governing the country according to the law.⁵⁷ These public pledges to the rule of law, as well as the regulatory changes governing social organizations, offer mixed signals when read alongside the intense crackdowns on lawyers and activists until understood within the framework of Xi's prevailing goals for economic preeminence and the centralization of power.

Despite these new official proclamations and regulatory reforms governing the nonprofit sector, there is no doubt that the space for legal advocacy and rights protection activities has diminished in recent years. Many high profile lawyers who were not targeted under the previous administration are now being persecuted under Xi, and in some cases, they are being caught in the struggle between the different factions of leaders. There has been a shift in the policy toward lawyers and civil society, demonstrated by the fact that many who were previously considered moderate and mainstream are now facing harassment and obstacles. (For example, see *Yirenping—Strategic Advocacy and the Consequences of Success* on page 28 and *Spotlight: Pu Zhiqiang (浦志强)—Telling Truths in the Face of Official Lies* on pages 23-24.) What is also evident, however, is that the crackdown, which has been undeniably harsh on rights lawyers, has also targeted those active on social media as well as dissidents and activists of all stripes. When the popular newspaper *Southern Weekend* (南方周末) attempted to publish a headline tying Xi's tagline, "China Dream" (中国梦), to constitutionalism, the publication was forced to pull its front page at the last minute.⁵⁸

One of the original documents that lead to this crackdown may be Document No. 9 (9号文件), an internal notice circulated by the Central Committee of the

57 Chris Buckley, "Xi Jinping's 'Four Comprehensives' Give Shape to a Crowded Agenda," *NEW YORK TIMES*, Mar. 1, 2015, <http://sinosphere.blogs.nytimes.com/2015/03/01/the-evolution-of-xi-jin-pings-four-comprehensives/>. See "Highlights of Communiqué of 4th Plenary Session of CPC Central Committee," *XINHUA*, Oct. 23, 2014, http://news.xinhuanet.com/english/china/2014-10/23/c_133737957.htm.

58 Teddy Ng, "Outrage at Guangdong Newspaper Forced to Run Party Commentary," *SOUTH CHINA MORNING POST*, Jan. 8, 2013, <http://www.scmp.com/news/china/article/1119378/outrage-guangdong-newspaper-forced-run-party-commentary>.

SPOTLIGHT:

YIRENPING—STRATEGIC ADVOCACY AND THE CONSEQUENCES OF SUCCESS

Founded in 2006 with a mission to use legal means to combat discrimination and defend the rights of the disadvantaged, the Beijing Yirenping Center, also known as Yirenping, has earned a reputation for effective public interest advocacy through strategic litigation and public outreach. With offices in Beijing, Hangzhou, Shenzhen, and Guangzhou, Yirenping's success stems from the representation of people with HIV and hepatitis B, people with disabilities, and women in anti-discrimination actions and advocacy campaigns against the government, companies, and schools. In 2012, Yirenping played a substantial role in carrying out six out of "China's Top Ten Public Interest Cases," as compiled by legal practitioners, academics, and journalists.¹ Unfortunately, as is often the case for successful rights lawyers, Yirenping's achievements have also branded both the organization and its lawyers as targets for official persecution under Xi Jinping's regime.

One troubling incident involved Yirenping lawyer Chang Boyang (常伯阳). Having agreed in May 2014 to defend three citizens on charges of "gathering in a public place to disturb public order" after their participation at an event to discuss the June Fourth movement, Chang attempted to visit his clients in detention—only to find himself detained under the same charges, despite having never attended the event.² To Chang's colleagues, the official motives were clear. "They were trying to prevent him from representing his clients," said Lu Jun (陆军), Yirenping's co-founder.³ Chang was then additionally charged with "suspicion of illegal commercial activities" and detained for almost six months before his release in November 2014.⁴ During that time, Yirenping's offices were raided by police, who also intimidated and harassed its employees.

More recently, following the arrests of the so-called "Five Feminists" ahead of International Women's Day in March 2015, Yirenping launched a public campaign calling for their immediate release. Of the five detainees, three—Li Tingting (李婷婷), Wu Rongrong (武嵘嵘), and Zheng Churan (郑楚然)—were current or former Yirenping employees. In retaliation against Yirenping's solidarity with the Five Feminists, officials once again raided Yirenping's offices, seizing critically important computer equipment and files of legal documents.⁵ Later, in June, authorities detained two former Yirenping employees—former office manager Yang Zhanqing (杨占青) and former office director Guo Bin (郭斌).⁶ The two were released after a month in July.⁷ Despite these setbacks, co-founder Lu Jun is hopeful that Yirenping's work will continue, emphasizing the dual focus on both legal mechanisms and public outreach. As he recently told a reporter, "You can only defend your rights by using the law, and you only win a case by influencing public opinion. There is no other way to do it."⁸

Notes

- 1 Asia Catalyst, *Yirenping Claims Six of the Top Ten Public Interest Cases of 2012*, Feb. 7, 2013, asiacatalyst.org/blog/2013/02/07/yirenping_claims_six_of_the_top_ten_public_interest_cases_of_2012/.
- 2 Didi Kirsten Tatlow, "Lawyer Charged After Trying to Defend June 4 Commemorators," *NEW YORK TIMES*, Jul. 7, 2014, sinosphere.blogs.nytimes.com/2014/07/07/lawyer-charged-after-trying-to-defend-june-4-commemorators/.
- 3 *Id.*
- 4 Chinese Human Rights Defenders, *Chang Boyang*, www.chrdnet.com/2014/09/prisoner-of-conscience-chang-boyang/.
- 5 William Wan, "China Raids NGO Offices in Latest Sign of Crackdown on Dissent," *WASHINGTON POST*, Mar. 26, 2015, www.washingtonpost.com/world/china-raids-ngo-offices-in-latest-sign-of-crackdown-on-dissent/2015/03/26/4badeaac-d3b0-11e4-ab77-9646eea6a4c7_story.html.
- 6 Sui-Lee Wee, "Chinese Police Detain Two Activists Linked to Prominent NGO," *REUTERS*, Jun. 15, 2015, www.reuters.com/article/2015/06/15/us-china-rights-idUSKBN0OV0YL20150615.
- 7 Amnesty International, *Good News! - China: Guo Bin and Yang Zhangqing Released*, Jul. 15, 2015, www.amnestyusa.org/our-work/latest-victories/good-news-china-guo-bin-and-yang-zhangqing-released-ua-13715.
- 8 Josh Chin, "Meet Lu Jun, One of China's Most Wanted Social Activists," *WALL STREET JOURNAL*, Sept. 6, 2015, www.wsj.com/articles/meet-lu-jun-one-of-chinas-most-wanted-social-activists-1441521914.

Communist Party of China's General Office in March of 2013,⁵⁹ which outlined seven "false ideological trends" to avoid. These include "promoting Western-style constitutional democracy"; "promoting 'universal values' in an attempt to weaken the theoretical foundations of the Party's leadership"; "promoting civil society in an attempt to dismantle the ruling party's social foundation"; as well as "promoting the West's idea of journalism, challenging China's principle that the media and publishing system should be subject to Party discipline."⁶⁰ The document signals an ideological shift toward a hard-line position. There are broader forces at work against foreign influences, including in the Draft Foreign NGO Management Law and the new State Security Law. The crackdown on activists over the past two years exposes the insecurity felt by the leadership, and lawyers—who defend those activists—are a clear target.

In many ways, the rhetoric around the so-called "China Dream" has also been an indication of the direction in which Xi intends to take the nation. Unveiled on March 17, 2013, the same month that Document No. 9 was circulated, the China Dream is "the dream of the whole nation, as well as of every individual."⁶¹ Xi declared in his keynote to the 12th National People's Congress, "The Chinese dream, after all, is the dream of the people. We must realize it by closely depending on the people, and we must incessantly bring benefits to the people."⁶² The intent behind the catchphrase was to control the narrative and to bring Chinese people and the government together in the achievement of mutual goals: the re-glorification of China and its global economic ascendancy. Aspirational but vague, the China Dream was quickly co-opted in ways that revealed numerous fractures: petitioners held up signs declaring their dreams, "My Chinese dream is to have my life and home back," and "My Chinese dream is justice and fairness," among others.⁶³

59 Reports state that this internal notice began circulating in late 2012, although Mingjing Magazine's version was dated March 2013.

60 For an English translation, see ChinaFile, *Document 9: A ChinaFile Translation*, www.chinafile.com/document-9-chinafile-translation. The original Chinese text was obtained by Mingjing Magazine. See also Chris Buckley, "China Takes Aim at Western Ideas," *supra* note 44; Raymond Li, "Seven Subjects Off Limits for Teaching, Chinese Universities Told," *SOUTH CHINA MORNING POST*, Aug. 29, 2013, <http://www.scmp.com/news/china/article/1234453/seven-subjects-limits-teaching-chinese-universities-told>; Ho Pin, "Gao Yu's Real Crime," *NEW YORK TIMES*, Apr. 28, 2015, <http://www.nytimes.com/2015/04/29/opinion/gao-yus-real-crime.html>.

61 "President Vows to Bring Benefits to People in Realizing 'Chinese Dream,'" *XINHUA*, Mar. 17, 2013, http://news.xinhuanet.com/english/china/2013-03/17/c_132240052.htm. Xi's first mention of "China Dream" was in 2012, but the March 2013 speech raised its profile. The Chinese term, *zhongguo meng*, can be translated as "China Dream" or "Chinese Dream." Its echo of the "American Dream" has been the topic of much discussion, and some have pointed to a New York Times op-ed by Thomas Friedman as the original source of the phrase's popularity in China. See Thomas Friedman, "China Needs Its Own Dream," *NY TIMES*, Oct. 2, 2012, <http://www.nytimes.com/2012/10/03/opinion/friedman-china-needs-its-own-dream.html>.

62 *Id.*

63 See, e.g., Rachel Lu, "Chinese Petitioners: Here's My 'Chinese Dream,'" *TEA LEAF NATION*, Mar. 27, 2013, <http://www.tealeafnation.com/2013/03/chinese-petitioners-heres-my-chinese-dream/>.

C. Evolution of Legal Activism

While March 2013 is an acknowledged start of the latest clampdown on lawyers, the tensions between public interest lawyers and government authorities predated the new administration. Under Hu Jintao, public opinion had become increasingly powerful. In recent years, the emergence of formalized lawyers' groups and networks on- and off-line have also contributed to the government's sense of a need to re-assert control over civil society in general and lawyers specifically. Coordination among lawyers, including their ability to organize, to work in concert with each other, and to mobilize public opinion, placed added pressures on government officials. The increasing professionalization and organization in activism among lawyers and other human rights defenders lead to advocacy efforts to expose human rights abuses, for example through the investigation of black jails in Heilongjiang Province. (See *Spotlight: Jiansanjiang's Black Jail—Anguish and Resilience in Heilongjiang* on pages 73-74).

1. PROFESSIONALISM, NETWORKING, AND COORDINATION

Authorities have placed the lawyers at the forefront of their "stability maintenance" (维稳) endeavor. The gradual strengthening of NGOs in recent years has been heralded as a new era for civil society space in China. Many of these organizations have received a large influx of foreign funding, and the government has become increasingly aware of this trend. While the authorities are increasingly recognizing the value of NGOs and are relaxing some registration requirements for them, organizations that work specifically on human rights issues are still subject to intense scrutiny.

These lawyers themselves are becoming more organized: lawyers put out coordinated statements within hours of someone being detained or arrested; lawyers produce and release their own reports on human rights issues; lawyers meet in self-organized groups and salons in order to discuss cases and case strategy. There is increasing cooperation and coordination between lawyers and other groups, including petitioners, journalists, and academics, and they share their legal knowledge to help in appeals, petitions, and campaigns. Lawyers are also developing increasingly sophisticated forms of organization, both formally and informally, with the establishment of many lawyers' groups and through the use of various technologies and social media, most notably WeChat (微信).

2. POLITICIZATION AND RENEWED ENGAGEMENT

The types of issues that public interest lawyers engage in have become increasingly sensitive in nature, including livelihood for migrants, the one-child policy, education, health, sexual abuse, and the detention of Falun Gong practitioners, all of which subject their work to further scrutiny. Additionally, issues and cases that had previously been thought of as relatively safe are now perceived as

more sensitive. Many lawyers themselves have also become increasingly politicized. Numerous lawyers signed the Charter 08 manifesto⁶⁴ and continued to participate in the New Citizens' Movement. Lawyers in China are constantly walking on a very fine line when it comes to politicization, and government persecution targets lawyers who work on more overtly political causes and make more explicit political statements.⁶⁵

This trend has taken lawyers' causes beyond a purely case-based model to a "citizen-based" model of activist civil rights lawyers. Many of these lawyers have also increasingly been taking more public approaches to advocating for their clients by speaking about their cases in public and building support for their causes, or, in other words, "taking to the streets." Lawyers in these instances have become protesters and movement leaders, stepping outside the confines of their profession to utilize non-law-based strategies in tandem with casework to provoke legal and political reform.⁶⁶

New social media platforms, such as microblogs (微博) and WeChat, have made it easy for people to share information with a lot of people instantaneously.

64 Teng Biao, "Political Legitimacy and 'Charter 08,'" English translation by Human Rights in China, Jun. 4, 2009, <http://www.hrichina.org/en/content/3791>.

65 Eva Pils, "Let us be citizens!": Human Rights Lawyers and the Democratic Opposition in China," forthcoming in *Contesting Civil Society*, special issue of *THE CHINA QUARTERLY*, guest-edited by Chloë Froissart and Anthony Spire. (On file with the Committee to Support Chinese Lawyers.)

66 EVA PILS, *CHINA'S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE* 232 (2015).

SPOTLIGHT:

THE FIVE FEMINISTS—FIGHTING TO INSPIRE A GROWING WOMEN'S RIGHTS MOVEMENT

In recent years, a nascent organized feminist movement has made waves—and progress—through refreshing, creative, and thought-provoking advocacy on Chinese women's issues. In 2012, for instance, activists Li Tingting (李婷婷) (also known as Li Maizi (李麦子)) and Wei Tingting (韦婷婷) paraded through the streets of Beijing in blood-spattered wedding gowns to raise awareness of domestic violence, holding signs saying "hitting is not intimacy; verbal abuse is not love."¹ Later, Li Tingting and Wang Tingting, with fellow activist Zheng Churan (郑楚然) (also known as Datu (大兔)), sought to highlight gender inequality in the allocation of public resources by staging an "Occupy the Men's Room" campaign in Guangzhou, encouraging women waiting in long lines outside restrooms to "occupy" the less-used men's rooms to reduce waiting times for women.² The campaign attracted

widespread attention and was replicated in other cities. Encouraged by their success, organizers of the growing movement planned to raise awareness of sexual harassment on public transportation on the eve of International Women's Day on March 8, 2015.³ The campaign, timed to coincide with annual sessions of the National People's Congress and the Chinese People's Political Consultative Conference in Beijing, included the placing of stickers on buses and other public transportation in Beijing and Guangzhou.⁴

The authorities, however, had other plans. On March 6 and 7, 2014, in the lead-up to International Women's Day, a number of women's and LGBT rights activists were rounded up by police in Beijing, Guangzhou, and Hangzhou. Five women, including Li Tingting, Wang Tingting, Zheng Churan, Wang Man (王曼), and Wu Rongrong (武嵘嵘), were detained under suspicion of "picking quarrels and provoking troubles" and "gathering crowds to disrupt order in public places," and transferred to Beijing's Haidian District Criminal Detention Center.⁵ What the authorities didn't plan for, however, was the enormous public backlash in support of the so-called "Five Feminists," who soon became a rallying point for China's civil society. For instance, lawyers like Wang Yu (王宇) rushed to their aid, only to be obstructed from doing their jobs by the Chinese government, including through restrictions on client visitation. (See *Spotlight: Wang Yu (王宇)—A Potent Symbol of China's Cause Lawyering Community* on pages 9-10.) Meanwhile, the prominent social justice organization Yirenping—of which Li Tingting, Wu Rongrong, and Zheng Churan were all current or former employees—mounted vocal campaigns calling for their release, resulting in retaliatory office raids and equipment seizures by the police. (See *Spotlight: Yirenping—Strategic Advocacy and the Consequences of Success* on page 28.) In the end, after intense domestic and international pressure, the Five Feminists were eventually released on bail on April 13, 2015, with considerable restrictions pending an ongoing investigation, including limitations on travel. Despite these restrictions, the Five Feminists and their supporters have all committed to continuing their work, and in so doing have galvanized an untold number of citizens—including young Chinese women—who find inspiration in their struggle.

Notes

- 1 Zhao Sile, "The Inspirational Backstory of China's 'Feminist Five,'" *FOREIGN POLICY*, Apr. 17, 2015, foreignpolicy.com/2015/04/17/china-feminist-bail-interview-released-feminism-activist/.
- 2 *Id.*
- 3 Chinese Human Rights Defenders, *5 Women's & LGBT Rights Activists Detained in Escalating Clampdown on NGOs*, Mar. 12, 2015, chrinet.com/2015/03/chrb-5-womens-lgbt-rights-activists-detained-in-escalating-clampdown-on-ngos-36-1215/.
- 4 *Id.*
- 5 Human Rights in China, *Supporting Women's Rights in China*, Apr. 28, 2015, www.hrichina.org/en/supporting-womens-rights-china. In addition, four other activists—Ai Ke (艾可), Gao Lei (高磊), Xu Ting (徐汀), Yu Lian (于莲)—were questioned and released.

These technological tools have helped to propel the movement and thus triggered various reactions from the authorities, including the 2011 crackdown and the crackdown on the New Citizens' Movement. In the case of the New Citizens' Movement, although it was relatively moderate on the political spectrum, the scale of its impact and ability to organize people elicited a strong reaction from the authorities.

The proliferation of social media has made it substantially easier for lawyers to connect and organize with each other. These new technologies pose challenges to the authorities in a much more fluid way than past modes of communication among lawyers. As a result, they are harder for the authorities to break and combat without resorting to more drastic measures. While the authorities have been attempting to restrict the online space and make these kinds of platforms less useful to social activists, both the users and the technologies themselves have proven to be very dynamic and often one-step ahead of the censors.

The Xi administration is trying to set a new standard for how the government interacts with civil society, and is ambitiously striving to reaffirm its strength as an authoritarian state. This is born out of dissatisfaction with previous policies toward civil society, and the government authorities see the lawyers more as troublemakers than as enemies of the State. The restrictions placed on lawyers are part of this broader consolidation of power and control in China today.

IV. GOVERNMENT PRACTICES THAT CONSTRAIN CAUSE LAWYERS

*"Before, you could go about your business as a lawyer without fear;
now everything has been disrupted."
—Rights lawyer⁶⁷*

A. Overview

In 1978, two years after Mao Zedong's death, China began dramatic political and economic reforms known as "Reform and Opening" (改革开放) that included a re-introduction of legal education, legal institutions, and a codified system of law that has been expanding over the past three-and-a-half decades. This has included the adoption of thousands of laws and regulations and calls—from both inside and outside the CPC—for embracing a rule of law. As recently as 2014, the fourth plenary session of the 18th Communist Party of China Central Committee announced a communiqué titled "comprehensively advancing the rule of law" in China.⁶⁸ The document identifies building a "socialist rule of law with Chinese characteristics" (中国特色社会主义法治) as a goal for the country.⁶⁹

In 2004, in the latest round of amendments to the PRC Constitution, a new clause was inserted that proclaimed, "the state respects and ensures human rights" (国家尊重和保障人权).⁷⁰ Indeed, the Constitution itself guarantees many of the same rights that are protected in international human rights instruments,⁷¹ as well as duties of citizens to protect the unity of the country, state secrets, and state security.⁷² These include the right to vote;⁷³ the rights to freedom of speech, freedom the press, and freedom of assembly and association⁷⁴; freedom of religious belief⁷⁵; protections against arbitrary arrest, detention, and

67 Interview with an anonymous lawyer, Jul. 28, 2014.

68 "Highlights of Communiqué of 4th Plenary Session of CPC Central Committee," XINHUA, Oct. 23, 2014, news.xinhuanet.com/english/china/2014-10/23/c_133737957.htm.

69 *Id.*

70 中华人民共和国宪法修正案 [CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA], Art. 33, National People's Congress, Adopted at the Fifth Session of the Fifth National People's Congress and promulgated for implementation by the Announcement of the National People's Congress on December 4, 1982 (As amended 1988, 1993, 1999, 2004) [*hereinafter* PRC Constitution].

71 Most importantly, these include the Universal Declaration of Human Rights ("UDHR"), the International Covenant on Civil and Political Rights ("ICCPR") and the International Covenant on Economic, Social and Cultural Rights ("ICESCR").

72 PRC Constitution, *supra* note 70, at Art. 48.

73 *Id.* at Art. 34.

74 *Id.* at Art. 35.

75 *Id.* at Art. 36.

search⁷⁶; protections of personal dignity⁷⁷; protections against unlawful search of the home⁷⁸; the right to privacy⁷⁹; the right to criticize the State⁸⁰; and the rights to work⁸¹ and rest⁸²; the right to social security⁸³ and social insurance⁸⁴; the right to education;⁸⁵ and the equality of rights as between women and men.⁸⁶ Importantly, the right to a defense for anyone accused of a crime is also protected in the Constitution.⁸⁷ Despite the inclusion of these rights, however, a major limitation in the Constitution is that it is not subject to judicial review, even if stronger protections for judicial independence are in place.

Like all China's citizens, lawyers are endowed with constitutional rights flowing from these provisions. In addition, the Law on Lawyers ("Lawyers Law") lays out rights and responsibilities of Chinese lawyers, including rights to access evidence, meet with clients in criminal proceedings, and annual lawyer registration requirements.⁸⁸ Most importantly, Article 37 of the Lawyers Law provides that the "personal rights of a lawyer in practicing law shall not be infringed upon."⁸⁹ It further provides that representations made by lawyers in court will not give rise to legal prosecution, "except speeches compromising the national security, maliciously defaming others or seriously disrupting the court order."⁹⁰ Despite these protections in the law, of the pressures experienced by lawyers who take on sensitive cases in China, including rights defense lawyers, cause lawyers, human rights lawyers, and in some cases criminal defense lawyers,⁹¹ have been documented for years by human rights organizations, professional associations, and Chinese lawyers themselves.⁹² Since the Committee to Support

76 *Id.* at Art. 37.

77 *Id.* at Art. 38.

78 *Id.* at Art. 39.

79 *Id.* at Art. 40.

80 *Id.* at Art. 41.

81 *Id.* at Art. 42.

82 *Id.* at Art. 43.

83 *Id.* at Art. 44.

84 *Id.* at Art. 45.

85 *Id.* at Art. 46.

86 *Id.* at Art. 52–55.

87 *Id.* at Art. 125.

88 Law on Lawyers of the People's Republic of China [中华人民共和国律师法], National People's Congress, effective June 1, 2008 [*hereinafter* Lawyers Law].

89 *Id.* at Art. 37.

90 *Id.*

91 See Section I.B., "Lawyers in China: Note on Terminology."

92 See, e.g., HUMAN RIGHTS WATCH, *A Great Danger for Lawyers: New Regulatory Curbs on Lawyers Representing Protesters* (2006), <http://www.hrw.org/reports/2006/china1206/china1206web.pdf>; HUMAN RIGHTS WATCH, *Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China* (2008) <https://www.hrw.org/report/2008/04/28/walking-thin-ice/control-intimidation-and-harassment-lawyers-china>; CSCL 2011 REPORT, *supra* note 7; AMNESTY INTERNATIONAL, *Against the Law: Crack-down on China's Human Rights Lawyers Deepens* (2011), <https://www.amnesty.org/en/documents/ASA17/018/2011/en/>; CHINA HUMAN RIGHTS LAWYERS CONCERN GROUP, *A Sword and A Shield: China's Human Rights Lawyers* (2012), <http://www.chrlawyers.hk/en/content/sword-and-shield>; New York City Bar Association, *Letter to Minister Wu Aiyang*, Mar. 5, 2011, www.hrichina.org/sites/default/files/nyc_bar_association-letter-to-h.e.xi.jinping-re-chinese-lawyers-7.28.15.pdf; New York City Bar Association, *Letter to His Excellency Mr. Xi Jinping*, Jul. 28, 2014, www.hrichina.org/sites/default/files/nyc_bar_association-letter-to-h.e.xi.jinping-re-chinese-lawyers-7.28.15.pdf.

Chinese Lawyers issued a report in 2011 describing the “shrinking space for legal activism and advocacy in China, with a focus on the escalation in enforced disappearances, secret detentions, and arrests of this community of rights lawyers” that year,⁹³ the Chinese government has expanded and intensified its arsenal of weaponry against rights defense lawyers and the broader legal profession. The crackdown on hundreds of lawyers in 2015 is the latest and most alarming manifestation of the Chinese government’s attack on the legal profession, but, as this report suggests, the trend has been growing since Xi Jinping’s rise to power in 2012 and 2013. (See *Spotlight: Summer 2015—The Latest Crackdown on China’s Cause Lawyers* on pages 5-6.) Harassment, intimidation, and detention of lawyers have all increased, according to lawyers assessing this period.⁹⁴ But perhaps more troubling is the increasing “legalization” of the ever-shrinking space for rights lawyers. Another lawyer described this trend:

*The government’s methods have changed. There’s perhaps less use of the black hooded kidnappings and illegal disappearances. But instead, they’re using other methods. For example, you can’t renew your lawyer’s license, and government officials monitor your every move.*⁹⁵

The diversity of the instruments authorities use is extensive, ranging from sophisticated, precise legal tools to neutralize the ability of lawyers to carry out their professional obligations, to extra-legal abuse and terrorization of lawyers and their families. While the variety of these weapons is broad, their purpose is singular—to neutralize and pull apart the persistent and growing vanguard of lawyers willing to take a stand on human rights, rule of law, and public interest causes.

As a practical matter, government attacks against lawyers employ mixed methods of intimidation, harassment, and harm. The vast majority of lawyers interviewed for this report experienced multiple forms personal and professional injury as a result of government targeting and persecution. Still, to better understand and assess the impact of the Chinese government’s array of weapons against rights defense lawyers, it is helpful to categorize these instruments into two broad groups: law-based measures, meaning the government’s enactment and application of domestic legal frameworks and mechanisms targeting the capacity of lawyers to function independently; and extra-legal measures, meaning government’s use of measures to inflict injury upon rights defense lawyers that are administered outside the authority of any legitimate legal framework, and often in direct contravention of fundamental international human rights norms.⁹⁶ Recent criminal law reforms have also facilitated the use of measures

[files/nyc_bar_association-letter_to_h.e._xi_jinping_re_chinese_lawyers_7.28.15.pdf](https://www.files.nycbar.org/files/nyc_bar_association-letter_to_h.e._xi_jinping_re_chinese_lawyers_7.28.15.pdf).

93 CSCL 2011 Report *supra*, note 7, at i.

94 Interview with an anonymous lawyer, Jul. 29, 2014.

95 Interview with an anonymous lawyer, Aug. 2, 2014.

96 The report issued by the Committee to Support Chinese Lawyers in 2011 primarily focused on extra-legal measures used against lawyers, but suggested that there was a rise in “the use of criminal

traditionally falling outside the legal framework—such as the detention of individuals in unknown locations—by the legal apparatus.

B. Law-Based Measures

"I was just presenting my opening statement in court and then I was detained—for ten days. In what universe is this okay? In China."
—Rights lawyer⁹⁷

"They are applying legal measures to repress the people."
—Rights Lawyer⁹⁸

Through strategic enactment and application of domestic legal frameworks and mechanisms, the Chinese government has set its sights on targeting and defusing the capacity of rights defense lawyers—individually and as a greater, coordinated community—to carry out their basic professional functions. Specifically, the government's law-based weaponry against rights defense lawyers includes legal frameworks designed and applied to hinder the ability of lawyers to freely and independently represent criminal defendants, including under the recently amended Criminal Procedure Law ("CPL"); the manipulation of regulatory mechanisms for the legal profession for the purpose of extinguishing the livelihoods of rights defense lawyers; and the outright criminalization of the work of rights defense lawyers, supported by prosecutions and campaigns to stigmatize the legal profession as a public security threat.

The use of law-based measures against these lawyers is especially stinging for the families of lawyers that have been targeted by them. As the wife of one lawyer noted, "the activities these lawyers are carrying out don't violate Chinese law; in fact, they are for the good of China."⁹⁹ Wang Qiaoling (王峭岭), the wife of prominent rights lawyer Li Heping (李和平), who was detained on July 10, 2015 and who—as this report went to press—remained missing, describes the work her husband does as "clean." She has initiated legal action against the state run news agency, Xinhua, among others, to demand an apology and ask for compensation for the slander of her husband.¹⁰⁰

charges to silence rights lawyers." 2011 CSCL Report, *supra* note 7, at 17. This report now suggests that, while extra legal attacks remain one weapon in the government's arsenal, the legalization of the attack against lawyers has dramatically increased.

97 Interview with an anonymous lawyer, Jul. 23, 2014.

98 Interview with an anonymous lawyer, Jul. 29, 2014.

99 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

100 John Sudworth, "China Blog: Wang Qiaoling's Battle to Find Missing Lawyer Husband, Li Heping," BBC News, Sept. 9, 2015, <http://www.bbc.com/news/blogs-china-blog-34199455>.

SPOTLIGHT: FENGRUI LAW FIRM—AFFECTED INDIVIDUALS

During the summer 2015 crackdown on rights lawyers, those associated with Fengrui Law Firm were specifically targeted by authorities. (See *Spotlight: Fengrui Law Firm—How Rights Lawyers Become “Criminals” in Xi Jinping’s China* on pages 43-44.) As of the time of this report’s publication, the status of those rounded up, detained, and in some cases forcibly disappeared, is as below.

Name	Position at Fengrui Law Firm	Initial Incident	Current Status
Wang Yu (王宇) ¹	Lawyer	Detained July 9, 2015 (Beijing)	Residential surveillance
Bao Longjun (包龙军) ²	Husband of lawyer Wang Yu	Detained July 9, 2015 (Beijing)	Residential surveillance
Zhou Shifeng (周世锋) ³	Director and lawyer	Detained July 10, 2015 (Beijing)	Criminal detention in an undisclosed location
Wang Quanzhang (王全璋) ⁴	Lawyer	Detained July 10, 2015 (Beijing)	Criminal detention in an undisclosed location
Huang Lique (黄力群) ⁵	Lawyer	Detained July 10, 2015 (Beijing)	Criminal detention in an undisclosed location
Liu Xiaoyuan (新晓刘) ⁶	Lawyer	Detained July 10, 2015 (Beijing)	Released
Li Shuyun (李姝云) ⁷	Lawyer	Detained July 10, 2015 (Beijing)	Whereabouts unknown
Liu Sixin (刘四新) ⁸	Assistant to Zhou Shifeng	Detained July 10, 2015 (Beijing)	Criminal detention
Zhang Weiyu (忠维张) ⁹	Lawyer	Questioned July 10, 2015 (Beijing)	Released
Jiang Tianyong (勇天江) ¹⁰	Lawyer	Questioned July 10, 2015 (Beijing)	Released
Wang Fang (王芳) ¹¹	Accountant	Detained July 10, 2015 (Beijing)	Unknown
Zhou Qing (锋周) ¹²	Driver	Detained July 10, 2015 (Beijing)	Released
Xie Yuandong (东远东) ¹³	Intern lawyer	Detained July 10, 2015 (Beijing)	Residential surveillance
Liu Shihui (辉士刘) ¹⁴	Lawyer	Summoned July 11, 2015 (Guangdong)	Released
Zhou Lixin (新立周) ¹⁵	Lawyer	Detained July 12, 2015 (Guiyang)	Released

Notes

- 1 Amnesty International, China: Latest Information on Crackdown against Lawyers and Activists, Sept. 4, 2015, www.amnesty.org/en/press-releases/2015/07/china-list-of-lawyers-and-activists-targeted/.
- 2 *Id.*
- 3 Amnesty International, China: Latest Information on Crackdown against Lawyers and Activists, *supra* note 1; China Human Rights Lawyers Concern Group, “709 Crackdown” Lawyers’ Case Update* (12 September 2015–19 September 2015), Sept. 18, 2015, www.chrlawyers.hk/en/content/“709-crackdown”-lawyers-case-update-12-september-2015-19-september-2015.
- 4 *Id.*
- 5 *Id.*
- 6 Amnesty International, China: Latest Information on Crackdown against Lawyers and Activists, *supra* note 1.
- 7 *Id.*
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 *Id.*
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 *Id.*

1. LAWS PREVENTING LAWYERS FROM CARRYING OUT THEIR PROFESSIONAL OBLIGATIONS

"The judge just slammed down the gavel and refused to let me to speak."
—Rights lawyer¹⁰¹

Despite protections in the international legal framework, most importantly in the UN Basic Principles, the ability of Chinese lawyers to do their jobs are purposefully restricted through laws and regulations. The over-regulation of what a lawyer can and cannot do in the context of representing his or her client extends to activities both inside and outside the courtroom. Despite the protections provided through the Lawyers Law, described above, the totality of criminal law provisions, directives from the Supreme People's Court and other bodies, as well as draft lawyers association regulations, all aim to constrain and control what lawyers are able to do.

a) Impeding Client Representation in the Courtroom

The Lawyers Law anticipates the role of the lawyer in the courtroom providing that:

*A lawyer serving as a defender shall present materials and arguments proving that a criminal suspect is innocent or is less guilty than charged or his criminal liability should be mitigated or relieved, on the basis of fact and law, so as to protect the legal rights and interests of the criminal suspect or defendant.*¹⁰²

The Lawyers Law also emphasizes, however, that lawyers cannot "seriously disrupt court order,"¹⁰³ a proviso that is bolstered through Article 309 in the Criminal Law that makes it a crime for anyone to disturb court order.¹⁰⁴ On August 29, 2015, the Standing Committee of the National People's Congress promulgated the Ninth Amendment to the Criminal Law of the People's Republic of China (Amendment), which will go into effect on November 1, 2015.¹⁰⁵ Most pressing in the Amendment for lawyers that represent unpopular clients and causes is a modification to Article 309, which expands the actions for which people can be

101 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

102 Lawyers Law, *supra* note 88, at Art. 31. English translation from HUMAN RIGHTS WATCH, *Walking on Thin Ice: Control, Intimidation and Harassment of Lawyers in China*, *supra* note 92.

103 Lawyers Law, *supra* note 88, at Art. 37.

104 Criminal Law of the People's Republic of China [中华人民共和国刑法], enacted by the National People's Congress March 14, 1997, Art. 309.

105 Criminal Law of the People's Republic of China Amendment (9) [中华人民共和国刑法修正案(九)], adopted on Aug. 29, 2015 at the 16th meeting of the Standing Committee of the 12th National People's Congress, Art. 383. The Amendment includes other provisions, some that human rights organizations have praised, including provisions that aim to gradually reduce the number of crimes punishable by the death penalty.

charged with “disrupting courtroom order” and sentenced for up to three years imprisonment, short-term detention, controlled release (akin to bail), or with a fine. These are:

1. Gathering crowds to make a racket or attack the court;
2. Beating judicial personnel or litigation participants;
3. Insulting, defaming, or threatening judicial personnel or litigation participants and not heeding the court’s admonitions, seriously disrupting courtroom order;
4. Exhibiting conduct such as disrupting courtroom order such as undermining courtroom operations or stealing or destroying litigation documents or evidence, where the circumstances are serious.¹⁰⁶

As detailed below, lawyers have already, under the existing provisions of Article 309, been removed from the courtroom or detained. The expanded language that will come into effect on November 1, 2015, only puts them at greater risk. The text is vague and allows for a subjective interpretation that may prevent lawyers from mounting an effective defense in a courtroom.

A new set of regulations issued by the Supreme People’s Court, Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice in September 2015¹⁰⁷ states its aim as ensuring the practice rights for lawyers and promoting the fair administration of justice.¹⁰⁸ The provisions instruct official organs not to interfere with the lawyer’s right to access information, meet clients, and build their case inside and outside the courtroom,¹⁰⁹ and to correct any interference—including physical interference—swiftly.¹¹⁰ The new regulations also place responsibilities on lawyers that suggest they also may be further used to control lawyers’ activities and act in concert with related laws and regulations.

Moreover, lawyers in China are all required to be a member of the official, non-independent, lawyers associations, including the All-China Lawyers Association (中华全国律师协会, “ACLA”).¹¹¹ The lawyers associations are charged

106 People’s Republic Of China Criminal Law Amendment (9) [中华人民共和国刑法修正案(九)], adopted on Aug. 29, 2015 at the 16th meeting of the Standing Committee of the 22 National People’s Congress, Art. 309, unofficial English translation replicated from China Law Translate, text available at <http://bit.ly/1iLOBBO>.

107 Provisions on Ensuring the Practice Rights of Lawyers in Accordance with Law [关于依法保障律师执业权利的规定], Supreme People’s Court, Procuratorate, Ministry of Public Security, Ministry of State Security, and Ministry of Justice, released on September 20, 2015, available at <http://bit.ly/1PsQ3mN>; unofficial English translation available at <http://chinalawtranslate.com/lawyers-practice-rights/?lang=en>.

108 *Id.* Art. 1.

109 *Id.* Art. 2.

110 *Id.* Art. 3.

111 Lawyers Law, *supra* note 88, at 45.

with establishing a professional code, and the ACLA promulgated the Practice Code of Conduct in 2004 for trial implementation.¹¹² However, proposed draft revisions to the Code of Conduct ("Draft Code Revisions") include detailed and comprehensive provisions that aim to "standardiz[e] lawyers' professional conduct and safeguarding the rights and interest of the legal profession."¹¹³ The Draft Code Revisions would apply to individual lawyers as well as law firms, and provides that a punishment or admonishment be given where lawyers' conduct violate the regulations.¹¹⁴ The Draft Code Revisions emphasize the duty of lawyer to support the CPC leadership, socialism, and the State, and to defend socialism with Chinese characteristics,¹¹⁵ and also require that lawyers show "good political and professional character and a good professional moral quality,"¹¹⁶ though these terms are not defined.

Several provisions of the Draft Code Revisions are of particular concern for lawyers taking on sensitive cases. Article 9 warns lawyers to "be prudent in their speech and actions, objective and fair in judicial commentary and use of the internet and media, protecting state secrets and clients commercial secrets and personal privacy."¹¹⁷ Moreover, Article 11 states:

*Lawyers must not publish open letters, unite and instigate protests, encourage or assist the inflammation of public opinion, putting pressure on case-handling organs and influencing their handling of the case in accordance with law.*¹¹⁸

Article 13 prohibits lawyers from "participating in or supporting organizations or activities which are incompatible with the duties and identity of a lawyer, or influence lawyers' societal image."¹¹⁹ The terms used are vague and can be subjectively interpreted to prohibit lawyers from participating in social justice lawyering. Article 17 raises similar concerns. Article 17 prohibits lawyers from exhibiting five categories of conduct as follows¹²⁰:

(1) Conduct causing adverse social impacts, detrimental to the reputation of the legal profession;

112 All China Lawyers Association Code of Conduct for Practicing Lawyers (2011 Revision) [全国律协律师执业行为规范], Reviewed and provisionally passed by the Ninth Executive Council of the All China Lawyers Association on March 20, 2004, and revised by the Second session of the seventh Council on December 27, 2009. .

113 Lawyers Practice Code of Conduct (Draft Revisions) (*hereinafter* Draft Code Revisions), unofficial English translation available at China Law Translate, <http://chinalawtranslate.com/lawyers-practice-code-of-conduct-draft-revisions/?lang=en>.

114 *Id.* Art. 3.

115 *Id.* Art. 5.

116 *Id.* Art. 8.

117 *Id.* Art. 9.

118 *Id.* Art. 11.

119 *Id.* Art. 13.

120 *Id.* Art. 17.

- (2) Conduct detrimental to national judicial and administrative organs lawful exercise of their powers;
- (3) Participating in prohibited institutions, organizations or community groups;
- (4) Other violations of laws, regulations, the lawyers' association code of conduct or professional ethics;
- (5) Other violations of public morality, causing serious damage to the image of the legal profession.

In light of the already existing practice related to targeting lawyers using these vague terms in provisions that restrict activities in the courtroom, the detailed and specific provisions laid out in this code should be cause for concern, and reflect the trend towards over-regulation of lawyers' professional conduct.

Recent examples demonstrate the danger of this type of regulation. There are numerous instances of lawyers being detained during the hearing, lawyers being silenced and prevented from presenting their case, and lawyers being barred entry into the courtroom. Recent examples are startling in their heavy-handedness towards lawyers, especially in light of the protections that are purportedly available in the Lawyers Law:

- April 2013: Beijing-based criminal defense lawyer Wang Quanzhang (王全章) was placed under a 10-day judicial detention for "serious violations of court procedure," under Article 194 of the CPL. One account of the incident indicates that Wang had attempted to use his own mobile phone to photograph a set of original documents that he was submitting to the court, but the judge ordered court security to confiscate his phone and took him into custody for "speaking loudly during the hearing."¹²¹
- January 2014: Beijing-based rights defense lawyer Cheng Hai (程海) represented Ding Jiaxi (丁家喜), a New Citizens Movement activist who was prosecuted as a result of his activism on educational equality and pushing for transparency in officials' assets.¹²² During the trial, Cheng withdrew from the court in protest over procedural violations, subsequently filing complaints with the authorities. In retaliation, the Changping District Judicial Administration Bureau in Beijing informed him on August 22 that his law license would be administratively suspended for a year, because he had "disrupted court order during a trial" and "interfered in the normal

121 CHINESE HUMAN RIGHTS DEFENDERS, A NIGHTMARISH YEAR UNDER XI JINPING'S "CHINESE DREAM": 2013 ANNUAL REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN CHINA (2014), chrdnet.com/2014/03/a-nightmarish-year-under-xi-jinpings-chinese-dream-2013-annual-report-on-the-situation-of-human-rights-defenders-in-china/. See also Human Rights in China, *Rights Defense Lawyer Detained After Court Appearance*, Apr. 3, 2013, <http://www.hrichina.org/en/content/6619>.

122 Human Rights in China, *Case Background: Lawyer Cheng Hai Faces One-Year License Suspension*, Sept. 5, 2014, <http://www.hrichina.org/en/case-background-lawyer-cheng-hai-faces-one-year-license-suspension>.

functioning of prosecutorial activities” during his defense of Ding.¹²³

- September 2013: When one rights lawyer told the Committee that during her appearance in court at the beginning of one trial, she unable to present her case at all and was silenced by the judge who slammed down his gavel and refused to let her speak. Although the law allows provides that lawyers be permitted to make requests at the start of a trial, she was prevented from doing so. In an earlier incident in 2012, the same lawyer had been detained by the court in the middle of a trial and was held for 10 days, seemingly in the course of simply presenting her case during trial.¹²⁴
- June 2013: Lawyers Li Subin (李苏滨) and Guo Haiyue (郭海跃) and nine other lawyers defending a group of 13 members of the banned Falun Gong spiritual movement were prevented from attending trial in Dalian at the Xigang District People’s Court. The lawyers, who were all staying at

123 *Id.*

124 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

SPOTLIGHT:

FENGRUI LAW FIRM—HOW RIGHTS LAWYERS BECOME “CRIMINALS” IN XI JINPING’S CHINA

As the shifting boundaries of public advocacy in China become more restrictive, rights lawyers face the intensifying challenge of representing their clients to the fullest in the midst of an ever-shrinking space. In recent years, Beijing’s Fengrui Law Firm has risen to this challenge with creativity, cunning, and grit. Founded by Zhou Shifeng (周世锋) in 2007, Fengrui’s team has grown to include a number of accomplished lawyers from prestigious law schools, including Wang Yu (王宇). (See *Spotlight: Wang Yu—A Potent Symbol of China’s Cause Lawyering Community* on pages 9-10.) Together, these lawyers and their staff have launched high-profile advocacy campaigns featuring a number effective strategies, including the staging of peaceful demonstrations outside judicial venues and proceedings, often attended by supportive citizens traveling from around the country, as well as powerful social media awareness campaigns, demonstrating expertise in using new media channels to bolster legal advocacy. From campaigns for police accountability for violent abuses against unarmed citizens to the defense of high-profile clients, including activists, journalists, and rights defenders, Fengrui’s adaptive strengths set a powerful example for other lawyers to follow.

Unfortunately, Fengrui’s growing influence appears to have been the very reason behind a brutal government backlash, setting off an astonishing nationwide

crackdown on lawyers in China in the summer of 2015. From July 9 to July 12, fifteen Fengrui-affiliated lawyers and associates were targeted for detention, intimidation, and in some cases, ongoing disappearance.¹ Shockingly, as of the date of this report's publication, the whereabouts of two of those individuals—lawyer Li Shuyun (李姝云) and accountant Wang Fang (王芳)—remain unknown. Meanwhile, six others—Fengrui lawyers Zhou Shifeng, Wang Yu, Wang Quanzhang (王全璋) and Huang Lique (黄力群), along with Wang Yu's husband, lawyer Bao Longjun (包龙军), and Zhou Shifeng's assistant Liu Sixin (刘四新)—remain detained and facing a range of criminal charges, most notably including "incitement to subvert state power."² (See *Spotlight: Fengrui Law Firm—Affected Individuals* on page 38.) The extravagant nature of the charges against Fengrui is illustrative of the Chinese Communist Party's latest campaign, under the leadership of Xi Jinping, to disparage the rights defense movement. (See *Spotlight: The Summer of 2015—A New and Chilling Crackdown on China's Cause Lawyers* on pages 5-6.) Among other things, the Fengrui lawyers are accused of operating a "major crime syndicate" aiming to cause "social chaos."³ Making matters worse, under unknown circumstances, Fengrui lawyers Zhou Yifeng and others appear to have publicly "confessed" to the criminal charges, prompting widespread concern that detainees have been subjected to coercion, torture, or other cruel, inhuman or degrading treatment or punishment, further amplifying concerns that the detainees will not receive a fair trial under international law standards.

For now, Fengrui's professional colleagues, including lawyers inside and outside China, stand in solidarity with all the lawyers and legal staff swept up in the latest crackdown. (See *Spotlight: Lawyers Supporting Lawyers—Global Solidarity with Chinese Colleagues* on page 14.) As a consortium of international professional lawyers' and jurists' groups correctly noted, the outrageous criminalization of Fengrui and other rights lawyers in China "make[s] it impossible to take President Xi Jinping's recent claims to be promoting the rule of law seriously, as they rigorously violate" critical international human rights principles, including those which the Chinese government has itself endorsed.⁴

Notes

- 1 Amnesty International, *China: Latest Information on Crackdown against Lawyers and Activists*, Sept. 4, 2015, www.amnesty.org/en/press-releases/2015/07/china-list-of-lawyers-and-activists-targeted/.
- 2 *Id.*
- 3 Chris Buckley, "People's Daily Details Allegations Against Lawyers Detained in China," *NEW YORK TIMES*, Jul. 13, 2015, sinosphere.blogs.nytimes.com/2015/07/13/peoples-daily-details-allegations-against-detained-lawyers/.
- 4 Consortium of Professional Lawyers' and Jurists' Organizations, *Open Letter to His Excellency Mr. Xi Jinping*, Jul. 21, 2015, www.advocatenvooradvocaten.nl/wp-content/uploads/Letter-Objecting-to-Chinese-lawyers-arrests-21-July-2015.pdf.

the same hotel in the city, also reported that numerous police had been monitoring their hotel and were camped outside up to two days before the trial was set to begin.¹²⁵

- October 2013: Police imposed a set of security checks around the Ji-ayang People's Court in Ziyang, Sichuan ahead of the start of trial for six Falun Gong practitioners, and denied their eight lawyers entry past the barriers. Lawyer Liang Xiaojun, who was defending one of the defendants, told reporters that after a number of security checks against identity cards, the lawyers were asked to submit to body searches, which they refused because it contravenes court rules. The trial went ahead with none of the eight lawyers present.¹²⁶

These incidents speak to the level of intimidation wielded against lawyers taking on certain types of cases. One lawyer told the Committee, "every time I appear in court to argue a case, the riot police are always there."¹²⁷ Another lawyer reported that she was once met by an intimidating line of riot police at the door to the courthouse where she was due to present a case, who asked her why she was there.

b) Impeding Client Meetings

In its 2011 report, the Committee expressed concern that then-proposed amendments to the CPL, if enacted, would simultaneously extend and undermine the rule of law, relying on the use of vaguely worded exceptions to ensure that state power remained paramount despite a legal system that was perhaps becoming more generally aligned with international standards.¹²⁸ Many observers and practicing lawyers argue that since the amended CPL came into force in January 2013, it has proven more harmful than helpful, having bolstered and expanded the scope of law-based obstacles that hinder rights defense lawyers in the effective representation of their clients, especially in sensitive cases. Specifically, many of those interviewed for this report feel that purported advantages in the amended CPL have been outweighed by substantial regressions and gaps in the new law, as well as persistent government obstructions that are informed more by political considerations than the law itself. The amended CPL has substantial implications for the ability of rights defense lawyers to effectively represent and advocate for their clients. In particular, it places undue restrictions on the right to legal counsel, the right to family notification of arrest and/or detention, the right against self-incrimination, all of which directly hinder the basic functioning of lawyers.

125 Qiao Long and Luisetta Mudie, "Lawyers Barred From Dalian Falun Gong Trial," RADIO FREE ASIA, June 21, 2013, www.rfa.org/english/news/china/trial-06212013112520.html.

126 Qiao Long and Luisetta Mudie, "Chinese Court Bars Defense Team From Falun Gong Trial," RADIO FREE ASIA, Oct. 18, 2014, www.rfa.org/english/news/china/falungong-10182013125328.html.

127 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

128 CSCL 2011 REPORT, *supra* note 7, at 35.

Article 33 of the CPL affords every criminal suspect the right to appoint a “defender,” which includes a defense lawyer, as of the date on which the suspect is either first interrogated by an investigating authority or is subject to other “compulsory measures.” Article 33 further states that at that moment, the suspect should also be informed of his or her right to appoint a defender. Meanwhile, Article 37 states that detention facilities have up to 48 hours to arrange for a lawyer to meet with the suspect from the time a lawyer makes such a request. Therefore, under Articles 33 and 37, assuming the detainee appoints a lawyer as soon as he or she is made aware of that right and the lawyer immediately makes a request to visit the client, detention facilities are still permitted to take up to 48 hours from the date of the suspect’s first interrogation or imposition of compulsory measures to arrange for a lawyer’s visitation.

This permissive timeframe is troubling in the context of Article 84 of the amended CPL, which requires that suspects be interrogated within 24 hours of being taken into custody, regardless of when they were detained. Accordingly, the CPL permits authorities to legally begin interrogation of criminal suspects outside the presence of their appointed lawyers. Moreover, the thin protection offered under Article 37’s requirement that detention facilities arrange client access to lawyers within 48 hours of a lawyer’s request does not apply when a suspect is accused of an offense involving “endangering state security” or “terrorism” or “bribery.” Under those circumstances, a lawyer must seek special permission to meet a client.

Making matters worse, the amended CPL contains no protections against self-incrimination or guarantees of an individual’s right to remain silent under interrogation, which intensifies the risks of abusive treatment and injustice that occur outside the presence of a lawyer—indeed, individuals have no right to be questioned in the presence of a lawyer.

According to those interviewed for this report, the 2013 amendments to the CPL have not substantially improved the treatment of rights defense lawyers working on politically sensitive cases, or the conditions under which they work. Conversely, in many cases, the provisions have caused additional problems. In the nearly two years since the CPL’s entry into force, lawyers continued to face obstacles, demonstrating that real change is premised not on the content of the law, including the CPL, but on political will and the power of the authorities to provide meaningful implementation. As one lawyer lamented, “they create these laws, but they don’t even bother to follow them.”¹²⁹

Most prominently, numerous instances of lawyers facing restrictions in meeting

129 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

with and accessing detained clients have been documented.¹³⁰ Recent examples include:

- February 2014: Li Fangping (李方平) reported from Urumqi that he had been unable to meet with his client Ilham Tohti (伊力哈木·土赫提), a prominent Uyghur economist and professor.¹³¹
- June 2014: lawyer Zhang Zanning (张赞宁) was unable to meet with his client, Ji Laisong (姬来松), also a lawyer, who had been detained since May 26 on charges of “gathering a crowd to disrupt order in a public place.” Zhang reported that the Zhengzhou police denied his request to meet with his client.¹³²
- July 2014: lawyers Pang Kun (庞琨) and Wen Yu (闻宇), representing lawyer Chang Boyang, repeatedly faced obstruction by Zhengzhou authorities when they attempted to visit Chang in detention. They were denied on the basis that Chang’s case required special approval because it involved “national security crimes.”¹³³ Pang and Wen state that these obstructions are violations of the CPL and the Procedural Regulations for the Handling of Criminal Cases by Public Security Organs.
- July 7, 2014: Ding Xikui (丁锡奎) was unable to meet with his client Lu Gengsong (吕耿松), a member of the China Democracy Party, who was criminally detained on suspicion of “subversion of state power.” The Hangzhou Detention Center and the local public security bureau denied Ding’s request to meet with his client on grounds that Lu is suspected of crime that endangers state security, and is thus not entitled to meet with a lawyer.¹³⁴
- July 21, 2014: Chang Weiping (常玮平) attempted to gain access to his clients, Xu Youchen (许有臣) and Zhang Xiaoyu (张小玉), who are petitioners accused of stabbing a policeman who later died of his wounds. Police in Jiaozuo City, Henan Province, obstructed the lawyer-client

130 The severity of the situation is demonstrated in part by protests in Zhengzhou in June 2014 and the signing of an open petition by 121 lawyers and legal advocates calling for revision of procedural regulations restricting the ability of lawyers to represent their clients. See, e.g., Siweiluozi’s Blog, *Lawyers Call for Rule Change after Police Refuse Meeting with Detainees on “State Security” Grounds*, Jun. 16, 2014, www.siweiluozi.net/2014/06/lawyers-call-for-rule-change-after.html; Human Rights in China, *Photos: Lawyers Protest to Demand Access to Activists by Zhengzhou Authorities*, Jun. 13, 2014, www.hrichina.org/en/citizens-square/photos-lawyers-protest-demand-access-activists-zhengzhou-authorities.

131 Michael Martina, “China Denies Detained Uighur Professor Access to Lawyer,” REUTERS, Feb. 27, 2014, www.reuters.com/article/2014/02/27/us-china-xinjiang-academic-idUSBREA-1Q0GH20140227.

132 Human Rights in China, *Complaint against Zhengzhou Public Security Bureau to Protest Criminal Detention of Li Laisong*, Jun. 22, 2014, <http://www.hrichina.org/en/citizens-square/complaint-against-zhengzhou-public-security-bureau-protest-criminal-detention-ji>.

133 Human Rights in China, *Lawyers’ Statement Concerning the Charge of ‘Illegal Business Operations’ Against lawyer Chang Boyang*, Jul. 10, 2014, <http://www.hrichina.org/en/citizens-square/lawyers-statement-concerning-charge-illegal-business-operations-against-lawyer-chang>.

134 Human Rights in China, *Lu Gengsong’s Lawyer Denied Access to Client*, Jul. 18, 2014, <http://www.hrichina.org/en/citizens-square/lu-gengsongs-lawyer-denied-access-client>. In cases such as these, the police are empowered to withhold access to a lawyer if they choose, though the provisions do not say anything directly about suspect’s entitlement to a lawyer.

meeting and instead held Chang for seven to eight hours, during which he was forced to answer questions as a witness in the case, which then rendered him ineligible to act as the defense attorney in the case.¹³⁵ Another lawyer, Liu Jinbin (刘金滨), issued an appeal that argued that what happened to Chang was in violation of the CPL and the PRC's Law on Lawyers.¹³⁶

Riot police have also been used ahead of client meetings to prevent lawyers from developing their case. In June 2013, riot police raided the hotel rooms of the lawyers for writer and democracy activist Zheng Qiuwu (郑酋午) and his wife, detained on suspicion of conducting "illegal business activities" in Wenchang, in Hainan. Lawyers Wu Kuiming (吴魁明), Sui Muqing (隋牧青), Liu Zhengqing (刘正清), and Ge Yongxi (秀永葛) were on the island to meet with their clients and were told, "you are not welcome by the people of Hainan," and were told to return to the provincial capital.¹³⁷ One lawyer on the team told the Committee that the police were armed and the incident involved a scuffle.¹³⁸

Provisions of the amended CPL permitting "residential surveillance in a designated location,"¹³⁹ including explicit exceptions to the right of individuals and their families to notification of the location of an individual's arrest and detention,¹⁴⁰ present a challenge to lawyers in identifying where their clients are and how to reach them. One lawyer told the Committee that sometimes the client meeting disruptions or difficulties in finding out where the client is being held are so serious that there is no choice but for the lawyers to drop the case. She herself had been forced to drop a case where she could not find out where her client was held to meet him.¹⁴¹

135 Human Rights in China, *Urgent Appeal Concerning Jiaozuo Police's Coercive Summons of a Lawyer*, Jul. 22, 2014, <http://www.hrichina.org/en/citizens-square/urgent-appeal-concerning-jiaozuo-police-es-coercive-summons-lawyer>. Also see Human Rights in China, *Police at Zhongzhan Substation of Jiaozuo Public Security Bureau Unlawfully Restricted Lawyer Chang Weiping's Personal Freedom and Violated His Right to Practice*, Jul. 23, 2014, www.hrichina.org/en/citizens-square/police-zhong-zhan-substation-jiaozuo-public-security-bureau-unlawfully-restricted.

136 See Human Rights in China, *Urgent Appeal Concerning Jiaozuo Police's Coercive Summons of a Lawyer*, *supra* note 135.

137 Qiao Long and Luisetta Mudie, "Riot Police Raid Chinese Dissident's Legal Team," RADIO FREE ASIA, Jun. 25, 2013), www.rfa.org/english/news/china/raid-06252013105618.html.

138 Interview with an anonymous lawyer, Jul. 24, 2014.

139 Criminal Procedure Law of the People's Republic of China (*hereinafter* CPL) [中华人民共和国刑事诉讼法], issued by the National People's Congress, Art. 57, 92, Amendments effective Mar. 14, 2012.

140 *Id.* Art. 64.

141 Interview with an anonymous lawyer, Jul. 24, 2014.

1. MANIPULATION OF FRAMEWORKS FOR PROFESSIONAL REGULATION OF LAWYERS

"The lesson is, the government will give you your license, but they'll restrict what cases you can take. You can't take this case or that case, depending on the nature of the case. In effect, having a license under these circumstances is really like not having a license at all."

—Rights lawyer¹⁴²

In recent years, a new cache of legislation and regulation enacted in the name of professionalizing the practice of law has articulated conditions in which lawyers are subject to control and limitations on their work.¹⁴³ New regulations have been in place since 2008 for lawyers to be annually assessed by the state-run lawyers' associations and local justice departments. Clear procedural and administrative measures are necessary additions to a legal system that has expanded rapidly, to regulate the fast growing number of practitioners. Significantly, however, this relatively new body of administrative regulations is in many cases also being deployed to frustrate the work of lawyers representing those seen as irritants to the state, including human rights defenders, individuals associated with sensitive religious or political causes, and other dissenters. These cases are stalled when the lawyers representing them cannot obtain license renewals. While lawyers can continue to dispense legal advice and serve as civil representatives in court cases, the lack of a license is a particular impediment to the provision of defense in criminal cases. This is because public security officials require a lawyer to produce a license before they are allowed to visit a client in detention, and without one, they will not be given access to case documents by the procuratorates and courts.¹⁴⁴

a) Legal Framework

The Lawyers Law requires that law firms also submit yearly reports to relevant local judicial administrative bureaus.¹⁴⁵ State-run lawyers' associations and local justice departments assess these reports, and depending on the severity of cases, lawyers can be denied license renewals, barred from practicing law for a period of time, or suffer revocation of their licenses. The 2009 Measures for

¹⁴² Interview with an anonymous lawyer, August 2, 2014.

¹⁴³ These include "Measures for Punishing Unlawful Acts by Lawyers and Law Firms" (Ministry of Justice Order No. 122) (2010), "Measures on Annual Inspection and Annual Assessment of Law Firms" (Ministry of Justice Order No. 121) (2010), "Measures for the Management of the Professional Credentials of Lawyers and Law Firms" (Ministry of Justice Order No. 119) (2009), "Measures for Management of the Legal Profession" (Ministry of Justice Order No. 112) (2008), and "Measures for Managing Law Firms" (Ministry of Justice Order No. 111) (2008).

¹⁴⁴ Amnesty International, *Against the Law: Crackdown on China's Human Rights Lawyers Deepens*, Jun. 30, 2011, <http://www.amnesty.org/en/library/asset/ASA17/018/2011/en/20ed6bf3-aaa9-4da5-8220-6c07615e531b/asa170182011en.pdf>.

¹⁴⁵ Lawyers Law, *supra* note 88, at Arts. 23–24.

the Management of the Professional Credentials of Lawyers and Law Firms¹⁴⁶ and the 2010 Measures on Annual Inspection and Annual Assessment of Law Firms¹⁴⁷ articulate the conditions for the yearly reappraisal, and critically added a provision to the assessment system requiring that law firms have a duty to “build Communist Party membership and leadership” within the firm. Firms must also ensure “political education for lawyers,” and provide further “self discipline” for lawyers representing “mass cases.”¹⁴⁸

The 2010 Measures outline seven areas in which firms are assessed: 1) building a legal team, 2) business operations of the firm, 3) performance of lawyers within the law firm, 4) internal management of the law firm, 5) punishment and awards the law firm received, 6) fulfillment of obligations as members of the local lawyers’ associations, and 7) other criteria specified by relevant provincial, municipal and autonomous region authorities.¹⁴⁹ Although the criteria for assessment of lawyers vary between locales, those maintained by the Beijing Lawyers Association require that lawyers meet the following criteria:¹⁵⁰

1. Has complied with the Lawyers Law, the Charter of the Beijing Lawyers Association, the Beijing Lawyers Professional Rules and other relevant laws and regulations and occupational rules.
2. Has not been subject to administrative penalties in the one-year review period.
3. Completed training required by lawyers’ association.
4. Fulfilled obligations to provide legal aid.
5. Information in Beijing lawyers’ digital database is correct.
6. The law firm that the individual lawyer works for has passed the annual assessment.
7. The law firm has assessed and approved the lawyer.
8. “Any other criteria” that the Beijing Lawyers Association “deem(s) necessary for the assessment.”
9. Lawyers completed the (unspecified) “duties” assigned to them by their law firm.

Further criteria require that those lawyers who have taken up important cases, mass cases, and “difficult and complicated” collective cases should report to

146 *Measures for the Management of the Professional Credentials of Lawyers and Law Firms* [律师和律师事务所执业证书管理办法], Ministry of Justice Order No. 119 (Sept. 21, 2009).

147 *Measures on Annual Inspection and Annual Assessment of Law Firms* [律师事务所年度检查考核办法], Ministry of Justice Order No. 121 (Apr. 8, 2010).

148 “Mass Cases” are defined as those in which there are 10 or more plaintiffs. All-China Lawyers Association, *Guiding Opinions of the All-China Lawyers Association on Lawyers Handling Mass Cases* [中华全国律师协会关于律师办理群体性案件指导意见] (March 20, 2006), Art. I.1.

149 *Measures on Annual Inspection and Annual Assessment of Law Firms* [律师事务所年度检查考核办法], Ministry of Justice Order No. 121 (Apr. 8, 2010).

150 Notice Regarding the Beijing Lawyers Association 2010 Annual Assessment Process [关于北京市律师2010年度执业活动年度考核工作的通知]. An English translation is provided in Amnesty International, *Against the Law: Crackdown on China’s Human Rights Lawyers Deepens*, *supra* note 92.

their law firm and to the city level lawyers' association, and asked these supervisory bodies for permission to take up the cases, following the advice and guidance of these bodies in handling the cases.

In 2009, the first year that the new annual assessments were in effect,¹⁵¹ there were reports that at least twenty-one cause lawyers saw their licenses revoked, while in 2010, at least six were denied license renewals.¹⁵² In 2013, the number of license denials rose again and dozens of lawyers were unable to renew their licenses to practice.¹⁵³ In 2014, at least thirteen rights defense lawyers were unable to pass the annual assessment.

In addition to threats of and actual blocking of license renewals, authorities have also attempted to pressure firms against employing or retaining these types of lawyers. Lawyers have been pressured to leave their firms and, in some cases, have been unable to find new firms to take them on.¹⁵⁴ This increased reliance on administrative obstructions to deter the work of rights lawyers echoes tactics taken by President Xi Jinping in his current anti-corruption campaign: both strategies appear to highlight the profile of the law and the importance of legal compliance, but are in fact fueled by political antagonisms rather than aspirations to mature the rule of law.

b) Impacts on Cause Lawyers

Many lawyers who take on rights defense cases or other sensitive cases report that license non-renewal is used as a tool by authorities to frustrate their ability to practice law. One lawyer recounted that he believed "my involvement with Lawyer Gao Zhisheng (高智晟)¹⁵⁵ and my participation in the campaign for direct elections in the Beijing Lawyer's Association—are the main reasons

151 *Measures for the Management of the Professional Credentials of Lawyers and Law Firms* [律师和律师事务所执业证书管理办法], Ministry of Justice Order No. 119 (Sept. 21, 2009).

152 See CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA (hereinafter "CECC"), 2009 ANNUAL REPORT (2010), www.cecc.gov/publications/annual-reports/2009-annual-report; CECC, 2010 ANNUAL REPORT (2011), <http://www.cecc.gov/publications/annual-reports/2010-annual-report>.

See also CECC, *Authorities Deny Human Rights Lawyers Professional License Renewals*, Dec. 10, 2010, <http://www.cecc.gov/publications/commission-analysis/authorities-deny-human-rights-lawyers-professional-license-renewals>. See also Patrick Poon, *Annual Lawyers "Inspection" in China Designed To Curtail The Activities Of Human Rights Lawyers?*, PRACTICE SOURCE, Jul. 15, 2010, practicesource.com/annual-lawyers-qinspectionq-in-china-designed-to-curtail-the-activities-of-human-rights-lawyers/.

153 Chinese Human Rights Defenders, *Authorities Delay Renewal of Licenses for Dozens of Rights Lawyers*, Jun. 6, 2013, chrdnet.com/2013/06/chrb-authorities-delay-renewal-of-licenses-for-dozens-of-rights-lawyers-531-66-2013/.

154 Xin Yu, "Lawyers' Licenses Withheld," RADIO FREE ASIA, July 18, 2010, <http://www.rfa.org/english/news/china/lawyers-inspection-07182010184545.html>; CHINESE HUMAN RIGHTS DEFENDERS, A NIGHT-MARISH YEAR UNDER XI JINPING'S "CHINESE DREAM": 2013 ANNUAL REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN CHINA, *supra* note 121, 24.

155 Another rights lawyer who was jailed for his work on sensitive causes. See Committee to Support Chinese Lawyers, *Gao Zhisheng*, www.csclawyers.org/cases/GaoZhisheng/.

why my license wasn't renewed."¹⁵⁶

The link between non-renewal or frustrations with the renewal process and cause lawyering is clear. One lawyer described a conversation with the local public security bureau:

*"Today is the last day to renew your legal license,' they told me. 'Tomorrow, your license will expire. If you agree to two conditions, I will help you renew your license, and you can continue your work. The first condition is to cease contact with Xu Zhiyong—you cannot go to his office anymore. And you must also cease contact with Teng Biao. They are both bad eggs. The second condition is that you cannot accept Falun Gong cases.' They said that if I accepted these conditions, they would allow my license renewal. I told them that I couldn't agree to these two conditions. The next day, my license renewal was denied."*¹⁵⁷

Some lawyers live in an administrative limbo because they are unable to obtain information about whether or not they have passed the assessment process, or are subject to long delays regarding their applications for license renewal. For example, in 2011, Beijing-based lawyers Liu Xiaoyuan (刘晓原), Li Baiguang (李柏光), and Li Jinglin (李静林) submitted their paperwork but were never notified of their results. Liu Xiaoyuan and Li Jinglin did receive their renewals a year and a half later.

Government authorities, including the police, know that lawyers' licenses and the related paper certificate that allows them entry into detention facilities are integral to their jobs, and as such lawyers sometimes find their certificates confiscated. One lawyer described being held at a police station for hours after the authorities had brought him in to question him about photographs he had taken of a protest. The lawyer noted that he was physically assaulted, and then permitted to leave, but the police refused to return his license. As he put it, "they didn't need to detain me. So long as they held onto my lawyer's license, I couldn't leave."¹⁵⁸

The annual license assessment process can be used in a number of ways to frustrate the work that lawyers do. Some cannot obtain licenses to enter the profession, others cannot renew the license, others are forced out of their law firms during the law firm assessment process, and some lawyers are disbarred permanently. Examples of these are described below.

156 Interview with an anonymous lawyer, Jul. 29, 2014.

157 Interview with an anonymous lawyer, Jul. 29, 2014.

158 Interview with an anonymous lawyer, Jul. 24, 2014.

(1) INABILITY TO OBTAIN LICENSES

A number of individuals with connections to the cause lawyering community have been unable to acquire licenses despite having met the other requirements for practicing law. In early cases, Wang Peijian (王培剑) and Mu Chuanheng (牟传珩) both reportedly passed the bar exam but were unable to obtain administrative permission to practice law.¹⁵⁹ In Zhejiang Province, Chen Shuqing (陈树庆)¹⁶⁰ and Zhuang Daohe (庄道鹤) both passed the bar exam, but the provincial ministry of justice refused them both permission to practice. Luo Qian (罗茜)¹⁶¹ passed the bar as well, but his result was canceled by Hunan Province's justice bureau in 2012. Zhu Ruling (朱汝玲) was unable to obtain her license after completing her law clerking for a year at the Zhong Yin Law Firm (北京市中银律师事务所), where she worked on the case of Dai Jianming (戴建明), who set himself on fire in protest against forced eviction.¹⁶²

(2) SUSPENSION OR NON-RENEWAL OF LICENSES

In August of 2014, rights defense lawyer Cheng Hai (程海) was notified by the Changping District Bureau of Justice in Beijing that his license would be suspended for "disrupt(ing) court order during a trial" and "interfer(ing) in the normal functioning of prosecutorial activities" when defending activist Ding Jiaxi.¹⁶³ He was granted a hearing, which took place on September 5, 2014. In some cases, the non-renewal does not last long; for example, also in 2014, Li Guobei (李国蓓)¹⁶⁴ and Zhang Keke (张科科)¹⁶⁵ were told they did not pass the annual inspections, and embarked on a hunger strike.¹⁶⁶ Later in June, both had passed the assessment.

159 China Justice Party, *The CPC Severely Tramples on the Administration of Justice, the Justice Party Urges an End to the U.S.-China Legal Experts Dialogue* [中共严重践踏司法, 正义党游说终止中美司法交流], Aug. 21, 1998, available at <http://cdjp.org/dinfo/cdjp/Intro/sifa.htm>.

160 Ouyang Yi, "All Under the Party and Heaven": Considering Chen Shuqing's Legal Qualifications [陈树庆的律师资格考量"党天下"], Mar. 28, 2010, http://blog.boxun.com/hero/201003/ouyy/137_1.shtml.

161 Rights Defense Net (维权网), "June 4" Student Luo Qianxi had his successful Bar Exam Results Cancelled ["六四"学生罗茜被取消司法考试成绩], Jan. 1, 2013, http://wqw2010.blogspot.hk/2013/01/blog-post_4530.html.

162 China Human Rights Lawyer Concern Group, *Profile on Zhu Ruling*, Jan. 1, 2010, <http://www.chr-lawyers.hk/zh-hans/content/%E6%9C%B1%E6%B1%9D%E7%8E%B2>.

163 Human Rights in China, *Appeal Regarding Rights Lawyer Cheng Hai's September 5 Hearing*, Sept. 3, 2014, www.hrichina.org/en/citizens-square/appeal-regarding-rights-lawyer-cheng-hais-september-5-hearing.

164 Sound of Hope, *Beijing Woman Lawyer's Hunger Strike Settles Situation* [遭秋后算账 北京女律师绝食抗议], May 26, 2014, <http://soundofhope.org/node/480707>.

165 New Citizen's Movement, *Lawyer Zhang Keke's Hunger Strike and the Difficulties Wrought by the Wuhan Lawyers Association and Justice Bureau* [张科科律师绝食抗议武汉律协司法局刁难], June 11, 2014, <http://xgmyd.com/archives/4360>.

166 Human Rights in China, *Chinese Lawyers Initiate 24-hour Fast Relay to Defend Lawyers' Rights*, Jun. 10, 2014, www.hrichina.org/en/citizens-square/chinese-lawyers-initiate-24-hour-fast-relay-defend-lawyers-rights.

In June of 2013, China Human Rights Defenders reported the non-renewal of licenses for dozens of lawyers, including: Chen Jihua (陈继华), Dong Qianrong (董前勇), Guo Haiyue (郭海跃), Lan Zhixue (兰志学), Liang Xiaojun (梁小军), Li Baiguang, Li Dunrong (李敦勇), Li Xiongbin (黎雄兵), Lin Qilei (蔺其磊), Liu Peifu (刘培福), Wang Quanzhang (王全章), Wang Yajun (王雅军), Wu Hongwei (邬宏威), Xie Yanyi (谢燕益), and Zhang Quanli (张全利).¹⁶⁷ These lawyers worked on a variety of human rights cases, including those involving members of Falun Gong.

In the 2010 assessment, at least eight lawyers did not have their licenses renewed. These were Jiang Tianyong (江天勇), Tang Jitian (唐吉田), Yang Huiwen (杨慧文), Wen Haibo (温海波), Liu Wei (刘巍) (later disbarred), Zhang Lihui (张立辉), Li Jingsong (李劲松), and Tong Chaoping (童朝平).¹⁶⁸

In December 2009, Fawei Law Firm's Lin Hongnan (林红楠) received a notice that suspended his license for one year. Prior to this, he had been working on a case involving three Internet activists who had been charged with making "false accusations" when they posted information about a police cover-up of a triad-related gang rape incident.¹⁶⁹ In August 2009, Liu Shihui's¹⁷⁰ license was suspended for six months (then extended to nine months) by the Guangdong Province Justice Bureau, for "taking up a case in a different law firm without the advance approval of the justice bureau, and for receiving a private fee."¹⁷¹ He was representing Yang Maodong (郭飞雄, also known as Guo Feixiong, 郭飞雄), a land rights activist. He has since been detained and arrested in the lead-up to the twenty-fifth anniversary of the Tiananmen Square crackdown.¹⁷² Also in 2009, Chang Boyang¹⁷³ was notified of his failure to pass the annual assessment.

167 Chinese Human Rights Defenders, *Authorities Delay Renewal of Licenses for Dozens of Rights Lawyers*, Jun. 6, 2013, chrdnet.com/2013/06/chrb-authorities-delay-renewal-of-licenses-for-dozens-of-rights-lawyers-531-66-2013/. Some of these names also reported via Twitter: <https://twitter.com/jtyong>.

168 Chinese Human Rights Defenders, *Hearing on Revocation of Lawyers' Licenses Ends without Decision, Lawyers Condemn Baseless Punishment*, Apr. 22, 2010, <http://chrdnet.com/2010/04/hearing-on-revocation-of-lawyers-licenses-ends-without-decision-lawyers-condemn-baseless-punishment/>. See also Amnesty International, *Against the Law: Crackdown on China's Human Rights Lawyers Deepens*, *supra* note 92, at 18; Xin Yu, "Lawyers' Licenses Withheld," July. 18, 2010, www.rfa.org/english/news/china/lawyers-inspection-07182010184545.html.

169 Liu Xiaoyuan, Li Fangping, Jin Guanghong, *Urgent Action for Lawyer Lin Hongnan, Facing Halted License for One Year* [关于林洪楠律师遭报复性执法被停止执业一年的紧急呼吁], Dec. 27, 2009, <http://yt580.com/html/yitongzixun/20091227/1040.html>. See also Amnesty International, *Against the Law: Crackdown on China's Human Rights Lawyers Deepens*, *supra* note 92, at 15.

170 Boxun, *Guangzhou Rights Lawyer Liu Shihui Has License Halted for 9 months as punishment* [广州维权律师刘士辉面临停止执业9个月处], Sept. 8, 2009, <http://boxun.com/news/gb/china/2009/09/200909081157.shtml>

171 Amnesty International, *Against the Law: Crackdown on China's Human Rights Lawyers Deepens*, *supra* note 92, at 15.

172 Independent Chinese PEN Center, *Alert: More Lawyers & Activists Criminally Detained or Disappeared in Run-up to Tiananmen Anniversary*, May 22, 2014, <http://www.penchinese.org/english/alert-more-lawyers-activists-criminally-detained-or-disappeared-in-run-up-to-tiananmen-anniversary#more-708>.

173 Amnesty International, *Against the Law: Crackdown on China's Human Rights Lawyers Deepens*,

He is the co-founder of the Zhengzhou branch of Yirenping, an anti-discrimination and health rights organization. In May 2014, he was detained by authorities and was arrested on July 3, 2014, for conducting “illegal business activities.”¹⁷⁴

(3) EXPULSIONS FROM LAW FIRMS

Law firms also come under serious pressure from authorities to dismiss lawyers who are perceived as participating in rights defense activities. Police and state security officers have visited law firm offices to exert pressure on the law firm heads to dismiss troublesome lawyers. As one lawyer noted, this is an especially useful tactic when the authorities cannot find a specific law to constrain the individual lawyer. Heavy-handed pressure on law firms is equally effective in rendering lawyers powerless.¹⁷⁵

Law firms have also been pressured in other ways. As one lawyer told the Committee:

“Before, license revocation or refusal of registration were common methods to attack lawyers. But now, they’ve expanded to using law firms, who are pressured to refuse to stamp letters or forms or to perform other administrative steps that prevent lawyers from representing their clients.”¹⁷⁶

Often, when a rights lawyer is dismissed from their firm, they are unable to find a new employer because the law firm is pressured not to hire that lawyer, even if he or she has a valid lawyer’s license.¹⁷⁷

In recent years, these lawyers have been forced to leave their firms: Chen Jiangang (陈建刚),¹⁷⁸ Huang Simin (黄思敏),¹⁷⁹ Wen Haibo (温海波),¹⁸⁰ Li Subin (李苏

supra note 92, at 20.

174 Chinese Human Rights Defenders, *Chang Boyang*, Sept. 1, 2014, chrdnet.com/2014/09/prison-of-conscience-chang-boyang/.

175 Interview with an anonymous lawyer, Jul. 29, 2014. This lawyer also noted that the authorities will go to lengths to find ways to silence lawyers if they cannot find direct ways to “make problems.” These will include using tax laws or commercial laws to find ways of attacking individual lawyers.

176 Interview with an anonymous lawyer, Aug. 2, 2014.

177 Interview with an anonymous lawyer, Aug. 2, 2014.

178 Chang Boyang, Message on Weibo, Apr. 19, 2014, <https://freeweibo.com/weibo/3701016992069019>

179 Zhang Keke, Message on Weibo, Jun. 6, 2014, <https://freeweibo.com/weibo/%40张科科律师V>

180 Sound of Hope, *Wen Haibo Joins the “Mini” An Hui Law Firm* [温海波加盟“迷你”安汇律师事务所], Jun. 20, 2010, <http://soundofhope.org/node/92840>.

宾),¹⁸¹ Xie Yang (谢阳),¹⁸² and Chen Wuquan (陈武权).¹⁸³ In 2011, Li Tiantian (李天天) was forced to terminate her employment contract with her law firm, and was unable to find a new firm to take her on. As a result, she missed the deadline for the annual licensing inspection.¹⁸⁴ She was also forcibly relocated from Shanghai to the Xinjiang Uyghur Autonomous Region and was told she would not be permitted to return to Shanghai for three months.¹⁸⁵ In other instances, lawyers have passed the annual licensing assessment, but their firms have withheld certification documents that they need in order to practice. Wang Cheng (王成), for example passed his annual assessment several years in a row, but his law firm refused to provide the certification for three years.¹⁸⁶ He was eventually fired and has not found a new firm to take him on. One lawyer emphasized that some law firms welcome lawyers who want to take on rights defense cases, but this can change as soon as the local justice bureau or security apparatus gets involved.¹⁸⁷

(4) REVOCATION OR CANCELLATION OF LICENSES

On June 30, 2014, the All-China Lawyers Association issued a statement distancing itself from specific rights lawyers and announcing they are no longer licensed, permanently revoking the licenses of lawyers Tang Jitian¹⁸⁸ (唐吉田), Liu Wei,¹⁸⁹ Zheng Enchong¹⁹⁰ (郑恩宠), and Tang Jingling. It also announced that Wang Cheng (王成) and Jiang Tianyong and Teng Biao have had their licenses canceled. The statement in June 2014 declared, "They are no longer lawyers, and the ACLA will not be liable for any activity they are involved in."¹⁹¹

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- 181 Yirenping, *Yesterday Li Subin brings suit against the Beijing and Henan Justice Bureaus for failing to meet responsibilities for lawyers* [李苏滨昨日起诉北京司法局、河南司法厅不履行交接律师档案职责], Jan. 27, 2014, <http://www.yirenping.org/newsx.asp?ID=753&typeNumber=0013>
 - 182 China Human Rights Lawyers Concern Group, *Pay Attention to the Suppression of Hunan Lawyer Xie Yang* [关注湖南谢阳律师受打压 湖南律协司法局不作为 异动手续逾半年无音讯] (May 2014), <http://www.chrlawyers.hk/en/node/636>
 - 183 China Human Rights Lawyer Concern Group, *Case Profile: Chen Wuquan*, Feb. 4, 2013, <http://chrlawyers.hk/zh-hans/content/陈武权>
 - 184 Voice of America, *Li Tiantian No Longer a Lawyer – Says Pressure too Great* [李天天不做律师了 称压力太大], Jun. 30, 2011, <http://www.voachinese.com/content/article-20110630-lawyer-li-tian-tian-124765424/783834.html>
 - 185 Xin Yu, "Shanghai Lawyer Banned from Home," July 6, 2011, www.rfa.org/english/news/china/lawyer-07062011213818.html.
 - 186 Radio Free Asia, *All-China Lawyers Association Publication Sullies Name of Seven Well-Known Rights Defense Lawyers Says Their Licenses Cancelled* [七名维权律师被律协刊报污名 王成律师已向法院提出诉讼], Jul. 2, 2014, <http://www.rfa.org/mandarin/yataibaodao/renquanfazhi/ql-07022014095035.html>
 - 187 Interview with an anonymous lawyer, Jul. 29, 2014.
 - 188 Edward Wong, "2 Chinese Lawyers Are Facing Disbarment for Defending Falun Gong," *NEW YORK TIMES*, Apr. 21, 2010, www.nytimes.com/2010/04/22/world/asia/22beijing.html. See also Committee to Support Chinese Lawyers, *Tang Jitian*, <http://www.csclawyers.org/cases/TangJitian/>.
 - 189 Liu Wei and Tang Jitian saw their licenses to practice revoked on April 30, 2010, by the Beijing Municipal Bureau of Justice. See Amnesty International, *Against the Law: Crackdown on China's Human Rights Lawyers Deepens*, supra note 144.
 - 190 Zheng Enchong, *My Lawyer Certificate was Never Suspended* [我的中国律师证从未被吊销], Boxun, Jul. 3, 2014, http://blog.boxun.com/hero/201407/cba5959/13_1.shtml.
 - 191 See Siweiluozi's Blog, *ACLA Issues Formal Notice Distancing Itself from Rights Lawyers*, Jul. 1, 2014, www.siweiluozi.net/2014/07/acla-issues-formal-notice-distancing.html.

This statement distanced the organization from the actions of these individuals, and has been criticized as evidence of the ACLA's unwillingness to "protect the rights and interests of lawyers," instead acting "as a foot soldier for powerful departments to retaliate and persecute lawyers."¹⁹²

Additionally, prominent lawyers Pu Zhiqiang¹⁹³ and Qu Zhenhong (屈振红)¹⁹⁴ are both in detention in relation to their rights defense work, and have had their licenses revoked as a result.

3. CRIMINALIZATION OF THE WORK OF RIGHTS DEFENSE LAWYERS

"If they say you're guilty, you're guilty. It's not as if they say, 'you've committed a crime, and therefore you're guilty.' Rather, if they even think you're guilty, then you are. If they feel that you're guilty, then you are. If they want to you be guilty, then you are."
—Rights lawyer¹⁹⁵

As the sections above demonstrate, the law creates obstacles that impeded cause lawyers in discharging their professional obligations in two substantial ways: first, the law obstructs lawyers from representing their clients—it hinders their ability to make their case in court, and legal provisions are used to restrict client meetings and appearances in court. Second, the law used to control which lawyers can continue to practice law: effectively pre-selecting which kinds of cases have effective assistance of counsel.

A third way the law is used to silence cause lawyers is by charging lawyers themselves with breaking the law. This method is, of course even more troubling given the associated problems—the vicious cycle—of representation and procedural fairness. Human rights organizations and professional lawyers' associations have highlighted numerous cases, especially since Xi Jinping came to power in 2012, of lawyers being detained, arrested, held, and sometimes indicted on criminal charges. Some lawyers are even disappeared through the use of the Criminal Procedure Law residential surveillance provisions that enable the authorities to hold them at a "designated" (i.e. unknown) location. This method has been used in the 2015 crackdown on lawyers. (See *Spotlight: Whereabouts Unknown* on pages 61-62.)

While the most serious cases often result in charges of "incitement to subvert

192 These statements were made by Tang Jitian on Facebook in response to the ACLA statement. Available at <http://www.siweiluozi.net/2014/07/acla-issues-formal-notice-distancing.html>.

193 Rights Defense Network, *Lawyer Qu Zhenhong Targeted Because He Represented Pu Zhiqiang's Case* [因代理浦志强案 屈振红律师受株连], Jun. 1, 2014, http://wqw2010.blogspot.com/2014/06/blog-post_5813.html

194 *Id.*

195 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

state power” under Article 105 of the Criminal Law, many more lawyers are charged with offenses that can be applied to a broad range of activities. These so-called “pocket crimes” (口袋罪)¹⁹⁶ include nonpolitical or business-related charges such as “illegal business practice,” “unlawful assembly,” and in particular Article 293 of the PRC Criminal Law that criminalizes certain “provocative and disturbing acts” and has been used expansively to target lawyers developing their cases outside of the courtroom, and used in tandem with Article 309 that criminalizes “disrupting courtroom order” that has been used to remove lawyers from the courtroom.¹⁹⁷ These charges carry with them shorter sentences of three to five years. As such, they are slight enough to deflect international attention, unlike charges of subversion.

As discussed in the 2011 Committee Report, the definition of what constitutes “provocative and disturbing acts” was broadened with two amendments in 2009 and 2011 to cover a broader range of acts.¹⁹⁸ In 2013, a judicial interpretation issued by the Supreme People’s Court and the Supreme People’s Procuratorate further extended the application of these provisions charge to the online activity, stating that the provision could be used to prosecute statements made online where they are false or are rumors and are widely circulated.

Lawyers working on these cases are well aware of the dangers they face, believing that authorities will go to any lengths to detain them and prevent their work. As one lawyer noted:

*They will always find a reason to arrest you. If you happen to own a shop, they’ll say you’re engaged in illegal transactions. If you happen to be in the vicinity of some confrontation, they’ll you’re inciting violence.*¹⁹⁹

This trend is exacerbated by the use of official state media that has aimed to paint the work of lawyers as criminal, gang-related, inciting national security concerns. The reporting has been aggressive and sensational. Together with actual criminal charges, lawyers feel completely trapped “unsure of what to do” at any step.²⁰⁰ Moreover, in an increasing clampdown on international mobility, a number of lawyers and their families have been prevented from traveling abroad, including through denial of required paperwork for travel and through physical interception at airports.²⁰¹ This includes lawyers Cai Ying and Si Weijiang, as well

196 *Sinosphere: Q and A: Chen Zhonglin on “Picking Quarrels” Online*, NY TIMES, Jul. 28, 2015, available at cn.nytimes.com/china/20150728/c28sino-chenzhonglin/en-us/.

197 Criminal Law of the People’s Republic of China Amendment (9) [中华人民共和国刑法修正案(九)], adopted on Aug. 29, 2015 at the 16th meeting of the Standing Committee of the 12th National People’s Congress, Art. 383.

198 CSCL 2011 REPORT, *supra* note 7, at 18.

199 Interview with an anonymous lawyer, Jul. 24, 2014.

200 Interview with an anonymous lawyer, Jul. 31, 2014.

201 Radio Free Asia, “Police Prevent Top Chinese Rights Attorneys From Leaving The Country,” August

as lawyers Zhong Jinhua and Zhang Qingfang and their respective families.²⁰² At the same time, a number of lawyers who were already traveling abroad prior to the summer 2015 crackdown have been prevented from returning.

C. Extra-Legal Measures

"The officers told me, 'if you continue to do this kind of work, you will face severe consequences.'"
—Rights lawyer²⁰³

While the manipulation of domestic legal frameworks allows authorities to neutralize the ability of cause lawyers to function as a matter of law, the government also has at its disposal a variety of weapons to attack the rights defense movement on other fronts, including those outside the realm of systematized law. In recent years, officials have continued and expanded the use of so-called "extra-legal" measures,²⁰⁴ that is, measures to inflict injury upon rights lawyers that are administered outside the authority of legitimate legal frameworks, and often in direct contravention of fundamental international human rights norms. These extra-legal measures pose a significant danger, not only because of the injuries they inflict, but also because they exist outside the scope of accountability, permitting officials to continue using them with impunity. As explained further below, these measures include the practice of arbitrary detention and enforced disappearance; the use of torture and other cruel, inhuman or degrading treatment or punishment; unlawful surveillance and monitoring; and increasing pressures on the family, friends, and social networks of rights lawyers.

1. ILLEGAL DETENTIONS AND ENFORCED DISAPPEARANCES

"Don't you see? Our power is limitless. We can detain you whenever we want."
—State security officer to a rights lawyer²⁰⁵

A defining feature of the government's 2011 attack against the rights defense movement was the disturbing increase in detentions of lawyers where family and friends of detainees were unable to access critical information about

20, 2015, available at www.rfa.org/english/news/china/police-prevent-top-chinese-rights-attorneys-from-leaving-country-08202015095944.html.

202 Yang Fanand, Luisetta Mudie, "Police Prevent Top Chinese Rights Attorneys from Leaving the Country," RADIO FREE ASIA, Aug. 20, 2015, available at www.rfa.org/english/news/china/police-prevent-top-chinese-rights-attorneys-from-leaving-country-08202015095944.html.

203 Interview with an anonymous lawyer, Jul. 24, 2014.

204 Professor Fu Hualing has identified the use of both "extra-law" measures (法律外秩序) as well as "extra-extra-law" measures (法律外外秩序) in China, to distinguish between measures that fall in the grey zone of authority and discretion that draws on political rules and power, and those practices that have no basis in any authority at all, such as the use of black jails, physical abuse, and disappearances. It is largely the latter that we describe in this section. Fu Hualing, *The Varieties of Law in China*, CHINA RIGHTS FORUM, Jul. 18, 2011, <http://www.hrichina.org/en/crf/article/5422>.

205 Interview with an anonymous lawyer, Jul. 29, 2014.

whether an individual was in detention, why, and where.²⁰⁶ Sadly, the Chinese government's use of this abhorrent practice shows no signs of abating. Lawyers and rights defenders interviewed for this report repeatedly described the routine threat and application of arbitrary detention and disappearance as "tools of the trade" that government authorities openly embrace as a means of weakening the rights defense movement. As one lawyer described, official captors flagrantly tout their ability to imprison with impunity. "The officer told me, 'Don't you see? Our power is limitless, and we can detain you whenever we want. You're on our blacklist, we can detain you anytime.'"²⁰⁷

One troubling round of detentions and disappearances occurred in 2014, in the weeks leading up to and following the 25th anniversary of June Fourth crackdown. During that time, at least 136 individuals—including lawyers Pu Zhiqiang, Tang Jingling, Chang Boyang, Zheng Enchong, Ji Laisong, Liu Shihui, and Qu Zhenhong, along with journalists, activists, artists, filmmakers, and academics—were arbitrarily detained in connection with peaceful, non-violent activities to commemorate the anniversary.²⁰⁸ While most have since been released, as of the time of this report's publication, Pu Zhiqiang and Tang Jingling, both prominent rights lawyers, remain detained and awaiting long-delayed criminal trials, more than 15 months after their initial arrests.²⁰⁹ (See *Spotlight: Pu Zhiqiang* (浦志强)—*Telling Truths in the Face of Official Lies* on pages 23-24 and *Spotlight: Tang Jingling* (唐荆陵)—*"Light against Darkness"* on pages 20-21.)

More recently, however, the magnitude of detentions and disappearances throughout the summer of 2015 has left many, including some of the most seasoned observers of the rights defense movement, nothing short of astonished. Beginning in July 2015, at least 245 rights lawyers and legal activists—and counting—have been targeted for intimidation and harassment through arbitrary detention, and in some cases, ongoing disappearance. (See *Spotlight: "Whereabouts Unknown"—Individuals Currently Disappeared or Detained at Undisclosed Locations* on pages 61-62.) Some instances appear to constitute outright enforced disappearances, including the cases of Fengrui lawyer Li Shuyun, Fengrui accountant Wang Fang, and rights activist Hu Shigen—all of whom were last seen July 10, 2015, their current whereabouts unknown. In several other cases, lawyers and rights activists remain detained under "residential surveillance" in undisclosed locations. For many, these actions confirm suspicions

206 CSCL 2011 REPORT, 13-16, *supra* note 7.

207 Interview with an anonymous lawyer, Jul. 29, 2014.

208 Human Rights in China, *Restrictions, Detentions, Disappearances, and Arrests Related to June 4, 2014*, Aug. 2014, www.hrichina.org/en/restrictions-detentions-disappearances-and-arrests-related-june-4-2014.

209 See Verna Yu, "Chinese Human Rights Lawyer Pu Zhiqiang Indicted for 'Inciting Ethnic Hatred'; Faces up to 8 Years' Jail," SOUTH CHINA MORNING POST, May 15, 2015, www.scmp.com/news/china/policies-politics/article/1798074/chinese-human-rights-lawyer-pu-zhiqiang-indicted; Human Rights Watch, *China: Release Advocates of Nonviolence*, Jun. 16, 2015, www.hrw.org/news/2015/06/16/china-release-advocates-nonviolence.

SPOTLIGHT:
**“WHEREABOUTS UNKNOWN”—
 INDIVIDUALS CURRENTLY DISAPPEARED OR DETAINED AT UNDISCLOSED LOCATIONS**

At the time of this report’s publication, the following lawyers and activists reportedly remained disappeared or detained at undisclosed locations following the summer 2015 crackdown on lawyers. (See also *Spotlight: Fengrui Law Firm—Affected Individuals* on page 38.)

Name	Date of Initial Incident	Current Status
Wang Yu (王宇) (lawyer at Fengrui Law Firm)	July 9, 2015	Held under residential surveillance at an undisclosed location— <i>whereabouts unknown</i> ¹
Bao Longjun (包龙军) (lawyer)	July 9, 2015	Held under residential surveillance at an undisclosed location— <i>whereabouts unknown</i> ²
Zhou Shifeng (周世锋) (lawyer)	July 10, 2015	Detained at an undisclosed location— <i>whereabouts unknown</i> ³
Li Shuyun (李姝云) (lawyer at Fengrui Law Firm)	July 10, 2015	Disappeared— <i>whereabouts unknown</i> ⁴
Wang Fang (王芳) (accountant at Fengrui Law Firm)	July 10, 2015	Disappeared— <i>whereabouts unknown</i> ⁵
Hu Shigen (胡石根) (activist)	July 10, 2015	Disappeared— <i>whereabouts unknown</i> ⁶
Sui Muqing (隋牧青) (lawyer)	July 10, 2015	Held under residential surveillance at an undisclosed location— <i>whereabouts unknown</i> ⁷
Xie Yuandong (谢远东) (lawyer)	July 10, 2015	Held under residential surveillance at an undisclosed location— <i>whereabouts unknown</i> ⁸
Monk Wangyun (望云和尚) (activist)	July 10, 2015	Held under residential surveillance at an undisclosed location— <i>whereabouts unknown</i> ⁹
Gou Hongguo (勾洪国), a.k.a. Ge Ping (戈平) (activist)	July 10, 2015	Held under residential surveillance at an undisclosed location— <i>whereabouts unknown</i> ¹⁰

Name	Date of Initial Incident	Current Status
Wang Quanzhang (王全璋) (lawyer)	July 10, 2015	Detained at an undisclosed location— whereabouts unknown ¹¹
Li Heping (李和平) (lawyer)	July 10, 2015	Detained at an undisclosed location— whereabouts unknown ¹²
Xie Yanyi (谢燕益) (lawyer)	July 10, 2015	Detained at an undisclosed location— whereabouts unknown ¹³
Huang Liqun (黄力群) (lawyer)	July 10, 2015	Detained at an undisclosed location— whereabouts unknown ¹⁴
Xie Yang (谢阳) (lawyer)	July 13, 2015	Held under residential surveillance at an undisclosed location— whereabouts unknown ¹⁵
Gao Yue (高月) (assistant of lawyer Li Heping (李和平))	July 20, 2015	Held under residential surveillance at an undisclosed location— whereabouts unknown ¹⁶
Li Chunfu (李春富) (lawyer and brother of Li Heping (李和平))	August 1, 2015	Detained at an undisclosed location— whereabouts unknown ¹⁷

Notes

- 1 Amnesty International, China: *Latest Information on Crackdown against Lawyers and Activists*, Sept. 4, 2015, www.amnesty.org/en/press-releases/2015/07/china-list-of-lawyers-and-activists-targeted/.
- 2 *Id.*
- 3 Amnesty International, China: *Latest Information on Crackdown against Lawyers and Activists*, *supra* note 1; China Human Rights Lawyers Concern Group, "709 Crackdown" Lawyers' Case Update* (12 September 2015-19 September 2015), Sept. 18, 2015, [www.chrlawyers.hk/en/content/"709-crackdown"-lawyers'-case-update-12-september-2015-19-september-2015](http://www.chrlawyers.hk/en/content/).
- 4 Amnesty International, China: *Latest Information on Crackdown against Lawyers and Activists*, *supra* note 1.
- 5 *Id.*
- 6 *Id.*
- 7 *Id.*
- 8 *Id.*
- 9 *Id.*
- 10 *Id.*
- 11 Amnesty International, China: *Latest Information on Crackdown against Lawyers and Activists*, *supra* note 1; China Human Rights Lawyers Concern Group, "709 Crackdown" Lawyers' Case Update* (12 September 2015-19 September 2015), *supra* note 3.
- 12 *Id.*
- 13 *Id.*
- 14 *Id.*
- 15 Amnesty International, China: *Latest Information on Crackdown against Lawyers and Activists*, *supra* note 1.
- 16 *Id.*
- 17 Amnesty International, China: *Latest Information on Crackdown against Lawyers and Activists*, *supra* note 1; China Human Rights Lawyers Concern Group, "709 Crackdown" Lawyers' Case Update* (12 September 2015-19 September 2015), *supra* note 3.

that amendments to the Criminal Procedure Law have legitimized the practice of disappearance as a matter of law. In all, at the date of this report's publication, at least 30 rights defenders remain detained or disappeared, including 12 lawyers and several of their legal support staff.

China has been repeatedly criticized by international legal bodies and independent monitors for laws and practices permitting deprivation of liberty in violation of international standards.²¹⁰ The inconsistencies between domestic Chinese and international standards include overbroad terms in the domestic that allow for criminal detention and charges without exemptions from criminal responsibility for those who are peacefully exercising their human rights;²¹¹ rules that allow for lengthy periods of detention without judicial approval;²¹² legal provisions placing the prosecution in a superior position to the courts;²¹³ restrictions on the right to defense;²¹⁴ and the lack of a genuine right to challenge administrative detention,²¹⁵ among others.

Principles of international law concerning unlawful detention and enforced disappearance are clear. Specifically, international law prohibits any deprivation of liberty, including detention and arrest, which is arbitrary.²¹⁶ This includes detentions that result from the exercise of specific freedoms guaranteed under the Universal Declaration of Human Rights, where fair trial standards are not observed, and where the deprivation of liberty results from discrimination.²¹⁷ In

210 See, e.g., Working Group on Arbitrary Detention, Report of the Working Group on Arbitrary Detention, Addendum, Mission to China, Comm'n on Human Rights, ¶¶ 73–76, U.N. Doc. E/CN.4/2005/6/Add.4 (Dec. 29, 2004) (providing an overview of the inconsistencies between the domestic and international standards relating to detention); HUMAN RIGHTS IN CHINA, STATE SECRETS: CHINA'S LEGAL LABYRINTH 27 (2007) (describing the way in which Chinese legal procedures under the state secrets framework denies the right to counsel).

211 *Id.* at ¶¶ 23, 73.

212 *Id.* at ¶¶ 28–32, 74.

213 *Id.* at ¶¶ 33–34, 74.

214 *Id.* at ¶¶ 35–38.

215 *Id.* at ¶¶ 39–42, 75.

216 See UDHR, *supra* note 15. See also International Covenant on Civil and Political Rights (*hereinafter* ICCPR), 999 U.N.T.S. 171, art. 9, *adopted* Dec. 16, 1966, *entered into force* Mar. 23, 1976; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (*hereinafter* Body of Principles), Principles 2, 4, G.A. Res. U.N. Doc. A/RES/43/173, *adopted* Dec. 9, 1988.

217 Human Rights Council, *Report of the Working Group on Arbitrary Detention* (*hereinafter* 16th Session WGAD Report), U.N. Doc. A/HRC/16/47 (Jan. 19, 2011), Annex, Revised methods of work of the Working Group (*hereinafter* WGAD Report Annex on Revised Methods of Work), ¶ 8. The Working Group, which is mandated by the Human Rights Council to investigate cases where liberty has been deprived arbitrarily, has established five distinct legal categories. These are (a) where it is “clearly impossible to invoke any legal basis justifying the deprivation of liberty” (Category I); (b) where “deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21” of the UDHR and for states parties to the ICCPR, by articles 12, 18, 19, 21, 22, 26, 26 and 27 of that document (Category II); (c) where “the total or partial non-observance of the international norms relating to the right to a fair trial . . . is of such gravity as to give the deprivation of liberty an arbitrary character” (Category III); (d) where “asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy” (Category IV); and where “the deprivation of liberty constitutes a violation of the international law for reasons of discrimination . . .” (Category V). *Id.*

other words, detentions that are not carried out strictly in accordance with domestic and international legal provisions,²¹⁸ or that are carried out as a means to silence the individual concerned,²¹⁹ have an arbitrary or unlawful nature. Enforced disappearances, themselves arbitrary, are specifically defined as the “arrest, detention, abduction or any other form of deprivation of liberty” by authorities or forces acting at the behest of the State, “followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person.”²²⁰ The act of enforced disappearance itself violates a range of fundamental human rights, including the right to recognition as a person before the law, the right to information and truth, liberty and security of person, minimum trial guarantees, and right to review of conviction.²²¹ It has been called the “ultimate silencing tactic,” because a disappeared person is aware she or he has been placed outside the protection of the law,²²² and is therefore at far greater risk of torture and other forms of cruel, inhuman, and degrading treatment and punishment.²²³ Detentions of any duration can amount to an enforced disappearance.²²⁴

218 See Body of Principles, *supra* note 216 at Principle 2.

219 WGAD Report Annex on Revised Methods of Work, *supra* note 217 at ¶ 8.

220 Convention for the Protection of All Persons from Enforced Disappearance, art. 2, G.A. Res. A/61/177, entered into force Dec. 23, 2006. Almost twenty years earlier, the UN General Assembly adopted the Declaration on the Protection of all Persons from Enforced Disappearance, which expressed deep concern that, “in many countries, . . . enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”

U.N. General Assembly, Declaration on the Protection of all Persons from Enforced Disappearance, art. 1, U.N. Doc. A/RES/47/133 (Dec. 18, 1992), <http://www2.ohchr.org/english/law/disappearance.htm>. Enforced Disappearances have also been recognized as a Crime Against Humanity, when carried out as part of a widespread or systematic attack. Working Group on Enforced or Involuntary Disappearances, *General Comment on Enforced Disappearances as a Crime Against Humanity*, ¶ 1, reprinted in Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, at U.N. Doc. A/HRC/13/31 (Dec. 21, 2009).

221 See Working Group on Enforced or Involuntary Disappearances, *General Comment on Enforced Disappearance as a Continuous Crime*, ¶ 2, reprinted in Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, at U.N. Doc A/HRC/16/48 (Jan. 26, 2011); Working Group on Enforced or Involuntary Disappearances, *General Comment on the Right to the Truth in Relation to Enforced Disappearances*, ¶ 2, reprinted in Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, at U.N. Doc A/HRC/16/48 (Jan. 26, 2011); Amnesty International, Press Release, “Whereabouts Unknown—Thousands Still Missing Worldwide,” Aug. 30, 2007, available at <http://www.amnesty.org/fr/node/2040>.

222 International Convention on Enforced Disappearances, *supra* note 220, at art. 2.

223 Human Rights Council, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, ¶¶ 10–15, U.N. Doc. A/56/156 (Jul. 3, 2011). The Declaration on the Protection of all Persons from Enforced Disappearance also states that acts of enforced disappearances violate guarantees against torture. U.N. General Assembly, Declaration on the Protection of all Persons from Enforced Disappearance, art. 1, U.N. Doc. A/RES/47/133 (Dec. 18, 1992), <http://www2.ohchr.org/english/law/disappearance.htm>.

224 Working Group on Enforced or Involuntary Disappearances, *General Comment on the Definition of*

Critically, when an individual's whereabouts are unknown, including cases involving residential surveillance at an undisclosed location or enforced disappearance, detainees are at particularly high risk of abuse, including through extraction of information and "confessions" through coercion and duress, as well as torture or other cruel and inhuman forms of punishment, as described in the following section.

2. TORTURE AND OTHER CRUEL AND INHUMAN FORMS OF PUNISHMENT

"I never thought a lawyer would be forced to take a beating like this."
—Rights lawyer describing an instance of torture while in police custody²²⁵

As is well-established, documenting torture and human rights abuses that occur during detention, particularly secret detention, is intrinsically difficult. This problem is magnified when victims fear that speaking out may lead to greater abuse in the future. Nonetheless, according to those interviewed for this report, systematic use of torture and other cruel, inhuman or degrading treatment or punishment continues to be an effective weapon used by Chinese authorities against the rights defense movement, particularly as a means of coercing detainees to "confess" to criminal activity or reveal information implicating themselves or their colleagues.

While many interviewees, particularly seasoned rights defense veterans, described the practice of torture and related abuses as routine, the detailed circumstances of these incidents are still shocking to behold. The abuses endured by lawyers Tang Jitian (唐吉田), Jiang Tianyong, Wang Cheng (王成), and Zhang Junjie (张俊杰) following their peaceful demonstrations outside a suspected black jail in Jiansanjiang in March 2014 are one clear example.²²⁶ (See *Spotlight: Jiansanjiang's Black Jail—Anguish and Resilience in Heilongjiang* on pages 73-74 and *Spotlight: Tang Jitian (唐吉田)—Battered but Undaunted* on pages 67-68.) After being rounded up from a local hotel and forcibly transported to the Daxing Public Security Sub-Bureau, Tang Jitian, Jiang Tianyong, and Wang Chen where strung up by their bound wrists, with their arms twisted backwards and their feet barely touching the ground.²²⁷ They were then kicked and beaten in their chests, heads, backs, and legs by police officers who threatened to "dig a hole in the ground and bury" one of the lawyers.²²⁸ Personal testimonies of

Enforced Disappearance, ¶ 8, reprinted in Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, at U.N. Doc. A/HRC/7/2 (Jan. 10, 2008), http://www.ohchr.org/Documents/Issues/Disappearances/disappearance_gc.pdf.

225 Interview with an anonymous lawyer, Aug. 1, 2014.

226 Human Rights Watch, *China: Investigate Lawyers' Torture Claims, Close Black Jails*, Apr. 7, 2014, www.hrw.org/news/2014/04/07/china-investigate-lawyers-torture-claims-close-black-jails.

227 *Id.*

228 *Id.*

such blatant physical attacks are not unique, and many lawyers interviewed had similar stories to tell. For instance, one lawyer described being physically restrained by several police officers while being relentlessly beaten by one of their colleagues. “As the officer continued pummeling me, the others did nothing to stop him, in fact they held me down to prevent me from defending myself,” the lawyer described.²²⁹ “I was indignant, furious, shocked... I never thought a lawyer would be forced to take a beating like this.”²³⁰

Other testimonies revealed a wide range of physical torture techniques calculated to minimize tangible evidence of injury. “This type of torture,” one lawyer explained, “is done in a way that outsiders cannot see.”²³¹ For instance, lawyers recounted long periods of harsh exposure to cold in heavily air-conditioned rooms with little clothing.²³² Others described excessive periods of sleep deprivation, as well as prolonged denial of access to food, water, or toilet or washing facilities.²³³ Naturally, such conditions typically caused detainees to suffer severe illness, often left untreated due to denial or significant delay of medical treatment—yet another form of cruel, inhuman or degrading treatment or punishment. “They told me that my illness was untreatable, and that I should wait until I get out of prison,” said one lawyer, “but because I was detained for so long, my illness went untreated.”²³⁴

It is well-documented that physical torture techniques are typically accompanied by psychological or emotional manipulation intended to coerce detainees into “confessing” to criminal activity or revealing information implicating themselves or their colleagues. “They want you to admit to wrongdoing, to damaging state security,” said one lawyer.²³⁵ “They also want you to reveal useful or incriminating information about others.”²³⁶ For instance, many interviewees described attempts by detention facility officials to sow discord among rights defenders as a means of extracting information. “The jailers will say, ‘you think that you’re doing such great work out there, but who has actually come to visit you now that you’ve been detained?’” described one lawyer, explaining how authorities then simultaneously refuse visits from fellow lawyers.²³⁷ “It’s an attempt to invent internal conflicts and create antagonism, in the hopes that you’ll turn against your colleagues to assist the police.”²³⁸

Other techniques include the conditioning of basic human necessities on acts

229 Interview with an anonymous lawyer, Aug. 1, 2014.

230 Interview with an anonymous lawyer, Aug. 1, 2014.

231 Interview with an anonymous lawyer, Aug. 2, 2014.

232 Interview with an anonymous lawyer, Jul. 29, 2014.

233 Interview with an anonymous lawyer, Jul. 23, 2014.

234 Interview with an anonymous lawyer, Jul. 28, 2014.

235 Interview with an anonymous lawyer, Jul. 29, 2014.

236 Interview with an anonymous lawyer, Jul. 29, 2014.

237 Interview with an anonymous lawyer, Jul. 28, 2014.

238 Interview with an anonymous lawyer, Jul. 28, 2014.

of “confession.” As the wife of one lawyer recounted from her husband’s previous detention, “they deprived him of sleep for 10 days and kept yelling at him to write a confession of wrongdoing.”²³⁹ She continued:

*“He was able to hold out for a while, perhaps longer than most prisoners, but eventually he could no longer take it and gave in. And even after he had written the so-called ‘confession,’ the authorities forced him to re-write it over and over again. Only after doing this was he finally allowed to sleep.”*²⁴⁰

She further recounted how her husband, currently detained, told her that during a previous detention, he was shown photos that officers had taken of her, his parents, and his siblings—all with worried or fearful expressions—in order to increase pressure on him to cooperate.²⁴¹

239 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

240 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

241 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

BOX:

TANG JITIAN (唐吉田)—BATTERED BUT UNDAUNTED

A determined veteran of the rights defense movement, lawyer Tang Jitian (唐吉田) has often been an outspoken champion for voiceless and marginalized victims of injustice. His past practice includes representation of individuals persecuted for their religious beliefs, such as Falun Gong practitioners, as well as detainees trapped in the Reeducation-Through-Labor system.¹ For his dedication to the underrepresented, however, Tang has paid significant professional consequences. In 2009, during the trial a Falun Gong practitioner, the judge repeatedly stopped Tang and his co-counsel Liu Wei (刘巍) from speaking on behalf of their client. The two were subsequently found to have “disrupted courtroom order and interfered with the regular litigation process” and their licenses were revoked.²

Despite being denied permission to practice as a lawyer, Tang nonetheless pushed forward as a legal activist in support of marginalized groups. Critically, he played key roles in coordinating peaceful demonstrations at facilities around China known for being secret “black jails,” where the clients of rights lawyers are often illegally detained and tortured, including Sichuan’s Ziyang Legal Detention Center and the notorious “legal education center” in Jiansanjiang, Heilongjiang. (See *Jiansanjiang’s “Black Jail”—Anguish and Resilience in Heilongjiang*.) Shockingly, during Tang’s April 2014 visit to Jiansanjiang, he and three fellow lawyers were forcibly seized and illegally

detained, resulting in Tang, Wang Cheng (王成), and Jiang Tianyong (江天勇) being held for 16 days, during which they were subjected to torture and other ill treatment. Upon his release, a medical examination revealed that Tang had numerous rib fractures, broken teeth, injuries to his chest and legs, as well as spinal injuries.³

Battered but undaunted, Tang recently filed a lawsuit against the Jiansanjiang Public Security Bureau alleging a range of constitutional and other violations, and demanding compensation for his injuries, an accounting of official misconduct, and a public apology.⁴ “As long as torture persists, it will be difficult eliminate injustice,” wrote Tang in a public statement.⁵ “I want to give a serious warning to Jiansanjiang police who take pleasure in torture that if they do not step back from the brink, they may one day taste the bitterness of their own fruit.”⁶ Nonetheless, Tang’s mistreatment at the hands of the police has not displaced his fundamental rejection of injustice, no matter who the victim might be. As he wrote in his statement, “if police officers are themselves tortured or forcibly disappeared, I would consider defending or representing them myself or contact others to do so, even if these officers have harmed me before.”⁷

Notes

- 1 Committee to Support Chinese Lawyers, *Tang Jitian* (唐吉田), <http://www.csclawyers.org/cases/TangJitian/>.
- 2 *Id.*
- 3 “Attorney Tang Jitian Sues Jiansanjiang Authorities,” *NEW TANG DYNASTY*, Jun. 25, 2015, www.ntd.tv/en/programs/news-politics/china-forbidden-news/20140625/164953-attorney-tang-jitian-sues-jiansanjiang-authorities.html.
- 4 *Id.*
- 5 Siweiluozi’s Blog, *Tang Jitian Recounts Torture and Detention in Heilongjiang*, May 31, 2014, www.siweiluozi.net/2014/05/tang-jitian-recounts-torture-and.html.
- 6 *Id.*
- 7 *Id.*

Not surprisingly, several lawyers described how the unbearable totality of these abuses took its toll, causing them to ultimately give in. “When I was detained, I knew my family was enduring enormous pressure, which made me feel so remorseful,” explained one lawyer.²⁴² “That remorse, combined with my deteriorating health and lack of any medical treatment, forced me to compromise with the authorities.”²⁴³

The risk of torture and other related abuses is particularly magnified when an individual’s whereabouts are unknown, including cases involving residential surveillance

²⁴² Interview with an anonymous lawyer, Jul. 29, 2014.

²⁴³ Interview with an anonymous lawyer, Jul. 29, 2014.

at an undisclosed location or enforced disappearance.²⁴⁴ Under these circumstances, where detainees are held—by design—in unofficial detention facilities with no monitoring mechanisms in place, detainees are at especially high risk of abuse, including through extraction of information and “confessions” through coercion and duress, as well as torture or other cruel and inhuman forms of punishment.

For these reasons, the secret detentions—and in some cases disappearance—of lawyers and legal activists in the summer of 2015 are especially troubling, including those cases connected to the Fengrui law firm. (See *Spotlight: “Whereabouts Unknown”: Individuals Currently Disappeared or Detained at Undisclosed Locations* on pages 61-62 and *Spotlight: Fengrui Law Firm—Affected Individuals* on page 38.) Because Fengrui’s director Zhou Yifeng and others appear to have publicly “confessed” to the criminal charges against them, there is widespread concern among Chinese lawyers and international observers alike that the Fengrui detainees are being subjected to coercion, torture, or other cruel, inhuman or degrading treatment or punishment, which also amplifies concerns that the detainees will not receive a fair trial under international law standards.

China has been a party to the Convention against Torture since 1988,²⁴⁵ which prohibits torture and other forms of cruel, inhuman, or degrading treatment or punishment. The definition of torture is limited to instances where severe pain or suffering is intentionally inflicted for the purpose of obtaining information or a confession, punishment, intimidation, or for reasons based on discrimination, where the act is committed by an official or at the behest of an official.²⁴⁶ This includes instances where officials have paid extra-legal forces to carry out detentions or acts of violence.²⁴⁷ China has been praised for some reduction in the instances of torture in official detention facilities, including prisons and detention centers.²⁴⁸ However, reviews of China’s performance under the Convention by the Committee Against Torture have consistently found systematic violations of obligations under the Convention, including routine use of torture against criminal suspects, abuses leading to deaths in custody, administrative

244 See Section IV: Government Practices that Constrain Cause Lawyers.

245 Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (*hereinafter* CAT), entered into force June 26, 1987, 1465 U.N.T.S. 85.

246 As defined in CAT, “torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” CAT, at Art. 1.

247 See *id.*

248 UN Commission on Human Rights, *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Mission to China*, Mar. 10, 2006, E/CN.4/2006/6/Add.6, <http://www.unhcr.org/refworld/docid/45377b160.html>.

detention and the ongoing use of “reeducation through labor,” and secret detentions.²⁴⁹ In a joint statement expressing serious concern about the detentions and disappearances of rights lawyers during the summer of 2015, five United Nations Special Procedures mandate-holders—including the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—specifically noted their concern “about the physical and mental integrity of 10 individuals, including 6 lawyers, who are currently held in police custody or under ‘residential surveillance’ in unknown locations, in most cases incommunicado since their arrests.”²⁵⁰

3. CONSTANT SURVEILLANCE AND MONITORING

“You begin to feel that you’ve lost possession of your own life.”
—Wife of a rights lawyer²⁵¹

Another effective weapon of intimidation and harassment against rights lawyers and their families is the practice of constant, around-the-clock surveillance and monitoring, strategically deployed to obliterate any expectation of personal or familial solitude and constituting an unlawful invasion of privacy on a massive scale. Time and time again, lawyers and their families reported endless encroachment on basic physical mobility and the freedom to perform even the most mundane daily tasks without official intrusion. For instance, many experienced constant accompaniment or shadowing of themselves and their families by government “minders.” “They told me, ‘you cannot go anywhere alone—if you do want to go anywhere, we will accompany you,’” said the wife of one rights lawyer, who was constantly followed by uniformed officers throughout 2011 and 2012 in an apparent attempt to intimidate her husband.²⁵² “They made it clear that they would follow me wherever I went.”²⁵³ There seem to be no limits to this type of harassment, with interviewees describing constant following by omnipresent officers—whether at the supermarket, accompanying children to school, attending doctor’s appointments, or visiting sick or elderly relatives—as a fact of everyday life. “If you want to do anything, anything at all, they will watch you and try to restrict you,” said one lawyer.²⁵⁴

Others interviewees described constant harassment by “visitors” at their homes

249 UN Commission on Human Rights, *Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment addendum: follow-up to the recommendations made by the Special Rapporteur visits to Azerbaijan, Cameroon, Chile, China, Colombia, Georgia, Jordan, Kenya, Mexico, Mongolia, Nepal, Pakistan, Russian Federation, Spain, Turkey, Uzbekistan and Venezuela*, Feb. 18, 2008, A/HRC/7/3/Add.2, <http://www.unhcr.org/refworld/docid/47cbbf262.html>.

250 Office of the High Commissioner for Human Rights, “*Lawyers Need to be Protected not Harassed*” – UN Experts Urge China to Halt Detentions, Jul. 16, 2015, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16241&LangID=E.

251 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

252 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

253 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

254 Interview with an anonymous lawyer, Jul. 29, 2014.

or workplaces. For instance, the wife of one lawyer described how, during a period when authorities were investigating her husband, a steady stream of government actors—including both uniformed and in plainclothes—would call on their home at all hours of the day and night for fictitious reasons, including inspection of water or gas pipes or demands for various types of property documentation.²⁵⁵ Another interviewed lawyer told of how she and her husband were forced to relocate eleven times in one month just to avoid “visitors” and other types of harassment at a time when her husband was ill and needed substantial rest.²⁵⁶ Another lawyer described constant telephone harassment late at night with demands that she come in to “drink tea” and report on her recent work.²⁵⁷

Constant monitoring is also performed through electronic means. Most interviewees experienced a considerable degree of digital surveillance in connection with telephones and electronic communications, as well as Internet use and electronic monitoring of homes and workplaces. In the words of one lawyer’s relative, “your phones are wiretapped, your house is bugged. You begin to feel that you’ve lost possession of your own life.”²⁵⁸ Troublingly, in the area of surveillance, the national security legislation passed on July 1, 2015 would appear officially legalize major monitoring practices to create what human rights monitors describe as a “system of complete, permanent digital surveillance.”²⁵⁹ The draft Cybersecurity Law will further bolster this system and facilitate surveillance.

Notably, constant and ever-present surveillance is not limited to individuals and their families. Since 2011, observers have noted a stark increase in reports of close monitoring of independent organizations, including NGOs, one of many tools through which the government exerts pressure on civil society. For many of these organizations, surveillance and monitoring is accompanied by police raids, seizures of files and equipment, and detentions of lawyers and legal staff. (See *Spotlight: Yirenping (益仁平)—Strategic Advocacy and the Consequences of Success* on page 28 and *Spotlight: Fengrui Law Firm—How Rights Lawyers Become “Criminals” in Xi Jinping’s China* on pages 43-44.)

4. PRESSURES FELT BY FAMILY, FRIENDS, AND NEIGHBORS

“Our entire lives have been totally disrupted.”
—Wife of a rights lawyer²⁶⁰

The arsenal of extra-legal weapons to dismantle the rights defense movement

255 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

256 Interview with an anonymous lawyer, Jul. 28, 2014.

257 Interview with an anonymous lawyer, Aug. 28, 2015.

258 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

259 Human Rights Watch, *China: Draft Counterterrorism Law a Recipe for Abuses*, Jan. 20, 2015, www.hrw.org/news/2015/01/20/china-draft-counterterrorism-law-recipe-abuses.

260 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

has continued to expand within the Chinese criminal justice system, encompassing not only individual rights defenders, but their family and social networks as well. Increasingly, the families, neighbors, and broader community circles of rights defense lawyers have become collateral targets for harassment, intimidation, and in some cases, criminal punishment. The proposition for these targets is clear—government persecution will continue, if not increase, so long as association with, and support for, the “troublemaking” rights lawyer continues; but cut all ties with the troublemaker, and life will return to normal. Through this dual combination of collective responsibility and social isolation, the injury to individual rights defenders is twofold—those personally associated with him or her are condemned to share his or her fate, while all connection to the rest is effectively severed. The consequences can be devastating. Based on experiences reported by lawyers and their families, the examples below illustrate how government authorities exert pressure across entire social networks as a means of weakening virtually every aspect of the life of a rights lawyer.

Many lawyers described constant harassment of their families and neighbors by government authorities, ranging from uniformed law enforcement officials to plain-clothes agents, all conveying a clear, unmistakable message to pass on to the lawyers—stop doing rights defense work. For example, in one often repeated scenario, a lawyer described how state security officials would arrive at his parents’ home to warn them that their son should immediately stop representing Falun Gong practitioners or face undefined consequences.²⁶¹ Another individual explained how security officers ransacked his parents’ home after finding he wasn’t there, warning that their son should not “cause trouble.”²⁶² Another lawyer currently living outside of China described how her husband and parents have both been pressured to urge her to drop her human rights activities as a condition to guaranteeing her safety when she returns.²⁶³ Other lawyers told similar stories involving similarly threatening “warnings” against rights defense work to parents, siblings, in-laws, and in some troubling instance, the young children of lawyers.²⁶⁴ Often, these warnings would be accompanied by verbal abuse, destruction of property, and physical altercations. While these abuses seem relatively minor compared to other types of intimidation, taken as a whole, the constant frequency of their occurrence and the degree of emotional disturbance to family and community relations can have highly disruptive impacts.

In several instances, pressure on families and neighbors was more significantly more heightened. For example, one lawyer described how officials targeted the professional livelihood of her adult daughter, who lost her job at a non-profit organization after an intervention by authorities.²⁶⁵ As a result of

261 Interview with an anonymous lawyer, Aug. 1, 2014.

262 Interview with an anonymous rights defense activist and spouse of a rights lawyer, Aug. 25, 2015.

263 Interview with an anonymous lawyer, Aug. 28, 2015.

264 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

265 Interview with an anonymous lawyer, Jul. 28, 2014.

her rights defense work, the lawyer described, “there’s no way for my daughter to hold down a job.”²⁶⁶ On other instances, family members were threatened with criminal charges and imprisonment for their support of their loved ones.²⁶⁷ For example, in late 2011, the wife of one rights lawyer was explicitly threatened with jail time for advocating on behalf of her husband.²⁶⁸

An increasingly common form of harassment involves significant government pressure on current or prospective landlords to evict or refuse rights lawyers and their families as tenants. A number of lawyers reported that government officials had begun intimidating property owners and housing agencies, warning

266 Interview with an anonymous lawyer, Jul. 28, 2014.

267 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

268 Interview with the wife of an anonymous lawyer, Jul. 23, 2014.

SPOTLIGHT:

JIANSANJIANG’S BLACK JAIL—ANGUISH AND RESILIENCE IN HEILONGJIANG

They are known as “black jails”—secret, illegal detention facilities operating outside of China’s formal legal system, where scores of Chinese citizens are held incommunicado and without access to lawyers under often deplorable conditions.¹ Despite the government’s highly publicized decision to abolish the “Reeducation-Through-Labor” system of extra-judicial detention in late 2013, there remains widespread concern among lawyers that illegal detention facilities continue to persist, including in the form of black jails.²

It was for this reason that four rights lawyers—Tang Jitian (唐吉田), Jiang Tianyong (江天勇), Wang Cheng (王成), and Zhang Junjie (张俊杰)—arrived in Jiansanjiang, in China’s northeastern Heilongjiang Province, on March 20, 2014.³ Accompanied by a group of concerned citizens, the lawyers sought to investigate a so-called “legal education center” which they believed was in fact a black jail where their clients, a group of Falun Gong practitioners, were being illegally held. The lawyers attempted to visit the facility, but after being denied access, they checked in at a hotel to rest and consider their next steps. While they expected local authorities to resist their campaign, they could not have prepared for the retaliation that followed.

The following morning, on March 21, plainclothes men rounded up the lawyers from the hotel and forced them into unmarked vehicles that transported them to the Daxing Public Security Sub-Bureau.⁴ There, Tang Jitian, Jiang Tianyong, and Wang Chen were strung up by their bound wrists, with their arms twisted backwards and their feet barely touching the ground.⁵ They were then kicked and beaten in their chests, heads, backs, and legs by

police officers who threatened to “dig a hole in the ground and bury” one of the lawyers.⁶ Zhang Junjie, meanwhile, was slapped, struck with water bottles, and pushed to the ground.⁷ Eventually, the lawyers were sentenced to between five and fifteen days of administrative detention for, among other things, “inciting” Falun Gong supporters to “gather in crowds to create disturbances” and “shout slogans of evil cult” in front of the black jail at Jiansanjiang.⁸ (See *Spotlight: Tang Jitian (唐吉田)—Battered but Undaunted* on pages 67-68.)

Remarkably, if the persecution of these lawyers was meant by the officials to warn the rights defense community away from Jiansanjiang, the effect was just the opposite. As word of the lawyers’ abuse spread in the days after their detention, dozens of lawyers and activists from around the country began to descend on Jiansanjiang.⁹ Many of the newly arrived, including lawyers Li Jinxing (李金星), Zhang Lei (张磊), Hu Guiyun (胡贵云), and Jiang Yuanmin (蒋援民), began an outdoor hunger strike on March 25, despite sub-zero temperatures.¹⁰ Meanwhile, news of the Jiansanjiang demonstration spread throughout China and around the world, prompting widespread calls for the release of the detained lawyers and the closure of the black jail at Jiansanjiang. Eventually, Zhang Junjie was released on March 27, while the remaining lawyers were released on April 6.¹¹ And while the legacy of China’s system extra-judicial detention persists in widespread reports of back jails continuing to operate nationwide, the solidarity of lawyers in Heilongjiang—and indeed throughout China and around the world—stands as moving example of how China’s rights lawyers push forward even under the most strenuous circumstances.

Notes

- 1 Human Rights Watch, “An Alleyway in Hell”: China’s Abusive Black Jails, (2009), www.hrw.org/report/2009/11/12/alleyway-hell/chinas-abusive-black-jails.
- 2 Human Rights in China, *Post Reeducation-Through-Labor “Abolition”: Lawyers and Defenders Monitor Legal Reform Implementation--The Jiansanjiang Case*, Apr. 28, 2014, www.hrichina.org/en/post-reeducation-through-labor-abolition-lawyers-and-defenders-monitor-legal-reform-implementation.
- 3 Human Rights Watch, *China: Investigate Lawyers’ Torture Claims, Close Black Jails*, Apr. 7, 2014, www.hrw.org/news/2014/04/07/china-investigate-lawyers-torture-claims-close-black-jails.
- 4 *Id.*
- 5 *Id.*
- 6 *Id.*
- 7 *Id.*
- 8 *Id.*
- 9 Human Rights in China, *HRIC Urges International Attention: Lawyers and Citizens Detained in Heilongjiang, Lawyers on Hunger Strike in Protest*, Mar. 26, 2014, www.hrichina.org/en/press-work/hric-bulletin/hric-urges-international-attention-lawyers-and-citizens-detained.
- 10 *Id.*
- 11 Human Rights in China, *Post Reeducation-Through-Labor “Abolition”: Lawyers and Defenders Monitor Legal Reform Implementation--The Jiansanjiang Case*, *supra* note 2.

them about the difficulties they might face in deciding to rent property to “troublemakers.” “Just the ability to rent a place to live has become a challenge due to police pressure on landlords and housing agencies to refuse us as tenants,” explained one lawyer.²⁶⁹ “We recently rented a house in one part of town, but were forced to move after the landlord evicted us due to police intimidation. Then, after living at a new place for just one week, the police came again, and then called the landlord and housing agency, forbidding them to rent to us.”²⁷⁰ Similarly, another lawyer described how local officials prevented him from leasing a home after moving to a new town to expand his rights defense law practice.²⁷¹

D. Impact on Cause Lawyers

The impact that these sweeping tactics—both law-based and extra-legal—have on individuals and on the legal profession as a whole cannot be understated. For individuals, the revocation of the license to practice law can mean loss of livelihood and serious economic hardship, which was highlighted by a number of interviewees. This, coupled with the strategic use of extra-legal measures that intimidate family, friends, and neighbors can lead lawyers and advocates to abandon their work entirely. Other lawyers are disappeared or put into detention and therefore unable to work. For the profession as a whole, this may mean that cause lawyers and lawyers that are willing to take on sensitive cases, simply may not be available, especially to detainees living in areas difficult to access.

One lawyer told the Committee that, at the time of the interview in late 2014, Henan province had only one rights lawyer left who was not in detention. The rights defense community was fearful that the authorities would arrest him, leaving Henan without any rights lawyers.²⁷² Lawyers also described the crack-down in other localities (including Shan Gan, Zhengzhou, Jianshenjiang, and Guangzhou) by increasing pressure on lawyers, detaining them, and forcing lawyers to return to their home provinces.²⁷³ The chilling effect of all these tactics is not just regional. Even in Beijing, where many rights lawyers are based, fewer and fewer law firms are willing to take on cases that are sensitive, or allow any of their law firms to do so, making access to these lawyers much more difficult for potential clients.²⁷⁴

269 Interview with an anonymous lawyer, Jul. 28, 2014.

270 Interview with an anonymous lawyer, Jul. 28, 2014.

271 Interview with an anonymous lawyer, Jul. 29, 2014.

272 Interview with an anonymous lawyer, Jul. 28, 2014.

273 Interview with an anonymous lawyer, Jul. 28, 2014.

274 Interview with an anonymous lawyer, Jul. 29, 2014.

V. WAYS FORWARD FOR CAUSE LAWYERS

There are reasons to remain optimistic about the strengthening of Chinese civil society in spite of the present crackdown—including the resilient spirit of cause lawyers themselves. Remarkably, even in midst of this unprecedented attack, the community of cause lawyers in China has taken a bold step to underscore its resolve to continue pressing forward. In a joint declaration circulated widely through social media, 276 lawyers from across the nation stated that they would “continue to devote ourselves to human rights and law in China, join in individual cases, strive to realize the part of the Constitution about ‘respecting and protecting human rights’ and work diligently to defend human rights!”²⁷⁵ At the same time, international civil society actors have voiced strong support for Chinese rights lawyers, including collective statements of solidarity by lawyers’ associations from around the world. (See *Spotlight: Lawyers Supporting Lawyers—Global Solidarity with Chinese Colleagues* on page 14.) Similar concerns have been voiced by international governments and the UN, including a joint statement from independent UN experts in support of Chinese rights lawyers, declaring that “[l]awyers should never have to suffer prosecution or any other kind of sanctions or intimidation for discharging their professional duties.”²⁷⁶ This section will examine the ways in which Chinese lawyers have been responding to the crackdown and demonstrating their resilience as a movement, as well as ways in which the international community can continue to assist the movement going forward.

A. A Growing Movement

As explained in Section III, are many reasons behind the rising number of lawyers taking on rights related cases in recent years. Despite the many risks, exemplified by lawyers who have taken on challenging cases and faced the consequences of that work, including Chen Guangcheng (陈光诚), Yang Maodong

275 Didi Kirsten Tatlow, “Despite Crackdown, Chinese Lawyers Vow to Press for Human Rights,” *NEW YORK TIMES*, Sept. 16, 2015, sinosphere.blogs.nytimes.com/2015/09/16/china-lawyers-human-rights-crackdown/.

276 Office of the High Commissioner for Human Rights, “Lawyers Need to be Protected not Harassed” – *UN Experts Urge China to Halt Detentions*, Jul. 16, 2015, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16241&LangID=E (citing collective statement joined by the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the promotion and protection of freedom of opinion and expression, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez). For statements from foreign governments, including the governments of Australia, Canada, Germany, and the United States, as well as from the European Union, see Human Rights in China, Mass Crackdown on Chinese Lawyers and Defenders, Sept 15, 2015, www.hrichina.org/en/mass-crackdown-chinese-lawyers-and-defenders.

(Guo Feixiong), Gao Zhisheng, and Zheng Enchong, others are still willing to join the ranks of rights lawyers. An increasing number are willing to risk harassment, threats, and legal sanctions, including many from diverse backgrounds, motivated by a variety of reasons. Government crackdowns can even be said to contribute in part to the growing of the ranks of rights lawyers. As more lawyers experience frustration in connection with official intrusion into their work, the more open and vocal in their dissatisfaction they become, and when the most outspoken are inevitably put away by the authorities, others join the ranks in their stead.

In addition, rights lawyers have struggled to carve out more space for themselves to do their work in recent years, and more lawyers appear to be joining the movement. Many lawyers have seen friends and colleagues threatened, fueling increasing solidarity within the professional lawyers' community.²⁷⁷ Notably, many lawyers who take on non-controversial cases are also facing problems, including commercial lawyers not otherwise associated with the rights defense movement, but who nonetheless feel the same frustrations as a result of government intrusion. For instance, lawyers Wang Yu and Yu Wensheng—both of whom started careers in commercial law before turning to public interest cases—were both caught in the recent roundup of rights defense lawyers.²⁷⁸ (See *Spotlight: Wang Yu (王宇)—A Potent Symbol of China's Cause Lawyering Community* on pages 9-10.) There appears to be a growing perception among all lawyers—both rights lawyers and conventional lawyers alike—that they are running out of alternatives to avoid challenging the system. Moreover, under these circumstances, the growing solidarity and cooperation among like-minded lawyers can be an effective tool against fear.

Even in the wake of the summer 2015 detentions, there is still optimism within the lawyers' community, which appears more active and vibrant than it was two or three years ago. At that time, rights lawyers did not work together or collectively organize as frequently; instead, many worked independently on their own cases. Now, however, as demonstrated by the Jiansanjiang "black jail" case and other dynamic examples of lawyer-driven campaigning, and by emerging new communities of lawyers such as the Women Lawyers Network,²⁷⁹ the broader professional community of rights lawyers is beginning to experience the benefits of collective strategy and action. These include a stronger division of labor, more comprehensive advocacy approaches, better utilization of the Internet and social media, shared learning and professional development opportunities, and greater numbers for recruitment of peaceful demonstrators and protestors.

277 Interview with anonymous lawyer.

278 See, e.g., Andrew Jacobs, "China Detains Lawyer Who Accused Police of Torture, His Wife Says," *NEW YORK TIMES*, Aug. 7, 2015, www.nytimes.com/2015/08/08/world/asia/china-detains-yu-wen-sheng-lawyer-who-accused-police-of-torture-his-wife-says.html.

279 Founding members of the network include Liu Wei (刘伟) and Wang Yu.

Under these circumstances, the degree of networking among lawyers has been especially striking. Without an independent bar association to represent their interests, lawyers attempt to meet over meals and informal “salons” to discuss shared connections, case strategies and best practices, and thoughts about the movement. When the rights defense movement first emerged, it was largely case-specific, but now the broader community of rights lawyers can engage in more comprehensive and analytical discussions, often tackling systemic legal and social issues underlying their rights defense advocacy.²⁸⁰

Importantly, the Internet, mobile technology, and social media make it easier for lawyers to connect and organize. In addition to facilitating communication, these tools are also essential for coordinating action. This has included exciting examples of the use of crowd-sourcing as a tool for transparency and accountability. As online networks of rights lawyers grow in scale, social media has also helped make the *weiquan* movement richer, more strategically oriented, and more regionally and demographically diverse. There are also more secure forms of communication available for lawyers, which help protect against electronic surveillance and monitoring. Taken together, the Internet, mobile technology, and social media continue to provide innovative tools to improve organization, cooperation, coordination, and support among the rights lawyers’ community.

B. Training and Advocacy

Part of the effort among rights lawyers themselves is to organize training opportunities, including seminars and shared learning discussions, to provide education and professional development to lawyers in public interest advocacy strategy. Rights lawyers in Beijing and in other cities have organized training roundtables that identify key strategies for specific types of public interest cases, for example cases that involve the application of torture and other ill-treatment, as well as strategies for legal advocacy and reporting. These important lawyer-driven efforts can be supported and enriched by professional connections and exchanges with lawyers and bar associations outside China, where public interest lawyering often enjoys a longer history. Indeed, many of the lawyers interviewed for this report enthusiastically invited more opportunities for exchange and training, including guidance on the international human rights obligations that China has submitted itself to, as well as on monitoring and evaluation of the government’s implementation of those obligations.

Moreover, while some lawyers used to fear that too much media coverage might have negative effects on their clients and advocacy, many are now increasingly conducting their own public media campaigns and calling for attention to their cases in order to be more effective advocates for their clients. Again, many of

280 EVA PILS, CHINA’S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE 232 (2015).

these lawyers interviewed for this report invited greater media attention from overseas outlets as a way to bolster their advocacy strategies.

Finally, international civil society actors, foreign governments, and independent experts are also adding pressure to the Chinese authorities through international channels and mechanisms. This attention is especially helpful when it comes from international lawyers associations and groups standing in solidarity with their professional colleagues in China. In 2015, some of the most helpful and inspiring demonstrations of support were strong statements issued out by lawyers' and jurists' associations across the globe. (See *Spotlight: Lawyers Supporting Lawyers—Global Solidarity with Chinese Colleagues* on page 14.) Lawyers interviewed for this report were often especially enthusiastic to see that the global community of legal practitioners was standing up for the role of rights lawyers in China.

VI. CONCLUSIONS AND RECOMMENDATIONS

The space for China's rights lawyers to do their jobs effectively has become increasingly tight since the change in China's leadership in 2013. Earlier periods of tightening control had been followed by periods of relative ease, but at the time of this publication the situation for lawyers, after a summer during which numerous lawyers were questioned, harassed, and detained, and disappeared, remains deeply problematic. Lawyers who seek to represent China's most vulnerable citizens themselves become a target for official retribution.

China's cause lawyers have indicated that they remain committed to their work and will continue to support each other and seek new opportunities to promote justice, public interest causes, and international human rights at home.

Political statements committing to the rule of law can only be taken seriously where the rights of lawyers to practice law are guaranteed in law and in practice. China's current framework of laws, regulations, and practices must be revised in order to ensure that lawyers are able to practice without "intimidation, hindrance, harassment or improper interference," as provided for in the UN Basic Principles.

The international community, including governments, non-governmental and international organizations, professional organizations, academic institutions, lawyers associations, and individuals, have an important role to play in calling for a strengthening of the rule of law in China by supporting the community of rights lawyers in China that continues to face persecution from the government. International groups must continue to monitor individual cases, systemic abuses, and demand a closer adherence to international law in the administration of justice in China.

A. To the Chinese Government:

1. Ratify the International Covenant on Civil and Political Rights, as the Chinese government has repeatedly promised to do, as well as the International Convention for the Protection of All Persons from Enforced Disappearance, to demonstrate its commitment to the promotion and protection of the human rights of all its citizens
2. Enact changes in laws and regulations that protect the rights of lawyers to practice law in conformity with international standards, including by:
 - a. Adopting national legislation that protects the rights of lawyers,

which includes a monitoring and complaints mechanism for lawyers to make use of where abuses take place, which includes monitoring of abuses undertaken against lawyers in both their professional and personal lives;

- b. Amending the Criminal Law offenses that are vague and open to abuse and use against individuals simply exerting their Chinese constitutional right and international human right to freedom of expression, including provisions prohibiting disturbances in the courtroom that have been used against lawyers simply for representing their clients;
 - c. Amending the lawyer licensing framework for lawyers to ensure that the ability of a lawyer to obtain or retain his or her license is not tied to the type of case that he or she undertakes and affirm that lawyers are not identified with their clients or their clients' causes;
 - d. Providing for the right of lawyers to form independent bar associations and mechanisms of support that they can join on a voluntary basis where the official bar associations fall short of their response to lawyers in need, and remove rights-limiting provisions of codes of conduct directed at lawyers;
3. Revise the Criminal Procedure Law to remove abuses to the right to a fair trial and adequate defense that impact lawyers, exposed after the 2012 amendments went into place, including by:
- a. Removing restrictions and delays on lawyers to meet with their clients promptly following detention, and to meet with clients in private regardless of the charge involved;
 - b. Providing for notice of detention and arrest to family and legal counsel in all cases;
 - c. Eliminating provisions allowing for residential surveillance at a designated place that legalize disappearances and subject detainees to greater vulnerability for abuse;
 - d. Undertaking other amendments to strengthen fair trial guarantees, such as providing for a public trial in all cases and providing for a right to silence.

4. Invite independent scrutiny of the system regulating lawyers in China in order to provide training, exchange, and adoption of best practices. This should include:
 - a. Inviting the United Nations Special Rapporteur on the independence of judges and lawyers to do a country visit to China and examine the laws, regulations, and practices that impede lawyers' professional duties, and make recommendations for improvement;
 - b. Establishing an independent working group with a mandate to conduct a nationwide study of the rights of lawyers with domestic and international participants that identifies current practices that impede lawyers' abilities to carry out their duties and isolates the specific needs that rights lawyers working in different fields have;
 - c. Invite independent international lawyers groups and bar associations to provide trainings in international standards for law for police, prosecuting organs, and judges, relating to the rights of lawyers, fair trial guarantees, the rights of criminal suspects and defendants;

Review the individual cases examined in this report to take immediate action to release from detention or residential surveillance all rights lawyers being held simply for carrying out their professional duties and ensure that practices enabling abuses of power and extra-legal measures targeting rights lawyers cease immediately.

B. To the International Community

The international community should:

1. Continue to press Chinese officials in both official and unofficial settings to strengthen protections for an independent legal profession and judiciary. Calls for the protection of an independent legal profession should include reference to specific cases so that the cases of individual rights lawyers in detention do not go undocumented and unnoticed;
2. Increase opportunities for legal exchanges and trainings between China and other legal jurisdictions, at bar associations, law firms, and law schools, to provide for further training and understanding of human rights concerns, independent legal standards, and non-criminal professional sanctions, and ensure that Chinese counterparts include participants from a range of backgrounds, not all affiliated with the official lawyers associations;

3. Provide opportunities for rights lawyers who are excluded from their professional associations to travel and study abroad if their licenses have been suspended and revoked due to their work on politically sensitive cases. International foundations should consider establishing a permanent financial base of support for Chinese rights lawyers living outside of China who cannot return home for fear of official reprisals;
4. Support individuals and networks of lawyers inside China who take on politically sensitive clients and causes to ensure that they are not excluded from professional support and compensation. Issue statements and strong demands that individual lawyers who come under pressure be allowed to continue their work.

ABOUT US

The **Committee to Support Chinese Lawyers** is a group of independent lawyers from outside China whose mission is to support lawyers in their endeavor to uphold the rule of law in China. The Committee seeks to strengthen the role of lawyers in China and to promote their independence through research, advocacy, capacity-building, and cross-cultural exchange.

One of the oldest and largest law school-based human rights programs, the **Leitner Center for International Law and Justice**, named in recognition of the Leitner Family, provides education and training to law students, facilitates capacity building and advocacy with activists and grassroots groups around the world, and contributes to critical research among scholars in international human rights. From its base at Fordham Law School in New York City, the Leitner Center develops long-term partnerships with local social justice organizations and other stakeholders across the globe



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