

An open letter to the Ministry of Justice of the People's Republic of China and All China Lawyers Association

Dear Minister Fu Zhenghua and President Wang Junfeng,

Over the past 40 years, China has repeatedly promised to reform the Chinese legal system. While there has been much modernisation on mechanisms pertaining to civil and commercial law, the current legal system has yet to meet the minimum standards of international human rights law; in fact, during this period, China's human rights record has significantly deteriorated.

Although China has steadfastly claimed to already be a country governed by the Rule of Law, the Chinese Communist Party (CCP) General Secretary Xi Jinping and Chief Justice Zhouqiang continue to maintain that China will never allow judicial independence and that Chinese courts must *always* accept the leadership of the CCP. China is still unable to ensure the fundamental rights guaranteed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and other instruments. As a signatory to the ICCPR (1998), China has the good faith obligation to refrain from acts that would defeat the object and purpose of the covenant. While claiming for over two decades to be preparing for ratification, China routinely 'defeats' the ICCPR by using its legal system to arbitrarily detain and disappear perhaps millions of people without access to legal representation or to independent, competent and impartial courts.

Hosted by the All China Lawyers Association, the Global Lawyers Forum, to be held on 9-10 December, is meant to be an opportunity for China to review its legal and judicial system with the 600 international guests invited.

The 709 Crackdown, Deprivation of Legal Rights and Prosecution

In 2015, China clamped down on the country's rights lawyers, leading to at least 321 victims, including lawyers, law firm staff, human rights activists and family members. Secret trials are known to have been held, with human rights lawyers being summarily convicted after prolonged incommunicado detention, often in undisclosed locations. Victims include, but are not limited to, Lawyers Wang Quanzhang¹ and his former defence lawyer Yu Wensheng; Lawyer Li Yuhan, the attorney for 709 victim, Wang Yu, who has been detained since 2017 and is still awaiting trial – which has been pushed back time and time again.

¹ Joint statement of 20 lawyers' associations asking for the immediate release of Chinese lawyer Wang Quanzhang: <https://www.odage.ch/medias/commissions/documents/Droits%20de%20l'Homme/Press%20Release%20Wang%20Q.%20EN.pdf>

Lawyers in China are often denied access to their clients in detention. They are also often told that they have been dismissed by their clients without proper proof of such decision by the client, effectively stripping clients of the right to counsel of choice. These violations extend beyond those who have been persecuted in the post 2015 Crackdown.

Some of the victims of the 709 Crackdown are still in prison²; suppression has not ceased as more rights lawyers have been incarcerated such as lawyers Chen Wuquan, Chen Jiahong and Qin Yongpei. Some have already finished their time in incarceration, but are still under close, constant surveillance, with their families and themselves harassed on a daily basis.

Torture, Enforced Disappearances and Forced Confessions

To this day, there are still human rights lawyers who are forcefully “disappeared” including Lawyer Gao Zhisheng, who has been disappeared now for more than two years; most endured torture during incarceration; some still suffer from psychological trauma because of the untold horrors they experienced while detained or jailed. Known means of torture include but are not limited to: sleep deprivation, forced medication, the use of tiger benches and H-link cuffs, as well as solitary confinement.

Prior to formal arrest, individuals can be subjected to residential surveillance at a designated location (RSDL). These victims are typically accused of overly broad offences such as “endangering national security”. Police are empowered to detain suspects at a location of their discretion for up to 6 months. Exacerbating the problem, RSDL is invariably used in combination with article 37 of Criminal Procedure Law which gives police the discretion to forbid suspects/ defendants’ access to counsel, subjecting them to a higher risk of torture in an incommunicado state. With the massive power that the police wield, arbitrary arrests and detentions are commonplace. Human rights lawyers like Wang Yu have been put under RSDL, tortured and have “confessed” under coercion to crimes they never committed.

Further Crackdown

Even lawyers who have completed sentences and been freed from prison are under constant surveillance. Despite having been released, Lawyer Jiang Tianyong remains deprived of the freedom of movement and is still under constant surveillance. All visitors must register with the agents who live around the lawyer’s residence, and who report to the authorities every activity and behaviour that they observe; lawyer Tang

² Victims such as Lawyer Zhou Shifeng (founder of Fengrui Law Firm), activist Wu Gan (a.k.a. the Butcher), and democracy advocate Hu Shigen were sentenced to seven to eight years in jail after the 709 Crackdown, and are still in jail.

For this year’s updates on victims of the 709 Crackdown, please refer to:

<https://www.chrlawyers.hk/en/content/%E3%80%90%E2%80%9C709-crackdown%E2%80%9D%E3%80%91-latest-data-and-development-cases-1800-8-july-2019>

Jingling was subjected to enforced disappearance for 10 days just months after his release, and was stripped of the right to travel abroad. Lawyers like Wang Quanzhang have also been deprived of political rights for 5 years, which would mean a deprivation of their right to vote, freedom of speech, protest and publication.

Administrative Penalties

Since 2015, the suppression assumed another discrete face, in the form of the filtering out of lawyers who have taken on politically sensitive cases. Such lawyers have been subjected to administrative sanctions including, but not limited to, suspension and invalidation of their practice licences. Even more grave is the possibility of having one's licence revoked for reasons like "improper remarks on the Internet."³ Between September 2017 and July 2019, there were at least 33 lawyers affected by such penalties⁴. We are deeply concerned by this deprivation of lawyers' rights to practice, and by the state of their livelihood once deprived of the profession for which they have been trained. Lawyers Associations are usually directly involved in the punishment of these lawyers, leading to internal disciplinary hearings by the Association and delayed licence approvals after the annual inspections, a system requiring lawyers to have their licences reviewed annually.

Harassment of Families of Human Rights Lawyers

Families of detained or imprisoned human rights lawyers are often banned from seeing them, and very often for years. Upon arrival at the detention centre, families are often told that they are not allowed to see the detained lawyer, but can only watch a current video of the detainee. Or they may be told that the facilities are undergoing construction and therefore are not open to visitors. That is what happened this year to Li Wenzu, wife of Wang Quanzhang, who was not allowed to see her husband for more than three years).

In addition to the arbitrary detention and punishment of the lawyers, their families are also often mistreated. Their children are deprived of proper education because schools in their areas are pressured to refuse them as students, or to expel them if they are already students. Examples include the children of Wang Quanzhang and of Li Heping. Wives of detained or imprisoned human rights lawyers are often threatened by authorities to dissuade them from continuing their activism in their fight for freedom and justice on behalf of their husbands. An example is Xu Yan (wife of Lawyer Yu Wensheng). Some are harassed to force them from their homes or their landlords are

³ For details, please see: <https://www.scmp.com/news/china/politics/article/3021863/china-strips-rights-lawyer-li-jingling-licence-over-improper>

⁴A List of Lawyers who Face the Threat of Administrative Penalty (As of 20 Sept 2019): <https://www.chrlawyers.hk/en/content/administrative-penalties-september-2019>

harassed into evicting them, leading to homelessness, as in the case of Wang Qiaoling (wife of Lawyer Li Heping, repeatedly forced to move).

Requests

Therefore, we call on the Ministry of Justice of the People's Republic of China, along with the All China Lawyers Association, to ensure that China honors its commitments to the Constitution, Chinese laws, the UN Universal Declaration of Human Rights, the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, the ICCPR and other instruments including the UN Basic Principles on the Role of Lawyers.

We also specifically call upon the Chinese authorities to implement genuine *Rule of Law*, rather than her present *Rule by law* by:

- Ratifying the ICCPR;
- Doing anything in your power to restore the freedom of all lawyers who have been imprisoned or detained for political reasons;
- Ensuring a smooth and fair process of prosecution for the accused and all legal rights to which the accused are entitled¹;
- Guaranteeing the fundamental rights of human rights lawyers;
- Ending all forms of enforced disappearances;
- Ending surveillance on lawyers who have already been released from prison;
- Immediately banning all forms of torture in detention and incarceration carried out by state agents and the police;
- Revoking administrative measures taken against lawyers which improperly interfere with lawyers' legitimate professional functions; and
- Immediately cease harassing families of detained or imprisoned lawyers.

Yours sincerely,

Organisations 團體

比利時法語及德語系律師協會, 比利時

Avocats.Be, l'ordre des Barreaux Francophones et Germanophone de Belgique Avocats/
Francophone and German-speaking Bars of Belgium Lawyers, Belgium

無國界律師組織, 比利時

Avocats sans Frontières/Lawyers Without Frontiers, Belgium

日內瓦律師協會

Bar of Geneva

中國維權律師關注組，香港
China Human Rights Lawyers Concern Group, Hong Kong

聲援中國律師委員會（紐約），美國
The Committee to Support Chinese Lawyers, NYC, US

人權公約施行監督聯盟
Covenants Watch, Taiwan

德國律師協會
Deutscher Anwaltverein/The German Bar Association

環境法律人協會，臺灣
Environmental Jurists Association, Taiwan

臺灣律師公會人權委員會
Human Rights Committee of the Taipei Bar Association, Taiwan

國際律師協會人權部
International Bar Association's Human Rights Institute

國際人民律師協會
International Association of People's Lawyers

民間司法改革基金會，臺灣
Judicial Reform Foundation, Taiwan

澳洲律師公會
Law Council of Australia

律師助律師基金會，荷蘭
Lawyers for Lawyers, Netherlands

加拿大律師權利觀察
Lawyers' Rights Watch Canada

萊特納國際法暨正義中心，美國
The Leitner Center for International Law and Justice, US

列日律師公會
Liege Bar Association

處境危險律師國際觀察站，義大利分部

Observatory of Endangered Lawyers, Italy

意大利刑事律師辦公室工會
Union of Italian Penal Chambers

台灣廢除死刑推動聯盟
Taiwan Alliance to End the Death Penalty

臺灣聲援中國人權律師網絡
Taiwan Support China Human Rights Lawyers Network, Taiwan

Individuals 個人

Dean (ret.)Gill H. Boehringer
Macquarie University Law School, Sydney, Australia

Alexis Deswaef, Lawyer at the Brussels Bar (Belgium) and Vice-president of the FIDH

Martin Flaherty, Visiting Professor at the Woodrow Wilson School of Public and International Affairs, Princeton University and Leitner Family Professor of International Human Rights, Fordham Law School.

Baroness Helena Kennedy, Director of the International Bar Association's Human Rights Institute

¹ The ICCPR is generally recognized by the international legal community as the gold standard for measuring fairness of criminal trials. Article 14 of that Covenant sets out the *absolute minimum* requirements for a trial to be considered “fair”. There are 14 or 17 such requirements, depending on how one counts the paragraphs and sub-paragraphs. In any event, China’s criminal investigation and trial systems meet **only two** of these most basic requirements: the right of the accused to be present at his trial and his right to an interpreter if he does not understand the language in which his trial is conducted. Every single one of the remaining fundamental requirements for fair trial under the ICCPR is violated by China’s standard criminal investigation and trial system.