

DAY OF THE ENDANGERED LAWYER 2017

Endangered Lawyers in China

Giornata dell'avvocato minacciato

लुप्तप्राय वकील दिवस

يوم المحامي المهدد

Ημέρα του Δικηγόρου που Κινδυνεύει



受迫害律師日

Journée des avocats en danger

Tehlikedeki avukatlar günü

ਸੰਕਟਮਈ ਵਕੀਲ ਦਾ ਦਿਨ

El Día del Abogado Amenazado

TAG DER BEDROHTEN ANWÄLTE

PETITION



"People's lawyers should involve in cases, cases, and issues that fundamentally affect the lives of a large number of people, usually a sector of society or even the whole society itself."



China Human Rights Lawyers Concern Group (CHRLCG)
 中國維權律師關注組 中國维权律师关注组



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To the Government of the people's Republic of China

24 January 2017

Your Excellency,

Every year since 2009, we observe 24 January as the Day of the Endangered Lawyers. The day commemorates the perils of lawyers during the Spanish fascists in Madrid in 1977 and we have over the past years expressed our solidarity with the endangered lawyers in countries including Colombia, Basque country, Iran, Turkey, Honduras and the Philippines.

For 2017, the day is dedicated to our brothers and sisters in China, all those who have been harassed, silenced, pressured, threatened, detained, tortured and even disappeared because they defend human rights, especially for the disadvantaged, in performing their professional roles and duties as lawyers.

China has been a rising power in the international political and economic arena and yet its legal environment has remained perturbing.

As legal professional from around the world, we are concerned that judicial independence is still largely absent in the country despite the many legal reforms claimed to have been conducted over the recent years. Without effective power check and balance between the law-enforcing organs and the judiciary, lawyers and legal rights workers have been subjected to risks and persecution in their work.

Lawyers' Right to Practice and the Defective Laws

We are concerned that China working to legalise and institutionalise suppression by constantly legislating and amending laws and regulations which sees lawyers' rights further circumscribed and police's power further expanded.

The Criminal Procedure Law revised in 2012 has included include, *inter alias*, a provision on "residential surveillance at designated location" (art. 73) which, when applied in combination with art. 37 of the same law, would allow the police maximum discretion on where to detain the suspect and whether or not to grant the suspect's right to lawyers.

In this regard, we express our solidarity to the lawyers and legal activists detained in the 709 Crackdown. To our understanding, the majority of them have fallen prey to the defects in the law and are deprived their right of access to legal representation.

Equally disturbing are the newly added articles 308 (1) and 309 in the Criminal Law revised in 2015 which seek to criminalise lawyers for divulging information that "should not be divulged" or that might cause "serious consequence" and for "disrupting order in the court". Vague and board as they are, the articles are prone to be manipulated to restrict lawyers' rights to perform their legal duties.

Autonomy of Lawyers and the Judicial Bureau

We are concerned that the much contended power of the judicial bureau, executive branch of the judiciary, in thwarting the autonomy of the lawyers both as individuals and as a professional community.

We take note of the revised Measures on the Administration of Law Firms and the Measures on the Administration of Lawyer Practice, both issued by the Ministry of Justice in September 2016. We are concerned that by incorporating law firm as part of the a collective control mechanism, the two Measures are amended to place lawyers under closer scrutiny of the judicial bureau not only on their politico-ideological stance but also on their speech and expression and their approach in handling “grave cases”.

Annual Inspection

We find the annual inspection system disturbing as it has been used by the judicial bureau to penalise lawyers and law firms not readily succumbing to its direction in case handling by declining to stamp on, and validate, the lawyer’s license for another year.

The self-assumed power to “stamp and validate” a license which was formalised by the judicial bureau in 2010 has been challenged by lawyers from across the country for lacking legal basis.

Along these lines, we regret that lawyer Li Jinxing (*alias* Wu Lei) was threatened in early 2016 by the Jinan judicial bureau in Shandong to fail his annual inspection. Li was the defence lawyer of renowned legal activist Guo Feixiong. He was later accused of “disrupting order of the court” and “interrupting the judge’s speech” for pointing out irregularities in Guo’s trial. Li was subsequently given administrative penalty with 1-year suspension of his practicing practice.

Also regretted is the latest situation of the hard-hit Beijing Fengrui Law Firm. The law firm together with its two senior partners, including rights lawyer Liu Xiaoyuan, have not been accepted for the 2016 annual inspection despite their being free from any charge or allegation in relation to the crackdown. The case is strongly suspected to be one of implication or collective punishment.

Violence against Lawyers

We are deeply concerned by the reports of the many instances of physical violence encountered by lawyers both in and out of the courtroom in China, and that intimidation, harassment, as well as abuses against lawyers has remained commonplace in the Chinese society with attackers being public officials including

police, parties to litigation and gangsters who often act with the acquiescence of the former.

We note in 2015, lawyers Dong Yalin in Heilongjiang, Wang Qiang in Shandong, Jiang Yanbao and Zhang Weiyue in Hengyang and Liu Shihui in Guangzhou, Xie Yang in Guangxi, Cui Wai in Beijing, to name but a few.

In 2016, the 4 cases of Lu Hang in Shanxi, Wang Zichen in Heilongjiang, Li Dugen and Jiqing Quan in Jiangsu as well as Zhang Xinsheng in Hubei happened just within 6 days, and with 3 of the cases taking place inside the courtroom or within the complex of the court. Public officials were involved in 3 of these 4 cases. The assault of lawyer Wu Liangshu astounded the world when he appeared in a photo taken outside a Guangxi court with one leg of his pair of trousers completely torn off. We refer also to the torture and cruel treatments experienced by lawyers during their detention, for instances, Xie Yang and Yu Wensheng. Lawyers familiar with the legal environment in have commented these cases as tip of the iceberg.

On cases of concern, we refer in particular to the lawyers and legal activists detained and arrested in the crackdown beginning on 9 July 2015, and commonly known as the 709 Crackdown.

Latest case (November 2016, Enforced Disappearance)

JIANG Tianyong, formerly lawyer in Beijing and disbarred in 2009 as a result of his work.

Jiang went disappeared on at around 22H on 21 November 2016 in Changsha, Hunan after he visited the family of Xie Yang, a rights lawyer indicted in the 709 Crackdown. It was almost three weeks later on 13 December that the authorities confirmed having detained him for administrative penalty from 21 November to 1 December 2016.

Later on 23 December, Jiang's family received an official notification that Jiang had been held under "residential surveillance at designated location", effective from 1 December 2016, for "inciting subversion of state power".

We are concerned that the authorities had denied knowledge of Jiang for almost a month before they admitted having taken custody of him, and by far the two lawyers appointed by Jiang's family have not been allowed to meet Jiang. Consequentially the whereabouts and status of physical and psychological wellbeing of Jiang Tianyong has remained unknown.

Cases from 2015 – pending for trial

LI Heping, practicing lawyer in Beijing, indicted for Subversion of State Power, pending for trial

Li was taken from home by police on at around 14H on 10 July 2015 and remained disappeared until his family received in late January 2016 the notification of his formal arrest effective on 8 January 2016. Li was alleged to have committed the crime of “subverting state power”.

The case of Li Heping has completed the processes of the initial police investigation and twice supplementary investigations.

On 5 December 2016, the Procuratorate confirmed an indictment against him on the alleged crime of “subverting state power”. As of the time of writing, Li is pending for trial on a date to be announced.

Major violations and concerns in Li Heping’s (LHP) case include:

(1) LHP’s family had not received any formal notification for the first five months of his detention and his whereabouts was unknown. (2) LHP has not been allowed to meet the lawyers appointed by his family since he was first taken by police in July 2015. His lawyers have been denied by the authorities and they did not have access to the files of the case. Status of his physical and psychological wellbeing is hence unknown. (3) It is also disturbing that police have attempted to allure LHP’s family at least twice in 2016 to make video to persuade Li into making confession. (4) Ms. Wang Qiaoling, wife of LHP, has been harassed multiple times including being questioned, temporarily detained, monitored and forced to evict from home while seeking legal remedies for her husband’s case. (5) The authorities have, by means of not issuing a residential permit, forbidden LHP’s six-year-old daughter from entering a primary school.

XIE Yang, practicing lawyer in Hunan, indicted for Inciting Subversion of State Power and Disrupting Order in Court, pending for trial.

Xie Yang was taken away from home by police at around 05H on 11 July 2015. Despite the notifications his family received, respectively in late 2015 and in January 2016, about him being held under “residential surveillance at designation location” and being formally arrested; Xie’s lawyers appointed by his family had not been able to meet him until late November 2016, and they only managed to gain access to case files in mid-December 2016.

The case of Xie Yang has completed the process of the initial police investigation and twice supplementary investigations. Xie is now formally indicted for “inciting

subversion of state power” and “disrupting order in court”. As of the time of writing, Xie is pending for trial on a date to be announced.

Major violations and concern in Xie Yang’s (XY) case include:

(1) XY has not been given access to lawyers appointed by his family until late November 2016, almost 17 months after his first detention. (2) XY has confirmed being tortured during his detention. (3) Chen Guiqiu, wife of XY, was harassed, threatened and banned from travelling out of mainland China while seeking legal remedies for her husband’s case.

WANG Quanzhang, practicing lawyer in Beijing, case returned to police on 5 December 2016 for supplementary investigation on the alleged crime of Subversion of State Power

Wang disappeared at about 10H on 10 July 2015 and remained so until the family received the first formal notification in January 2016 which announced his formal arrest effective on 8 January 2016 on suspicion of having committed the crime of “subverting state power”.

The Procuratorate returned Wang’s case to the police on 5 December 2016 for the second (last) supplementary investigation. A decision on whether or not to indict will have to be made within another 2.5 months (from 5 December) for the latest.

Major violations and concerns in Wang Quanzhang’s (WQZ) case include:

(1) WQZ’s family had not received any formal notification for the first five months of his detention and his whereabouts was unknown. (2) WQZ has not been allowed to meet the lawyers appointed by his family since he was first taken by police in July 2015. WQZ’s lawyers have been denied by the authorities and they have not been given access to any case files. Status of WQZ’s physical and psychological wellbeing is hence unknown. (3) The police have attempted to allure his family at least twice in 2016 to make videos to persuade Wang into making confession. (4) Ms. Li Wenzu, wife of WQZ, has been harassed multiple times including being questioned, temporarily detained, monitored and forced to evict from home while seeking legal remedies for her husband’s case. (5) Police have harassed school masters to forbid the three-year-old son of Wang from attending a kindergarten.

XIE Yanyi, practicing lawyer in Beijing, case returned to police on 5 December 2016 for supplementary investigation on the alleged crime of Inciting Subversion of State Power

Xie disappeared after meeting head of local public security bureau at around 8H on 12 July 2015. His home was raided by police the same day. He was formally arrested

on 8 January 2016, on suspicion of having committed the crime of “inciting subverting state power”.

The Procuratorate returned Xie’s case to the police on 5 December 2016 for the second (last) supplementary investigation. A decision on whether or not to indict will have to be made within another 2.5 months (from 5 December) for the latest.

Major violations and concerns in Xie Yanyi’s (XYY) case include:

(1) XYY’s family had not received any formal notification for the first five months of his detention and his whereabouts was unknown. (2) XYY has not been allowed to meet the lawyers appointed by his family since he was first taken by police in July 2015. XYY’s lawyers have been denied by the authorities and they have not been given access to any case files. Status of XYY’s physical and psychological wellbeing is hence unknown. (3) Ms. Yuan Shanshan, wife of XYY, has been harassed multiple times including being questioned, temporarily detained, monitored and forced to evict from home while seeking legal remedies for her husband’s case. Yuan Shanshan is under strict surveillance with pin-hole camera installed right above the door entrance to her flat.

LI Chunfu, practicing lawyer in Beijing, case returned to police on 5 December 2016 for supplementary investigation on the alleged crime of Inciting Subversion of State Power

Li Chunfu is the younger brother of indicted lawyer Li Heping. He was taken away by police at around 22H on 1 August 2015. Prior to this day, he was openly demanding to know the whereabouts his brother who disappeared about three weeks earlier.

Li’s family received notification in January 2016 about his formal arrest, effective 8 January, on suspicion of having committed the crime of “subverting state power”.

The Procuratorate returned Li’s case to the police on 5 December 2016 for the second (last) supplementary investigation. A decision on whether or not to indict will have to be made within another 2.5 months (from 5 December) for the latest.

Major violations and concerns in Li Chunfu’s (LCF) case include:

(1) LCF’s family had not received any formal notification for the first four months of his detention and his whereabouts was unknown. (2) LCF has not been allowed to meet the lawyers appointed by his family since he was first taken by police in August 2015. LCF’s lawyers have been denied by the authorities and they have not been given access to any case files. Status of LCF’s physical and psychological wellbeing is hence unknown. (3) Family has been warned to stay quiet on the case. (4) One of

LCF's lawyers was intimidated by police going to his house to question his son, a minor, while he was alone at home.

Wu Gan, administrative staff member of Beijing Fengrui Law Firm, legal activist, case returned to police on 11 October 2016 for supplementary investigation on the counts of Subversion of State Power as well as Picking Quarrels and Provoking Troubles

Wu was first detained by police in Fujian in May 2015 and formally arrested on 3 July 2015 for taking part in protests calling on lawyer's right to access files. In January 2016, police started the case anew on the claim of having found evidence of new crimes and the case was transferred to Tianjin where the majority of the 709 cases have been detained.

Allegations against Wu Gan were changed to subverting state power as well as picking quarrels and provoking troubles in August 2016.

Having returned the case to the police on 11 October 2016 for second (last) supplementary investigation, the Procuratorate should make a decision on whether or not to indict Wu Gan by the end of 2016 (2.5 months from 11 October 2016).

Major violations and concerns in Wu Gan's (WG) case include:

(1) WG's family did not receive any notification regarding his relocation from Fujian to Tianjin or the change of his allegations. (2) WG first met his lawyer on 9 December 2016, almost 11 months after he was moved to Tianjin. (3) WG confirmed being tortured during his detention.

Cases from 2015 – case sentenced

Zhou Shifeng, practicing lawyer in Beijing and director of the Beijing Fengrui Law Firm, convicted for Subverting State Power and sentenced to 7 years of imprisonment on 4 August 2016.

Major violations and concerns in Zhou Shifeng's (ZSF) case include:

ZSF encountered similar problems of violations and concerns shared by lawyers listed here above during his detention. He disappeared abruptly on 10 July 2015 with his family deprived of any formal notification of his detention and his lawyers on the right to meet him. It was also reported that Zhou's family was pressurised by the police to change Zhou's lawyer into one appointed by the authorities.

There are also grave concerns on the way ZSF was trialed. (1) Date of trial was announced only one day in advance. (2) Police were stationed in the neighbourhood

where Zhou's family lived with family members warned not to attend the trial. (3) The trial was attended by government arranged people and media instead of being open to public as the law prescribes. (4) Zhou was represented in the court by a lawyer appointed by the authorities.

Cases from 2015 – case released on bail

Wang Yu, practicing lawyer in Beijing, disappeared on 9 July 2015 and formally arrested for the alleged crime of “subverting state power” on 8 January 2016 with no access to lawyer before being released on bail in August 2016

Bao Longjun, practicing lawyer in Inner Mongolia (legal activist in Beijing), husband of Wang Yu, disappeared on 9 July 2015 in Beijing and formally arrested on 8 January 2016 for the alleged crime of “inciting subversion of state power” with no access to lawyer before being released on bail in August 2016

Ren Quanniu, practicing lawyer in Henan, defence lawyer of Zhao Wei, legal assistant arrested in the 709 Crackdown. Ren was taken away by police in Zhengzhou, Henan, on 8 July 2016 for the alleged crime of “picking quarrels and provoking troubles” with access to lawyer once before being released on bail on 6 August 2016. His wife was reportedly harassed and intimidated during his detention.

Liu Sixin, formally practicing lawyer in Beijing, disbarred in 2009 in an arbitrary criminal case of assault. Liu was taken away by police on 10 July 2015 and formally arrested for the alleged crime of “subverting state power” with no access to lawyer before being released on bail at the end of September 2016

Zhang Kai, practicing lawyer in Beijing, taken away by police in Wenzhou, Zhejiang, on 25 August 2015 for the alleged crimes of “assemble to disrupt public order” and “stealing, collecting, purchasing and illegally providing state secrets and intelligence to overseas organizations”; with no access to lawyer before being released on bail in March 2016

Sui Muqing, practicing lawyer in Guangzhou, taken away by police on 10 July 2015 for the alleged crime of “inciting subversion of state power” with no access to lawyer before being released on bail in January 2016

Wang Liquan, practicing lawyer in Beijing, taken away by police on 10 July 2015 on unclear grounds with no access to lawyer before being released on bail in January 2016

Xie Yuandong, trainee lawyer in Beijing, taken away by police on 10 July 2015 for the alleged crime of “inciting subversion of state power” with no access to lawyer before being released on bail in January 2016

Li Shuyun, trainee lawyer in Beijing, taken away by police on 10 July 2015 and formally arrested in January 2016 for the alleged crime of “subverting state power” with no access to lawyer before being released on bail in April 2016

Wang Qiushi, practicing lawyer in Heilongjiang, taken away by police on 9 January 2016 and released on bail on alleged (but unspecified) national-security-related crime with no access to lawyer before being released on bail in early February 2016

Zhao Wei, assistant to lawyer Li Heping, taken by police on 10 July 2015 and formally arrested on 8 January 2016 for the alleged crime of “subverting state power” with no access to lawyer of choice before being released on bail in early July 2016.

Gao Yue, assistant to lawyer Li Heping, taken by police on 20 July 2015 and formally arrested on 8 January 2016 for the alleged crime of “aiding to destroy evidence” with no access to lawyer of choice before being released on bail at the end of April 2016.

Liu Peng, assistant to lawyer Zhang Kai, taken by police in Wenzhou, Zhejiang, on 25 August 2015 for the alleged crimes of “assemble to disrupt public order” and “stealing, collecting, purchasing and illegally providing state secrets and intelligence to overseas organizations”; with no access to lawyer before being released on bail in December 2015

Fang Xiangui, assistant to lawyer Zhang Kai, taken by police in Wenzhou, Zhejiang, on 25 August 2015 for the alleged crimes of “assemble to disrupt public order” and “stealing, collecting, purchasing and illegally providing state secrets and intelligence to overseas organizations”; with no access to lawyer before being released on bail in December 2015

Major violations and concerns for cases now released on bail include:

(1) All, except one, lawyers, lawyer’s assistants and legal activists now released on bail have had no access to lawyers of choice during their detention ranging from 1 to 13 months. In at least two cases, the families were pressurised to accept the lawyers appointed by the authorities. (2) The majority of those released on bail has remained largely constrained in their freedom of movement. Some have been forced to return to their native towns in remote areas. Others have to stay at designated locations for weeks before they could join their family. To date, the more prominent figures are still under strict surveillance of the police. (3) Many have been warned against speaking up or contacting friends.

Non-709 Cases on Fair and Open Trial

Tang Jinling, Guangzhou-based disbarred rights lawyer

Tang was formally arrested in June 2014, roughly one month after he was first detained, for “inciting subversion of state power”. The authorities refused his family from attending the trial which took place at the end of January 2016.

Tang was subsequently convicted for reproducing and disseminating 5 publications by Gene Sharp on “non-violent civil disobedience movement” and was sentenced to 5-year imprisonment. The second (appeal) trial took place in the detention centre on 19 June was however done in secret which violated. Tang’s lawyers were not informed of the venue and time of trial and they were asked to leave the detention centre before the trial took place. His appeal was rejected and verdict of the first trial remained valid. Tang has complaint being tortured during his detention.

Xia Lin, rights lawyer in Beijing

Xia was taken away from home by police without warrant on 8 November 2014, soon after he took up the case of Guo Yushan, an activist targeted by the authorities in a series of NGOs crackdowns at the time.

He was convicted for “fraud and deception” and was given 12-year imprisonment on 22 September 2016, by far the heaviest among rights lawyers persecuted. It is understood that the case has been controversial in the way it was handled. Xia were denied access to his lawyers during his detention and money-at-stake was proved to be loans between friends and partners done in the civic arena with no major gripe.

The conviction of Xia is seen as another case of political retaliation on human rights lawyers in the country. The case is pending for appeal.

International Treaties

China has ratified the following international human rights treaties (year ratified):

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1980);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1981);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1988);
- Convention on the Rights of the Child (CRC) (1992);
- International Covenant on Economic, Social and Cultural Rights (ICESCR) (2001);

- Convention on the Rights of Persons with Disabilities (CRPD) (2008)

China has signed but not ratified the following treaty (year signed):

- International Covenant on Civil and Political Rights (ICCPR) (1998)

China has also supported the “Basic Principles on the Role of Lawyers” adopted by the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, in 1990, which inter alia, obliges the State to protect lawyers.

Taking note of the many instances of President Xi Jinping pledging to promote rule of law and protect constitutional rights of the Chinese people,

Recognising that as a long standing member of the United Nations, the UN Human Rights Council, and state party to the majority of the core human rights treaties, China is obliged to abide by its international legal obligations in observing the guiding principles and provisions enshrined in the various human rights laws.

We take reference of the provisions in both national and international laws and in particular that of,

- Articles 33, 34, 35, 36 37,38, 39 and 125 of the PRC Constitution,
- Articles 1, 2, 16, 18, 20, 23, 24, 26, 27, 28 and-29 of the UN Basic Principles on the Role of Lawyers,
- Articles 2, 4, 7, 9, 14, 18 and 26 of the ICCPR,
- Articles 1, 2, 4, 10, 11, 12, 13 and 15 of the CAT, and
- Articles 2 and 28 of the CRC,

We reiterate our convictions in lawyers’ role in upholding the rule of law and in defending social justice, and only when lawyers’ rights are not protected that the rights of citizens can be safeguarded.

Hence we hereby call on the Chinese government to immediately,

1. Respect and observe her legal duty as a member of the international community, respect and observe her pledges to the Chinese citizens on rule of law and rights protection by adhering rigorously to the spirit and principles of the international human rights laws;
2. Release all lawyers and others who have been unlawfully detained, convicted and sentenced, in particular those implicated in the 709 Crackdown,
3. Ensure the full protection of the basic rights of all lawyers and others arrested or held as criminal suspects including but not limited to access to lawyers of one's own choosing, adequate medical treatments, visitation and freedom from torture, inhuman treatments and self-incrimination,
4. Cease all harassment, intimidation and collective punishments against lawyers' families, their colleagues and friends, and ensure all their basic rights as citizens are protected

We appeal further to the Chinese government to embark on legal, judicial and institutional reforms that work to,

1. Facilitate the prospective development of judicial independence,
2. Help bring an end to any systematic violations of human rights and suppression on the civil society by repealing any draconian legislation,
3. Help bring provisions in national law and regulations in line with the principles and standard of international human rights protection,
4. Fortify citizen's rights to litigation and legal remedies
5. Fortify lawyers and legal practitioners' role and functions in defending rule of law and criminal justice.

We urge international communities to continue with their concerns and pressure for China to reform and we reiterate our pledges to stand in solidarity with the lawyer brothers and sisters as well as the legal practitioners in China in their struggles for better rights protection and legal environment,

The AED (AED-EDL)

Pascale Taelman, Roberto Sabata y Gripekoven, Denis de Ploeg

The Foundation “The Day of the Endangered Lawyer”

Hans Gaasbeek

The International Observatory for Lawyers in Danger (OIAD)

The French National Bar Council

Le Barreau de Paris

The CCBE

The IDHAE

Bertrand Favreau (president)

The UIA

AVVOCATI MINACCIATI

Nicola Canestrini

L4L

Adrie van der Streek

IAPL

Stuart Russell, Gill Boehringer

CHR LAWYERS HONG KONG

Kit Chan

BARREAU DE BRUXELLES (French order)

VSAN

And many other international and national bar associations and lawyer organizations!