

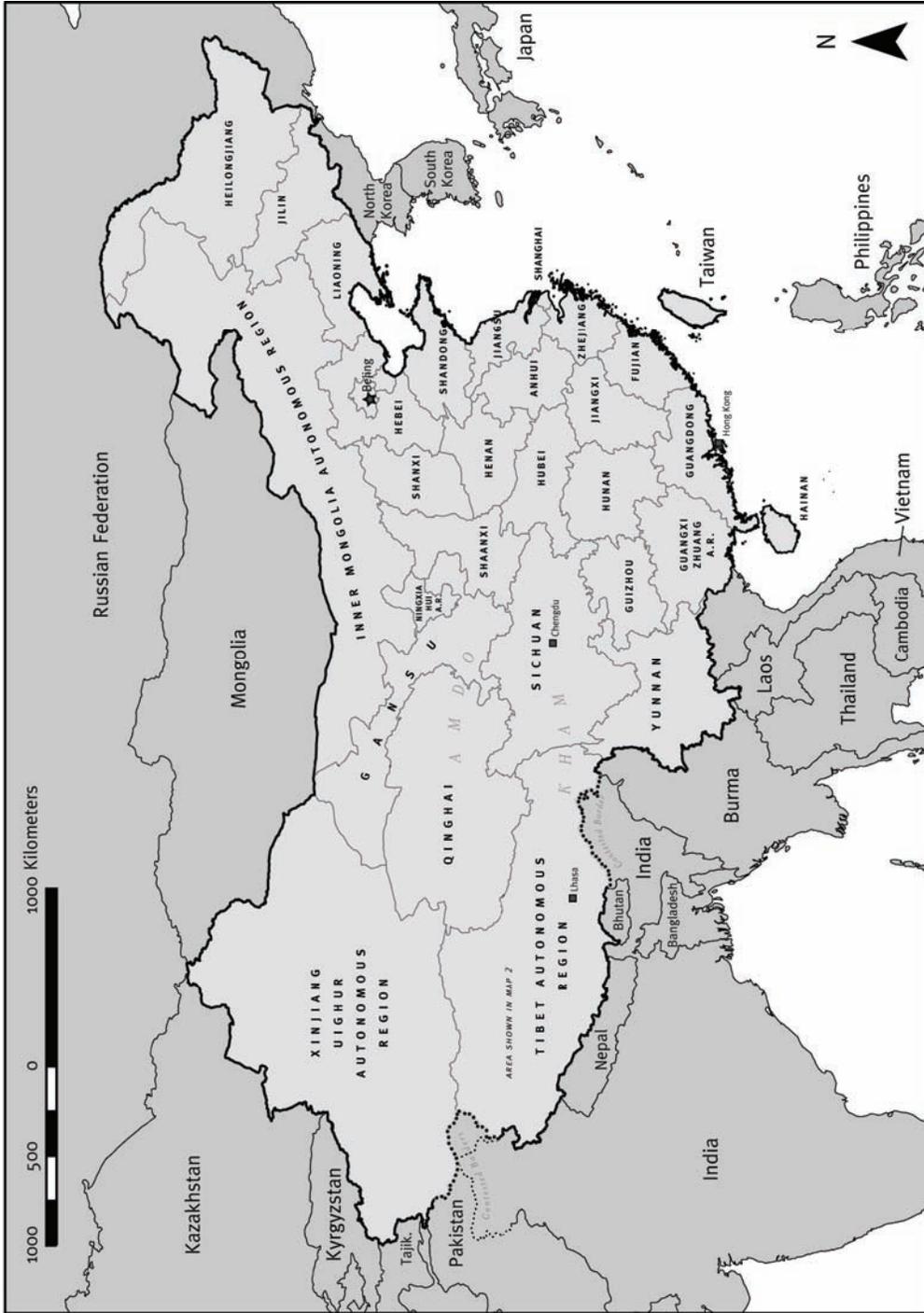


“A Great Danger for Lawyers” New Regulatory Curbs on Lawyers Representing Protesters

Map of China.....	1
I. Summary.....	2
II. International Standards for Lawyers.....	8
III. The Legal Profession: A General Lack of Independence	11
IV. Mass Cases and the Rights Protection Movement	17
Box: Mass incidents on the rise (April 2005-November 2006).....	21
V. The New Guiding Opinions	27
A. Tightening of control by the judicial bureaus and other governmental departments	29
B. Requiring lawyers to share confidential information with the authorities	30
C. Strengthening of controls exercised by the lawyers associations	31
D. Introduction of specific requirements for accepting cases	33
E. Greater restrictions on working with petitioners.....	34
F. Discouraging contacts with media and foreign organizations	35
G. Requiring lawyers to take cases based on their possible effect on “stability”	37
H. Intimidating sanctions	38
VI. Promulgation of Local Versions of the Guiding Opinions	39
VII. Lawyers’ Reactions to the New Restrictions and the Government’s Response ..	44
A. Lawyers’ initial reactions.....	46
B. Government response.....	52
VIII. Recommendations	58

To the Chinese government.....	58
To the United Nations	59
To the international law community.....	59
Acknowledgments.....	61
Appendix I: Guiding Opinions of the All-China Lawyers Association on Lawyers	
Handling Mass Cases	62
I.....	62
II.....	64
III.....	65
IV.....	67
V.....	68
Appendix II: Glossary of Chinese Terms	69

Map of China



Map : Provinces and Autonomous Regions of the People's Republic of China

I. Summary

Lawyers who handle mass cases should accept supervision and guidance by judicial administration departments.

—Guiding Opinions of the All-China Lawyers Association on Lawyers Handling Mass Cases

These Guiding Opinions give a message to lawyers: Don't take up mass cases.

—Posting on the Internet bulletin board of the All-China Lawyers Association

The development of a strong, independent legal profession in China is critical to the country's long-term stability.¹ The Chinese party-state has repeatedly stressed the need to develop the legal profession as part of its stated commitment to rule of law, and extolled the role that lawyers can play in resolving social contradictions. Yet in March 2006 the authorities introduced new regulatory curbs on lawyers representing protesters and plaintiffs bringing collective lawsuits. These restrictions effectively deprive people with lawful collective complaints of meaningful legal representation, and risk instilling a sense of futility about legal avenues of redress that may exacerbate social unrest in the future. This is a significant development for the fate of legal reforms in China. This report analyses the new regulations and the background against which they were adopted.

Over the past few years China has seen a sharp increase in public protests, both in rural and urban areas. In 2005 the Chinese government estimated the number of “mass incidents” at 87,000, quadruple what it was a decade ago.

¹ In accordance with the established usage, in this report the term “legal profession” refers to lawyers only, and not to other law professionals such as judges, prosecutors, or legal academics. The corresponding Chinese term is *lǚshī hángyè* (律师行业), literally “lawyer profession.”

That public protests occur at all in a one-party state may at first glance seem surprising. A couple of dozen incidents at most are reported in domestic and overseas media every year. But with the myriad social problems facing China, exemplified by escalating social and economic inequalities, intensifying labor disputes, a severe environmental crisis, and the need to absorb millions of migrant workers moving from deprived rural areas to the cities, even the Chinese Communist Party (CPC) has recognized the need to allow some outlets for the expression of grievances. In a balancing act, the authorities now tolerate many public protests while suppressing others they believe are threatening to national or local power or overall social stability. In many cases, the local authorities still punish protest organizers or participants, while at the same time trying to address the grievances that caused the protests in the first place.

China's top leaders, acknowledging that many of these protests were responses to local government abuses, have promised to enhance access to judicial and administrative remedies, and have reiterated at every opportunity their commitment to the rule of law. Indeed, the establishment of a legal system that can resolve not only criminal or commercial matters—now a top priority for the government—but also conflicts between ordinary citizens and the government is imperative for the rule of law and the defense of human rights.

While the authorities still allow some protests to take place, they have banned most domestic media coverage of incidents of unrest, promulgated new regulations designed to prevent petitioners from taking their cases to Beijing, and allowed massive deployment of security forces to suppress protesters, such as a December 2005 confrontation in Dongzhou, Guangdong province, in which police shot and killed at least three protesters.

Government claims to be committed to the rule of law are further undermined by a plethora of physical attacks on lawyers that remain unpunished (the subject of a forthcoming Human Rights Watch report). Local authorities often deploy a wide range of tactics to obstruct the work of lawyers, including unlawful detentions, disbarment, intimidation, and simply refusing to accept a case into the court system.

Most recently, a number of new restrictions have been introduced on the ability of lawyers to freely practice their profession and represent poor and marginalized groups against state agencies and officials who abuse or ignore the law. On March 20, 2006, the government-controlled All-China Lawyers Association (ACLA)—in essence the national bar association—issued the “Guiding Opinions on Lawyers Handling Mass Cases,” which instruct lawyers to seek the “supervision and guidance” of judicial administrative bureaus when handling mass cases (defined as involving 10 or more plaintiffs²), and provide for closer supervision by the government-controlled local lawyers associations. The ACLA says that the Guiding Opinions are necessary to “safeguard the legal rights” of lawyers handling mass cases, and that they aim to enhance the ability of lawyers to resolve disputes between citizens and their respective local governments. In fact, the Guiding Opinions introduce extensive restrictions on lawyers handling mass cases and sharply curtail the ability of plaintiffs to be meaningfully assisted or represented by lawyers when they seek justice.

Prior to the adoption of the Guiding Opinions, Chinese lawyers were already constrained by the Law on Lawyers, which stipulates that they receive supervision and guidance from the judicial bureaus operating under the Ministry of Justice (MOJ). Local judicial bureaus are part of the local government’s structure, and therefore under the direct authority of their respective local government and local party committee—in particular the party’s Political and Legal Committee in charge of legal affairs. In practice, judicial bureaus have the authority to compel lawyers associations and lawyers to follow their instructions about how the legal profession operates, and can impose disciplinary penalties on lawyers, including the suspension or cancellation of their licenses.

But even though politically motivated interference by the judicial bureaus was already routinely occurring, the Guiding Opinions legitimize and systematize such interference, and introduce specific requirements for mass cases that do not exist for other types of cases. For example, the Guiding Opinions require that at least three

² There is no equivalent for class action suits in Chinese law: plaintiffs in mass cases represent only themselves even though in practice they often seek remedy for a whole class of people. For instance a group of farmers would sue the local authorities in the hope that an abusive or illegal decision might be invalidated, thus benefiting the entire village.

partners in the law firm sign off before a lawyer accepts a mass case, demand that lawyers report to government departments when disputes intensify, and mandate that lawyers exercise “caution” in their contact with the media and with foreign organizations. Since the adoption of the Guiding Opinions, lawyers involved in sensitive cases have privately confided that they have come under pressure from their employers or other partners in the firm to stop doing work that may potentially jeopardize business. In the past, some lawyers have been forced to quit their firms as a result of their sensitive work on behalf of protesters.

The Guiding Opinions cite the need to maintain “stability” as a reason for their promulgation—a telling statement of the acute political sensitivity regarding public protests. They refer to the “major impact” that land seizures, forced evictions, relocations from dam areas, and layoffs resulting from state-owned enterprise restructuring—precisely the kinds of problems that give rise to “mass cases”—can have on “the country’s stability.” Citing stability is a trump card of the party and government, as the term refers as much to the nonappearance of potential challenges to party rule—such as autonomous social, political, or religious groups—as to law and order in society.

In a worrying sign that the Guiding Opinions may lead to further restriction on lawyers’ activities, several provinces and municipalities have since adopted similar regulations, which in many cases are even more restrictive. These make clear that political considerations are paramount and that lawyers must act as auxiliaries of the judicial bureaus when handling politically sensitive cases involving protesters.

The Guiding Opinions also appear to signal the government’s intent to target lawyers active in the self-termed “rights protection movement” (*weiquan yundong*). Made up of an informal assemblage of lawyers, legal scholars, journalists, and nongovernmental organization (NGO) activists, the *weiquan* movement aims to uphold through legal activism and litigation the constitutional and legal rights of people who are victims of administrative arbitrariness, mostly by predatory and abusive local officials. It is these legal activists who are most likely to represent aggrieved parties in mass cases stemming from environmental, employment, or land-related incidents, among others.

The rights protection movement has become the main conduit for disclosing and bringing international attention to specific incidents that domestic media are prohibited from reporting. Acting as human rights defenders, *weiquan* activists have often themselves become victims of retaliatory measures or intimidation from the local authorities they try to hold to account.

On April 11, 2006 (four days before the Guiding Opinions were made public), the Politburo's top authority on legal matters, Head of the Legal and Political Committee Luo Gan, urged in an internal party speech the adoption of "forceful measures... against those who carry out sabotage under the pretext of rights protection [*weiquan*] ... so as to protect national security and the political stability of society."³

Most recently, the government's hostility towards rights protection lawyers was reflected in the four-year and three-month sentence given to Chen Guangcheng, a self-taught rights advocate who exposed abuses in family planning policies, and in the arrest of two prominent human rights lawyers: Gao Zhisheng, once named by the official Xinhua news agency as "one of the top 10 lawyers in China," on subversion charges, and Guo Feixiong, a non-qualified lawyer who had been providing legal advice to rural protesters across the country, on criminal charges.

The adoption of the Guiding Opinions is a major setback to efforts to promote the rule of law. Since the mid-1990s there have been some important advances for the legal profession, and lawyers have gained a degree of independence from the direct control of the state. The ranks of lawyers and the fields of legal practice have expanded gradually. The state has consistently encouraged the idea that citizens have basic rights and can turn to the courts when those are violated, and several national television programs, reaching hundreds of millions of viewers each week, regularly depict citizens fighting for justice against local authorities through the courts. But despite this overall improvement for lawyers and their clients, progress remains tenuous and open to reversals. Extensive restrictions remain in place,

³ Luo Gan's speech was published in the party's theoretical journal, *Seeking Truth*, in June 2006. See Luo Gan, "Bolstering the teaching of the concept of socialist rule by law: Conscientiously strengthening the political thinking of the political and legal ranks," *Seeking Truth*, Issue No. 433, June 16, 2006 [罗干, "深入开展社会主义法治理念教育 切实加强政法队伍思想政治建设", *求是*, 2006年6月16日(总433期)], <http://www.qsjournal.com.cn/qs/20060616/GB/qs^433^o^1.htm> (accessed October 16, 2006).

including the lack of independence of bar associations and the very weak status of lawyers in judicial procedures compared with that of the state actors (the police, the procuracy, the courts).

An independent legal profession is critical to the ability of ordinary people to exercise their fundamental rights—such as freedom of expression, association, assembly, and petition—under Chinese law, the Chinese constitution, and international law. Constraining the ability of lawyers to litigate on their behalf is tantamount to constraining those rights. Even though many of the provisions of the Guiding Opinions are aimed at the “rights protection lawyers,” in reality they fundamentally harm the entire profession by limiting its independence and legitimizing the interference of local governments in professional processes. Even less politically sensitive initiatives that have been endorsed by the government, such as public interest litigation in consumer rights and environmental protection areas, could find themselves in jeopardy under the new Guiding Opinions.

Along with recent attacks on and the detention or arrest of prominent lawyers, and in a context where the government views the activism of lawyers as glimmerings of a legal opposition, the promulgation of the Guiding Opinions may presage even more restrictions on the activities of lawyers. The Chinese government should be aware that restricting access to legal avenues for solving disputes may deepen the sense of futility of the public in the legal system. Perversely, these restrictions may actually lead to more protests, further fuelling unrest across the country. Putting a lid on the activities of lawyers may remove a vital pressure release valve for the one-party system.

Human Rights Watch urges the ACLA and the Chinese government to repeal the Guiding Opinions and its local variants. It is not the role of lawyers to protect social and political stability. Their duty is to represent their clients in an ethical and professional manner. Instead of enacting regressive regulations, the government should enact statutes that guarantee full independence of the Chinese Bar as a preliminary step to providing effective protection to lawyers discharging their duty as required by international standards on lawyers and the judiciary.

II. International Standards for Lawyers

The independence of lawyers is a fundamental principle of international human rights law. Lawyers play a major role in ensuring that victims or potential victims of human rights violations obtain effective remedies and protection, and that perpetrators of human rights violations are brought to justice. The importance that the international community places upon the independence of the judiciary and of lawyers is evidenced by the emphasis that it is given in numerous international and regional treaties,⁴ United Nations (UN) resolutions⁵ and international statements,⁶ to many of which China has agreed, such as the Beijing Basic Principles on the Independence of the Judiciary.⁷

The most detailed exposition of the rights and responsibilities of lawyers is found in the United Nations Basic Principles on the Role of Lawyers.⁸ Among other things, the Basic Principles provide for:

- The independence of lawyers: “Adequate protection of the human rights and fundamental freedoms to which all persons are entitled ... requires that all persons have effective access to legal services provided by an independent legal profession.”⁹

⁴ For example, judicial independence is guaranteed in the Universal Declaration of Human Rights, art. 10; International Covenant on Civil and Political Rights, art. 14.1; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6; African Charter on Human and Peoples' Rights, art. 7; American Convention on Human Rights, art. 8; and Inter-American Democratic Charter, art. 3.

⁵ For example, UN General Assembly Resolutions 40/32 (29 November 1985) and 40/146 (13 December 1985); UN Commission on Human Rights Resolutions 2004/33 (19 April 2004), 2003/43 (23 April 2003), 2002/43 (23 April 2002), 2001/39 (23 April 2001), and 2000/42 (20 April 2000).

⁶ For example, the Suva Statement on the Principles of Judicial Independence and Access to Justice (2004); Cairo Declaration on Judicial Independence (2003); Bangalore Principles of Judicial Conduct (2002); UN Basic Principles on the Role of Lawyers (1990); Beijing Basic Principles on the Independence of the Judiciary (1985); International Bar Association's Minimum Standards of Judicial Independence (1982); and UN Draft Principles on the Independence of the Judiciary (1981).

⁷ The vice-president of the People's Supreme Court was the signatory for China.

⁸ The Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, “should be respected and taken into account by Governments within the framework of their national legislation and practice” (preamble).

⁹ Basic Principles on the Role of Lawyers, preamble.

- Freedom of expression and association: “Lawyers shall be entitled to form and join self-governing professional associations... The executive body of the professional associations ... shall exercise its functions without external interference.”¹⁰
- Confidentiality of communications between lawyers and their clients: “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”¹¹
- Protection from unlawful interference: “Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall 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.”¹²
- Right to due process for lawyers facing disciplinary sanctions: “Lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.”¹³

The UN Declaration on Human Rights Defenders recognizes that non-lawyers have “the right, individually and in association with others... to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.”¹⁴

The Basic Principles and the Declaration are not, in themselves, legally binding instruments. However, they contain a series of principles and rights that are based

¹⁰ Ibid., principle 24.

¹¹ Ibid., principle 22.

¹² Ibid., principle 16.

¹³ Ibid., principle 28.

¹⁴ Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by the UN General Assembly at the 85th plenary meeting, December 9, 1998.

on human rights standards enshrined in other international instruments, such as the International Covenant on Civil and Political Rights.¹⁵ These principles are now commonly referred to in academic legal studies in China, although they have not been incorporated into domestic law.¹⁶

¹⁵ While China has not ratified the Covenant, it is still “obliged to refrain from acts which would defeat the object and purpose of the treaty” because it has signed the ICCPR and has not expressed an official intention to not become a party to it. See Vienna Convention on the Law of Treaties, art. 18; Peter Malanczuk, ed., *Akehurst’s Modern Introduction to International Law* (London: Routledge, 7th edition, 1997), p. 135.

¹⁶ See, for example, Ye Qing and Gu Yuejin eds., *Study of the Lawyers System in China* (Shanghai: Shanghai Academy of Social Sciences Press, 2005), p. 55. [叶青, 顾跃进 (主编), *中国律师制度研究*, 上海: 上海社会科学出版社, 2005, 第 55 页.]

III. The Legal Profession: A General Lack of Independence

The political upheavals of the Mao era resulted in the dismantling of the Ministry of Justice and the abandonment of other legal institutions. China's formal legal system was only reestablished in 1978 by Deng Xiaoping, and the role of defense lawyers was reinstated the next year in the Criminal Procedure Law. But lawyers did not act only in the interests of their clients: the 1980 regulations on lawyers defined them as "legal workers of the state."¹⁷ In 1989 the Ministry of Justice started to draft a law governing the profession of lawyers. It came into force on January 1, 1997, and recognizes lawyers as "professionals providing legal services to society."¹⁸

During this same period, China enacted many new laws and regulations, reconstructed a court system, and elevated the concept of "ruling the country according to law" (*yi fa zhi guo*) to ideological and constitutional prominence.¹⁹

Alongside rapid economic development, this process led to a surge in the number of lawyers. In 1986 there were about 21,500 lawyers. This more than doubled to 45,000 by 1992 as the first private law firms emerged, largely to service the growing private business sector. There are now around 120,000 lawyers and 12,000 law offices.²⁰ Yet this is still a low figure for a country the size of China, with a proportion of lawyers to the total population at just 0.9 per 100,000.²¹

¹⁷ Standing Committee of the National People's Congress, Interim Regulations of the People's Republic of China on Lawyers, Promulgated on August 26, 1980.

¹⁸ Law of the People's Republic of China on Lawyers, adopted May 15, 1996 (revised December 29, 2001), art. 2.

¹⁹ For a general account of legal reforms since 1978, see Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford: Stanford University Press, 1999); and Randall Peerenboom, *China's Long March toward Rule of Law* (Cambridge: Cambridge University Press, 2002).

²⁰ "China's lawyers failing to provide nationwide service," *Xinhua News Agency*, July 10, 2006.

²¹ Lawyers-to-population ratio is hardly comparable from one country to another because of the specificities of each legal system. For illustration purposes the figure per 100,000 people is 1.2 for Japan, 1.3 for India, 4 for France, 15.4 for the United Kingdom, and 32.7 for the United States. "China has a strong demand for lawyers," *China Economic Net* (www.ce.cn), October 10, 2005, http://en.ce.cn/Insight/200510/11/t20051011_4902926.shtml (accessed August 3, 2006).

In recent years there have been significant advances for the legal profession. The development of trade and external pressure for a rules-based system for business and China's accession to the World Trade Organization, as well as recognition that part of modernization is the development of the rule of law, have noticeably strengthened the autonomy of lawyers and law firms. Local bar associations have become more vocal in promoting the rights and interests of the legal profession. Academic debates and the Internet have contributed to legitimating the role and usefulness of lawyers in society.

There have also been benefits for ordinary Chinese. Lawyers are playing a greater role than ever in representing victims of human rights abuses. They have helped gain recognition of grievances, promoted legal awareness among victims of abuses, provided legal aid and counsel for claiming judicial or non-judicial remedies, fostered better compliance with statutory procedural requirements from law enforcement agencies and courts, and monitored the enforcement of judicial decisions. This has been allowed as the CPC and government have encouraged the idea that ordinary citizens have legal rights, as a way of ensuring social stability, checking petty corruption, and channeling social grievances into the party-controlled judicial system.

However, lawyers lack independence and necessary protections under Chinese law. The legal system in which they operate still suffers from the systematic interference of party and government officials. The CPC, through its political and legal committees at the central and local level, continues to supervise and direct the work of judicial organs, including courts, procuracies, public security, and lawyers associations. In practice, party Committees play a central role in all the cases that are considered important or politically sensitive, "consulting all institutions involved and deciding a case in conjunction with them."²²

²² Yuwen Li, "Court Reforms in China: Problems, Progress and Prospects," p. 59, note 10, in Jianfu Chen, Yuwen Li, Jan Michiel Otto, eds., *Implementation of Law in the People's Republic of China* (The Hague: Kluwer Law International, 2002).

The Law of the People's Republic of China on Lawyers (hereafter, "the Law on Lawyers"), revised in 2001, is the chief statute governing the legal profession.²³ It stipulates the qualification requirements, rights and duties, scope of professional activities, and management system of lawyers and law firms. In order to practice, lawyers must obtain a license from the judicial bureaus, and apply for renewal every year. Association with a law firm is an absolute requirement and lawyers cannot accept cases in their own name: all contracts are passed between the client and the law firm. The Law on Lawyers gives authority to the judicial administration departments of the Ministry of Justice (also referred to as "judicial bureaus") to "supervise and guide lawyers, law firms and lawyers associations."²⁴ This means that judicial bureaus have the authority to require lawyers associations and lawyers to follow their instructions about how the legal profession operates, the range of professional activities lawyers can engage in, and at what level lawyers fees are set.

Lawyers are vulnerable to interference by judicial and other state institutions. The judicial administration departments and their equivalents at the local level have the power to issue warnings or sanctions, or to revoke the licenses of lawyers who violate the Law on Lawyers and commit "other acts in respect of which penalties should be imposed."²⁵ Although it is very difficult to know how many lawyers are penalized every year and why, the judicial authorities at different levels regularly publish reports about the number of law firms that have been "stopped for rectification" (*tingye zhengdun*), de-registered (*zhuxiao*), or issued administrative warnings (*bei xingzheng jinggao*); and about lawyers who have had their licenses withdrawn (*diaoxiao*), or have been suspended for a period of time (*tingzhi zhiye*), have been "issued criticisms" (*tongbao piping*), or temporarily de-registered (*bei zanhuan zhuce*). In practice, these decisions are almost impossible to challenge. The Law on Lawyers also empowers judicial departments to impose disciplinary penalties against lawyers, including cessation of practice, for "acts in respect of

²³ Standing Committee of the National People's Congress of the PRC: Law of the People's Republic of China on Lawyers, adopted May 15, 1996, revised December 29, 2001, effective January 1, 2002. At present there are over 150 additional laws, regulations, judicial interpretations, and professional rules for lawyers. See *Regulations and Professional Standards for Lawyers in China* (Beijing: China Law Press, 2005). [中国律师管理法规与行业规范, 北京: 法律出版社, 2005.]

²⁴ Law of the People's Republic of China on Lawyers ("Law on Lawyers"), art. 2.

²⁵ *Ibid.*, art. 44.

which penalties should be imposed”—a circular definition allowing great discretionary powers.²⁶ Through the annual renewal of lawyers’ licenses, the judicial administration departments are able to ensure the compliance of lawyers with their directives.²⁷

Chinese lawyers depend greatly on cooperation from the law enforcement organs, or *gongjianfa*, to perform their duties. Standard practices such as accessing court documents and evidence held by the investigating organs, filing a case in court, or meeting with a client in detention are in practice achieved only at the discretion of these institutions. Lawyers commonly refer to the “three difficulties” (*san nan*) they face in their work: difficulties in seeing their clients, difficulties in accessing official documents (anything from the evidence held by the Public Security Bureau to arrest warrants), and difficulties in gathering evidence (from interviewing witnesses to obtaining evidence held by other state agencies).²⁸ Lawyers who take on sensitive cases find that doing so jeopardizes their relationship with *gongjianfa* officials, such that their ability to make a living can be compromised.²⁹ This too serves as a powerful deterrent.

The All-China Lawyers Association, the Chinese equivalent of a bar association, is also subordinate to the Ministry of Justice, from which it receives “guidance and supervision.” In practice, the ACLA must comply with instructions issued by the MOJ and regulate the profession in accordance with the directives of the MOJ’s department in charge of lawyers, the “Lawyers and Notaries Bureau.” All lawyers must join the local branch of the ACLA in order to practice. The head and secretary of the local lawyers association are generally appointed by the local judicial bureaus. A

²⁶ *Ibid.*, art. 10.

²⁷ For a detailed study of the difficulties faced by criminal lawyers see Ping Yu, “Glittery Promise vs. Dismal Reality: The Role of a Criminal Lawyer in the People’s Republic of China after the 1996 Revision of the Criminal Procedure Law,” *Vanderbilt Journal of Transnational Law*, vol. 35: 827, May 2002, pp. 827-865.

²⁸ There is a vast literature on the “three difficulties” (三难) issue. For a recent example see “Experts advise for the prompt reform of the criminal procedure law – Solving the “three difficulties” of defense lawyers,” *China Legal Publicity*, July 8, 2006. [“专家建议尽快修改刑事诉讼法 - 解决刑辩律师“三难”,” 中国普法网, 2006-07-08.]

²⁹ On this point see Ethan Michelson, “The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work,” *Law & Society Review*, vol. 40, No. 1 (2006), pp. 1-38. Michelson notes that “[t]he financial success of lawyers in China’s top corporate law firms working on international commercial transactions belies the grim reality that most Chinese lawyers are struggling for survival” (p. 10).

lawyer who has joined his or her local lawyers association is at the same time a member of the All-China Lawyers Association.³⁰ Disciplinary proceedings against lawyers by the ACLA are not subject to independent judicial review. ACLA sanction proceedings have been used to retaliate against human rights and civil rights lawyers. For instance, Beijing lawyer Gao Zhisheng, Shanghai lawyer Zheng Enchong, and now-exiled Shanghai lawyer Guo Guoting all lost their licenses under administrative pretexts for their work in politically sensitive cases (Gao Zhisheng's case is discussed further in Section IV, below).³¹

Lawyers routinely identify lack of independence as the structural challenge to their profession. As a comprehensive study on lawyers published by the Shanghai Academy of Social Sciences Press in 2005 writes, "The core question in the reform of the legal profession is the self-governance of the profession. Lawyers should independently carry out their professional duties and not be subjected to interference from state organs, groups or individuals."³² Indeed, local power holders can easily use, or abuse, government channels or party channels, through the judicial bureaus and the lawyers association (whose leaders are selected by the judicial bureaus anyway), to preclude legal challenges brought by lawyers on behalf of plaintiffs. Such interventions are often made on the pretext that matters are sensitive or would jeopardize social stability. This situation had led many lawyers and scholars to blame the overall political structure—in particular the one-party system—for the current problems hindering the legal profession.³³

In practice, if the local authorities judge that protesters should not be allowed to bring a lawsuit, they can instruct the lawyers association and the judicial administration bureau to act accordingly. A lawyer who took no heed of these instructions would be subject to sanctions either from the lawyers association or the

³⁰ Law on Lawyers, art. 39.

³¹ Joseph Kahn, "Crackdown on Defense Lawyers Is Intensified in China," *The New York Times*, August 18, 2006; "Detained rights activist and lawyer formally arrested," *South China Morning Post*, October 3, 2006.

³² Ye Qing and Gu Yuejin, eds., *Study of the Lawyers System in China* (Shanghai: Shanghai Academy of Social Sciences Press, 2005), p. 54. [叶青, 顾跃进 (主编), *中国律师制度研究*, 上海: 上海社会科学出版社, 2005, 第 54 页.]

³³ See Ping Yu, "Glittery Promise vs. Dismal Reality," *Vanderbilt Journal of Transnational Law* (vol. 35: 827), p. 863; Yi Sheng, "A Promised Unfulfilled: The Impact of China's 1996 Criminal-Procedure Reform on China's Criminal Defense Lawyers' Role at the Pretrial State (Part 2), *Perspectives*, vol. 5, No. 1, March 31, 2004, in particular Section V.

judicial administration bureaus. For instance, Zhu Jiuhu, a lawyer who represented private operators contesting the confiscation of oil fields by the Shaanxi government, was repeatedly warned to drop the case or face economic and administrative retribution. When he refused to comply, he was put into detention by the local Public Security Bureau on trumped-up charges.³⁴

³⁴ Howard W. French, "In China, whose oil is it?" *The New York Times*, July 19, 2005.

IV. Mass Cases and the Rights Protection Movement

The CPC appears to have realized that its viability depends to some extent on building a credible legal system. The authorities want people to turn to the courts and petitioning offices of the Letters and Visits system,³⁵ instead of taking to the streets to resolve social discontent—so long as the authorities can control those courts and offices.

Lawyers in recent years have successfully defended victims of police mistreatment, won compensation for victims of officials' abuses, and gained acquittals or sentence reductions for demonstrators, workers, political dissidents, journalists, and writers. They have prompted swift remedies from the central authorities for specific cases by attracting media and public attention, and brokered the resolution of countless acute labor, environmental, and land disputes.

A significant proportion of these cases involve dozens or even hundreds of plaintiffs, in what the authorities refer to as “collective” (*jiti*) and “mass” (*qunti*) cases, or, if they involve protests, “sudden incidents” (*tufa shijian*). These kinds of cases often revolve around livelihood issues such as land confiscation, forced evictions, forced relocations, life-threatening environmental pollution, layoffs induced by large-scale industrial restructuring, and non-payment of pensions and welfare benefits. Lawyers' ability to take on mass cases may be one of the only ways to break an increasingly vicious cycle, in which the lack of legal protections and of clarity in property rights fuels abuses by corrupt local authorities, which in turn fuel public protests among those who have no access to justice.

³⁵ The Letters and Visits system, colloquially called *shangfang* (“appealing to higher levels”), is a complaints system allowing citizens to report grievances to authorities, who are then supposed to instruct other government departments to resolve the problems. It is estimated that a staggering 10 million petitions were filed in 2004. According to the *People's Daily*, “An official survey revealed that 40 percent of these complaints are about police, courts and prosecutors' offices, 33 percent about government, 13 percent about corruption and 11 percent about injustices.” Other specific subjects often named in petitions include environmental problems, workplace complaints, and forced evictions. Human Rights Watch has documented these problems and how petitioners often suffer from systematic violence and ill-treatment. See Human Rights Watch, “*We Could Disappear At Any Time*”: Retaliation and Abuses Against Chinese Petitioners, vol. 17, no. 11(C), December 2005, <http://hrw.org/reports/2005/china1205/index.htm>.

The increasing assertiveness of lawyers has progressively given rise to a small but influential movement of lawyers, law experts, and activists who try to assert the constitutional and civil rights of the citizenry through litigation and legal activism. The so-called “rights protection movement” (*weiquan yundong*) remains highly informal, and is mainly characterized by its willingness to take up and publicize cases that are politically sensitive because they involve citizens with grievances against local governments or state agencies. By circulating articles, maintaining web-logs (“blogs”), and mobilizing Internet communities, concerned journalists and scholars and the foreign media, members of the rights protection movement frequently expose the lack of legality in local government decisions and lack of credibility in central government commitments to a fair judicial system and “ruling the country according to law.”

Weiquan lawyers are often openly critical of the deficiencies of the legal system, and in particular of the lack of independence of the judicial system. At the same time, the hallmark of the movement has been to keep all activities strictly within the realm of Chinese law and to advise protestors not to resort to unlawful means of contention.

Along with other legal activists, *weiquan* lawyers have been the vanguard of a number of high-profile protests, such as those in Taishi (Guangdong province), Tangshan (Hebei), or Zigong (Sichuan), which have attracted widespread attention, including from the international media.³⁶ Overseas human rights organizations have also started to rely on *weiquan* lawyers’ accounts to report and document cases in which lawyers are serving as counsel and on incidents in which the lawyers themselves have become victims of abuses.

One of the most serious obstacles to accessing justice is that courts can—wholly at their own discretion—refuse to entertain cases without providing any justification or offering alternative recourse. The problem is compounded by specific instructions that prohibit certain categories of cases. A regulation issued by the Supreme Court in 2002, for instance, provides that the “Peoples’ Courts should not accept civil

³⁶ See Kristin Jones, “China’s Hidden Unrest,” Committee to Protect Journalists, May 2006; Thomas Lum, “Social Unrest in China,” Congressional Research Service, May 8, 2006; Eva Pils, “Land Disputes, Rights Assertion, And Social Unrest in China: A Case from Sichuan,” *Columbia Journal of Asia Law*, Spring/Fall 2005, pp. 235-292; Joseph Kahn, “Legal Gadfly Bites Hard, and Beijing Slaps Him,” *The New York Times*, December 13, 2005.

lawsuits from plaintiffs if they concern disputes that have arisen during the course of State-Owned Enterprises reforms carried out by responsible government departments.”³⁷

Residents in Beijing reported that the courts were instructed to refuse cases involving residents forcibly evicted for urban redevelopment, and lawyers routinely complain that the courts will turn down cases without even explaining their decisions.³⁸ But making legal avenues appear futile in the eyes of the growing number of powerless and disenfranchised citizens left behind by economic reforms might ultimately heighten the risk of social unrest.

The Ministry of Public Security estimated the number of “mass incidents” at 87,000 during 2005, up more than 6 percent from 2004 and quadruple what it was a decade ago.³⁹ In December 2005 police opened fire on villagers opposing land confiscations in the southern village of Dongzhou, Guangdong province, killing at least three protesters.⁴⁰ In May 2006 China’s top environment watchdog, the State Environmental Protection Agency (SEPA), acknowledged that over 50,000 protests related to pollution had been recorded in 2005.⁴¹ Pan Yue, deputy director of SEPA, stated that environmental problems had “become one of the main factors that affect national safety and social stability.”⁴² (Although state media have reported a

³⁷ Supreme People’s Court of the People’s Republic of China, “Regulations on various problems regarding the hearing of cases of civil dispute arising in enterprise reforms,” effective January 1st, 2003, art. 3.

³⁸ See, for example, Jerome A. Cohen, “China’s Legal Reform at the Crossroad,” *The Far Eastern Economic Review*, March 2006, pp. 23-27. Cohen notes that “[i]n too many cases, plaintiffs with justifiable legal grievances are simply denied access to the courts by one means or another.”

³⁹ The Ministry of Public Security has referred interchangeably to “mass incidents” and “public order disturbances” for the 87,000 figure. Given the lack of a precise definition and the politically sensitive nature of social unrest in China, these statistics should be taken as indicating a trend rather than absolutes. PRC Ministry of Public Security Press Conference, “Press Release: Ministry of Public Security Report on the Trend of Social Order and Disaster in 2005,” January 20, 2006 [“公安部召开新闻发布会通报2005年全国社会治安形势暨火灾形势”, 2006-01-20], <http://www.mps.gov.cn/cenweb/brjlCenweb/jsp/common/article.jsp?inford=ABC0000000000001018> (accessed August 3, 2006); “Data show social unrest on the rise in China,” *The Financial Times*, January 19, 2006.

⁴⁰ “China: Dongzhou Killings Must Be Investigated,” Human Rights Watch news release, June 1, 2006, <http://hrw.org/english/docs/2006/06/01/china13489.htm>.

⁴¹ “Environment issues addressed more urgently,” *China Daily*, May 4, 2006.

⁴² *Ibid.*

decrease of the number of incidents during the first nine months of 2006, this decrease is most likely due to under-reporting by local officials. Anecdotal evidence points to heightening, rather than diminishing social conflicts.⁴³⁾

The central authorities have recognized the link between abuses, unrest, and the need to develop legal services for preventing the escalation of disputes. Premier Wen Jiabao acknowledged in January 2006 that “some localities are unlawfully occupying farmers’ land and not offering reasonable economic compensation and arrangements for livelihoods, and this is sparking mass incidents in the countryside.”⁴⁴ Two months later, in his annual report to the National People’s Congress, China’s parliament, he promised “effective legal services and legal aid so as to provide effective help to people who have difficulty filing lawsuits,” and a “strict, impartial, and civilized enforcement of the law.”⁴⁵

Actual developments and practice, however, have contradicted these promises. Instead of enhancing lawyers’ ability to do their work, on March 20, 2006, the government imposed new limitations by adopting the Guiding Opinions on Handling Mass Cases. *Weiquan* lawyers became targeted in the name of preserving “social stability.” On April 11, 2006, Luo Gan, a senior member of the Politburo and the head of the party Central Committee’s Legal and Political Committee,⁴⁶ urged the adoption of “forceful measures ... against those who, under the pretext of rights-protection (*weiquan*), carry out sabotage,... so as to protect national security and the political stability of society.”⁴⁷

⁴³ Richard McGregor, “Beijing reports decline in protests,” *The Financial Times*, November 8, 2006.

⁴⁴ “Chinese PM Warns on Rural Unrest,” BBC News Online, January 20, 2006, <http://news.bbc.co.uk/2/hi/asia-pacific/4630820.stm> (accessed January 21, 2006).

⁴⁵ “Text of Chinese premier’s government work report at NPC session,” *BBC Monitoring Asia Pacific*, March 5, 2006.

⁴⁶ Luo Gan is currently a member of the Politburo Standing Committee of the 16th CPC Central Committee. He is also a state councilor, a member of the Leading Party Group of the State Council and secretary of the CPC Political and Legislative Affairs Committee of the 16th CPC Central Committee.

⁴⁷ Luo Gan, “Bolstering the teaching of the concept of socialist rule by law: Conscientiously strengthening the political thinking of the political and legal ranks,” *Seeking Truth*, Issue No. 433, June 16, 2006 [罗干, “深入开展社会主义法治理念教育切实加强政法队伍思想政治建设”, *求是*, 2006年6月16日(总433期)], <http://www.qsjournal.com.cn/qs/20060616/GB/qs^433^o^1.htm> (accessed October 16, 2006).

Box: Mass incidents on the rise (April 2005-November 2006)

- November 10, 2006 – Thousands of protesters rampage through a hospital in Sichuan province after the death of a young boy whose guardians could not afford to pay treatment fees. At least 10 people are injured in fighting with police.
- November 8, 2006 – Thousands of villagers near Shunde, Guangdong, clash with riot police after barricading officials and foreign businessmen in a warehouse they said had been built on illegally seized land.
- October 23-24, 2006 – Thousands of university students from Jiangxi province's Clothing Vocational College march through campus and riot after state media reports that school authorities had deceived new students about their eventual qualifications and issued fake diplomas.
- August 20, 2006 – Villagers of Maoming, Guangdong province, detain a number of government officials in the course of a dispute about water tariffs. Police forces are dispatched and a dozen villagers are injured in the ensuing clash.
- August 1, 2006 – Hundreds of villagers near Linhai municipality, Zhejiang province, clash with police over land seizures. Thirty villagers are reportedly injured.
- July 29, 2006 – Christians in eastern China's Zhejiang province clash with police. The violence occurs as the police tries to break up a 3,000-strong protest against the demolition of a church. Twenty people are injured, including four seriously.
- July 27, 2006 – Around a thousand workers riot over working conditions at a factory producing toys for McDonald's in Dongguan, Guangdong province.
- June 2006 – Around a thousand policemen violently disperse a sit-in organized by villagers opposing the construction of a chemical plant in Guangxi. Four villagers are placed in criminal detention.
- June 2006 – Thousands of students ransack their university in Zhengzhou, Hunan province, in a dispute over diplomas.
- May 2006 – Thousands of residents of Loufeng township near Suzhou, Jiangsu province, protest over the conditions of their forced relocation. The police detain a dozen protesters.

- January 2006 – Hundreds or thousands of protesters clash with police over inadequate compensation for farmland taken for industrial use in Panlong village, Sanjiao township, Guangdong province.
- December 2005 – A dispute over the construction of an electricity generating plant and related property seizures culminates in a violent clash in Dongzhou village near Shanwei city, Guangdong province. Police open fire, killing at least three protesters.
- September 2005 – Over a hundred workers at a shoe factory in Guangzhou, Guangdong province, battle police and smash vehicles while protesting over unpaid wages.
- August 2005 – Police beat villagers protesting against pollution from a battery factory in Zhejiang province.
- August 2005 – Unemployed residents of Daye, Hubei province, attack government offices and destroy cars after the police break up an earlier demonstration over an official plan to annex Daye to a larger city, Huangshi. Ten people are sentenced to prison terms ranging from one to five years for their involvement in the protests.
- July 2005 – Residents of Taishi village near Guangzhou, capital of Guangdong province, submit a petition to remove their village chief for embezzling public funds. After one of their leaders is arrested, 1,500 villagers clash with 500 armed police.
- July 2005 – Some 3,000 migrant workers at a Hong Kong-owned garment factory near Guangzhou riot over a pay dispute. A report of the incident published in the local press mentions that there are thousands of such “explosions” every year.
- July 2005 – Farmers in Xinchang, 200 kilometers south of Shanghai, attack a pharmaceutical plant over pollution it emits.
- June 2005 – About 150 kilometers southwest of Beijing, approximately 300 hired thugs attack a group of farmers who have camped on disputed land that the local government plans to use to build a power plant. The farmers protest the lack of proper compensation for their land. Six villagers are reportedly killed in the attack, which is captured on video by a protester and shown on Chinese websites. Higher governmental authorities sack the local party chief and mayor and return the farmland.

- April 2005 – Some 20,000 peasants from several villages in Huashui township, Zhejiang province, who have been complaining for four years about industrial pollution from an industrial park that they claim has ruined their agricultural livelihood, fight with police. The factories are eventually shut down, but protest leaders are arrested.

Sources: Media reports; *Social Unrest in China*, Congressional Research Service, May 8, 2006.

In the following months the government's hostility towards the *weiquan* movement was reflected in the arrest and conviction of three of its most outspoken members, Chen Guangcheng, Gao Zhisheng, and Guo Feixiong. All three men had been providing legal advice to protesters and plaintiffs suing government authorities—Gao as a qualified lawyer, Chen and Guo as legal advisers (under Chinese law, it is not a necessary condition to be a qualified lawyer to be entrusted by a defendant, including in criminal trials).⁴⁸

Guo Feixiong

Guo Feixiong (also known as Yang Maodong, his real name) is best known for providing legal assistance to villagers in Taishi, Guangdong province, as they sought to remove the allegedly corrupt village leader from office. As a result of his involvement, he was detained on September 13, 2005, and held incommunicado until October 4, when his legal representatives Guo Yan and Gao Zhisheng were notified of his arrest on suspicion of “assembling crowds to disturb public order.” He was released without charge on December 27. In February 2006 he was detained again, by the Beijing Public Security.⁴⁹ In August he was formally arrested on suspicion of “running an illegal business.”⁵⁰ His wife told Agence France-Presse that

⁴⁸ Article 32 of the Criminal Procedure Law allows “persons recommended by a public organization or the work unit the defendant belongs to, and their guardians, relatives and friends” to represent a defendant.

⁴⁹ Amnesty International, “China: Fear of torture and ill treatment: Yang Maodong (also known as Guo Feixiong) (m),” AI Index: ASA 17/008/2006, February 9, 2006.

⁵⁰ “Detained Rights Activist and Lawyer Formally Arrested,” *South China Morning Post*, October 3, 2006.

she “refused to sign the arrest notice and told the police [her] husband was innocent.”⁵¹

Chen Guangcheng

Chen Guangcheng, a self-taught rights advocate, was sentenced in August 2006 to four years and three months’ imprisonment for allegedly “damaging property and organizing a mob to disturb traffic” in August 2006. The initial trial was fraught with irregularities and an appellate court ordered a retrial, which took place in late November and where the original verdict was upheld.⁵²

In March 2005 Chen learned from villagers that officials in Linyi, a city in Shandong province, had subjected thousands of people trying to evade restrictive population control laws to midnight raids, beatings, late-term forced abortions, and compulsory sterilization.⁵³ In June 2005 he filed a lawsuit and then traveled to Beijing to discuss the case with legal scholars, lawyers, and foreign journalists. Soon after, the lawsuit was rejected. On August 12, 2005, local officials imprisoned Chen and his immediate family in their home and shut off all outside communication. They were detained there for seven months (Chen managed to escape in September, but was apprehended in Beijing and returned to Linyi). On March 11, 2006, Yinan county police officers “disappeared” Chen for three months, officials acknowledging only on June 11 that he was formally detained in the Yinan County Detention Center.

On June 21 the Yinan County People’s Procuracy approved Chen’s arrest. That same day Chen’s lawyers, Li Jinsong and Zhang Lihui, were able to visit him, but from then on authorities escalated the pressure to deny access to defense witnesses and materials for all the lawyers and activists involved. On June 22 police officers took lawyer Li in for questioning. Unknown assailants beat three other lawyers defending villagers jailed for supporting Chen. When Li Jinsong and Li Subin, another member of Chen’s legal team, tried to visit Chen’s wife on June 23, they were stopped and

⁵¹ “Chinese police arrest civil rights lawyer,” Agence France-Presse, October 2, 2006.

⁵² “China abortion activist sentenced”, *BBC News Online*, August 24, 2006, <http://news.bbc.co.uk/1/hi/world/asia-pacific/5281440.stm> (accessed November 23, 2006).

⁵³ “China: Release ‘Barefoot Lawyer,’” Human Rights Watch news release, July 19, 2006, <http://hrw.org/english/docs/2006/07/18/china13765.htm>.

beaten by guards. The following day, all the lawyers involved returned to Beijing. Li Jinsong and Li Subin tried returning to Shandong on June 27, only to be harassed again while the police stood by. Some 20 men overturned the lawyers' car. Police took Li Jinsong in for questioning once again.⁵⁴

On the eve of Chen's trial, all three of his lawyers were detained by Yinan police. None of Chen's lawyers were allowed in the courtroom for the trial on August 24, 2006. Instead, authorities appointed their own public defender for Chen just before the trial began. The trial lasted just two hours and Chen was sentenced to four years and three months of imprisonment for "damaging property and organizing a mob to disturb traffic."

In what was seen as a response to an international outcry, an appellate court on October 30 overturned the conviction and ordered a retrial.⁵⁵ The retrial, on November 27, was equally mired by severe violation of due process. Chen's three lawyers, Xu Zhiyong, Li Jinsong, and Teng Biao, were harassed on their arrival in Linyi the day before the trial by dozens of plainclothes agents who refused to identify themselves.⁵⁶ A key witness who had admitted providing a false testimony against Chen under police duress and whom Chen's lawyers intended to call at the trial was kidnapped by unidentified men, and two other defense witnesses were similarly taken away. Lawyer Teng Biao was detained for four hours by the police. The judge refused to adjourn the case despite the forced disappearances of the defense witnesses, prompting Chen's lawyers at one point to storm out of the court in protest. On December 1, the court upheld the original verdict and sentence.⁵⁷

In April 2006, *Time* magazine named Chen one of its "100 people most influential in shaping our world."⁵⁸

⁵⁴ Ibid.

⁵⁵ Joseph Kahn, "Rights advocate wins a retrial, a rarity in Chinese courts," *The New York Times*, November 1, 2006.

⁵⁶ Maureen Fan, "Rare Retrial Begins for Blind Chinese Legal Activist Proceedings Again Marked By Tumult, Attorneys Say," *The Washington Post*, November 28, 2006.

⁵⁷ Maureen Fan, "Chinese Activist's Sentence Is Reaffirmed," *The Washington Post*, December 1, 2006.

⁵⁸ "TIME 100: The People Who Shape Our World", *Time*, April 30, 2006.

Gao Zhisheng

Gao Zhisheng, one of China's foremost human rights lawyers, is being held incommunicado on charges of "inciting subversion." He was arrested on August 15, 2006, and formally charged on September 15, although his family was only notified on October 12.

As the director of the Beijing-based Shengzhi Law Office, Gao has done pro bono work for forcibly evicted homeowners, members of the Falungong religious sect, underground Christians, fellow lawyers, and democracy activists. In November 2005 the operations of the Shengzhi Law Office were suspended by the Beijing Municipal Bureau of Justice for one year. One month later, Gao Zhisheng's license to practice law was revoked. He was then subjected to continuous surveillance and other forms of harassment and intimidation by the authorities.

His arrest came on the heels of a hunger strike he organized to protest violence against dissidents. Prosecutors charged him on September 15 with "inciting subversion," a state security crime often used against political dissidents. The police have denied his lawyer contact with Gao on grounds that the case involves unspecified "state secrets."⁵⁹

⁵⁹ Joseph Kahn, "China Arrests Human Rights Lawyer Who Criticized State," *The New York Times*, October 15, 2006.

V. The New Guiding Opinions

After a lawyer has accepted a mass case, he must... promptly report the situation to the relevant government departments.

—Section II of the Guiding Opinions

From the overall principles to the detailed content, everything is wrong in these Guiding Opinions.

—Zhang Sizhi, former vice-chair of the Beijing Lawyers Association

The Guiding Opinions of the All-China Lawyers Association on Lawyers Handling Mass Cases were adopted “on a trial basis” on March 20, 2006, by the Standing Committee of the ACLA.⁶⁰ They were not made public until April 15, when they were posted on the website of the ACLA. Administrative measures adopted on a trial basis are fully operative and generally constitute the first step towards more permanent statutes, which are often more constraining.⁶¹

The Guiding Opinions open with a preamble explaining the goal and basis of the regulations, followed by five sections covering the definition of mass cases and the general responsibilities of lawyers; the requirements for handling relationships with clients, judicial agencies, the government, the media, and the public; the requirements for the acceptance of mass cases by law firms; the duties of local lawyers associations; and legal liability. The Guiding Opinions recognize the positive role of lawyers for the legal system, noting that “[l]awyers who intervene in mass cases are helpful to the government, enterprises, and other opposing parties in their lawful handling of matters” and, when handling individual cases, “help promote

⁶⁰ Guiding Opinions of the All-China Lawyers Association on Lawyers Handling Mass Cases, adopted “on a trial basis” on March 20, 2006, by the Standing committee of the ACLA (“Guiding Opinions”). [中华全国律师协会关于律师办理群体性案件指导意见, 2006年3月20日常务理事会通过并试行.]

⁶¹ Jianfu Chen, “The Development and Conception of Administrative Law in the PRC,” *Law in Context*, 16(2), 1998, pp. 72-105.

judicial and legislative activities and lawful administration” by issuing “legal opinions and suggestions.”⁶²

Mass cases are defined as those “involving 10 or more plaintiffs” who have initiated a common lawsuit or a series of legal proceedings on a common matter.⁶³ The preamble refers specifically to issues of “land confiscation, forced eviction, relocation from reservoir areas, enterprise restructuring, environmental pollution and other aspects of the protection of the rights and benefits of rural residents.”⁶⁴ These cases “usually involve complex social, economic and political factors, and have varied impacts on state and society that cannot be ignored.”⁶⁵

All but two of the provisions of the Guiding Opinions set forth new restrictions and additional duties for lawyers handling mass cases, so as to “regulate and guide” the work of lawyers handling these cases.⁶⁶ Section V states that lawyers are to abide by these Guiding Opinions “when taking on important sensitive cases.” The Guiding Opinions cover not only litigation (*su song*) but also other forms of professional services, such as providing advice for non-litigious (*fei susong*) resolutions such as mediation or conciliation or petitioning through the Letters and Visits (petition) system. They impose new requirements for lawyers in their relations with plaintiffs, lawyers associations, justice bureaus, government departments, and the media. In effect, the Guiding Opinions limit the ability of lawyers to prosecute some of the most important kinds of cases regarding human rights in China today.

A central problem with the Guiding Opinions is the vagueness of the language contained in many key provisions, which opens the door to arbitrary interpretations by the authorities (terms such as “sensitive” or “major impact” cases and cases that have “adverse consequences,” or criteria such as “good political quality,”

⁶² Guiding Opinions, Section 1, sub-section 1. (The numbering and bulleting format of the Guiding Opinion is not consistent throughout its five sections. For the sake of clarity paragraphs numbered with Chinese numerals are referred to here as “sub-sections” and those numbered with Arabic numerals as “points.”)

⁶³ *Ibid.*, Section 1, sub-section 1.

⁶⁴ *Ibid.*, Preamble.

⁶⁵ *Ibid.*, Preamble.

⁶⁶ *Ibid.*, Preamble.

“interfering with the normal operations of the state agencies,” or a “great sense of social responsibility”). This is particularly disappointing in a document produced by a legal institution.

Two further provisions provide that local lawyers associations must help safeguard lawyers’ lawful rights⁶⁷ and that cases initiated before the issuing of the Guiding Opinions must be brought into conformity with the new requirements.⁶⁸ Below we set out in greater detail key provisions of the Guiding Opinions, and Human Rights Watch’s related concerns.

A. Tightening of control by the judicial bureaus and other governmental departments

The Guiding Opinions state that, after a lawyer has accepted a mass case, he or she must accept the “guidance and supervision” of the judicial bureau.⁶⁹ Lawyers must also “promptly and fully communicate” with the bureau, and “assist the judicial agency in ascertaining the facts.”⁷⁰ The exact extent of the “guidance and supervision” is not defined, which allows for arbitrary interpretation by the authorities.

The Ministry of Justice, an administrative organ under the State Council, oversees judicial bureaus and departments at the provincial and local levels. These judicial agencies are administrative entities rather than part of the court system.⁷¹ The authority wielded over the judicial system by the party’s Legal and Political Committees are such that they can easily instruct the judicial authorities to use the Guiding Opinions to bar lawyers from taking on sensitive cases that could result in exposure of government abuses.

⁶⁷ Guiding Opinions, Section IV, points 4 and 5.

⁶⁸ Ibid., Section V.

⁶⁹ Ibid., Section I, sub-section 3.

⁷⁰ Ibid., Section II, “Relations with judicial agencies.”

⁷¹ See Randall Peerenboom, “Lawyers in China: Obstacles to Independence and the Defense of Rights,” Lawyers Committee for Human Rights, March 1998.

By requiring lawyers to accept the instructions emanating from the local judicial bureaus, the Guiding Opinions further open the door to interference of unscrupulous local authorities. In practice, on account of the hierarchical structure of local governments, higher-level governmental departments and party committees can issue instructions to their subordinated judicial bureaus about cases in which the local government itself is the defendant. When the authorities tried to rein in Gao Zhisheng (before ultimately arresting him a few months later, see above), the Beijing Judicial Bureau handed him “a list of cases and clients that were off limits.”⁷²

This leaves the plaintiff seeking redress little chance of success. For example, lawyers representing rural residents displaced by a highway project would have to accept the “guidance” of the departments of the very authorities that had authorized the eviction in the first place. Many of the most acute protests in recent years have been triggered by local governments’ attempts to pay derisory compensation for taking over rural land, in the knowledge that farmers would have no effective way to contest the legality of the decision. In June 2006 an official from the Ministry of Land and Resources acknowledged that more than one million cases involving land-related irregularities had built up in the previous two years.⁷³

Even less politically sensitive initiatives that have been endorsed by the government, such as public interest litigation in consumer rights and environmental protection areas, could find themselves in jeopardy under the new Guiding Opinions.

B. Requiring lawyers to share confidential information with the authorities

Section II of the Guiding Opinions requires a lawyer to “promptly and fully communicate with the relevant justice bureau” about mass cases as well as actively pass information about the dispute “to the judicial agency,” and “assist ... [that] agency in ascertaining the facts.” If lawyers discover problems that may “intensify”

⁷² Joseph Kahn, “Lawyer takes on China’s ‘unwinnable’ cases,” *The New York Times*, December 12, 2005.

⁷³ “Local Governments Linked to Most Serious Cases of Using the Land Illegally,” *Legal Daily*, June 6, 2006. [“严重土地违法多与地方政府有关,” *法制日报*, 2006-06-06.] A survey of 15 cities carried by the ministry indicated at least 60 percent of the land developed in metropolitan areas since September 2004 had either been illegally obtained or used, while in other cases the proportion was as high as 90 per cent.

the dispute, or discover that the dispute may escalate, they must immediately report it to the judicial authorities.⁷⁴ Lawyers are also instructed to avoid the “distortion” of the details of the case or false testimonies that create a situation “where the popular mood becomes unstable.”⁷⁵ If this is the case, the lawyer is obliged to “promptly report the situation to the relevant government departments.”⁷⁶

These provisions negate the principle of confidentiality between lawyer and client and quash the ability of plaintiffs to enjoy meaningful legal representation. The contradiction is particularly acute in cases where one of the parties is precisely the authorities to which the lawyer must report: in many of the cases of local protests that have been documented, local governments not only refused to entertain the plaintiffs’ grievances, but also intimidated or retaliated against them.⁷⁷ Lawyers routinely complain that local governments are the most significant source of external interference in preventing access to justice.⁷⁸

C. Strengthening of controls exercised by the lawyers associations

The Guiding Opinions add a second layer of controls over individual lawyers and law firms by requiring that they communicate with and receive the supervision of the local lawyers association. Even though lawyers associations are already under the administrative supervision of the judicial bureaus, the Guiding Opinions establish specific requirements for mass cases that do not exist for other types of cases. When a lawyer accepts a mass case, he must immediately report the case to the local

⁷⁴ Guiding Opinions, Section II, “Relations with government.”

⁷⁵ *Ibid.*, Section II, “Relations with the client.”

⁷⁶ *Ibid.*, Section II. “Relations with government.” The Guiding Opinions leave unclear what should be considered as the “relevant” government departments, but they are most likely the departments that have jurisdiction over the issue at hand, such as the land management bureau in the case of a land dispute, or the tax bureau for a dispute over abusive taxation.

⁷⁷ See, for example, Eva Pils, “Land Disputes, Rights Assertion, And Social Unrest in China: A Case from Sichuan,” *Columbia Journal of Asia Law*, Spring/Fall 2005, pp. 235-292.

⁷⁸ See Ye Qing and Gu Yuejin, eds., *Study of the Lawyers System in China* (Shanghai: Shanghai Academy of Social Sciences Press, 2005). [叶青, 顾跃进 (主编), *中国律师制度研究*, 上海: 上海社会科学出版社, 2005.]

lawyers association.⁷⁹ A law firm retained for a mass case must also report it to the lawyers association to which the firm is subordinate.⁸⁰

The lawyers associations must report and “share information” on these cases with the judicial bureaus,⁸¹ and have the responsibility to “supervise, regulate, and safeguard” lawyers’ handling of mass cases.⁸² In mass cases that have or are expected to have a “major impact,” the associations are also required to promptly “communicate and coordinate” with the “relevant [governmental] bureaus.”⁸³

In practice, a lawyer involved in a case that the local authorities wish to keep out of public view would have to report developments that may lead to publicity or protests by informing the government of the intentions of his clients. For example, a lawyer representing villagers who have taken a polluting factory to court would have to alert the government authorities if he or she were to learn that they intended to hold a sit-in in front of its gates.

Lawyers associations have the authority to look into how a lawyer is handling a case and to put forward suggestions.⁸⁴ They can propose or remind each party’s lawyers to enter into mediation and negotiation, and to resolve conflict.⁸⁵ If asked by a law firm,⁸⁶ they can also issue directly an opinion to the “masses.”⁸⁷

⁷⁹ Guiding Opinions, Section III, point 1.

⁸⁰ *Ibid.*, Section III, point 1.

⁸¹ *Ibid.*, Section IV, point 7.

⁸² *Ibid.*, Section I, sub-section 3.

⁸³ *Ibid.*, Section IV, point 3.

⁸⁴ *Ibid.*, Section IV, point 1.

⁸⁵ *Ibid.*, Section IV, point 6.

⁸⁶ *Ibid.*, Section IV, point 6.

⁸⁷ *Ibid.*, Section IV, point 3.

D. Introduction of specific requirements for accepting cases

The Guiding Opinions introduce for law firms requirements supplementary to the Law on Lawyers regarding the steps by which they accept cases. These serve as additional deterrents to lawyers who want to take up mass cases.

Section III states that the initial consultation with the plaintiffs must be conducted by a minimum of two lawyers of “good political quality” and “abundant experience.”⁸⁸ The decision to undertake a case must be decided by at least three partners.⁸⁹ The director of the law firm assumes “full responsibility for oversight and supervision.”⁹⁰ Law firms that decide to take a case must complete a comprehensive record of their acceptance of the case⁹¹ and promptly report it to the local lawyers association.⁹²

These requirements seek to hold firms explicitly responsible for the deeds of their lawyers when they handle mass cases. Requiring the full approval of at least three partners of the firm may be sufficient in many cases to dissuade lawyers from engaging in such cases by spreading the responsibility—and therefore the consequences—of taking up mass cases from individual lawyers to groups of partners.

The provision requiring lawyers to be of “good political quality” places political loyalty to the CPC over professional responsibility or the right to counsel. In the Chinese political lexicon, the requirement to be of “good political quality” is understood as compliance with party directives. The CPC relies on lawyers who are themselves party members to form the backbone of the legal profession. One of the roles of the judicial bureaus in charge of lawyers is to organize political

⁸⁸ Ibid., Section III, point 3.

⁸⁹ No provision is made for firms with fewer than three partners. Since joining a law firm is an absolute requirement for lawyers to practice (article 23 of the Law on Lawyers), one- or two-person firms are very uncommon. National People’s Congress of the PRC, Law of the People’s Republic of China on Lawyers (Revised 2001), adopted December 29, 2001, effective January 1, 2002.

⁹⁰ Guiding Opinions, Section III, point 2.

⁹¹ Ibid., Section III, point 3.

⁹² Ibid., Section III, point 1.

indoctrination sessions for lawyers. In some localities, attendance at these meetings is compulsory for the renewal of law licenses.

E. Greater restrictions on working with petitioners

Under article 41 of the Chinese constitution, citizens have the right to petition any state organs for violation of the law or dereliction of duty. Millions of petitions are filed every year, and thousands of people travel to Beijing to petition the central authorities when they are unable to obtain redress at the local level.

Two clauses of the Guiding Opinions pertain to the provision of legal services to plaintiffs who are petitioning through the Letters and Visits system. The Guiding Opinions prohibit lawyers from “instigating” and “participating” in petitioning activities with or on behalf of their clients.⁹³ This prohibition is a further curtailment of their independence and a violation of both their clients’ and their own constitutional rights to petition.

Despite its abysmally low rate of success, collective petitioning (*jiti shangfang*) constitutes a way for citizens sharing the same grievance to organize, publicize, and seek the intervention of higher authorities to intervene in their cases, and is often conducted in conjunction with ongoing legal processes and various forms of protests.⁹⁴ As such, it is seen by the authorities as a potential factor in, or indicator of, social unrest.⁹⁵ In recent years a number of prominent lawyers and legal experts have helped protesters draft and circulate petitions, including to media organs and government departments.⁹⁶

In 2005 the government also launched a campaign to “resolve” petitioners’ grievances that in some cases involve the assistance of local lawyers. Yet in these

⁹³ Ibid., Section II, “Relations with the client.”

⁹⁴ A recent study found that only three of two thousand petitioners surveyed had their problems resolved. Human Rights Watch, “*We Could Disappear At Any Time.*”

⁹⁵ In recent years, the number of petitions across the country has skyrocketed, prompting the authorities to enact new regulations in 2005 that aim at containing them at the local level. Petitioners often face persecution and violence, which largely go unsanctioned by the authorities. See Human Rights Watch, “*We Could Disappear At Any Time.*”

⁹⁶ See, for example, Yu Meisun, “The Diary of a Peasant Advocate,” *China Rights Forum*, No 3, 2004, pp. 61-67.

instances the Guiding Opinions now stipulate that lawyers must “persuade their clients not to take their petitions to higher levels or to organize mass petitions.”⁹⁷ Instead, they instruct lawyers to discourage collective or higher-level petitioning.

The absence of petitions therefore becomes a criterion of the “successful” resolution of a mass case in the eyes of the authorities. “When 3,000 households were evicted... to make way for the Olympics village project,” an article published in the *People’s Daily* exemplified, “not one person petitioned.”

The chief factor was that lawyers were involved early in the demolition and relocation process and assisted the government departments in reaching settlements. This is an example of lawyers participating successfully in the resolution of a mass case.⁹⁸

The requirement that lawyers dissuade their clients to exercise their constitutional right to petition is clear interference with the duty of the members of the legal profession to represent their clients.

F. Discouraging contacts with media and foreign organizations

The Guiding Opinions warn lawyers to restrict contacts with the media. Lawyers must “be cautious in their commentary” and avoid “stirring up” news.⁹⁹ They must also “exercise caution” in their contacts with overseas organizations and media.¹⁰⁰

The role of the media in publicizing cases, particularly cases of manifest injustice, has grown significantly with the spread of the Internet. Faced with powerful local authorities who often are able to prevent legal challenges to their decisions, many

⁹⁷ Guiding Opinions, Section III, point 4.

⁹⁸ “In Solving Mass Cases, the Role of Lawyers Cannot be Ignored,” *People’s Daily Online*, June 20, 2006. [“处理群体事件，律师作用不可忽视”，*人民网*，2006-06-20], reproduced at <http://opinion.people.com.cn/GB/40604/4496965.html> (accessed December 6, 2006).

⁹⁹ Guiding Opinions, Section II, “Relations with the media.”

¹⁰⁰ *Ibid.*, Section II, “Relations with the media.”

lawyers try to generate pressure through the media.¹⁰¹ *Weiquan* lawyers and law academics have also become a primary source of information about protracted disputes and unrest incidents. It is characteristic of the *weiquan* movement that it often involves coordination between local activists, lawyers and legal experts, and investigative journalists.¹⁰²

Although the Guiding Opinions do not prohibit lawyers from talking to the media, they nevertheless specify that they should “be careful,” “exercise caution,” and avoid “stirring up news,” without defining these terms or clearly stating the sanctions for violations.¹⁰³ This suggests that a lawyer who actively mobilized the media on cases or events that the government considers an embarrassment would be liable to sanctions. In subsequent comments after the promulgation of the Guiding Opinions, official media have denounced lawyers who “blacken the country” by disclosing or commenting on mass cases.¹⁰⁴ Suggesting that lawyers exercise caution in talking to “foreign organizations” further curtails their independence. Foreign reporters have also been subjected to state harassment while covering rural protests.

¹⁰¹ For a general discussion of the relationship between the media and the legal system see Benjamin L. Liebman, “Watchdog or Demagogue? The Media in the Chinese Legal System,” *Columbia Law Review*, 105:1, January 2005, pp. 1- 157. Liebman reports that “[l]awyers also comment that maintaining good relations with the media is important, particularly when representing weak or disadvantaged clients who are in disputes with locally influential persons or individuals” (p. 93).

¹⁰² A prominent example was the Tangshan case, where law activists Yu Meisun and Li Baiguang partnered with the investigative journalist Zhao Yan—who was working at the time for the liberal journal *China Reform*—to expose the plight of relocated residents fighting for compensation. Yu Meisun has also recounted how he tried to get an influential program on China’s Central Television (CCTV) to cover the cases of villagers involved in a land dispute. See Eva Pils, “Land Disputes, Rights Assertion, And Social Unrest in China: A Case from Sichuan,” *Columbia Journal of Asia Law*, Spring/Fall 2005, pp. 235-292.

¹⁰³ Guiding Opinions, Section II, “Relations with the media.”

¹⁰⁴ “Lawyers Handling Mass Cases Have Regulations,” *Legal Daily*, May 24, 2005 [“律师办理群体性案件有章程”, *法制日报*, 2006-05-24], http://www.legaldaily.com.cn/bm/2006-05/24/content_320333.htm.

G. Requiring lawyers to take cases based on their possible effect on “stability”

The Guiding Opinions state that “lawyers must ... safeguard the country’s stability”¹⁰⁵ and that “the correct handling of [mass cases] is essential to the successful construction of a socialist harmonious society.”¹⁰⁶

The Chinese government regularly invokes the specter of instability as grounds for curtailing basic rights. The term stability signals official concern about both law and order and the nonappearance of potential challenges to the rule of the CPC. The slogan “stability overwhelms everything” (*wending yadao yiqie*), a formula coined by Deng Xiaoping, remains a basic tenet of party ideology. It refers to the idea that all values and goals must yield to the primary goal of maintaining stability.

Appealing to “social stability” is the most common justification by the government for conducting politically motivated repression against perceived dissenters or critics. It often cites the “adverse consequences” of news stories for “social stability” as a justification for censoring media reports about social unrest or punishing news outlets and journalists for reporting on them.¹⁰⁷ The criminal charge of “disrupting social order” has repeatedly been used to crush any perceived dissent or opposition to the party and the state, or when citizens seek to exercise their fundamental rights and freedoms. The cover-up of public health crises (such as the SARS—“Severe Acute Respiratory Syndrome”—epidemic in 2003)¹⁰⁸ or industrial accidents (such as the chemical spill in the Songhua river in November 2005)¹⁰⁹ have also been justified by the need to preserve “social stability.”

¹⁰⁵ Guiding Opinions, Section I, sub-section 2.

¹⁰⁶ *Ibid.*, Preamble.

¹⁰⁷ See, for example, “China: Journalists imprisoned after reporting on land disputes,” Committee to Protect Journalists, January 19, 2006; Kristin Jones, “China’s Hidden Unrest,” Committee to Protect Journalists, May 2006.

¹⁰⁸ Brad Adams (Human Rights Watch), “China’s Other Health Cover-up,” commentary, *The Asian Wall Street Journal*, June 12, 2003, <http://hrw.org/english/docs/2003/06/12/china12938.htm>.

¹⁰⁹ Beijing waited until 10 days after the incident to tell the public about a factory explosion that dumped 100 tons of benzene and other chemicals into northeastern China’s Songhua river. “China’s PR problem,” *Los Angeles Times*, December 13, 2005.

H. Intimidating sanctions

Lawyers who contravene the Guiding Opinions, causing “adverse consequences,” are liable to disciplinary sanctions from their lawyers association or from the judicial bureaus, as provided by the Law on Lawyers.¹¹⁰ The sanctions range from warnings to revocation of license.¹¹¹

However, the Guiding Opinions do not define in any way what “adverse consequences” are, making decisions about what is permitted inherently subjective and arbitrary. Given that the preamble to the Guiding Opinions warns of “varied impact” on “state and society,” these terms imply that lawyers can be held responsible for clients’ protests, sit-ins, demonstrations, or other collective actions, which probably fit into the government’s definition of “adverse consequences” on social order.

Lawyers trying to publicize mass cases through the media are liable to sanctions.

¹¹⁰ Guiding Opinions, Section 4, point 8.

¹¹¹ The detailed modalities of sanctions applicable to lawyers are detailed in regulations issued by the Ministry of Justice. See Ministry of Justice, *Methods for Punishing Lawyers and Law Firms Illegalities*, March 19, 2004. [“司法部关于律师和法律事务所违法行为处罚办法”, 2004年3月19日.]

VI. Promulgation of Local Versions of the Guiding Opinions

The adoption of the ACLA Guiding Opinions immediately prompted the promulgation of comparable regulations at the local level in several municipalities and provinces, such as Henan, Guangdong, Shenyang, Shenzhen, and Hangzhou. Although some of these regulations have not officially been made public, media reports have disclosed all regulations requiring lawyers to seek instructions and report to local judicial bureaus when handling “sensitive” or “mass” cases.

Many of the local regulations appear considerably more explicit and restrictive than the Guiding Opinions. For instance, whereas the latter instruct lawyers to “exercise caution” in their dealings with foreign organizations, local variants state that “without having received approval from the relevant departments, [lawyers] must not accept any interview with foreign media.”¹¹² Similarly, whereas the Guiding Opinions mandate that lawyers uphold a “great sense of social responsibility,” a local variation instructs that “in cases that have a political influence ... the lawyer handling the case must respect political and propaganda discipline.”¹¹³ Local regulations also widen the scope of mass cases considered “sensitive” by including catch-all clauses such as “important cases designated by leadership organs”¹¹⁴—that is, the CPC—or cases “that have extensive influence in this province or for all the country,” “that attract a high degree of media attention, or that have a big influence on the actions of the government.”¹¹⁵

¹¹² Shenzhen Municipality Judicial Bureau, Provisional Regulation on Lawyers Handling Sensitive and Mass Cases, June 29, 2006 [深圳市司法局: “关于律师代理群体性敏感案(事)件管理的暂行规定” 2006-06-29], <http://www.szlawyers.com/ShowDetail.asp?ArticleId=2346> (accessed October 30, 2006), art. 7, point 2.

¹¹³ Henan Provincial Judicial Bureau, Trial Opinion on Strengthening the Supervision and Guidance for Lawyers’ Representation in Important and Sensitive Cases and Mass Cases, March 18, 2006 [“河南司法厅关于加强律师办理重大、敏感、群体性案件指导监督的意见, (试行)” 2006-04-18], <http://www.hnlawyer.org/show.aspx?id=2482> (accessed July 13, 2006), Section III, sub-section 1, point 2.

¹¹⁴ Shenzhen Municipality Judicial Bureau, Provisional Regulation on Lawyers Handling Sensitive and Mass Cases, June 29, 2006 [深圳市司法局: “关于律师代理群体性敏感案(事)件管理的暂行规定” 2006-06-29], art. 2, point 8.

¹¹⁵ Henan Provincial Judicial Bureau, Trial Opinion on Strengthening the Supervision and Guidance for Lawyers’ Representation in Important and Sensitive Cases and Mass Cases, March 18, 2006 [“河南司法厅关于加强律师办理重大、敏感、群体性案件指导监督的意见, (试行)” 2006-04-18], Section I, sub-section 1.

Local regulations also make the criteria for imposing penalties on lawyers more explicit: “[I]f a lawyer violates the political discipline, the propaganda discipline or causes problems in a mass case incident, he must be disciplined ... and receive a suspension penalty.”¹¹⁶

Henan province

On March 18, 2006, as the Guiding Opinions awaited promulgation, the Henan Judicial Bureau issued trial regulations on “Strengthening the Supervision and Guidance for Lawyers’ Representation in Important and Sensitive Cases and Mass Cases.”¹¹⁷ The regulations mandate that lawyers report to judicial bureaus when handling “important, mass, or sensitive cases.” These three categories include cases that affect the “government’s image,” criminal cases involving high-level cadres, and “cases involving collective interests that can reach 20 people or more.”¹¹⁸

The regulations instruct judicial bureaus to “strengthen their supervision” of lawyers, and “handle these cases with a high degree of political responsibility.”¹¹⁹ The judicial bureaus are required to prevent lawyers handling sensitive cases from “aggravating a situation,” or “using domestic or international media to inflame public opinion”; to prevent the general public being “incited to oppose the government,” or to “create problems through mass cases”; and to prevent the “use of proxy cases to attack the party or the judicial system.”¹²⁰

Lawyers handling “important, sensitive, or mass cases” must submit to the same requirements detailed in the national Guiding Opinions, such as reporting and informing judicial bureaus and government departments and accepting their instructions. The Henan regulations also state that lawyers associations in the province will organize trainings on how to handle the Guiding Opinions according to “political discipline” demands.

¹¹⁶ *Ibid.*, Section III, subsection 1, point 4.

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, Section I, sub-section 1.

¹¹⁹ *Ibid.*, Section I.

¹²⁰ *Ibid.*, Section I, sub-section 3.

Shenyang municipality

In April 2006, a month after the ACLA adopted the Guiding Opinions, the judicial bureau of Shenyang municipality, Liaoning province, issued regulations regarding the activities of lawyers in “important, difficult, and sensitive cases.”¹²¹ The Shenyang regulations established procedures for seeking instructions and submitting reports to the judicial bureau so as to “comprehensively advance the role of lawyers in protecting social order and building a harmonious society.”¹²² The regulations went beyond what the Guiding Opinions mandate by imposing restrictions not just on mass cases but on the broadly defined “sensitive” cases.

Shenzhen municipality

In July 2006 the Shenzhen Municipal Judicial Bureau issued its “Provisional Regulations on Lawyers in Handling Sensitive and Mass Cases.”¹²³ The regulations impose similar requirements as the Guiding Opinions on lawyers handling cases “that can easily lead to social contradictions ... or influence social stability,” such as “violations of people’s interests by government departments.”¹²⁴ Mass cases are defined as cases that can “influence the relation between the party and the masses ... such as disputes about land compensation, forced demolitions and evictions, enterprise restructuring, workers’ layoffs, illegal fundraising, elections at the grassroots level, and unpaid wages.”¹²⁵ In addition to reporting within three days of accepting sensitive or mass cases, lawyers must not “use the media to bring pressure to bear on government bureaus or judicial organs.”¹²⁶

¹²¹ Judicial Bureau of Shenyang Municipality, Liaoning Province, *Several Opinions on the Instruction and Reports of Shenyang Lawyers in Charge of Important, Difficult, and Sensitive Cases*, issued April 19, 2006. [辽宁省沈阳市司法局: “沈阳市律师承办重大疑难敏感案件请示报告的若干意见”2006-04-19 发起.]

¹²² “Shenyang Lawyers Accepting Sensitive Cases Must Ask for Instructions,” website of the Ministry of Justice, April 19, 2006 [“沈阳律师承办敏感案件须请示”, www.legalinfo.gov.cn, 2006-04-19], http://www.legalinfo.gov.cn/moj/lsgzgzzds/2006-04/20/content_3037 (accessed May 23, 2006).

¹²³ Shenzhen Municipality Judicial Bureau, *Provisional Regulation on Lawyers Handling Sensitive and Mass Cases*, June 29, 2006 [深圳市司法局: “关于律师代理群体性敏感案(事)件管理的暂行规定”, 2006-06-29], <http://www.szlawyers.com/ShowDetail.asp?ArticleId=2346> (accessed October 30, 2006).

¹²⁴ *Ibid.*, art. 2, point 9.

¹²⁵ *Ibid.*, art. 2, point 4.

¹²⁶ *Ibid.*, art. 7, point 2.

Lawyers have reported similar regulations for Hangzhou municipality and Guangdong province, although it is unknown whether they were issued before or after the ACLA regulations.¹²⁷ They similarly instruct lawyers to report to the judicial authorities when they take mass or “sensitive” cases.

* * *

In Henan province and Shenyang municipality the enactment of new regulations was accompanied by the organization of meetings with the judicial bureaus to convey the new requirements to lawyers. Such meetings, while a typical means of disseminating information about new laws, underscore the emphasis the government is placing on the issue. In Henan province, on April 19, a “Work conference on strengthening the establishment of lawyers ranks,” presided over by the party secretary and the head of the Judicial Bureau, was held in the provincial capital Zhengzhou to “analyze and study the current state of affairs and problems that lawyers [in Henan] face, and strengthen their sense of professional responsibility.”¹²⁸ In Shenyang, a similar conference was held on April 14. The Shenyang Judicial Bureau reportedly “established the system for reporting important, difficult and sensitive cases... in order to realize the unification of legal, social and political outcomes.”¹²⁹

The promulgation of the national ACLA Guiding Opinions and the adoption of similar or broader regulations at the local level reflect a deliberate attempt by the authorities to respond to the increase in public protests by restricting access to legal and media channels through which protesters attempt to assert their rights. While it remains to be seen whether, as many Chinese legal experts predict, the government’s strategy will ultimately lead to an escalation of protests and violence, these new regulations

¹²⁷ “Rights Protection Lawyers Restrained,” *Ming Pao* (Hong Kong), May 18, 2006. [“维权律师被套紧箍咒”，明报（香港），2006-05-18.]

¹²⁸ “The Justice Bureau of Zhengzhou Municipality Convenes a Work Conference on Strengthening Lawyers Ranks,” article posted on the website of the Zhengzhou Lawyers Association, April 19, 2006 [“郑州市司法局召开加强律师队伍建设工作会议”，郑州律师网，2006-04-19], <http://www.zzlawyer.org/show.aspx?id=1265> (accessed May 26, 2006).

¹²⁹ “The Judicial Bureau of Shenyang Municipality Takes 5 Measures to Advance and Strengthen the Building of Lawyers Ranks,” website of the Judicial Bureau of Shenyang Municipality, April 19, 2006 [“沈阳市司法局采取五项举措推进和加强律师队伍建设”，中国沈阳普法网，2006-04-14], <http://www.sypf.com/fzxw/sfdt/o86.htm> (accessed June 30, 2006).

reflect the fragility of the CPC's commitment to the rule of law when Chinese citizens band together to air their grievances. The development of such limitations has also led to fears that local governments would be able to further extend and legitimize these restrictions to the courts, instructing them not to accept certain cases.

VII. Lawyers' Reactions to the New Restrictions and the Government's Response

The Guiding Opinions have attracted strong public denunciation... They are a step back for lawyers and a disgrace for the entire legal profession.

—Posting on a bulletin board by a lawyer from Henan province

The publication of the Guiding Opinions has generated considerable disquiet within the Chinese legal community. Lawyers and legal experts have expressed concerns about what they see as warnings against taking up mass cases, efforts to curtail their independence, and a worrying indication that the government intends to roll back hard-earned improvements in their status made since the 1980s.

At the time the Guiding Opinions were promulgated, the debate was allowed virtually no room in official media. One significant exception to the general media silence on the issue was the publication of an extremely critical article in the *China Economic Times*, one month after the Opinions appeared on the ACLA website.¹³⁰ The article was entitled “In the End, Should Lawyers ‘Follow the Law’ or ‘Listen to Government Departments’?” and strongly criticized the Guiding Opinions, depicting them as a setback for the legal profession. A second critical article appeared a week later in the *Oriental Morning Post*, focusing on the threat to the professional independence of lawyers.¹³¹ These articles were widely circulated and commented upon on Internet legal forums, but the fierce reaction of critics was not directly reported in China’s official media. On May 24, however, the *Legal Daily*, a publication operated by the Ministry of Justice, published an unusual article defending the Guiding Opinions,

¹³⁰ Shan Shibing, “In the End Should Lawyers ‘Follow the Law’ or ‘Listen to Government Departments’?” *China Economic Times*, May 18, [单士兵, “律师到底要“遵从法律”还是“听命部门”?,” *中国经济时报*, 2006-05-18], republished at <http://law111.com/bbs/viewthread.php?tid=28> (accessed June 1, 2006).

¹³¹ Wang Lin, “The Chief Task of the All-China Lawyers Association Should be to Protect Professional Independence,” *Oriental Morning Post*, May 24, 2006 [王琳, “评论: 律协的主业应是维护行业独立性”, *东方早报*, 2006-05-24], <http://gb.chinabroadcast.cn/9083/2006/05/24/622@1057649.htm> (accessed May 26, 2006).

acknowledging that they had “attracted the attention of the public and a large number of lawyers,” while criticizing the “incorrect and biased understanding of the provisions” of those who saw the Guiding Opinions as a curb on lawyers (see also below).¹³²

The absence of independent lawyers’ organizations, which could speak out forcefully in defense of lawyers, and the tight constraints on public debate in China, meant that most of the critical debate on and comment against the Guiding Opinions has been on specialized Internet forums. (The ACLA and many local lawyers associations maintain electronic bulletin boards and forums, and there are thousands of legal websites across China that allow users to post comments. Some of the electronic bulletin boards are restricted to licensed lawyers who must register in order to access or post comments.) Lawyers’ comments clearly reflect that they view the Guiding Opinions as a rollback of their independence. They also stress that the Guiding Opinions will reinforce the impunity of local governments and officials who commit abuses—having authority over the local government’s judicial bureaus, local power-holders can order them to instruct lawyers in a way that makes the local government virtually immune from litigation. Party leaders have also undisputed authority over the local judicial bureaus through the Political and Legal Committee of the CPC, which statutorily “leads” their work. Lawyers also raise a range of other concerns, including how these Guiding Opinions reflect on the lack of independence of the ACLA, the consequences of the restrictions on contact with the media, the legal basis for the Guiding Opinions, and whether the regulations were targeting the *weiquan* rights protection movement.

Although academics are now mostly free to discuss any legal topic, publishing in newspapers or journals remains tightly controlled and some outspoken advocates of legal reforms have been blacklisted or temporarily suspended from teaching.¹³³ It is likely that scholarly comment will appear in professional journals in the future, but Human Rights Watch is not aware of any at the time of publication of this report.

¹³² “Lawyers Handling Mass Cases Have Regulations,” *Legal Daily*, May 24, 2005 [“律师办理群体性案件有章程”，*法制日报*, 2006-05-24], http://www.legaldaily.com.cn/bm/2006-05/24/content_320333.htm (accessed May 26, 2006).

¹³³ This is the case of Sichuan law professor and legal activist Wang Yi, for instance. “China Closes Dissident Blog Nominated for Award,” Radio Free Asia, October 31, 2005.

Organization of academic conferences requires the approval of the authorities of the host research institution, a process that allows topics that are judged politically sensitive to be weeded out. It is therefore hardly surprising that the most significant gathering of legal experts opposing the new Guiding Opinions took place not in a law school or research institution, but in a Beijing bookshop.¹³⁴ On June 14, prominent members of the legal community held a seminar in a Beijing bookshop attended by law professors, lawyers, and law activists on the new Guiding Opinions, in an attempt to organize a response to these new threats to the lawyers' profession and the legal system. Despite the participation of some of the most well-known legal reformers and lawyers, including the former vice-chair of the Beijing Lawyers Association, as well as the very critical tone of the meeting, the event got no mention in the official press. (The seminar is discussed in greater detail below.)

A. Lawyers' initial reactions

The initial reactions posted on the Internet forum of the ACLA website and on other local lawyers associations' websites were unambiguous: "I just glanced at the regulations: I feel a great danger for lawyers," read a posting on the ACLA's bulletin board.¹³⁵ Dozens of similar postings appeared on local lawyers associations' websites, legal electronic lists, blogs, and general discussion forums.

1. *A blow to the legal profession*

Lawyers generally perceived the Guiding Opinions' stringent restrictions on the handling of mass cases as a warning from the government to dissuade them from representing these "sensitive" cases. One lawyer succinctly commented, "These Guiding Opinions give a message to lawyers: don't take up mass cases."¹³⁶

¹³⁴ Restrictions on nongovernmental organizations organizing conferences are often even tighter. In June 2006 the Beijing authorities quashed the attempt by lawyers and legal experts involved in the case of the blind lawyer Chen Guangcheng to organize an independent seminar on rights defenders in China. The organizer of the seminar, Han Tao, had invited two of Chen's legal advisers, Teng Biao and Xu Zhiyong, as well as HIV/AIDS and rights activist Hu Jia. Security officers instructed Tao to cancel the conference, searched his home and the conference site, and placed Han under surveillance. Radio Free Asia (in Chinese), June 30, 2006.

¹³⁵ Posting number 678106 by user "xly," bulletin board of the ACLA website, <http://www.acla.org.cn/forum/>, June 6, 2006 (accessed June 16, 2006).

¹³⁶ Posting number 675700 by user "zzg," bulletin board of the ACLA website, <http://www.acla.org.cn/forum/>, May 23, 2006 (accessed May 26, 2006).

Indeed, the chilling effect was rapidly confirmed by other lawyers. A participant in the ACLA forum on the new regulations indicated for example that his law firm had conducted a meeting to dissuade its employees and partners from engaging in the activities listed by the new Guiding Opinions on mass cases:

Two days ago the law firm I work for held a meeting to convey the spirit [of these Guiding Opinions]. As a result, lawyers are only allowed to speak about law, and must not incite petitioning activities, disturbances, sit-ins, and expose cases to the media. All this is not allowed ... otherwise, you're done.¹³⁷

The Guiding Opinions became ironically nicknamed “the incantation of the golden hoop”—a reference to the famous classical Chinese novel *Pilgrimage to the West*, where the cunning Monkey King (Sun Wukong) wears a golden hoop around his head. When his master recites the incantation, the hoop tightens, causing him insufferable pain.¹³⁸ “In substance [the Guiding Opinions] are putting another golden hoop spell on lawyers ... This will tie down lawyers,” wrote one commentator, in one of many similar postings.¹³⁹

Legal activists such as Xu Zhiyong, a law lecturer at Beijing University who has often been involved in defending mass cases, and Pu Zhiqiang, a lawyer specializing in media defamation who has represented politically sensitive cases, also voiced their concerns. Pu Zhiqiang told the *Financial Times* that the Guiding Opinions would “make lawyers fearful of accepting lawsuits by disadvantaged groups”—farmers and

¹³⁷ Posting by user “Cen Shao,” bulletin board of the ACLA website, <http://www.acla.org.cn/forum/>, May 20, 2006 (accessed May 25, 2006).

¹³⁸ See, for example, Arthur Waley’s rendering of the incantation of the golden hoop in his abridged translation of *Pilgrimage to the West*: “Tripitaka began to recite again. Monkey was soon writhing and turning somersaults. He grew purple in the face and his eyes bulged out of his head. Tripitaka, unable to bear the sight of such agony, stopped reciting, and at once Monkey’s head stopped hurting. - ‘You’ve been putting a spell upon me,’ he said.” Wu Ch’eng-en, *Monkey*, translated by Arthur Waley (London: Penguin Books, 2006 edition), p. 156.

¹³⁹ Posting number 676487 by user “lkhls,” bulletin board of the ACLA website, <http://www.acla.org.cn/forum/>, May 30, 2006 (accessed June 20, 2006). Reflecting the popularity of the reference, an important article later published in defense of the Guiding Opinion in the *Legal Daily* used as a subtitle “It’s a protective film, not a golden hoop.” “Lawyers Handling Mass Cases Have Regulations,” *Legal Daily*, May 24, 2005 [“律师办理群体性案件有章程”，*法制日报*, 2006-05-24], http://www.legaldaily.com.cn/bm/2006-05/24/content_320333.htm (accessed May 26, 2006).

those forcibly evicted, for example—while Xu Zhiyong told the *South China Morning Post* that the new obligation to report these cases “may attract problems and pressure” for lawyers.¹⁴⁰

Lawyers pointed out that, by virtue of being under the authority of the local government, the judicial bureaus’ most likely course of action when confronted with a case involving protesters would be to side with the government and restrict the activities of lawyers:

[I]n these mass cases, the so-called “relevant departments” are themselves frequently one of the parties. These kinds of requirements for lawyers [to seek instructions from these departments] are really the biggest perversion of the spirit of the law.¹⁴¹

Another commentator echoed the widely shared perception that the new restrictions would make lawyers irrelevant in the eyes of citizens seeking redress:

If a lawyer has accepted a case of forced eviction, forced resettlement, or dismissal, he must provide legal aid to his clients. But according to the requirements of the ACLA, he must also closely collaborate with “the relevant government departments,” “report the circumstances,” and accept “guidance and supervision of the judicial administrative organs.” Can this kind of lawyer still obtain the trust of the plaintiff(s)?¹⁴²

A commentator on the ACLA’s forum stressed that, in many cases, the power of the national and of local governments was largely unconstrained by legality:

¹⁴⁰ “Warning to Lawyers Handling Protest Suits,” *South China Morning Post*, May 19, 2006.

¹⁴¹ Shan Shibing, “In the End Should Lawyers ‘Follow the Law’ or ‘Listen to Government Departments?’” *China Economic Times*, [单士兵, “律师到底要“遵从法律”还是“听命部门”?,” *中国经济时报*].

¹⁴² Wang Lin, “The Chief Task of the All-China Lawyers Association Should be to Protect Professional Independence,” *Oriental Morning Post*, May 24, 2006 [王琳, “评论: 律协的主业应是维护行业独立性”, *东方早报*, 2006-05-24].

In a country governed according to law, this kind of problem [listening to government departments or following the law] doesn't present itself. But in China, in reality power is stronger than the law. A lawyer can only make choices according to his own circumstances and the local circumstances.¹⁴³

In other words, a lawyer relies very much on having good relations with *gongjianfa* (police, procuracy, and courts) officials, whose cooperation he needs to carry out his professional duties. Lawyers privately confided that *gongjianfa* officials often try to impress on lawyers that the claims of their clients are groundless or unreasonable and that in view of the larger imperative of maintaining social stability they should reject the case or refrain from bringing a lawsuit in court.

2. Criticizing the ACLA

In addition to the alarm generated by the Guiding Opinions themselves, commentators also voiced frustrations about the role of the All-China Lawyers Association. Rather than defending the independence of the legal profession, the ACLA had in fact itself helped inflict the damage.

Some of the points made by the ACLA's Guiding Opinions are valid... of course we should be concerned with the resolution of this type of cases. But because the ACLA is a self-governing body, its foremost concern should remain the independence of the lawyers' profession.¹⁴⁴

Another lawyer expressed his disappointment in these sarcastic terms:

In truth this shows that "governing the country according to law" in reality is nothing but a slogan.... The ACLA limits itself to protect the realization of a "harmonious society," avoids putting itself in trouble,

¹⁴³ Posting number 676319 by user "Bo Yang," bulletin board of the ACLA website, <http://www.acla.org.cn/forum/>, May 25, 2006 (accessed June 20, 2006).

¹⁴⁴ Wang Lin, "The Chief Task of the All-China Lawyers Association Should be to Protect Professional Independence," *Oriental Morning Post* [王琳, "评论: 律协的主业应是维护行业独立性", 东方早报]

it's hopeless ... We should thank the ACLA for this, our ACLA is really great!¹⁴⁵

Other commentators defended the ACLA, pointing out that because it is statutorily under the “guidance and supervision” of the Ministry of Justice, it had no choice but to carry out the instructions:

For a long time in practice the lawyers association at all levels has not been able to avoid the coloration of being “half-official.” Even though they are technically a social organization, the head and the secretary are chosen or controlled by the justice administrative organs... When lawyers most need the organization to fight for their rights and benefits, the lawyers association is often silent.¹⁴⁶

Members of the ACLA have long advocated for a more vigorous role for the association in defending lawyers. In 1998 the ACLA established a Committee for the Protection of Lawyers’ Legal Rights and Interests, although it still has very little sway and has been silent on the issue of the Guiding Opinions.

3. Pledging not to be intimidated

The most significant response to date to the Guiding Opinions from the legal community came from the seminar organized on June 14, 2006, by prominent legal figures in Beijing, and chaired by the former vice-chair of the Beijing Lawyers Association, Zhang Sizhi. The small-scale seminar brought together law professors, criminal lawyers and *weiquan* activists. Among them were prominent legal experts, including He Weifang (Peking University), Zhang Zhiming (People’s University), He Bing (Chinese Politics and Law University), and Mo Shaoping, a criminal lawyer who has defended many dissidents and politically sensitive cases in the past (including the case of the *New York Times* researcher Zhao Yan).

¹⁴⁵ Posting number 678149 by user “Lawyer Sun Yueli,” bulletin board of the ACLA website, <http://www.acla.org.cn/forum/>, June 1, 2006 (accessed June 20, 2006).

¹⁴⁶ Wang Lin, “The Chief Task of the All-China Lawyers Association Should be to Protect Professional Independence,” *Oriental Morning Post* [王琳, “评论: 律协的主业应是维护行业独立性”, *东方早报*].

Zhang Sizhi (who has often been referred to as the “conscience of the Chinese legal community” for his historical role in promoting the legal profession)¹⁴⁷ reportedly termed the Guiding Opinions “a disaster” that was “sending back the legal profession to the situation of the 1980s,”¹⁴⁸ when lawyers could only be employed by the state.¹⁴⁹ “From the overall principles to the detailed content, everything is wrong in these Guiding Opinions,” the Hong Kong newspaper *Ming Pao* reported him as saying.¹⁵⁰

Corroborating the general view that the Guiding Opinions were designed to intimidate lawyers against taking mass cases, Zhang urged lawyers to continue to take up these cases, even if it landed them in trouble with the authorities: “I am ready to shield you with my own body. I am already almost 80 years old, but you have long days before you, [and] China will need your contribution.”¹⁵¹

A renowned legal scholar, He Bing contested the legality of measures restraining lawyers handling mass cases, which overstepped the Charter of the ACLA and the Law on Lawyers. Fu Dalin, a professor from Xi’an Political and Legal University, had made a similar point in a posting on the forum of the ACLA: even though the Law on Lawyers stipulates that the lawyers are “supervised” by the justice departments, such supervision was not intended to allow intervention in specific cases:

This supervision [by the judicial bureaus] must be a lawful supervision and guidance for lawyers who violate the law in their profession, and must be a macro-guidance within the law, it cannot on any pretext

¹⁴⁷ “Fifty Public Intellectuals Who Influence China,” *Southern Peoples’ Weekly*, September 8, 2004 [“影响中国公共知识分子 50 人”，*南方人物周刊*，2004 年 9 月 8 日。]。Zhang Sizhi has acted as defense lawyer in several of China’s highest -profile cases, from the “Gang of Four” in 1980 to political dissident Wei Jingsheng in 1995.

¹⁴⁸ “The Legal Community Denounces the All-China Lawyers Association for Harming the Lawful Rights of the Masses,” *Ming Pao* (Hong Kong), June 15, 2006. [“法界斥律协戕害大众法律权利”，*明报* (香港)，2006-06-15.]

¹⁴⁹ Li Yuwen, “Lawyers in China: A Flourishing Profession in a Rapidly Changing Society?” *China Perspectives*, No. 27, January-February 2000.

¹⁵⁰ “The legal Community Denounces the All-China Lawyers Association for Harming the Lawful Rights of the Masses,” *Ming Pao*. [“法界斥律协戕害大众法律权利”，*明报*.]

¹⁵¹ *Ibid.*

become a basis for interfering in a particular case that is being lawfully handled by a lawyer.¹⁵²

Other participants, such as He Weifang, criticized the Guiding Opinions as an attempt by the central authorities to cover up protests and government-committed abuses. He Weifang argued that the Guiding Opinions were part of a “hysterical reaction” from the authorities to the rise of protests in recent years. “The authorities want to put out the fire by putting down the lawyers,” he reportedly said, urging lawyers not to be intimidated.¹⁵³ He pointed out that the new Guiding Opinions limited the normal operations of the lawyers’ profession, harmed the fundamental principles of the lawyers’ professional organization, and resulted in the lawyers losing the right to handle cases independently.¹⁵⁴

B. Government response

Although the government prevented a public debate on the Guiding Opinions, the strong reaction of the legal community prompted the authorities to respond publicly.

1. *Defending the Guiding Opinions*

In May 2006 the Ministry of Justice took the unusual step of responding indirectly to the criticisms in an article defending the Opinions in the *Legal Daily*, a publication it runs. Noting that the new Guiding Opinions had “attracted the attention of the public and a large number of lawyers,” the article disputed that the objective was to limit the ability of lawyers to operate. The principle behind the new regulations, the *Legal Daily* stated, was solely to “safeguard the legal rights” of lawyers handling mass cases.¹⁵⁵ The *Legal Daily*’s argument reflected clearly that establishing the rule of law was not the primary goal of the Guiding Opinions:

¹⁵² Fu Dalin, “Lawyers Must Ask for Instructions?” website of the ACLA, April 28, 2006 [傅达林, “律师办案须请示”, 中国律师网, 2006-4-28], reproduced at://www.cdlawyer.com/wztj/ShowArticle.asp?ArticleID=593 (accessed April 28, 2006).

¹⁵³ “The legal Community Denounces the All-China Lawyers Association for Harming the Lawful Rights of the Masses,” *Ming Pao*. [“法界斥律协戕害大众法律权利”, 明报.]

¹⁵⁴ *Ibid.*

¹⁵⁵ “Lawyers Handling Mass Cases Have Regulations,” *Legal Daily* [“律师办理群体性案件有章程”, 法制日报].

Some articles pointed to the provision mandating that lawyers report when handling such cases, and, seizing this point while neglecting the rest of the content, criticized the fact that the Guiding Opinions limited and restricted the freedom of lawyers to handle cases. This indicates that some people have an incorrect and biased understanding of the provisions and background of the Guiding Opinions, as well as of their aim and significance.¹⁵⁶

The terms “incorrect and biased understanding” have strong political overtones, making use of a language habitually directed towards what the party identifies as political criticism.

At the same time, the head of the ACLA, Yu Ding, also rejected the notion of lawyers’ independence from the government, arguing that

The ACLA is a professional social organization under the supervision and guidance of the Ministry of Justice. According to the regulations, the ACLA should communicate... with the Ministry of Justice before getting involved in a big case.¹⁵⁷

Yu argued that the Guiding Opinions were designed for the purpose of “bettering the ability of lawyers to resolve contradictions between citizens and the government,” and “offer[ing] better protection for the security and interests of lawyers, so as to avoid conflicts with the government.”¹⁵⁸

Yu also reiterated the threat that lawyers violating the new regulations would be penalized by the ACLA:

¹⁵⁶ Ibid.

¹⁵⁷ “Rights Protection Lawyers Restrained,” *Ming Pao* (Hong Kong), May 18, 2006. [“维权律师被套紧箍咒”，明报（香港），2006-05-18.]

¹⁵⁸ Ibid.

According to disciplinary standards of the profession, if a lawyer violates the regulations, the ACLA can discipline him by handing out a suspension or issuing a warning.¹⁵⁹

Wang Cailiang, a Beijing lawyer who contributed to the initial drafting of the Guiding Opinions, also argued that reinforcing the links between lawyers and governmental agencies was of benefit to both lawyers and social stability. Wang justified the drafting as a way to encourage more lawyers to take on mass cases:¹⁶⁰

Two problems are at the origin of this lack of willingness to take mass cases.... One is that local regulations in some areas prevent the filing of mass cases, leading vulnerable populations to be even more vulnerable. Another one is that because of the [social and political] factors behind these cases, lawyers are unwilling to take up these cases due to the risks attached.¹⁶¹

Wang did not explain why curbing the independence of lawyers rather than reinforcing their protection was the logical solution. Rather, he merely stated in vague terms that the new regulations were “appropriate” to the “national conditions”.¹⁶²

These Guiding Opinions undoubtedly benefit the protections of the legal rights and benefits of the vulnerable populations, and are beneficial for the development of the proper role of lawyers in social building and social harmony. The regulations establish a reporting and communication system, this fits the present national conditions. Even

¹⁵⁹ Ibid.

¹⁶⁰ “Drafter Talks about the Guiding Opinions on Lawyers Handling Mass Cases,” website of the ACLA www.acla.org.cn, May 18, 2006 [“起草人谈律师办理群体性案件指导意见,” *中国律师网*, 2006-05-18], <http://www.lawyers.org.cn/jsp/news/newsInfo.jsp?newsID=2000039725> (accessed May 20, 2006).

¹⁶¹ Ibid.

¹⁶² Ibid.

if it adds to the lawyers obligations, considering it from the general situation of social stability, it is nevertheless appropriate.¹⁶³

Appealing to “present national conditions” and the imperative to maintain “social stability” is the most common justification by the government for conducting politically motivated repression against perceived dissenters or critics.

2. Blaming Western enemy forces

Local authorities have explicitly justified the Guiding Opinions on the grounds that exposing protests and sensitive cases would embarrass the party and the government. For example, the Henan authorities listed “criminal cases of high-level officials” as a category of sensitive cases that could “affect the general political situation,”¹⁶⁴ while Shenzhen listed “violations of people’s interests by government departments,” and “unfair decisions by law enforcement agencies” as cases where lawyers were prohibited to talk to the media without prior approval.¹⁶⁵

The head of the Judicial Bureau of Zhengzhou, Henan province, justified the curbs on grounds of unspecified plans by “elements of the democracy movement” to use the legal community to undermine the authorities:

Elements of the democracy movement and overseas organizations of the evil cult Falungong also plot to use lawyers as a tool to pressure the party and the government. Looking at the domestic situation, nowadays.... it is a period when contradictions between the people arise, crime rises, and the fight against enemies is complicated.¹⁶⁶

¹⁶³ Ibid.

¹⁶⁴ Henan Provincial Judicial Bureau, Trial Opinion on Strengthening the Supervision and Guidance for Lawyers’ Representation in Important and Sensitive Cases and Mass Cases, March 18, 2006 [“河南司法厅关于加强对律师办理重大、敏感、群体性案件指导监督的意见, (试行)” 2006-04-18], <http://www.hnlawyer.org/show.aspx?id=2482> (accessed July 13, 2006).

¹⁶⁵ Shenzhen Municipality Judicial Bureau, Provisional Regulation on Lawyers Handling Sensitive and Mass Cases, June 29, 2006 [深圳市司法局: “关于律师代理群体性敏感案(事)件管理的暂行规定” 2006-06-29], <http://www.szlawyers.com/ShowDetail.asp?ArticleId=2346>, art. 2, points 6 and 7.

¹⁶⁶ “Speech of Comrade Zheng Zhaoquan at the Work Conference on Building Shenyang Municipality Lawyers’ Ranks,” website of the Judicial Bureau of Shenyang Municipality, April 14, 2006 [“郑朝权同志在全市律师队伍建设工作会议上的讲话”, 中国沈阳普法网, 2006-4-14], <http://www.sypf.com/fzxw/sfdt/o81.htm> (accessed June 30, 2006).

He went on to suggest that the Guiding Opinions were crucial to stemming the tide of protests, which he implied were being instigated by foreigners:

Sensitive cases of all kinds and mass incidents multiply ceaselessly. This augmentation must be solved in a legal manner.... Lawyers who take up sensitive and mass cases must resolve the contradictions according to law. If not, these cases could easily degenerate, to the advantage of a few individuals with ulterior motives in the country and to Western enemy forces abroad, affecting social and political stability. Therefore, we must remain highly vigilant, and absolutely not let the Western enemy forces' plans succeed.¹⁶⁷

The allegation that protestors' lawyers were supported by foreign forces had similarly been leveled by the Guangdong authorities in the wake of the Shanwei incidents, Dongzhou prefecture, where the police fired at protesters, killing at least three.¹⁶⁸ The Public Security Bureau circulated a report shortly after the killings, blaming a succession of collective protests on "disputes over so-called rights protection" issues and accused "hostile forces" of politicizing and inciting the masses over issues of farmers' rights. The report also accused activists of "taking advantage of individual incidents"—the occurrence of protests or crackdowns—to write essays stirring up public opinion.¹⁶⁹

Discourses that associate vigorous legal activism with a political challenge are in line with remarks made by Politburo member Luo Gan on "Strengthening the political thinking of political and legal ranks" on April 11, 2006.¹⁷⁰ Luo Gan called for

¹⁶⁷ *Ibid.*

¹⁶⁸ See "China: Dongzhou Killings Need Independent Investigation," Human Rights Watch news release, December 15, 2005, <http://www.hrw.org/english/docs/2005/12/15/china12281.htm>, and "China: Dongzhou Killings Must Be Investigated," Human Rights Watch news release, June 1, 2006, <http://hrw.org/english/docs/2006/06/01/china13489.htm>.

¹⁶⁹ See Congressional-Executive Commission on China, "Guangdong Public Security Bureau Blames Mass Incidents on Rights Defenders Activities," March 31, 2006, <http://cecc.gov/pages/virtualAcad/index.phpd?showsingle=42751> (accessed June 30, 2006).

¹⁷⁰ Luo Gan, "Bolstering the teaching of the concept of socialist rule by law: Conscientiously strengthening the political thinking of the political and legal ranks," *Seeking Truth*, Issue No. 433, June 16, 2006 [罗干, "深入开展社会主义法治理念教育

strengthening the “political and national security awareness” as a way to “strengthen our fight against opponents.”¹⁷¹ He listed “those who, under the pretext of rights protection [*weiquan*] carry out sabotage” among the enemy forces against whom “forceful measures” must be adopted, along with “people with ulterior motives who use internal contradictions within the people to create disturbances, who use Falungong and other evil sects to stir up trouble, and who use the ‘three forces’ [separatism, extremism, and terrorism] to carry out terrorism and separatist activities.”¹⁷²

Against such a politicized background, the Guiding Opinions act as a strong deterrent for lawyers to get involved in mass cases, which are explicitly defined as being politically sensitive.

切实加强政法队伍思想政治建设”, *求是*, 2006年6月16日(总433期)],
<http://www.qsjournal.com.cn/qs/20060616/GB/qs^433^o^1.htm> (accessed October 16, 2006).

¹⁷¹ *Ibid.*

¹⁷² *Ibid.*

VIII. Recommendations

To the Chinese government

- Immediately release all lawyers arrested, detained, or under supervision on account of their professional activities as human rights defenders.
- Repeal the ACLA's Guiding Opinions and similar local regulations that interfere with the ability of lawyers to represent the interests of their clients in collective cases.
- Ensure the effective protection of lawyers carrying out their functions, in part by publicly committing to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, notably, principles:
 16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall 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.
 23. Lawyers like other citizens are entitled 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.

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.
- Limit the authority of judicial bureaus over lawyers and prohibit interference in specific cases and cancel the system of annual renewal of lawyers' licenses.
 - Ensure access to justice for victims of abuses of power by upholding existing laws, and prosecuting officials who obstruct the course of justice.
 - Make the ACLA fully independent so that it can adequately represent the interests of lawyers.
 - Issue an unconditional invitation to the United Nations special rapporteur on the independence of lawyers and judges to visit China, and allow the rapporteur full access in compliance with the terms of reference for United Nations rapporteurs.

To the United Nations

- Press the Chinese government to free or cease harassing lawyers and allow “mass cases” to proceed through the legal system.
- Press the Chinese government to invite the UN special rapporteur on the independence of lawyers and judges to visit.

To the international law community

- Emphasize to Chinese officials the importance of an independent legal sector to resolving public disputes.
- Publicly call for the repeal of the Guiding Opinions to bring them into line with international legal standards.
- Recognize that assistance to improving judicial administration, which receives most international attention, will have a limited effect without commensurate support to the Chinese legal profession and the challenges it faces.

- Offer assistance on how to structure an independent lawyers' association and provide comparative expertise on how other countries manage relationships between judicial branches and lawyers.

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Appendix I: Guiding Opinions of the All-China Lawyers Association on Lawyers Handling Mass Cases

Adopted on a trial basis at the 4th session of the 6th meeting of the Standing Committee of the All-China Lawyers Association on March 20, 2006

During these important times, and beyond, the correct handling of cases of a mass nature [mass cases] is essential to the successful construction of a socialist harmonious society. Mass cases more commonly occur in land confiscation, forced eviction, relocation from reservoir areas, enterprise restructuring, environmental pollution, and other aspects of the protection of the rights and benefits of rural residents. Mass cases usually involve complex social, economic, and political factors, and have varied impacts on state and society that cannot be ignored. Thus, there is a need to regulate and guide lawyers in their handling of mass cases. Therefore, the following work opinions are proposed:

I.

1. A mass case is defined as one in which many (10 or more) plaintiffs act on the basis of the same or similar questions of fact or law to (a) bring an action through one representative, or collectively; (b) bring a series of actions; or (c) settle the matter outside the legal system. In a mass case, the law authorizes firms to provide professional and legal services in settling the matter outside the legal system, bringing court actions, and completing other related tasks.

Lawyers who undertake mass cases must go through legal channels to perform their duties. Lawyers who lawfully intervene in mass cases are helpful to the government, enterprises, and other opposing parties in their handling of the matters. Lawyers who get involved on an individual case basis, engage in analysis and inquiry, and propose legal opinions and suggestions help promote judicial and legislative activities and lawful administration.

In mass cases, lawyers can be retained by a mass client and provide legal advice, participate in mediation, and act as its agent in litigation. Lawyers can also provide consultative services as legal counsel to the government and enterprises, in order to assist the government and judicial agencies in handling and resolving issues, and can also be retained by the government, enterprises, and other opposing parties, to act as an agent in litigation and participate in mediation. Lawyers who handle mass cases shall serve their client within the bounds of their professional duties, in accordance with law, and strictly abide by professional ethics and disciplinary rules.

2. Lawyers should have a great sense of social responsibility and attach the utmost significance to mass cases. They should be faithful to the Constitution, the law, and their duties; maintain their principles; dutifully safeguard their client's lawful rights; uphold the law, social equity, and justice; actively participate in and facilitate the appropriate resolution of mass cases; safeguard the nation's stability; ensure economic development; and promote social harmony.

Lawyers who handle mass cases shall attempt to resolve contradiction and conflict, and assist all parties to a dispute in the selection of lawful, suitable, peaceful, and reliable paths and methods for resolution of the dispute. They should advocate mediation to resolve disputes.

3. Lawyers who handle mass cases must adhere to these Guiding Opinions, as well as strictly abide by professional ethics, disciplinary rules, and other rules that relate to the legal profession.

Lawyers who handle mass cases should accept supervision and guidance by judicial administration departments.

Lawyers associations have the responsibility to supervise, regulate, and safeguard the lawful handling of mass cases.

II.

Lawyers who take on mass cases should carefully handle their relationships with the client, judicial agencies, the government, the media, and the public, among others.

Relations with the client

1. Lawyers should assist, supervise, and urge the client to provide honest testimony, and cannot support or assist the client in intentionally concealing or omitting important evidence or providing false testimony.
2. Lawyers should do their best to avoid situations in which the popular mood becomes unstable due to the false testimony or the distortion of case details by some of their clients or their representatives.
3. Lawyers should reject blatantly irrational demands raised by the client, the client's representative, or the client's agent.
4. Lawyers must neither instigate nor participate in the petitioning activities of the client, the client's representative, or the client's agent. Lawyers must neither participate in nor suggest the client's use of methods such as violating public security or interfering with the normal operations of state agencies to compel a resolution to the case.
5. Where the following circumstances exist, a law firm can rescind the retainer agreement and terminate the lawyer-client relationship:
 - (1) The client persists in demands that violate the law;
 - (2) The client conceals or distorts important facts;
 - (3) The client uses the lawyer's services to engage in activities that violate the law;
 - (4) Other objective reasons that make it difficult for the lawyer to perform their professional duties in a normal way.

Relations with judicial agencies

After a lawyer has accepted a mass case, they must promptly and fully communicate with the relevant justice bureau, and “seek truth from the facts” to report the situation, so that the appropriate level of significance may be attached. They must actively assist the judicial agency in ascertaining the facts. If there is a need, they can go through the lawyers association to report any problems to the judicial agency.

Relations with the government

After a lawyer has accepted a mass case, they must go through legitimate channels to promptly report the situation to the relevant government bureaus. If they discover anything indicating a potential intensification of the dispute or escalation of the situation, they should immediately report to judicial administration authorities.

Relations with the media

Lawyers and law firms must have appropriate relations with the media (including online media), “seek truth from the facts,” and be cautious in their commentary. They must not stir up the news, and must not pay for news coverage. They should exercise caution in their contacts with overseas organizations and overseas media.

III.

Lawyers who handle mass cases should comply with the following demands:

1. The system of reporting and placing cases on file. After a law firm has been retained in a mass case, it shall promptly report to the lawyers association to which it is subordinate. Where multiple law firms have undertaken a case on behalf of different clients, but based on the same appeal, they can consult with one another to determine one law firm that will be responsible for reporting to the lawyers association. Law firms in different regions that accept the same case shall report separately to the respective lawyers associations to which they are subordinate.
2. Collective discussion, strengthened supervision. The undertaking of a mass case should be collectively discussed and agreed by at least three partners at

a law firm, who will jointly accept the retainer, designate a person to undertake the case, and collectively formulate the case strategy. The director of the law firm is fully responsible for overseeing and supervising the lawyers handling a mass case, and shall promptly curb and adopt remedial measures against any behavior in violation of regulations that is discovered during the course of a lawyer's handling of the case.

3. Completion of consultation and accepting cases. Law firms shall arrange for two or more lawyers of good political and professional quality, with abundant experience, to conduct the consultations and accept mass cases, and keep records of their work. Lawyers must be painstaking and thorough in responding to those who come in for consultation, and should not be hasty in providing opinions. Law firms that decide to take a case shall complete a comprehensive record of their acceptance of the case.
4. Lawyers who are requested by the relevant government bureau to participate in petitioning cases must safeguard social stability while also safeguarding the lawful rights of the mass client. Lawyers shall, within the bounds of their own professional duties, work hard to support the work of the relevant bureaus, guide the client in the lawful handling of the case, and do their best to persuade their clients not to take their petitions to higher levels or to organize mass petitions.
5. Depending on the particular circumstances of a mass case, law firms can enter into a retainer agreement with the client and also enter into a retainer agreement with the client's authorized representative or agent. After a case has entered the litigation stage and a court has made a request for each retainer letter authorized by the client, the law firm shall assist with the formalities.
6. After a mass case has concluded, the law firm shall promptly report the situation to the lawyers association to which it is subordinate.

7. Law firms shall guarantee that the records of a mass case are complete, detailed, orderly, and tidy.

IV.

When lawyers handle mass cases in accordance with law, a lawyers association shall provide support, guidance, and supervision:

1. Lawyers associations have the authority to familiarize themselves with the circumstances of a lawyer's handling of a case, and to put forward suggestions.
2. Pursuant to a law firm's request, a lawyers association can organize an individual case study. It can also, on its own, decide to convene a case study symposium and put forward its opinions.
3. With respect to mass cases that could have a major impact, lawyers associations shall promptly communicate and coordinate with the relevant bureaus. Lawyers associations can, according to the need, express their opinions to the masses on issues related to the case.
4. If the personal integrity and professional rights of a lawyer are harmed, a lawyers association shall promptly report the situation to the relevant bureau and urge the relevant bureau to adopt measures to safeguard the lawyer's lawful rights.
5. If the professional rights of a lawyer are harmed outside his practicing jurisdiction, and he requests support from the lawyers association to which he is subordinate, the lawyers association receiving his request shall provide support. The All-China Lawyers Association can, according to the need, carry out organized and coordinated activities to defend the lawyer's rights.
6. Law associations can, based on a request by a law firm or on the basis of their judgment regarding appropriate handling of the issue, propose or

remind each party's lawyers to enter into mediation and negotiation to resolve a dispute.

7. With respect to important mass cases, lawyers associations shall promptly share information with the judicial administration departments at their same level [of administration].
8. If a lawyer or law firm does not handle mass cases in accordance with the Opinions, and thus brings about adverse consequences, a lawyers association can administer a punishment based on the relevant rules of the legal profession, or propose the administration of a punishment by a judicial administration department.
9. Lawyers associations should strengthen professional training for lawyers handling mass cases and shall provide general guidance on situational policies, case handling strategies, and work demands.

V.

When taking on important sensitive cases, lawyers shall abide by the Guiding Opinions. Mass cases taken on before the Guiding Opinions came into effect should be reorganized accordingly.

The All-China Lawyers Association Executive Council is responsible for interpreting and revising the Guiding Opinions.

The Guiding Opinions were formulated based on the "Lawyers Association Articles of Association." They have been placed on file with judicial administration departments.

The Guiding Opinions will be implemented on a trial basis from the date of issuance.

Appendix II: Glossary of Chinese Terms

English	Pinyin	Chinese
Rights protection	<i>Weiquan</i>	维权
Rights protection movement	<i>Weiquan yundong</i>	维权运动
Rights protection lawyer(s)	<i>Weiquan lüshi</i>	维权律师
Ruling the country according to law	<i>Yi fa zhi guo</i>	依法治国
Stopped for rectification	<i>Ting ye zheng dun</i>	停业整顿
De-registered	<i>Zhuxiao</i>	注销
Issued administrative warnings	<i>Bei xingzheng jinggao</i>	被行政警告
License withdrawn	<i>Diaoxiao</i>	吊销
Suspended for a period of time	<i>Tingzhi zhiye</i>	停止职业
Issued criticisms	<i>Tongbao piping</i>	通报批评
Temporarily de-registered	<i>Bei zanhuan zhuce</i>	被暂缓注册
Law enforcement organs	<i>Gongjianfa</i>	公检法
The “Three difficulties”	<i>San nan</i>	三难
Collective case	<i>Jitixing anjian</i>	集体性案件
Mass case	<i>Quntixing anjian</i>	群体性案件
Sudden incidents	<i>Tufa shijian</i>	突发事件
Litigation	<i>Susong</i>	诉公
Non-litigious	<i>Fei susong</i>	非诉公
Letters and Visits system (colloq.)	<i>Shangfang</i>	上访
Collective petitioning	<i>Jiti shangfang</i>	集体上访
“Stability overwhelms everything”	<i>Wending yadao yiqie</i>	稳定压倒一切