

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.