

I. Summary

The rule of law is important for the promotion, realization and safeguarding of a harmonious society. This principle should be rigorously implemented in all political, administrative and judicial sectors to ensure the powerful be checked and accountable for their misdeeds.

—Hu Jintao, June 26, 2005¹

You cannot be a rights lawyer in this country without becoming a rights case yourself.

—Lawyer Gao Zhisheng, December 2005²

The development of a strong, independent legal profession in China is critical to the promotion and protection of human rights. Lawyers serve a critical function in the administration of justice, a point recognized by China's top leaders themselves,³ as well as the large international legal reform community working in China.

Over the past two decades, the Chinese Communist Party (CCP) has progressively embraced the rule of law as a key part of its agenda to reform the way the country is governed. Importing entire pieces of Western-style legal institutions, the CCP is in the process of establishing a modern court system, has enacted thousands of laws and regulations, and has established hundreds of law schools to train legal professionals. It has publicized through constant propaganda campaigns the idea that common citizens have basic rights, elevated the concept of the “rule of law” to constitutional status, and recognized the validity of human rights norms with a new constitutional clause stipulating that “the state respects and protect human rights.”

¹ “Building harmonious society crucial for China's progress: Hu,” *People's Daily Online*, June 27, 2005, http://english.peopledaily.com.cn/200506/27/eng20050627_192495.html (accessed February 9, 2008).

² Joseph Kahn, “Legal Gadfly Bites Hard, and Beijing Slaps Him,” *The New York Times*, December 12, 2005.

³ “Hu Jintao instructs: build the lawyers' ranks, protect justice and prevent corruption,” *Xinhua News Agency*, March 7, 2004 [“胡锦涛指示: 建设律师队伍 维护公正防止腐败,” *新华网*, 2004-03-23], http://news.xinhuanet.com/zhengfu/2004-03/24/content_1381319.htm (accessed April 5, 2008).

Yet, Chinese lawyers continue to face huge obstacles in defending citizens whose rights have been violated and ordinary criminal suspects. This report shows that lawyers often face violence, intimidation, threats, surveillance, harassment, arbitrary detention, prosecution, and suspension or disbarment from practicing law for pursuing their profession. This is particularly true in politically sensitive cases. Lawyers are often unable to seek redress for these threats and attacks as law enforcement authorities refuse to investigate abuses, creating a climate of lack of accountability for actions against members of the legal profession.

Instances of abuse by the national government or local authorities against lawyers have disproportionately affected lawyers who are part of the *weiquan*, or “rights protection” movement, 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. *Weiquan* lawyers represent cases implicating many of the most serious human rights issues that beset China today: farmers whose land has been seized by local officials, urban residents who have been forcibly evicted, residents resettled from dam and reservoir areas, victims of state agents’ or corrupt officials’ abuses of power, victims of torture and ill-treatment, criminal defendants, victims of miscarriage of justice, workers trying to recoup unpaid wages and rural migrants who are denied access to education and healthcare.

As one lawyer told Human Rights Watch:

All lawyers in China face the same constraints. What makes *weiquan* lawyers special is that they try to break free from these constraints, and they pay the price for it.⁴

There are also many structural reasons for the vulnerability of lawyers and the weak status of the legal profession. First and foremost is that lawyers and the entire legal system operate within a one-party political system. The legal profession in China, like the judiciary, is still far from attaining either formal or functional independence. More specific but related reasons most often cited by Chinese and foreign scholars are that

⁴ Human Rights Watch interview with W.Z., a Shanghai lawyer, September 25, 2007.

legal reform is relatively recent, beginning only two years after the end of the Cultural Revolution, in 1978; the even more recent emancipation in 1996 of the legal profession from the Ministry of Justice, when the first Law on Lawyers was promulgated; the fact that bar associations remain under the control of the judicial authorities, which in turn remain under the control and supervision of Communist Party organs; and that the ability of citizens to challenge or sue the government is a very recent development (laws allowing administrative litigation and state compensation date only from 1989 and 1994, respectively).

Lawyers routinely identify lack of independence from the government as the key structural challenge facing their profession. As a comprehensive study on lawyers published in 2005 by the Shanghai Academy of Social Sciences Press points out, “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.”⁵

Even the objectives and functions of legal aid structures remain closely directed by the judicial authorities. In one typical speech in October 2007, the vice-minister of justice in charge of the administration of lawyers called on the judicial bureaus to “strengthen the direction of legal service employees and legal aid workers” to implement the objectives set by Party leaders,⁶ reaffirming that “the key point in the work of lawyers is their role in contributing to the stability of a harmonious society,” and that lawyers “must support the leadership of the Party at all times.”⁷

For all these reasons, lawyers are reluctant to work on politically sensitive cases, in particular human rights cases. Lawyers face powerful incentives to avoid work that is perceived by the CCP and government authorities as a threat or as a potential source of embarrassment, including work on cases seeking redress for abuses of power or

⁵ 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.]

⁶ “Closure Speech by Vice-Minister Zhao Dacheng at the All-China National Lawyers Association training in socialist rule of law values,” website of the All-China Lawyers Association (www.acla.org.cn), October 30, 2007, [“赵大程副部长在全国律师社会主义法治理念培训班结束时的讲话,” 中国律师网 (www.acla.org.cn), 2007-10-30], <http://www.chineselawyer.com.cn/pages/2007-10-30/s41655.html> (accessed October 31, 2007).

⁷ Ibid.

wrongdoings committed by state or Party authorities. The result is not only abuse of lawyers, both physically and professionally, but a setback for the rule of law and the administration of justice. It also contributes to continuing public unrest as those with political or economic power, both inside and outside the CCP, trample on the rights of average citizens.

China's top leaders now routinely state their commitment to the rule of law. In his report to the 17th Party Congress in October 2007, President Hu Jintao stressed that "the rule of law constitutes the essential requirement of socialist democracy," and pledged to "respect and safeguard human rights, and ensure the equal right to participation and development for all members of society in accordance with the law."⁸

In a one-party system intent on keeping its hold on political power—and in the absence of other independent checks on power such as a free press or an autonomous civil society—this formidable effort at establishing the rule of law is aimed at providing stability and predictability to a rapidly modernizing society, supporting economic development, and imparting legitimacy to the Communist Party and government. Party and government officials have repeatedly stressed the need to develop the legal profession as part of their stated commitment to rule of law, and extolled the role that lawyers can play in the resolution of social contradictions to serve the overall political goal set by Hu Jintao of constructing a "harmonious society."⁹

There have also been benefits for ordinary Chinese. Lawyers are playing a greater role than ever in resolving ordinary disputes and representing victims of human rights abuses. They have helped gain recognition of grievances, promoted legal awareness

⁸ Hu Jintao, "Hold High the Great Banner of Socialism With Chinese Characteristics and Strive for New Victories in Building a Moderately Prosperous Society in All Respects—Report to the Seventeenth National Congress of the Communist Party of China," October 15, 2007 ["高举中国特色社会主义伟大旗帜 为夺取全面建设小康社会新胜利而奋斗—在中国共产党第十七次全国代表大会上的报告胡锦涛在中国共产党第十七次全国代表大会上的报告," 2007-10-15], http://news.xinhuanet.com/newscenter/2007-10/24/content_6938568.htm (accessed October 24, 2007). English version available at <http://www.chinaelections.org/en/readnews.asp?newsid={3923CAAD-3248-47C5-A579-BE5DA4091C6C}&classname=News%20Highlights> (accessed October 24, 2007).

⁹ "Building harmonious society crucial for China's progress: Hu," *People's Daily Online*, June 27, 2005, http://english.peopledaily.com.cn/200506/27/eng20050627_192495.html (accessed February 9, 2008).

among victims of abuses, advanced consumer rights, provided legal aid and counsel in both judicial and non-judicial settings, fostered better compliance with statutory requirements from law enforcement agencies and courts, and monitored the enforcement of judicial decisions.

If China's legal reform is to reach the next level, however, authorities need to act much more decisively to remove the obstacles that continue to prevent lawyers from playing their proper role. Lawyers' exercise of their profession—including their vigorous defense of controversial clients and causes—requires increased professional autonomy and protection against arbitrary interference by other judicial system actors, particularly though not exclusively in politically sensitive cases. As this report demonstrates, China still has a long way to go to lift arbitrary restrictions on lawyers and establish genuine rule of law.

Key recommendations

Human Rights Watch urges the Chinese government to address the plight of lawyers and the legal profession by:

- Immediately releasing all lawyers arrested, detained, or under supervision as a result of their professional activities, including as human rights defenders;
- Ending all officially sponsored attacks on lawyers and holding the perpetrators of such attacks accountable under the law;
- Making lawyers associations fully independent, insulated from interference by Party officials, security officials, and the Ministry of Justice;
- Repealing aspects of annual bar registration for lawyers which allow judicial system authorities to put pressure on and arbitrarily retaliate against lawyers for political and other reasons;
- Revising key laws and regulations governing the legal profession to bring them into accordance with international standards;
- Ensuring that arbitrary restrictions are not placed on the press in the coverage of politically sensitive cases; and
- Ensuring that lawyers, like other citizens, are able to exercise their rights to freedom of expression, belief, association, and assembly.

Human Rights Watch also urges key international interlocutors of the Chinese government and Chinese legal community to press the government to keep its commitments to law reform, professionalization of the legal community, and the rule of law. Large sums of money are allocated every year by foreign governments and international organizations to legal aid to China. While these efforts are laudable, their efficacy will remain minimal if restrictions on lawyers identified in this report are not lifted, and the internal dynamic of legal reform thus continues to be unnecessarily held in check. Key international interlocutors should also urge the Chinese government to issue an invitation to the United Nations special rapporteur on the independence of judges and lawyers to assess the situation of the legal profession and the judiciary.

More detailed recommendations, as well as more immediate steps the Chinese government can take, appear at the end of this report.

Methodology

This report is based on field research conducted over 12 months in Beijing, Shanghai, and Guangzhou. The research included extensive review of Chinese language sources—including news accounts, official publications, and scholarly journals—discussions with scores of experts and analysts both inside and outside China, and 48 in-depth interviews with Chinese lawyers, legal experts, rights activists, and journalists with firsthand knowledge of the cases and issues covered in this report.

The scope of this study is necessarily limited by research constraints in China. China remains closed to official and open research by international human rights organizations. Over the years, Human Rights Watch has received numerous reports of the detention and interrogation of Chinese activists and scholars, including a number of lawyers, because of their contact with international human rights groups. As this study documents, many Chinese lawyers working on human rights or civil rights cases are closely monitored, and some have been interrogated or detained for their work.

As a result, unless otherwise noted, Human Rights Watch has replaced interviewees' names with initials which are not the interviewees' actual initials, and has not included other information that could be used to identify the interviewees. Interviews were conducted in settings that were as private as possible. All interviews in China were conducted in Mandarin without the assistance of interpreters.

Human Rights Watch takes no position on the underlying merits of the legal cases mentioned in this report, but rather focuses on what happens to lawyers who become involved in them.