



CHINA

# “Walking on Thin Ice”

Control, intimidation and harassment of lawyers in China

HUMAN  
RIGHTS  
WATCH



# **“Walking on Thin Ice”**

**Control, Intimidation and Harassment of  
Lawyers in China**

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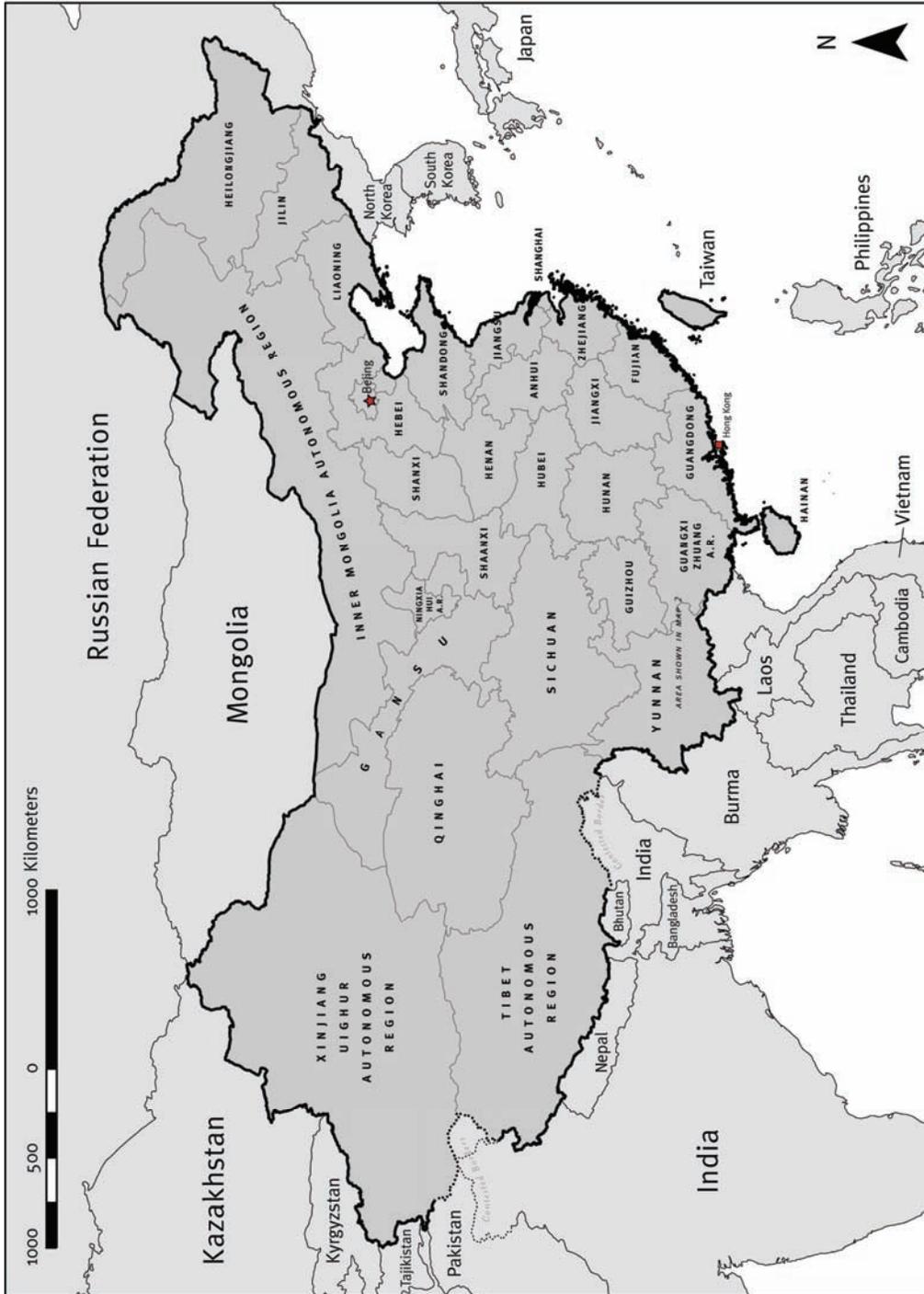
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# Map of China



Data Source: ESRI  
Design: John Emerson 2006

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

## 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, 2005<sup>1</sup>

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

—Lawyer Gao Zhisheng, December 2005<sup>2</sup>

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,<sup>3</sup> 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.”

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<sup>1</sup> “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](http://english.peopledaily.com.cn/200506/27/eng20050627_192495.html) (accessed February 9, 2008).

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

<sup>3</sup> “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](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.<sup>4</sup>

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

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<sup>4</sup> 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.”<sup>5</sup>

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,<sup>6</sup> 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.”<sup>7</sup>

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

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<sup>5</sup> 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.]

<sup>6</sup> “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](http://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](http://www.acla.org.cn)), 2007-10-30], <http://www.chineselawyer.com.cn/pages/2007-10-30/s41655.html> (accessed October 31, 2007).

<sup>7</sup> 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 17<sup>th</sup> 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."<sup>8</sup>

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."<sup>9</sup>

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

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<sup>8</sup> 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](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).

<sup>9</sup> "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](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 accord 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.

## II. International Standards for Lawyers

The independence of lawyers is a fundamental principle of international law. Lawyers play a key role in the administration of justice and protection of human rights. The importance that the international community places upon the independence of the judiciary and of lawyers is evidenced by their prominence in numerous international and regional treaties,<sup>10</sup> United Nations (UN) resolutions,<sup>11</sup> and international statements,<sup>12</sup> to many of which China has agreed, such as the Beijing Basic Principles on the Independence of the Judiciary.<sup>13</sup>

China has also signed but not yet ratified the International Covenant on Civil and Political Rights (ICCPR). Many of its provisions are part of international customary law. Among other things, the ICCPR recognizes the right to counsel, the principle of equality before the courts, and the right to a fair and public hearing by an independent court established by law.<sup>14</sup> The United Nations Human Rights Committee, which oversees implementation of the ICCPR, stated in its General Comment that “[l]awyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgment without any restrictions, influences, pressures or undue interference from any quarter.”<sup>15</sup>

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<sup>10</sup> 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.

<sup>11</sup> 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).

<sup>12</sup> 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).

<sup>13</sup> The vice-president of the Supreme People’s Court was the signatory for China.

<sup>14</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art 14.

<sup>15</sup> United Nations Human Rights Committee (Twenty-first session, 1984): “International Covenant on Civil and Political Rights General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14),” April 13, 1984, paragraph 9.

The most detailed exposition of the rights and responsibilities of lawyers is found in the United Nations Basic Principles on the Role of Lawyers.<sup>16</sup> 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.”<sup>17</sup>
- 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.”<sup>18</sup>
- 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.”<sup>19</sup>
- 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.”<sup>20</sup>
- Right to due process for lawyers facing disciplinary sanctions: “Lawyers shall be brought before an impartial disciplinary committee established by the legal

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<sup>16</sup> 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). The Basic Principles is not a legally binding instrument. However, they contain a series of principles and rights that are based on human rights standards enshrined in other international instruments, such as the ICCPR, which China has signed but not ratified.

<sup>17</sup> Basic Principles on the Role of Lawyers, preamble.

<sup>18</sup> *Ibid.*, principle 24.

<sup>19</sup> *Ibid.*, principle 22.

<sup>20</sup> *Ibid.*, principle 16.

profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.”<sup>21</sup>

In addition, “The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defenses and the right to challenge the conduct of the case if they believe it to be unfair.”<sup>22</sup>

These principles are now commonly referred to in academic legal studies in China, although they have not been incorporated into domestic law.<sup>23</sup>

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<sup>21</sup> Ibid., principle 28.

<sup>22</sup> United Nations Human Rights Committee (Twenty-first session, 1984): “International Covenant on Civil and Political Rights General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14),” April 13, 1984, para. 9.

<sup>23</sup> See, for example, Bian Jianlin, ed., *The Quest for China's Criminal Justice Reform - Taking for Reference the Norms of the United Nation on Criminal Justice* (Beijing: Chinese People's Public Security University Press, 2007) [卞建林(著编)《中国刑事司法改革探索-以联合国刑事司法准则为参照》, (北京: 中国人民公安大学出版社, 2007)]; Tian Wenchang, Chen Ruihua, eds., *Draft Recommendations and Considerations by the Legal Profession on the Revisions to the Criminal Procedure Law of the PRC*, (Beijing: Law Press China, 2007) [田文昌、陈瑞华(主编), 《中华人民共和国刑事诉讼法在修改-律师建议稿于论证》, (北京: 法律出版社, 2007)]; 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. China's Legal Profession

The President of the Supreme People's Court has issued important written instructions: courts at all levels must respect the professional rights of lawyers according to law.... and jointly protect fairness and justice.

—Notice of the Supreme People's Court, March 13, 2006<sup>24</sup>

The judicial organs will only give you what they want.... This is like a tiger blocking the road. Chinese lawyers are powerless.

—L.W., a Beijing lawyer, November 2007<sup>25</sup>

#### The development of the legal profession

China's recognition that a functioning legal system is necessary to support economic development, its accession to the World Trade Organization, and external pressure for a rules-based system for business have resulted in significant advances for the legal profession. The number of lawyers has surged dramatically over the past 20 years. 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 143,000 lawyers and 13,000 law offices.<sup>26</sup> 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 legitimizing the role and value of lawyers in society.

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<sup>24</sup> "Supreme People's Court Notice Regarding the Earnest Implementation of the Law on Lawyers and the Lawful Protection of the Professional Rights and Interest of Lawyers in Legal Procedures," March 13, 2006 [最高人民法院关于认真贯彻律师法 依法保障律师在诉讼中执业权利的通知, 2006-03-13], [http://www.bokee.net/company/weblog\\_viewEntry/899299.html](http://www.bokee.net/company/weblog_viewEntry/899299.html) (accessed April 7, 2008).

<sup>25</sup> Human Rights Watch interview with L.W., a Beijing lawyer, November 2007.

<sup>26</sup> "China has more than 143,000 lawyers," *People's Daily Online*, April 16, 2008, <http://english.peopledaily.com.cn/90001/90776/90882/6393774.html> (accessed April 20, 2008); "Survey of the legal profession reveals a divide," *Legal Daily*, April 18, 2008 ["中国律师现状调查录: 生存状况两极分化," 法制日报, 2008-04-18], <http://www.lawstar.cn/cac/120015872.htm> (accessed April 20, 2008).

However, the dramatic increase in the number of lawyers has not yet been accompanied by the establishment of an accessible, equitable legal system. Vast numbers of Chinese citizens are still unable to use the system to seek justice. The proportion of lawyers to the total population remains low, at just 0.9 per 100,000.<sup>27</sup> The distribution of lawyers and law firms is disproportionately skewed towards the largest metropolises, such as Beijing, Shanghai, and Guangzhou, with few services available in the western and interior part of the country. Lawyers also remain oddly outnumbered by judges and prosecutors: in 2004 there were 190,000 judges and 125,000 prosecutors.<sup>28</sup>

## The role of lawyers under Chinese law

Lawyers are regulated by the Law on Lawyers of the People's Republic of China (hereafter, the Law on Lawyers). This is the primary, but not the only, statute governing the legal profession. It was revised in October 2007 in part to strengthen the rights of lawyers in legal proceedings, but failed to offer better avenues of redress when these rights are violated. Although the revised law will become effective on June 1, 2008, some of its most crucial advances depend ultimately on the revision of now conflicting provisions in the Criminal Procedure Law, which takes precedence over the Law on Lawyers when the two are in conflict.

The crucial issue of the lack of independence of the profession remains unchanged. Under Chinese law, lawyers are not free to form their own professional associations. Lawyers, law firms, and bar associations remain under the authority of the Ministry of Justice (MOJ), which gives them "supervision and guidance."<sup>29</sup> The All-China Lawyers

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<sup>27</sup> 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](http://en.ce.cn/Insight/200510/11/t20051011_4902926.shtml) (accessed August 3, 2006).

<sup>28</sup> Zhu Jingwen, *Report on China Law Development: Database and Indicators* (Beijing: People's University Press, 2007), Tables 1-32 and 1-33, pp. 34-35. [朱景文 (主编), *中国法律发展报告: 数据库和指标体系*, (北京: 中国人民大学出版社, 2007), 第 34-35 页, 图 34-1, 34-2.]

<sup>29</sup> Article 4 of the Law on Lawyers of the People's Republic of China states that "The judicial administrative departments conduct supervision and guidance of lawyers, law firms and bar associations according to the present law." Article 4 of the Charter of the All-China Lawyers Association states that "Lawyers associations receive the supervision and guidance of judicial administrative departments." Standing Committee of the National People's Congress, Law on Lawyers of the People's Republic of China, adopted May 15, 1996 (last revised October 28, 2007, effective June 1st, 2008) [全国人民代表大会常务委员会: 《中华人民共和国律师法》(2007 年 10 月 28 修订后) 2008 年 6 月 1 日起施行],

Association (ACLA), the Chinese equivalent of a national bar association, is nominally in charge of “self-governing” the profession, but it too is subordinated to the MOJ.<sup>30</sup>

The ACLA and its local branches must comply with instructions issued by the MOJ, and must 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,<sup>31</sup> and joining the local branch also means being a member of the ACLA.<sup>32</sup> The head and secretary of the local lawyers association are generally chosen by local judicial authorities.<sup>33</sup>

Lawyers and law firms are therefore placed under a system of joint authority by the MOJ and by the MOJ-controlled lawyers associations. The judicial bureaus, the branches of the Ministry of Justice at the local level, assume “macro-control,” including guidance, admissions, administration, and coordination, while the lawyers associations assume “micro-control” of body structure, professional duties, daily affairs, training, and education.<sup>34</sup> Disciplinary proceedings against lawyers by the MOJ or lawyers associations are not subject to independent judicial review.

## The emergence of the *weiquan* movement

Partly in response to the inadequacy of legal remedies for large swathes of the Chinese people, who seem to have few avenues other than bringing their grievances to the streets, a movement of lawyers, law experts, and activists who try to assert the constitutional and civil rights of the citizenry through litigation and legal activism has

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<http://www.chinanews.com.cn/gn/news/2007/10-28/1061502.shtml> (accessed November 2, 2007); Charter of the All-China Lawyer Association, April 4, 1999 [中华全国律师协会章程, 1999年4月28日], <http://law.chinalawinfo.com/newlaw2002/SLC/slc.asp?db=chl&gid=31669> (accessed November 2, 2007).

<sup>30</sup> Law on Lawyers, art. 43; Charter of the All-China Lawyer Association, arts. 2 and 3.

<sup>31</sup> Law on Lawyers, art. 45.

<sup>32</sup> *Ibid.*

<sup>33</sup> The Ministry of Justice has carried out some experimentation with bar associations electing themselves their president, although the process remains under tight scrutiny. In one recent case in Southern China, the president elected in this way was the former head of the local judicial bureau.

<sup>34</sup> This system is referred to as the “joint administration system” (*liang ge jiehe*). See Ye Qing and Gu Yuejin, eds., *Study of the Lawyers System in China* (Shanghai: Shanghai Academy of Social Sciences Press, 2005), p. 98. [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98页.]

emerged in past five to six years. The self-named “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.

“In essence,” a recent academic study of the movement says, “lawyers and activists in the *weiquan* movement are generally always on the side of the weaker party: (migrant) workers v. employers in labor disputes; peasants in cases involving taxation, persons contesting environmental pollution, land appropriation, and village committee elections; journalists facing government censorship; defendants subject to criminal prosecution; and ordinary citizens who are discriminated against by government policies and actions.”<sup>35</sup>

By circulating articles, maintaining web pages, 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 claims to “ruling the country according to law.”

*Weiquan* lawyers and activists are often openly critical of the deficiencies of the legal system, and in particular of the lack of independence of the judiciary. At the same time, the hallmark of the movement has been to keep all activities strictly within the realm of Chinese law.<sup>36</sup> Along with other legal activists, *weiquan* activists have been involved in providing legal advice in a number of high-profile cases of protests, such as those in Taishi (Guangdong province), Tangshan (Hebei), and Zigong (Sichuan), which have attracted widespread attention, including from the international media.<sup>37</sup>

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<sup>35</sup> Fu Hualing, Richard Cullen, “*Weiquan (Rights Protection) Lawyering in an Authoritarian State*,” January 15, 2008, <http://ssrn.com/abstract=1083925> (accessed February 9, 2008).

<sup>36</sup> Keith J. Hand, “Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People’s Republic of China,” *Columbia Journal of Transnational Law*, Issue 45 (2006), pp. 114-147.

<sup>37</sup> 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.

*Weiquan* has now become the term now typically used in China to identify the type of legal activities commonly referred as “cause lawyering,” or public interest legal work.<sup>38</sup>

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<sup>38</sup> Fu Hualing, Richard Cullen, “Weiquan (*Rights Protection*) *Lawyering in an Authoritarian State*,” January 15, 2008.

## IV. Legal Rule and Party Rule: A Deliberate Contradiction

All law-enforcement activities should be led by the Party. All reform measures should be conducive to the socialist system and the strengthening of the Party leadership.... The correct political stand is where the Party stands.”

—Luo Gan, Head of the Political and Legal Committee, February 1, 2007<sup>39</sup>

The power of the courts to adjudicate independently doesn't mean at all independence from the Party. It is the opposite, the embodiment of a high degree of responsibility vis-à-vis Party undertakings.

—Xiao Yang, President of the Supreme People's Court, October 18, 2007<sup>40</sup>

China's top leaders have acknowledged that greater demand for rights protection and many social protests are responses to local government abuses, and have promised to enhance access to judicial and administrative remedies, reiterating at every opportunity their commitment to the rule of law.

In October 2007 President Hu Jintao pledged in his report to the 17<sup>th</sup> Party Congress to “build a fair, efficient and authoritative socialist judiciary system to ensure that courts and procuratorates [the Procuracy offices] exercise their respective powers independently and impartially in accordance with the law.”<sup>41</sup>

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<sup>39</sup> Luo Gan, “The Political and Legal Organs Shoulder an Important Historical Mission and a Political Duty during the Construction of a Harmonious Society,” *Seeking Truth*, Issue 448, February 1, 2007 [罗干, “政法机关在构建和谐社会中担负重大历史使命和政治责任,” *求是*, 2007-02-01 (总 448 期)], <http://www.qsjournal.com.cn/qs/20070201/GB/qs%5E448%5E0%5E1.htm> (accessed March 6, 2007). See also: Lindsay Beck, “China Urges Judiciary to Handle Unrest Better,” *Reuters*, February 2, 2007; Joseph Kahn, “Chinese Official Warns Against Independence of Courts,” *The New York Times*, February 3, 2007.

<sup>40</sup> “A correct concept of judicial authority is the proper meaning of rule of law,” *China Court Daily*, February 21, 2008. [“正确的司法权威观是法治的应有之意,” *中国法院网*, 2007-10-18], <http://www.chinacourt.org/html/article/200710/18/270093.shtml> (accessed February 21, 2008).

<sup>41</sup> 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

Premier Wen Jiabao has made many similar statements. In January 2006, he acknowledged 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.”<sup>42</sup> In March 2006, 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.”<sup>43</sup> And in March 2007, he pledged to “do a good job ... in providing legal services” and more specifically called on law enforcement agencies to “exercise their powers and carry out their duties in strict accordance with legally specified limits of authority and procedures” and “accept the oversight of the news media and the general public.”<sup>44</sup>

Yet despite the vigorous development of legal institutions over the past two decades, a basic contradiction remains: the Party pledges to operate under the primacy of the law, yet it insists at the same time on Party supremacy in all matters, including the law. The Constitution is defined as having “supreme legal authority,” but also enshrines the principle of the “leadership of the Communist Party.” Courts are supposed to adjudicate independently, but the Party opposes the idea of an independent judiciary. Power nominally resides in government organs, yet real power rests with the Party committees that shadow those organs at every level. State organs must carry out the paramount task of protecting “social stability” by offering legal remedies to protesters with legitimate complaints, but they must also suppress them if Party authority risks being undermined.

In practice, this permanent contradiction greatly undermines the effectiveness of the formal legal entitlements of Chinese citizens. Their ability to exercise their rights—or

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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](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).

<sup>42</sup> “Chinese PM Warns on Rural Unrest,” BBC News Online, January 20, 2006, <http://news.bbc.co.uk/2/hi/asiapacific/4630820.stm> (accessed January 21, 2006).

<sup>43</sup> “Text of Chinese premier’s government work report at NPC session,” *BBC Monitoring Asia Pacific*, March 5, 2006.

<sup>44</sup> Report on the Work of the Government delivered by Premier Wen Jiabao at the Fifth Session of the Tenth National People’s Congress on March 5, 2007, [http://english.gov.cn/official/2007-03/16/content\\_552995.htm](http://english.gov.cn/official/2007-03/16/content_552995.htm) (accessed June 19, 2007).

turn to the courts if their rights are violated—remains subject to the arbitrary assessments of Party authorities. Combined with the traditionally extensive powers of the bureaucracy, this creates a high degree of legal uncertainty for plaintiffs. Some social grievances are determined as legitimate while others are seen as destabilizing and must therefore be suppressed. Some protests are tolerated, while others are quashed and their organizers imprisoned. Some environmental, labor, and social activists are tolerated or even encouraged, while others are suppressed and arrested. Some lawsuits against local governments are allowed, while others are proscribed and their initiators punished.

In essence, when the larger goals of the party-state and the processes of a professional judicial system align, the system can function fairly independently. But when the Party decides that its political interests do not coincide with the administration of justice, rule of law considerations are suspended. Internally, Party and government authorities justify these shifts by the Party's own ideological axioms about the need to protect Party rule and political expediency, such as “looking at the big picture,” “protecting social stability,” or “harmonizing legal and social results.” The determination process—in Party parlance, *ding xing*: “making a determination regarding the [political] nature of a situation”—is intrinsically political and arbitrary. It takes place outside of considerations for the integrity of the rule of law and relegates the role of the judiciary to a simple instrument of the Party.

Similarly, appealing to “social stability” is the most common justification given by the government for politically motivated repression of perceived dissenters or critics. Officials often cite the “adverse consequences” of news stories for “social stability” as a reason for censoring media reports about social unrest or punishing news outlets and journalists for reporting on them.<sup>45</sup> The cover-up of public health crises (such as the Severe Acute Respiratory Syndrome epidemic in 2003)<sup>46</sup> or industrial

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<sup>45</sup> 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.

<sup>46</sup> 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>.

accidents (such as the chemical spill in the Songhua River in November 2005)<sup>47</sup> have also been justified by the need to preserve “social stability.”

At every level, China’s key legal institutions are under the authority of the Party’s political and legal committees. Through these institutions, corrupt local power holders can easily instruct the police to abandon investigations, foreclose legal challenges, and dictate the outcome of particular cases to judges, or frame protesters and activists on vague charges of threatening state security and social stability.

There are other structural factors that make it especially difficult for ordinary Chinese citizens to get access to justice. Legal institutions remain tightly controlled by state organs, the Party does not rely primarily on the judicial system to investigate corruption and wrongdoing of its members, many grievances are turned toward an ineffective petitioning system, and freedom of expression and the press remain highly constrained.

The low status of the legal profession is particularly salient in relationship to the law enforcement and judicial organs of the state, colloquially referred to as the *gongjianfa*: the Public Security Bureau (*Gong’an*, the police), the Procuracy (*Jianchayuan*, the public prosecution), and the courts (*Fayuan*). Of these three institutions, the Public Security Bureau is by far the most powerful, as its minister is traditionally a member of the Political Bureau of the Central Committee, the most important part of the party-state.<sup>48</sup> At the local level, the head of the Public Security Bureau is always a member of the Party Committee and generally the head of its powerful Political and Legal Committee in charge of legal affairs.

The imbalance of power between state judicial institutions and the legal profession means that Chinese lawyers depend greatly on cooperation from the former to perform their duties. Standard procedures such as accessing court documents and

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<sup>47</sup> 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.

<sup>48</sup> By contrast, neither the President of the Supreme People’s Court nor the President of the Supreme People’s Procuratorate are members of the Political Bureau.

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.

The government has recognized the existence of these problems. In 2005, a task force from the National People's Congress was formed to investigate difficulties faced by lawyers and report to the President of the Supreme People's Court (SPC), China's highest judicial body. Subsequently, the SPC acknowledged that "Certain courts and a small number of adjudicators and tribunal staff did not respect sufficiently the rights of lawyers and their role in litigation procedures, and sometimes violated their rights." In March 2006, the SPC promulgated regulations calling courts to "earnestly implement the Law on Lawyers and protect lawyers' professional rights."<sup>49</sup>

But even lodging cases can be difficult for lawyers. Courts have a large degree of discretion in accepting cases, and frequently apply political and legal criteria in determining whether to accept cases.<sup>50</sup> Courts are often instructed by Party or government authorities not to take up certain cases or category of cases.<sup>51</sup> For instance, residents in Beijing have reported that the courts were instructed not to take up cases of residents forcibly evicted for urban redevelopment.<sup>52</sup>

The court structure is also an impediment to meaningful participation of lawyers. Under the current system, cases deemed important or "especially complicated" are

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<sup>49</sup> "Supreme People's Court Notice Regarding the Earnest Implementation of the Law on Lawyers and the Lawful Protection of the Professional Rights and Interest of Lawyers in Legal Procedures," March 13, 2006 [最高人民法院关于认真贯彻律师法 依法保障律师在诉讼中执业权利的通知, 2006-03-13.]

<sup>50</sup> According to a professional guide on Case filing procedures: "The merits of the case by the Courts must be measured against two criteria: (1) legal criteria: whether it falls within the scope of laws and regulations ... (2) political criteria: for questions that involve national defense, foreign relations, state interest and other matters that go beyond the scope of the power of the judiciary and are not suitable to be adjudicated by the courts, cases should not be accepted. This is dictated by the place of the courts (...) in the political system." Huang Lirong, "Legal Theory Considerations on the Standards of Case Filing in Civil Litigation," Case-filing Office of the Supreme People's Court, ed., *Guide on Case-Filing*, Beijing: People's Court Publishing House, November 2004 (China Trial Guide series) [黄立嵘, "关于民事立案标准的法理思考," 载 最高人民法院立案厅 编: *立案工作指导*, 北京: 人民法院出版社, 2004-11 (中国审判指导丛书)], pp. 89-91.

<sup>51</sup> For instance, a regulation issued by the Supreme Court in 2002, for instance, provides that the "Peoples' Courts should not accept civil lawsuits from plaintiffs if they concern disputes that have arisen during the course of State-Owned Enterprises reforms carried out by responsible government departments." 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, article 3.

<sup>52</sup> See for instance 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."

internally decided by “adjudicating committees [*shenpan weiyuanhui*],” composed of senior judges and judges who are often members of the Party’s Political and Legal Committee in charge of legal affairs.<sup>53</sup> Judges are then bound by the decision of the adjudicating committee. Lawyers do not participate in adjudicating committee meetings and cannot have their views represented there.<sup>54</sup>

Corruption is also an obstacle to obtaining justice.<sup>55</sup> A corruption case in 2004 in Wuhan, one of the largest courts in the country, exposed a sophisticated scheme of corruption within the court system and showed how multiple levels of judges and administrators were able to form circles of mutual benefit and profit. Rewarded activities in this system of bribe extraction included “taking bribes from the plaintiff and the defendant [*chi yuangao, beigao*],” “manufacturing court cases [*zao jia an*],” “selling evidence of the court case [*mai zhengju*],” “receiving kick-backs for passing cases [*chi huikou*],” “abusing the power of judges to order suspension of business operation or confiscation of property [*lan zhixing*],” “demanding commissions for making beneficial judgment [*gao youchang fuwu*],” and “embezzling court funding [*tanwu nuoyong zhixing kuan*].”<sup>56</sup> In 2006, a total of 292 judges across the country were found to have abused power for personal interests, and 109 of them were prosecuted and sentenced.

## Retrenchment: The campaign for “socialist rule of law”

In April 2006, the authorities launched a large-scale political campaign for “education in socialist rule of law concepts [*shehuizhuyi fazhi li’nian jiaoyu*],” aimed at “strengthening and improving the Party’s leadership over judicial work” and emphasizing the difference between “socialist rule of law” and “Western rule of law.”

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<sup>53</sup> According to article 149 of the Criminal Procedure Law, “difficult, complex or major” cases can be referred to the president of the court to decide to submit the case to the judicial committee for “discussion and decision.” The collegial panel “shall execute the decision made by the judicial committee.”

<sup>54</sup> On the role of the adjudicating committees see “New trends for the reform of the Adjudicating committees,” Dongfang Fayuan ([www.dffy.com](http://www.dffy.com)), May 15, 2005 [“新形势下审判委员会的改革,” 东方法眼, 2006-5-15], <http://www.dffy.com/faxuejieti/ss/200605/20060515203809.htm> (accessed April 5, 2008).

<sup>55</sup> Work Report of the Supreme People’s Court, March 10, 2008 [最高人民法院工作报告, 2008-03-10], [http://law.southcn.com/lfdt/content/2008-03/25/content\\_4361035.htm](http://law.southcn.com/lfdt/content/2008-03/25/content_4361035.htm) (accessed April 7, 2008).

<sup>56</sup> “The alliance of corrupted judges,” *China Newsweek*, April 19, 2004. [“法官的腐败同盟,” *中国新闻周刊*, 2004-04-19.] See also “The Wuhan Court Bribery Case,” *China Rights Forum*, No. 1, 2005, pp. 30-32, [www.hrichina.org/public/PDFs/CRF.1.2005/1.2005TheWuhanCourt.pdf](http://www.hrichina.org/public/PDFs/CRF.1.2005/1.2005TheWuhanCourt.pdf) (accessed November 2, 2007).

The campaign was introduced by a landmark speech by Luo Gan, a senior member of the Politburo and the head of the Party Central Committee's Legal and Political Committee (the highest policy-making authority in legal matters),<sup>57</sup> on April 11, 2006. Luo announced an initiative to strengthen the leadership of the Party over the courts, curb liberal ideas about greater independence for judges and lawyers, oppose the "infiltration" of the judiciary by unspecified "hostile foreign forces," and shift collective litigation from the judiciary towards the mediation system.

He also urged tighter control over legal activists, in particular the *weiquan* movement. Specifically, he 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."<sup>58</sup>

Although the leadership role of the Party and the need to ward off threats to political stability are common themes in CCP rhetoric, this speech marked a departure from earlier policies and practices regarding the gradual professionalization of the judicial system.

A set of political instructions directed at judges in a provincial court shortly after the launch of the campaign illustrates the retreat from increased professionalization of the courts:

Recently, some judges have started to believe that to be a judge you just have to strictly apply the law in a case. In fact, this kind of concept is erroneous, [as] 'strictly apply the law' can have different explanations ... [and] all the legal formulations have a clear political background and direction.<sup>59</sup>

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<sup>57</sup> At the 17th Party Congress in October 2007, Luo Gan retired under the Party's age limit rules and was replaced by the former Minister of the Public Security, Zhou Yongkang, as a member of the Politburo Standing Committee of the 16th CPC Central Committee as well secretary of the CPC Political and Legislative Affairs Committee of the CPC Central Committee.

<sup>58</sup> 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).

<sup>59</sup> Huang Jiayou, "Considerations on some issues related to the education in socialist rule of law viewpoints," *China Laws* (<http://www.lawbase.com.cn>), June 13, 2006 [黄家由, "社会主义法治理念教育若干问题思考," *国法律资源网*, 2006-6-13],

Another target of the campaign was the judges' desire for greater judicial independence. In the same court document cited above, the Party Committee instructed court cadres to "respect political discipline":

We often talk now about giving prominence to the judge's position, but these are only words ... we haven't said that the judge can escape political discipline. Court cadres must talk about politics and respect political discipline ... We must stamp out the kind of narrow viewpoint that thinks that you can also do court work by having judicial independence, having the courts judge behind closed doors and not communicate with the relevant departments.<sup>60</sup>

In October 2007, a speech from the president of the People's Court, Xiao Yang, reiterated the importance of the shift from judicial independence to Party leadership: "The power of the courts to adjudicate independently doesn't mean at all independence from the Party. It is the opposite, the embodiment of a high degree of responsibility vis-à-vis Party undertakings."<sup>61</sup>

In contrast with the repeated claims that the courts must uphold "justice, [and] fairness, [and] base their decisions on the law only and serve the public," these instructions are clearly designed to make the judiciary even more subservient to the Party.

The socialist rule of law education campaign was also marked by the imposition of additional restrictions on lawyers handling collective cases and by a renewed crackdown on *weiquan* legal activists.

A few weeks before the formal announcement of the campaign, the government imposed new limitations on the legal profession by adopting regulations that

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[http://www.lawbase.com.cn/law\\_learning/lawbase\\_@1486.htm](http://www.lawbase.com.cn/law_learning/lawbase_@1486.htm) (accessed November 2, 2007). The author is identified as the Head of the Political department of the Party Committee of Zhaoxing Municipality's Intermediate Court, Zhejiang Province.

<sup>60</sup> Ibid.

<sup>61</sup> "A correct concept of judicial authority is the proper meaning of rule of law," *China Court Daily*, February 21, 2008 ["正确的司法权威观是法治的应有之意," *中国法院网*, 2007-10-18], <http://www.chinacourt.org/html/article/200710/18/270093.shtml> (accessed February 21, 2008).

significantly hinder the ability of lawyers to represent collective cases and protesters.<sup>62</sup>

The “Guiding Opinions on Lawyers Handling Mass Cases,” promulgated through the All-China Lawyers Association, cited the need to maintain “stability” as a reason for their promulgation. They referred to the “major impact” that land seizures, forced evictions, relocations from dam areas, and lays-offs resulting from state-owned enterprise restructuring—precisely the kinds of problems that give rise to “mass cases”—can have on “the country’s stability.”<sup>63</sup> In essence, the Guiding Opinions made clear that political considerations were paramount and that lawyers must act as auxiliaries of the judicial bureaus when handling politically sensitive cases involving protesters.<sup>64</sup> The regulations were widely perceived as suppressing *weiquan* lawyers, who had been representing many collective cases.

At the same time, 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 necessary to be a qualified lawyer to represent a defendant, including in criminal trials).<sup>65</sup>

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<sup>62</sup> The Guiding Opinions and their background is detailed in Human Rights Watch, “*A Great Danger for Lawyers*”: *New Regulatory Curbs on Lawyers Representing Protesters*, vol. 18, no. 15(C), December 2006, <http://hrw.org/reports/2006/china1206/>.

<sup>63</sup> Human Rights Watch, “*A Great Danger for Lawyers*”: *New Regulatory Curbs on Lawyers Representing Protesters*.

<sup>64</sup> The Guiding Opinions introduced specific requirements for mass cases that do not exist for other types of cases. For example, the Guiding Opinions require that at least three 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. Several provinces and municipalities since adopted similar regulations, which in many cases are even more restrictive. Human Rights Watch, “*A Great Danger for Lawyers*”: *New Regulatory Curbs on Lawyers Representing Protesters*.

<sup>65</sup> 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.

The socialist rule of law education campaign also signaled tighter overall controls over the legal profession. In September 2006, the vice-minister of justice in charge of the administration of lawyers, Zhao Dachen, called for “strengthening the management” of the legal profession and guarding against neglecting “the essential attribute of the socialist legal worker.”<sup>66</sup> The vice-minister openly stipulated that lawyers consider not only the legal results but also the “social result” of their work, so as to “build a high quality corps of lawyers that reassures the party and makes the people content.”

The speech also called for “purifying the thinking” of judicial workers, and imparting to “the teams working on the administration of lawyers and the lawyers at large to ‘ideological education.’” It sternly criticized judicial officials who neglected the “political attributes” of legal professionals:

Some comrades unilaterally believe that the legal service of lawyers is a mere legal professional activity, they neglect its intrinsic political attributes; ... Some comrades incorrectly indicate that lawyers are a liberal profession, and neglect the essential attribute of the socialist legal worker.<sup>67</sup>

The vice-minister also warned against “ignoring national conditions” when copying foreign legal practices:

On the issue of perfecting the lawyer system, there are some comrades who simply copy from other countries’ methods, ignoring the national conditions ... It is necessary to strengthen further the concept of the general situation and all the work of the judicial administration must be incorporated in the general situation of the work of the Party and the state.<sup>68</sup>

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<sup>66</sup> Zhao Daocheng, “Several Issues relating to the Administration of Lawyers,” *Justice of China*, November 2006 [赵大程, “关于律师工作的若干问题,” 中国司法, 2006-11], pp. 9-14.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*

In November 2006, Wang Shengjun, Secretary of the Political and Legal Committee of the Party, warned lawyers about opposing the Party:

There are people who use the tools of Western legal theory, and put on the hat of ‘ruling the country according to law’ to negate the leadership of the Party in respect to political and legal affairs; take up the slogan of ‘judicial reform’ to negate the socialist judicial system; or stir up individual cases to defame the political and legal organs, attempting to bring chaos in the sphere of judiciary ideology.... We must unwaveringly uphold the political socialist direction of China’s political and legal work.<sup>69</sup>

In February 2007, warnings about the subversive character of foreign legal concepts were even more explicit in a new landmark speech by Luo Gan, the head of the Political and Legal Committee, and published in *Seeking Truth*, the theoretical journal of the Central Committee. Luo Gan’s speech urged legal organs to guard against “hostile forces (who) have been trying their best to attack and fundamentally transform our judicial system.”<sup>70</sup>

All law-enforcement activities should be led by the party. All reform measures should be conducive to the socialist system and the strengthening of the party leadership ... There is no question about where legal departments should stand. The correct political stand is where the party stands.<sup>71</sup>

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<sup>69</sup> “Interview of Wang Shengjun, Secretary of the Political and Legal Committee,” *Legal Daily*, November 24, 2006 [“访中央政法委秘书长王胜俊,” *法制日报*, 2006-11-24], [http://www.chinapeace.org.cn/misc/2006-11/24/content\\_7083.htm](http://www.chinapeace.org.cn/misc/2006-11/24/content_7083.htm) (accessed November 4, 2007).

<sup>70</sup> Luo Gan, “The Political and Legal Organs Shoulder an Important Historical Mission and a Political Duty during the Construction of a Harmonious Society,” *Seeking Truth*, Issue 448, February 1, 2007 [罗干, “政法机关在构建和谐社会中担负重大历史使命和政治责任,” *求是*, 2007-02-01 (总 448 期)], <http://www.qsjournal.com.cn/qs/20070201/GB/qs%5E448%5E0%5E1.htm> (accessed March 6, 2007). See also: Lindsay Beck, “China Urges Judiciary to Handle Unrest Better,” *Reuters*, February 2, 2007; and Joseph Khan, “Chinese Official Warns Against Independence of Courts,” *The New York Times*, February 3, 2007.

<sup>71</sup> *Ibid.*

Luo nevertheless acknowledged that social unrest had legitimate causes. In some protests, participants had no direct interest in the cause but were venting accumulated anger, he said, adding that judicial departments should “reflect on this phenomenon” and “safeguard social justice and fairness.”<sup>72</sup>

Yet, the crackdown against rights activists continued. In August 2007, the Ministry of Justice ordered the dissolution of the Beijing Bar Association’s Constitutional and Human Rights Committee. The committee, established in 2001, was known for its progressive stance and counted several high profile public interest lawyers as members.<sup>73</sup>

On October 28, 2007, the government passed the long-awaited revisions to the Law on Lawyers,<sup>74</sup> a move state media hailed as designed to “make life easier for lawyers.”<sup>75</sup> But two days later, on October 30, in an important speech pronounced at the closure of a training session on “Socialist rule of law concepts” held by the All-China Lawyers Association, Vice-Minister of Justice Zhao Dacheng ruled out greater independence for the legal profession, stressing to the contrary the need to further control the work of lawyers as a way to diffuse social unrest.

“Lawyers must guard against the concept of mere professionalism, and carry out in their work the unification of legal and social results,” Zhao said.<sup>76</sup>

Mass cases coming from conflicts over land confiscation, demolition and evictions, relocation from dam areas, enterprise reforms,

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<sup>72</sup> Ibid.

<sup>73</sup> “Dissolution of a lawyers rights protection organization in Beijing,” *Radio Free Asia* (Mandarin Service), August 14, 2007. [“北京律师维权组织犯禁被撤,” *自由亚洲电台*, 2007-08-14], <http://www.rfa.org/mandarin/shenrubadao/2007/08/14/lawyers/> (accessed November 5, 2007).

<sup>74</sup> Law on Lawyers of the People’s Republic of China, adopted May 15, 1996 (last revised October 28, 2007, effective June 1st, 2008) [全国人民代表大会常务委员会:《中华人民共和国律师法》(2007年10月28修订后)2008年6月1日起施行], <http://www.chinanews.com.cn/gn/news/2007/10-28/1061502.shtml> (accessed November 2, 2007).

<sup>75</sup> The revisions to the Law on Lawyers and their likely impact are discussed throughout this report. “China amends law to make life easier for lawyers,” *China Daily*, October 28, 2007, [http://www.chinadaily.com.cn/china/2007-10/28/content\\_6211922.htm](http://www.chinadaily.com.cn/china/2007-10/28/content_6211922.htm) (accessed November 5, 2007).

<sup>76</sup> “Closure Speech by Vice-Minister Zhao Dacheng at the All-China National Lawyers Association training in socialist rule of law values,” 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,” 2007-10-30.]

environmental polices are growing by the day. In these circumstances judicial administrative organs and bar associations must conscientiously carry out the guidance and supervisory duties, positively guide lawyers in accordance with the ‘Guiding Opinions on handling mass cases’ and other regulations and requirements.<sup>77</sup>

In essence, “harmonizing legal and social results” requires that lawyers tailor legal solutions to what the Party thinks best serves social stability.

Against this highly politicized background, lawyers in China face huge obstacles in defending citizens whose rights have been violated. Yet, more and more lawyers are taking such cases, encouraged by profound social dynamics such as rising rights awareness among the populace, repeated expressions of commitment to the rule of law by the authorities, support from legal professors and experts, the growth of a professional culture among judges, prosecutors, and legislative drafters, and, at least for some, the high social status lawyers enjoy when they are commercially successful.

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<sup>77</sup> *Ibid.*

## V. Violence Against Lawyers

For the past few years the working environment of the legal profession has become more dangerous day by day.

—Text of an open letter by 53 lawyers, December 2006

For lawyers, retaliation by the local authorities is a big danger. We are all walking on thin ice.

—P.D., a Beijing lawyer, November 2007

Many Chinese lawyers routinely complain that violence, or the threat of violence, is an ever-present risk against which they feel inadequately protected by the state. The majority of cases of violence against lawyers are purely criminal, but many others are linked to their involvement in civil rights or human rights cases, and a few seem abetted by law enforcement personnel or local officials. This chapter documents the failure of the Chinese government to fulfill its responsibility under the law to adequately safeguard the security of lawyers and people who, without having the formal status of lawyer, exercise the functions of lawyers.

The government acknowledges that lawyers play an important role in the administration of justice and has indicated—including through instructions issued by the Supreme People's Court—that legal institutions and law enforcement agencies must ensure that lawyers receive sufficient protection so as to be able to carry out their functions unhindered. But, in practice, lawyers say that criminal threats and assaults against them are a frequent occurrence; that those instances are not vigorously investigated; that bar associations are unwilling or unable to help them; and that they have to keep silent about specific incidents for fear of retribution or loss of business.

Despite lawyers being adamant that the risk of violence against them is an acute problem for the entire legal profession—a claim supported by countless articles in professional and legal publications—there are no recent published empirical studies documenting this. Very few cases have been reported in the official media over the

years.<sup>78</sup> Individual cases that have been given publicity in domestic media rarely involve politically sensitive cases and tend to show the government responding to the violation. This pattern suggests that only isolated cases or general and abstract discussions about them are tolerated in professional, academic, and media publications.

Indeed, after the national bar association published for restricted distribution a ground-breaking report on abuses against lawyers in 2002, in the context of a three-year program to study the problems faced by lawyers, Beijing judicial authorities cut the program short and prohibited the publication of similar reports.<sup>79</sup> The report, based on a survey of 598 respondents, exposed severe difficulties for lawyers, and described cases of lawyers harassed, detained, arrested, or prosecuted in the course of carrying out their professional duties.<sup>80</sup> The cases included lawyers assaulted by the opposing party: Yan Yujiu (Sichuan), She Yuanxi (Sichuan), Pei Shan (Xinjiang), Wang Bing (Liaoning), Jia Tianjin (Henan), Wang Fei (Chongqing); lawyers attacked by unidentified aggressors, including Liu Chixian (Guangxi), Yu Haifeng (Shandong), Yang Jianxin (Heilongjiang), Teng Kuang (Heilongjiang); and lawyers kidnapped by the opposing party including Ren Shangfei (Hebei) and Chen Guangqiang (Fujian).<sup>81</sup>

In December 2006, 53 lawyers and law experts took the rare initiative of addressing an open letter to the central authorities to ask the government to protect lawyers.<sup>82</sup>

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<sup>78</sup> For instance the annual reports published by the Ministry of Justice, which includes the activities of the Lawyers and notaries bureau, doesn't make any mention of having entertained complains from assaulted or threatened lawyers. See *Law Yearbook of China*, (Beijing: China Law Press, various years). [中国司法行政年鉴 (北京: 法律出版社).]

<sup>79</sup> "The exceptional publication of a survey on the situation of criminal lawyers," *China 21st Century Business Herald*, August 11, 2004 ["刑辩律师执业状况调查报告的非正常公布," 21世纪经济报道, 2004-08-11], <http://www.nanfangdaily.com.cn/jj/20040812/zj/200408110011.asp> (accessed February 13, 2007).

<sup>80</sup> A version of the report was later published as a book: *Selection of cases of defense of lawyers' rights* (Changchun: Jilin People's Press, 2003). [律师维权案例选 (长春: 吉林人民出版社, 2003).]

<sup>81</sup> *Ibid.* For a brief presentation of some of these cases see: Tom Kellogg, "A Case for the Defense," *China Rights Forum 2* (2003): 31-34; "In Custody: Lawyers in Detention," *China Rights Forum 2* (2005): 101-105.

<sup>82</sup> "Strongly requesting the protection of the security of the legal profession according to law, and the amelioration of the environment of the legal profession," Letter to the central government, dated December 29, 2006. The signatories were Cheng Hai, Gao Fengquan, Zhang Lihui, Ou-Yang Zhigang, Li Heping, Li Qingsong, Meng Xianming ["强烈要求依法保护律师执业安全, 改善律师执业环境," 2006-12-29, 附请求人: 程海, 高凤泉, 张立辉, 欧阳志, 李和平, 李劲松, 孟宪明], <http://crd-net.org/Article/ShowArticle.asp?ArticleID=3017> (accessed May 15, 2007).

The drafters of the letter, lawyers Cheng Hai, Gao Fengquan, Zhang Lihui, Li Heping, Ouyang Zhigang, Li Jinsong, and Meng Xianming, wrote that the environment had grown “day by day more dangerous” over the past year:

For the past few years the working environment of the legal profession has become more dangerous day by day. Not only must lawyers face all sorts of illegal restrictions from the judicial and administrative departments, such as being followed, being, at times violently, prevented access [to clients or witnesses], or being prevented from gathering evidence, but their personal security is also threatened.

These threats are not coming solely from the opposite party: they increasingly come from forces of the Public Security Bureau, the Procuracy, and the courts themselves. Between March and August this year, more than four cases of lawyers being attacked by public security or court personnel have been exposed nationally, this is a frightening development!<sup>83</sup>

The government to date has not acknowledged the letter, while domestic Chinese media never reported the initiative. One lawyer told Human Rights Watch that the Party authorities in charge of judicial affairs had instructed the judiciary to maintain vigilance against “people who try to use the legal system to attack the party and the government,” and that it would never respond to this type of public appeal.<sup>84</sup>

### **Gao Zhisheng, Chen Guangcheng, and the crackdown on cause lawyering**

The case of the human rights lawyer Gao Zhisheng, sentenced to four years under subversion charges after months of increased harassment, has received extensive international attention, and prompted foreign governments to make regular diplomatic representations to the Chinese government, though with little apparent

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<sup>83</sup> Ibid.

<sup>84</sup> Human Rights Watch interview with D.X., a Beijing lawyer, November 2007.

effect.<sup>85</sup> Along with the arrests of the blind barefoot lawyer Chen Guangcheng and the Guangzhou-based legal activist Yang Maodong (better known under his pen name Guo Feixiong), Gao Zhisheng's arrest marked the peak of a campaign by the Chinese authorities to squash what they perceived as a nascent legal opposition movement in 2006.

### *Suppression of Gao Zhisheng*

Gao was a successful lawyer who specialized in defending cases of corruption, land seizures, police abuse, and religious freedom. In 2001 he was rated by the *Legal Daily*, a publication operated by the Ministry of Justice, as "one of the top ten lawyers in China." Increasingly outspoken, he started to take on more politically sensitive cases, including torture of practitioners of the banned Falun Gong movement. As the courts systematically refused to lodge his lawsuits, he turned to writing reports and publishing open letters denouncing these abuses, including to the top leadership of the Communist Party.

As 2006 progressed, the Chinese authorities first put Gao Zhisheng and his family under around-the-clock police surveillance, then suspended his law firm license and stripped him of his professional lawyer's license. Then they arrested him, detained him incommunicado for six months, coerced him into pleading guilty and relinquishing the right to choose his lawyer, and tried him in proceedings his family members were not permitted to attend. He was then sentenced to four years' imprisonment for subversion with a five-year reprieve.<sup>86</sup>

According to the court, the reprieve was granted because Gao had cooperated with the investigators and informed on fellow human rights activists. Gao later denied that he had informed on fellow activists, and stated that he had only agreed to the terms forced upon him by the authorities under psychological and physical pressure. The interrogators had questioned him for an extensive period of time under bright lights

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<sup>85</sup> "China Lawyer's Sentence Suspended," *The Associated Press*, December 22, 2006.

<sup>86</sup> A reprieve withholds execution of the penalty as long as the defendant exhibits good behavior. If, however, the defendant breaches bond conditions or commits another crime, the court is entitled to revoke the suspension and have the defendant serve the initial sentence in prison.

and openly threatened to retaliate against his family if he did not cooperate, he told a fellow activist.

A long string of violent incidents that had begun in 2005, starting with constant surveillance by plainclothes police officers, gave Gao reason to heed those threats. Those incidents included:

- On October 19, 2005, one day after Gao published a scathing open letter to the top state leaders about abuses against religious and Falun Gong practitioners, he received an anonymous threat by phone: “We know where you live and we know where your daughter goes to school.” The next day Gao and his wife verified that their 12-year-old daughter was indeed followed by plainclothes police officers.
- On November 21, 2005, a group of unidentified men followed Gao to a meeting in a restaurant with the United Nations Special Rapporteur on Torture Manfred Nowak, crowding the room they were sitting in and displaying hostile, intimidating behavior. After a UN aide took a picture of the group, the men protested vehemently and forced her to delete the picture. Gao and Novak retreated to a hotel to continue without their meeting being directly observed.
- On March 10, 2006, plainclothes police officers who were monitoring his law firm stopped lawyer Li Heping—who was handling Gao’s appeal against the suspension of his professional license—from accessing his office. The men wrestled Li out of the building and threatened Gao.
- On July 30, 2006, Gao was violently beaten by policemen in charge of the surveillance of his home, and then briefly detained at the local police station. Gao had come down from his apartment to request that they turn off the motor of their vehicle. A dispute erupted and three of the seven-man team posted there assaulted Gao. One of them tried to hit him with a large brick. Gao sustained minor injuries to his left arm and to one of his legs.
- On August 15, 2006, Gao was arrested at his sister’s home in Dongying municipality, Shandong Province. He was taken away in a car and disappeared for over a month. His family was finally notified on September 21 that he was in police custody for suspected criminal acts.

- Gao's wife, Geng He, subsequently was warned by police officials not to contact or communicate with anyone, especially the media. If she complied, she was told, she would be able to meet Gao Zhisheng. (Gao remained incommunicado until his trial on December 12.) The family continued to be harassed by agents who monitored them around the clock, followed them everywhere, prohibited friends and visitors from coming to see them, and warned them about communicating with anyone about Gao's case.
- On November 21, 2006, plainclothes policemen made an attempt to pick up Gao's two-year-old son from kindergarten. The officers showed their police badge to the teacher, who refused to comply. Gao's wife's enquiries to the police went unanswered.
- On November 24, 2006, two police officers punched Gao's wife in the street after she challenged them for tailing her. She called the police station, which declined to send a patrol but asked her to report to a station close to her residence.
- On December 16, 2006, a few days before Gao's trial, his 13-year-old daughter refused to be escorted home from school in a police car. Police officers dragged her into the car, bruising her legs and neck.

The violence and intimidation against Gao Zhisheng appears more typical of the tactics used by the authorities against people identified as political dissidents than the forms of intimidation recounted by average lawyers. What made Gao a dissident in the eyes of the authorities was his refusal to yield to pressure and desist from denouncing the lapses of the judicial system and the defects of Party control over the legal system. Gao's outspokenness, his defense of the Falun Gong, his acerbic interviews with foreign media and open letter to the state leaders had clearly made his case the province of the political police—the State Security Bureau and State Protection Bureau—rather than the judicial authorities. The fact that the authorities saw Gao as a dissident was later reflected in his sentence for subversion, based on

his having published nine articles that “defamed and made rumors about China's current government and social system, conspiring to topple down the regime.”<sup>87</sup>

Yet, even if in the eyes of the authorities Gao was tried as a dissident rather than a lawyer, his work as a lawyer prompted the retaliation. His case became emblematic of the authorities’ blatant disregard for legality in the methods used to silence him and the chilling effect his case had on the legal profession.

### *Attacks against Chen Guangcheng’s legal team*

The second case that attracted considerable attention in 2006 was the long string of abuses and procedural flaws in the trial of the blind “barefoot lawyer” Chen Guangcheng. A self-taught legal activist, not a licensed lawyer, Chen documented abuses committed by the local family planning authorities of Linyi municipality, Shandong Province, in a report made public in June 2005.<sup>88</sup> He was first put under house arrest in mid-August 2005 as he was trying to help four villagers to bring a lawsuit against the family planning bureau. By this time, Chen’s case had become something of a “cause célèbre” among *weiquan* and legal activists, and a number of lawyers, legal experts, and rights activists started to organize his defense and publicize his case.

On March 11, 2006, following a confrontation with the police over the beating of a neighbor by unidentified men, Chen was taken away by police and detained incommunicado for six months. After being formally charged with “inciting crowds to disrupt traffic” and intentional destruction of property, Chen was sentenced in August 2007 to four years and three months’ imprisonment. In October, the appellate court annulled the first trial, although it did not make clear on what grounds, and ordered the case remanded to the same court, which in December imposed the exact same sentence for the same crimes. The second verdict was upheld in January 2007 by the appellate court.

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<sup>87</sup> “Chinese lawyer Gao Zhisheng says judicial procedures for his case fair,” *Xinhua News Agency*, December 25, 2006, [http://english.peopledaily.com.cn/200612/24/eng20061224\\_335364.html](http://english.peopledaily.com.cn/200612/24/eng20061224_335364.html) (accessed February 11, 2008).

<sup>88</sup> The report, “Violence in Enforcing Family Planning in a Chinese Region,” was translated into English and posted by the nongovernmental organization The Network of Chinese Human Rights Defenders (CRD) on June 11, 2005 at [http://crd-net.org/Article/Class9/Class11/200506/20050611195219\\_427.html](http://crd-net.org/Article/Class9/Class11/200506/20050611195219_427.html) (accessed June 15, 2005).

Lawyers who came to Chen's defense were repeatedly subject to intense harassment and in some cases physical attack every time they came to Linyi to visit Chen, interview relatives and villagers, or prepare for and attend the trial. Incidents included:

- On October 4, 2005, Beijing lawyers Li Fangping and Li Subin, accompanied by law lecturer Xu Zhiyong, attempted to visit Chen, who was then under arbitrary house arrest. They were stopped by over a dozen unidentified men surrounding Chen's house. Xu Zhiyong and Li Fangping were shoved and punched, and the three men were taken to the Shuanghou police station where they were interrogated until the following morning, before being escorted back to Beijing.
- In late June 2006, while Chen was detained at the Yinan County Detention Center, three lawyers accompanied by the Beijing-based human rights activist Hu Jia attempted to visit Chen's family. As they entered the village, unidentified men surrounded their car and flipped it over. The men threatened the group and physically prevented them from reaching Chen's house. Lawyer Li Jingsong started to take pictures but had his camera snatched by the men. Uniformed police present on the site refused to intervene and took Li Jinsong in for questioning.
- On July 10, a few days before Chen's hearing date for the trial, lawyers Li Jinsong, Li Subin, and Zhang Lihui, accompanied by Hu Jia, traveled to Linyi to gather testimonies and visit Chen's relatives. Chen's wife was taken away in a police car before she could meet them.
- On August 17, lawyers Li Fangping and Zhang Lihui, along with legal scholar Xu Zhiyong, arrived in Linyi for Chen's trial, due to be held the following day. Unidentified men physically intimidated the group in a restaurant, and accused Xu of being a pickpocket. The police detained the three lawyers, and held Xu long enough that he was unable to attend the trial.
- On November 27, lawyer Teng Biao, who had traveled to Linyi to attend the re-trial of Chen, was forcibly taken away and detained for five hours by the police. He was handled roughly, with five or six policemen pinning him to the ground while they searched him, confiscated his mobile phone, and

questioned him. He was released without explanation as to why he was detained.

- On December 27, lawyers Li Fangping and Li Jinsong were ambushed on their way to meet with Chen to discuss his second appeal. Two cars without license plates stopped the overnight bus on which they were traveling. Eight unidentified men dragged Li Jinsong out of the bus and without a word started hitting him with metal pipes. Li Fangping stepped off the bus and was attacked as well, sustaining head injuries that required emergency care. The lawyers suspected that the local authorities knew of their itinerary, as they had communicated with the judge who had conveyed Chen's request to see them.

As in the case of Gao Zhisheng, the local authorities put under surveillance, harassed and threatened the family of their target. Chen's wife, Yuan Weijing, has been under permanent surveillance since Chen's arrest. She has filed numerous formal and informal complaints, including with the help of some Beijing lawyers, all to no avail. When Yuan attempted to travel to Manila in August 2007 to collect a human rights award from the Ramon Magsaysay Foundation on Chen's behalf, police confiscated her passport and sent her back to Shandong province. A few days later, she was forcibly pulled from the bus she had boarded to return to Beijing by a group of plainclothes policemen.<sup>89</sup> To date she is still under around-the-clock police surveillance and her movements are restricted.<sup>90</sup>

Chinese domestic media never reported on Gao Zhisheng's or Chen Guangcheng's cases except to announce their convictions,<sup>91</sup> and official spokespersons evaded questions from foreign journalists about these cases during the Ministry of Foreign Affairs' weekly press conferences.

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<sup>89</sup> "Wife of blind activist says she was dragged off bus in eastern China," *The Associated Press*, September 1, 2007.

<sup>90</sup> See "China vs. a Blind Man: A Report on the Case of Imprisoned Human Rights Defender Chen Guangcheng," *The Network of Chinese Human Rights Defender (CRD)*, February 20, 2007, [http://crd-net.org/Article/Class9/Class48/Class62/200702/20070222165944\\_3485.html](http://crd-net.org/Article/Class9/Class48/Class62/200702/20070222165944_3485.html) (accessed March 1, 2007).

<sup>91</sup> The official Xinhua news agency only issued very brief dispatches announcing the formal prosecution and the sentencing of Gao and Chen.

The conclusion that *weiquan* lawyers drew from the cases of Gao and Chen was that the central authorities would condone physical abuses against lawyers if they were involved in cases that could result in significant embarrassment for the government or the Party, even at the expense of damaging the credibility of the legal system as a whole.

“The silence of the central authorities implies that they endorsed the actions of the local officials who beat up lawyers,” said one attorney directly involved in the Chen Guangcheng case.

In Beijing it is the state security that was doing the surveillance of some of the lawyers [during the trial]—how could the central government not know about the case? What’s more, this case was widely reported by international media—the *New York Times*, *Radio Free Asia*, we got calls from media from the world over. And it was a big discussion topic on internet.<sup>92</sup>

According to one account given to Human Rights Watch by a legal expert, the Ministry of Justice in Beijing had initially not paid any attention to Chen Guangcheng’s case, and that it was the local authorities in Linyi who were solely responsible for the abuses against Chen and various members of his defense team. But the central authorities then stepped in:

After the international outcry that followed the first trial, the central authorities were forced to take notice. The party authorities at the Ministry of Justice mandated a special small investigative team to review the case. The team concluded that the trial had clearly violated the procedures.... The Political and Legal committee of the Party ultimately decided that it could not uphold the trial but nor could it give encouragement to the *weiquan* agitators. So it instructed the appellate court to have the case remanded.<sup>93</sup>

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<sup>92</sup> Human Rights Watch interview with G.F., a lawyer member of the Beijing Bar association, November 2007.

<sup>93</sup> Human Rights Watch interview with L.W., a lawyer and lecturer from Beijing, April 2007.

It is impossible to verify this account of the central authorities' involvement, given the notorious opacity of decision-making in cases with political overtones. Nevertheless, the Chinese government has a responsibility to uphold the law. The silence of the government and the official media in face of what appears to have been blatant criminal intimidation and unlawful acts over many months indicates that the central government was, at a minimum, abetting the repressive tactics of the local authorities and the political police.

*Weiquan* lawyers readily acknowledge that Gao's and Chen's cases were out of the ordinary because their prominent standing in international media prompted the highest Party authorities to dictate the outcome.<sup>94</sup> But these lawyers are also adamant that these cases were emblematic of the prevalent problems that lawyers and legal advocates face in their work: physical danger, surveillance and intimidation by state security personnel, refusal by law enforcement agencies to protect lawyers or entertain complaints, impunity for the attackers, and media censorship surrounding the cases.

One lawyer, in reference to Gao and Chen, told Human Rights Watch:

These cases may have been exceptional but the problems they exposed were typical of those that affect the legal profession. Completely typical.<sup>95</sup>

Other lawyers who were not involved in the case shared this view in private discussions.

What do you think? If this can happen when so many people pay attention to the case—lawyers, law professors, the foreign media, the internet community—how could the situation be better in regular cases?

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<sup>94</sup> Joseph Kahn, "Rivals on Legal Tightrope Seek to Expand Freedoms in China," *The New York Times*, February 25, 2007.

<sup>95</sup> Human Rights Watch interview with W.R., a Beijing lawyer, April 2007.

The problems shown by the ‘Old Gao’ and [Chen] Guangcheng cases are really very widespread.<sup>96</sup>

According to another lawyer, it was precisely because Chen Guangcheng’s case was so typical that it inspired the legal community to support him.

Personally I don’t think this case was well handled [by Chen’s legal team], but the hardships faced by the defense were not out of the ordinary for lawyers in China. The local authorities are too powerful—this is why you have to avoid alienating the central authorities in a case like this.<sup>97</sup>

### **Beyond Gao and Chen: Recurring violence against lawyers**

Violence against lawyers is not limited to high profile cases that the authorities see as political. In fact, cases of assault against lawyers appear with disturbing frequency in all types of cases, from commercial disputes to administrative lawsuits. For instance, between 2005 and 2006, at least five cases of physical assaults against lawyers in Shanghai were reported and widely discussed in the domestic media.<sup>98</sup>

The cases of Wang Lin, who was beaten by a court official in Tianjin, and of Mao Liequn, who was attacked by a gang in Shanghai, received nationwide attention among lawyers, with various bar association trying to publicize the incidents to advance the cause of lawyers in public opinion and government circles. More sensitive cases like Gao Weiquan, who was dragged from a petition office, Yang Zaixin, attacked two weeks after having his professional license suspended, and Tang Jingling, who was assaulted in Guangzhou, are well known among *weiquan* activists but have received no publicity. All these cases were regularly cited by legal professionals interviewed by Human Rights Watch as typical of the dangers faced by lawyers.

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<sup>96</sup> Human Rights Watch interview with L.D., a Beijing lawyer, March 2007.

<sup>97</sup> Human Rights Watch interview with M.Y., a criminal lawyer from Beijing, March 2007.

<sup>98</sup> “Shanghai lawyers appeal for greater protection following attack on colleague,” *The Associated Press*, September 1, 2006.

## *Wang Lin, Tianjin*

The March 2006 attack on Beijing lawyer Wang Lin is probably the most famous case to be covered by the official media. The fact that the incident took place just a few weeks after the Supreme People’s Court had promulgated new measures intended to strengthen “the protection of lawyers carrying their professional duties” was of particular significance.<sup>99</sup>

On March 28, 2006, Wang Lin went to file a collective administrative lawsuit against the government construction bureau at the Tianjin Nankai District court. He was accompanied by 11 plaintiffs who were challenging a decision from the Tianjin Construction Bureau to evict them, arguing that the scope of an eviction order granted two years ago had been broadened without permission to encompass their homes.

The vice-head of the administrative court refused to accept the filing of the case, asserting that the plaintiffs needed to file individual cases, not a collective one. Wang suggested that he would do so, but the court official replied, “Even if you file plaintiff by plaintiff we won’t lodge this case.” Wang asked for a written court document to that effect, which the official refused as well. “I am the court and the court is me. If I say no filing, that means no filing,” the official told Wang.

In the heated discussion that followed, the official tried to punch Wang, and then shoved him outside the court, grabbing him by the back of the neck and warning him: “Be careful when walking in the street at night.”

Because Wang was relatively well-known, having been featured in a program by China Central Television that exposed the wrongful eviction of over 7,000 people in central Hunan province, and having worked for an influential law firm, he managed to get a prominent newspaper, the *Beijing Youth Daily*, to run a detailed exposé of the incident shortly afterwards.

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<sup>99</sup> “Supreme People’s Court Notice on Conscientiously Implementing the Law on Lawyers and Protecting Lawyers’ Professional Rights in Litigation,” March 13, 2006 [最高人民法院关于认真贯彻律师法 依法保障律师在诉讼中执业权利的通知, 2006-03-13], reproduced at <http://www.p5w.net/news/gncj/200604/t288730.htm> (accessed July 26, 2007).

The publication of the article generated a strong debate among lawyers, who spotted an opportunity to highlight their plight and denounce the authorities' inaction. Many articles quoted Wang Lin's comments published on his personal website:

You can beat me up, but please do not beat me up in court; please do not beat me up as I carry out my professional duties. Being beaten in this manner, I feel that not only myself but the law itself is being beaten. And this is what I find difficult to accept.<sup>100</sup>

One online commentator suggested that petty harassment of lawyers by court officials was widespread:

This is far from being the only case. In many local tribunals the personnel are really beyond belief! Last year a certain lawyer was even attacked during the hearing by a court official.... Court personnel make our work difficult and we have to endure countless humiliations.<sup>101</sup>

In early April, media reports announced that the president of the Supreme People's Court, Xiao Yang, had himself issued "internal instructions [*pishi*]" to investigate the Wang Lin incident "and solve it according to the facts."<sup>102</sup>

On April 15, the Tianjin Party political-legal committee set up an investigation team with members from the committee, the court and the Procuracy.<sup>103</sup> The team concluded that "there was not sufficient evidence to resolve this case," but nevertheless dismissed the court official. Although Wang was personally vindicated,

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<sup>100</sup> "Wang Cailiang: A lawyer bringing lawsuits for forcibly evicted households," *Law and Life*, April 28, 2007 [王才亮: 专为拆迁户打官司的律师, *法律与生活*, 2007-04-28], [http://www.online.jx.cn/zeronews/2007/connet/2007-04/28/content\\_321950\\_3.htm](http://www.online.jx.cn/zeronews/2007/connet/2007-04/28/content_321950_3.htm) (accessed April 8, 2008).

<sup>101</sup> Posting by a user on a Tianjin online forum ([www.tj.fous.cn](http://www.tj.fous.cn)), 2006-04-13 09:09:11 (on file with HRW).

<sup>102</sup> "Tianjin Court reject responsibility for the beating of a Beijing lawyer – Xiao Yang issues written instructions," *The Beijing News*, April 13, 2006 ["天津法官否认殴打北京律师 肖扬对此作批示", *新京报*, 2006-04-13], <http://news.sohu.com/20060413/n242776418.shtml> (accessed April 8, 2008).

<sup>103</sup> "Who is going to protect lawyers? The incident of the Beijing lawyer beaten by a Tianjin court official," *21st Century Business Herald*, April 19, 2006 ["谁来保护律师 天津法官被指殴打北京律师"事件", *21世纪经济报道*, 2006-04-19], <http://www.p5w.net/news/gncj/200604/t288730.htm> (accessed April 8, 2008).

the Nankai court has yet to grant a hearing for the administrative lawsuit of the plaintiffs whose homes were destroyed.

Although the outcome of the episode—the sanction of a court official—is the exception rather than the norm, lawyers interviewed by Human Rights Watch said that “the case was emblematic of the behavior of some local courts.”<sup>104</sup>

### *Gao Weiquan, Shenyang*

Gao Weiquan’s case is also illustrative. Gao (who is no relation to Gao Zhisheng), a 59-year old lawyer from Shenyang, Liaoning Province, was physically assaulted on April 13, 2006, as he attempted to file a complaint for retrial at the Letters and Visit Office of the Liaoning Province High Court.

According to Gao’s account, the staff refused to file his complaint without explanation. Gao then asked to see the head of the Letters and Visits office. He was told to “go look for him outside.” Three court staff members then brutally dragged him out of the building, hitting and kicking him with their fists and feet. Gao called the police. The court personnel justified his physical removal from the court on the grounds that Gao had been “petitioning without grounds” and “damaging the door” of the office. The police refused to lodge a formal complaint. The next day, Gao filed a report to the Shenyang lawyers association and the Liaoning High People’s court. Three weeks later, on May 8, having still not received an official answer, Gao wrote an open letter to the provincial Liaoning lawyers association and posted it on the internet:

How come I have still not heard a word from the court? ... A lawyer is beaten and so what? If even the lawyers association doesn’t care, how can we expect the Public Security Bureau to do anything about it?<sup>105</sup>

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<sup>104</sup> Human Rights Watch interview with X.Y., a law lecturer in Beijing involved in impact litigation cases, March 2007.

<sup>105</sup> “Lawyer Gao Fenquan issues a letter to the Liaoning Bar association,” *Hualü Wang* ([www.66law.cn](http://www.66law.cn)), May 8, 2006[“高凤泉律师致辽宁省律协的公开信”, *华律网*, 2006-05-08], <http://www.66law.cn/channel/newssearch.aspx?keyword=%C8%BA%BC%AF%Do%D4%Bo%B8%BC%FE&categoryid=0> (accessed April 8, 2008).

Despite eliciting much support on internet from fellow lawyers, neither the local judicial authorities nor the Liaoning lawyers association have taken any action to date.

### *Mao Liequn, Shanghai*

Even when local bar associations are more vocal, the results are limited, as illustrated by the attempt by the Shanghai bar association to improve protection for lawyers after a 2006 spate of attacks against attorneys doing their jobs.

In August 2006, lawyer Mao Liequn was severely beaten by a gang of 10 men while representing a Hong Kong company in talks to evict a Shanghai firm illegally occupying a dockside storehouse in Pudong. Mao suffered a broken nose and multiple injuries to his head, hand, and body that required hospitalization. “One man grabbed my clothes, hitting me with his fist on the face, while another one grabbed my hair. Other joined and blows rained all over my body,” Mao recounted to a Chinese journalist. His client, who was accompanying him, was also assaulted. Mao was then dragged into a nearby building, where he was again beaten up. An associate of Mao managed to call the police, and, crucially, to film from his car the assailants as they were escaping.<sup>106</sup>

The Shanghai bar association reacted vigorously. A spokesperson told the press that the Mao Liequn attack “came as a warning to all of us,” and that the bar association was proposing draft legislation to strengthen the protection of lawyers carrying out their duties. “In recent years many lawyers from Shanghai were assaulted in the course of their professional work,” the spokesperson said.<sup>107</sup> “We feel that there should be a law for protecting lawyers.”

Local press reports highlighted three other recent cases of lawyers having been assaulted: On September 28, 2005, a lawyer from the Guochen law firm was attacked and threatened by thugs while handling a commercial dispute between rival firms.

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<sup>106</sup> “Lawyer Beaten at Pier while Carrying Duties – Police Already Investigating,” *China Youth Daily*, August 31, 2006 [“律师码头履行公务遭群殴 警方已经介入调查,” *青年报*, 2006年8月31日], <http://news.eastday.com/eastday/node33/node178/node14417/u1a172791.html> (accessed February 26, 2007).

<sup>107</sup> *Ibid.*

The harassment continued afterwards, ranging from threats to cutting the water supply to his private home. In two separate incidents in July and August 2005, two lawyers from the Guoxiong and Liancheng law firms, respectively, were attacked by disgruntled parties in front of the court building.

The Shanghai bar indicated that the proposed legislation would seek to guarantee the rights and safety of lawyers during negotiations, investigations, and evidence gathering.<sup>108</sup> Such legislation had been discussed for a number of years and had been recommended for ratification by the judicial affairs committee of the Shanghai People's Assembly as early as 2004, but to no effect. Despite the national attention given to Mao's case, it failed to generate momentum for the adoption of such regulations.

A few months later, on October 19, 2006, another Shanghai lawyer was violently assaulted. He Wei, from the Minjiang law firm, was working free of charge on a labor case, seeking compensation for a worker who had lost three fingers in an accident at a printing company. When He tried to visit the company, the manager reportedly told him: "A lawyer? What kind of thing is that?" and proceeded to beat him with the help of his associates, kicking him repeatedly on the ground.<sup>109</sup> He Wei sustained a perforated eardrum and various other injuries that required hospitalization. Shanghai media reported the case, including on television, and He Wei's attacker was later sentenced to a year of imprisonment, but there was no new public appeal from the bar association to enact regulations protecting lawyers.<sup>110</sup>

Despite the inability of bar associations across the country to defend individual lawyers who represent sensitive human rights cases, the associations often do show professional solidarity with the victims of abuses.

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<sup>108</sup> "Shanghai lawyers appeal for greater protection following attack on colleague," *The Associated Press*, September 1, 2006.

<sup>109</sup> "Shanghai lawyer beaten while collecting evidence – What is the source of despise for the law?" *Radio Free Asia* (Mandarin Service), October 31, 2006 ["上海律师取证被打 蔑视法律根源何在?" 自由亚洲电台, 2006-10-31], <http://www.rfa.org/mandarin/shenrubao/2006/10/31/lawyer/> (accessed April 8, 2008).

<sup>110</sup> "After the lawyers beating," *Shanghai Media Group portal* ([www.smg.cn](http://www.smg.cn)), November 22, 2006 ["律师被打以后," 上海文广新闻传媒集团网站 ([www.smg.cn](http://www.smg.cn)), 2006-11-22], [http://www.smg.cn/tv/entertainment/column\\_content.aspx?ProgramId=14839](http://www.smg.cn/tv/entertainment/column_content.aspx?ProgramId=14839) (accessed April 8, 2008).

## *Li Heping, Beijing*

Li Heping, a lawyer from the Beijing Globe law firm, was kidnapped, detained, and beaten by a group of unidentified men on September 29, 2007. His captors released him after six hours, having threatened him with further violence if he did not leave Beijing permanently.

Initially a specialist in intellectual property and civil law, Li had also participated in a string of sensitive cases, including that of the blind activist Chen Guangcheng; the underground Christian sect leader Xu Shuangfu, who was executed with 11 other members in November 2006;<sup>111</sup> Yang Zili, a member of a university discussion group (New Youth Study Group), who was sentenced in 2001 to eight years imprisonment for “subverting state power”;<sup>112</sup> and other cases highlighting abuses by state agencies.

In the few days preceding the attack, Li had reported being followed by police and plainclothes officers he believed he had met before and were from the State Protection Bureau. On September 29, around 5 p.m., one of these officers invited him to get into his car. Li declined. Five minutes later a group of men seized Li, covered his head with a hood, bundled him into a car, and drove out of Beijing. He was then dragged into a basement where he was beaten up by men using electrical batons. They ordered him to leave Beijing with his family or face retribution. Li’s captors also copied the contents of his computer, and took his external hard drive, mobile phone chip, and notebook, before detaining him for a day in a Beijing suburb. Li reported the incident the next day, and was promised a “serious investigation” into the incident by the police. “They want all my family to move out of Beijing, to sell my apartment, my car and leave Beijing. In their words, I am to ‘get the hell out of Beijing [*gunchu Beijing*],” Li recounted to Radio Free Asia the next day.<sup>113</sup> Li has since indicated he intends to continue his work undeterred.

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<sup>111</sup> “China reportedly executes Christian sect leader in secret,” *The Associated Press*, November 29, 2006

<sup>112</sup> See Philip P. Pan, “A Study Group Is Crushed in China’s Grip: Beliefs Are Tested in Saga Of Sacrifice and Betrayal,” *The Washington Post*, April 23, 2004. Yang was sentenced to eight years imprisonment. He is due for release on March 13, 2009.

<sup>113</sup> “Beijing lawyer Li Heping kidnapped and beaten,” *Radio Free Asia* (Mandarin Service), September 30, 2007 [“北京律师李和平遭绑架殴打,” 自由亚洲电台, 2007-09-30], <http://www.rfa.org/mandarin/shenrubaodao/2007/09/30/li/> (accessed October 1, 2007).

## *Yang Zaixin, Guangxi*

An attorney from impoverished Guangxi province, Yang Zaixin, was dismissed from his law firm in January 2006 after he took a series of sensitive cases, including those of defendants accused of being members of the banned Falun Gong. Yang posted articles online protesting his dismissal and continued his involvement in sensitive cases.

On February 17, 2006, his home was searched by the local police, who confiscated his computer and court case documents, and took him to the police station for 24 hours to question him about his activities and links with overseas media and groups. Undeterred, Yang continued to denounce his dismissal in internet postings and interviews with overseas media as politically-motivated, and announced that he would go to court to challenge it. On April 9, around 9 p.m., Yang was assaulted by a group of unidentified men in front of the school complex where he resides. The men punched and kicked Yang, and took turns hitting him after he fell to the ground.

Yang sustained minor head and ear injuries that required stitches, and bruises on his back, chest, and arms. Yang called the police immediately after the attack, but the police officer declined to send a patrol, requiring him to come first to the police station to report the case even before seeking medical attention. Yang was bleeding and went to the hospital first. When the head of the police station was contacted by a journalist from Voice of America's Mandarin service, he denied knowledge of the attack, stating that, "Last night, nobody came to report such a case."<sup>114</sup>

In August 2006, Yang traveled to Shandong province to attend Chen Guangcheng's trial. The local police apprehended him before sending him back to Guangxi, where he was detained for a few days by the police.<sup>115</sup>

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<sup>114</sup> "Assaulted Guangxi Rights Defender Says Police is Not Taking Action," *Voice of America* (Mandarin service), April 9, 2007. ["广西维权律师挨打称公安知情不管," *美国之音*, 2007-04-09], <http://www.voa.gov/chinese/archive/worldfocus/apr2007/0409071guangxiattorneybeatenu.htm> (accessed May 12, 2007).

<sup>115</sup> Human Rights Watch News Release, "China: Government Must End Crackdown on Lawyers," August 23, 2006, [http://hrw.org/english/docs/2006/08/23/china14064\\_txt.htm](http://hrw.org/english/docs/2006/08/23/china14064_txt.htm).

## *Tang Jingling, Guangzhou*

Tang Jingling's case provides another example of physical attacks on and intimidation of lawyers by unidentified agents at the very time that judicial authorities are pressuring the lawyers to drop sensitive cases. Tang, a lawyer from Guangzhou who gained prominence in participating in a notorious case of counterfeited medicine, known as the “*qi er yao*” case, was working with rights activist Guo Feixiong on a number of election recall cases, including in Taishi, Guangdong.<sup>116</sup>

On February 2, 2006, Tang was verbally provoked and hit by men who appeared to have links to law enforcement agencies. A group of unidentified men had started to follow Tang after he had visited Guo Feixiong that day. Tang tried unsuccessfully to get away from them, before going towards the closest police station. According to Tang's account, one of the men then hit him from behind:

One of them, maybe their chief, was older than the others, very tall, with a heavy face. As we were walking towards the police station in a small alley, he suddenly hit me with great force in the back of the head. I turned around and said “Why did you hit me?” I talked to them calmly, [though] there were other people in the street [who] all saw his belligerent gesture. He didn't reply. I gave him a look, and continued to walk in the direction of the police station. After a few steps, he hit me another time. Again, I asked him why. We continued to walk and at the turn of the alley, four people surrounded me.

Tang recounted that the men obstructed his passage with their bodies, pushed him around, and stamped on his feet. At this point Tang saw a police car close by and

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<sup>116</sup> Villagers in Taishi attempted to organize the recall of a local party power-holder. A long cycle of crackdowns and protests ensued. Ai Xiaoming, a professor at Sun Yat-sen University in Guangzhou made an underground four-part documentary about the protest movement there, and authored a letter to Premier Wen Jiabao calling for central government intervention. Many of the legal activists involved in the Taishi dispute have since run into problems, from beatings and intimidation (Lu Banglie,) to harassment (Guo Yan, Zhao Xin,) to arrest (Gao Zhisheng, Guo Feixiong.) A large compilation of articles related to the protests in Taishi was made by Fan Yafeng, “Chronology of the Taishi Incident,” *Internet Publicatio*, dated September 17, 2005. [范亚峰, “太石村事件备忘录,” 博讯, 2005-9-17.] A partial translation in English was made available on the “EastSouthWestNorth” website ([www.zonaeuropa.com](http://www.zonaeuropa.com)) at [http://zonaeuropa.com/20050919\\_1.htm](http://zonaeuropa.com/20050919_1.htm). See also “Chinese Authorities Arrest Rights Lawyer in ‘Test-Case’ Taishi Village,” *Radio Free Asia*, October 5, 2005, [http://www.rfa.org/english/china/2005/10/05/china\\_taishi/](http://www.rfa.org/english/china/2005/10/05/china_taishi/) (accessed October 31, 2007).

went for help. The police took him to the police station a few hundred meters from there. The men waited outside the police station. Tang then contacted Sun Yatsen University's Professor Ai Xiaoming, a renowned rights activist, who came to the police station to help Tang to file a complaint. The officer taking the deposition refused to accept that Tang had been assaulted and failed to give a copy of the complaint to Tang. After Tang and Ai realized that the police would not accompany them despite the presence of the gang outside of the police station, they took a taxi to Ai's home, to which they were followed by the men who kept watch until 10 p.m. A few weeks later, in April 2006, Tang lost his professional registration when his law firm withdrew his annual renewal application. (See below section VI.)

As the cases above illustrate, physical intimidation of lawyers remains a pervasive risk. Violence is used as way to deter lawyers from representing certain plaintiffs, to deny them the ability to gather evidence independently, to discourage them from pursuing a case, to retaliate against them if they persist, and to frighten and silence them if they continue to be active about causes after having been disqualified as professional lawyers. Moreover, violence and the threat of violence are not only the province of criminals but also sometimes of non-state agents who appear to act with the knowledge of the police.

The failure of the government to ensure that lawyers are able to perform all their professional functions without intimidation appears to be particularly conspicuous for lawyers who try to bring human rights cases before the courts, but not limited to these cases. The investigation of attacks against lawyers was a specific request of the 53 lawyers who addressed an open letter to the central authorities in December 2006. Without adequate protection for lawyers, the letter pointed out, the government pledges of building "a lawful and harmonious society" were unrealistic:

We entirely support the general project of governing the Party and the state according to law, as well as the establishment of a harmonious society. But a harmonious society must be a society based on legality. If the environment for lawyers deteriorates in this way, how can we advance a law-abiding and harmonious society? We strongly request that the illegalities committed by judicial organs and associated rogue

agents be investigated so as to carry out the lawful protection of the security of legal professionals discharging their duties. We also demand that the Law on Lawyers be revised, and that relevant regulations and supervision measures be enacted, so as to improve the environment in which lawyers work.<sup>117</sup>

Despite the widespread character of attacks on members or ex-members of the legal profession and the repeated calls to address this situation, the government appears to continue to turn a blind eye to the problem.

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<sup>117</sup> “Strongly requesting the protection of the security of the legal profession according to law, and the amelioration of the environment of the legal profession,” Letter to the central government, dated December 29, 2006 [“强烈要求依法保护律师执业安全, 改善律师执业环境,” 2006-12-29.]

## VI. Intimidation

Lawyers interviewed by Human Rights Watch said a frequent source of threats or acts of violence against ordinary lawyers is criminal intimidation in the course of a legal dispute. This is most typically carried out at the behest of the opposite party, employing strongmen or thugs to discourage a particular lawyer or his law firm from representing the case. Sometimes the aim is to discourage the counsel from embarking on a specific legal step, such as producing evidence of corruption or wrongdoing in court. Another frequent occurrence, lawyers say, is retaliation after a verdict has been reached, or attempts to discourage legal efforts to see a judgment enforced. Lawyers have also been attacked by their own clients for losing in court.<sup>118</sup>

Many lawyers report that most threats come from persons who claim to be members of criminal gangs, or “secret societies [*hei shehui*].”<sup>119</sup> Some newspaper accounts have reported that secret society members discouraged victims of intimidation from going to the police by claiming that they had links with Public Security Bureau or government officials. Consequently, the “secret societies” act with near-total impunity.<sup>120</sup> In this context, threats are a sufficient deterrent keeping victims and even legal professionals from turning to the Public Security Bureau.

Intimidation of lawyers by criminal elements is reportedly particularly acute in disputes related to real estate and property ownership. Lawyers representing residents who are trying to bring lawsuits against property development have been threatened to get them to drop their cases or to encourage their clients to accept the terms of the real estate companies. Because of the prevalence of local protectionism,

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<sup>118</sup> “Seven cases of lawyers assaulted this year in Shanghai,” *Legal Daily*, October 31, 2005 [“上海今年发生 7 起律师被侵害事件,” 法制日报, 2005-10-31], <http://www.gzlawyer.org/topic.php?action=news&channelID=4&topicID=3&newsID=10003932> (accessed April 9, 2008).

<sup>119</sup> By the government’s own admission, local mafia-type secret societies are widespread in China, and intimidation of a competitor or debtor is an oft-seen occurrence in economic disputes, forced eviction of residents, land seizures from villagers and labor disputes. Collusion between law enforcement officials and local mafias—an association colloquially referred to in Chinese as “black umbrellas [*hei yusan*]”—is recognized as a severe problem across China. In May 2007, the Supreme People’s Procuracy (SPP) disclosed that 62 government officials had been accused of protecting criminal gangs over the past year. One of the most prominent cases was the former vice-director of Jiangxi province’s Public Security Bureau.

<sup>120</sup> Nicholas Bequelin (Human Rights Watch), “Beijing’s Rule of Law Retreat,” commentary, *The Wall Street Journal*, July 2, 2007.

lawyers are also more at risk of violence and intimidation when they travel to a local area to represent an outsider or a party that is viewed unfavorably by the local power holders. A local company trying to keep out a competitor might benefit from the local authorities “looking the other way” when they use illegal influence or criminal intimidation for that purpose.<sup>121</sup>

Lawyers say that law enforcement agencies, which tend to see lawyers as an impediment to their work, do not prioritize investigating threats or tracking attackers. Attacks against lawyers also do not seem to be seen by the Public Security Bureau or the Procuracy as constituting the kind of substantial threat to the legal system and the judiciary that warrants a vigorous and speedy response.

We were unable to find any reports in official media over the past five years of cases involving assaults or threats against attorneys that were successfully brought to prosecution, including cases that would have established a link between the attackers and one of the parties to a legal dispute.

Because of these obstacles, lawyers themselves are reluctant to press charges and bring attention to attacks or threats they suffer. As a lawyer working at a legal aid center in Beijing told Human Rights Watch, threats are “part of the job,” and “every lawyer has to exercise his own judgment in minimizing these risks.”

Lawyers also fear making it known that they have been targeted, as doing so could damage their ability to maintain or attract clients. “It is bad for business because the client must be confident that his/her lawyer has sufficient status, connections and experience to be effective in defending his/her interests.”<sup>122</sup> Admitting to having been the target of intimidation or reprisals undermines the prestige of an attorney and exposes his vulnerability to extra-legal factors.<sup>123</sup>

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<sup>121</sup> The Supreme People’s Court has regularly issued directives against local protectionism. See “Regional Protectionism Weakening State Capacity,” *China.org.cn*, March 27, 2001, <http://china.org.cn/english/2001/Mar/9673.htm> (accessed February 18, 2007).

<sup>122</sup> Human Rights Watch interview with C.H., a Beijing lawyer, December 2007.

<sup>123</sup> Human Rights Watch interview with W.Z., a Shanghai lawyer, September 2007.

Bar associations do not publish accounts or numbers of threats or attacks against their members because it is considered “too sensitive” and might reflect poorly on both the profession and the legal system at large. For that reason, lawyers say that they seldom report assaults and threats to the bar association, which contributes to the difficulty in assessing the extent of the problem and effectively remedying it.

Lawyers complain that two additional factors contribute to their vulnerability. Lawyers have relatively weak institutional status in the Chinese legal system: as “outsiders” they are an easy target for intimidation. Prevalent corruption within law enforcement agencies also heightens their vulnerability. Lawyers try to enlist the media to cover their cases and help them overcome official unwillingness to take action.<sup>124</sup>

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<sup>124</sup> See Benjamin L. Liebman, “Watchdog or Demagogue? The Media in the Chinese Legal System,” *Columbia Law Review*, vol. 105, Issue 1 (January 2005), pp. 1- 157.

## VII. Prosecution for Perjury

A particular subject of concern to criminal lawyers is their vulnerability to prosecution for the crime of “falsifying evidence” under article 306 of the Criminal Procedure Law (article 307 universally prohibits falsification of evidence and perjury). This article prohibits lawyers from tampering with evidence and “coercing or luring witnesses” into changing their testimony and applies in situations in which witnesses recant statements made earlier (in most circumstances, to investigative organs).<sup>125</sup>

Although article 306 is not on its face objectionable, in practice it has been manipulated to intimidate lawyers or prevent them from effectively representing their clients. Some lawyers have been charged under article 306 after defendants or witnesses misrepresented facts to them or fabricated evidence without their knowledge. In other cases, prosecutors have brought charges against defense lawyers because a witness or client claimed an earlier statement to investigators was made under duress or for other reasons was inaccurate.

The provisions of article 306 are particularly detrimental for the rights of the defense because they make challenging the evidence presented by the prosecution highly risky for a lawyer. Lawyers in general are adamant that many cases of alleged falsification of evidence are initiated in bad faith by the prosecution, as a way to retaliate against the defense, in what is commonly called “judicial retribution [*sifa baofu*]”:

Article 306 is vaguely phrased, and in particular there is no certainty about what exactly constitutes ‘luring [*yin you*]’ [a client or witness to falsify evidence]. In practice, if the client himself changes his testimony the lawyer is the one considered to have forged the evidence, and there are very big difficulties in defending against that sort of thing.

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<sup>125</sup> Article 306 provides that “If, in criminal proceedings, a defender or law agent destroys or forges evidence, helps any of the parties destroy or forge evidence, or coerces the witness or lures him into changing his testimony in defiance of the facts or give false testimony, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention; if the circumstances are serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years. Where a witness’s testimony or other evidence provided, shown or quoted by a defender or legal agent is inconsistent with the facts but is not forged intentionally, it shall not be regarded as forgery of evidence.”

This leads to a situation where many criminal defense lawyers can easily be detained.<sup>126</sup>

A lawyer interviewed by Human Rights Watch said that the risks presented by article 306 had made criminal cases the least attractive to defend:

Lawyers in China often joke: ‘If you want to do law, avoid at all cost being a lawyer; if you want to be a lawyer, avoid at all cost criminal cases; if you do criminal cases, avoid at all cost gathering evidence; if you want to gather evidence, avoid at all cost taking testimonies. Ignore all this, and it is *you* who will end up in a cell!’<sup>127</sup>

This situation has a clear chilling effect for defense lawyers, who may decide to defend clients less forcefully than they otherwise would for fear of displeasing the prosecution. As one lawyer told Human Rights Watch:

If the prosecutor’s office tells you, ‘If you present this testimony in court we will arrest you for tampering evidence,’ what do you do? Do you go ahead and present the testimony nevertheless? In fact you have really no choice; you must find another entry point into the case to defend your client.<sup>128</sup>

Zhang Jianzhong, a prominent lawyer and advocate who served as the head of the committee on lawyer’s rights of the Beijing Lawyers Association, was arrested in May 2002 and sentenced to two years in prison in December of the same year under article 307 for allegedly having assisted with the fabrication of evidence. Many lawyers speculated that this case was retribution for his having mounted a vigorous defense in two of the most high-profile corruption cases involving government officials in recent years, the cases of Li Zhou and Cheng Kejie. In an unusually strong and public response, over 500 lawyers signed a petition in his support, while legal

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<sup>126</sup> Human Rights Watch interview with G.W., a Guangzhou lawyer, January 2007.

<sup>127</sup> Human Rights Watch interview with G.J., a non-criminal lawyer in Beijing, April 2007.

<sup>128</sup> Human Rights Watch interview with M.Y., a criminal lawyer in Beijing, May 2007.

academics and the All-China Lawyers Association submitted legal analyses to help his defense.

In another case, Chongqing lawyer Jiang Daocai spent 197 days in prison in 2004 on charges of helping his client to destroy evidence. Eventually the prosecution agreed to drop the case when the court deemed the charges baseless. While in jail Jiang was prohibited from taking up any cases. In its verdict, the Chongqing Yongchuan municipal court wrote that “the procuratorate of Yongchuan had no basis for initiating the prosecution of Jiang Daocai.” But Jiang had been sufficiently discouraged. He subsequently told a journalist:

I don't know if I will ever be able to be a lawyer again, and I don't know if I am still suitable to be a lawyer. I am now learning to be a driver, this is a great feeling.... Many of my lawyer friends have changed paths, because of the conditions prevailing in the legal profession.<sup>129</sup>

Wang Wanxiong, a lawyer from Hubei's Tijiang municipality law firm, was arrested in July 2001 on the instruction of the Procuracy. In February 2002, the local court acquitted him and he was released, but the Procuracy appealed. It was not until March 2004 that the Hubei People's High Court finally fully exonerated him.<sup>130</sup>

Wang Yibing, a lawyer from a Heilongjiang law firm working in Kunming (Yunnan province) was detained in December 1997, before being acquitted by the appeals court two years later.

The manipulation of article 306 also contributes to the general impunity for police officers who engage in torture and ill-treatment of suspects in pre-trial detention, a time when officers are particularly eager to obtain confessions. Many lawyers would like to be able to challenge depositions obtained under duress, but are unwilling to

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<sup>129</sup> “First case of perjury for lawyers brought by Chongqing municipality disintegrates,” *Time & Truth News*, January 8, 2005 [“重庆市首起律师伪证案尘埃落定,” *时代信报*, 2005-01-08], <http://www.y-llaw.com/bbs/read.php?tid=502&page=lastpost&fpage=4> (accessed April 8, 2008).

<sup>130</sup> “Hopes of elimination of the crime of perjury for lawyers,” *China Newsweek*, April 26, 2004 [“律师伪证罪有望取消,” *中国新闻周刊*, 2006-04-26], pp. 29-31.

do so because of the risks of prosecutions. The UN Special Rapporteur on Torture Manfred Nowak recommended in 2005 that the government “Abolish Section 306 of the Criminal Law, according to which any lawyer who counsels a client to repudiate a forced confession, for example, could risk prosecution.”<sup>131</sup>

Public concern in China has grown since 2005, when two high profile cases of wrongful convictions were revealed. She Xianglin, a villager from Hebei, was freed after serving 11 years for the murder of his wife, after she returned alive to her village. Another man, Nie Shubin, turned out to have been wrongly executed for a rape and murder after the real killer confessed. The president of the Supreme People’s Procuratorate, Jia Chunwang reported in March 2006 that 930 officials had been investigated for torture of detainees in 2006, adding that the issue “had not been effectively scrutinized and addressed.”<sup>132</sup>

It is unclear how many lawyers have been prosecuted, detained, arrested, sanctioned or effectively prevented from defending their clients through the manipulation of article 306. According to a prominent lawyer interviewed by Human Rights Watch, a survey by the All-China Lawyers Association showed that over 500 lawyers were detained, accused, or sanctioned for falsification of evidence under article 306 between 1997 (when the article was introduced) and 2002, but 80% of them were ultimately cleared of any wrongdoing. The survey has not been published.

In 2006, sources quoted by the Ministry of Justice-run *Legal Daily* put the number of lawyers detained in connection with such charges at 200, though the article did not specify the period considered.<sup>133</sup> Lawyers commonly assert that about 80 percent of cases in which lawyers are prosecuted are related to article 306 offences, although

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<sup>131</sup> United Nations, “Special Rapporteur on Torture Highlights Challenges at End of Visit to China,” Beijing, 2 December 2005, <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/677C1943FAA14D67C12570CB0034966D?opendocument> (accessed February 1, 2008).

<sup>132</sup> Didi Kirsten Tatlow, “Justice on trial: Two defense lawyers have taken up the cause of hundreds of men and women facing execution, who they say have been jailed under a flawed judicial system,” *South China Morning Post*, October 30, 2007.

<sup>133</sup> “Lawyers call for the abolition of the perjury crime for lawyers – three reasons listed,” *Xinhua News Agency*, June 1, 2005 [“律师呼吁取消 律师伪证罪—列举三条理由,” *新华网*, 2005-06-01], <http://news.sina.com.cn/c/2005-06-01/08596046391s.shtml> (accessed April 8, 2008).

this may bundle together all the difficulties encountered in gathering evidence, not only with respect to article 306.<sup>134</sup>

Some legal scholars have argued that “falsifying evidence” became the weapon of choice to prosecute lawyers as soon as it was introduced, replacing the use of embezzlement charges, but that the number of prosecutions against lawyers has not increased overall.<sup>135</sup> They also point out that retaliatory prosecutions also reflect the fact that criminal lawyers have become more adroit in defending the rights of criminal suspects:

Lawyers are intimidated and prosecuted because lawyers have become more proactive, aggressive and innovative in defending the rights of their clients and of their own, posing serious legal challenges that prosecution has never encountered before. This challenge is possible because criminal justice reform in China in the past ten years has created opportunities and incentives for a growing legal profession.<sup>136</sup>

In any case, the charge that article 306 is often manipulated by the Procuracy is supported by the fact that many cases involving such charges never reach the trial stage after police or prosecutorial investigation. But even if the case does not lead to an indictment, the lawyer loses considerable “time and energy to defend himself, not to mention the amount of lost fees and his ability to work.”<sup>137</sup>

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<sup>134</sup> A legal scholar put the proportion lower, based on a study of 70 cases from 1984 to 2006 where 33 were for fabrication of evidence. Fu Hualing, “When Lawyers are Prosecuted: The Struggle of a Profession in Transition,” *Social Science Research Network*, May 2007, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=956500](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=956500) (accessed November 7, 2007).

<sup>135</sup> Fu Hualing writes that “[P]olice and prosecution principally used the offences of covering up and malpractice for personal gains before 1997 to punish aggressive lawyers for challenging prosecution’s case or for falsifying evidence, and when the amended CL [Criminal Law] became effective on 1 October 1997, they immediately switched to Article 306, abandoning the former charging practice.” Fu Hualing, “When Lawyers are Prosecuted: The Struggle of a Profession in Transition,” *Social Science Research Network*, May 2007.

<sup>136</sup> Fu Hualing, “When Lawyers are Prosecuted: The Struggle of a Profession in Transition,” *Social Science Research Network*, May 2007.

<sup>137</sup> Human Rights Watch interview with G.W., a Guangzhou lawyer, January 2007.

This continues to make criminal cases unappealing to lawyers. Following an article describing the plight of lawyer Jiang Daocai in Chongqing, the head of a law firm in Sichuan province expressed thoughts typical of many in the legal profession:

This is why currently I am not doing criminal cases!... If lawyers cannot guarantee their own protection, how are they going to protect the rights and interests of their clients?<sup>138</sup>

Unsurprisingly, there is a wide consensus among lawyers that article 306 should be repealed. Many lawyers have written in professional publications to criticize the article and its misuse by the Procuracy to retaliate against the defense.

As Chen Ruihua, a law professor at Beijing University who has argued repeatedly against this provision, stated to the Ministry of Justice's *Legal Daily* in July 2007:

The only way to put our worries to rest is to abolish Article 306. Otherwise, relevant authorities can seek criminal investigations against lawyers on account of perjury and invoke Article 306 at any time.<sup>139</sup>

A prominent lawyer who is also a delegate to the National People's Congress, Zhang Yan, has repeatedly called for the repeal of article 306. As early as 2000, she introduced a resolution calling for the withdrawal of the article. In 2006, she again introduced a resolution to that effect, listing four main reasons for the abolition, including the unwillingness of lawyers to take up criminal cases.<sup>140</sup>

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<sup>138</sup> Posting on a legal forum in response to an article about Jiang Daocai's case, September 19, 2006, [http://club.china.alibaba.com/forum/thread/view/5\\_20906125\\_.html](http://club.china.alibaba.com/forum/thread/view/5_20906125_.html) (accessed May 9, 2007). On file with Human Rights Watch.

<sup>139</sup> "A bottleneck in the system for lawyers gathering evidence – Looking for a legislative breakthrough," *Legal Daily*, July 29, 2007 ["律师调查取证遭遇'制度瓶颈' 寻求立法突破", *法制日报*, 2007-07-29], [http://news.xinhuanet.com/2007-07/29/content\\_6446050.htm](http://news.xinhuanet.com/2007-07/29/content_6446050.htm) (accessed April 8, 2008).

<sup>140</sup> "Lawyers call for the abolition of the perjury crime for lawyers – three reasons listed," *Xinhua News Agency*, June 1, 2005 ["律师呼吁取消 律师伪证罪—列举三条理由," *新华网*, 2005-06-01.]

Lawyers' publications often cite the fact that the average number of criminal cases taken up each year by lawyers in Beijing dropped from 2.64 in 1990 to 0.78 in 2000, although this does not take into account the fact that the number of lawyers grew considerably during the same period.<sup>141</sup> The risks of "prosecutorial retaliation," along with a system of fixed-fees that make criminal cases financially unattractive, are cited by lawyers as major factors that dissuade them from taking up criminal cases.

Article 306 has a particularly deleterious effect on the ability of lawyer to represent human rights cases. Victims of abuses committed by agents of the state, especially by the public security, are already an irritation to the judicial authorities, thus presenting a considerable disincentive for lawyers to take them as clients, especially if the victims face criminal charges. It is telling that the numbers of lawyers representing high-profile dissidents are very small; in fact, a single law firm, that of Mo Shaoping, has represented the great majority of them. And, as he points out, "I have yet to win a single case."<sup>142</sup>

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<sup>141</sup> Ibid.

<sup>142</sup> "Mo Shaoping on the 'harmonious society,'" interview with *Phoenix TV*(Hong Kong), April 2007 (exact date not known), <http://rfaunplugged.wordpress.com/2007/04/13/mo-shaoping-on-the-harmonious-society/> (accessed April 8, 2008).

## VIII. Limits on Ability to Represent Clients

Not only do we see cases of forced confession under torture, illegal search, illegal detention, overtime detention, and other illegal action, but such cases are not promptly investigated. This fosters illegality, which leads to frequent miscarriages of justice.

—*Legal Daily*, August 25, 2005

We were warned not to represent Tibetans.

— A lawyer from Beijing who had volunteered to represent Tibetan arrested after the unrest in Lhasa, April 2008

Lawyers in China routinely complain that their ability to represent their clients and participate in court processes, particularly in criminal cases, is subject to many arbitrary restrictions imposed by judicial institutions and interference by other state institutions. They explain that judicial institutions routinely ignore their procedural requests, engage in obstructionist or delaying tactics, and at times threaten them with administrative or economic retaliation. Lawyers say that courts and police often invoke the “exceptional” character of a case to deny them basic defense prerogatives such as gathering evidence, meeting their clients in detention, producing witnesses and experts in courts, cross-examining prosecution witnesses, and having access to complete court files.<sup>143</sup>

Restrictions are even greater in cases involving human rights violations by state agents and politically motivated prosecutions. Lawyers say that the outcome of cases involving dissidents charged with state security or state secrecy crimes are dictated by the political authorities. Under the current court system, cases deemed important or “especially complicated” are reviewed by “adjudicating committees [*shenpan weiyuanhui*],” which are composed of senior judges and judges who are often

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<sup>143</sup> Ample illustration of these claims can be found in professional publications such as *China Lawyer* (中国律师), published by the All-China Lawyers Association and *Lawyer Digest* (律师文摘), published by the Ministry of Justice-owned China Law Press.

members of the Party's Political and Legal Committee.<sup>144</sup> Lawyers do not participate in adjudicating committees meetings and their views are not conveyed there.<sup>145</sup>

“Under this system, ‘the judges who conduct the trial are not the ones adjudicating it, and those adjudicating the trial are not the one conducting it’ [*shen er bu pan, pan er bu shen*]—it completely invalidates the role of the defense,” one lawyer told Human Rights Watch.<sup>146</sup>

As lawyers and legal experts are quick to point out, Chinese lawyers in effect rely on personal networks to circumvent these problems and compensate for the overall “weak status of the legal profession.”<sup>147</sup>

Some scholars have argued that because lawyers enjoy so few effective powers, it is essentially through personal connections with members of the judicial system bureaucracy that lawyers are able to carry out any work at all.

The challenges [lawyers] routinely face include various forms of obstruction, harassment, and intimidation, and even physical abuse, often at the hands of personnel in the public security administration (the police system), the procuracy (the public prosecutor's office), and courts.... Surviving and even thriving in their hostile institutional environment demands formal and informal ties to the state bureaucracy.... [A survey of 1,000 lawyers conducted in 2000 by the author showed that] ties to the state provided protection against various forms of institutionalized, state-sponsored harassment and

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<sup>144</sup> According to article 149 of the Criminal Procedure Law, “difficult, complex or major” cases can be referred to the president of the court to decide to submit the case to the judicial committee for “discussion and decision.” The collegial panel “shall execute the decision made by the judicial committee.”

<sup>145</sup> “New trends for the reform of the Adjudicating committees,” *Dongfang Fayan* ([www.dffy.com](http://www.dffy.com)), May 15, 2005 [“新形势下审判委员会的改革,” *东方法眼*, 2006-5-15], <http://www.dffy.com/faxuejieti/ss/200605/20060515203809.htm> (accessed April 5, 2008).

<sup>146</sup> Human Rights Watch interview with X.J., a lawyer working for a nongovernmental organization in Beijing, March 2007.

<sup>147</sup> Ethan Michelson, “Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism,” *American Journal of Sociology*, vol. 113, Issue 2 (2007).

rent-seeking. Lawyers more deeply embedded in the state reported fewer professional aggravations.<sup>148</sup>

Since the promulgation in 1996 of the Law on Lawyers, the Chinese legal profession has generally been fairly successful in weaving informal links with judicial personnel. It is these ties that ensure that a particular lawyer can assert many of the rights clients are guaranteed and, because cases are arbitrarily decided by the authorities, goodwill alone often determines whether lawyers are informed of a case's current status, can gain access to court files, be notified in advance of hearing dates, or learn whether there are political considerations weighing on the case.

The efficacy of these arbitrary ties often leads external observers to credit the legal profession in China with more legal authority in judicial processes than lawyers actually possess. More importantly, this type of relationship-based goodwill from the judiciary does not extend to cases that are particularly contentious or seen as politically risky, such as human rights abuses committed by judicial personnel or the police; the trial of political dissidents, religious dissenters, or members of groups explicitly designated as threats to the security of the state, such as Uighur or Tibetan nationalists; cases alleging corruption of government and Party leaders; and specific cases linked to incidents of social unrest. In such cases, ties with judicial system officials are by definition of little help; indeed, the very act of taking on such cases may destroy ties a lawyer has been working to build.

### **Lack of access to criminal suspects in detention**

Criminal lawyers face immense obstacles in gaining permission to visit their clients in detention, particularly in the pre-trial stage, before they have been formally charged. This situation is a concern both in terms of the rights of defendants and the rights of defense attorneys, as detailed below. Furthermore, suspects are vulnerable because of their lengthy incommunicado detention by law enforcement agencies, extraction of confessions under duress, ill-treatment, and torture.

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<sup>148</sup> Ethan Michelson, "Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism," *American Journal of Sociology*, vol. 113, Issue 2 (2007), p. 1.

### *The right to access clients in detention*

Under Chinese law, a criminal suspect can retain a lawyer after his first interrogation by the investigative organs or from the day the detention starts.<sup>149</sup> The right of a defense attorney to access accused persons in detention is guaranteed by the Law on Lawyers and by the Criminal Procedure Law. One important exception in the Criminal Procedure Law concerns cases “involving state secrets,” for which the hiring of a lawyer is conditioned on approval by the investigating organs.<sup>150</sup> In those cases, the time limits and procedures to gain access are set by specific regulations issued jointly by the Supreme People’s Court and six other ministries and committees with legal responsibilities (hereafter “the Joint Regulations”), complemented by institutional regulations of the Public Security Bureau, the Procuracy, and other institutions involved.<sup>151</sup>

The Joint Regulations provide that law enforcement agencies must comply with a valid visit request from a retained lawyer within 48 hours in ordinary cases, and within five days if the cases involve organized crime or are “especially complicated.”<sup>152</sup> In cases “involving state secrets” the right to visit is conditioned on the approval of the investigation organs.<sup>153</sup>

Typical violations of the rights to access suspects documented by lawyers and legal experts include: failing to inform the criminal suspect of his right to retain a lawyer, refusing or delaying his request to appoint a lawyer, failing to inform the family of the detention and of their right to retain a lawyer on the behalf of their relative, failing to inform the lawyer designated by the criminal suspect that he has been selected,

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<sup>149</sup> Criminal Procedure Law, art. 96.

<sup>150</sup> *Ibid.*, art. 96.

<sup>151</sup> Regulations on a number of issues concerning the implementation of the criminal procedure law, jointly issued by the Supreme People’s Court, Public Security Ministry, State Security Ministry, Justice Ministry, National People’s Congress Standing Legal Work Committee, January 19, 1998 [最高人民法院 最高人民检察院, 公安部, 国家安全部, 司法部, 全国人大常委会法制工作委员会: 关于刑事诉讼法实施中若干问题的规定, 1998-01-09], [http://www.lawstar.cn/txtcac/chl/093/chL\\_93.021.htm](http://www.lawstar.cn/txtcac/chl/093/chL_93.021.htm) (accessed November 7, 2007).

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*

denying permission for the lawyer to visit the suspect, and falsely claiming that the case involves state secrets.

According to a Chinese study:

The impossibility for a lawyer who has been retained to see a criminal suspect remains the biggest and most often seen problem of criminal defense lawyers. Legally endowed rights cannot be exercised.<sup>154</sup>

The few publicly available empirical studies seem to support this conclusion:

- A survey of police station detention cells in Beijing's Haidian district indicated that lawyers were able to visit only 14.6% of detainees under investigation, even though 46.3% of the demands to see a lawyer from pre- and post-trial detainees were met.<sup>155</sup>
- Another partial survey of 200 detainees in Beijing showed that 75.5% were never told by the investigators that they could request a lawyer. 17.3% of those who requested a lawyer were told that it was useless to do so, 12.2% were scolded by the investigators, and 12.2% were told to ask again later. According to the Procuracy, 57% of criminal suspects have signed a retainer agreement with a lawyer.<sup>156</sup>
- A survey carried by the Beijing lawyers association showed that in one-third of the cases, lawyers were denied access to their client. "In most of these cases, the investigative organs refuse to organize access to the detainee with or without reasons; when lawyers seek to obtain a retainer agreement, often there are able to do it "only through using extralegal methods [*fei falü de*

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<sup>154</sup> Cheng Tao, *Research on Procedural Rights of Defence Attorneys* (Beijing: Chinese People's Public Security University Press, 2006), p. 117. [程滔(著), *辩护律师的诉讼权利研究*, 北京: 中国人民公安大学出版社, 2006 第 117 页.]

<sup>155</sup> Chen Ruihua, Ed., "*Empirical Investigation of the Criminal Defense System*" (Beijing: Beijing University Press, 2005). [陈瑞华 主编, *刑事辩护制度的实证考察*, (北京: 北京大学出版社, 2005).]

<sup>156</sup> "When is lawyer's help most needed? Survey of 200 detainees in Beijing," *China Lawyers*, Issue 11, 2003, p. 4 ["什么时候最需要律师帮助: 对北京 200 名在押人员的调查," *中国律师*, 2003 年第 11 期, 第 4 叶], reproduced at <http://smth.edu.cn/pc/pcon.php?id=1137&nid=40913&tid=1981> (accessed February 11, 2008).

*shouduan*] like making representations to the leaders or the higher departments.’”<sup>157</sup>

- One lawyer told Human Rights Watch that the ACLA has complained repeatedly to the judicial authorities about the issue of access, attaching a compilation of actual cases in which access was denied, but none of these documents were made public. One such study, a survey carried out by the Committee on Lawyers Rights of the Beijing Lawyers Association in 2006, indicates that 90% of the respondents “must repeatedly apply before getting approval for a visit, and most of the time cannot see their client within the 48 hour limit.”<sup>158</sup>

### *Restrictive practices*

Many Chinese lawyers and legal experts claim that as a matter of course the Public Security Bureau often denies any contact with lawyers until at least after the investigation is completed, the defendant is formally charged, and the case has been handed over to the prosecution. Only a fraction of criminal suspects are able to meet their counsel before they are charged. In some cases, lawyers have been entirely unable to secure even a single meeting before the trial takes place.

When lawyers do manage to gain access to their clients, lawyers complain that visits are few, brief, and often conducted in the presence of a representative of the investigation or in non-confidential settings.

To see his or her client, a lawyer is required to fill out an “application to access criminal suspect” and obtain approval from the Public Security Bureau where the suspect is detained. Lawyers point out that internal Public Security or Procuracy regulations, which sometimes vary from place to place, expand on the exceptions set forth by the Criminal Procedure Law, often specifying other cases where the

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<sup>157</sup> Cheng Tao, *Research on Procedural Rights of Defence Attorneys* (Beijing: Chinese People's Public Security University Press, 2006), p. 116. [程滔(著), *辩护律师的诉讼权利研究*, 北京: 中国人民公安大学出版社, 2006 第 116 页.]

<sup>158</sup> “Problems in lawyers accessing clients in detention awaits resolution,” *Democracy and Law*, April 4, 2007 [“律师会见难困局待解,” *民主与法制时报*, 2007 年 04 月 16 日], [http://news.xinhuanet.com/legal/2007-04/16/content\\_5982885.htm](http://news.xinhuanet.com/legal/2007-04/16/content_5982885.htm) (accessed April 16, 2007).

application can be turned down, such as “especially complicated cases,” or “cases related to organized crime.”<sup>159</sup> These provisions contribute to law enforcement officials’ perception that they can deny visits outright.

Law enforcement agencies typically “give [only] pretexts or no reason at all” when denying or delaying lawyers’ requests to visit their clients.<sup>160</sup> According to one lawyer interviewed by Human Rights Watch:

The Public Security doesn’t grant you access; they just don’t. They don’t tell you why. You file your application [for a visit], and that’s it—no reply. What can you do? You have to know personally the court officials [to intercede], but sometimes it doesn’t help. You have to look at the local conditions. If the Public Security doesn’t want it, the fact is that nobody can force them.<sup>161</sup>

Judicial personnel also obstruct lawyers when they apply to visit their clients. A news report quoted a lawyer complaining that “the thing lawyers hear most often when applying to see a client is the sentence: ‘The handling person is not there.’ And this ‘handling person’ can never be found.”<sup>162</sup>

Another lawyer complained about delaying tactics used by some courts.

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<sup>159</sup> For instance the Kunming municipality (Yunnan Province) regulations on “Protecting lawyers rights during the criminal process,” issued in 2007, set forth that the Procuracy must respond within 48 hours, except in cases involving criminal cases or involving state secrets.

<sup>160</sup> Survey from the Beijing Lawyers Association, cited in Cheng Tao, *Research on Procedural Rights of Defence Attorneys* (Beijing: Chinese People's Public Security University Press, 2006), p. 116 [程滔(著), *辩护律师的诉讼权利研究*, (北京: 中国人民公安大学出版社, 2006) 第 116 页.]

<sup>161</sup> Human Rights Watch interview with D.X., a Beijing lawyer, December 2007.

<sup>162</sup> “The lawyer’s right to see his client: made impossible by internal bureaucratic directives?” *China Youth Daily*, March 24, 2007 [“律师会见权: 红头文件”下的空中楼阁?” *中国青年报*, 2007-03-24], [http://zqb.cyol.com/content/2007-03/24/content\\_1710361.htm](http://zqb.cyol.com/content/2007-03/24/content_1710361.htm) (accessed August 17, 2007).

Very often, the answer to a request for a visit is ‘Please wait.’ And you wait for one, two hours. There is no reason for it; this is just to wear you out. In the end they tell you that you can’t see your client.<sup>163</sup>

Other typical excuses cited by a legal scholar include “the responsible person is on a business trip, it may be a long time until he comes back,” “the leaders are not there,” and, “This is an economic case, the circumstances exceptional.”<sup>164</sup>

Legal scholars have pointed out that this phenomenon is more than just a smattering of anecdotal complaints, but rather a deliberate practice of obstructing the work of lawyers by the judicial institutions:

Many departments ‘pass the ball around [*tipi qiul*]’: The Public Security Bureau says that the case is already with the Procuracy; the Procuracy that it has not yet been filed, or that it is already with the court. And so on and so forth. The actual visit very seldom takes place within the fixed time limits. It takes at least a week, most of the time a month, sometimes even longer to gain access to a suspect. Sometimes, the visit is denied, especially if it is the Procuracy itself that is conducting the investigation.<sup>165</sup>

Many lawyers have endured such ordeals. A lawyer from the established Liu Hule law firm in Yunnan province held the firm record of visiting the police station 22 times in 40 days, finally getting to see his client for a mere 30 minutes.<sup>166</sup> The lawyer for Hua

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<sup>163</sup> Ibid.

<sup>164</sup> Cheng Tao, *Research on Procedural Rights of Defence Attorneys* (Beijing: Chinese People's Public Security University Press, 2006), p. 160. [程滔(著), 辩护律师的诉讼权利研究, 北京: 中国人民公安大学出版社, 2006 第 160 页.]

<sup>165</sup> Human Rights Watch interview with F.H., a Beijing lawyer, October 2007.

<sup>166</sup> “The lawyer’s right to see his client: made impossible by internal bureaucratic directives?” *China Youth Daily*, March 24, 2007 [“律师会见权: ‘红头文件’ 下的空中楼阁?” 中国青年报, 2007-03-24], [http://zqb.cyol.com/content/2007-03/24/content\\_1710361.htm](http://zqb.cyol.com/content/2007-03/24/content_1710361.htm) (accessed August 17, 2007).

Huiqi, an underground Christian, never gained access to his client, and Hua was even tried *in camera* with Hua himself kept from entering the court chamber.<sup>167</sup>

Environmental activist Wu Hongli was visited by his lawyer only after many months of detention. His wife reported that Wu had told her he had been tortured in detention and that she saw torture marks on his body.<sup>168</sup>

Another reason frequently advanced by law enforcement agencies to deny lawyers permission to visit their client is that the suspect is not in criminal detention but in one of the various forms of “administrative detention” such as “summoned for detention” (*juchuan*), bail (*jubao houshen*), or supervised residence (*jianshi juzhu*). These measures have their own specific maximum time limits, but in practice are often manipulated to justify extended incommunicado detention by the investigators.

#### *Invoking state secrets as a pretext to deny access to detained suspects*

In politically sensitive cases and cases involving political offenses such as subversion or crimes against state security, the police frequently invoke the involvement of “state secrets” to deny attorney-client meetings. Recent cases include those of Zhou Heng, Lü Gengsong, and Yan Chunlin.

The dissident Lü Gengsong was denied the right to hire a lawyer of his choice by the Public Security because his case allegedly involved state secrets. A former instructor at the Zhejiang Police College, Lu was arrested in August 2007 on suspicion of subverting state power and illegally holding state secrets after he wrote a series of articles about official corruption and the need for political reforms. Lu’s wife tried to hire two Beijing lawyers, but was notified in writing by the Xihu Public Security

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<sup>167</sup> See the account written by the lawyer of Hua Huiqi: “The Secret “Public” Trial of Hua Huiqi’s Case,” translated on Chinaaid.org, posted July 20, 2007, <http://chinaaid.org/2007/07/20/the-secret-public-trial-of-hua-huiqis-case/> (accessed April 8, 2008).

<sup>168</sup> “Wife of Chinese green activist targets watchdog,” *Reuters*, June 5, 2007.

Bureau that Lu was not allowed to hire a lawyer because his case involved state secrets.<sup>169</sup>

She then tried to travel to Beijing, but was stopped near her home town by officers of the State Protection Bureau. After she finally managed to retain Mo Shaoping and Ding Xingkui as lawyers, the same Public Security officials pressured her on two occasions to dismiss them and engage a local lawyer from Hangzhou. She stood firm.

Zhou Heng, a bookshop operator in Urumqi (Xinjiang province) and member of an underground Christian group, was denied access to his lawyer for over six weeks by the Public Security Bureau on allegations that his case involved “state secrets.” Zhou was arrested on August 3, 2007, after a large shipment of bibles sent to him from overseas was seized by the police. (Under Chinese law, bibles and religious material can only be printed by domestic pre-approved printing presses.) He was held on suspicion of illegal business activity and detained at the Public Security-run Xi Shan detention centre. His lawyer was finally able to meet him on September 14, but two police officers sat in on the meeting.<sup>170</sup>

Yang Chunlin, an activist representing a group of evicted farmers in Jiamusi, Heilongjiang province, was denied any contact with his lawyer after his arrest in July 2007. Yang was formally arrested on suspicion of “subverting state power” in September 2007. Yang had led a group of farmers to demonstrate in front of a government building, carrying banners with the slogan “We want human rights, not Olympic games.” Yang’s wife contacted a Beijing lawyer, Li Fangping, to defend him. The Public Security Bureau, who was apparently monitoring her telephone, tried to dissuade her from hiring Li, reportedly telling her “If you hire a lawyer from Beijing the sentence will be heavier.” Yang’s lawyer applied to visit his client on September 7,

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<sup>169</sup> Lawyer prohibited to take up Lü Gengsong case because it involves state secrets,” *Radio Free Asia* (Mandarin Service), September 20, 2007 [“吕耿松案被以涉密禁律师介入,” *自由亚洲电台*, 2007-09-20], <http://www.rfa.org/mandarin/shenrubaodao/2007/09/20/lu/> (accessed September 20, 2007).

<sup>170</sup> “Arrested for receiving two tons of Bible books, Zhou Heng is able to meet with his lawyer at the custody centre for the first time,” *Radio Free Asia* (Mandarin Service,) September 18, 2007 [“因接两吨圣经被捕 周恒在看守所首次会见律师,” *自由亚洲电台*, 2007-09-18], <http://www.rfa.org/mandarin/shenrubaodao/2007/09/18/zhou/> (accessed September 18, 2007).

2007. He was informed that permission was denied because the case involved state secrets.<sup>171</sup>

Lawyers state that they have no effective recourse against denial of access to their client, and legal statutes provide no specific remedies aside from an administrative lawsuit under the administrative litigation law. Human Rights Watch is aware of very few cases where such challenges have been successful. Some courts have ruled that administrative acts emanating from the judicial power cannot be reviewed in administrative courts.<sup>172</sup> This leaves no recourse at all when law enforcement agencies do not comply with a request for a visit.

As detailed above, may dissidents, civil rights activists, religious figures, and defendants charged with vaguely worded state security offenses, such as subversion, state secrets, harming state security, or separatism have been detained for lengthy periods of time, sometimes the entire pre-trial period, without access to a lawyer.

### *Lack of redress for violations of procedures*

Chinese legal experts point to the disproportionate power wielded by law enforcement agencies, which are easily able to flout procedural rules,<sup>173</sup> in obtaining redress for procedural violations. Chen Guangzhong, a criminal procedure law professor at China's Politics and Law University, says that the root of the problem is that "the Public Security has too much power":

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<sup>171</sup> "Rights defender Yang Chunlin arrested: Lawyers visit obstructed," *Radio Free Asia*, September 5, 2007 ["维权人士杨春林被捕 律师会见受阻," 自由亚洲电台, 2007-09-05], <http://www.rfa.org/mandarin/shenrubaodao/2007/09/05/yangchunlin/> (accessed September 05, 2007).

<sup>172</sup> See for instance Wang Canfa, "Chinese Environmental Law Enforcement: Current Deficiencies and Suggested Reforms," *Vermont Journal of Environmental Law*, Vol. 8 (2006-2007).

<sup>173</sup> See for instance Cheng Tao, *Research on Procedural Rights of Defence Attorneys* (Beijing: Chinese People's Public Security University Press, 2006). [程滔(著), *辩护律师的诉讼权利研究*, 北京: 中国人民公安大学出版社, 2006.]

The Court decides about guilt, the Procuracy about arrest, but it is the Public Security who decides about visits. The Court and the Procuracy are absolutely helpless with respect to access to lawyers.<sup>174</sup>

According to another Beijing criminal lawyer, in many cases the Procuracy itself shies from challenging the Public Security over forced confessions. If the Procuracy has doubts about the veracity of witness statements or confessions, it may try to invalidate them by finding mistakes and ruling out the evidence on that basis rather than directly rejecting the evidence because it was obtained under duress.

The newly revised Law on Lawyers, which will take effect on June 1, 2008, has removed all exceptions to the right to meet with an accused person in detention, including for cases “involving state secrets.” However, only when the Criminal Procedure Law—which at present allows for such restrictions—is similarly revised in the same sense will the change be effective.<sup>175</sup> After the revisions to the Law on Lawyers were promulgated in October 2007, lawyer Mo Shaoping told the *South China Morning Post* that he did not expect the revisions to effectively protect the rights of lawyers: “A police officer could say no to a lawyer’s request under the Lawyers’ Law, claiming that he is not governed by the industry-specific law,” Mr. Mo said. “Without changing other relevant legislation, amending the Lawyers’ Law alone cannot protect lawyers’ rights.”<sup>176</sup>

Above all, lawyers insist that the main obstacle to their carrying out their duties remains the government’s failure to implement the existing rules.

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<sup>174</sup> “Problems in lawyers accessing clients in detention awaits resolution,” *Democracy and Law*, April 4, 2007 [“律师会见难困局待解,” 民主与法制时报, 2007年04月16日], [http://news.xinhuanet.com/legal/2007-04/16/content\\_5982885.htm](http://news.xinhuanet.com/legal/2007-04/16/content_5982885.htm) (accessed April 16, 2007).

<sup>175</sup> The revisions to the Law on Lawyers in October 2007 have established the right for lawyers to meet with criminal suspects without restrictions, although the new provision is now in conflict with the Criminal Procedure Law as detailed below.

<sup>176</sup> Ng Tze-wei, “Revisions a step forward but not enough: lawyers Mixed response to changes to protect legal practitioners,” *South China Morning Post*, October 30, 2007.

## Lack of access to case files

In criminal trials, the right and ability of the defense to access appropriate case information, files, and documents—including the evidence on which the prosecution is based—is a key component of due process and a fair trial. Chinese lawyers commonly rank “difficulties gaining access to court documents [*yuejuan nan*]” as one of the top three difficulties that the legal profession faces.

### *Limited rights under the law*

Under Chinese law, lawyers enjoy the right to “consult, excerpt, photocopy and duplicate case material” during the prosecution and court stages from the first day the case is filed.<sup>177</sup> Upon the filing of a written request, the People’s Procuratorate must provide the defense counsel with a specified list of procedural documents, such as detention and arrest warrants, search and seizure orders, lists of witness affidavits, and forensic diagnostics. Once the case is filed in court, the lawyer is also entitled to access “the material of the facts of the crime,”<sup>178</sup> the latter being defined not as all the evidence brought by the prosecution, but only as “the principal evidence.”

The concept of “principal evidence [*zhuyao zhengju*]” is highly constraining, because it leaves judicial authorities with virtually untrammelled discretion in deciding what should be communicated to the defense counsel. For instance, lawyers often are provided not with actual testimonies of witnesses from whom depositions were taken by investigators, but only the list of witnesses interrogated. Key documents, such as the deposition of the criminal suspect, full witness statements, and key physical evidence are not generally made available.

Another serious burden on defense rights is that only evidence in support of the accusation is considered as “principal evidence.” There is no obligation for the Procuracy to communicate potentially exculpatory evidence. This puts the defense at a significant disadvantage. As one Chinese legal expert writes:

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<sup>177</sup> Criminal Procedure Law, art. 36.

<sup>178</sup> *Ibid.*

Using this system of ‘communication of the principal evidence,’ the procuracy.... simply selects what supports the accusation, and according to them this cherry-picked evidence unquestionably becomes the ‘principal evidence.’<sup>179</sup>

Since evidence withheld from the defense is not precluded from being used at trial, even key evidence is at times kept from the defense lawyer, “so as to reserve the ‘heavy artillery’ for the hearing,” as one lawyer put it.<sup>180</sup>

In essence, as Chinese study on lawyers concludes, lawyers are “powerless” in accessing substantive documents:

It is not hard to fathom, that at any given stage, the main documents that the lawyer can check are procedural documents. He has no means to acquaint himself fully with the substantive ones. This results in the lawyer basically being powerless to fully grasp the details of the case.<sup>181</sup>

### *Routine procedural violations*

Lawyers also complain of other difficulties in accessing case files, even when those difficulties explicitly violate clearly-stated rights. The prosecution often disregards time limits. “The law says that the prosecution has a maximum of five days to grant access to the case file, but in general the minimum is one week, most often one month, some times even more,” according to one lawyer interviewed by Human Rights Watch.<sup>182</sup> At times, the prosecution sometimes justifies its refusal to let lawyers access the case files by claiming that the case involves “other suspects that

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<sup>179</sup> Long Zongzhi, “Study of the criminal trial system,” *Politics and Law University Press*, 2001, p. 151. [龙宗智, 刑事庭审制度研究, 中国政法大学出版社 2001 年版, 第 151 页.]

<sup>180</sup> Cheng Tao, *Research on Procedural Rights of Defence Attorneys* (Beijing: Chinese People's Public Security University Press, 2006), p. 169. [程滔(著), 辩护律师的诉讼权利研究(北京: 中国人民公安大学出版社, 2006) 第 169 页.]

<sup>181</sup> Ye Qing and Gu Yuejin, eds., *Study of the Lawyers System in China* (Shanghai: Shanghai Academy of Social Sciences Press, 2005), p. 186. [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 186 页.]

<sup>182</sup> Human Rights Watch interview with M.Y., a criminal lawyer from Beijing, March 2007.

have escaped,” or “state secrets,” or that the case is “especially complicated.” At other times, the applications for the consultation of the case file are simply left unanswered.

Personnel of the Procuracy and courts also frustrate lawyers through tactics that run counter to their obligation to “facilitate” lawyers access to case documentation, as set by court regulations. The tactics include: impractical locations for reading the documents (a lawyer reported that he had once to bring a flashlight because the light bulbs in the windowless room were dead), poorly maintained photocopy equipment and exorbitant photocopying charges, arbitrary delays, and hostile behavior of court employees. Lawyers believe that many of these obstacles are intended to remind them of their low status within the larger legal system.

Lawyers have no effective remedies against these obstructions. A typical assessment made by lawyers is that their procedural “rights” are empty: “Despite the guarantee of the lawyer’s right to access documents, because there is no operative definition of this right, it remains without any force.”<sup>183</sup>

One lawyer told Human Rights Watch:

The judicial organs will only give you what they want, and it is not uncommon to see the real evidence only on the day of the trial. This is like a tiger blocking the road. Chinese lawyers are powerless.<sup>184</sup>

Lawyers agree that they face even greater hurdles when they represent sensitive political cases.

If the case is politically sensitive, everything is decided by higher-level authorities: the court officials have to ask for instructions before they give you access to the court file, they won’t dare to take the

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<sup>183</sup> Cheng Tao, *Research on Procedural Rights of Defence Attorneys* (Beijing: Chinese People's Public Security University Press, 2006), p. 169. [程滔(著), *辩护律师的诉讼权利研究程* (北京: 中国人民公安大学出版社, 2006), 第 169 页.]

<sup>184</sup> Human Rights Watch interview with L.W., a Beijing lawyer, November 2007.

responsibility themselves. They tell you ‘this is a special case, we are not in a position to decide’.<sup>185</sup>

Court officials also delay access on small pretexts. For instance, court personnel reportedly told lawyers for rights activist Guo Feixiong they could not access his court files because they could not find the key to the file cabinet. Guo had been formally indicted on charges of alleged “illegal business activities” on May 15, 2007, but the court delayed access to the case files until May 23. Guo’s lawyers, Mo Shaoping and Hu Xiao, flew from Beijing to Guangzhou for the appointment. But on arrival, personnel told them that a “technical issue” made it impossible to see the file: the court official with the only key to the file cabinet was away and would not return until the next afternoon.<sup>186</sup> A few days later, Guo’s lawyer finally obtained the file, although it contained none of the depositions made by Guo or his allegations that he had been tortured.

The Chinese government has acknowledged that lawyers face unreasonable obstructions in accessing court documents, and have urged judicial authorities to address the problem. In March 2006, for instance, the president of the Supreme People’s Court, Xiao Yang, reiterated that “[the judicial authorities] must establish conditions to provide necessary convenience for lawyers to consult, summarize, photocopy, and duplicate case material.”<sup>187</sup>

## **Intimidation of witnesses and lack of access to evidence**

The ability of Chinese lawyers to gather evidence either independently or through the courts, to produce and examine witnesses, and to seek judicial redress when their rights are violated in the course of such attempts is sharply limited by statute and by practice. These limitations are particularly severe in criminal cases, as well as in cases deemed sensitive by the authorities, such as those alleging human rights

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<sup>185</sup> Human Rights Watch interview with F.H., a Beijing lawyer, November 2007.

<sup>186</sup> “Guo Feixiong Lawyers unable to get access to court documents at Guangdong Court,” *Voice of America* (Mandarin Service), May 24, 2007. [“粤法院搞乌龙郭飞雄律师未阅卷宗,” *美国之音*, 2007-05-24.]

<sup>187</sup> “Supreme People’s Court Notice on Conscientiously Implementing the Law on Lawyers and Protecting Lawyers’ Professional Rights in Litigation,” March 13, 2006 [最高人民法院关于认真贯彻律师法 依法保障律师在诉讼中执业权利的通知, 2006-03-13.]

violations. Generically termed as “difficulties in gathering/collecting evidence [*shou zheng nan*],” these limitations feature as one of the “three top difficulties [*san lao nan, san da nan*]” lawyers face, along with access to clients in detention and to case files detailed above.

Most testimonies in Chinese courts are in the form of written affidavits. According to a comprehensive survey carried in 2004, fewer than 1 percent of witnesses who give depositions before trial subsequently appear in court to testify.<sup>188</sup> This puts the defense at a significant disadvantage, as they have no ability to examine prosecution witnesses or produce their own witnesses. They are not entitled to attend depositions.

“It is usual for the Public Security to threaten witnesses,” one criminal lawyer told Human Rights Watch. “They say: ‘We already have your testimony ... if you change it, we will accuse you of perjury and arrest you.’”<sup>189</sup>

Chinese and foreign legal scholars who have examined how to improve witness examination procedures point to the courts’ lack of financial resources, overwork, and poor coordination with other officials, particularly police, as key constraints.<sup>190</sup> But lawyers contend that this situation is made worse by the obstacles they face in taking depositions effectively or without interference, especially in the light of other existing restrictions, such as limited access to case files.

Many lawyers told Human Rights Watch that the police often interfere with their activities and intimidate plaintiffs and witnesses.

Because the Public Security often ‘gives pressure’ to witnesses, it is very hard to interview them. They are afraid.... When you go to a small

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<sup>188</sup> Li Weihua, “‘Today no witness will appear in court’ – An in depth analysis,” *Democracy and Law*, Issue No. 4, 2005. [黎伟华, “今日庭审无证人”的深层剖析, *民主与法制*, 2004 第 4 期.]

<sup>189</sup> Human Rights Watch interview with D.X., a lawyer in Beijing, December 2007.

<sup>190</sup> Yuwen Li, “Court Reforms in China: Problems, Progress and Prospects,” 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).

town and the police are following you all the time, what kind of testimonies can you get?<sup>191</sup>

Sometimes, lawyers are forcibly kept away or sent back by the local authorities.

We went to this rural place to take the deposition of forcibly evicted farmers... but the Public Security stopped us at the restaurant where we were having lunch. They said that this matter had already been investigated.... A few individuals were ‘creating trouble,’ and for our own security [the police] could not let us go around freely.... They drove us back to the nearby township and stayed with us until we boarded the train back.<sup>192</sup>

Another common problem is impunity for acts of intimidation by non-state agents who appear to be acting at the behest of local power holders. A lawyer told Human Rights Watch about a trip undertaken to investigate a dispute over compensation for resettlement in Sichuan province.

The whole time we were interviewing the residents [who claimed they were owed compensation after having been resettled] unidentified individuals followed us.... They harassed us, blocking our way, making snide remarks, trying to dissuade residents from talking to us ... We complained to the police but they didn’t do anything.<sup>193</sup>

Many lawyers point out that such hurdles are inevitable:

These are lawyers’ ‘professional risks’. In China, this is the way it is.... We have our techniques. For instance, when we go investigate a particular place, we never stay in a hotel on site but spend the night in a neighboring town.... Also, we never go alone. This way, it is safer.

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<sup>191</sup> Human Rights Watch interview with L.W., a Beijing lawyer, November 2007.

<sup>192</sup> Human Rights Watch interview with S.T., a lawyer working in Beijing on public interest cases, March 2007.

<sup>193</sup> Human Rights Watch interview with L.J., a Beijing lawyer, January 2008.

As illustrated throughout this report, these techniques are far from being foolproof. When two Guangzhou lawyers retained by a group of Taishi villagers in 2005 attempted to investigate the situation there, they were attacked by a group of unidentified men and one of them was slightly injured. Their law firm unilaterally decided to end their representation of the villagers.<sup>194</sup>

In another case, Ren Hua, a well-known lawyer from Beijing and author of a public appeal to the National People's Congress and the State Council to abandon the petitioning system of "Letters and Visits," went missing for three days after an attack by thugs in Hunan province in August 2007.

Ren had been conducting investigations with three other persons for two days in Jiangshui township, where some residents were accusing the local authorities of embezzlement, forced eviction, and official collusion with businessmen. On August 5, 2007, unidentified thugs burst into their hotel room, in the nearby city of Yongzhou. Ren sent a text message to friends in Beijing describing the incident and mentioning that two people were injured, and then disappeared for three days. The local Public Security Bureau denied any knowledge of his whereabouts to relatives and journalists from *Radio Free Asia*. Although Ren never spoke publicly about the incident, other lawyers told overseas media that he had been detained by thugs acting at the behest of local officials wanting to prevent scrutiny of their administration.<sup>195</sup>

Lawyers also say that they often face great difficulties in gathering physical and documentary evidence. The Law on Lawyers stipulates in general terms that lawyers have the right to request evidence from work units (the Chinese term for public and private bodies) or individuals.<sup>196</sup> The extent of this right is detailed in the Criminal

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<sup>194</sup> "Official pressures on the Taishi case: Guangzhou Rights Defense Lawyers Dismissed," *Radio Free Asia*, December 13, 2005 [“官方打压太石村事件 广州维权律师被解聘,” 自由亚洲电台, 2005-12-13], <http://www.rfa.org/mandarin/shenrubaodao/2005/12/13/taishichun/> (accessed August 30, 2007).

<sup>195</sup> "Rights defender Ren Hua and others disappear after beatings by thugs while conducting an investigation in Hunan," *Radio Free Asia*, August 9, 2007. [“维权人士任华等在湖南作调查被暴徒殴打目前失踪,” 自由亚洲电台, 2007-08-09], <http://www.rfa.org/mandarin/shenrubaodao/2007/08/09/renhua/> (accessed August 9, 2007).

<sup>196</sup> Law on Lawyers, various articles.

Procedure Law and various regulations and interpretations issued by the judicial authorities.<sup>197</sup>

In criminal matters, the right of lawyers to “collect evidence,” including witness testimonies and depositions, is conditioned on prior approval by the prosecution and agreement by the institution or individual to which the inquiry is directed. This system of “double permission [*shuangchong xuke*]” mandates that the defense submit a written application to the prosecution or the court to approve discovery procedures,<sup>198</sup> such as obtaining official records from public or private institutions and individuals, taking testimonies, producing witnesses in court, and obtaining subpoenas for witnesses and documentary evidence.<sup>199</sup>

Lawyers also complain that judicial authorities typically ignore or frustrate their efforts to collect information and evidence during the pre-trial stage. One lawyer from Hainan told Human Rights Watch:

Collecting evidence is an impossible task for Chinese lawyers. The *gongjianfa*'s [judicial organs'] mentality is still that we are the 'enemy,' so they will not cooperate. You can present your own evidence but the court will just ignore it, saying it is not valid.<sup>200</sup>

Numerous professional publications by lawyers and legal experts echo the systemic problems encountered in gathering evidence. A typical article published in *China Lawyers*, published by the All-China Lawyers Association (ACLA), deplores lawyers' inability to collect information:

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<sup>197</sup> See in particular: “Regulations on a number of issues concerning the implementation of the criminal procedure law, Jointly issued by the Supreme People’s Court, Public Security Ministry, State Security Ministry, Justice Ministry, National People’s Congress Standing Legal Work Committee,” January 19, 1998 [最高人民法院 最高人民检察院, 公安部, 国家安全部, 司法部, 全国人大常委会法制工作委员会: 关于刑事诉讼法实施中若干问题的规定, 1998-01-09], [http://www.lawstar.cn/txtcac/chl/093/chl\\_93.021.htm](http://www.lawstar.cn/txtcac/chl/093/chl_93.021.htm) (accessed November 7, 2007).

<sup>198</sup> As in many civil law systems, there is no equivalent in China of the American system of discovery. The term “discovery” is employed here to designate all actions undertaken by the defense to obtain documentary from third parties in view of legal proceedings.

<sup>199</sup> Article 37 of the Criminal Procedure Law sets forth that the defense can ask procuracy courts to gather, get evidence or apply to court let know witness to attend court to make testimony.

<sup>200</sup> Human Rights Watch interview with H.L., a lawyer from Southern China, February 2007.

Under a situation where it is impossible to get appropriate relief from the judiciary, lawyers are powerless in trying to conduct normal investigation and collect evidence. This translates into difficulties in defending plaintiffs.<sup>201</sup>

Despite repeated promises by the government since the enactment of the Law on Lawyers in 1996 that the judicial authorities would improve their “cooperation” with lawyers, specific procuracy and court regulations make clear that those authorities enjoy almost unfettered discretion in granting or refusing lawyers’ applications for discovery of evidence or examination of witnesses. One provision in the People’s Court Regulations, for instance, indicates that courts are to consent to a lawyer’s demand “if the court believes it is indeed necessary [*renwei queyou biyao de*].” There are no further provisions explaining what criteria courts are to apply in determining whether the evidence is “necessary.”

According to a Beijing criminal lawyer, courts often resort to unmotivated refusals:

Whether it is the procuracy or the court, the answer is always the same: ‘We believe there is no necessity.’ There is nothing you can do about it. It’s discouraging.<sup>202</sup>

Even when the judicial authorities agree to a lawyer’s request to obtain evidence from a third party, the absence of explicit legal provisions relating to the disclosure of information gives ample ground for refusal to cooperate from those who have been asked to provide information. According to a Shanghai lawyer:

When lawyers direct their inquiries to an official ministry, the relevant departments put up all sorts of obstacles such as ‘refusal on the grounds that they give material to the procuracy, not to lawyers.’<sup>203</sup>

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<sup>201</sup> Ye Qing and Gu Yuejin, eds., *Study of the Lawyers System in China* (Shanghai: Shanghai Academy of Social Sciences Press, 2005), p. 176. [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 176 页.]

<sup>202</sup> Human Rights Watch interview with L.J., a lawyer in Beijing, January 2008.

<sup>203</sup> 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.]

The difficulties that lawyers and their clients have in obtaining hospital records are an illustration of the problem. In Beijing, lawyers representing HIV-AIDS patients, and patients who had been subjected to trial drugs without their informed consent, faced enormous difficulties in obtaining simple information such as patient records, financial documents, and administrative records from the hospital:

The least you can say is that they were not forthcoming. We asked for certain documents, such as consent forms and they refused.... We pressed them, and finally they provided them to us. But then we realized they were forgeries: the dates were wrong.<sup>204</sup>

Lawyers say that it is difficult and time consuming to try to obtain a court order when third parties are not cooperating, and futile when state organs are concerned.

The October 2007 revisions of the Law on Lawyers indicate some willingness to strengthen the right of lawyers to access case documents, in particular specifying that the work units and individual “ought to cooperate [*yindang yuyi peihe*].” But the accessible information remains limited to the “principal evidence” as decided by the prosecution, and domestic legal experts insist that only a revision of the Criminal Procedure Law could effectively improve access to case information.

## **Restrictions on free expression and use of media by lawyers**

The ability of lawyers to obtain justice for their clients is constrained by limits on freedom of expression and information.<sup>205</sup> While the central government makes use of media exposure and “public opinion supervision [*yulun jian du*]” to promote its policies and keep local officials’ corruption and abuses of power in check, it maintains that the media should not be allowed to become a platform for criticizing

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<sup>204</sup> Human Rights Watch interview with W.Y., a lawyer working on “class action” cases, March 2007.

<sup>205</sup> Tight restrictions on media freedom also affect foreign correspondents working in China. See Human Rights Watch, “*You Will Be Harassed and Detained*”: *Media Freedoms Under Assault in China Ahead of the 2008 Beijing Olympic Games*,” August 2007, vol. 19, no. 12(C), <http://hrw.org/reports/2007/china0807/index.htm>.

or opposing CCP rule, which in turn may result in limiting the exposition of official wrongdoing.

Academics are now mostly free to discuss any legal topic in academic settings, although publishing in newspapers or journals remains tightly controlled and some outspoken advocates of legal reform have been blacklisted or temporarily suspended from teaching.<sup>206</sup> An increasing number of controversial cases are debated in the media, and lawyers themselves often make the media part of their overall litigation or defense strategy.<sup>207</sup> Widening internet access has also eroded the government's traditional monopoly over the means of publication.

At the same time, Party authorities routinely censor the coverage of cases that may embarrass the authorities, typically stating that the case could have “a negative influence on public sentiment” or could be “detrimental to social stability.”

Many cases that expose wrongdoing by local officials or local governments are likely to be suppressed in the local media, which are under the supervision and control of the local authorities (through the News Publishing Bureau, the Propaganda Department, and various Party committees). But in some cases, the influence of these local power-holders does not extend to media from other provinces or to national media. Chinese journalists are well aware of this and the practice of “reporting from another location [*yidi baodao*]”—exposing a problem in one province in the media of another province—is a common technique to circumvent local censorship.

Numerous national television programs report on cases of local official wrongdoings that have been brought successfully to court, often through long tribulations. But according to journalists, a significant proportion of these investigations are also never broadcast because either they are considered too sensitive by the government

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<sup>206</sup> 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.

<sup>207</sup> 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).

or because the local authorities have been able to convince the central authorities not to air them. According to a journalist working for a domestic newspaper, “once the Propaganda Department or the News Publishing Bureau, for whatever reason, has issued an edict censoring a particular subject, it will be very difficult to release it. No one will want to take the risk to report about it.”<sup>208</sup>

When reporting on a case is banned by local media, lawyers sometimes turn to overseas Chinese media and to the foreign press in the hope of overcoming resistance and protecting themselves by gaining a degree of notoriety. But such international exposure can also turn into a liability for the lawyers, and their clients, and many lawyers have been warned repeatedly not to accept or conduct interviews with foreign media. In addition, a number of local regulations governing the administration of lawyers explicitly limit their right to talk to domestic and foreign media.<sup>209</sup>

The case of Teng Biao, a lawyer at the Beijing Huayi Law firm and a lecturer at the University of Politics and Law, is emblematic of the risks run by lawyers who campaign publicly for their causes.

On March 6, 2008, at around 8.30 p.m., Teng was abducted by plainclothes policemen as he was coming home. He was restrained, bundled into an unmarked car, blindfolded, and brought to a secret location where he was kept for 40 hours. Police told him he had been detained because of articles he had written on protecting the rights of citizens, including an open letter to the government penned with fellow activist Hu Jia,<sup>210</sup> who was sentenced to three years’ imprisonment a few weeks later. The police threatened to have Teng disbarred, dismissed from his university position, and arrested on subversion charges.<sup>211</sup>

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<sup>208</sup> Human Rights Watch interview with S.R., a mainland reporter in Beijing, March 2007.

<sup>209</sup> See Human Rights Watch, *“A Great Danger for Lawyers.”*

<sup>210</sup> A full translation of the letter “The Real China and the Olympics” is available at [http://hrw.org/pub/2008/asia/teng\\_biao080220.pdf](http://hrw.org/pub/2008/asia/teng_biao080220.pdf)

<sup>211</sup> On Hu Jia’s case, see “Chronology of Hu Jia’s Case,” Human Rights Watch, April 2008, <http://hrw.org/english/docs/2008/02/26/china18149.htm>. See also: “China: Activist’s Jailing Spotlights Olympics’ Negative Effect on Rights,” Human Rights Watch news release, April 3, 2008; “Hu Jia’s Fate a Test of Beijing’s Human Rights Stance,”

“I was taken away on Thursday night. They shoved me into a car and put a bag over my head,” Teng told Agence France Presse after his release.<sup>212</sup> “They didn't show me any identification, but they said that they were from the Beijing Public Security Bureau.”<sup>213</sup>

“They told me not to talk to foreign journalists,” Teng said. “I can't tell you exactly what they said. They told me that I shouldn't speak. There is a lot of pressure on me. There is no law that gives them the right to silence me, it is only their threats.”<sup>214</sup>

A former visiting scholar at Yale University's law school, Teng had received the French Republic Award for Human Rights in December 2007. In April 2008, Teng co-signed an appeal by 28 lawyers offering legal assistance to Tibetan protesters who had reportedly been detained after the uprising in Lhasa. The appeal was censored on all internet sites in China.

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Human Rights Watch news release, February 26, 2008; “China: Activist Couple Accused of Endangering State Security,” Human Rights Watch news release, May 21, 2007.

<sup>212</sup> “Rights lawyer says released after kidnap by Chinese police,” *Agence France Presse*, March 8, 2008

<sup>213</sup> *Ibid.*

<sup>214</sup> *Ibid.*

## IX. Control Over Lawyers' Licenses

Lawyers' licenses must be registered yearly. Unregistered licenses are not valid.

—Article 12 of the Ministry of Justice's "Methods for the Management of Lawyers Professional Licenses"

The first warning is that someone at the Judicial Bureau will give you a simple phone call to invite you to "have a chat."

—W.Z., a Shanghai lawyer, September 2007

Lawyers interviewed by Human Rights Watch said that the risk of suspension or withdrawal of their professional license was their greatest concern when handling cases likely to trigger official retaliation. This risk, they say, is a powerful deterrent keeping lawyers from taking on such cases.

In effect, Chinese lawyers must fulfill four conditions to practice: (1) hold a personal professional lawyer's license, (2) each year "register [*zhuce*]" this license with the local bureau of the Ministry of Justice, (3) be a member of the local lawyers association (which makes them automatically a member of the All-China Lawyers Association), and (4) be employed by a registered law firm.<sup>215</sup>

Aside from the formal suspension of a lawyer's own professional license, lawyers can be disqualified and barred from practice through denial of the mandatory annual registration of licenses, loss of membership in the local bar association, or termination of their employment with a registered firm.

All the lawyers interviewed by Human Rights Watch acknowledged receiving regular "pressure [*yali*]" from judicial bureau officials, who warn them about unspecified "repercussions" of their work.

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<sup>215</sup> The October 2007 revisions to the Law on Lawyers have introduced the possibility of setting up one-person law firms for lawyers who have at least five years of professional experience (Article 16.) Some cities had been experimenting with the system in previous years.

A number of human rights lawyers and lawyers with human rights cases against state authorities have been disbarred or otherwise professionally disqualified in recent years. This includes Li Jianqiang, whose annual registration was denied without any written justification; Yang Zaixin, Zhang Jiankang, and Tang Jingling, whose respective employers, under pressure from the local judicial bureaus, did not endorse their application for re-registration; and Gao Zhisheng, Guo Guoting, and Zheng Enchong, whose personal professional licenses were suspended.

For judicial authorities the most expedient way to disqualify a lawyer is to deny his re-registration at the end of the year, because it does not entail the procedures required for formal suspension or withdrawal. Although the year-end procedure is termed “registration [*zhuce*],” for all intents and purposes it is an annual licensing process in which the judicial authorities are the sole arbiter of whether the registration will be granted or denied.<sup>216</sup>

One lawyer told Human Rights Watch that the annual re-registration was a sufficient deterrent for many in the legal profession to refrain from engaging in sensitive cases “such as cases that can influence society, cases against government officials, or mass cases”:

The first warning is that someone at the Judicial Bureau will give you a simple phone call to invite you to ‘have a chat.’ There is nothing official in this, but lawyers get the message. It’s a threat.<sup>217</sup>

To circumvent this ever-present risk, lawyers say they frequently choose to handle cases that carry a risk of official retribution outside of the area where they are officially registered. This effectively minimizes the risk of a retaliatory suspension, as local authorities in a different province or a smaller jurisdiction have little power over judicial bureaus situated elsewhere, in particular in larger cities like Beijing, Shanghai, or Guangzhou.

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<sup>216</sup> Grounds for denial of registration stipulated by the judicial authorities include non-completion of yearly mandatory training, breach of professional standards, ineligibility because of on-going suspension or default of membership to the bar association.

<sup>217</sup> Human Rights Watch interview with W.Z., a Shanghai lawyer, September 2007.

Still, lawyers say they this “outsider tactic” is of little help if one becomes the subject of attention of the central authorities:

“Those with good relationships with judicial authorities have nothing to fear, but those who take sensitive cases have to take a calculated risk,” one lawyer from Beijing told Human Rights Watch.<sup>218</sup> “Most lawyers just don’t want to take this risk.”

The disqualification of lawyers who handle sensitive cases also sends a message to the rest of the legal profession.

### **Manipulation of the annual registration requirement**

The requirement for lawyers to “register” annually is not stipulated in the Law on Lawyers, but comes from a simple regulation issued in November 1996 by Ministry of Justice, “Methods for the Management of Lawyers Professional Licenses.”<sup>219</sup>

According to this regulation, a lawyer’s application for renewal must be submitted to the judicial bureaus by the law firm for which he works. The applicant must submit a number of documents describing his work during the year, including proof of attendance at the mandatory training courses by the judicial bureaus, which combine professional training with some political indoctrination,<sup>220</sup> and a summary of the work he did over the past year. The local judicial bureau then “issues a vetting opinion [*shencha yijian*]” before “transmitting it to the higher level” for registration. This process gives great discretion to the judicial bureau to decide whether to grant the re-registration. The standards upon which the “examination opinion” is based are not publicly available.

Some domestic law experts have argued that the system of annual registration is necessary in order to ensure that members of the legal profession continue to attend

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<sup>218</sup> Human Rights Watch interview with L.J., a lawyer in Beijing, January 2008.

<sup>219</sup> “Methods for the management of lawyers’ professional licenses,” Ministry of Justice, Order No 46, November 25, 1996. [《律师执业证管理办法, 1996年11月25日司法部令第46号发布。]

<sup>220</sup> See for instance: “The Judicial 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议,” 郑州律师网, 2006-04-19], [www.zzladyer.org/show.aspx?id=1265](http://www.zzladyer.org/show.aspx?id=1265) (accessed May 26, 2006).

the annual training needed to keep up in a rapidly evolving legal system. However, there is evidence that the registration is used as a way to exert influence over lawyers and make them dependent on the Party and government authorities.

For many lawyers, particularly in large cities like Beijing and Shanghai, this annual re-registration procedure can be a simple formality. But in smaller places, it is a far greater concern. The lines of authority between local power-holders or Party committees and the local bureaucracy are much shorter, making it easier to retaliate against a lawyer by instructing the judicial bureau not to grant the annual registration.

### *Denial of re-registration*

Li Jianqiang, a lawyer from the Shandong Guanhua law firm who had defended a string of human rights and political cases, was denied renewal of his license registration by the Shandong Provincial Judicial Bureau in June 2007.

Li, a graduate of the Chinese Literature Department of People's University and of the Economics Department of the University of Politics and Law, started his criminal lawyer career in 1994. He has represented writers, journalists, dissidents, and members of underground churches, including the writer Yang Tianshui, the poet Li Hong, the activist and artist Yan Zhengxue, and the dissident Chi Jianwei. His license had already been suspended once by the authorities in November 2003, but was reinstated later. Li also defended Chen Shuqing, a member of the banned China Democratic Party, who was charged with the crime of "subversion of state power."

In November 2006, Li published a short report on the internet, "The situation of freedom of religion and freedom of expression in China in 2006," which documented a series of violations, including those at issue in certain cases he had defended, in very candid language:<sup>221</sup>

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<sup>221</sup> Li Jianqiang, "Review of the situation of freedom of religion and freedom of expression in China in 2006," internet publication, dated November 11, 2006 (revised December 8, 2006) [李建强, "2006 年中国信仰自由和言论自由状况回顾 作者," 2006 年 1 月 20 日 (12 月 8 日修订)] reproduced at [http://crd-net.org/Article/Class53/200704/20070428082905\\_4111.html](http://crd-net.org/Article/Class53/200704/20070428082905_4111.html) (accessed July 7, 2007).

As the year 2006 ends, the general situation for freedom of expression and freedom of religion in China has deteriorated. Within a year, there has been a series of arrests and trials of liberal writers, journalists, rights defenders, Christians and religious believers. Important cases included the sentencing in Nanjing of the writer Yang Tianshui, who was sentenced to 12 years, the rights defender Chen Guangcheng, to four years and three months, the Hebei writer Guo Qizhen, to four years, the journalist from Guizhou Li Yuanlong to two years, the Shandong writer Li Jianping to two years, the Hunan journalist Yang Xiaoqing [though he] avoided criminal punishment, the writer Li Zhangqing to three years.

In the second part of the year, there was also the arrest of Gao Zhisheng, Guo Feixiong, Zhou Zhirong, Zhang Jianhong, Cheng Shuqing, Yan Zhengxue, Chi Jianwei, and other rights defense lawyers, liberal writers, and civil rights volunteers. At least 2,000 underground Christians have been detained, among whom a few tens were tried or sentenced to reeducation-through-labor. The general human rights situation in China has deteriorated, and religious rights have also been severely repressed.<sup>222</sup>

The judicial bureau did not provide an oral or written explanation for the 2007 refusal to re-register Li, but he attributed the sanction to his work on human rights cases:

[The bureau] didn't even provide a reason; they just didn't renew the registration of my license for the coming year. I have defended many dissidents; maybe some people are not very happy about it. I can imagine that at a certain point, the authorities just don't register you anymore.<sup>223</sup>

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<sup>222</sup> Ibid.

<sup>223</sup> "Human Rights lawyer Li Jianqiang's application to extend his license denied," *Radio Free Asia* (Mandarin service), July 20, 2007. ["人权律师李建强申请执照延期被拒," 自由亚洲电台, 2007-07-30], reproduced at [http://crd-net.org/Article/Class53/200707/20070730232300\\_5221.html](http://crd-net.org/Article/Class53/200707/20070730232300_5221.html) (accessed August 7, 2007).

After Li lost the ability to practice, he explained that the Shandong Judicial Bureau's refusal to provide him with a written explanation for refusing to extend his license made it impossible for him to appeal the decision.

I don't believe I can appeal to higher level because they did not provide a written justification for the refusal of my application. Mine is not a situation where one receives a penalty according to laws and regulations because of a particular transgression—instead, the judicial bureau doesn't give you any reason, they just don't issue you the registration license! There is no process, and this contravenes the rules governing the administration of lawyers.<sup>224</sup>

Neither the Shandong Lawyers Association nor the All-China Lawyers Association volunteered to take Li's case to the judicial authorities.

### *Indirect denial of registration: Pressures on law firms*

In addition to directly denying re-registration, in some cases the authorities have exerted pressure on local bar associations not to register a lawyer, or on law firms to dismiss or disassociate from a lawyer, to ensure that the lawyer in question cannot fulfill the conditions for re-registration of his or her license to practice.

Lawyer Zhang Jiankang, who had represented farmers in a high profile land dispute in Nanhai, Guangdong Province, was denied re-registration in March 2007.<sup>225</sup> Under pressure from the Shaanxi Judicial Bureau, Zhang's law firm declined to endorse his membership application to the local lawyers association, effectively depriving him of his lawyer's license.<sup>226</sup> According to Zhang, the Xi'an Judicial Bureau threatened to close the Diyi law firm if it supported Zhang's membership.

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<sup>224</sup> Ibid.

<sup>225</sup> "Rights Protection Lawyer Zhang Jiankang Refuses to Drop the Nanhai Extortion Case," *Radio Free Asia* (Mandarin Service), December 11, 2006, <http://www.rfa.org/mandarin/shenrubaodao/2006/12/11/nanhai/> (accessed May 16, 2007).

<sup>226</sup> Under local regulations, law firms are responsible for the registration of lawyers to the local bar association. Lawyers cannot register individually and solo practices are not allowed. "Lawyer at Risk of Losing License, Facing Punishment for Defending Farmers," *China Rights Defenders* (crd-net.org), March 29, 2007, <http://crd-net.org/Article/ShowArticle.asp?ArticleID=3799> (accessed May 16, 2007).

Zhang had been warned earlier by the judicial authorities to stop getting involved in controversial cases. In May 2006, he was denied permission to travel to the United States for a conference. Zhang provided the following account of his exchange with an officer at the Public Security Bureau who had authority over the issuance of passports:

Official: “You can not apply for a passport. The Jiangxi Province State Protection Bureau has a case on you, your acts have violated State security.”

Zhang: “Can you be more concrete?”

Official: “I cannot be more precise. This is not my responsibility to inform you of the circumstances. You can take it up with the Jiangxi State Protection Bureau; if they drop your case, you can get a passport.”<sup>227</sup>

Officers from the State Protection Bureau warned him that he should abandon all controversial cases such as the land dispute in Nanhai, stop giving interviews to the media and stop writing articles critical of the government posted on overseas websites.<sup>228</sup>

Despite these warnings Zhang did not cease his activities, and argued in articles posted on overseas websites that the interference from the judicial authorities was illegitimate.<sup>229</sup> In October 2006, Zhang wrote:

Not to accept interviews, not to say a word, this is like being a dead person. I don't care where request for interviews come from, I have the right to be interviewed.<sup>230</sup>

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<sup>227</sup> Zhang Jiankang, “Record of the obstacles in the defense of Wang Wenyi,” Letter posted on the overseas internet forum “Democracy Forum” (<http://www.asiademo.org/>), dated May 27, 2006, Xi'an [张鉴康, “为王文怡辩护受阻纪事,” 转自《民主论坛》, 2006年5月27日于西安], reproduced at [http://boxun.com/hero/2006/wwy/191\\_1.shtml](http://boxun.com/hero/2006/wwy/191_1.shtml) (accessed May 16, 2007).

<sup>228</sup> Ibid.

<sup>229</sup> “Lawyer Zhang Jiankang has still not embarked on the journey to represent the Jiangxi case,” *China Human Rights Defenders* (crd-net.com), April 4, 2007, [“张鉴康律师代理浙江案件仍然没有成行,” 维权网, 2007-4-4], <http://crd-net.org/Article/ShowArticle.asp?ArticleID=3840> (accessed May 16, 2007).

Zhang also continued his involvement in the Nanhai case. In January 2007, he was informed by his law firm that they would not register him at the local bar. According to Zhang, his firm was sympathetic but felt they could not risk alienating the judicial authorities: “You are within your rights, but we don’t have a choice. If you file a complaint, we will cooperate.”<sup>231</sup>

Zhang’s law firm subsequently tried to negotiate with the provincial judicial authorities that he be allowed to finish ongoing cases that he had been handling. In April 2006, the firm made a written demand to the Xi’an Judicial Bureau to ask permission for Zhang to travel to neighboring Jiangsu province to defend a criminal case he had started to work on a few months before, in June 2006. The bureau responded by calling the law firm two days later, stating that Zhang was not authorized to handle any case, old or new, and that he was to cease immediately handling cases with which he had been entrusted previously.<sup>232</sup> Zhang later decided to travel to Jiangsu nevertheless, but was unable to represent his client.<sup>233</sup>

In April 2007, seven protesters from the Nanhai land dispute were given sentences ranging from two-and-a-half to four years’ imprisonment on charges of extortion and blackmail. Only one of them was represented by a lawyer at the trial. The verdicts were upheld by the intermediate court in October 2007.

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<sup>230</sup> Lin Hui, “Lawyer Zhang Jiankang discuss house arrest and the case of Gao Zhisheng,” *The Epoch Times* (Chinese Web Edition), October 13, 2006 [林慧, “张鉴康律师谈软禁经过及高智晟案,” *大纪元*, 2006-10-13], <http://www.epochtimes.com/gb/6/10/13/n1485688.htm> (accessed May 16, 2007). The Epoch Times, a publication with ties to the banned sect Falun Gong, does not meet minimum standards of editorial independence. However, Zhang Jiankang has since confirmed in various other interviews the facts reported in this particular story.

<sup>231</sup> *Ibid.*

<sup>232</sup> “Lawyer in Charge Helps in Wenzhou Case, Will it Be Zhang Jiankang’s Last Case?” *The Epoch Times* (Chinese Web Edition), April 8, 2007 [“主办律师温州当助手 张鉴康最后一案?” *大纪元*, 2007-4-8], reproduced at <http://crd-net.org/Article/ShowArticle.asp?ArticleID=3887> (accessed May 16, 2007). See note 230 regarding the authoritativeness of this report.

<sup>233</sup> “Lawyer Zhang Jiankang has still not embarked on the journey to represent the Jiangxi case,” *China Human Rights Defenders* (crd-net.com), April 4, 2007. [“张鉴康律师代理浙江案件仍然没有成行,” *维权网*, 2007-4-4], <http://crd-net.org/Article/ShowArticle.asp?ArticleID=3840> (accessed May 16, 2007).

## Politically-motivated disbarment and sanctions against lawyers

The formal suspension of professional licenses is rarer but has nevertheless been used in the case of particularly outspoken lawyers handling contentious human rights cases and political dissidents. Prominent examples include Gao Zhisheng, who was suspended in December 2006, Guo Guoting, who was suspended in March 2005, and Zheng Enchong, who was disbarred in 2001.<sup>234</sup>

Aside from the requirement to re-register yearly, the Law on Lawyers sets forth a number of specific irregularities for which the judicial bureau can impose a temporary suspension ranging from three months to one year. Many of the proscribed actions are non-controversial—such as the prohibition against engaging in corrupt practices with court personnel—but the law can also be easily manipulated, given the inclusion of clauses against “inciting and instigating the adoption by plaintiffs of illegal means such as creating public disturbances and harming public order to solve disputes” (Article 39-7), which deters lawyers from representing many protesters, and the exclusion from immunity of “speech that threatens national security” (Article 37) made by lawyers in court.<sup>235</sup>

The Ministry of Justice’s own regulations, the “Methods regarding the punishment of illegal acts by lawyers and law firms,” expanded greatly on the provisions of the Law on Lawyers before its revision in October 2007,<sup>236</sup> and includes a number of vaguely defined clauses that could easily be abused for politically-motivated disbarment or suspension. Those include “using media and publicity or other means to carry out untrue or unsuitable publicity” (Article 9-11); “other acts for which a penalty is

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<sup>234</sup> After the loss of his professional license Zheng continued to provide legal advice to forcibly displaced Shanghai residents . He was jailed for three years in 2003 under trumped-up state secrets charges. To this date he is still under house arrest at his home in Shanghai and prevented from traveling or meeting foreign visitors. See “Prisoner Profile: Zheng Enchong,” *China Rights Forum*, No 4, 2003, pp. 124-129.

<sup>235</sup> The reaction of lawyers to the introduction to this new requirement in 2008 is reflected in “Revisions a Step forward but not Enough: Lawyers Mixed Response to Changes to Protect Legal Practitioners,” *South China Morning Post*, October 30, 2007.

<sup>236</sup> Ministry of Justice, “Methods regarding the punishment of illegal acts by lawyers and law firms,” March 19, 2004. [律师和律师事务所无所违法行为处罚办法, 2004年3月19日司法部第86号令发布.] In September 2007, in a rare initiative, five lawyers from Anhui province have launched a lawsuit against the Provincial judicial bureau to challenge their disbarment. “Five lawyers from Anhui sue the provincial judicial bureau for their disbarment,” *Xin An Evening News*, September 7, 2007 [“安徽5名律师因被吊销执业证起诉省司法厅,” *新安晚报*, 2007-09-07], <http://ah.news.163.com/07/0907/08/3NPAELSB0057007D.html> (accessed September 13, 2007).

appropriate” (Article 9-23); and “other illegal acts, that seriously damage the image of the legal profession” (Article 10-3).<sup>237</sup>

Article 9 of the same regulations allows for law firms to be temporarily suspended for three months to a year if they fail to promptly register “changes regarding the name, charter, responsible persons, partners, address and partnership agreement.” This last clause was used by the Beijing Municipality Judicial Bureau to justify the suspension of Gao Zhisheng’s law firm, the Shengzhi law firm, before his subsequent arrest and sentencing under subversion charges.

### *Gao Zhisheng*

On October 18, 2006, Gao issued an open letter addressed to China’s top leaders, Hu Jintao and Wen Jiabao, denouncing the widespread use of torture against Falun Gong practitioners.

Six days after, as he was working on a case in the distant province of Xinjiang, Gao received a call from the vice-head of the Beijing Judicial Bureau. The official asked him to withdraw his letter or face unspecified consequences. “If you don’t take it back, I don’t need to say what this implies...,” Gao reported having been told.

On November 3, upon his return to Beijing, Gao was summoned to the judicial bureau for a “group discussion” during which he was asked to drop all sensitive cases and to stop talking to foreign media. The next day, a judicial bureau investigation team went to the Shenzhi law firm, taking records and interrogating Gao’s personal assistant.

On November 4, the Beijing Judicial Bureau told Gao that his law firm was being suspended for a year “following the results of the investigation.” The two reasons for the temporary suspension, effective 15 days later, were a “failure to register in time the change of address of the law firm” and “violat[ing] the professional ethics of the legal profession.”<sup>238</sup>

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<sup>237</sup> Revisions to the “Methods” are expected to follow the revisions to the Law on Lawyers promulgated in October 2007. There are indications that the requirements listed here will remain in place, as they were initially introduced in the draft revisions to the Law on Lawyers but were not included in the version promulgated in October 2007.

<sup>238</sup> Both provisions were taken from the “Methods regarding the punishment of illegal acts by lawyers and law firms.”

Gao said that the suspension was retaliation for his letter and his refusal to drop the sensitive cases. He also disputed the veracity of both charges, saying that his staff had actually tried repeatedly to register the change of address of the practice, but that the Judicial Bureau would not process the registration, nor acknowledge its refusal to process it.

Gao also disputed the basis of the charge of having violated professional ethics, which stemmed from the fact that a legal document submitted by his firm bore the signature of the lawyer of another practice, Tang Jingling. The document was a petition to visit the rights activist Guo Feixiong, who was at the time in police custody in Guangzhou.<sup>239</sup>

A few weeks later, the Beijing Judicial Bureau revoked Gao's personal law license, and he was instructed to turn it over or have it confiscated by force.<sup>240</sup> The director of the Lawyers and Notaries department of the Beijing Judicial Bureau confirmed to Associated Press that Gao's license had been revoked, but refused to give further details, stating only that the decisions had been made "some time ago."<sup>241</sup>

Li Heping, one of the lawyers who had banded together to defend Gao, reviewed the bureau's notification and said that the cancellation violated the law. Gao stated at the time that he would appeal the decision but he was arrested a few weeks later.

### *Guo Guoting*

Guo Guoting, director of the Tianyi law firm in Shanghai, had practiced maritime law for almost twenty years. A guest professor at the law institute of Wuhan University, he had published numerous books and articles on commercial and maritime law, and was a member of the National Arbitration Committee on Maritime Affairs.

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<sup>239</sup> Guo Feixiong was then released, before being arrested again a few months after. He was sentenced to five years imprisonment for "illegal business activities" in November 2007.

<sup>240</sup> Joseph Kahn, "Legal Gadfly Bites Hard, and Beijing Slaps Him," *The New York Times*, December 12, 2005.

<sup>241</sup> "Activist lawyer to be stripped of license," *Associated Press*, December 14, 2005.

In 2003, he decided to help a former classmate, Zeng Enchong, a former lawyer who was fighting a legal battle on the behalf of forcibly evicted residents in Shanghai. Zeng had been disbarred in 2001 after he leveled accusations of collusion between developers and the Shanghai municipality. Despite his disbarment, he continued to work on behalf of residents, filing multiple lawsuits. He was arrested in June 2003 and charged with a state secrets offense for passing an article from an internal publication of *Xinhua* news agency to an overseas human rights organization.

Almost immediately after Zeng's arrest, Guo started to receive warnings from the Shanghai judicial authorities telling him to drop Zeng's case. "The authorities called me in 18 times to tell me to abandon this case," he told the *New York Times* at the time.<sup>242</sup> "It's not a legal matter, it's a political matter,' they'd say. Finally, a midlevel cadre warned me, 'If you pursue this case any further, whatever comes of it will be entirely your own responsibility.'"<sup>243</sup>

Guo refused to yield to these pressures, and continued to defend Zeng and others arrested for posting articles online. Shi Tao was accused of "illegally providing state secrets abroad" for posting the content of a circular from the Propaganda Department related to the June 4<sup>th</sup> anniversary of the 1989 Tian'anmen crackdown. He had been arrested in November 2004 and his trial was scheduled for March 2005. Zhang Lin, a dissident writer, had been imprisoned since January 2005 for articles he posted on overseas web sites related to the Falun Gong movement and calling for political reform. Zhang faced state security charges, with a trial due in August 2005. Huang Jinqiu, an internet essayist, had been arrested in September 2003 and sentenced in September 2004 to 12-year imprisonment for subversion and writing "reactionary articles."<sup>244</sup>

Guo had mounted vigorous challenges on all three cases, both on procedural and freedom of expression grounds, and faced growing pressure from the Shanghai

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<sup>242</sup> Howard W. French, "A Mild Shanghai Lawyer and His Accidental Crusade," *The New York Times*, September 18, 2004.

<sup>243</sup> *Ibid.*

<sup>244</sup> Shi Tao was ultimately sentenced to 10-year imprisonment in April 2004. He received the Golden Press Freedom award from the World Association of Newspapers (WAN) in March 2007. Zhang Lin was sentenced to five-year prison sentence on 28 July 2005 on charges of "harming national security."

government to drop these controversial cases. On February 22, 2005, he was barred from a scheduled visit to Zhang Lin. The next day, over a dozen officials from the Shanghai Judicial Bureau raided Guo's firm. They confiscated his license, having pretended that they needed to copy his license number, and took away his computer. On March 1, the Shanghai Judicial Bureau issued Guo a one-year suspension. Guo stated that it was an "unjustified official punishment" and announced his intention to challenge the suspension at the hearing on March 4.

To prevent Guo's supporters from attending the hearing, the Shanghai Judicial Bureau changed the place of the hearing at the last minute to another location. Police then prevented fellow lawyers from entering the hearing chamber by claiming that it was already "full."

According to Guo's lawyer, Wei Rujiu, the hearing was perfunctory. The judicial authorities accused Guo of having written articles that "slandered the Communist Party" and "violated the four cardinal principles" of the Constitution.<sup>245</sup> Representatives from the Shanghai Judicial Bureau submitted Guo's information, including Guo's defense statement, articles he had written, and media interviews he had given.<sup>246</sup> "Guo admitted to being the author of the articles, but did not admit that the content was attacking the Party and socialism," Wei subsequently told overseas media.<sup>247</sup>

Immediately after the hearing the police put Guo under house arrest. Uniformed and plainclothes police monitored him around the clock, confiscated his mobile phone, wiretapped his home phone and prohibited him from talking to the media.<sup>248</sup> Guo

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<sup>245</sup> The four cardinal principles laid down in the preamble of the Constitution intimate that China cannot deviate from Marxist ideology, CPC rule, people's dictatorship and the socialist road.

<sup>246</sup> "The Shanghai rights defender lawyers Guo Guoting is suspended for one year," *Deutsche Welle* (Mandarin Service), March 7, 2005 ["上海维权律师郭国汀被罚停业一年," 2005-03-07], <http://www.dw-world.de/dw/article/0,2144,1510688,00.html> (accessed April 8, 2008).

<sup>247</sup> "Hearing Ends as Attorney Guo Keeps Silent," *The Epoch Times*, March 14, 2005, [http://www.fofg.org/news/news\\_story.php?doc\\_id=949](http://www.fofg.org/news/news_story.php?doc_id=949) (accessed June 7, 2007). (See note 230 regarding the authoritativeness of this news report).

<sup>248</sup> "Chinese Police Place Defense Lawyer Guo Guoting Under House Arrest," *South China Morning Post*, March 16, 2005.

was prevented from attending the trial of Shi Tao, for whom he had been the main defense lawyer.

In late May 2005, the Shanghai authorities allowed Guo Guoting to leave to Canada, where he now lives in exile. His clients were all convicted and sentenced. Shi Tao was secretly tried by the Changsha Intermediate Court on May 11 and sentenced to 10 years' imprisonment to be followed by a two-year deprivation of political rights for the crime of "illegally providing state secret overseas." Zhang Lin was sentenced to five years in prison in July 2005 on charges of "harming national security." Huang Jinqui was denied appeal and is serving his 12-year term in Pukou Prison, near Nanjing.

Although the law specifies that lawyers subjected to a suspension or withdrawal of license can technically challenge the decision by "applying for administrative reconsideration" or "bringing an administrative lawsuit," such a challenge does not suspend the sanction and in practice is ineffective given the judicial authorities' tight control over the courts.

Human Rights Watch is not aware of any instances in which a lawyer has successfully challenged a suspension or withdrawal penalty through the courts.

Statistics about the yearly number of suspensions and disbarments are not readily available. Local judicial bureaus occasionally publish reports that give details about the number of lawyers they have sanctioned over the past year or during one of the recurrent "rectification" campaigns, among which suspensions or withdrawal of licenses are featured, but the data is not comprehensive. Nationwide figures are unavailable or unreliable.<sup>249</sup>

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<sup>249</sup> The Ministry of Justice in its annual report on the "Measures for the development of the legal profession," stopped providing the overall figure for the numbers of lawyers it has sanctioned after the year 2005 (47 lawyers were disbarred that year). Local reports by judicial bureaus at the provincial or municipal level seem to indicate temporary suspensions are frequent. For instance, according to the Sichuan province judicial bureau, two lawyers lost their licenses and seven were temporarily suspended. In the city of Fuyang (Anhui province) alone, during a 40-day "rectification drive [整顿运动]," ten lawyers and one law firm were temporarily suspended. In Dalian municipality (Heilongjiang province), four lawyers were temporarily suspended in 2006. Sources: *Yearbook of Judicial Administration* (Beijing: China Law Press) [中国司法行政年鉴, 北京: 法律出版社], various years; "Last year 47 lawyers were disbarred for violating law and discipline," *Xinhua Net*, May 31, 2005 ["去年我国有 47 名违法违纪律师被吊销执业证书," 新华网, 2005-05-31], [http://news.xinhuanet.com/newscenter/2005-05/31/content\\_3026105.htm](http://news.xinhuanet.com/newscenter/2005-05/31/content_3026105.htm) (accessed May 17, 2007); The Judicial Bureau passes sanctions against lawyers from Hualei district for 21 types of illegal acts, *Xinhua*, March 22, 2004 ["司法部为律师行为划雷区 二十一种违法行为将受罚," 新华网, 2004-03-22.]

Some estimate that 100-200 lawyers are suspended every year in China; others believe the figure is higher. Given the widely acknowledged problems of fraud and corruption that plague the legal profession, it is likely that many such sanctions are legitimate, the consequence of actual infractions committed by lawyers or law firms.<sup>250</sup>

But there is also strong evidence, much of which is detailed above, that the Chinese authorities use suspensions and denial of registration to retaliate against or prevent lawyers from exposing cases that may cause embarrassment to the authorities, such as embezzlement, corruption, abuses of power, and human rights violations committed by state and Party officials. The suspension and disbarment of a number of outspoken lawyers for their defense of victims of human rights abuses deters most lawyers from engaging in such cases. The net result is that it is much more difficult for ordinary Chinese citizens to seek justice through the courts—contrary to the government’s insistence that it upholds the rule of law.

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<sup>250</sup> Publications from the Ministry of Justice stress that offering bribes to judicial personnel is the most common offense behind the sanctioning of lawyers.

## X. Recommendations

### To the Chinese government

#### *a. Release and reinstate lawyers illegitimately sanctioned*

- Immediately release all lawyers arrested, detained, or under house arrest as a result of their legitimate professional activities on behalf of controversial clients or causes.
- Reinstate the professional licenses of lawyers who have been suspended or whose registration has been denied for political reasons.

#### *b. Improve access to justice and sanction official arbitrariness*

- Repeal local or administrative rules and regulations and prohibit the enactment of new rules and regulations that impose additional limitations on the rights of lawyers beyond those defined in national law or regulations.
- Ensure access to justice for victims of abuses of power by upholding existing laws and prosecuting officials who obstruct the course of justice.
- Remove obstructions—including embedded Party and administrative interference—that prevent lawyers from effectively and vigorously representing criminal defendants and other clients in contentious cases, including those alleging official abuse.
- Provide for more effective and automatic administrative sanctions for judicial officials who arbitrarily deny attorneys' registration and Public Security Bureau officials who block access to justice.

#### *c. Grant the legal profession independence*

- Ensure that bar associations are fully independent and self-governing so that they can adequately represent the interests of the legal profession and actively defend lawyers facing illegitimate official sanctions. Abolish statutes stipulating that judicial bureaus exercise “supervision and guidance” of bar associations.

- Allow for free elections of the executive bodies of bar associations at the local and national level and ensure that they exercise their functions without external interference.
- Remove all restrictions preventing lawyers from talking to the media, consistent with China’s constitutional free expression guarantee, with only narrowly tailored exceptions necessary to protect the integrity of judicial processes.
- Ensure that arbitrary restrictions are not placed on the press in the coverage of cases, including restrictions stemming from political considerations or aimed at preventing official embarrassment.

*d. Revise key laws and regulations*

**Annual renewal of registration of professional licenses**

- Revise the Ministry of Justice’s “Methods for the Management of Lawyers Professional Licenses [律师执业证管理办法]” and similar local regulations to ensure that lawyers’ annual registration is not subject to political considerations or other arbitrary factors. No lawyer should be denied renewal of registration on the basis of the cases he has represented or is representing. If registration is denied, the grounds on which the decision was made should be communicated in writing, and the decision subject to appeal to an independent appellate body.

**Restrictions on collective cases**

- Repeal the “Guiding Opinions on Lawyers Handling Mass Cases [中华全国律师协会关于律师办理群体性案件指导意见]” and similar local regulations that interfere with the ability of lawyers to represent the interests of their clients in collective cases. There should be no limitation on the type and nature of cases lawyers are entitled to represent, nor on the number of plaintiffs involved. Lawyers who accept collective cases should not be forced to seek instructions or permission from the Ministry of Justice.

## Revisions to the Criminal Procedure Law

- Repeal article 306 of the Criminal Procedure Law that allows for the prosecution of lawyers who counsel clients to retract inaccurate depositions or forced confessions.
- To improve lawyers' access to criminal suspects in custody, bring article 96 of the Criminal Procedure Law into agreement with provisions of the revised Law on Lawyers before the latter goes into effect on June 1, 2008. In particular, repeal the provisions stating that a meeting request can be denied for "cases involving state secrets" and that "personnel from the investigating organ... [may] be present" during the meeting between a lawyer and his client.
- Ensure that revisions to the Criminal Procedure Law are consistent with international standards for the administration of justice and the protection of criminal defendants' human rights. Such revisions should be made through a transparent and consultative process, with a public timetable of hearings and sessions, and sufficient time for a proper debate in the legislative assembly. A strong basis for the necessary revisions can be found in:

Tian Wenchang, Chen Ruihua, eds., *Draft Recommendations and Considerations by the Legal Profession on the Revisions to the Criminal Procedure Law of the PRC* (Beijing: Law Press China, 2007). [田文昌、陈瑞华(主编), 中华人民共和国刑事诉讼法在修改—律师建议稿于论证, (北京:法律出版社, 2007).]

Bian Jianlin, ed., *The Quest for China's Criminal Justice Reform - Taking for Reference the Norms of the United Nation on Criminal Justice* (Beijing: Chinese People's Public Security University Press, 2007). [卞建林(著编), 中国刑事司法改革探索-以联合国刑事司法准则为参照(北京:中国人民公安大学出版社, 2007).]

- Revise provisions of the Criminal Procedure Law to ensure that lawyers get access to all evidence as soon as it is sent to court, and that they are given adequate time to examine, investigate, and prepare evidence and witnesses before court proceedings commence.
- Revise the Criminal Procedure Law to exclude evidence obtained from torture so as to enforce the prohibition of torture and forced confessions.

*e. Ensure effective protection of lawyers*

- Ensure the effective protection of lawyers carrying out their functions, in part by reiterating China's commitment to the Basic Principles on the Role of Lawyers, to which China is a signatory, particularly:

**Principle 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.

**Principle 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.

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.

*f. Invite the United Nations special rapporteur on the independence of lawyers and judges*

- 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 members of the international law community**

*Including governments and international organizations funding legal aid programs, law schools running legal cooperation initiatives and international law firms with a presence in China*

Human Rights Watch believes that international legal exchange and support programs that focus on legal practitioners are making a positive contribution to legal reform in China. Such programs should be strengthened and greater resources should focus on protection for the legal profession and access to justice.

To support lifting the restrictions on lawyers identified in this report that unnecessarily held in check the internal dynamic of legal reform, the international law community should:

*a. Ensure effective protection of its local partners*

- Privately and publicly express concern when the Chinese partners with whom they work face abuse or interference.
- Press central government authorities to ensure that national laws protecting the practice of law, including lawyers' vigorous defense of controversial clients and causes, are applied locally.
- Regularly convey concerns shared by Chinese legal aid institutions to the Chinese authorities, in particular when legal activists are at risk.

*b. Focus on practices rather than exclusively on norms*

- Identify modest adjustments to existing routines and institutions that can substantially improve the ability of lawyers to exercise their rights and lower human rights abuses.
- Encourage and finance empirical studies on obstacles faced by legal practitioners.
- Support programs that empirically measure key variables and basic operations of criminal defense lawyers.

*c. Promote judicial independence as the cornerstone of legal reform*

- Emphasize to Chinese officials the importance of an independent legal sector in resolving public disputes and mediating social unrest.
- Promote the independence of judges, lawyers, and legal professionals.
- 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.

*d. Promote public interest law*

- Promote the development of *pro bono* law practice.
- Support legal aid to underrepresented groups in the legal process.
- Open grant-making programs to the public so as to generate a more diversified pool of domestic partners across the country.
- Ensure a balance between academic, official, and non-governmental partners in legal aid programs.

*e. Ensure greater coordination in legal assistance to China*

- Ensure greater coordination between legal aid programs.
- Ensure a balance between academic, official, and non-governmental partners in legal aid programs.

*f. Provide balanced assessments of the performance of China's legal system based on international standards*

- Include in periodic activity reports from legal aid programs comprehensive updates on the performance of China's legal system, including the extent to which it is making progress in meeting international standards for the administration of justice.

**To foreign governments and the United Nations**

- Press the Chinese government to invite the UN special rapporteur on the independence of lawyers and judges to visit.
- Press the Chinese government to report on the implementation of the recommendations made by the special rapporteur on torture after his visit to China.
- Press the Chinese government to ratify as soon as possible the International Covenant on Civil and Political Rights (ICCPR), which recognizes the right to counsel, the principle of equality before the courts, and the right to a fair and public hearing by an independent court established by law.

## **XI. Acknowledgments**

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## Appendix I: Glossary of Chinese Terms

| Chinese pinyin                                     | Chinese characters | English   |
|--|--------------------|---|
| <i>Bei xingzheng jinggao</i>                       | 被行政警告              | Issued administrative warnings                                      |
| <i>Bei zanhuan zhuze</i>                           | 被暂缓注册              | Temporarily de-registered   |
| <i>Chi beigao</i>                                  | 吃被告                | Taking bribes from the defendant                                    |
| <i>Chi huikou</i>                                  | 吃回扣                | Receiving kick-back   |
| <i>Chi yuangao</i>                                 | 吃原告                | Taking bribes from the plaintiff                                    |
| <i>Ding xing</i>                                   | 定性                 | Make a determination on the (political) nature of a situation       |
| <i>Diaoxiao</i>                                    | 吊销                 | License withdrawn   |
| <i>Falü xiaoguo he shehui xiaoguo xiang tongyi</i> | 法律效果与社会效果相统一       | Unification of legal and social outcomes                            |
| <i>Fayuan</i>                                      | 法院                 | The courts  |
| <i>Fei falü de shouduan</i>                        | 非法律的手段             | Non-legal methods   |
| <i>Fei susong</i>                                  | 非诉讼                | Non-litigious   |
| <i>Gao youchang fuwu</i>                           | 搞有偿服务              | Demanding commission for making beneficial judgment                 |
| <i>Gong'an</i>                                     | 公安                 | Police  |
| <i>Gong quanli</i>                                 | 公权力                | Public power  |
| <i>Gongjianfa</i>                                  | 公检法                | Judicial organs (police, Procuracy, and courts)                     |
| <i>Guquan daju</i>                                 | 顾全大局               | Take the big picture into consideration                             |
| <i>Hei yusan</i>                                   | 黑雨伞                | “Black umbrellas” (collusion between officials and organized crime) |
| <i>Heishehui</i>                                   | 黑社会                | Secret societies  |
| <i>Heyiting</i>                                    | 合议庭                | Collegiate panel system   |
| <i>Jianchayuan</i>                                 | 检察院                | Public prosecution/procuratorial work                               |
| <i>Jianshi juzhu</i>                               | 监视居住               | Supervised residence  |
| <i>Jiti shangfang</i>                              | 集体上访               | Collective petitioning  |
| <i>Jitixing anjian</i>                             | 集体性案件              | Collective case   |
| <i>Jubao houshen</i>                               | 取保候审               | Bail  |
| <i>Juchuan</i>                                     | 拘传                 | Summon for detention  |

|   |            |  |
|---|------------|--|
| <i>Lan zhixing</i>                      | 滥执行        | Abusing the adjudication powers  |
| <i>Liang ge jiehe</i>                   | 两个结合       | Joint administration system (for the management of lawyers)  |
| <i>Mai zhengju</i>                      | 卖证据        | Selling evidence of the court case   |
| <i>Pishi</i>                            | 批示         | (Internal) written instructions  |
| <i>Quntixing anjian</i>                 | 群体性案件      | Mass case  |
| <i>Renwei queyou biyao de</i>           | 认为确有必要的    | “If [the court] believes it is indeed necessary”   |
| <i>San (lao/da) nan</i>                 | 三(老/大)难    | The “Three difficulties”   |
| <i>San lu hu</i>                        | 拦路虎        | Obstacle (litt.: a tiger blocking the road)  |
| <i>Shangfang</i>                        | 上访         | To petition or appeal to higher levels (colloq.)   |
| <i>Shehuizhuyi fazhi li'nian jiaoyu</i> | 社会主义法治理念教育 | “Education in the concept of socialist rule of law”  |
| <i>Shen er bu pan, pan er bu shen</i>   | 审而不判, 判而不审 | “[The judges] who conduct the trial are not the ones adjudicating it, and those adjudicating the trial are not the ones conducting it” |
| <i>Shencha yijian</i>                   | 审查意见       | Vetting opinion  |
| <i>Shenpan weiyuanhui</i>               | 审判委员会      | Adjudicating committee   |
| <i>Shouzheng nan</i>                    | 收证难        | Difficulties in gathering evidence   |
| <i>Shuangchong xuke</i>                 | 双重许可       | Double permission  |
| <i>Sifa baofu</i>                       | 司法报复       | Judicial retribution   |
| <i>Susong</i>                           | 诉讼         | Litigation   |
| <i>Tanwu nuoyong zhixing kuan</i>       | 贪污挪用执行款    | Embezzling court funding   |
| <i>Ti piqiu</i>                         | 踢皮球        | Pass the ball around (between government departments)  |
| <i>Ting ye zheng dun</i>                | 停业整顿       | Stopped for rectification  |
| <i>Tingzhi zhiye</i>                    | 停止职业       | Professional suspension  |
| <i>Tongbao piping</i>                   | 通报批评       | Issued criticisms  |
| <i>Tufa shijian</i>                     | 突发事件       | Sudden incidents   |
| <i>Wei quan</i>                         | 维权         | Rights protection  |
| <i>Wei quan lde shoushi</i>             | 维权律师       | Rights protection lawyer(s)  |
| <i>Wei quan yundong</i>                 | 维权运动       | Rights protection movement   |

|                            |        |  |
|----------------------------|--------|--|
| <i>Wending yadao yiqie</i> | 稳定压倒一切 | “Stability overwhelms everything”                |
| <i>Xingxun bigong</i>      | 刑讯逼供   | Forced confessions                               |
| <i>Ya li</i>               | 压力     | Pressure   |
| <i>Yidi baodao</i>         | 异地报道   | Reporting from a different location              |
| <i>Yi fa zhi guo</i>       | 依法治国   | Governing the country according to law           |
| <i>Yinyou</i>              | 引诱     | Luring (a client or witness to falsify evidence) |
| <i>Yingdang yuyi peihe</i> | 应当予以配合 | Ought to offer cooperation                       |
| <i>Yuejuan nan</i>         | 阅卷难    | Difficulties in accessing court documents        |
| <i>Yulun jian du</i>       | 舆论监督   | Public opinion supervision                       |
| <i>Zao jia'an</i>          | 造假案    | Manufacturing court cases                        |
| <i>Zhuanzheng jiguan</i>   | 专政机关   | Dictatorial organs                               |
| <i>Zhuce</i>               | 注册     | Registration (of lawyers licenses)               |
| <i>Zhuxiao</i>             | 注销     | De-registered                                    |
| <i>Zhuyao zhengju</i>      | 主要证据   | Principal evidence                               |

## Appendix II: Index of Chinese Names

| Chinese Pinyin              | Chinese Characters |
|-----------------------------|--------------------|
| Ai Xiaoming                 | 艾晓明                |
| Chen Guangzhong             | 陈光中                |
| Chen Ruihua                 | 陈瑞华                |
| Cheng Guangcheng            | 陈光诚                |
| Cheng Hai                   | 程海                 |
| Cheng Kejie                 | 程克杰                |
| Chi Jianwei                 | 池建伟                |
| Gao Zhisheng                | 高智晟                |
| Geng He                     | 耿和                 |
| Guo Feixiong (Yang Maodong) | 郭飞雄 (本名杨茂东)        |
| Guo Guoting                 | 郭国汀                |
| Guo Qizhen                  | 郭起真                |
| He Wei                      | 何伟                 |
| Hu Jia                      | 胡佳                 |
| Hu Jintao                   | 胡锦涛                |
| Hu Xiao                     | 胡啸                 |
| Hua Huiqi                   | 华惠棋                |
| Huang Jinqiu                | 黄金秋                |
| Jia Chunwang                | 贾春旺                |
| Jiang Daocai                | 蒋道财                |
| Li Fangping                 | 李方平                |
| Li Heping                   | 李和平                |
| Li Hong (Zhang Jianhong)    | 力虹 (本名张剑红)         |
| Li Jianping                 | 李建平                |
| Li Jianqiang                | 李建强                |
| Li Jinsong                  | 李劲松                |
| Li Qingsong                 | 李轻松                |

|                |      |
|----------------|------|
| Li Subin       | 李苏宾  |
| Li Yuanlong    | 李元龙  |
| Lü Gengsong    | 吕耿松  |
| Luo Gan        | 罗干   |
| Mao Liequn     | 毛列群  |
| Meng Xianming  | 孟宪明  |
| Mo Shaoping    | 莫少平  |
| Nie Shubin     | 聂树斌  |
| Ouyang Zhigang | 欧阳志刚 |
| Pu Zhiqiang    | 浦志强  |
| Pu Zhiqiang    | 浦志强  |
| Ren Hua        | 任华   |
| She Xianglin   | 佘祥林  |
| Shi Tao        | 师涛   |
| Tang Jingling  | 唐荆陵  |
| Teng Biao      | 滕彪   |
| Wang Bing      | 王冰   |
| Wang shengjun  | 王胜俊  |
| Wang Wanxiong  | 王万雄  |
| Wang Yibing    | 王一兵  |
| Wei Rujiu      | 魏汝久  |
| Wen Jiabao     | 温家宝  |
| Wu Lihong      | 吴立红  |
| Xiao Yang      | 肖扬   |
| xu Shuangfu    | 徐双富  |
| Xu Zhiyong     | 许志永  |
| Yan Zhengxue   | 严正学  |
| Yang Chunlin   | 杨春林  |
| Yang Jianxin   | 杨建新  |
| Yang Tianshui  | 杨天水  |
| Yang Xiaoqing  | 阳小青  |

|                 |     |
|-----------------|-----|
| Yang Zaixin     | 杨在新 |
| Yuan Weijing    | 袁伟静 |
| Zhang Jiankang  | 张鉴康 |
| Zhang Jianzhong | 张建中 |
| Zhang Lihui     | 张立辉 |
| Zhang Lin       | 张林  |
| Zhang Yan       | 张燕  |
| Zhao Dacheng    | 赵大程 |
| Zheng Enchong   | 郑恩宠 |
| Zheng Xiaoyu    | 郑筱萸 |
| Zhou Heng       | 周恒  |
| Zhou Zhirong    | 周志荣 |

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## **Appendix IV: Law on Lawyers of the People's Republic of China**

(Adopted at the 19th Session of the Standing Committee of the Eighth National People's Congress on May 15, 1996; last revised at the 30th Session of the Tenth National People's Congress on October 28, 2007; effective as of June 1, 2008.)

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### *Chapter I: General Provisions*

#### **Article 1**

This Law has been made to improve the lawyer system, standardize the practicing conduct of lawyers, safeguard the legal practice of law by lawyers, and discharge the functions of lawyers in the building of a socialist legal system.

#### **Article 2**

A lawyer as mentioned in this Law shall refer to a practitioner who has acquired a lawyer's practicing certificate according to law and accepts authorization or appointment to provide legal services for a client.

A lawyer shall maintain the legal rights and interests of a client, maintain the correct enforcement of law, and maintain the social fairness and justice.

#### **Article 3**

In practicing law, a lawyer must observe the Constitution and laws and adhere to the professional ethics and practicing disciplines of lawyers.

In practicing law, a lawyer must take fact as the basis and take law as the yardstick.

In practicing law, a lawyer must accept the supervision of the state, public and client.

The legal practice of a lawyer shall be protected by law, and no organization or individual shall infringe upon the legal rights and interests of a lawyer.

#### **Article 4**

The justice administrative authorities shall supervise and provide guidance for lawyers, law firms and lawyers' associations in accordance with this Law.

### *Chapter II Lawyer Practice Licensing*

#### **Article 5**

To apply for practicing law, a person shall satisfy the following conditions:

1. Upholding the Constitution of the People's Republic of China;
2. Passing the uniform national judicial examination;
3. Completing one-year internship at a law firm; and
4. Having good character and conduct.

In the application for practice of law, a certificate of lawyer qualification acquired before the adoption of the uniform national judicial examination shall be equally authentic with a certificate of passing the uniform national judicial examination.

#### **Article 6**

To apply for practicing law, a person shall lodge an application with the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government, and submit the following materials:

1. Certificate of passing the uniform national judicial examination;
2. Document issued by a lawyers' association on the applicant's passing the internship assessment;
3. Identity certificate of the applicant; and
4. Certificate issued by a law firm on agreeing to accept the applicant.

To apply for practicing law on a part-time basis, a person shall also submit a certificate that the work unit of the applicant allows the applicant to practice law on a part-time basis.

The authority accepting the application shall examine the application and submit its examination opinions and all application materials to the justice administrative authority of a province, autonomous region or municipality directly under the Central Government within 20 days as of the date of acceptance. The justice administrative authority of a province, autonomous region or municipality directly under the Central Government shall review the submissions and make a decision on approving or disapproving the practice of law within ten days as of receiving the submissions. If the practice of law is approved, a lawyer's practicing certificate shall be issued to the applicant; if the practice of law is disapproved, the reasons shall be explained in writing to the applicant.

#### **Article 7**

A lawyer's practicing certificate shall not be issued to an applicant who is under any of the following circumstances:

1. Having no capacity or limited capacity in civil conduct;
2. Having a record of criminal punishment, except for a crime of negligence; or
3. Having been expelled from a public office or having his lawyer's practicing certificate revoked.

#### **Article 8**

Where a person, who has received regular course education or above in an institution of higher learning, has been engaged in the professional work for at least 15 years in a field short of legal service staff and has a senior professional title or an equivalent professional title, applies for practicing law on a full-time basis, an approval of practice of law may be granted if he passes the assessment of the justice administrative authority under the State Council. The specific rules shall be made by the State Council.

### **Article 9**

Under either of the following circumstances, the justice administrative authority of a province, autonomous region or municipality directly under the Central Government shall revoke a decision on approving the practice of law, and cancel the lawyer's practicing certificate of the person whose practice of law is approved:

1. An applicant has acquired a lawyer's practicing certificate by fraud, bribery or any other illicit means; or
2. The practice of law by an applicant who does not satisfy the conditions set forth in this Law has been approved.

### **Article 10**

A lawyer may only practice law in one law firm. Where a lawyer changes his firm of practice, he shall apply for replacement of the lawyer's practicing certificate.

The practice of law by a lawyer shall be free of territorial restrictions.

### **Article 11**

A civil servant shall not concurrently serve as a practicing lawyer.

A lawyer, who serves as a member of a standing committee of a people's congress at any level, shall not be engaged in a practice of representation or defense in litigation during his term of membership.

### **Article 12**

A person who is engaged in the legal education or research work in an institution of higher learning or research institute may apply for practicing law as a part-time lawyer, according to the procedures set forth in Article 6 of this Law, with the consent of the work unit of the person, if the conditions set forth in Article 5 of this Law are satisfied.

### **Article 13**

A person who has not acquired a lawyer's practicing certificate shall not be engaged in legal service practices in the name of lawyer; and, except as otherwise provided for by law, shall not be engaged in a practice of representation or defense in litigation.

## *Chapter III Law Firms*

### **Article 14**

A law firm is a firm where a lawyer practices law. To form a law firm, the following conditions shall be satisfied:

1. It shall have its own name, residence and articles of association;
2. It shall have lawyers consistent with the provisions of this Law;
3. The promoter shall be a lawyer with certain practicing experience and without suffering a penalty of cessation of practicing within three years; and
4. It shall have assets in the amount as provided for by the justice administrative authority of the State Council.

### **Article 15**

To form a partnership law firm, in addition to satisfying the conditions set forth in Article 14 of this Law, there shall be three or more partners, and a promoter shall be a lawyer with practicing experience for three or more years.

A partnership law firm may be formed as a general partnership or a limited liability partnership. The partners of a partnership law firm shall be liable for the debts of the law firm in terms of the form of partnership.

### **Article 16**

To form a sole proprietorship law firm, in addition to satisfying the conditions set forth in Article 14 of this Law, the promoter shall be a lawyer with practicing experience for five or more years. The promoter shall be unlimitedly liable for the debts of the law firm.

### **Article 17**

To apply for forming a law firm, the following materials shall be submitted:

1. The written application;
2. The name and articles of association of the law firm to be formed;
3. The list and resumes, identity certificates and lawyer's practicing certificates of lawyers;
4. Certificate of residence; and
5. Certificate of assets.

To form a partnership law firm, a partnership agreement shall also be submitted.

#### **Article 18**

To form a law firm, an application shall be lodged with the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government, and the authority accepting the application shall examine the application and submit its examination opinions and all application materials to the justice administrative authority of a province, autonomous region or municipality directly under the Central Government within 20 days as of the date of acceptance. The justice administrative authority of a province, autonomous region or municipality directly under the Central Government shall review the submissions and make a decision on approving or disapproving the formation of the law firm within ten days as of receiving the submissions. If the formation of the law firm is approved, a law firm's practicing certificate shall be issued to the applicant; if the formation of the law firm is disapproved, the reasons shall be explained in writing to the applicant.

#### **Article 19**

A partnership law firm that has been formed for three years and has 20 or more practicing lawyers may form a branch. The formation of a branch shall be examined by the justice administrative authority of the people's government of a province, autonomous region or municipality directly under the Central Government of the location of the branch to be formed. The procedures as provided for in Article 18 of this Law shall apply to an application for the formation of a branch.

A partnership law firm shall be liable for the debts of its branch.

#### **Article 20**

A law firm funded and formed by the state shall legally and independently develop lawyer practices, and be liable for its debts with all assets of the law firm.

### **Article 21**

Any modification of the name, person in charge, articles of association or partnership agreement of a law firm shall be reported to the original examination and approval authority for approval.

Any modification of the residence or partners of a law firm shall be reported to the original examination and approval authority for archival purposes within 15 days as of the date of modification.

### **Article 22**

A law firm under any of the following circumstances shall be terminated:

1. The statutory formation conditions cannot be maintained, and the law firm remains to be unable to satisfy the conditions after making rectification before a prescribed time limit;
2. The law firm's practicing certificate has been revoked according to law;
3. The law firm decides to wind up on its own; or
4. Any other circumstance under which a law firm is to be terminated as provided for by a law or administrative regulation.

Where a law firm is terminated, the authority issuing the practicing certificate shall cancel the practicing certificate of the law firm.

### **Article 23**

A law firm shall establish and enhance the practicing management, examination on conflicts of interest, fee charge and financial management, complaint investigation, annual assessment, archival management and other systems, and supervise its lawyers' compliance with the professional ethics and practicing disciplines in their practicing activities.

### **Article 24**

A law firm shall submit its annual practicing information report and lawyer practicing assessment results to the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government after the annual assessment each year.

### **Article 25**

For a lawyer to undertake a practice, the law firm shall uniformly accept a client's authorization and enter into a written authorization agreement with a client, and uniformly charge fees and enter them into accounts according to the provisions of the state.

A law firm and its lawyers shall pay taxes according to law.

### **Article 26**

A law firm and its lawyers shall not develop practices by defaming other law firms and lawyers, paying middleman fees and other illicit means.

### **Article 27**

A law firm shall not be engaged in business operations other than legal services.

## *Chapter IV Practices, Rights and Obligations of Lawyers*

### **Article 28**

A lawyer may be engaged in the following practices:

1. Accepting authorization by a citizen, legal person or any other organization to serve as a legal consultant;
2. Accepting authorization by a client in a civil or administrative case to serve as an agent ad litem and participate in legal proceedings;
3. Accepting authorization by a criminal suspect in a criminal case to provide him with legal advice, represent him in filing a petition or charge, or apply for a bail for awaiting trial for an arrested criminal suspect; accepting authorization by a criminal suspect or defendant or accepting appointment by a people's court to serve as a defender; and accepting authorization by a private prosecutor in a case of private prosecution or by the victim or his close relative in a case of public prosecution to serve as an agent ad litem and participate in legal proceedings;
4. Accepting authorization to represent a client in filing a petition in any litigation;
5. Accepting authorization to participate in mediation and arbitration activities;
6. Accepting authorization to provide non-contentious legal services; and

7. Answering questions on law and representing a client in writing litigation documents and other documents on the relevant legal affairs.

#### **Article 29**

A lawyer serving as a legal consultant shall provide opinions on relevant legal issues for a client as agreed upon, draft and examine legal documents, represent a client in legal proceedings, mediation or arbitration, handle other legal affairs as authorized, and protect the legal rights and interests of the client.

#### **Article 30**

A lawyer serving as an agent in contentious and non-contentious legal affairs shall protect the legal rights and interests of a client within the extent of authorization.

#### **Article 31**

A lawyer serving as a defender shall present materials and arguments proving that a criminal suspect is innocent or is less guilty than charged or his criminal liability should be mitigated or relieved, on the basis of fact and law, so as to protect the legal rights and interests of the criminal suspect or defendant.

#### **Article 32**

A client may refuse to be further defended or represented by an authorized lawyer, and may authorize another lawyer to defend or represent him.

After accepting authorization, a lawyer shall not refuse to defend or represent a client without good reasons. However, if the authorized matter violates the law, the client makes use of the services provided by the lawyer to engage in illegal activities or deliberately conceals a material fact related to the case, the lawyer shall have right to refuse to defend or represent the client.

#### **Article 33**

As of the date of first interrogation of or adoption of a compulsory measure on a criminal suspect by the criminal investigative organ, an authorized lawyer shall have right to meet the criminal suspect or defendant and learn information related to the

case, by presenting his lawyer's practicing certificate, certificate of his law firm and power of attorney or official legal aid papers. A lawyer who meets a criminal suspect or defendant shall not be under surveillance.

#### **Article 34**

As of the date of prosecution examination of a case, an authorized lawyer shall have the right to consult, extract and duplicate litigation documents and case materials. As of the date of acceptance of a case by the people's court, an authorized lawyer shall have the right to consult, extract and duplicate all materials related to the case.

#### **Article 35**

As needed by a case, an authorized lawyer may apply to the people's procuratorate or the people's court to gather, investigate and take evidence or apply to the people's court for notifying a witness to testify in court.

Where a lawyer investigates and takes evidence on his own, he may investigate information related to the legal affairs handled from the relevant entity or individual, by presenting his lawyer's practicing certificate and certificate of his law firm.

#### **Article 36**

Where a lawyer serves as an agent ad litem or defender, his right of debate or defense shall be protected by law.

#### **Article 37**

The personal rights of a lawyer in practicing law shall not be infringed upon.

The representation or defense opinions presented in court by a lawyer shall not be subject to legal prosecution, however, except speeches compromising the national security, maliciously defaming others or seriously disrupting the court order.

Where a lawyer is legally detained or arrested for any suspected criminal involvement during participation in a legal proceeding, the detention or arrest organ shall notify the relative, the law firm and the lawyers' association of the lawyer within 24 hours after the adoption of detention or arrest.

### **Article 38**

A lawyer shall keep the national secrets and trade secrets known in practicing law, and shall not divulge any privacy of a client.

A lawyer shall keep confidential the condition and information that is known by the lawyer in practicing law and the client and other persons are reluctant to disclose, however, except facts and information on a crime compromising the national security or public security or seriously endangering the safety of the body or property of a person, which a client or other person prepares to commit or is committing.

### **Article 39**

A lawyer shall not represent both parties in a same case, and shall not represent a client in a legal affair that has any conflict of interest with himself or his close relative.

### **Article 40**

A lawyer shall not have any of the following conduct in practicing law:

1. Accepting authorization or charging fees privately, or accepting property or any other benefit from a client;
2. Seeking the disputed rights and interests of a party by taking advantage of the provision of legal services;
3. Accepting property or any other benefit from the opposite party, maliciously colluding with the opposite party or a third party to damage the rights and interests of his client;
4. Meeting a judge, prosecutor, arbitrator or any other relevant staffer in violation of provisions;
5. Bribing or bribing as an intermediary a judge, prosecutor, arbitrator or any other relevant staffer, instructing or inducing a party to bribe the same, or affecting the handling of a case according to law by a judge, prosecutor, arbitrator or any other relevant staffer by any other illicit means;
6. Deliberately providing false evidence or threatening or inducing others to provide false evidence, or obstructing the opposite party's legal obtaining of evidence;

7. Instigating or abetting a party to settle disputes by such illegal means as disrupting the public order or compromising the public safety; or
8. Disrupting the order of a court or arbitral tribunal, or interfering with the normal conduct of litigation or arbitration.

#### **Article 41**

A lawyer who once served as a judge or prosecutor shall not act as an agent ad litem or defender within two years after leaving his post in the people's court or the people's procuratorate.

#### **Article 42**

Lawyers and law firms shall perform their obligations of legal aid according to the state provisions, provide the aided persons with standard legal services, and protect the legal rights and interests of the aided persons.

### *Chapter V Lawyers' Association*

#### **Article 43**

A lawyers' association is a social organization as legal person and self-disciplinary organization of lawyers.

The All-China Lawyers' Association shall be formed at the national level, while local lawyers' associations shall be formed by provinces, autonomous regions, and municipalities directly under the Central Government. Local lawyers' associations may be formed as needed by cities with districts.

#### **Article 44**

The Articles of Association of the All-China Lawyers' Association shall be made by the National Congress of Members and submitted to the justice administrative authority of the State Council for archival purposes.

The articles of association of a local lawyers' association shall be made by the local congress of members and submitted to the same-level justice administrative authority for archival purposes. The articles of association of a local lawyers'

association shall not conflict with the Articles of Association of the All-China Lawyers' Association.

#### **Article 45**

A lawyer or law firm shall join his or its local lawyers' association. A lawyer or law firm that has joined his or its local lawyers' association shall concurrently be a member of the All-China Lawyers' Association.

The members of a lawyers' association shall enjoy the rights as provided for by the articles of association of the lawyers' association, and perform the obligations as provided for by the articles of association of the lawyers' association.

#### **Article 46**

A lawyers' association shall perform the following functions:

1. Safeguarding the practice of law by lawyers, and protecting the legal rights and interests of lawyers;
2. Summarizing and exchanging the work experience of lawyers;
3. Making a professional code and disciplinary rules;
4. Organizing the lawyer practice training and the education on professional ethics and practicing disciplines, and conducting the practicing assessment of lawyers;
5. Organizing and managing the internships of persons applying for the practice of law, and conducting the assessment of interns;
6. Rewarding or disciplining a lawyer or law firm;
7. Accepting a complaint or report on a lawyer, mediating disputes arising out of the practice of law by a lawyer, and accepting a petition by a lawyer; and
8. Other functions as provided for by laws, administrative regulations and rules and articles of association of a lawyers' association.

The professional code and disciplinary rules made by a lawyers' association shall not conflict with the relevant laws and administrative regulations and rules.

## *Chapter VI Legal Liability*

### **Article 47**

For any of the following conduct of a lawyer, the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government shall give a warning and may impose a fine of not more than 5,000 yuan; if there is any illegal income, shall confiscate the illegal income; and if the circumstances are serious, shall impose a penalty of cessation of practice for not more than three months:

1. Practicing law in two or more law firms at the same time;
2. Developing practices by illicit means;
3. Representing both parties in a same case, or representing a client in a legal affair that has any conflict of interest with himself or his close relative;
4. Serving as an agent ad litem or defender within two years after leaving his post in a people's court or the people's procuratorate; or
5. Refusing to perform his legal aid obligation.

### **Article 48**

For any of the following conduct of a lawyer, the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government shall give a warning and may impose a fine of not more than 10,000 yuan; if there is any illegal income, shall confiscate the illegal income; and if the circumstances are serious, shall impose a penalty of cessation of practice for not less than three months but not more than six months:

1. Accepting authorization or charging fees privately, or accepting property or any other benefit from a client;
2. Refusing to defend or represent a client, or failing to appear before court in litigation or arbitration, without good reasons, after accepting authorization;
3. Seeking the disputed rights and interests of a party by taking advantage of the provision of legal services; or
4. Divulging a trade secret or personal privacy.

## Article 49

For any of the following conduct of a lawyer, the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government shall impose a penalty of cessation of practice for not less than six months but not more than one year and may impose a fine of not more than 50,000 yuan; and if there is any illegal income, shall confiscate the illegal income; if the circumstances are serious, the justice administrative authority of a province, autonomous region or municipality directly under the Central Government shall revoke his lawyer's practicing certificate; and if a crime is constituted, he shall be pursued for criminal liability:

1. Meeting a judge, prosecutor, arbitrator or any other relevant staffer in violation of provisions, or affecting the handling of a case according to law by a judge, prosecutor, arbitrator or any other relevant staffer by any other illicit means;
2. Bribing, bribing as an intermediary or instigating or inducing a party to bribe a judge, prosecutor, arbitrator or any other relevant staffer;
3. Providing the justice administrative authority with false materials or making any other falsehood;
4. Deliberately providing false evidence or threatening or inducing others to provide false evidence, or obstructing the opposite party's legal obtaining of evidence;
5. Accepting property or any other benefit from the opposite party, maliciously colluding with the opposite party or a third party to infringe upon the rights and interests of a client;
6. Disrupting the order of a court or arbitral tribunal, or interfering with the normal conduct of litigation or arbitration.
7. Instigating a party to settle disputes by such illegal means as disrupting the public order or compromising the public safety;
8. Delivering a speech that compromising the national security, maliciously defaming others or seriously disrupting the court order; or
9. Divulging a national secret.

Where a criminal penalty is imposed on a lawyer for an intentional crime, the justice administrative authority of a province, autonomous region or municipality directly under the Central Government shall revoke his lawyer's practicing certificate.

#### **Article 50**

For any of the following conduct of a law firm, the justice administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government shall give a warning or impose a penalty of cessation of practice for correction for not less than one month but not more than six months and may impose a fine of not more than 100,000 yuan according to the circumstances; and if there is any illegal income, shall confiscate the illegal income; and if the circumstances are especially serious, the justice administrative authority of a province, autonomous region or municipality directly under the Central Government shall revoke the law firm's practicing certificate:

1. Accepting authorization or charging fees in violation of provisions;
2. Handling such major matters as modification of its name, person in charge, articles of association, residence and partners in violation of statutory procedures;
3. Being engaged in business operations other than legal services;
4. Developing practices by defaming other law firms and lawyers, paying middleman fees and other illicit means;
5. Accepting cases with any conflict of interest in violation of provisions;
6. Refusing to perform its legal aid obligation;
7. Providing the justice administrative authority with false materials or making any other falsehood; or
8. Causing serious results for mismanagement of its lawyers.

Where a law firm is punished for any violation of law in the preceding paragraph, a warning shall be given to or a fine of not more than 20,000 yuan shall be imposed on the person in charge of the law firm according to the severity of circumstance.

#### **Article 51**

Where, for any violation of this Law, a lawyer is again subject to a warning punishment within one year after being given a warning punishment, the justice

administrative authority of the people's government of a city with districts or the people's government of a district of a municipality directly under the Central Government shall impose a penalty of cessation of practice for not less than three months but not more than one year; where a lawyer is again subject to a penalty of cessation of practice within two years after a period of penalty of cessation of practice expires, the justice administrative authority of a province, autonomous region or municipality directly under the Central Government shall revoke his lawyer's practicing certificate.

Where, for any violation of this Law, a law firm is again subject to a penalty of cessation of practice for correction within two years after a period of penalty of cessation of practice for correction expires, the justice administrative authority of a province, autonomous region or municipality directly under the Central Government shall revoke the law firm's practicing certificate.

#### **Article 52**

The justice administrative authority of the people's government at the county level shall conduct the daily supervision and management of the practice of law by lawyers and law firms, and order correction of the problems found in the inspection; and shall timely investigate complaints by the parties concerned. Deeming that an administrative punishment shall be imposed against any legal violation committed by a lawyer or a law firm, the justice administrative authority at the county level shall offer punishment suggestions to its superior justice administrative authority.

#### **Article 53**

A lawyer on whom a penalty of cessation of practice for not less than six months has been imposed shall not serve as a partner until three years have passed after the period of penalty expires.

#### **Article 54**

Where a lawyer causes losses to a party for his illegal practice of law or fault, his law firm shall assume the compensatory liability. After compensation, the law firm may demand recourse from the lawyer who acts intentionally or has gross negligence.

### **Article 55**

Where a person without acquiring a lawyer's practicing certificate engages in legal service practices in the name of lawyer, the justice administrative authority of the local people's government at or above the county level at his locality shall order cessation of the illegal practice, confiscate illegal income, and impose a fine of not less than the amount but not more than five times the amount of illegal income.

### **Article 56**

Where a staffer of the justice administrative authority abuses his powers or commits dereliction of duties in violation of this law, and constitutes a crime, he shall be pursued for criminal liability; where a crime is not constituted, a discipline shall be imposed on him according to law.

## *Chapter VII Supplementary Provisions*

### **Article 57**

In respect of military lawyers who provide legal services to the army, this law shall apply to their acquisition of the lawyer qualification, rights and obligations and code of conduct. The specific measures for the administration of military lawyers shall be made by the State Council and the Central Military Commission.

### **Article 58**

The specific measures for the administration of establishment of offices by foreign law firms within the territory of the People's Republic of China to provide legal services shall be made by the State Council.

### **Article 59**

The specific measures for charging lawyers' fees shall be made by the competent price authority of the State Council in conjunction with the justice administrative authority of the State Council.

### **Article 60**

This Law shall be effective as of June 1, 2008.

## “Walking on Thin Ice”

### Control, intimidation and harassment of lawyers in China

The development of a strong, independent legal profession is critical to the establishment of the rule of law and the protection of human rights in China. The Chinese government, which has committed itself to the rule of law while still insisting on the primacy of Party rule, has repeatedly stressed the need to develop the legal profession and extolled the role that lawyers play in dispensing justice and preserving social stability.

If Chinese lawyers now enjoy increasing administrative and financial independence vis-à-vis the state, legal restrictions still impede their ability to provide an effective defense, to champion causes that challenge local power, or to form independent bar associations. Lawyers who have taken politically sensitive cases or sought redress for abuses committed by Party and state agents have met with consistent patterns of abuses, including violence, arrest and prosecution, disciplinary sanctions, harassment, and suspension of their professional license or disbarment.

These powerful disincentives, combined with pervasive political control of the judiciary, effectively deter China’s legal profession at large from engaging in work that is perceived by Party and government authorities as a threat or as a potential source of embarrassment. These dynamics undermine citizens’ ability to exercise their legal rights and exacerbate rising levels of social unrest, as citizens are denied meaningful legal avenues to seek redress for abuses.

Based on interviews with Chinese lawyers and legal experts, and on an extensive review of Chinese language news accounts, official publications, and scholarly journals, *Walking on Thin Ice* is the most comprehensive study to date to detail both the systemic constraints that weigh on the legal profession and the fate of those who try to break them in order to further the protection of human rights in China

*A Chinese paramilitary policeman stands guard outside Beijing’s No. 2 Intermediate Court. The participation of lawyers in the administration of justice is crucial for the protection of human rights.*

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