

# Written Submission on the human rights situation in China– the crackdown on human rights lawyers

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## **1. Introduction**

The years since Xi Jinping came to power in November 2012 / early 2013 have been marked by a profound deterioration of the human rights situation in the People's Republic of China ('China'). This has included a crackdown on human rights lawyers, which began in the night of 9 July 2015 with the detention of Lawyers Wang Yu and Bao Longjun and their sixteen year old son, Bao Zhuoxuan, and which has affected some three hundred lawyers and legal workers and their social environment. In this submission I provide an account of the challenges human rights lawyers are facing and of the current crackdown, arguing that it constitutes an attack not only on access to justice, but also on the rights lawyer movement as a nascent, peaceful, liberal-democratic opposition to the Chinese party-state. I also outline some possible responses.

The report is intended to complement the reports submitted by human rights organisations including CHRD and CHRLG, of which I am aware. It is based on a variety of sources, cited where relevant to the opinions expressed, and accumulated over more than ten years of research on law and human rights in China. This has included frequent fieldwork research and hundreds of conversations with lawyers and human rights defenders in mainland China, most recently in April 2016. Conversation records are generally cited in anonymised form.

## **2. China's human rights lawyer movement: advocacy, repression, resistance**

***Emergence over past 15-20 years.*** China today has around 240,000 licenced, full-time lawyers. Some 200-300 of these identify themselves as 'rights defence' (*weiquan*) or 'human rights lawyers' (*renquan lüshi*) (for short, 'rights lawyers') who participate in online human rights lawyer groups and joint actions. The lawyers and legal assistants targeted in the recent crackdown are part of this group, which emerged in the 1990s and grew to its present size from just a handful of known rights lawyers active around 2000.

The rights lawyer movement was a response to social and political changes. While the CCP has always rejected separation of powers, always controlled its legal system, and while it had

severely persecuted the legal profession in the late Mao Zedong era, the new policy of ‘ruling the country in accordance with law’ in the era of ‘Reform and Opening’ had led to a re-establishment of the legal profession from the late 1970s. As the economy opened up and the system shed some of its totalitarian features, it was widely hoped that top-down reform would incrementally liberalise the system.<sup>1</sup> Building on these hopes, members of the legal profession began to seek new roles in areas including not only criminal defence and the system’s many mechanisms of administrative and extra-legal detention, but also some core political rights such as freedom of expression and litigation in the context of mass (social) grievances, which became more widespread as economic development brought inequality, deprivation and corruption. As of today, these wider grievances include, for example, land takings and housing demolitions, labour disputes, discrimination against internal rural migrants and other disadvantaged and/or stigmatised groups, environmental grievances, and food and medicine safety issues. Some of the cases rights lawyers take on are deemed inherently ‘political sensitive’ as, from the perspective of the authorities, they involve seditious or subversive actors and activities – this includes Uighur Muslims and Tibetan Buddhists, as well as members of Falun Gong, for example. Other cases can start out as ordinary ones but become sensitive by attracting public attention and/or triggering public protest, which would be seen as a sign of ‘social instability.’

***Limitations, repression.*** Given the party-state’s stringent control of the legal institutions and restricted access to international human rights mechanisms,<sup>2</sup> its systematic violation of freedom of expression and association, and stringent bureaucratic control of the legal profession, case-centred, professional human rights advocacy was problematic from the start. The 2007 PRC Law on Lawyers as well as further laws, regulations and party documents define lawyers’ professional rights and duties and establish a system of bureaucratic discipline affecting all lawyers. Under this system,

- All lawyers must be registered with the local branch of the official Lawyers’ Association;
- They must undergo annual official appraisal exercises to have their licences extended;
- They must swear an oath of loyalty to the Communist Party (CCP) to enter the profession. It is the All China Lawyers’ Association and the Ministry of Justice, working through their subordinate local associations and justice bureaux, that are chiefly responsible for the many disciplinary measures that can be imposed on lawyers; they are ultimately controlled by the CCP.

Within this framework, rights lawyers are at constant risk of interference with their professional work (for example, instructions not to take on a particular case or to provide information on litigation and defence strategies to the authorities) and, ultimately, of losing their licence to

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<sup>1</sup> Following the events of 4 June 1989, the party-state leadership dramatically changed its rhetoric on human rights, with a first White Paper on Human Rights issued in 1991.

<sup>2</sup> The judiciary, in particular, does not adjudicate cases on the basis of constitutional (rights) provisions; and Kellogg discusses a now-revoked 2001 decision that appeared to indicate the judiciary might take a more activist stance in... China has opted out of all individual complaints mechanisms in the UN human rights treaty system and it has only signed but not so far ratified the International Covenant on Civil and Political Rights.

practice law. Since 2000, numerous rights lawyers have been disbarred and some law firms have been closed down due to their advocacy work.<sup>3</sup> One of the first high-profile cases of disbarment, prosecution and persecution of a human rights lawyer was that of Gao Zhisheng, after he wrote online letters to expose the torture of Falun Gong practitioners in 2004.

Rights lawyers face additional dangers from the police (in particular, the domestic security division of the police, or *guobao*), state security (*guo'an*), and other agencies that form part of the party-state security apparatus. As the number of human rights lawyers has risen steadily over the past fifteen years, persecution has become more coordinated and organised as well as better-resourced. Measures used against rights lawyers have included

- electronic surveillance
- enforced ‘chats’ and ‘tea drinking’ session (被谈话, 被喝茶) with security apparatus
- tracking and following (跟踪)
- ‘investigation’ and intimidation of family, social and professional environment
- informal house arrest known as ‘soft detention’ (软禁)
- ‘enforced travel’ (被旅游)
- detention under numerous official detention systems with some legal bases (拘留, 逮捕)
- forced disappearance (被失踪) without legal basis
- criminal convictions and imprisonment;
- torture (酷刑)
- threats and measures against family members, friends and colleagues.

Of these, retaliatory measures against family and torture have generally been most feared and produced the most devastating effects, with numerous lawyers stating that they found measures threatening or affecting their children, parents and spouses the hardest to bear. Forced disappearance and torture are relatively easily available forms of repression, because there are many different forms and systems of incarceration that can be used by the ‘law enforcement’ and criminal investigation authorities (the People’s Police and People’s Procuracies) and informal contractors they employ; and because even so far as the authorities rely on legal rules to incarcerate targets, they tend to combine uses with abuses of the rules in actually observed cases.

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<sup>3</sup> I discuss this in Pils, *China’s human rights lawyers: advocacy and resistance* (2014), chapter 5.

During my interview-based research on human rights lawyers, I conducted recorded conversations with about eighty rights lawyers and twenty non-lawyer rights defenders between October 2010 and April 2016. Of these interlocutors, as of April 2016, some seven lawyers and four non-lawyers have been criminally convicted for their advocacy. Some twenty have suffered detention without trial, including forced disappearances; and well over half have reported suffering physical violence, ranging from scuffles with agents of the security apparatus to very serious torture. Some very egregious cases of brutal torture occurred early on – Lawyer Gao Zhisheng was tortured during a forced disappearance that lasted several weeks in 2007, for example, and his colleague Li Heping was abducted and tortured for several hours at the same time. Over time, measures of this kind became more systematic and large-scope.

***Advocacy as resistance.*** Facing persecution, human rights lawyers had to adapt their advocacy strategies. They did this mainly in two ways. First, as their ability to promote human rights through court litigation was so restricted, they expanded their activities beyond litigation, conducting signature campaigns, holding meetings, seminars and training workshops, and small-scale demonstrations. They also systematically documented their experience. These activities sometimes helped them overcome obstacles encountered in the judicial process. Second, as the government marginalised human rights lawyers and treated them as enemies of the state, the lawyers sought strength in numbers. They collaborated amongst each other, as well as with some members of their professional clienteles of disadvantaged social groups, and the few independent rights advocacy organisations that managed to work on advocacy in party-state tolerated zones, such as employment discrimination and women’s and LGBTQI rights. They also conveyed a more and more consciously political message. In the years from 2009, for example, they launched numerous campaigns, groups and movements, including

- A campaign for the democratisation of the Beijing Lawyers Association;<sup>4</sup>
- Lawyer groups working on anti-death penalty advocacy; on torture; etc.;<sup>5</sup>
- The Beijing-centred New Citizen Movement calling, *inter alia*, for disclosure of officials’ assets and equal education rights for internal migrant children;<sup>6</sup>
- The Guangdong-centred campaigns for realising constitutionalism and ratification of the ICCPR.<sup>7</sup>

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<sup>4</sup> Jerome A Cohen, ‘The Struggle for Autonomy of Beijing’s Public Interest Lawyers,’ *China Rights Forum*, 1 April 2009 at <http://www.hrichina.org/content/3692>; Pills, chapter 5.

<sup>5</sup> An example that used to maintain a (currently closed) website is the group China Against Death Penalty (CADP) / 北京兴善研究所 / *Beijing Xingshan Yanjiusuo*, website at [www.cadpnet.org/en/](http://www.cadpnet.org/en/) (link dead as of April 2016).

<sup>6</sup> See for co-initiator Xu Zhiyong’s court verdict <http://chinalawtranslate.com/xu-zhiyong-opinion/?lang=en>; for his reflections on this in his closing statement Xu Zhiyong, ‘For Freedom, Justice and Love — My Closing Statement to the Court,’ translated anonymously, 22 January 2014, *ChinaChange*, <http://chinachange.org/2014/01/23/for-freedom-justice-and-love-my-closing-statement-to-the-court/>

<sup>7</sup> See verdict sentencing co-initiator Yang Maodong/Guo Feixiong at and his closing statement ‘The Sovereignty of the People: My Conviction and my Dream,’ translated by Louisa Chiang and Perry Link, *ChinaChange*, 28 November 2014, <http://chinachange.org/2014/11/28/the-sovereignty-of-the-people-my-conviction-and-my-dream/>

The latter two of these movements consciously addressed a wider Chinese public, as well as their fellow legal professionals. In the context of a system in which political organisation is strictly prohibited, Chinese rights lawyer groups are among the peaceful, liberal-democratic groups opposed to the existing system.

### **3. The ‘709’ (9 July 2015) crackdown on rights lawyers and other human rights defenders**

The ‘709’ Crackdown – named after the date when it began with the detention of Wang Yu and others -- mainly targeted three groups connected to rights advocacy, namely: rights lawyers and assistants connected to Fengrui Law Firm; rights lawyers and assistants connected to Lawyer Li Heping and his colleagues (with some overlap between these groups), and a group around activist Hu Shigen that included rights lawyers as well as more ‘grassroots’ human rights defenders. It affected a larger number of lawyers than ever before. It also used new methods and the party-state propaganda surrounding the crackdown appeared to target a much wider audience than before.

*Unprecedented scope of the crackdown.* On the issue of numbers of affected persons, it appears most sensible to refer to the civil society group focused on human rights in China that has maintained an independent record since the beginning of the crackdown. The Hong Kong based China Human Rights Lawyers Concern Group as of 13 April 2016 records a total of 317 affected persons, of whom 21 have been formally arrested on criminal charges; one remains criminally detained; two remain forcibly disappeared; nine have been released on bail; one remains house arrested; and the rest have been affected by short-term measures such as enforced chats or brief summonses for the purpose of interrogation.<sup>8</sup> According to another calculation method, some 17 lawyers and legal assistants have been affected.<sup>9</sup> CHRDL records numbers of human rights defenders detained and/or affected by other repressive measures more widely and its report to this Commission shows that year on year, there has been a drop in short term detention numbers but that longer average detention times and severity of criminal charges ‘point to an overall escalation of persecution against HRDs in 2015.’<sup>10</sup>

Both the numbers supplied by CHRLCG and anecdotal evidence and insights gained through conversations with human rights defenders suggest that the scope of the currently ongoing crackdown is unprecedented. Of course, this can in part be attributed to the rather rapid increase in numbers of rights lawyers and human rights defenders more widely over the past few years. In any case it means that the authorities have attempted to silence virtually all persons self-identifying as rights lawyers; and it indicates exacerbated contention between independent civil society and the party-state.

*Methods, targets and goals of the crackdown.* The full extent of the changes that have occurred under Xi Jinping cannot be understood merely on the basis of the numbers. Rather, it is important to pay attention to the crackdown’s methods, the changes in rhetoric and legal rules that accompany it, and the intended immediate and intermediate targets of these changes.

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<sup>8</sup> <http://www.chrlawyers.hk/en/content/%E9%A6%96%E9%A0%81> (accessed 13 April 2016).

<sup>9</sup> Conversation #121-16-1.

<sup>10</sup> Draft (accessed 13 April 2016).

The authorities have on the one hand emphasised that they are acting in accordance with ‘law’ understood on their own terms. On the other hand, through the use of official media reporting and propaganda related to some aspects of the crackdown, they have intensified the terror the enforcement of ‘law’ so conceived can produce. Specifically this has included:

- ‘*Residential surveillance in a designated location,*’ This much-criticised measure was imposed invoking ‘national security’ related exemptions from ordinary legality, in particular Article 73 Criminal Procedure Law (CPL) as one of the new rules of the CPL, effective since January 2013. Article 73 purports to allow incommunicado detention without access to legal counsel for up to six months in suspected cases of crimes against state security (*inter alia*), and euphemistically terms this measure ‘residential surveillance’ even though the detainee is held in a ‘designated location,’ which may, for example, be a safe-house, a pension or hotel, or other police-operated building.

Conversations directly drawing on the experience of ‘709’ detention suggest that they were very similar to earlier forced disappearances, as well as to the *shuanggui* or ‘two prescribed’ detention that is typically imposed on party members suspected of discipline violations. For example, in the case of at least one person detained in the context of the ‘709’ Crackdown, detention was nominally authorised under the revised article 73 of the Criminal Procedure Law. It took place in the same building where rights lawyers have been forcibly disappeared before, e.g. in 2011 (when the new Article 73 was not yet available); and it was carried out by some of the same personnel and involved severe sleep deprivation and stress positions amounting to torture and threats of further, even more serious physical torture. It also led to the same kind of forced confessions and statements of repentance that had been used, for example, in the 2011 ‘Jasmine’ crackdown. And, just like in earlier forced disappearances, the ‘confession’ and ‘statement of repentance’ and promises had to be read out aloud before a camera before the target person was released; and the target person also was told they could only be released after the ‘central authorities’ had agreed. They referred, also in conversation with their guards, to the measure as ‘abduction’ (*bangjia*) and the guards ‘did not bother to object’ to this description.<sup>11</sup>

‘[In the ‘designated location’ during ‘surveillance] I was not allowed to sleep for [a certain number of] days and nights on after they had held me for some time. They also brought a pair of handcuffs and showed me how they could handcuff me to the bed... [interlocutor holds hands up to demonstrate]. At that point I told them, “alright, I won’t resist any longer.”...At that point, because of the sleep deprivation, I was already completely broken; I thought I was going to die.’<sup>12</sup>

Systematic violations of the right to fair trial and other rights have occurred in the context of this measure, as outlined further below. Here it should be noted that the authorities provided insufficient or no information on where detainees were held to their families. In the case of Li Heping, for example, no notification was provided until the period of his

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<sup>11</sup> Conversation #120-16-1.

<sup>12</sup> Conversation #120-16-1.

‘residential surveillance’ had lapsed and he was arrested on suspicion of ‘subversion.’ In other cases, the authorities refused to acknowledge where ‘suspects’ were being held; or to specify what they were accused of. None of the detainees had access to legal counsel of their own or their families’ choice, family or friends during the period of ‘residential surveillance.’

In January 2016, the authorities ‘arrested’ (逮捕) the lawyers after the expiry of the six-month ‘residential surveillance’ period and they have since extended their arrest periods, thus deferring the referral of the cases to the procuracy, which is formally the authority to decide where or not there will be public indictments against them.

- *Systematic weakening of communication and advocacy support structures for the detained main targets of the crackdown*, taken against a wider range of rights lawyers and supporters, including:
  - Enforced ‘chats’ and short-term detentions to intimidate hundreds of rights lawyers and their sympathisers or supporters. On the basis of what victims of such chats have mentioned, those targeted were typically ordered to meet the police in the late evening or in the middle of the night (sometimes through phone-calls, other times by officers coming to their homes). Two interlocutors victimised reported being tracked, effortlessly it seemed, through the monitoring of their mobile phones, while travelling (on trains, to their hotels, etc.).<sup>13</sup>

During their conversations with the (domestic security division) police they were ordered to ‘promise’ not to take on the cases of fellow rights lawyers; not to communicate about these cases via the social media; and not to take media interviews about them. In at least one case, that of Lawyer Xie Yanyi, a person who refused to make these promises was themselves detained under Article 73 CPL (‘residential surveillance in a designated location’ ) after being initially allowed to go home;<sup>14</sup> and several lawyers who were threatened with similar consequences ‘promised’ to comply but noted that these promises had been extracted through unlawful coercion and were not binding.

Based on current information, not only lawyers but also sympathising other members of civil society, including academics, were affected.<sup>15</sup> Some interlocutors pointed out that the true nature of these ‘chats’ was that of coercive summonses but that the authorities gave them the offer of not going through the formal process of a summons.<sup>16</sup>

During the first few days of the crackdown, when many enforced chats were held, it was not clear who amongst those taken away for ‘chats’ would be formally detained or put under ‘surveillance’ on ‘suspicion’ of a crime, the enforced chats

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<sup>13</sup> Conversations #137-16-1, 138-16-1.

<sup>14</sup> Conversation #129-16-2, #121-16-1.

<sup>15</sup> Conversation #121-16-1.

<sup>16</sup> Conversation #137-16-1.

had an intensely terrifying effect on the rights lawyer community.<sup>17</sup> It also terrified those who managed to escape by carefully avoiding being tracked, for example through their mobile phones.<sup>18</sup>

Lawyers who, at the time, were not so well known yet to the authorities were better able to withstand some of the pressure, however,<sup>19</sup> and thus managed to be appointed as criminal defence lawyers for their detained colleagues (usually by their families).

Some interlocutors reported that they were explicitly threatened with being treated as ‘fellow criminal suspects’ (*tong’an [fanzui xianyi ren]*) with their already-detained colleagues *merely for taking on these colleagues’ criminal defence.*<sup>20</sup>

In the social media chat groups devoted to discussing the crackdown, this sort of incrimination has since come to be sarcastically referred to as ‘the crime of legal defence’ (*bianhu zui*).<sup>21</sup>

- Strict electronic surveillance and suspension of the social media app ‘Telegram’ which is widely used amongst rights defenders, for a short period at the beginning of the crackdown, in addition to the existing intensive control of expression via the internet and social media. (As of mid-April 2016, ‘Telegram’ is heavily firewalled and only partly functional in China mainland.) In addition the authorities used mobile phones to track target persons down. Target persons reported that they evaded being tracked by avoiding keeping their phones connected to the internet for longer than three minutes; but also that they were in constant fear of being located anyway.<sup>22</sup>
- Travel bans on rights lawyers, apparently authorised effective from 6 July 2016, i.e. three days *before* the first detention (of Wang Yu and others) in the immediate context of the 709 Crackdown.<sup>23</sup> As a number of lawyers have reported they were told at the border crossing that their leaving the country ‘might endanger national security’ but they were not given any further details.
- Enforced ‘chats,’ intimidation, travel bans and other measures targeting family members. Some family members of the detained lawyers have, since July, vocally engaged in appeals for their spouses and children (in particular, Wang Qiaoling, the wife of Li Heping, Li Wenzu, the wife of Wang Quanzhang), and the mother of Zhao Wei. They have been active despite also having been called in for enforced ‘chats’, having been intimidated and barred from leaving the country.

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<sup>17</sup> Conversations #137-16-1; #138-16-1.

<sup>18</sup> Conversation #131-16-2.

<sup>19</sup> Conversations #128-16-1; 130-16-1.

<sup>20</sup> Conversation #137-16-1.

<sup>21</sup> Screenshot on file with author (April 2016).

<sup>22</sup> Conversation #131-16-2.

<sup>23</sup> Conversation #121-16-1.



Further repressive measures taken against the family have included blocking Li Wenzu's access to her husband's, Wang Quanzhang's, bank account, ostensibly on the ground that he, Wang, did not wish to give his wife access, and had stated so in handwriting.<sup>24</sup> Like the purported lawyer 'dismissals' (see below) this statement may have been manufactured in some way, for example by putting pressure on Wang.

Like other aspects of the crackdown, so, too, does the highly coordinated, sweeping nature of the 'enforced chats' suggest that the crackdown was planned and carried out in accordance with high level central decisions; and indeed some interlocutors mentioned being explicitly told that the decision had been taken at 'a very high central level.'<sup>25</sup> It was thus an integral part of the entire crackdown; and beyond its primary goal of intimidating and (at least temporarily) silencing the rights lawyer community it was clearly intended also to intimidate those in the professional and social environment of the rights lawyers targeted by enforced 'chats.'

From the conversations I have held after the crackdown, and information gathered otherwise, I would nevertheless say that the crackdown has so far only partly succeeded in silencing this community. Indeed all lawyers and rights defenders recently contacted were happy to meet and discuss the issue and urgently called for international attention and appeals. Several pointed out that whatever promises had been extracted from them did not bind them, legally or morally; and my interlocutors all appeared to believe that a mitigated outcome for those currently facing the possibility of trials and convictions might yet be achieved through further domestic advocacy and international pressure.

- *Suspicious 'dismissals' of criminal defence lawyers.* The authorities have in a number of cases documented by CHRD told the friends, family and appointed lawyers of the crackdown targets that these targets, who remain in detention and are unable to confirm this, have 'dismissed' the lawyers originally appointed by or for them.<sup>26</sup> Forced lawyer 'dismissals' have been used on previous occasions.

'The greatest problem now is that the authorities do not allow the families to appoint lawyers, they want to use the lawyers they themselves like, to disrupt any channels of information and render meetings with the detainees impossible.'<sup>27</sup>

It is also known that the enforced chats in the immediate wake of the first detentions were used to extract promises from rights lawyers that they would not take on the criminal defence of their professional colleagues.<sup>28</sup>

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<sup>24</sup> An account of this has been circulated via the social media by Li Wenzu (April 2016).

<sup>25</sup> Conversation #138-16-1.

<sup>26</sup> CHRB, 'Forced "Switch" to Police-Appointed Lawyers Further Erodes Protections for Detained Rights Defenders,' 21 March 2015, provides a lot of detailed information.

<sup>27</sup> Conversation #121-16-1

<sup>28</sup> Conversation #121-16-1.

In some cases, family members of the detained were reportedly shown new defence lawyer appointment letters signed by the detainees. Their friends fear that a lot of pressure was put on them to make them sign.<sup>29</sup> but the previously appointed lawyers have not (necessarily) seen these documents for themselves and have not been send letters informing them of their ‘dismissal’ so that they are unable to confirm if they have been dismissed.<sup>30</sup>

It must therefore be assumed that the defence lawyer ‘dismissals’ are not genuine, and that the right to fair trial of the detainees has been violated. An example is the case of Lawyer Li Heping’s claimed ‘dismissal’ of his criminal defence lawyers Cai Ying and Ma Lianshu. Generally, the lawyers told that they have been dismissed insist on statements directly by their clients to ascertain that the dismissal was genuine, and point out that the dismissals in favour of government-appointed, more acquiescent and compliant lawyers make no sense.<sup>31</sup>

Forced or faked ‘dismissals’ of the originally appointed lawyers would most immediately violate the detainees’ right to appoint a lawyer of their own choice. An interlocutor pointed out that this right had been recognised, at least in principle in important political case beforem, including those of Wei Jingsheng, Liu Xiaobo, and Hu Jia, indicating a significant weakening of respect for this right in the Xi Jinping era.<sup>32</sup>

Forced or otherwise manufactured ‘dismissals’ would also, in the view of all interlocutors consulted about this, pose the very serious risk of *de facto* ‘secret trials’ held with the acquiescence of (*de facto*) government-appointed lawyers who would be instructed to keep quiet. Some interlocutors are especially concerned about this, because they believe that the in substance extremely weak prosecution cases against their colleagues and friends might succeed (in a manner of speaking) if the entire criminal process from detention/abduction to final conviction remained secret, with no public access whatsoever. Since criminal defence lawyers could not be excluded from access to their clients for the entirety of the criminal process, even in cases of ‘state security’ criminal suspects, total non-transparency could only be achieved with cooperative lawyers. In the eyes of the interlocutors, this would be the worst possible outcome of the ongoing criminal cases, and it would be the scenario most likely to allow the authorities to convict those in this process of state security crimes and impose harsh punishments.<sup>33</sup>

- *Coerced and in part televised ‘confessions’ and statements of repentance.* So far was it is possible to understand the facts at this point, it is clear that victims of ‘residential surveillance in a designated location’ and of other forced disappearances have been required to admit guilt and express repentance. In a few cases, video-footage showing

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<sup>29</sup> Conversation #124-16-1.

<sup>30</sup> Conversation #125-16-1.

<sup>31</sup> Conversations #128-16-1 and 129-16-1 provide a lot of detailed comment and examples of these processes.

<sup>32</sup> Conversation #138-16-1. This is not to say that the authorities did not attempt to put pressure on the defendants in these cases, for example, in Hu Jia’s case. Pils, ‘Hu Jia in China’s Legal Labyrinth.’

<sup>33</sup> E.g. Conversation #129-16-1.

them making statements of this kind has been released on national television (see below). In particular,

- Based on current information, detained victims had to produce statements admitting guilt and expressing repentance in writing and read the statement out aloud in front of a camera, before being released. This follows a well-established pattern also used in the 2011 Jasmine Crackdown, for example.

As an important element of ‘crackdown propaganda,’ lawyers and legal assistants such as Zhou Shifeng, Wang Yu, Bao Longjun, Zhang Kai, and others have been displayed on television in film footage that shows them in the humiliating circumstances of detention, visibly upset and fearful, and expressing repentance or regret. For example, Wang Yu and Bao Longjun are shown distraught and in tears over the rendition of their son; and Zhou Shifeng is shown expressing repentance.<sup>34</sup> (According to reports, Zhou Shifeng reportedly said later that he was unaware of being filmed at the time.<sup>35</sup>) Some of the legal workers were shown saying unfavourable things about professional colleagues and rights lawyers, and interlocutors speculated that the speakers may have been unaware of how their comments would be used.

‘Probably this video-clip was made when the domestic security police goaded [the detained lawyer] to talk about matters ‘unrelated to business’ and got him to make a few remarks about [his colleague]...and edited the recording to turn it into what looks like a denunciation.’<sup>36</sup>

Another interlocutor commented,

‘[These reports] have in the eyes of many [rights lawyers] done the worst harm to us, because many ordinary people will still be inclined to trust these official reports. They might generally have comes across some positive information about rights lawyers; but after these detentions they will be informed that these lawyers were working in their own interest, to earn foreign money and that this entire circle has actually been doing these things under the direction of foreign anti-China enemy forces. The majority of viewers might accept the message conveyed by these CCTV reports.’

The interlocutor added that fellow legal professionals would also be bound to be frightened by these reports as they would have to consider the possibility that they would suffer similar consequences even though they only engaged in lawful rights advocacy.

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<sup>34</sup> CCTV 13, 北京锋锐律所“维权”黑幕利益链调查, 19 July 2015, <http://news.sina.com.cn/c/2015-07-19/023932122718.shtml>.

<sup>35</sup> Social media groups circulated this information in March / April 2016.

<sup>36</sup> Conversation #121-16-1.

We do of course hope that as many lawyers as possible will understand the background of these reports, that they [the detained] have not violated the law... [but they will also learn from these reports that] that if they engage in these activities they will inevitably encounter repression of this kind from the government.<sup>37</sup>

- *Abduction / cross-border forced retrieval.* The use of rendition as a method of subjecting target persons to informal incarceration or to the formal criminal justice process is becoming more and more common. It has also been used in the context of the 709 Crackdown. For example, the son of Wang Yu and Bao Longjun, originally detained along with his parents on 9 July, deprived of his passport and held under strict surveillance, left the country with the help of friends. From there, he and the two friends were forcibly retrieved back to China from the border region with Myanmar. The two friends, Tang Zhishun and Qing Xingxian, apparently remain disappeared, Bao Zhuoxuan (Mengmeng), now seventeen, is living under strictest surveillance and control of his movements with his maternal aunt and grandmother's family, having been forced to change to a school there. It is impossible for his parents' rights lawyer friends to provide him with any support or counsel.<sup>38</sup> According to friends, his movements are strictly controlled; and based on recent reports he is understood to live in a state of very great distress, anguish and indignation about the strict controls he has been subjected to. Adding this current experience to his being held for over 40 hours without any grounds, being forcibly retrieved from Myanmar, and his doubtless great concern about his parents, a friend describes his state as 'utterly desperate.'

'There is no contact with them. Their phone is controlled. And the flat just opposite his aunt's flat has been taken over by the *guobao* [domestic security police], who got the previous tenants to move out. At his school, they use the head student, teachers, and other classmates to control him. It is just like with Gao Zhisheng's [daughter] at the time. So, the boy's situation now is really under terrible pressure. It ought to be the springtime of his life. But now, he has not been able to see his parent's for such a long time; he has lost his freedom of movement, and his plan to go study abroad was disrupted when they abducted him [in the night of 9 July 2015, on the way to the airport]...his mobile phone was previously forcibly taken away by them so we dare not try to contact him. And [his entire family] is under their control. This family's situation is really the worst...If Mengmeng could have left, it would have been a consolation for his parents and encouragement for others. The fact he was taken back has now also scared a lot of other lawyers, who are asking themselves, what if their own child has to go through this sort of collective punishment at some point.'<sup>39</sup>

- *Forced disappearances* without invoking any legal rules. In at least two cases targets of the crackdown have been forcibly disappeared without invoking any rules of criminal procedure. Tang Zhishun and Qing Xingxian were taken away by the authorities after a

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<sup>37</sup> Conversation #124-16-1.

<sup>38</sup> Conversation #121-16-1.

<sup>39</sup> Conversation #122-16-1/

failed attempt to rescue the son of Lawyers Wang Yu and Bao Longjun to flee the country. The authorities have provided no information at all on where they are being held, although it is assumed that they might, in accordance with precedent, be held in the same detention centre as other rights defenders in the 709 crackdown.<sup>40</sup>

As just noted, purportedly lawful residential surveillance in a designated location and forced disappearances are not necessarily very different especially when, as for example in the case of Lawyer Li Heping, there is no notification of the imposition of residential surveillance.

- *Torture*: the use of torture methods including sleep deprivation and stress positions has been confirmed, for example, in the abovementioned case. We cannot ascertain the situation of those detained incommunicado. Given the circumstances of detention in these cases, and the fact that several detainees have been displayed ‘confessing’ to conduct that may be seen as wrongful even if (when) it does not amount to any crime, it is unfortunately very likely that undue pressure was brought to bear on them, and that others detained are also subjected to coercive interrogation.

‘Torture is probably unavoidable in the cases [of the still-detained]. Torture is just part of the system in China...<sup>41</sup> [Someone who was released] believes that those who have not been released have suffered worse torture, because they are more central figures in these cases.’<sup>42</sup>

It is understood from two cases that the persons detained suffered torture including kicking and beating; sleep deprivation; continued interrogation while being sleep deprived and having a light shone in their face for a number of days and nights; being forced to sit in painfully motionless positions; and being threatened with an extremely severe torture method, before agreeing to make statements.<sup>43</sup> It is not possible to confirm whether the reports in question are complete, because at least in one case it is understood that the person in question emerged extremely frightened by the experience.

The fact that detainees cannot be accessed by reliable lawyers or friends is further cause of concern in this context.

- *The threat of criminal convictions and severe prison sentences*. The authorities having deferred the further progression of the criminal process twice already, it is generally expected that the cases might proceed to public indictment and trial state within months. It has also been argued that the likely reason for the deferrals is that no decision on how

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<sup>40</sup> Conversation #122-16-1.

<sup>41</sup> As the Committee Against Torture stated in its 9 December 2015 report (the CAT report), it ‘remains seriously concerned over consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system, which overly relies on confessions as the basis for convictions.’<sup>41</sup> (Emphasis added). CAT, ‘Concluding observations on the fifth periodic report of China (advance version),’ 9 December 2015, at [http://www.savetibet.org/wp-content/uploads/2015/12/CAT\\_C\\_CHN\\_CO\\_5\\_22477\\_E.pdf](http://www.savetibet.org/wp-content/uploads/2015/12/CAT_C_CHN_CO_5_22477_E.pdf).

<sup>42</sup> Conversation #122-16-1.

<sup>43</sup> Conversations #120-16-1; #122-16-1.

to handle these politically highly sensitive cases (which, it is implied, will not be decided by the court trying the cases) has been made yet, and that such a decision would have to be made at the central and highest level. There is a wide expectation that at least some of the currently detained lawyers and rights defenders will be found ‘guilty’ of the subversion crimes they are currently ‘suspected’ of and this means they face extremely severe punishments including possible life sentences, even though their supporters are unable to fathom what conduct might be used to justify the convictions they expect.

It has been surmised that a special procedure of seeking permission from the National People’s Congress to obtain a further deferral might be used in case no decision has been made. It has also been suggested that the ‘suspects’ might continue to be held because they have not yet provided satisfactory statements to proceed to publicly indicting and trying them.<sup>44</sup>

Several lawyers have nevertheless emphasised that, given the spurious nature of the charges, there remains the possibility of obtaining release, e.g. on bail, even though releases would likely be premised on some statements by the detainees (statements admitting guilt, expressing repentance, and promising to stop advocacy). All interlocutors asked about this seemed to think that, given the long months of incommunicado detention and (in their view) highly likely torture, the authorities must by now have largely obtained whatever statements they wanted.

- *Crackdown propaganda, including ‘TV confessions’ or ‘trial by television’* (电视审判) The crackdown also very prominently included broadcasts and reports vilifying the lawyers connected to Fengrui Law Firm TV ‘confessions.’<sup>45</sup> Beyond the immediate crackdown these methods have served to magnify the impact of the measures taken against particular individuals and groups. In TV confessions
  - Target persons generally ‘confessed’ to wrongdoing phrased in very general and at times incoherent terms rather than specific crimes; and
  - They expressed repentance and submission. Visually if not verbally they also expressed fear, anguish, and despair.
  - Confessions etc. were televised selectively, largely focusing on the activities of the Fengrui Law Firm circle and its methods of forceful, vocal and politically aware rights advocacy using methods such as flash-mob demonstrations and social media communication to draw attention to specific cases from wider audiences.<sup>46</sup>

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<sup>44</sup> Conversation #120-1-16; 122-1-16.

<sup>45</sup> Cao Yin, ‘Lawyers “tried to influence verdicts”,’ 13 July 2015, [http://www.chinadaily.com.cn/china/2015-07/13/content\\_21255261.htm](http://www.chinadaily.com.cn/china/2015-07/13/content_21255261.htm); CCTV 13, 北京锋锐律所“维权”黑幕利益链调查, 19 July 2015, <http://news.sina.com.cn/c/2015-07-19/023932122718.shtml>.

<sup>46</sup> Comments in conversation #129-16-1.

Apart from the evident violation of core procedural principles of criminal justice including the presumption of innocence by attempting to create a public presumption of guilt, it is also very difficult to associate the conduct depicted in this way with any credible criminal charges, let alone charges (or suspicions) of crimes ‘endangering state security.’ At most, it might seem possible that the authorities, based on their very extensive definition of ‘public order’ disturbances, to construct a prosecution case based on a public order offence, for example with regard to some of the demonstrations by small numbers of persons holding up signs outside official buildings, appealing, for example, for the protection of lawyers’ professional rights.<sup>47</sup> The CCTV media reports, indeed, themselves spoke of ‘creating “rights-defence-style” public disturbances (sic).’ It is very difficult to make out ways in which the authorities could argue that any of these various advocacy activities constituted crimes of subversion; but some interlocutors were of the view that the authorities might want to bend the rules to make them fit whatever advocacy conduct the detained rights defenders had engaged in.<sup>48</sup>

This form of selective crackdown-related propaganda, of ‘TV confessions’ and ‘trial by television,’ was not, to my knowledge, used widely during the Reform and Opening era until Xi Jinping’s assumption of office. It represents what some see as a conscious reversion to Mao era style denunciation of ‘enemies of the party-state.’<sup>49</sup> Occurring as it does after some thirty years of ‘reform and opening’, this open regression to the methods a former, totalitarian era is highly alarming. It suggests that the party-state authorities responsible for the crackdown are attempting to re-design the criminal process into a mechanism that purges it from its liberal elements, in particular from the most central rights of the accused. ‘Trial by TV’ allows the authorities not only to vilify particular individuals or groups like the Ruifeng law firm, but also to project and indeed propagate their power to extract meaningless, even irrational, statements from those it holds captive. It also suggests a clear focus on vilifying forceful advocacy as such, and portraying it as inherently criminal. If, so far, the authorities have refrained from displaying people ‘confessing’ to the explicitly political crime of subversion; this might be because such ‘confessions’ would simply be too unconvincing or might lead to more social controversy.<sup>50</sup> In any case, the recent displays have been used to vilify particular rights lawyer groups and their supporters as criminals, warn others not to engage in legal advocacy considered ‘disruptive’ and propagate a highly controlled, authoritarian conception of the legal process. It is a good illustration of this fact that one of the July 2015 official media reports in the English language version of the newspaper *China Daily* carried the simple title, ‘Lawyer “tried to influence verdicts.”’<sup>51</sup>

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<sup>47</sup> One of the TV reports showed a dozen or so persons demonstrating in this manner in the ‘Leping case.’

<sup>48</sup> E.g. conversations #138-16-1; 128-16-1.

<sup>49</sup> Conversation #122-16-1. 也许你已经发现了，这其实一直是这个国度的传统。无论是“人民日报认罪”，“新华社认罪”，还是“央视认罪”，甚至早期还包括《中国青年报》等团报，各地省委籍贯党报上的认罪，本质上都是政治运动中“当众检查”“低头认罪”的传统延续。央视认罪”则是“2.0 升级版”

<sup>50</sup> Conversation #121-16-1, #122-16-1.

<sup>51</sup> Cao Yin, ‘Lawyers “tried to influence verdicts”,’ 13 July 2015, [http://www.chinadaily.com.cn/china/2015-07/13/content\\_21255261.htm](http://www.chinadaily.com.cn/china/2015-07/13/content_21255261.htm).

***Wider systemic effects and implications:*** Numerous changes in the rhetoric and some of the written rules of the law reflect a wider attempt of the current party-state leadership to concentrate coercive power, reorganise the relationship between the government and the people on a corporatist ‘civil society’ model, and reject and vilify any form of legal and/or political advocacy that presents a liberal-democratic challenge to the existing system.

There were relatively early indications of this at the level of rhetoric and instructions to the media and education institutions. Thus a leaked party instruction to higher education institutions, called ‘Document No 9,’ in 2013 tabooed the discussion or propagation of ‘universal values’ and ‘civil society;’ and an October 2014 Document issued by Party Central explicitly declared that ‘Party Leadership and Socialist Rule of Law are identical. Socialist Rule of Law must maintain Party leadership and Party leadership must rely on Rule of Law.’<sup>52</sup>

In 2015, these rhetorical changes were followed by a number of legislative drafts and enactments of direct relevance to the rights lawyer movement and its supporters; including but not limited to the following.<sup>53</sup>

- The 2012 revision of the *Criminal Procedure Law* (CPL) incorporating the new rules on ‘residential surveillance in a designated location’ – this change came into effect just as the Xi administration took over and it has been exploited as discussed above.<sup>54</sup> Considering its effects on the system, this new compulsory measure at the investigation stage of a criminal process has the pernicious effect of providing a veneer of legality for measures that used to be clear violations of human rights but also to constitute false imprisonment under China’s criminal law.
- The 2015 *National Security Law*, which defines national security in an extremely broad way as follows: ‘*National security is the relative absence of international or domestic threats to the state’s power to govern, sovereignty, unity and territorial integrity, the welfare of the people, sustainable economic and social development, and other major national interests, and the ability to maintain a continued state of security.*’ Even though this law is worded in a highly vague way, it at least provides rhetorical support for the actions of the security apparatus and indeed; it also purports to justify actions taken by ordinary citizens to protect National Security; this would appear to provide at least some support for actions taken by persons with no clear connection with ‘law enforcement.’
- The 2015 revision of the *Criminal Law* (CL) further tightening the definition of disruption of courtroom order. The revised Article 309 CL defines disruption of courtroom order: *gathering crowds to make a racket or attack the tribunal; beating judicial work personnel or litigation participants; insulting, defaming or threatening*

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<sup>52</sup> CCP Central Committee Decision concerning Some Major Questions in Comprehensively Moving Governing the Country According to the Law Forward,' 28 October 2014 (党的领导和社会主义法治是一致的，社会主义法治必须坚持党的领导，党的领导必须依靠社会主义法治).

<sup>53</sup> I recommend for reference the website China Law Translate, which provides updated translations of most of the texts discussed here.

<sup>54</sup> <http://chinalawtranslate.com/criminal-procedure-law/?lang=en>.



*judicial personnel or litigation participants, and not heeding the court's admonitions, seriously disrupting courtroom order; ... acts of destruction of court facilities; purloining or damaging litigation documents or evidence and other such acts, seriously disrupting court order.*' (Emphases added.) Both broad wording of this provision, and the elastic addition of 'other such acts' in the definition of the crime would unfortunately lend themselves to abuse. This problem is further aggravated by the new definition of rules on courtroom order published by the All China Lawyers' Association:

- The draft 2015 All China Lawyers' Association's *Lawyers' Practice Code of Conduct* (律师执业行为规范) has included new courtroom discipline rules. For example, Article 84 stipulates that '*Lawyers must not use methods such as making distorted, untrue or misleading commentary or publicity; releasing public letters, lining up and encouraging demonstrations, and encouraging and assisting the inflammation of public opinion; putting pressure on case-handling organs, disparaging, vilifying, defaming or slandering the reputation of case-handling organs or opposing parties, influencing the handling of the case in accordance with law.*' (Emphases added.)<sup>55</sup>
- The 2016 *People's Court Courtroom Rules*-- the definition of disruption of courtroom order in Article 20 reflects the ACLA one.
- The 2015 *Draft Foreign (extra-territorial) NGO Management Law*, which is apparently expected to be enacted in the course of 2016 – as has been widely commented, this piece of legislation, if enacted in accordance with the current draft, will bring foreign entities broadly under the control of the public security authorities (the police). Even while it has not yet been enacted, it has produced effects on transnational civil society organisations with operations in mainland China. They and (especially) their (former) Chinese partners have faced greater pressure from the security apparatus and they generally react by limiting their activities to what is less controversial. In this way, repression is being exported – it comes to affect civil society across China's borders.<sup>56</sup>
- The 2015 *Charity Law*, which governs domestic imposes stringent restrictions, for example, on fundraising by entities not recognised and organised in accordance with its rules. A family member of a currently detained lawyer facing a heavy prison sentence explained that with the effectiveness of the new *Charity Law* becoming effective soon; they fear that previous successful crowd-funding campaigns to support the family and cover legal costs through small donations by hundreds of sympathisers are no longer available now,<sup>57</sup> even though it has been pointed out that the law does not prohibit individuals from appealing to others for financial support.

These changes of rhetoric and rules are accompanied by crackdowns, only one of which has been the subject of this report. Wider repressive waves have affected groups and circles which, while

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<sup>55</sup> Translation by China Law Translate, CLA revisions of Lawyers' Practice Code of Conduct (律师执业行为规范, <http://chinalawtranslate.com/lawyers-practice-code-of-conduct-draft-revisions/?lang=en>).

<sup>56</sup> <http://chinalawtranslate.com/foreign-ngo-draft-2/?lang=en>.

<sup>57</sup> Conversation #123-16-1.

also crucial to the emergence of a more liberal and democratic society, have in the past been more tolerated: for example, feminist activists, LGBTQI and anti-discrimination activists, labour activists, and independent media groups and individuals. Moreover, the authorities have also begun to crack down on civil society organisations. The overall direction of these wider systemic changes is clear: greater power concentration; the subjection of the legal institutions, including the legal profession, to a more comprehensive control by the party; and ultimately, the elimination of China's independent civil society.

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