

Evidence to Conservative Party Human Rights Commission

Inquiry on China

Submission from Nicola Macbean, Executive Director, The Rights Practice

31st March 2016

1. I welcome the Conservative Party Human Rights Commission's Inquiry into the human rights situation in China. I founded The Rights Practice in 2002 during a period of optimism and openness when many Chinese academics and practitioners were keen to strengthen human rights protections in the criminal justice system. The mission of our organisation was to support these efforts through raising awareness of international law and sharing experience from around the world of how human rights can be better protected in practice.
2. From the early 1980s China began to rebuild its legal system after the chaos of the Cultural Revolution. The government recognised the importance of law to its new economic priorities; in addition to commercial laws, administrative and criminal laws were also drafted and promoted. Improved diplomatic relations with the West brought opportunities for international cooperation and exchange and there was growing interest in the institutions and practices of a more liberal rule of law. China's law schools and the number of lawyers increased; and foreign law firms set up office. Although liberal ideas were influential, institutions remained under the tutelage of the Chinese Communist Party (CCP). Political legal committees, at all bureaucratic levels, oversaw the functioning of the police, the prosecution and the courts. Chinese lawyers were, and still are, obliged to be members of the local branch of the All China Lawyers' Association, an organisation answerable to the Ministry of Justice, which retains powers to approve annually lawyers' licenses. The CCP approves the appointment of judges and the National People's Congress has powers to supervise the work of judges and courts. The CCP and the government have recently indicated support for greater judicial independence and there have been steps to reduce the influence of the court's adjudication committee and strengthen the role of trial judges. However, for a variety of political and developmental reasons moves towards greater independence of the courts, from other branches of government, are likely to be incremental.
3. China was an early state party to the UN Convention Against Torture (1988) and the UN Convention on the Elimination of All Forms of Discrimination against Women (1980), but it was in the mid-1990s that China began to engage more fully with international human rights mechanisms. It ratified the UN Convention on Economic, Social and Cultural Rights and signed, but has not yet ratified, the UN Convention on Civil and Political Rights. In the late 1990s, following a lengthy period of discussion, new criminal laws and a lawyers' law were adopted. In 2004 the constitution was amended to include recognition of the state's duty to respect and protect human rights.
4. Against this backdrop lawyers, legal scholars and, even some officials, took a growing interest in how to turn the rhetorical promises of the law into reality. Pilot projects, many inspired by overseas study visits and often in cooperation with organisations like ours, experimented with new policies to protect juveniles, promote the use of bail, introduce sentencing reforms etc.

Some lawyers began to take on cases in the public interest and a small group of lawyers, describing themselves as ‘rights-protecting’ (*weiquan*), championed the interests of marginalised groups, including persons facing forced eviction, victims of miscarriages of justice and Falungong practitioners.

5. In recent years, the Chinese government has demonstrated growing ambivalence towards human rights, rights lawyers and the idea of universal values. A July 2012 article in the overseas edition of the People’s Daily signalled the authorities’ growing concern that rights lawyers as well as underground religious groups, dissidents and Internet leaders would try to bring about change in China from the “bottom up”¹. Document Number 9², a CCP document which started circulating in spring 2013, criticised notions of universal values and civil society as attempts by the West to undermine the influence of the CCP.
6. Yet, the Chinese authorities have also declared their commitment to building a country ruled by law. One of new CCP General Secretary Xi Jinping’s early speeches was a call, on the 30th anniversary of its promulgation, to rule the nation in accordance with the constitution. Support for the constitution is usually seen as a marker of more liberal values and the speech aroused considerable attention. However, in a book of Xi Jinping’s speeches released a year and a half later the speech was missing³. In October 2014, CCP leaders at the Fourth Plenum of the Central Committee of the 18th Party Congress approved an agenda to promote greater independence of the courts from local political interests and to boost the professionalism of the judiciary. There were also calls to end miscarriages of justice. A plenary meeting dedicated solely to legal matters was unprecedented. The Decision issued at the end of the meeting, however, underlined the Party’s supremacy over legal institutions⁴. Observers should understand that the Chinese government does not share a liberal interpretation of the law as a means to restrain power. The CCP sees developing rule by law as a disciplinary tool to strengthen social control and manage disputes and grievances.
7. For many years a government priority has been maintaining ‘social harmony’ or stability. Police and local leaders have been assessed and rewarded on the extent to which they have been perceived to contain public unrest and nip protests in the bud. Consequently many human rights defenders, such as rights lawyers or NGO activists, have been subjected to police requests to ‘have tea’ in order to solicit information on activities or warn them off holding larger scale events.
8. In the past couple of years the focus on social stability has been supplemented, if not surpassed, by a very public concern for national security. A new national security commission was announced in November 2013 with President Xi at the head. In January 2015 the government announced a new national security strategy in response to a sense of increased risk from

¹ For a report, see for example <http://chinachange.org/2015/07/23/crime-and-punishment-of-chinas-rights-lawyers/>

² *Document 9: a ChinaFile translation* at <https://www.chinafile.com/document-9-chinafile-translation>

³ <http://cmp.hku.hk/2014/09/04/35905/>

⁴ <http://blogs.nottingham.ac.uk/chinapolicyinstitute/2015/05/28/xi-jinpings-rule-of-law-with-chinese-characteristics/>

dangers at home and abroad⁵. In July 2015 the National People's Congress passed a National Security Law. National security is defined in Article 2 as referring to "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 ensure a continued state of security"⁶. The law's remit is broad including religion, culture and ideology. A counter-terrorism law was passed at the end of December 2015.

9. Document Number 9 cast a chill over academic life within the humanities, social sciences and law schools⁷. Chinese academics describe increased pressure within universities to avoid discussion of controversial topics; there are reports of staff being side-lined and more muted classroom debate. Chinese scholars also face increased obstacles to meeting with foreign scholars, travelling overseas to conferences and hosting international meetings. China's Education Minister recently vowed that 'Western values' will not be allowed into the country's classrooms⁸. There are many academics and officials who are unhappy with the turning away from reform and a more liberal view of the law and governance, but their jobs depend on the state and it is a very brave (or retired) person who dares to challenge this newly constrained way of working.
10. The CCP is also asserting greater control over the mainstream media in China and users of social media face harsh sentences for disseminating content critical of government policy. In highly publicised visits by President Xi to state news organisations in February 2016 China's media was called on to serve the interests of the Party. In late January Xinjiang-based blogger Zhang Haitao was sentenced to 19 years for 'incitement to subvert state power' after posting comments critical of the government's policy in the Xinjiang region. Reporters Without Borders ranked China 175th out of 180 countries in the 2014 World Press Freedom Index.
11. Against this background, the prospects of meaningful political reform to allow greater public participation in decision-making are negligible. The Chinese model of governance, currently being promoted, gives little or no voice to civil society in policy advocacy, and restricts the role of lawyers, who speak out on human rights in the courtroom and in public, in the administration of justice. To convey this message of Party state control the authorities have resorted to an unprecedented crackdown on civil society organisations and human rights lawyers. Critics of China's political system have long paid a heavy price for their views, but we now see the state showing a greater willingness to use its extensive powers to detain in order to control the human rights defenders who have been trying to work within the law to challenge human rights violations. The objectives of the crackdown seem broader than a concern to ensure social stability; police tactics appear to have changed and the purpose seems to be intimidation. Unlike many previous detentions of social activists, none of those whose cases are briefly described below report receiving any advance warning from the police that they faced arrest.

⁵ <http://thediplomat.com/2015/01/chinas-national-security-strategy/>

⁶ http://chinalawtranslate.com/2015nsl/?lang=en#_Toc423592306

⁷ <http://www.theguardian.com/world/2015/aug/06/china-xi-jinping-crackdown-liberal-academics-minor-cultural-revolution>

⁸ <http://www.ft.com/cms/s/0/95f3f866-a87e-11e4-bd17-00144feab7de.html#axzz44ail9WRg>

A year of repression

12. Last year, on the eve of international women's day, the police detained five young Chinese feminists. They were picked up in different parts of the country and held in pre-trial detention for over a month. Their alleged offence was "picking quarrels and stirring up trouble". They had been planning a small public campaign against sexual harassment on public transport, but had not carried it out at the time they were detained⁹.
13. In early June 2015 Guo Bin and Yang Zhanqing, two NGO workers who had worked for anti-discrimination charity Yirenping, were detained on charges of "illegal business operations". They were held for a month and then released without charges. Their colleague, lawyer Chang Boyang, had been detained for six months in May 2014 on similar charges of illegal business operations as well as "gathering crowds to disrupt order in a public place".
14. On 9th July 2015 the authorities launched a nationwide crackdown ('709') on lawyers and their assistants. Between 9 to 16th July over 120 lawyers were summoned by the police for questioning¹⁰. Although the majority of lawyers were released within hours, 13 lawyers and legal assistants, detained in July, remain in detention to this day. All of the lawyers and legal assistants detained in the '709' crackdown were initially detained under "residential surveillance in a designated location" (RSDL). When the time limit for this detention measure expired in January, they were transferred to pre-trial detention centres. Eight were formally arrested on the charge of state subversion; these included lawyer Ms Wang Yu, who visited London in March 2015, and lawyer Li Heping, who has been working with The Rights Practice on an EU-funded project to combat the use of torture. Four persons face charges of "incitement to state subversion" and Li Heping's young project assistant, Ms Gao Yue, faces charges of helping to destroy evidence.
15. On 25th August 2015, human rights lawyer Zhang Kai was detained in Wenzhou, Zhejiang. He had been advising Christian communities in Zhejiang province following the forcible removal of crosses from local churches. Zhang Kai was shown making a televised confession on state media on 25th February 2016. He was released from detention and sent back to his hometown on 23rd March¹¹.
16. On 3rd December, more than a dozen labour activists were detained in Guangdong province. Three remain in detention: Zeng Feiyang and Meng Han of the Panyu Workers Centre have been charged with "gathering a crowd to disturb social order" and He Xiaobo of the Nanfeiyan Centre in Foshan has been charged with "the misappropriation of funds"¹².

⁹ <http://www.theguardian.com/lifeandstyle/2015/apr/17/chinas-feminist-five-this-is-the-worst-crackdown-on-lawyers-activists-and-scholars-in-decades>

¹⁰ The summons and detentions continued throughout the summer. China Human Rights Lawyers Concern Group have documented 317 cases of lawyers, legal assistants, activists and family members being affected by the crackdown. <http://www.chrlawyers.hk/en/content/%E2%80%98709-crackdown%E2%80%99-latest-data-and-development-cases-1800-18-march-2016>

¹¹ <http://www.nytimes.com/2016/03/25/world/asia/china-lawyer-zhang-kai-released.html>

¹² <http://www.clb.org.hk/content/guangdong-labour-activists-detained-100-days-worker-unrest-continues>

17. In early January 2016, a Swedish national, Peter Dahlin, who worked with the China Urgent Action Working Group was detained in Beijing on the way to the airport. He was held for two weeks and shown making a televised confession on Chinese state media. China's Foreign Ministry accused him of violating national security laws and expelled him¹³.
18. At the end of January, the Beijing Zhongze Women's Legal Counselling and Service Centre, set up by veteran women's rights lawyer Guo Jianmei, was told by the police that the organisation would be closed down¹⁴. No one in the organisation was detained.

Legal concerns

19. Many of the people detained over the past year were held for over one month without being formally arrested. Under Chinese criminal procedure law the police are supposed to make a decision whether to formally arrest a suspect within three days; this can be extended by one to four days under special circumstances. Where a detainee is suspected of being involved in crimes committed in multiple places or as part of a gang the time limit for submitting a request can be extended to 30 days. The People's Procuratorate then have seven days to approve or disapprove of the request¹⁵. In most documented cases involving human rights defenders the police use the maximum time allowed. The length of time allowed by Chinese law pre-arrest and without judicial oversight was criticised by the United Nations Committee Against Torture following their recent review of China¹⁶. They called for China to bring detained persons promptly before a judge within a time limit that should not exceed 48 hours. During their time held in pre-trial detention centres, the five feminists and the NGO workers all reported being able to meet with their lawyers. Although the permitted role of Chinese lawyers in the initial "investigation phase" is limited, the lawyers in these cases provided family and friends with the comfort of knowing that the detainees were in reasonable health.
20. The crackdown against lawyers and their assistants used different legal procedures. Rather than detain people in the normal pre-trial detention centres, the police made use of a special provision in the criminal procedure law that allows the detention of suspects in a place of detention designated solely by the police. The UN Committee Against Torture deems this a form of incommunicado detention and has called on China to abolish it¹⁷. Although the physical conditions in pre-trial detention centres are often quite basic and there is overcrowding, there are measures in place to help prevent ill-treatment and the use of torture. These include surveillance cameras, access to lawyers and some separation between investigating and detaining authorities. There is also contact with other detainees and some access to reading and television. The lack of protective measures for anyone held in "residential surveillance in a designated location" (RSDL) makes them very vulnerable to ill-treatment and torture. Former detainees describe the psychological strain of long periods deprived of sleep and human interaction.

¹³ <http://www.nytimes.com/2016/01/26/world/asia/china-to-expel-swedish-human-rights-advocate.html>

¹⁴ <http://www.nytimes.com/2016/01/30/world/asia/beijing-women-legal-aid-guo-jianmei.html>

¹⁵ Criminal Procedure Law (revised 2012). Article 89.

¹⁶ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1002&Lang=en

¹⁷ Ibid

21. Chinese law requires official notification of detention to be sent to the detainee's family. While in most of the '709' cases such notices were sent, lawyer Li Heping's wife never received official notification that he had been detained. In all of the '709' cases the investigating police denied detainees access to lawyers on the grounds that they were accused of endangering state security. In the case of Gao Yue, she was originally detained on suspicion of "picking quarrels and provoking trouble", however, after lawyers requested a meeting with her the charge was changed to endangering state security. Once the six months' time limit under RSDL was reached the police transferred detainees to pre-trial detention centres in mid-January. When lawyers made fresh applications to meet with their clients, the police announced that the detainees had all dismissed the lawyers appointed by their families and were appointing other lawyers instead. In none of these cases have the original lawyers been able to verify that the decision to dismiss them was made freely and without duress. Restricting detainees' access to a lawyer of their choice appears to be a new police tactic in response to the growing number of lawyers willing to represent 'politically sensitive' cases and speak out on behalf of their clients. The detained labour activists and Peter Dahlin also faced restrictions meeting with lawyers. The Swedish authorities were refused consular access to Dahlin for a fortnight and the Chinese side refused to give information on where he was being held or whether he was receiving medicine for a rare illness.
22. The authorities also seem to be making increasing use of prejudicial media reports including televised confessions¹⁸. The People's Daily described the Ministry of Public Security's detention of the lawyers as 'smashing a major criminal gang'. Two lawyers from the Fengrui law firm, at the heart of the allegations, were subsequently shown confessing on state television. Lawyer Zhang Kai was shown on television warning other lawyers not to receive overseas funds and Peter Dahlin was also shown on state media apologising for hurting the Chinese people.

Impact of detentions on individuals and families

23. These, and similar incidents not only play fast and loose with the law, but of course, have an impact on the individual, their family, civil society organisations and the wider society. For individuals, detention can be a traumatic experience. Lawyer Li Heping was kidnapped and beaten with electric batons in 2007; in May 2015 he declared at a workshop sensitising lawyers to the psychological impact of torture that he had finally recovered from that experience. Even where detainees are treated reasonably well, the uncertainties and indignities of detention can have a lasting impact, particularly for those people who never imagined their work could lead to this. Many activists are used to being required to 'have tea' with the police and these opportunities to meet are sometimes a chance to explain their work and be informally advised of 'red lines'. In the detentions over the past year no one was given any warning.
24. Police harassment and monitoring usually continues on release from detention. In most instances the police make use of another coercive measure, "taking a guarantee while waiting trial". Usually translated into English as bail, the measure is more akin to probation; it can be

¹⁸ British investigator Peter Humphrey was shown on state media shortly after his detention in Shanghai in 2013. <http://www.theguardian.com/world/2015/jun/18/china-gsk-peter-humphrey-prostate-problems-confession-claim>

applied for up to one year and those subject to it are often required to live in their hometown where they have their household registration. While on bail former detainees can be recalled to detention at any time. Former detainees are often pressured to give up their previous work and some face overseas travel bans. Many report ongoing problems with anxiety and depression.

25. Detentions also have an impact on families. Family members have been pressured to appoint lawyers recommended by the local authorities rather than a lawyer from the human rights community. In the '709' cases, the police have recently informed families that the human rights lawyers they appointed have been dismissed by the detainee. Family members may be threatened with loss of employment if they do not try to persuade someone to give up their human rights activism. In the past week, family members still in China, are reported to have been detained in order to silence overseas critics¹⁹.

Regulatory framework

26. A new regulatory framework for civil society in China is now taking shape. At the March 2016 meeting of the National People's Congress, China's first charity law was passed by 2,636 votes to 131. This legislation, which will regulate domestic charitable organisations, has been generally welcomed, although it has been under discussion for a decade. It is expected that the law will make it easier for mainstream charitable ventures to register – and most importantly – raise funds. However, the late addition of articles explicitly prohibiting activities that harm national security and the vague definition of charitable purpose suggest that the way this law is implemented will be critical. Many organisations working in the human rights field do not expect to be allowed to register as charities and may continue operating as companies or unregistered. The law has already had an impact on one organisation: a group of lawyers who raised funds online to support cases of alleged miscarriages of justice have announced that, due to the new law, they will no longer collect money from the public. The new law is likely to facilitate some activities while closing down other opportunities.
27. A positive feature of the charity law is that charities will be under the jurisdiction of the Ministry of Civil Affairs. This is not likely to be the case with the Foreign NGO Management Law. In the current publicly available draft, responsibility for the registration and supervision of foreign not for profit organisations will lie with the police. The intention to regulate foreign NGOs was announced as part of a national security review into their operations in China and the Ministry of Public Security took the lead in drafting the new law. Under the law, organisations will be required to obtain the approval of both a sponsoring organisation and the police. The draft law grants the police extensive powers, including approval of activity plans and sources of funding; access to offices and files; and the administrative detention of staff. Foreign NGOs that are not registered, but want to undertake activities in China will be required to obtain a temporary registration. As currently drafted, the law will be onerous for foreign NGOs to comply with and for the police to administer it fairly. Consequently, implementation is likely to be selective. At the moment foreign NGOs act in a grey area of the law and registration could bring some

¹⁹ <http://www.theguardian.com/world/2016/mar/28/chinese-dissident-chang-ping-says-brothers-abducted-over-letter-criticising-president>

protection and certainty. Equally, failure to fully comply with some of the provisions of the law could be used to justify police actions to close down organisations and deport foreign staff. The law will potentially impact on a very wide range of international not for profit organisations operating in or visiting China from chambers of commerce to universities, arts groups and professional bodies as well as international charities working in development. Given the broad remit of this draft law and its likely impact there has been significant international push back as well as opposition within China. A third and final draft of the law is expected later this year following further consultations. Many observers expect little change.

28. The charity law and the foreign NGO law both have the potential to restrict the financial independence of Chinese civil society organisations from the state. Although the charity legislation should help to increase Chinese philanthropy and address the current lack of trust in many Chinese charities, it will also curb public fundraising initiatives by unregistered charities. The foreign NGO law will probably lead to a reduction in the availability of overseas funding for Chinese NGOs.

Impact on organisations and society

29. The detention of human rights activists and the increased repression has had an inevitable and immediate impact on NGOs in China. Some organisations have been forced to close down as a result of police pressure; there have been no legal procedures to enforce closure. Other organisations that normally work with affected organisations look on with concern and distance themselves from any risky cooperation. The prospect of a foreign NGO law and the heightened risks associated with foreign funding have also resulted in Chinese partners withdrawing from cooperation with international organisations, including established charities. Many foreign NGOs are likely to withdraw from China as the operating environment deteriorates and the risks increase. The funding and opportunities for Chinese civil society are likely to be cut back. The space for civil society to work and to partner with other stakeholders will be further restricted. Anyone in China thinking of setting up an NGO in the current climate will pause.
30. At the societal level, the diminishing space for civil society will mean that many of Chinese society's pressing issues are not being adequately addressed. The human rights activists detained over the past year were promoting women's rights, an end to domestic violence and sexual harassment; they were challenging employment discrimination towards people with disabilities; they were championing workers' rights, particularly unpaid wages; and the lawyers were working on alleged miscarriages of justice and the use of torture. While some other groups are still working on these issues, the threat of further detentions and the increasing control of the media, will constrain how these concerns are tackled. As the government seeks to monopolise policy debate and silence criticism, China risks losing the diversity of voices and innovation any society needs to tackle complex social challenges.
31. The unprecedented scale of the recent repression has also brought resistance both in China and internationally. Within China lawyers have filed complaints; families and those caught up in travel bans have sought administrative reconsideration and used open government information requests when the authorities fail to respond to requests for basic information on the situation

of detainees. Details of the detentions are being spread through social media. Chinese activists overseas have helped to rally International support; recent detentions have led to strong public statements from Bar associations, governments and the United Nations. The apparent abduction of booksellers from Hong Kong, including British passport holder Lee Bo, and their reappearance in mainland China, was a step too far for some who may have become inured to the way China treats its own citizens.

How should we respond?

32. There are no easy answers to how we should respond to the worsening human rights situation in China, but we should probably start by being very honest about what is happening and our concerns. A range of UK stakeholders have responsibilities to use their voice: the government, parliament, universities, legal profession, business, churches and NGOs. On the one hand, we need to monitor, report and raise specific concerns about what is happening on both public occasions and through private channels. We also need to recognise that China's human rights situation is deeply tied to the rule of law and the political system. There has been a widely held assumption that growing wealth will inevitably liberalise China's political and legal systems. There is also faith in a reformist logic that the situation is improving incrementally. This is certainly not the case for those who come into conflict with the interests of the state (at all levels). And, in recent years, it is not clear that the situation is improving significantly in cases where the state has little obvious interest. We all need to reassess what is happening and how we should engage with China on our concerns.
33. We would like to see the British government raising specific concerns in both public and private. We recognise that private diplomacy can be effective, but this needs to be supported by public statements on issues of concern. We do not believe that this is 'megaphone diplomacy'; it is about raising precise concerns, whether that is a person who has been detained for their human rights work or a piece of legislation or practice that is troubling. This can be done in an informed and respectful manner. Many people in China find it hard to believe that foreigners could be genuinely concerned about the plight of individuals in China. Too broad a condemnation of human rights failings only supports the Chinese view that we are playing politics. Although the law in China is manipulated and abused, the government's claims to rule by law are important and we should hold them to account. However, we should also recognise that some of China's laws, for example with respect to detention time limits and judicial oversight, fall far short of international standards. There is more scope to raise detailed concerns, for example, regarding the range of detention practices. These include "residential surveillance in a designated location" that was used with the '709' lawyers and "*shuanggui*", a type of detention and interrogation of Party members, outside the criminal law, which is widely used by the Commission on Discipline Inspection in the anti-corruption crackdown and where the use of torture and ill-treatment is allegedly commonplace²⁰.
34. We should also be clear that the human rights situation in any country is of international concern. China is not being singled out for criticism, but as a global power it also has global responsibilities. I once heard the situation of human rights defenders described as resembling

²⁰ <https://vimeo.com/104070378>

the canary in the coalmine. What happens today to a human rights defender can happen tomorrow to business colleagues or our partners in universities. The abduction of Lee Bo shows it can happen to British citizens in Hong Kong. We believe that human rights can be better mainstreamed into all aspects of the UK's relationship with China. Our broader engagement with the country – through business, education, the arts, sport – must be founded on human rights principles of respect for the dignity of each and every individual. All parts of the British government, as well as business, should convey a consistent message that human rights must underpin our overall relationship.

35. Parliament can play a bigger role in debating our relationship with China and our human rights concerns. Public expressions of concern will be disseminated in China and are a reminder that the outside world is watching. Parliament can also pay more attention to monitoring the British government's strategy towards human rights and rule of law in China and how the policy is resourced and integrated across government departments. We believe that greater transparency will encourage a more robust approach to ensuring that British government cooperation with China in the area of rule of law does not have the unintended consequence of endorsing repression and "zones of illegality". Most importantly, parliament should challenge any impression that our business interests with China should trump our concerns for human rights and the rule of law.

Nicola Macbean

The Rights Practice, 1 April 2016