

## LAWYERS' RIGHTS

### 1. Generally

The protection of the rights of human rights defenders is itself indispensable to the vital operation of the United Nations as it is the particular and significant role of human rights defenders to give voice to those who are unable to speak themselves, and more generally to interface between the victims of human rights abuses and the mechanisms of legal redress.

However, it is precisely because of their role as the vanguard of human rights that human rights defenders have increasingly become the targets of human rights abusers. According to the U.N. Commission on Human Rights (UNCHR), fact sheet 29, "Human Rights Defenders: Protecting the Right to Defend Human Rights" (available at <http://www.ohchr.org/english/about/publications/sheets.htm>), the "severity and scale of reprisals committed against defenders were one of the primary motivations behind the adoption of the Declaration on Human Rights Defenders and the establishment of the mandate of the Special Representative of the Secretary-General on human rights defenders, a position now held by Ms. Jilani." As the report further indicates, these reprisals have taken the form of murder, death threats, kidnapping, assault and battery, torture, arbitrary arrest and detention, and the filing of criminal or other charges leading to prosecution and conviction. Court sentences have included long terms of imprisonment and forcible commitment to psychiatric institutions and "re-education through labor." Human rights defenders are additionally defamed or blocked from exercising legitimate rights through the enactment of special laws. *Id.*

Since state authorities are both the most commonplace perpetrators of violations against human rights defenders and the ones who also bear the responsibility for assuring human rights defenders protection from reprisals, the role of the U.N. Special Representative of the Secretary-General on human rights defenders, human rights NGOs, the international human rights legal bar, and all concerned people is especially significant to help ensure the protection of human rights defenders from reprisals by state actors.

The most detailed expression of the rights of human rights defenders is provided by the U.N. 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, August 27 to September 7, 1990. Among other things, it provides for the:

- Independence of lawyers;
- Freedom of expression and association, including the right to form and join self-governing professional associations;
- Confidentiality of communications between lawyers and their clients;
- Protection from unlawful interference, including the right to perform their professional functions without intimidation, hindrance, harassment or improper interference, as well as the right to travel and to consult with their clients freely both within their own country and abroad;

- Right to due process for lawyers facing sanctions.

The U.N. Declaration on Human Rights Defenders similarly recognizes that human rights defenders have the right to:

- Submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impeded the realization of human rights;
- Make complaints about official policies and acts relating to human rights and to have such complaints reviewed;
- Offer and provide professionally qualified legal assistance or other advice and assistance in defense of human rights;
- Effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights.

While the Basic Principles and Declaration are not in themselves legally binding instruments, they contain a series of principles and rights that are based on human rights standards enshrined in other international instruments, such as the International Covenant on Civil and Political Rights. Moreover, they were adopted by consensus by the U.N. General Assembly and therefore represent a very strong commitment by states to their implementation. See, *supra*, UNCHR fact sheet 29, II. (A)(1).

## 2. China

The Constitution of the People's Republic of China ("P.R.C.") requires that judicial, prosecutorial, and law enforcement officers operate independently under a system of checks and balances to ensure correct and effective enforcement of law. (Article 135, Constitution). Moreover, in 1999, Article 5 was amended to include this passage: "The People's Republic of China shall practice ruling the country according to law, and shall construct a socialist rule-of-law state."

Still, as many experts have commented, actual legal practice in China, particularly in criminal cases, often flatly contradicts that declaration. As Ronald Dworkin states in a 1996 article in *The New York Review of Books*, entitled "Taking Rights Seriously in Beijing," the two principles central to the rule of law—that the coercive power of the state may only be exercised in accordance with standards established in advance, and that judges must be independent of the executive and legislative powers of government—have been rejected by the traditional legal practice within China today. Judges have developed no system of legal precedent: that is, there was no understanding that judges in later cases would follow principles laid down in earlier decisions. Instead, the law is an instrument of power and political control, such that its application is always subject to the dictatorship of the CCP as representing the proletarian masses.

This is especially clear from the CCP's criminal prosecutions of lawyers who exercise their right to provide legal assistance to all citizens of China. It is also clear from the reprisals and criminal prosecutions of lawyers who exercise many of the rights afforded them by the U.N.

Basic Principles on the Role of Lawyers and the U.N. Declaration on Human Rights Defenders, which include the right of submission to governmental bodies and agencies and organizations criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may impede the realization of human rights.

According to Human Rights Watch, this is precisely what is happening to lawyers in China today. According to Human Rights Watch, “Great Danger for Lawyers: New Regulatory Curbs on Lawyers,” Section I, at page 2 of 6 (available at <http://www.hrw.org/reports/2006/china1206/2.htm>), the Chinese regime’s “claims to be committed to a rule of law are ... undermined by a plethora of physical attacks on lawyers that remain unpublished (the subject of a forthcoming Human Rights Watch report).” In addition, “local authorities often deploy a wide range of tactics to obstruct the work of lawyers, including unlawful detentions, disbarment, intimidation, and simply to accept a case into the court system.”

What follows is a look at a few illustrations of the crackdown on lawyers in China today, especially in the wake of the passage of new restrictions on the ability of lawyers to freely practice their profession on March 20, 2006, through the state-controlled All-China Lawyers Association’s (ACLA’s) issuance of the “Guiding Opinions on Lawyers Handling Mass Cases,” which instructs lawyers to seek the “supervision and guidance” of judicial administrative bureaus when handling mass cases (defined as involving 10 or more plaintiffs,) and provides for far greater surveillance of local lawyers’ associations by the regime. *Id.*

#### **a. Gao Zhisheng**

Perhaps the most well-known target of the crackdown on lawyers in China is Gao Zhisheng, who submitted three open letters to the P.R.C. People’s Congress, head of state Hu Jintao, and Premier Wen Jiabao, regarding the illegality of the persecution against Falun Gong in China. These include his December 31, 2004 “Open Letter to the Chairman of the Standing Committee of the National’s People’s Congress,” (available at <http://www.theepochtimes.com/tools/printer.asap?id=39696>) regarding the particularities of the case of persecuted Falun Gong practitioner Huang Wei. During his investigation of this case, the judicial officer threatened him, saying that he was doing something quite dangerous. *Id.* They also include a December 16, 2005 third open letter, “Why One of China’s Top Attorneys Broke with the Communist Party,” which is available at <http://www.theepochtimes.com/tools/printer.asap?id=35876>. In this letter, Attorney Gao shared the experiences of several Falun Gong practitioners who had been tortured brutally based solely on their religion or belief. He concludes this letter by reminding the Chinese regime that:

Our investigation has shown that, when facing the believers that almost all ... ‘refuse to transform,’ those responsible for ‘transforming’ them have completely lost their humanity.... The whole system has exhibited insanity driven by desperation as the suppression has lasted six years without success. The recent horrifying incident, in

which the policeman He Xuejiain raped two female Falun Gong practitioners in Tunzhong City, Hebei Province, in front of his colleagues, is a clear example.

The day after Gao published his third open letter, he published his decision to quit the Chinese Communist Party, describing his decision to “quit the cruel, untrustworthy, inhuman, and evil party,” as the “proudest day of [his] life.”

The CCP’s reprisals against Attorney Gao have included suspension of his license to practice law, harassment of his wife and children, physical assaults on his person, and threats that put his own liberty and the safety of his family at risk. Finally, as is observed by the Congressional-Executive Commission on China, on August 15, 2006, he was held incommunicado since Chinese authorities reportedly abducted him from his sister’s home in Shandong Province. See September 20, 2006 CECC Press Release. After subjecting Gao to several months of illegal detention, interrogation, and torture, a trial that, Gao’s attorney Mo Shaping called “totally illegal,” was held. As Mr. Mo noted, during the investigation of this case, “no lawyer was allowed to present or offer evidence or help Gao Zhisheng [and] although he was told it would be an open trial, no one was allowed to attend.” New York Times, *Activist Chinese Lawyer Put on Trial*, December 12, 2006 (available at: <http://www.nytimes.com/aponline/world/AP-China-Outspoken-Lawyer.html>).

As the reactions of several human rights NGOs make clear, the subsequent finding of guilt and sentence of probation with a five-year suspended jail term can only be described as an illegal form of retaliation against a man who dared to openly state the truth about China’s persecution of the underground Christians and practitioners of Falun Gong. However, the recent courageous acts of Gao Zhisheng coupled with his international reputation have broadened and deepened the respect and accolades afforded to him. For example, on May 3, 2007, the Chairman of the Awards Committee of the American Board of Trial Advocates selected Gao as the recipient of its Courageous Advocacy award. As indicated in its letter sent to Chinese head of state Hu, the award gives “special recognition to a judge or advocate who demonstrates particular courage in the performance of duty, who has believed in and prosecuted a strict adherence to the Rule of Law even at great risk to personal freedom and safety.” Hu has been asked to permit Gao to travel to Santa Barbara, California, to personally accept the award he clearly merits.

#### **b. Chen Guangcheng**

In late August 2006, Chen Guangcheng, the self-trained legal activist who publicized the fact that women in China had been forced to undergo abortions and sterilizations to lower its population through its “one-child” policy, was sentenced to four years and three months’ imprisonment. A chronology of the events culminating in Chen’s illegal sentence are detailed by Human Rights Watch in “Chronology of Chen Guangcheng’s Case,” available at <http://hrw.org/english/docs/2006/07/18/chiina13766.htm>. As this report indicates, his refusal to stop his “activism” placed him under house arrest. Prominent lawyers’ attempts to assist him

were thwarted. Lawyers Li Fangping and Li Subin were beaten by police and returned to Beijing to discourage their involvement in the case in October 2005. *Id.* Teng Biao from the Chinese University of Politics and Law and Xu Zhiyong from Beijing University of Posts and Telecommunications were warned to stay away from the case after they met with Chen's 70-year-old mother, his 3-year-old son, and his older brother in June 2006. *Id.* In addition, Chen's lawyers, Li Jinsong and Zhang Lihui, were not only harassed, beaten, and threatened, but also not permitted to provide Chen with the due process rights guaranteed to him and all Chinese citizens under their Constitution. *Id.*

Purportedly in response to international attention, the appellate court ordered a retrial. However, Chen remains in jail.

### **c. Zheng Enchong**

On August 28, 2003, Zheng Enchong was tried behind closed doors on charges of "supplying state secrets to foreign entities" by Shanghai No. 2 Intermediate People's Court. As Amnesty International notes, "state secrets are vaguely defined in Chinese law: whether something constitutes a 'state secret' is often an arbitrary and politically motivated decision." In Zheng's case, Zheng was alleged to have sent secrets to the New York-based organization Human Rights in China. As Amnesty International further notes, more than 100 people protested outside the court. Nonetheless, Zheng was found guilty and on October 28, 2003, he was sentenced to three years in prison.

On December 9, 2003, Zheng Enchong was awarded a Human Rights Award by the German Judges' Association in a ceremony attended by the German President Horst Koehler. For further information, see "Fear of Torture or Ill-treatment/Prisoners of Conscience, Public AI Index: ASA 17/047/2005, available at <http://web.amnesty.org/library/print/ENGASA170472005>.

### **d. The Weiquan Movement**

Authorities in China have especially targeted a loosely knit group of lawyers, legal academics, rights activists, and journalists, known as the "weiquan movement." Through a focus on housing rights, family planning abuses, land seizures, workers rights, and police abuse, this movement uses litigation to provide Chinese citizens with the protections due to them under the constitution. See Human Rights Watch, January 2007 Country Summary: China, available at <http://www.hrw.org>.

Legal activist Yang Maodong (also known as Guo Feixing) was formally arrested in September 2006 for assisting Guangdong villagers resist land seizures. In June 2006, a local court sentenced Huang Weizhong to three years in prison for his role in assisting villagers protect land acquisition procedures. *Id.*

## POSTSCRIPT

Human rights lawyers in China have had their licenses revoked and have been subjected to harassment, assaults, and, in some cases, criminal prosecution for protecting the human rights of the Chinese people.

Since July 4, 2009, human rights lawyer Wang Yonghang has been illegally detained and persecuted based on his representation of Falun Gong practitioners and his publication of an article online in which he argued that the persecution of Falun Gong is without sound legal basis or foundation. The two lawyers hired by his family to represent him were told by the Dalian City internal security police that they were not allowed to meet with Wang Yonghang in direct violation of the Law on Lawyers of the People's Republic of China. He is at risk of further torture and ill treatment.

On July 9, 2009, the Beijing Justice Bureau cancelled the licenses of 53 lawyers. Among those disbarred was Jiang Tianyong, a high-profile civil rights lawyer who has represented members of several disfavored groups in China, including Tibetan religious leaders and members of the Falun Gong religion. The Beijing Justice Bureau has also issued a list of 24 Beijing-based lawyers who will not have their licenses re-registered. This list also includes many prominent Chinese lawyers who have represented members of disfavored groups in China, including Falun Gong believers, such as Li Heping, Li Xiongbing, Li Chunfu, Wang Yajun and Guo Shaofie.

Some of the newly disbarred lawyers are associates of Gao Zhisheng, the prominent civil rights lawyer who openly urged China to extend the rights guaranteed by Chinese law to all Chinese citizens to members of the religion of Falun Gong. As a result of his support of Falun Gong believers and other groups targeted by China's politicized legal system, Gao has himself become the target of illegal arrest, detention and persecution. His whereabouts are now unknown. If alive, he is at risk of being subjected to additional torture and persecution.

Human rights defenders are indispensable. They give voice to those who are unable to speak themselves, and more generally, they interface between the victims of human rights abuses and the mechanisms of legal redress. The Human Rights Law Foundation (HRLF) calls upon NGOs and legal professionals around the world to form alliances to ensure that all human rights defenders can continue their legal work in China without fear of intimidation, arbitrary detention, imprisonment or torture.