

# Lawyers' Rights

**The 29 Principles**

**Lawyers for Lawyers**

**The International Bar Association's Human Rights Institute**

# Responses from China

- In the previous UPR cycle, China **accepted 284** recommendations and noted some as **‘already implemented’**.
- Human rights defenders and lawyers are able to exercise their right to freedom of expression and opinion without threats, harassment or repercussions;
- Necessary measures have been taken to provide a safe environment for those who work on the protection and promotion of human rights.

# Responses from China

- In the previous UPR cycle, China did **not** accept **62** recommendations including:
  - An end to the practice of ‘Residential Surveillance at a Designated Location’ (RSDL), specifically with regard to human rights defenders and lawyers;
  - The release of all human rights defenders and lawyers and refrain from persecuting those who exercise their rights or defend others.

# Key Message

- The information received from lawyers in China demonstrates that **China does not uphold the necessary guarantees for the proper functioning of the legal profession** as set out in the Basic Principles.
- Lawyers encounter serious difficulties in carrying out their professional duties independently.
- Undermines the proper functioning of the judicial system, including the right to a fair trial and effective access to justice.

# Three Main Issues

## Issue 1

### Criminal Prosecution of Lawyers

- The issue: arrests, arbitrary detention, and illegitimate criminal prosecution of lawyers
  - Lawyers are systematically targeted with national security crimes under China's Criminal Law, in particular Article 105(2): 'inciting subversion of State power'.
  - This contravenes Principle 16(a) of the Basic Principles: governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”.
  - ‘Residential Surveillance at a Designated Location’ (RSDL) has continued to be used against lawyers.

# Three Main Issues

## Issue 2

### Disbarment and Other Disciplinary Measures on Improper Grounds

- The issue: deprives lawyers' of their ability to adequately defend their clients and themselves
  - Administrative instrument: For sensitive cases, the Justice Bureau can decide not to renew or withdraw the license of a particular human rights lawyer in the event that the authorities perceive the lawyer in question as 'problematic' for carrying out professional duties.
  - This contravenes the UN's Basic Principles on the Role of Lawyers: lawyers "shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards, and ethics."

# Three Main Issues

## Issue 3

### Restrictions of lawyers' rights in Hong Kong

- The issue: implementation of the Law on Safeguarding National Security in the Hong Kong Special Administrative Region (HKNSL)
  - Limits lawyers' rights as well as the city's commitment to human rights protection.
  - Both the HRC and CESCR expressed concern about the HKNSL's arbitrary application and lack of due process.
  - Both committees noted the potential detrimental effects on human rights focused-work and expression, including the arrest and arbitrary detention of journalists, politicians, academics, students and human rights defenders expressing dissenting opinions.

# Recommendations

We recommend the government of China:

1. Immediately release all detained human rights lawyers;
2. Guarantee detained lawyers immediate and effective access to legal counsel of their own choosing;
3. Abolish RSDL and all other forms of administrative detention;
4. Immediately halt all abuse and misuse of national security laws including the HKNSL, aimed at arbitrarily restricting lawyers' legitimate activities;
5. Established safeguards to guarantee the full independence, safety and effective protection of lawyers in law and practice;
6. Guarantee the effective protection of the right of freedom of expression of lawyers, especially to participant in discussions of matters concerning the law, justice and human rights