

**JOINT UPR SUBMISSION  
PEOPLE'S REPUBLIC OF CHINA**

**MARCH 2013**

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## **LAWYERS FOR LAWYERS (L4L) AND LAWYERS' RIGHTS WATCH CANADA (LRWC) JOINT UPR SUBMISSION – PEOPLE'S REPUBLIC OF CHINA, MARCH 2013**

1. Lawyers for Lawyers (hereinafter 'L4L') and Lawyers' Rights Watch Canada ('LRWC') submit this report on the state of human rights, especially those regarding the legal profession, in the People's Republic of China (hereinafter 'China') with recommendations to the OHCHR for the 17<sup>th</sup> session of the UPR Working Group in the UN Human Rights Council in 21 October – 1 November 2013.
2. L4L is an independent and non-political Dutch foundation, which was established in 1986 and is funded by lawyers' donations. L4L promotes the proper functioning of the rule of law through a free and independent exercise of the legal profession.
3. LRWC is a committee of Canadian lawyers who promote human rights and the rule of law by providing support internationally to human rights defenders in danger.

### **MECHANISMS FOR PROTECTING AND PROMOTING HUMAN RIGHTS**

#### **Guarantees for the functioning of lawyers**

4. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively by an independent legal profession. This follows *inter alia* from the Charter of the United Nations (ratified by China on 24 October 1945), the Universal Declaration of Human Rights (adopted by China on 10 December 1948) and the International Covenant on Civil and Political Rights (signed by China on 5 October 1998).
5. In its task of promoting and ensuring the proper role of lawyers, the Chinese government should respect the UN Basic Principles on the Role of Lawyers ('Basic Principles')<sup>1</sup>, that provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to legal assistance.
6. According to Article 16 of the Basic Principles, the Chinese government must ensure that lawyers "(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics." Article 17 stipulates that "[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities." The Chinese government has failed to meet these obligations in the review period.
7. In the beginning of 2011, following the 'Arab Spring' in the Middle East, a large number of Chinese 'rights lawyers' ('weiquan') were subjected to enforced disappearances, arbitrary detention,

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<sup>1</sup> Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

house imprisonment, torture, forced relocation and other forms of intimidation and harassment by the Chinese government. From this group, the cases of Jian Tianyong, Ni Yulan, Liu Wei, Tang Yitian and Teng Biao drew international attention, although many more cases were documented.<sup>2</sup>

8. All these lawyers were targeted for taking on “sensitive” cases, such as representing Falun Gong practitioners, Tibetan activists, land rights activists or HIV victims. The ill-treatment by state officials of these rights lawyers, in many instances leading to the revocation of their licenses to practice, indicates that a lawyer accepting a politically sensitive case will very likely suffer severe professional and personal consequences. The ‘chilling’ effect created by these attacks has diminished the number of lawyers willing to take on “sensitive” cases, and thus increased the difficulty for large groups of vulnerable Chinese citizens to find adequate and able representation in legal matters.
9. Besides violating the Basic Principles, the attacks on the rights lawyers contravene the Chinese government’s National Human Rights Action Plan for 2009 – 2010, which states *inter alia*: “The state also guarantees the personal rights of lawyers and their right to debate or defend when they carry out their duties.”<sup>3</sup> The Chinese government declared the tasks and targets in the Plan fulfilled in June 2011, although at that time many lawyers were still in custody or otherwise targeted by the government.<sup>4</sup>
10. One of the instruments used by the government to prosecute criminal lawyers is Article 306 of the Chinese Criminal Law (CCL). This article specifically prohibits defence lawyers from inducing or “luring” clients or witnesses to change their testimony or make false testimony. In practice, any lawyer who advises his client to change or repudiate an untruthful confession made to the police before trial runs the risk of being prosecuted himself for violation of article 306 of the CCL and being sent to prison for up to seven years. This is illustrated by the case of Beijing lawyer Li Zhuang, who was initially sentenced in 2010 to two years and six months imprisonment for fabricating evidence after his client changed his confession, which Li argued was made after his client was tortured by the police. On appeal, Li’s sentence was changed to one year after he changed his plea to “guilty” and admitted to all the charges against him. There is a general perception among lawyers in China that article 306 of the CCL is inappropriately used by prosecutors and the police to get rid of criminal defence lawyers it finds too aggressive. Although there were some claims that this well-known practice was diminishing after the 2007 Lawyers Law came into effect, the Li Zhuang case illustrates that it is still extremely dangerous for lawyers to challenge evidence or confessions which were allegedly obtained through torture.
11. Even where there has been no confession, Chinese lawyers place themselves in jeopardy of criminal conviction under Article 306 simply by pleading their clients “not guilty”. Virtually no Chinese criminal defendant is ever acquitted. The conviction rate is in excess of 99%. When a client

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<sup>2</sup> See for instance: Amnesty International, report ‘Against the Law: Crackdown on China’s human Rights Lawyers Deepens’, June 2011; Committee to Support Chinese Lawyers, report ‘Legal Advocacy and the 2011 Crackdown in China: Adversity, Repression, and Resilience’, November 2011; Elizabeth M. Lynch (2013), China’s Rule of Law Mirage: The Regression of the Legal Profession since the Adoption of the 2007 Lawyers Law. *George Washington International Law Review*, Vol. 42, p.535-585.

<sup>3</sup> National Human Rights Action Plan of China (2009-2010), 13 April 2009, sub II-(3).

<sup>4</sup> National Report Submitted in accordance with paragraph 15 (A) of the Annex to Human Rights Council Resolution (China), sub 90.

is convicted after pleading not guilty, perhaps offering alibi evidence, the reasoning of the Court is:

- a. Since the Court has found the defendant guilty, the defendant was obviously lying;
- b. Since the defendant was lying, he must have been instructed to do so by his lawyer; and
- c. Therefore lawyer and client are both sent off to prison together.

### **Independent Bar Associations**

12. A self-regulated and properly independent Bar with mandatory membership is regarded as essential to ensuring: the independence of lawyers, protection from state interference; the quality of legal services; and, the rule of law.
13. According to Article 24 of the Basic Principles, lawyers shall be entitled “to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity”. These associations of lawyers shall “cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics”.
14. Currently all lawyers in China are members of the All China Lawyers Association (ACLA). The ACLA, however, cannot be regarded as a self-regulated Bar Association representing all lawyers in China. For instance, its members cannot appoint their own members to its governing body. All executive members of the ACLA are nominated and appointed by the Chinese government. Through the governing body of the ACLA, the Chinese government can exercise its influence. Some reports state that the Chinese government is in full control of the ACLA and therefore has direct influence in “randomly” denying renewals of law licences of individual lawyers.
15. For this same reason, the ACLA also cannot be seen as a proper independent organisation. Furthermore, L4L and LRWC note that since March 2012 it has become mandatory for aspiring lawyers to recite a new oath pledging allegiance to the Chinese Communist Party.

### **The new Lawyers Law: Professional Association & fundamental rights of defence-lawyers**

16. L4L and LRWC acknowledge that the modern legal profession in China is young and is still developing. L4L and LRWC therefore welcome the effort the Chinese authorities have made to modernise the 1996 Lawyers Law by adopting the new Lawyers Law in 2007 (Lawyers Law/2007) which has come into force since June 1, 2008.
17. The Lawyers Law/2007 was seen by some to promise a significant break with the past where lawyers were seen as ‘state legal workers’. The Lawyers Law/2007 promised greater self-governance of the profession and to guarantee basic rights of defence-lawyers such as the right to disclosure of pleadings and to obtain evidence.<sup>5</sup> Although welcomed in 2007 as having the potential to create an independent, competent and mature legal profession capable of holding the State accountable,<sup>6</sup> the Lawyers Law/2007 has undermined the independence of lawyers and further jeopardised the rule of law in China. L4L and LRWC note with deep concern that intricate and

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<sup>5</sup> See articles 16, 35, 36 and 37 of the Lawyers Law 2007.

<sup>6</sup> Lynch, *supra* note 2, (2013: 543).

vague regulations in the Lawyers Law/2007 are being used by state officials to suppress lawyers, more specifically human rights-defending lawyers.

18. With regard to the promise of greater self-governance, L4L and LRWC wish to draw attention to a group of Beijing lawyers who called, in August 2008, for direct elections of the leadership of the Beijing Lawyers Association (BLA). The BLA, which is controlled by the Ministry of Justice (MoJ) responded by issuing a harsh rebuke, warning that any individual who promotes and supports the 'Beijing Bar Association Direct Election' is violating the law.<sup>7</sup> No alterations of the election procedure have been made.
19. Lawyers' associations need to be free from state control. Today the BLA leadership and with it much of the real power still lies in the hand of the MoJ. L4L and LRWC are furthermore alarmed by the fact that the lawyers involved in the call for election of BLA officials were punished. At the beginning of 2009 the **Yitong Law Firm** which was most-associated with the appeal for direct elections was closed for six months<sup>8</sup> in accordance with article 50 (3) of the Lawyers Law/2007 by the Beijing Bureau of Justice.<sup>9</sup> **Fifty-three other lawyers** associated with the appeal for BLA elections were faced with the denial of the re-registration of their lawyer's practice license.
20. According to Article 24 of the Basic Principles on the Role of Lawyers the legal profession shall be entitled "[...] to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference."
21. L4L and LRWC urge the Chinese government to amend article 4 of the Lawyers Law/2007,<sup>10</sup> as it is in direct conflict with article 24 of the Basic Principles. The Chinese authorities need to ensure that professional associations of lawyers on the national as well as on the regional level are protected from state interference.
22. Apparent guarantees of fundamental rights of defence-lawyers in the Lawyers Law/2007 do not exist in practice as demonstrated by the cases of human rights-defending lawyers **Mr. Tang Jitian** and **Ms. Liu Wei**. In April 2009 they represented Falun Gong practitioner Yang Ming in Luzhou City court in Sichuan Province. Although article 36 of the Lawyers Law/2007 guarantees their right to pleadings, they were never afforded the opportunity to present their arguments in court. As a silent protest **Tang** and **Liu** eventually left the courtroom. A year later they were disbarred by the Beijing Bureau of Justice for violating article 49(6) of the Lawyers Law/2007 because of 'disrupting the order of a court'. Unfortunately the case of **Tang** and **Liu** does not stand alone.

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<sup>7</sup> Clarke, D. (2009: 11). Lawyers and the State in China: Recent Developments. *Testimony before the Congressional-Executive Commission on China*, Washington D.C., 7 October 2009.

<sup>8</sup> Clarke (2009: 2).

<sup>9</sup> Article 50 sub 3 of the Lawyers Law 2007 states that officials can suspend legal practice of a law firm when it "(3) engages in other business activities than provision of legal services".

<sup>10</sup> Article 4 of the Lawyers Law 2007 states 'the judicial administration departments shall supervise and give guidance to lawyers, law firms and lawyers' associations in accordance with this Law'. This is in direct conflict with article 24 of the Basic Principles on the Role of Lawyers.

23. Rights supposedly guaranteed in the Lawyers Law/2007 are negated by articles such as the vaguely-worded article 49 'prohibition against disrupting the courtroom'. Thus the Lawyers Law/2007 in fact facilitates disbarment for simply carrying out day-to-day duties by lawyers. In sum, officials are acting arbitrarily and using overly broad and vague regulations to punish and disbar human rights-defending lawyers.
24. L4L and LRWC remind the Chinese authorities that they have committed themselves to guarantee fundamental rights of defence-lawyers through the new Lawyers Law. We therefore urge the Chinese authorities to abolish the use of intricate and vague regulations to subvert lawyers.

**Recommendations:**

L4L and LRWC recommend that the Chinese government take all legal and practical steps necessary to:

1. Ensure that lawyers, including lawyers advocating for human rights and/or against wrongdoing by state officials, can exercise their profession freely and without improper interference from the government;
2. Abolish article 306 CCL;
3. Allow lawyers "to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity;
4. Ensure that the executive body of the such professional associations are elected by its members; and,
5. Ensure that the elected executive is free to exercise its functions without external interference.