

A. Partial or lack of implementation of recommendations by China

In October 2009, under the **1st Universal Periodic Review (UPR) cycle**, China was reviewed at the 11th session of the Human Rights Council Universal Periodic Review (A/HRC/11/25).

In December 2013, under the **2nd UPR cycle**, China was reviewed at the 25th session of the Human Rights Council Universal Periodic Review (A/HRC/25/5) and, in February 2014, it subsequently provided responses to these recommendations (A/HRC/25/5/Add.1). The most relevant UPR recommendations related to the work of lawyers and human rights defenders are as follows:

- **186.115. NOT ACCEPTED:** There are no arbitrary or extrajudicial detentions in China. All criminal and security detentions are decided on and implemented based on the Criminal Procedure Law and Law on Public Security and Administration of China. According to China's Constitution and relevant laws, all citizens enjoy freedom of speech, the press, assembly, association and religious beliefs, and shall not harm the national, social and collective interests and legitimate rights of other citizens when exercising the above-mentioned rights. Illegal and criminal activities shall be prosecuted according to law.
- **186.116. NOT ACCEPTED:** See 186.115.
- **186.152. NOT ACCEPTED:** See 185.115.
- **186.129. ACCEPTED**
- **186.130. ACCEPTED**
- **186.131. ACCEPTED**
- **186.132. ACCEPTED**
- **186.149. ACCEPTED AND BEING IMPLEMENTED:** In accordance with China's Constitution and relevant national laws, citizens enjoy freedom of expression, the press, assembly, association, procession, demonstration, and religious belief. The Chinese government guarantees citizens' right to exercise these freedoms in accordance with the law. Chinese judicial organs impartially deal with all violation of citizens' personal and democratic rights according to law. There is no so-called issue of suppressing "human rights defenders".

B. Challenges to the situation of lawyers and human rights defenders in China since 2013

I. Political background and legislative context in China

Since China's last UPR in 2013, freedom for lawyers and human rights defenders to exercise their professional duties and undertake advocacy has consistently been curtailed. New amendments to the legislative framework and more authoritative pressure from the government has led to a shrinking

space for freedom of expression and to the increase of cases of arrest and detention of lawyers and human rights defenders in the country.

The “709 crackdown” of lawyers and human rights defenders, which started on 9 July 2015, represented a flagrant manifestation of this trend. According to recent statistics collected by the China Human Rights Lawyers Concern Group, “as of 21 February 2018, at least 321 lawyers, law firm staff, human right activists and family members have been questioned, summoned, forbidden to leave the country, held under house arrest, residential surveillance, criminally detained, arrested or missing”.¹ Charges against lawyers and human rights activists in detention mainly relate to “suspicion of **subverting state power**”, “**inciting subversion of state power**”, and “**picking quarrels and provoking trouble**”, amongst others.²

On 5 October 1998, China signed the UN International Covenant on Civil and Political Rights (ICCPR) but did not ratify it. Nonetheless, according to article 18 of the 1969 Vienna Convention on the Law of Treaties, it is obliged “to refrain from acts which would defeat the object and purpose of a treaty”. Furthermore, as a member of the United Nations, China is bound to respect the Universal Declaration of Human Rights (UDHR), and to act in accordance with the principles of the UN Charter.

President Xi Jinping started his presidential mandate in 2013 and, since his ruling began, several legislative changes have been passed. These include the enactment of the 2014 Counterespionage Law, the 2015 Counterterrorism Law and the National Security Law, the 2016 Cybersecurity Law, and the 2017 National Intelligence Law, which allegedly have a direct and indirect effect of further restricting freedom of expression in the country.³

II. The Law Society’s work on cases of detention of lawyers and human rights defenders in China

Between 2014 and 2017, the Law Society sent twelve intervention letters to the government of China, which refer to a wide range of human rights violations committed against lawyers and human rights defenders. Intervention letters referring to cases of arrest or detention are divided as follows:

- (i) Ten letters referred to cases of arrest, arbitrary or prolonged detention of a total of twenty-two lawyers and human rights defenders.
- (ii) Two letters focused on cases of prolonged detention and two letters highlighted cases of arbitrary detention.
- (iii) One letter refers to the “709 crackdown”, which comprised violations against more than 300 individuals between lawyers and human rights defenders.

¹ CHRLCG, [‘709 Crackdown’] Latest data and development of cases as of 1800 21 February 2018, 21.02.2018 <<http://www.chrlawyers.hk/en/content/%E2%80%99709-crackdown%E2%80%99-latest-data-and-development-cases-1800-21-february-2018>>.

² HRIC, Mass Crackdown on Chinese Lawyers, Defenders and International Reactions: A Brief Chronology, 15.09.2017, <<https://www.hrichina.org/en/mass-crackdown-chinese-lawyers-defenders-and-international-reactions-brief-chronology>>.

³ CHRLCG, An Open Letter to the UN High Commissioner for Human Rights by 15 Hong Kong NGOs On the International Human Rights Day, 11.12.2017, <<http://www.chrlawyers.hk/en/content/14%E5%80%8B%E9%A6%99%E6%B8%AF%E6%B0%91%E9%96%93%E5%9C%98%E9%AB%94%E8%87%B4%E8%81%AF%E5%90%88%E5%9C%8B%E4%BA%BA%E6%AC%8A%E4%BA%8B%E5%8B%99%E9%AB%98%E7%B4%9A%E5%B0%88%E5%93%A1%E5%85%AC%E9%96%8B%E4%BF%A1>>.

For this reason, this UPR submission will focus only on cases of arrest and detention of lawyers and human rights defenders monitored by the Law Society between 2014 and 2017, and the correlated human rights violated.

Right to liberty and security of person is enshrined in article 3 of the UDHR. The UN Human Rights Committee, in its General Comment No. 35, reiterated the importance of UDHR article 3.⁴ Article 9 of UDHR and of ICCPR prohibits arbitrary arrest or detention. The UN Human Rights Committee elucidates the notion of *arbitrariness* in the General Comment No. 35, according to which arbitrariness “is not to be equated with ‘against the law’, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law [...]”⁵ and that arrest and detention are arbitrary if related to “the legitimate exercise of the rights as guaranteed by the Covenant [...], including freedom of opinion and expression (art. 19) [...]”⁶ This is also reinforced by the UN Working Group on Arbitrary Detention.⁷

This distinction is important and is in line of China’s response to the rejected following recommendations No. 186.115., No.186.116., and No.186.152., where the Chinese government affirms that no arbitrary detention cases have taken place in China on the basis that “all criminal and security detentions are decided on and implemented based on the Criminal Procedure Law and Law on Public Security and Administration of China”.

In General Comment No. 35, the UN Human Rights Committee underlines the link between the right to liberty and security and the right to fair trial, in that: “delays in bringing a defendant to trial” may constitute violations of both rights.⁸ This is also reinforced in principles 11(1) and 37 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.⁹ The same principle is enshrined in ICCPR article 9(2) and reiterated by the Human Rights Committee in General Comment No. 32.¹⁰

The Law Society has sent intervention letters on behalf of the lawyers and human rights defenders mentioned in the four cases below and have been chosen to illustrate the existing pattern of detention against Chinese lawyers and human rights defenders. However, these cases do not provide an exhaustive picture of all human rights violations against lawyers and human rights defenders in the country.

- Cases of arbitrary arrest and detention:

Ge Yongxi is a Guangdong-based human rights lawyer, very well-known for defending political and social activists in China. Between 28 May and 6 June 2015, Mr Yongxi was held at a detention centre in Qing’an. He was released after 733 Chinese lawyers signed a petition, calling on the Standing

⁴ UN Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), CCPR/C/GC/35, 16.12.2014, para 2.

⁵ Ibid, para 12.

⁶ Ibid, para 17.

⁷ UN Working Group on Arbitrary Detention, Fact Sheet No. 26, “No one shall be subjected to arbitrary arrest, detention or exile”, Category II, <<http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>>.

⁸ Ibid n. 6, para 53; UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32, 23.08.2007, para 27 and 35.

⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Adopted by General Assembly resolution 43/173 of 09.12.1988.

¹⁰ Ibid n.10, General Comment No. 32, para 35.

Committee of the National People's Congress to investigate his detention. On 14 April 2016, Ge Yongxi posted a picture on a social media network, WeChat, which related to the leaked Panama Papers. His detention was allegedly justified on the basis that "he had been insulting other people".

On 21 November 2016, *Jiang Tianyong*, human rights lawyer, initially reported missing, was then notified to be held under residential surveillance at a designated location in December 2016. Mr. Tianyong was then "jailed for two years after being found guilty of inciting subversion of the State's power".¹¹ Mr. Philip Alston, UN Special Rapporteur on extreme poverty and human rights, stated that Mr. Tianyong's detention might have been in reprisal for his cooperation with the UN during Mr. Alston's visit to China in August 2016.¹² On 6 September 2017, a group of UN experts condemned the detention.¹³ In November 2017, Mr. Tianyong was sentenced to two years' imprisonment on subversion charges,¹⁴ condemned by the same group of UN experts on 23 November 2017.¹⁵

- Cases of prolonged detention:

In May 2014, lawyers *Pu Zhiqiang* and *Qu Zhenhong* were arrested on charges related to "creating disturbances" and "illegally obtaining personal information". Qu Zhenong is the niece of Pu Zhiqiang and was arrested when becoming his uncle's legal counsel. She was subsequently released on bail in May 2015. In December 2015, a Beijing court found Pu Zhiqiang guilty of "inciting ethnic hatred" and "picking quarrels" in social media posts; eighteen months after his initial arrest, he was sentenced to three years residential surveillance.

On 8 November 2014, *Xia Lin*, a criminal defence lawyer, was arrested soon after he started working on the case of Guo Yushan, a human rights activist. Xia Lin's trial started in June 2016. He was subsequently convicted for "fraud and deception" and was sentenced to twelve years of imprisonment on 22 September 2016. On 21 April 2017, the court changed his sentence to ten years imprisonment. He is currently in prison.

III. Analysis: related violations of international human rights law

Despite the existence of an international legal framework that regulates lawyers' functions, the Law Society continues to be very concerned about the on-going obstacles faced by lawyers, which are seriously preventing them from fulfilling their professional legal duties. Since 2013, lawyers have been victims of arrest and (prolonged and/or arbitrary) detention as documented by the Law Society, the UN,¹⁶ and national and international bodies. These cases involve flagrant violations of the right to liberty and security of person (UDHR article 3), freedom from arbitrary arrest, detention or exile

¹¹ OHCHR, China: UN experts condemn jailing of human rights lawyer Jiang Tianyong, 23.11.2017, <<http://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22437&LangID=E>>.

¹² OHCHR, UN experts urge China to investigate disappearance of human rights lawyer Jiang Tianyong, 06.12.2016, <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20987>>.

¹³ OHCHR, UN experts urge China to release lawyer Jiang Tianyong currently on trial for subversion, 06.09.2017, <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22028>>.

¹⁴ The Guardian, 'Travesty' trial ends in China with lawyer Jiang Tianyong jailed, 21.11.2017, <<https://www.theguardian.com/world/2017/nov/21/chinese-human-rights-lawyer-jiang-tianyong-jailed>>.

¹⁵ Ibid, n. 14.

¹⁶ Including, Human Rights Council, Report of the Special Rapporteur on the situation of Human Rights Defenders, Michel Forst, Addendum, Observations on communications transmitted to Governments and replies received, A/HRC/37/51/Add.1., 16.02.2018.

(UDHR article 9; ICCPR article 9), right to fair trial (UDHR article 10; ICCPR article 14) and right to freedom of expression (UDHR article 19; ICCPR article 19). They also violate principle 6 of the UN Basic Principles on the Role of Lawyers.¹⁷

The role of lawyers and their independence is central to uphold the rule of law and the protection of human rights. In resolution 29/6 on “Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers”, the UN Human Rights Council underlines that: “an independent and impartial judiciary, an independent legal profession, an objective and impartial prosecution able to perform its functions accordingly, and the integrity of the judicial system are prerequisites for the protection of human rights and the application of the rule of law and for ensuring fair trials and the administration of justice without any discrimination” and that “judges, prosecutors and lawyers play a critical role in upholding human rights”.¹⁸ This is also enshrined in principle 14 of the Basic Principles on the Role of Lawyers.

In its response to the rejected UPR recommendations No. 186.115., 186.116. and 186.152., the government of China stated: “according to China’s Constitution and other relevant laws, all citizens enjoy freedom of speech [...] and shall not harm the [...] social and collective interests and legitimate rights of other citizens when exercising the above-mentioned rights”.¹⁹ Lawyers play a central role in the protection of the *legitimate rights of other citizens*, as well as in defending the *social and collective interests of other citizens* and of society.²⁰ Furthermore, in the same response, China stated that “there are no arbitrary or extrajudicial detentions in China”.²¹ However, the documented high numbers of lawyers under arrest and arbitrary or prolonged detention in China provide a contrasting picture to the objective and explanation stated by the Chinese government in its responses to 2013 UPR recommendations hereby mentioned. This inevitably raises concerns over the adherence of Chinese authorities to their own pledges.

Repression and detention of lawyers in China has taken place on a mass scale, as witnessed during the “709 crackdown” in 2015. Such repression and detention may also act as a catalyst for a *chilling effect* amongst human rights lawyers and activists in China, who may be hindered in their advocacy, fearing reprisals and harassment because of the cause they defend and their legitimate work. According to the Basic Principles on the Role of Lawyers, in particular principle 17, governments should be accountable on their duties of safeguarding lawyers under threat.

Having analysed and monitored cases of arrest and detention of lawyers and human rights defenders in China since 2013, the Law Society is also concerned about the pattern and the profile of lawyers targeted. The lawyers arrested mostly represented parties in cases involving human rights violations, sometimes also representing parties in cases where other lawyers were victims themselves. It is alarming to note that those targeted during the 709 crackdown were also specifically rights lawyers

¹⁷ 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.

¹⁸ Human Rights Council, Resolution 29/6 “Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers”, A/HRC/29/L.11, 30.06.2015.

¹⁹ Human Rights Council, Report of the Working Group on the Universal Periodic Review, China, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, A/HRC/25/5/Add.1., 27.02.2014.

²⁰ Emphasis added in reference to China’s response to the UPR recommendation No. 186.115., No. 186.116. and No. 186.152.; Ibid.

²¹ Ibid.

and human rights activists.²² The principle of non-identification of lawyers with their clients, and the right to freedom of expression of lawyers are guaranteed in principles 18 and 23 of the Basic Principles of the Role of Lawyers.

During the 2nd UPR review, China accepted several recommendations emphasising the importance of creating a framework that ensures that lawyers can carry out their work without hindrance (recommendations No. 186.129, No. 186.130, No. 186.131, and No. 186.132).²³ Furthermore, China accepted recommendation No. 186.149., also adding that, as of 2014, this recommendation was already in the process of being implemented.²⁴ In particular, in its response, the Chinese government highlights that “in accordance with China’s Constitution and relevant national laws, citizens enjoy freedom of expression [...]. The Chinese government guarantees citizens’ rights to exercise these freedoms in accordance with the law”.²⁵

The documented high numbers of arrest and detention of lawyers since the last UPR cycle in 2013 give rise to concerns over the effective implementation of these recommendations in the country, as well as to doubts over the statement that “there is no so-called issue of suppressing ‘human rights defenders’” in the country.²⁶

C. Recommendations

- a. To stop any form of harassment and threats against lawyers and human rights defenders in China.
- b. To guarantee freedom of expression for the legal profession and human rights defenders in the exercise of their professional duties as human rights advocates.
- c. To ensure that lawyers are not hindered in their work and can freely undertake their professional duties regardless of the cause they defend or the clients they represent.
- d. To drop charges and to release all lawyers and human rights activists arbitrarily under arrest and/or detention.
- e. To ensure that fair trials and due process are followed.
- f. To ratify the UN International Covenant on Civil and Political Rights.

²² Amnesty International, China’s crackdown on human rights lawyers, <<https://www.amnesty.org/en/latest/campaigns/2016/07/one-year-since-chinas-crackdown-on-human-rights-lawyers/>>.

²³ Human Rights Council, Report of the Working Group on the Universal Periodic Review, China (including Hong Kong, China and Macao, China), A/HRC/25/5, 04.12.2013.

²⁴ Ibid, n. 22.

²⁵ Ibid.

²⁶ Ibid.