

Lawyers' Rights Watch Canada

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Universal Periodic Review of China: Report of Lawyers Rights Watch Canada (LRWC)¹

1. This report details the complete failure of the rule of law² in China through:
 - a. the absence of an independent judiciary and the required safeguards that would enable lawyers and other human rights defenders to pursue lawful human rights advocacy free from harassment, intimidation, censure and punishment by the government of China; and,
 - b. China's use of the courts and of criminal and civil law to prevent human rights enforcement and to punish lawyers and other human rights defenders attempting to enforce human rights in situations that question state actions or policy.
2. China ranks among the worst violators of human rights among the international community of nations. The Chinese Communist Party (CCP) governs China.
3. China routinely jails, tortures, and in some cases kills citizens for exercising rights purportedly guaranteed by the *Constitution of the People's Republic of China* (Constitution), such as freedom of speech, assembly, and religion. Suppression of these rights by the CCP is compounded by the fact that virtually all Chinese human rights lawyers and defenders who attempt to provide representation to citizens whose only "crime" has been to practice their

1. Lawyers Rights Watch Canada (LRWC) is a committee of Canadian lawyers who promote human rights and the rule of law internationally by providing support to lawyers and other human rights defenders in danger because of their advocacy.

² Defined by the International Commission of Jurists as, "The principles, institutions and procedures, not always identical, but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and to enable him to enjoy the dignity of man.". Defined by P. Sieghart as, "the principle which requires that there should be laws which lay down what the state may and may not do and by which one can test whether such power which it claims, or any particular exercise of such power is legitimate and a system of courts independent of every other institution of the state, including the legislators and the executive, which interprets and applies those laws.", *International Human Rights Law*, cited in Lord Elwyn-Jones, "Judicial Independence and Human Rights" in R. Blackburn & J. Taylor, eds., *Human Rights for the 1990s: Legal and Political and Ethical Issues* (London: Mansell, 1991) at 44.

religion, or to express an opinion which differs from that of the CCP, are themselves subjected to the same reprisals as were their clients. (APPENDIX I) In the case of Falun Gong practitioners, lawyers are forbidden to provide representation, whether in defense of criminal prosecutions or in bringing court actions against parties which have violated their rights. Moreover, the CCP has forbidden Chinese “courts” from accepting lawsuits on behalf of Falun Gong practitioners.

4. Lawyers and human rights defenders attempting to represent individuals or groups targeted by Chinese authorities are subjected to reprisals, including: confiscation of or refusal to re-issue licenses to practice law (tantamount to disbarment), preventing attendance at “trial”, arbitrary arrest and detention, attacks by police and agents of local authorities, malicious prosecutions, representation by public defenders incapable or unwilling to provide defense. It is commonplace for a lawyer representing a person in dispute with the state to be charged with a completely specious “criminal” offence, and then in turn for the lawyer defending the first lawyer to be similarly charged, resulting in the imprisonment of both lawyers, along with the original client. (Appendix II)

5. In some countries, state authorities are attempting to protect victims of human rights violations but lack either the state machinery to do so, or the means to educate lower level functionaries, police, prosecutors, and courts about basic human rights norms. In China, it is the Chinese Government (the CCP) itself which orders the violations as a matter of policy. LRWC and other organizations charged with protecting human rights and exposing violations often petition the Chinese government and its leaders to immediately and thoroughly investigate grossly illegal and reprehensible human rights violations. No reply is ever received.

6. The practices described in paragraph 1 above violate a number of domestic law and international principles binding on China including: the *Constitution of the People’s Republic of China* (Constitution), the *Universal Declaration on Human Rights* (UDHR), the *Basic Principles on the Role of Lawyers*, the *Declaration on Human Rights Defenders*, the *International Covenant on Civil and Political Rights* (ICCPR), the *Basic Principles on the Independence of the Judiciary* and the *Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT).

7. Violations of the Constitution include:

a. Article 126 guarantees judicial independence, yet Chinese “courts” continue to function simply as lower level administrative organs of the CCP, and judges perform no independent judicial function whatsoever.

b. Articles 35 and 36 together guarantee freedom of speech, religion and assembly. But those who put these guarantees to the test face savage beatings at the hands of police, criminal charges on vague grounds such as “inciting public disorder”, “subversion of the state”, “spreading false rumours”, etc., and incarceration.

c. The Constitution also guarantees that Chinese citizens shall be free of discrimination by reason of political belief. Yet anyone who expresses a political opinion at odds with CCP policy or teachings incurs severe reprisals from the authorities and virtually no one may be appointed as a “judge” in China’s “courts” if he is not a Party member.

8. Violations of UDHR include:

a. Article 1 stipulates that all citizens have the right, “individually or collectively to promote the protection and fulfillment of human rights and fundamental liberties at the national and international levels”. Yet the Chinese Government consistently imprisons and tortures those attempting to do so.

b. Article 10 provides that “everyone is entitled to...a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Yet impartial and independent tribunals are non-existent in China, as are fair and public hearings. All courts are constitutionally accountable to the People’s Congress and thereby accountable to the CCP.

9. Violations of the *Basic Principles on the Role of Lawyers* include:

a. Article 16 requires that “Governments shall ensure that lawyers are able to perform all their professional functions without intimidation, hindrance, harassment or improper interference”. The CPP routinely intimidates, hinders, harasses, and improperly interferes with lawyers and other human rights defenders attempting to carry out their completely lawful duties. Virtually all members of the Chinese human rights bar at present are either incarcerated, under house arrest, disappeared, disbarred, or under heavy-handed intimidation and harassment. (Appendix I)

b. Article 17 provides that “Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities”. Again, the “authorities” in China constitute the problem.

10. Violations of the *Declaration on Human Rights Defenders* include:

a. Article 9(5) requires the Chinese Government to conduct prompt, impartial and effective investigations into the coercive measures taken against all these Human Rights defenders. Again, this cannot happen in China because the Chinese Government is itself the perpetrator and to this point has never exhibited any propensity to investigate itself.

b. Article 12(2) requires, “The state shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, defacto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration”. It is the Government of China which orders attacks on and prosecutions and arrests of lawyers and other human rights defenders.

11. Violations of ICCPR include:

a. Article 2(3) obligates States to ensure that anyone whose rights are violated shall have a legal remedy, notwithstanding that that the violation has been committed by persons acting in an official capacity. China clearly remains in breach of this obligation.

b. Article 14(1) obligates a state signatory to provide equality before the courts, and, *inter alia*, a fair and public hearing by a competent, independent and impartial tribunal.... People identified as Falun Gong practitioners are arbitrarily denied the right to bring an action before any Chinese “court” and are denied legal representation if charged in a Chinese criminal “court”.

12. Violations of the *Basic Principles on the Independence of the Judiciary* include:

a. Article 1 requires states to guarantee judicial independence and enshrine it in a Constitution or elsewhere in a statute. Although the Constitution, Article 126, purports to enshrine judicial independence, all judicial appointments, removals and functions are exercised under the direct control of the Chinese government.

b. Article 2 requires that “The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.” The reality is that: i) the judge hearing the case does not make the judgment; and, ii) judgment is determined by a committee not present at the ‘hearing’: a committee instructed and

controlled by the CCP Party Secretary within the court; and, iii) the chairperson of the Political-Legal Committee of the People's Congress can, in any event, overrule the court.

c. Article 4 states that: "There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. Chinese "courts" are without exception entirely subservient to the CCP. In cases involving the state, the courts are directly instructed by the CCP.

d. Article 6 stipulates that "The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected." Nothing in the procedure of a Chinese "court" is consistent with the requirements of this article. (Appendix III)

e. Article 10 provides, *inter alia*, that "In the selection of judges, there shall be no discrimination against a person on the grounds of ...religion, political or other opinion...". In violation of this principle, no one who is not a member of the CCP and no one who is a Falun Gong practitioner is eligible for appointment as a judge in any Chinese "court".

f. Article 11 stipulates that "The term of office of judges, ...shall be adequately secured by law". There is no fixed term of office for Chinese judges. The Constitution provides that judges serve at the pleasure of the People's Congress, which has the power to appoint at will and remove without cause. The People's Congresses are completely controlled by the CCP.

g. Article 12 goes further, requiring that "Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists". As noted, the Chinese practice is diametrically opposed to this principle.

h. Article 13 provides that "Promotion of judges, should be based on objective factors, in particular ability, integrity and experience." In the Chinese "judicial" system, promotion is based largely on loyalty and service to the CCP.

i. Article 18 further provides that "Judges shall be subject to suspension or removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties." The CCP, through the puppet People's Congresses, can remove any "judge", at any time, for any reason. See attached Appendix III, Endnote 25)

12. Violations of CAT include:

Torture continues to be a systemic component of the "judicial" and penal systems, a standard procedure employed by police, prosecutors, and prison guards at all levels. The widespread use of torture in China has been confirmed by many human rights organizations including Human Rights in China, Human Rights Watch and Amnesty International and by the UN Special Rapporteur on Torture, Manfred Nowak.

13. As a member of the World Trade Organization, China is required to establish a transparent and genuine legal system. China has steadfastly refused to do so. Although China's legal system requires that trials be public, they almost never are. Moreover, when public trials are held, the trial itself is nothing more than "theater" for the public; the real decision making takes place outside the courtroom by "judges" who were did not preside over he trial.

9. In many countries, governments are genuinely attempting to use their legal systems to improve the human rights situation and bring the perpetrators of abuses to justice. Chinese rulers have no intention to make their "legal system" functional, in any way that would be recognizable to the rest of the world or would conform to international legal principles and standards. The creation of the Chinese "judicial" system has been nothing more than an exercise in public relations and deception, designed primarily to persuade foreign investors that their investments are protected by "law". The structure itself is entirely fraudulent in that (in important, large, or

politically sensitive cases)the “judges” who preside over trials do not decide the cases; the “judgments” are made in back rooms by a committee whose members have not attended the trial, listened to any of the evidence, or (very often) even consulted the file. Moreover, the CCP stands completely above the law and has the power to dictate to the “courts”.

10. The CCP uses the “legal” system to facilitate, rather than to prevent persecution and human rights abuses. China’s legal system is not intended to function as a safeguard of human rights or against arbitrary and illegal actions by the state. An independent “judiciary” and genuine implementation of the Rule of Law would signal the end of the CCP dictatorship. Although the CCP has often displayed its homicidal tendencies; it has never displayed any predilection for suicide.

11. All governments which are signatories to the ICCPR and CAT have treaty obligations to protect their citizens against human rights violations and to provide remedies for violations. In the case of China, the government itself is the perpetrator of massive and flagrant human rights violations.

12. The legal profession in China, though comprised of many individual members who have struggled bravely to promote the Rule of Law and recognition of basic human rights, is also controlled by the CCP. The All China Lawyers Association (ACLA) is often called the Bar Association of China by foreign commentators. The ACLA is a CCP controlled association with no independence whatever and its purpose is not to protect lawyers and advance their interests, but to assist the CCP in controlling lawyers.

13. There are two fundamental contradictions inherent in the present Chinese “judicial” system. The first is the earlier noted fact that those who hear the case do not make the judgment; those who make the judgment have not heard the case. This is a structural matter which could be easily remediable were there the will to do so. The second is more fundamental. The principle of Party supremacy runs through every aspect of the “judicial” system. The Constitution, in practice if not in actual words, makes the “courts” accountable to the CPP; the *Organic Law of the People’s Courts* sets out the foremost duty of the “courts” as “safeguarding the Proletarian Dictatorship”; the *Organic Law of the People’s Procurate* places the “courts” under the supervision of the prosecutors; top CCP leaders stress the need to increase and tighten Party control over the “courts”. All these facts are totally inconsistent with, and indeed cannot co-exist with the Rule of Law.

Respectfully submitted for to the United Nations Human Rights Council for consideration on the Universal Periodic Review of China by Lawyers Rights Watch Canada.

Appendices I & II attached as separate documents.

APPENDIX I – Summary of reported attacks on lawyers and human rights defenders in China.
10 pages.

APPENDIX II - Clive Ansley, *THE CHINESE “JUDICIAL SYSTEM”*: A FAIRY TALE OF BEIJING, *Creative Fiction* by Jean Chretien and Paul Martin, Verdict, Issue 112, March 2007.
10 pages.