

A) Prelude

1. "Rights-defense lawyers", or commonly called "human rights lawyers", is an ironic term. In many places, lawyers are a group of professionals who defend the rights and interests of their clients. So when a lawyer exercises his/her duties, s/he is supposed to defend someone's rights. S/he is a rights defender. But in China, when the lawyers defend the rights of clients, they need to defend their own rights first, because the lawyers themselves could become the victims of government suppression. When they handle politically sensitive cases or the cases threatening the interests of top officials in both local and national levels, they are brutally stopped to be rights defenders. They rather need someone to defend their rights. Human rights lawyer is a title not only describes how a group of lawyers in China bravely exercises their mandate and duties to defend their clients' fundamental rights and interests, but also states a fact how the lawyers' own rights are deprived of.
2. The present submission articulates how lawyers in China face severe suppression. The Chinese Government set a hurdle in **annual renewal of lawyers' licenses as a way to stop the lawyers to defend their clients** and to warn other lawyers to depart themselves from human rights cases. Failure in renewal of lawyers' licenses makes the lawyers unable to continue representing their clients. Some of them have been unable to succeed in renewing their lawyers' licenses for several years. Failure in renewal of licenses does not only happen to individual human rights lawyers, but also to their law firms. The livings of the lawyers and their families are devastated. Human rights lawyers just exercise their mandate and duties to defend their clients' rights and interests, but they become the victims of government suppression.
3. **Unlawful practices by court** also limit human rights lawyers to represent their clients. In many cases, the lawyers were denied meeting their clients, unnoticed by court for the trials, or denied access to their clients during the trials. Therefore, they were unable to defend their clients.
4. **Physical and psychological violence against the lawyers and/or their families** are not uncommon in China. Lawyers are forced to give up their cases and finally the victims cannot enjoy the rights to legal assistance and to fair trials.

B) Administrative Sanction Against Human Rights Lawyers

5. In 2009, at least 20 human rights lawyers could not pass in the first round of annual assessment because of their legal involvements in human rights cases,¹ such as representing Falun Gong practitioners, HIV/AIDS patients, peasants who lost their land due to forcible eviction, the victims of the tainted milk powder scandal, and deaths in Re-education-Through-Labour facilities.²
6. Administrative suppression peaked in 2010. Apart from 6 human rights lawyers who were unable to pass the annual assessment (5 of whom had not been able to pass in the previous as well),³⁴ among them, **Tang Jitian** of Beijing Anhui Law Firm and **Liu Wei** of Beijing Shun He Law Firm had had their licenses permanently revoked by the Beijing Municipal Bureau of Justice on April 22.⁵ The two lawyers were accused of "disturbing the order of the court and interfering with normal litigation"⁶ during the trial of a case on 27 April 2009 in Sichuan Province, involving a Falun Gong practitioner being accused of "using a cult organisation to undermine the implementation of the laws of the state".⁷
7. In 2011, at least 4 human rights lawyers could not pass in the annual assessment because they failed to inform the Justice Bureau for taking up "sensitive" and "mass" cases.⁸⁹ Despite the decreased number of lawyers being graded unqualified, suppression against human rights lawyers persisted indirectly by asserting pressure on their law firms. For instance, Beijing Qijian

Law Firm, which was headed by **Liu Xiaoyuan**, one of the four aforementioned lawyers that had not passed the assessment in 2011 and who represented a lot of sensitive cases such as the renowned cases of Yangjia (2008) and Beijing artist Ai Weiwei (2011), was not granted its license renewal in both 2011 and 2012 for various ungrounded reasons. Eventually, Liu had no option but to shut down the firm in October 2012 and practise in another firm.

8. In 2012, **Chen Wuquan**, defense lawyer of the case of Chen Kegui, nephew of the prominent blind legal activist Chen Guangcheng, had his employment contract terminated by his law firm as instructed by the Guangzhou Municipal Bureau of Justice. Up to the moment when this submission is drafted, Chen is unable to resume his practice in a new firm due to sustained pressure from the authority.

Comments

9. Lack of independence and impartiality in the practice of law is reflected from the current annual assessment system, such insufficiency violates Article 7 of the Universal Declaration of Human Rights and Principle 28 of the UN Basic Principles on the Role of Lawyers (UNBP). The system also violates the country's Law on Lawyers and Administrative Licensing Law.¹⁰
10. Lawyers¹¹ and law firms¹² must re-register the licenses on a yearly basis. Based on vaguely-defined codes such as "immoral behaviour" or "conduct which has resulted in adverse social impact", misconduct of lawyers would result in a grade of "unqualified" and discontinuation of the practice in the coming year, while lawyers would not be informed about the reasons.¹³ The assessment is carried out by All China Lawyers Association (ACLA), which is under direct supervision of the Ministry of Justice, therefore, makes it extremely easy for the government to use it as a means to put pressure on lawyers. It is not uncommon to see lawyers who handle cases contrary to the interest of the government ended up failing in the annual assessment, or in extreme cases, be given administration punishment, including licenses being revoked.
11. Assessment of law firms also takes into account the annual assessment results of its practicing lawyers.¹⁴ And as a measure of direct monitoring, firms are required to "build Communist Party membership and leadership" within its establishment.¹⁵ Hence, we saw cases where human rights lawyers endured pressures from their law firms to withdraw from politically sensitive cases.
12. All lawyers and law firms must join the local bar associations and automatically become a member of the ACLA,¹⁶ however, these organizations failed to defend the rights of its members when their professional duties brought them into conflict with the authorities as they are controlled by the Chinese government. In June 2009, 9 lawyers from Beijing wrote to the Beijing Lawyers' Association, condemning its suppression against human rights lawyers by failing the assessment of those who participated in or promoted direct election for the Association.¹⁷
13. By directly and indirectly depriving lawyers of the full rights to practice, the annual assessment system is, indeed, disciplinary proceedings that bypass formal legal procedures in penalising lawyers' conduct. It falls short in safeguarding lawyers' right to fair trial, which is stipulated in the Principle 27 of UNBP.
14. Moreover, under the current system, lawyers and law firms have to pay a compulsory annual membership fee to their respective local bar associations;¹⁸ and failing to re-register the licenses implies that lawyers lose their means of living. Such arbitrary infringement of property ownership and access to economic means are in violation of Article 1 and Article 6 of the International Covenant on Economic, Social and Cultural Rights.¹⁹

C) Unlawful Practice by the Court

15. On 7th February 2013, the second hearing of the local police officer **Wang Dengchao** in Shenzhen exposed some unlawful practices by the court.
16. First, without any given reasons, Wang's wife was not allowed to attend the hearing. A very common practice by the court is the defendant's family or the representing lawyer was being denied access to the trials regardless of the proper procedure the court should observe. Along with her 7-month-old son, Wang's wife had to wait outside the court for the trial result.
17. Second, according to the Criminal Procedure Law (CPL) Article 151, the court should "announce, three days before the opening of the session, the subject matter of the case to be heard to the public, the name of the defendant, and the time and place of the court session."²⁰ But the defendant did not receive the notice of court session until the day of the hearing and Wang was not prepared for the trial.
18. Also the 2 lawyers, **Li Jinxing** and **Li Jinglin**, were unable to defend Wang during trials. They were given no time for any speech to represent their client and the judge rejected most of the requests like avoidance from the lawyers. That contradicted the National Human Rights Action Plan of China (2012-2015) The Civil and Political Rights, Article 3 "Right to Fair Trial", which stated that "Guaranteeing the personal rights and right of defense of lawyers when they perform their duties."²¹
19. Wang received unfair treatment prior to the trial and his lawyers were obstructed in court to complete their duties and make defenses.
20. In another severe case, **Chen Kegui**, the nephew of human rights lawyer Chen Guangcheng, a citizen of Linyi, Shandong Province, experienced an unfair trial on 30th November 2012 while Chen Kegui's father did not received any court session notice until the day of the hearing.

Comments

21. The International Covenant on Civil and Political Rights (ICCPR) is signed by China in 1998 but lacks ratification. Although without ratification of the treaty should not stop China from protecting and preventing any possible violation of human rights, unlawful practice by the court is a common phenomenon in China.
22. Countless cases can be used to indicate that the Chinese court is short of the following legal procedures in managing cases, which makes defendants or lawyers difficult to go through a fair and open legal process. The transparency and fairness of how the court operates is very low and unclear.

D) Obstruction of access to justice

23. **Chen Kegui** was arrested for inflicting injuries on public security officials when they raided his home on 27th April 2012. Family of Chen entrusted lawyer Liu Weiguo, along with other lawyers after he was arrested. The lawyers faced threats imposed by the state security. **Liu Weiguo**, one of the lawyers representing Chen Kegui, was threatened by state security that his family would be harassed if he continued to handle the case. Chen Wuquan, another lawyer representing Chen Kegui, had his lawyer license snatched by state securities of Guangzhou, the city where he practiced, when he was about to leave for meeting Chen Kegui's family in Shangdong.
24. The Chen family later entrusted two more lawyers, **Si Weijiang** and **Ding Xikui**. However, during investigation, review and indictment of the case, officials of the Yinan Detention Centre denied request of meeting Chen Kegui made by the two lawyers.²²

25. Later, the Yinan officials announced that Chen applied for legal aid in the detention centre and asked the legal aid department to appoint two lawyers for him. However, the authorities failed to produce any document that proves Chen's application for legal aid as well as authorization of entrusting two government-appointed lawyers to represent him in court.²³
26. Because Chen was unable to make further contact with his relatives and obtained no information on his trial process, knowing he would be incapable to gain any more help from the representing lawyers, he chose to accept the verdict of the first trial.
27. **Li Wangyang**, deceased human rights activist, was found hanging on a window of the hospital with his feet touching the ground. Li's family hired a legal representative, Tang Jingling to inquire into Li's death on 7th June, 2012. However, Tang was missing for a few days right after he promised to take on the case. He was forced to drop the case through threats and intimidation directed at his family.²⁴

Comments

28. In order to increase the transparency and fairness of the Chinese Courts' system, CHRCLG recommends that the People's Republic of China:
29. Although the Criminal Procedure law states clearly that "a criminal suspect shall have the right to retain a defender from the day when the criminal suspect is interrogated by a criminal investigation authority for the first time or from the day when a compulsory measure is taken against the criminal suspect"²⁵, the right is not protected.
30. Article 37 of Criminal Procedure law also states clearly that "a defense lawyer may learn relevant case information and provide legal advice and other services"²⁶. In the aforementioned cases, the authorities shunned all channels of legal services and aid. We believe that Chen and Li are not unique cases of authorities which actively violate the suspect's right to defense.

E) Ill treatment of prisoners

31. Rights lawyer **Gao Zhisheng** was sent to prison for 3 years after being accused of violating probation requirements in December 2011. He was only first allowed to meet his family on 28 March 2012. Prior to the meeting, the prison officer told Gao's elder brother: "It's a three-month education period. If his performance is good, you will get to see him after three months. If not, you will not see him."²⁷
32. Legal activist **Ni Yulan** was sentenced to two years and eight months of imprisonment for "picking quarrels, provoking trouble and wilfully destroying private and public property" and "fraud" in April 2012.
33. In the meeting with her lawyers in July 2012, Ni expressed that she was not given proper medical care for her keel fracture caused by the torture she suffered during her previous detention. She was also diagnosed with a Thyroid tumor on the left side of her neck. The prison does not have adequate medical facilities. The catering and medical standards were poor in prison. Ni was heavily underweight.²⁸

Comments

34. Currently the regulations of family visit in prison vary from prison to prison. The right of prisoners meeting with their families is not protected by law. We urge the Chinese government to recognize the right of prisoners meeting with their families, as well as protecting such right in its regulation.
35. In the Judicial Reform in China White Paper released in 2012, "medical care for prison inmates

will be socialized, so as to ensure that an inmate gets timely treatment in case of illness.”²⁹ However, Ni was not given timely treatment for her illness.

F) Recommendations

CHRLCG urges the government of the People's Republic of China:

Concerning administrative sanction against human rights lawyers

36. To ratify the UN Basic Principles on the Role of Lawyers, and take concrete and immediate steps in realizing the provisions as part of the on-going judicial reform.
37. To abolish the annual assessment system and any other means of administrative retaliation and disbarment against lawyers who handle politically sensitive cases.
38. To abolish Communist Party membership and leadership within law firms and lawyers associations.
39. To take effective measures to prevent any sort of governmental influence on the self-organisation of legal practitioners and to promote the autonomous management of their own professional organizations, a recommendation that was rejected by China in the last Universal Periodic Review.

Concerning unlawful practice by the court

40. To make sure defendants, defendants' relatives and representing lawyers will be notified for the court session in time before the trial;
41. To allow family members, relatives of the defendants' have access to the trial without any mental or physical threats;
42. To issue and implement a clear guidelines for instructing Chinese Courts for the legal procedure;
43. To pursue an effective measurement for the courts who did not follow the guidelines;
44. To speed up the process of ratifying ICCPR, this can advance the rule of law and to promote the reform of the judiciary system.

Concerning obstruction of access to justice

45. To regulate the unlawful practices of officials at city and provincial level that violates citizens' right to defense and right to enjoy legal service and aid. State securities should stop threatening lawyers and legal representatives.
46. To realize its plan on “revising related laws to provide a legal guarantee for lawyers to overcome difficulties in meeting with the suspect or defendant, accessing to materials concerning the case and obtaining evidence through investigation”³⁰, in the Judicial Reform in China White Paper.

Concerning ill treatment of prisoners

47. To implement its policy underpinned in the White Paper by making sure that timely treatment is given to prisoners with accordance to their medical needs.

¹ Including Cheng Hai, Jiang Tianyong, Lan Zhixue, Li Chunfu, Li Dunyong, Li Heping, Li Jinlin, Li Xiongbing, Liu Wei, Liu Xiaoyuan, Peng Jian, Tang Jitian, Wan Haibo, Wang Yajun, Xie Yanyi, Yang Huiwen, Zhang Kai, Zhang Lihui, and Zhang Xinchui.

² China Human Rights Lawyers Concern Group, 16th July 2009. Protest against Beijing Justice Bureau's Unreasonable Suspension of Legal Practice of Human Rights Lawyers.

³ Jiang Tianyong, Wen Haibo, Liu Wei, Tang Jitian, Yang Huiwen, and Tong Chaoping.

⁴ China Human Rights Lawyers Concern Group, 15th July 2010. Concern over Human Rights Lawyers Snatched of their Legal Practice Qualification; Demand Scrapping the Annual Inspection and Annual Registration System.

⁵ China Human Rights Lawyers Concern Group, 21st April 2010. Statement: Two Beijing Lawyers' Licenses Unreasonably Revoked; Rights to Criminal Defense Infringed in Court.

⁶ Article 49(1), Clause 6, Law on Lawyers.

⁷ According to the two lawyers, the presiding judge interrupted them more than ten times during the presentation of their defense statements during the trial at the Luzhou City Intermediate Court, and ignored their requests to stop a person sitting in the public gallery from video-recording the court proceedings, which was in violation of Article 9, Clause 1, of the "Court Rules of the People's Courts of the People's Republic of China".

⁸ Including Liu Xiaoyuan of Beijing Qijian Law Firm, Li Baiguang of Beijing Gongxin Law Firm, Cheng Hai of Beijing Wutian Law Firm, and Li Jinglin of Beijing Haosheng Law Firm.

⁹ China Human Rights Lawyers Concern Group, 19th July 2011. Four Human Rights Lawyers Barred From Passing The Annual Assessment.

¹⁰ The two laws are more superior legally compared to the measures that demand the implementation of the system. The Law on Lawyers has not required the establishment of the system, nor has it mentioned about the invalidation of license if a lawyer fails in the renewal practice. Its subsequent amendment rules, such as "Measures on the Management of the Licenses to the Practice of Lawyers and Law Firms" issued in 2009, too had not mentioned about the requirement for annual license renewal. Article 16 of the Administrative Licensing Law states that "The regulations and rules shall not make specific requirements for the implementation of the administrative license set down by the upper law, shall not increase administrative license; for the specific conditions of administrative license, they shall not establish any other condition in violation of the upper law." In July 2009, a group of scholars submitted an open letter to the Ministry of Justice challenging the legality of the annual assessment system.

¹¹ According to "Administrative Measures for the Practice of Law by Lawyers, Articles 43(4) and 44(5).

¹² According to "Measures for the Annual Examination and Assessment of Law Firms".

¹³ Article 9 to Article 12, Rules for the Annual Assessment of Lawyers' Practice.

¹⁴ According to Article 5, "Measures for the Annual Examination and Assessment of Law Firms".

¹⁵ Article 7(4), "Measures for the Annual Examination and Assessment of Law Firms".

¹⁶ Article 45, Law on Lawyers.

¹⁷ Letter of Complaint Regarding the Beijing Lawyers Association's Violation of Law and the Association's Articles of Association and Its Encroachment on Lawyers' Right to Practice, 1st June 2009.

¹⁸ Take Beijing, for example, according to "Measures for the Management of Beijing Lawyers' Association Membership Fee" and "Notice on the 2012 Annual Assessment of Lawyers' Practice by the Beijing Lawyers' Association", in 2012, the annual fee was 2,000 RMB for the former and 5,000 RMB to 10,000 RMB for the latter.

¹⁹ In 2009, a group of about 10 lawyers made three submissions to the government, accusing against the Beijing Justice Bureau for "extorting management fees, registration fees and membership fees charged to lawyers".

²⁰ <http://www.china.org.cn/english/government/207332.htm>. China.org.cn is the "authorized government portal site to China, China.org.cn is published under the auspices of the State Council Information Office and the China International Publishing Group (CIPG) in Beijing."

²¹ http://www.china.org.cn/government/whitepaper/2012-06/11/content_25619585.htm

²² China Human Rights Lawyers Concern Group, 10th May 2012. CHRLCG's Declaration of Condemnation on the Suppression against CHEN Kegui and His Appointed Lawyers.

²³ China Human Rights Lawyers Concern Group, 18th June 2012. Statement: CHRLCG condemns the central government for breaking promises, and for allowing the Linyi government to deprive CHEN Kegui of the rights of defence and

endanger his personal safety.

²⁴ China Human Rights Lawyers Concern Group, 18th September 2012. Justice Demanded Hong Kong Groups urge UN to follow up Li Wangyang's case

²⁵ Article 33, Criminal Procedure Law of the People's Republic of China (2012 Amendment)

²⁶ Article 37, Criminal Procedure Law of the People's Republic of China (2012 Amendment)

²⁷ China Human Rights Lawyers Concern Group, 29th March 2012. Human Rights Lawyer Gao Zhisheng allowed to meet family for the first time in two years, life safety still a major concern

²⁸ China Human Rights Lawyers Concern Group, 13th December 2012. China Human Rights Lawyers Concern Group calls on concern over Ni Yulan's life-threatening health condition and her application for medical parole.

²⁹ Judicial Reform in China, Information Office of the State Council,

<http://www.china-embassy.org/eng/zt/bps/t978034.htm>

³⁰ Judicial Reform in China, Information Office of the State Council,

<http://www.china-embassy.org/eng/zt/bps/t978034.htm>