



BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND AND WALES

**Report of the Bar Human Rights Committee
of England and Wales**

China – Universal Periodic Review

Bar Human Rights Committee
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29 March 2018

SCOPE

1. The Bar Human Rights Committee of England and Wales (BHRC) is grateful to respond to the call by the Office of the High Commissioner for Human Rights (OHCHR) for views and opinions in advance of its Universal Periodic Review of China. This report outlines specific concerns regarding the procedural safeguards of lawyers in China.

BHRC

2. BHRC is the international human rights arm of the Bar of England and Wales. Established in 1991, it is an independent committee of the General Council of the Bar of England & Wales. The Committee functions as an independent, legally qualified observer, critic and advisor, with internationally accepted rule of law principles at the heart of its agenda. BHRC's objectives include upholding the rule of law and internationally recognised human rights norms and standards, and supporting practicing lawyers, judges and human rights defenders.
3. BHRC has issued a series of statements of concern at the treatment of lawyers and human rights defenders in China. It has met with lawyers and human rights defenders who report persecution by the State; it receives regular updates from lawyers' groups in China as to the scale of State attempts to prevent the exercise of legitimate legal defence.¹

PERSECUTION OF LAWYERS IN CHINA

4. A global problem persists of persecution of lawyers on the basis of their legitimate professional or human rights promoting activities and of interference with the independence of the legal profession. This is particularly true in China. It is evident that threats to lawyers in China form part of a definite move by authorities to silence dissenters and those who advocate for basic human rights within the country.
5. Lawyers in China who, in the performance of their legitimate professional duties, act against the perceived interests of the State are at risk of detention, prosecution, torture or ill treatment and disappearance by Chinese authorities. Those who are not apprehended by State authorities often face professional persecution, including sanctions and limitations on access to educational and professional opportunities. This leads to many lawyers being ostracised and deprived of adequate income, forcing them and their families into poverty.²
6. Human rights lawyers facing prosecution are often charged under criminal statutes which are vague and rely on national stability narratives as a basis for imposing severe sentences.

¹ BHRC statements are available on our website <http://www.barhumanrights.org.uk/country/China/>

² Report of the Special Rapporteur on the situation of human rights defenders, Michel Forst (26 February to 23 March 2018), available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/043/30/PDF/G1804330.pdf?OpenElement>, page 44.

A commonly used allegation is that of “*subverting state power*”.³ The clear intent, and effect, of pursuing this charge is to suppress opposition.

7. The secondary impact is the erosion of a legal profession that exists to fearlessly defend the interests of its clients, act with integrity and uphold the rule of law. The UN Basic Principles on the Role of Lawyers proclaim the important role that lawyers hold in the protection and promotion of human rights. In particular, Principle 16 provides:

*Governments shall 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.*⁴

8. In China, the arrest of a human rights defender has been followed by arrest of their defence lawyer, which has in turn been followed by arrest of that lawyer’s defence lawyer. The conflation of legitimate exercise of the rights of the defence with state subversion is fundamentally undermining the right to a fair trial, contrary to Article 14 of the International Covenant on Civil and Political Rights⁵ (ICCPR) and the right to free speech, contrary to Article 19 ICCPR.

Procedural rights violations

9. Either as a consequence of the charges filed, or the status of the accused, it is repeatedly the case that lawyers are arrested and held without charge for lengthy periods. Frequently they are denied contact with their families, who are given inaccurate or no information as to the whereabouts of their loved ones. Moreover, accused lawyers often are denied access to a defence lawyer or are unable to hire the lawyer of their choosing. This is in contravention of China’s domestic law as well as international law.
10. Lawyers also endure ill-treatment and oppression – including residential surveillance, lengthy pre-trial detention, incommunicado detention, enforced disappearances and disproportionate prison sentences for the accusation and conviction of their activities. Of concern are reports from lawyers as to the use of torture as means of extracting forced confessions.
11. These practices violate the rights not to be arbitrarily detained or subjected to torture or inhuman or degrading treatment set out in Articles 9 and 7 ICCPR respectively, in addition to the due process protections provided by Article 14 ICCPR.

³ Article 105, paragraph 2 of the 1997 revision of the People's Republic of China's Penal Code. Applied in cases such as Ms Li Yuhan, see <http://www.barhumanrights.org.uk/bhrc-calls-for-release-of-li-yuhan-as-chinas-arrest-of-human-rights-lawyers-continues/>.

⁴ UN Basic Principles on the Role of Lawyers 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

⁵ International Covenant on Civil and Political Rights 1966, available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

12. The case of human rights lawyer, Mr Jiang Tianyong, who was arrested while visiting the wife of another human rights lawyer arrested in the ‘709 crackdown’ of 2015 illustrates this. The accusations against him were ill-defined including that Mr Jiang Tianyong had “*received long-term funding and support from abroad and has identified himself as a ‘citizen agent.’*” These interactions likely included Mr Jiang’s interactions with the United Nations and foreign media. On 22 August 2017, Mr Jiang Tianyong made a televised ‘confession’, which was allegedly extracted under torture.⁶
13. The actions taken against lawyers and their families by Chinese authorities, is done with the clear intention of stigmatising human rights defenders in China – portraying them as anti-state.
14. There are many examples of the ill-treatment and intimidation that lawyers and legal professionals are subjected to in China. Some include:
 - A. The arrest and detention of human rights lawyers in China was brought to the international fore by, as the media referred to it, the ‘709 crackdown’, which started on 9 July 2015. This includes allegations of the arbitrary arrest and prolonged incommunicado detention of human rights lawyers Xie Yang, Wang Quanzhang and Jiang Tianyong and their subjection to torture and other cruel, inhumane or degrading treatment during detention. They were arrested, for subverting state power and, like the other 220 lawyers, legal staff, human rights defenders and family members connected with the ‘709 crackdown’ have been charged with various broadly defined national security related criminal sanctions in China.⁷ Wang Quanzhang is believed to be the longest serving prisoner in the 709 crackdown. He and many of the others who were arrested during the crackdown are still in detention.⁸
 - B. Wu Gan, a legal administrative assistant, is well known for his online and street advocacy on miscarriages of justice.⁹ He was arrested in May 2015 and again on 3 July 2015 as part of the 709 Crackdown; he was then held in incommunicado detention until December 2016. He has been unable to access his chosen lawyers since he accused authorities of torture in January 2017. His trial on 14 August 2017 was held in secret. He was sentenced to 8 years in prison for subverting the state in December 2017.

⁶ Report of the Special Rapporteur on the situation of human rights defenders, *supra*, para 291.

⁷ <http://www.barhumanrights.org.uk/on-eve-of-activists-trial-bhrc-calls-on-china-to-release-detained-lawyers-and-human-rights-defenders/>

⁸ Sources for the examples listed here include China Human Rights Lawyers Concern Group, Chinese Human Rights Defenders, Front Line Defenders, Human Rights Watch, and the BBC.

⁹ <http://www.barhumanrights.org.uk/on-eve-of-activists-trial-bhrc-calls-on-china-to-release-detained-lawyers-and-human-rights-defenders/>

- C. Ms Li Yuhan, a human rights lawyer, was arrested on 9 October 2017. At the time of her arrest, Li Yuhan was representing another lawyer charged under the 709 crackdown. She could not be traced until 31 October when her family was verbally informed that she was being detained for allegedly “*picking quarrels and provoking troubles*”.¹⁰ Ms Li Yuhan has been subjected to abuse and mistreatment during her detention, and the prison in which she is detained has a reputation for using torture against human rights defenders and dissidents. Ms Li Yuhan also suffers from heart problems and other health issues; there is concern that her conditions are not being adequately treated.

HARRASSMENT OF FAMILY MEMBERS

15. These threats and attacks extend to the family members of those lawyers who are in detention and subject to surveillance. The Special Rapporteur on the situation of human rights defenders has received accusations of ill treatment against family members of human rights lawyers, including allegations of harassment by security agents as well as permanent surveillance of Ms Wang Qiaoling, and of Ms Li Wenzu, following their expressions of support for their husbands who are detained human rights lawyers and their campaigns through the media to draw attention to their situation.
16. Family members of Mr Wang Quanzhang were requested by police officers on 28 April 2015 to “*persuade*” Quanzhang to confess his “*mistakes*” on video. Such tactics are indicative of authorities exerting undue pressure on families to secure confessions and self-incriminating statements.¹¹

RECOMMENDATIONS

17. As part of its review we urge the OHCHR to investigate the following allegations of grave international human rights violations:
- A. The use in China of vague national security-related crimes, particularly charges of subverting state power against lawyers in order to suspend lawyers’ rights to due process and subject them to extended and undetermined detention periods for investigation.
- B. The common practice of denying access to self-selected counsel and visits by families while in detention. Lack of access further weakens other protections, including the prohibition on torture or inhuman and degrading treatment. Lack of access to a lawyer of one’s choosing also further impedes the proper investigation of charges.
- C. Police pressure to obtain confessions, including the use of torture and inhuman or degrading treatment and threats against family. Apart from the wholly inappropriate

¹⁰ <http://www.barhumanrights.org.uk/bhrc-calls-for-release-of-li-yuhan-as-chinas-arrest-of-human-rights-lawyers-continues/>

¹¹ See 2016 Open Letter at <http://www.chrlawyers.hk/en/content/open-letter-legal-professionals-president-xi-jinping-occasion-anniversary-709-crackdown>

application of state force that these allegations suggest, this approach exerts pressure on lawyers in detention, risks self-incriminating statements and casts doubt on the integrity of the evidence collection procedure.

D. The surveillance, harassment and ostracisation of lawyers and their family members as a means of discouraging lawyers' legitimate professional activities and advocacy for fundamental human rights.

18. BHRC calls on the OHCHR to acknowledge and condemn these practices and the treatment of lawyers in China – practices which fall foul of China's commitments to its own Constitution, the UN Basic Principles on the Role of Lawyers and the International Covenant on Civil and Political Rights amongst other international conventions on human rights protection.

CONCLUSION

19. Special Rapporteur on extreme poverty and human rights Philip Alston, met Mr Jiang Tianyong during an official visit to China in August 2016 and described his disappearance and arrest as "*the equivalent of a legal sledgehammer*".¹² This characterisation reflects the treatment of many lawyers in China.

20. The practices above underline a methodical and systematic attempt to reduce free speech in China and silence criticism of State action.

21. Every day in China lawyers risk their wellbeing, and that of their families, to uphold the rule of law and protect human rights. This role is integral to the fabric of human rights protection and access to justice in China; it is being eroded by State interference.

22. It is hoped that the OHCHR UPR will serve to highlight both the valuable work of defence lawyers and human rights activists in China and their unlawful treatment by State authorities.

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Bar Human Rights Committee of England and Wales.

29th March 2018

¹² <https://www.reuters.com/article/us-china-rights-un/u-n-rights-experts-urge-china-to-provide-care-for-rights-lawyer-idUSKBN1GZ179>