

In its 2nd Universal Periodic Review (UPR) in 2013, the Chinese government accepted 207 recommendations which include promises to take measures against torture, improvement of the legal framework and institution as well as enhanced protection of lawyers' rights to practice.

However, CHRLCG is perturbed to note that there has been little sign of improvement in the criminal justice system despite the 4.5 years now passed. Situation has literally gone from bad to worse.

While both numbers of prosecution and conviction have stayed high over the past years, hostility towards rights lawyers and defenders has also escalated amounting to brutal suppression amounting to brutal suppression that exposes not only how the deeply flawed judicial system is continuously manipulated by the executive power, but also how measures distinctive under the rule of Xi Jinping have been newly and systemically employed leading to grave rights violation.

This submission highlights (1) concerns about the defective criminal due process including prolonged pre-trial detention, access to counsels, torture and extensive police power abuse; and (2) the profoundly circumscribed status of lawyers as a professional group in China.

I. Prolonged pre-trial detention

1. According to the 2012 PRC Criminal Procedure Law (CPL), a suspect could stay in the hands of police without any judicial oversight for as long as 37 days before an arrest warrant is issued. The length of such detention could drastically be increased to become 7 months and 7 days if the suspect is alleged, again at the sole discretion of the police, to have committed state-security related crimes. The additional 6 months refers to the notorious "residential surveillance at designated location" (see section II)

After the arrest, investigation could last for another 13.5 months before a decision on whether or not to prosecute. This, together with the first 7 months, is literally a period of detention without charge. If an indictment is made, the case will enter the court stage in where the period awaiting trial may go up to 8 months or literally indefinite for cases of "special circumstance" as the CPL does not limit the number of times for such kind of cases

to be deferred for trial. It is worth noting that CPL has given no further details to define “special circumstance”.

Throughout the whole period of time aforesaid, a suspect or defendant is bound to stay under the direct control of police without any effective judicial oversight.

2. The status of Wang Quanzhang, 42, Beijing-based rights lawyer, seized by police on 3 August 2015, formally arrested on 8 January 2016 and indicted on 14 February 2017, is of grave concern. Despite having entered the court stage for over a year, he stays incommunicado with no trial fixed. Written correspondences sent for his attention by his family have never been replied.

3. **Recommendations**

- a) **China should immediately release lawyer Wang Quanzhang.**
- b) **China should immediately reform the Criminal Procedure Law to incorporate all recommendations by the UN Committee in its 2015 Concluding Observations on the 5th periodic report of China, in particular those of paragraphs 11, 13, 21 and 23.**

II. **Residential Surveillance at Designated Location (RSDL)**

4. RSDL was recently added into the CPL in its 2012 amendment to target suspects of state-security-related crimes, acts of terrorism and or grave bribes. Accordingly, police is empowered to detain a suspect at a location of their discretion for up to six months. The law explicitly forbid suspects to be held at any formal detention facilities or in premises of investigation.
5. The “state-security-related” crimes without clear definitions have been increasingly used against political dissidents, rights lawyers and defenders in China. To exacerbate the problem, RSDL is invariably used in combination with article 37 which entitles police the discretion to forbid suspects/ defendants’ access to counsel, subjecting them to a much higher risk of torture in an incommunicado state of being.
6. Of the 42 individuals who were subsequently applied criminal procedure in the 709 Crackdown, 29 were accused of state-security-related crimes (among whom 15 lawyers or

disbarred lawyers and 4 legal assistants/ defenders). 26 out of these 29 were held under RDSL.

7. In addition, it is not uncommon for RSDL to be arbitrarily applied also for non-state-security-related crimes. For the 13 rights defenders on non-state-security-related crimes (out of the 42 criminalised), at least 5 were given RSDL.
8. CHRCLG notes that RSDL as a form of arbitrary and prolonged detention amounting to “enforced disappearance” is operated upon the lack of judicial oversight and unchecked power of the police. It also contravenes with the ethos of the criminal due process which is to ensure the protection of basic human rights as articulated in ICCPR to which China is a signatory, in the PRC Constitution and in the CPL (general principles).
9. **Recommendation**
 - a) **CHRCLG calls on RSDL to be immediately repealed.**

III. Torture

10. Torture has continued to be an issue of grave concern in China, both as the cause and consequences of the defects in the criminal justice system and its respective procedure.
11. On one hand, the absence of a clear definition in China’s laws, in the criminal code and the CPL in particular, has made it impossible for the acts of torture to be effectively prevented and prohibited. On the other, the lack of power check and effective pursuit for legal accountability have allowed the law enforcers, and police in particular, to manipulate with the deeply flawed criminal justice system for the purposes of extracting confession, intimidation, punishment and retaliation in face of the targeted groups and individuals including rights lawyers and defenders.
12. As the Chinese courts still largely depend on confession for conviction, CHRCLG is of the view that China should include in its judicial system a comprehensive law of evidence that incorporates international norms and standards for criminal justice.
13. Along these lines, the CHRCLG is of grave concern how torture could have become an institutionalised part of detention. A small survey conducted by CHRCLG in 2017

documented the testimonies of 14 rights lawyers and defenders detained in the 709 Crackdown noting the systematic usage of at least 15 forms/ recurring patterns of torture or inhuman treatments when they were held under RSDL. Tortures were used to inflict physical harm ranging from weeks and months of prolonged hours of fixation of posture forbidding any slightest movement to direct beating and assaults. They also include intimidation and threatening about hurting family members, drug prescription, and deprivation of daily necessities including sleep, food and toiletry.¹ These various forms intend not only to inflict fear and physical pains but also to humiliate, degrade and shatter self-esteem and personal dignity. (Appendix A)

14. CHRLCG notes with dismay the status of physical, mental and psychological well-being of many torture victims upon their release from detention.

15. Lawyer Yu Wensheng who held to a mental chair for hours for questioning needed several months of recovery from his mistreatment, including surgery for a hernia he developed during his 3-month detention incommunicado between 2014 and 2015.

On 19 January 2018 Yu was taken away again by police. Yu is currently held incommunicado under RSDL for allegedly “inciting subversion of state power”.

16. Lawyer Li Yuhan was enforced disappeared for one month before she was formally arrested in November 2017 for “picking quarrels and provoking troubles”. She has complained about being beaten, assaulted and with other inmates being instructed to urinate on her food.

17. Lawyer Li Chunfu, victim of RSDL in the 709 Crackdown, was diagnosed symptoms of schizophrenia when he was released in January 2017 with weight loss, extremely traumatised state of mind, suffering paranoia and strong sense of insecurity after a detention of 16 months. Apart from ill treatments, Li has also complained of enforced drug feeding which happened to at least 6 other RSDL victims known to the Concern Group.

¹ <http://www.chrlawyers.hk/sites/default/files/20170709%20-%20Torture%20in%20the%20709%20Crackdown%20%28ENG%29.pdf>

18. CHRLCG understands from several other victims of the Crackdown that they have still been unable or unwilling to reveal details of their most painful and degrading experiences during detention.
19. Impunity has remained another significant aspect of torture that the Chinese authorities should be made responsible for.
20. In January 2017, lawyer Xie Yang, then charged of “inciting subversion of state power”, was able to publicise, through his counsel lawyer Chen Jiangang, a detailed account of his experiences being torture during RSDL with a list of names and ranking of his perpetrators plus time and venue of torture. However, the authorities were swift to respond with a sloppy report of denial after interviewing 8 individuals, largely the officials. In the show trial in May 2017, Xie Yang was put up before the state media to categorically deny any mistreatments.
21. The episode ended up with Chen being monitored and harassed, Xie held under strict surveillance months after he was released and lawyer Jiang Tianyong being accused as the mastermind in fabricating the story of Xie’s torture. Jiang, convicted of inciting subversion of state power has been serving a 2-year sentence since November 2017.

22. Recommendations

- a) China should ensure and make visible the status of being of all rights lawyers and defenders under detention, and as of 29 March 2018, CHRLCG refers to the cases of lawyers Wang Quanzhang, Yu Wensheng, and Li Yuhan.**
- b) CHRLCG calls on China to ratify OP-CAT on the prevention of torture**
- c) In addition to the recommendations aforesaid, CHRLCG further urges that as part of its reform of its system criminal justice, China should ensure the followings:**
 - That legislation be enacted to formally criminalise torture
 - That the bail system be fully and effectively used to minimise detention, making its criminal due process in compliance with the basic principle of presumption of innocence, as enshrined both in the domestic law and as international human rights

standard. As it is now in China, the bail system is grossly underused in the due process. It is more often appropriated by the police for extended punishment for those they fail to formally indict.

- That China should provide in its criminal code the procedure of “habeas corpus” to allow detainees challenge legality of their imprisonment or the conditions in which they are made captive; and an articulation of the legal accountability of perpetrators of torture.
- That mechanism is built for independent inquiry into complaints of torture and for the purposes of remedy and redress.

IV. Fair Trial

23. To start with, CHRLCG maintains that as a right stipulated by both domestic and international laws, the protection of the right to fair trial without undue delay is a legal obligation that the Chinese government must uphold.

CHRLCG reiterates its grave concerns on Wang Quanzhang regarding his right to fair trial without undue delay.

24. The Chinese courts have by far conducted 8 rounds of trials related to the 709 Crackdown, respectively in early August 2016 and in various months throughout 2017, implicating a total of 14 rights lawyers and legal activists with sentencing ranging from exemption from criminal punishment in the case of Xie Yang, and suspended sentences in cases including Li Heping to concrete jail terms between 20 months and 8 years in the case of Wu Gan. It has however remained disturbing to see the recurrences of legal irregularities and rights violations in those trials as they took place in the course of time.

25. In a 13-page report that took reference of relevant domestic and international laws, and published in August 2016, CHRLCG documented all the rights violations notable in the first round of the 4 trials (3 rights defenders and 1 lawyer) that took place in August 2016. CHRLCG referred in particular to the non-compliance with the basic principles for fair and open trial by the Chinese authorities and of the Court. (Appendix B)

26. Despite a joint statement initiated by CHRLCG (23 March 2017), cosigned by 13 international professional legal groups, 5 prominent law academics plus another 13 international human rights organisations urging China to ensure the right to fair trial, it is regrettable that the trial of lawyer Jiang Tianyong that took place as late as August 2016 had remained essentially another “show trial”. (Appendix C)
27. The authorities had never recognised the family-appointed lawyers for Jiang and their rights to meet him. Instead, Jiang was represented by 2 state appointed lawyers in the trial who made no practical dispute against the accusations and “evidence” presented by the prosecutors.
28. Date of the trial was not publicised pursuant to the CPL but only in the same morning of the trial.
29. Public were not allowed to take part in the hearing. Friends of Jiang who applied as members of public were rejected. Instead the courtroom was filled up with attendants including “representatives of the local people’s congress and political consultative committees” and “members of public”. While Jiang’s sister was forbidden to attend, Jiang’s father was seized by police from his home to be accompanied by policemen in the courtroom.
- CHRLCG has received confirmation from a Chinese language press that they received an invitation extended through phone call from the Ministry of Public Security to attend Jiang’s trial. The trial which was claimed to be broadcast live on the Court’s webpage was in fact transmitted through a number of edited clips of the hearing.
30. The usual tactics of smearing and slandering Jiang took place before the trial.
31. As in other show trials, Jiang pleaded guilty in the court promising not to appeal and reconfirming his gratitude towards the care and generosity of the CCP.

32. Recommendations

- a) Reform the CPL to ensure the full protection of criminal due process including the right to fair and open trial without undue delay as stipulated by both domestic and international norms enshrined in the UDHR, and the ICCPR.**

b) China should immediately ratify ICCPR which it has signed for 20 years since 1998.

V. Lawyers' Right to Practice

33. Apart from the risk of being criminalised for their rights defending work, lawyers in China are also subject to administrative control and penalties via means of (1) newly revised Measures on the Administration of Law Firms (2016) as well as the Measures on the Administration of Lawyers' Practice (2016) (the Two Measures) basing on which the judicial bureaus take into their hands the extensive power to suspend, cancel or revoke the licence of either a lawyer and or a law firm and; (2) annual inspection system -- applied largely through the much contended role and power of the judicial bureau, executive branch of the judiciary, in thwarting the autonomy of the lawyers both as individuals and as a professional community and done in conjunction with the lawyers associations both at national and local levels.
34. The Two Measures, both issued by the Ministry of Justice, have been revised to place lawyers and law firms under closer scrutiny of the judicial bureaus by (1) incorporating law firms as part of the collective control mechanism through the monopolization of politico-ideological stance (art. 3, art. 4) and direct intervention into how "grave cases" are to be handled. (art. 49); and (2), depriving lawyers of their rights to freedom of speech and expression with prohibition on a series of board and vaguely defined behaviours targeting specifically the lawyers.
35. In the lack of substantive improvement in judicial independence with fair treatments given to both the prosecutor and the defence, the newly added articles of 37 – 40 of the Measures on the Administration of Lawyers' Practice could be readily manipulated to obstruct lawyers in conducting their legal duties and to constraint their freedom of speech and expression.
36. The Annual Inspection System has been used to penalise lawyers and law firms not readily succumbing to the authorities' "guidance" in the handling of "grave cases" by revoking their licences. In practice, this works through the self-assumed power of Judicial Bureaus to "stamp and validate" a license formalised in 2010, a power being repeatedly challenged as lacking legal basis by the lawyers communities from across the country.

37. Since 2017, more than 13 rights lawyers from across the country have been penalised either by having their licence suspended, canceled or revoked by the judicial bureau. 5 of them were affected within the 3 months after the 19th Plenary Session held in mid-October 2017. The figure is stunning when compared to 20 cases from 2004 to 2014 and 9 cases from 2014 to 2016.

38. Recommendations

- a) Repeal the Two Measures and the Annual Inspection which are designed to circumscribe lawyers' independence and rights of practice.**
- b) The judicial bureau should revert the power to discipline the lawyers' profession back to the lawyers associations.**
- c) Reforms should be made in the lawyers associations to incorporate free elections by members in returning their office-bearers.**

Encl. Appendix A-C

About CHRLCG

The China Human Rights Concern Group (CHRLCG “The Concern Group”) is a non-profit organization based in Hong Kong Special Administrative Region (HKSAR). Its objective is to advocate for the protection of the human rights lawyers and legal rights defenders in China. It was established on 20 January 2007 by a group of lawyers, legislators and academics in Hong Kong. Despite their endeavors to fight for the rights of the underprivileged within the legal framework, many lawyers and legal activists in China have been subjected to tremendous political pressure and unfair treatment by the Chinese authorities. They and their families deserve more attention and support from Hong Kong and the international community. We believe that the status and rights of the lawyers must be respected before China can successfully develop constitutionalism and rule of law.

The Concern Group has prepared this briefing for the Committee against Torture to assist its consideration of China’s 5th /6th periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“the Convention”). In line with the scope of our organization, this briefing is confined to mainland China and excludes the Special Administrative Regions of Hong Kong and Macau.