

## **2017: PEOPLE'S REPUBLIC OF CHINA**

On January 24th, 2017 - the seventh year of the Day of the Endangered Lawyer- the focus will be on China.

Lawyering could be a highly risky profession in China especially for human rights lawyers.

In the absence of an independent judicial system, the 300,000-odd lawyers in China are subject to close monitoring by the authorities in their work. Rights lawyers who insist in taking up cases with human rights implications, in procedural justice and refuse to succumb to the government's intervention in their case-handling are prone to even greater risk of harassment and suppression. They are subject to the control of the authorities via both legal and non-legal means.

To start with, the PRC Lawyers Act (2012) stipulates that lawyers, law firms and lawyers associations shall be under the supervision and guidance of the executive branch of the judiciary. The newly revised Administrative Measures for Law Firms (2016), a set of regulations issued by the Ministry of Justice, provide that law firms should make "supporting the leadership of the Chinese Communist Party and socialist rule of law" the basic requirement for their business. The new regulations also provide that Party league should be set up in the law firms, and that lawyers should be supervised by the law firms in case taking and handling.

The PRC the Criminal Procedure Law and the PRC Criminal Code were also revised respectively in 2015 and 2012 to include articles that could easily be manipulated, articles 37 and 73 of the Criminal Procedure Law and article 309 of the Criminal Code, for instances, to curtail lawyers' capacity in conducting their professional duties.

Apart from the legal constraints, lawyers in China are also bound by direct intervention and various administrative measures by the judicial bureaus, the lawyers association and the police, exerted often either without solid legal grounds or out of sheer abusive executive powers.

One major constraint comes with the highly controversial Annual Inspection system.

In order to continue their practice, lawyers have to submit their lawyer's licence to the judicial bureau, the executive branch of the judiciary, for inspection on an annual basis. They will be scrutinised for the cases they handled, especially the so-called "politically sensitive" ones, which are often with human rights and/or rule of law implications. A lawyer who fails the inspection will not be given a stamp on his or her licence. The stamp, which is an administrative measure and without legal basis, will determine if a lawyer can continue his or her practice in the following year. The authorities may also suspend the lawyer's practice by holding the licence for a prolonged period of time, hence stopping the lawyer from practising. In their daily practice, lawyers also encounter harassment and intimidation by the public security officers, a special branch of the police, and by the courts. They could be forbidden to meet their clients and/or to have access to files, often and again for the so-called politically sensitive cases. Situations of this kind may result in lawyers being criminally detained or subjected to violence if they insist that their procedural rights or due process be observed.

Other measures against rights lawyers include forcing them and their family to constantly move home and/or forbidding them from travelling outside the country.

In the summer of the 2015, a crackdown on rights lawyers in an unprecedented scale took place in China. The incident is now commonly known as the 709 Crackdown to commemorate the date of 9 July when the first lawyer was taken away by police in the early hours of the day. The crackdown has drawn extensive outcry and criticisms from the international communities including many lawyers groups and bar associations from around the world. By far, over 300 lawyers and civil society activists have been impacted. They have either been detained, temporarily detained, harassed, interrogated or banned from travelling out of the country.

Among the lawyers subsequently arrested and prosecuted, many have been detained incommunicado, without being allowed to meet their defence counsels of their or their family's choosing. Some of the detained lawyers have been reported being tortured. In early August, one of the detained lawyers was trialed and sentenced to 7 years imprisonment for "subverting state power"

As of 17 October 2016, 6 rights lawyers have remained in detention pending for trial. They are Li Heping, Wang Quanzhang, Xie Yang, Xie Yangyi, Li Chunfu and Liu Sixin. ([pdf](#))

Apart those who have been impacted by the 709 Crackdown, it is also important that the international community remember a few other rights who have been sentenced to jail for exercising their civil and political rights:

Lawyer Pu Zhiqiang was given a 3-year suspended sentence on December 22, 2015 after being detained for over 19 months. He was found guilty of “inciting ethnic hatred” as well as “picking quarrels and provoking trouble”.

Lawyer Tang Jingling was sentenced to five years imprisonment in January 2016, 20 months since his detention in May 2014 for “inciting subversion of state power”. His appeal was rejected in May 2016

Lawyer Xia Lin was sentenced to 12 years imprisonment on 22 September 2016 on a highly contended case of “fraud” and “deception”. Wang Zhenyu, one of Xia’s defence counsels, has unambiguously concluded in his defence statement that Xia’s case had been established by the authorities on “imagination” rather than facts. Xia has filed an appeal.

### **International treaties**

China has ratified the following international human rights treaties (date of ratification):

- Convention on the Elimination of All Forms of Discrimination against Women (1980); International Convention on the Elimination of All Forms of Racial Discrimination (1981);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1988);
- Convention on the Rights of the Child (1992);
- International Covenant on Economic, Social and Cultural Rights (2001);
- Convention on the Rights of Persons with Disabilities (2008)

China has signed but not ratified the following treaty:

- International Covenant on Civil and Political Rights (signed in 1998)

China has also supported the Basic Principles on the Role of Lawyers adopted by the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, in 1990, which inter alia, obliges the State to protect lawyers.

[A Ritual Dance with the Dragon](#) – full report ([pdf](#))

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