

# Lawyers' Rights Watch Canada

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Promoting human rights by protecting those who defend them

## ***Present Realities and Continuing Trends in the Chinese “Judicial System”***

### **With Particular Reference to the Widespread and Growing Campaign of Intimidation by the Chinese Government Against the Legal Profession in China**

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#### **I. Introduction and Overview**

The prisons and torture chambers of China currently hold great numbers of Chinese lawyers who have been subjected to intimidation, incarceration, and physical abuse for activities theoretically protected by the Chinese Constitution. Chinese lawyers today are routinely punished and brutalized for simply attempting to do their jobs properly and for vigorously advocating on behalf of their clients.

“Rule of Law”, for China, remains but a dream of the Chinese legal profession for the implementation of a genuine judicial system in some far distant future.

The Chinese Communist Party (“CCP”) today implements “Rule by Men”, partly by implementing a system of “Rule *by* law”, as opposed to “Rule *of* Law”. But the law has no inherent authority of its own because the CCP is unequivocally above the law and in no way subject to the law.

Article 126 of the Chinese Constitution guarantees the complete independence of the Chinese “judiciary” and prohibits any interference with that institution by any outside entities whatever. But the Constitution is routinely ignored by the CCP, which is the *de facto* government of China. No Chinese “court” has the power to rule against any action, policy, or promulgated action of the Party/State.

In theory<sup>2</sup>, in practice<sup>3</sup>, and in clearly articulated policy<sup>4</sup>, the CCP stands above the law. All entities in Chinese society are required to accept the leadership of the CCP and the “courts” are clearly no exception to this all encompassing basic principle.

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<sup>1</sup> With the assistance of Ellen Gilley.

<sup>2</sup> Article 128 of the Chinese Constitution stipulates that the “courts” are responsible at each level to the People’s Congresses which appoint them. Since these congresses are entirely controlled by the CCP and all members of those congresses are either CCP members or have been approved by the CCP, the real effect of Article 128 is to ensure that the CCP in reality appoints all “judges” and that those appointees are responsible to the Party. Moreover, they may be removed by the congress at their own level at any time, with or without cause. Also, Article 4(5) of the *Organic Law of the People’s Procurates* provides that the prosecution arm of the “judicial system” is responsible for supervising the “courts”!

## **II. Systemic Defects in the Chinese “judicial” System which impact upon Chinese Lawyers and “Judges”**

1. The Chinese “judiciary” is entirely lacking in independence and is absolutely beholden to the CCP.<sup>5</sup>
2. The legal profession lacks any independent professional association to advocate on its own behalf and protect it from government interference. The All China Lawyers’ Association (“ACLA”) has never spoken out or taken any action whatever to protect the large number of Chinese human rights lawyers who have been intimidated, tortured, incarcerated on spurious charges, and increasingly deprived of the right to practise their profession.<sup>6</sup>
3. Notwithstanding the empty rhetoric of the Chinese Constitution to the effect that no individual or entity is above the law, the reality is that all “courts”, all “judges”, and all lawyers are required to “accept the leadership of the CCP”, and public statements of that principle by CCP leaders, “judges”, and executives of the ACLA are commonplace.
4. Torture at the hands of police, at the hands of prosecutors, and at the hands of criminals recruited by the police for the purpose of torture, is systemic in the Chinese “judicial system”.<sup>7</sup>

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<sup>3</sup> The CCP exercises direct and indirect control over the “courts” in a number of ways. With rare exceptions, all “judges” are required to be members of the CCP. Moreover, in all cases which impact on CCP interests, laws, or policies, the “judgement” is made not by the “judges” who actually heard the case, but by the Judicial Committee, an invisible internal committee of “judges” within the “court” who have not attended the trial and often have not even familiarized themselves with the evidence or the statutes relevant to the case. The most important input affecting the final “judgement” within the Judicial Committee comes from the CCP Party Secretary within the “court”. Finally, in the unlikely event that any decision of a Chinese “court” were to conflict with the instructions of the CCP, the “judgement” of the “court” can be over-ruled by the head of the CCP’s Political Legal Committee at the level of the “court” concerned (district, intermediate, provincial, or central [national]). These individuals are not lawyers; nor are they judges. In fact, in almost all cases they have no legal training whatsoever. For that matter, the recently appointed new Chief Justice of China, Wang Shengjun, is not a lawyer and has never received any legal training. His appointment appears to have been a direct result of his active promotion of a new legal “theory” attributed to Hu Jintao, China’s President. According to this theory, known as the “Three Supremes”, China’s “judges” should be loyal first to the CCP, second to the “masses” (the people), and only thirdly to the law. The CCP is the only entity which can interpret the will of the “masses”.

<sup>4</sup> See, e.g. the speech of Luo Gan, Head of the Political Legal Department of the Central Committee of the CCP, to the All China Lawyers’ Association (“ACLA”, which was reported by Joseph Kahn in the New York Times on February 2, 2007, in which Luo Gan stated that the CCP must protect itself against enemy forces by “maintaining its dominance over lawyers, judges and prosecutors....There is no question about where legal departments should stand....The correct stand is where the Party stands”.

<sup>5</sup> For example, the CCP has issued to the “courts” a blanket prohibition against accepting lawsuits on behalf of Falun Gong practitioners and lawyers who insist on advocating for Falun Gong adherents face severe intimidation and physical abuse.

<sup>6</sup> This is clearly because the profession lacks the right to directly elect its own representatives to the governing bodies and positions of the ACLA. The ACLA’s leadership is entirely selected by and controlled by the CCP. Indeed, it exists not for the purpose of representing and protecting Chinese lawyers, but for the purpose of assisting the CCP in controlling the profession.

<sup>7</sup> The documentation of systemic and routine torture has been so broad and extensive that it would serve no purpose to list specific citations here. Suffice to say that the documentation has been provided by such impeccable sources as Amnesty International, *Human Rights in China*, Human Rights Watch, and Human Rights Without Frontiers. That said, particular mention should be made of the finding by Manfred Nowak, UN Rapporteur on Torture, that torture is systemic in the Chinese legal system.

5. Chinese human rights lawyers are routinely charged, convicted and incarcerated for vague and bogus “crimes” such as “disrupting social order”, “promoting civil unrest”, “undermining the socialist state”, and “passing state secrets to foreigners”<sup>8</sup>.
6. A substantial number of the Chinese criminal defence bar has been convicted and imprisoned under Article 306 of the 1997 Chinese Criminal Code. On its face, this is a reasonable provision which simply makes it a crime for Chinese defence lawyers to present false or manufactured evidence to the “courts”, or to suborn perjury. But in practice, it is routinely used to intimidate defence counsel for purely legitimate advocacy on behalf of their clients.<sup>9</sup>
7. Chinese lawyers advocating on behalf of clients who have incurred the disfavour of the CCP<sup>10</sup> do so at their peril. Many have been publicly beaten by thugs recruited by police, tortured by police in detention facilities, and sentenced to terms of imprisonment on completely specious charges.<sup>11</sup>
8. The last year has seen an alarming increase in the CCP’s effective disbarment of Chinese human rights lawyers by instructing the Justice Ministry to refuse the annual renewal of their licences to practise.<sup>12</sup>

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<sup>8</sup> *Prima facie*, the charge of passing state secrets appears neither vague nor unusual in terms of comparative practice in any country characterized by the rule of law. The spurious nature of these charges is illustrated only by reference to the actions by Chinese lawyers which have resulted in these charges. For example, the well known Chinese lawyer, Zheng Enchong, who was convicted in 2003 and sentenced to three years in prison, was charged only because he faxed to human rights activists in the US some background information relating to his class action on behalf of homeowners in Shanghai who had been dispossessed by corrupt developers in collusion with equally corrupt Shanghai municipal officials.

<sup>9</sup> Interestingly, Article 306 has no application to prosecutors; it is an offence relating exclusively to defence counsel. The problem with the article is not that it makes perjury or manufacture of evidence an offence on the part of defence counsel; the problem is the illegitimate way in which the charge is frequently invoked against honest defence counsel. It normally happens in two ways.

First, it is a routine consequence in those rare cases where an accused person insists on pleading innocent to a charge. The normal procedure is for the accused to confess and plead guilty, following which defence counsel’s role is to speak to sentence and plead mitigating circumstances. But when a client pleads guilty, the reasoning of the “court” is this: Since the accused, has pleaded “not guilty”, and since we have nevertheless found him to be guilty (virtually 100% of criminal defendants are convicted), it is clear that he was lying. Since he was lying, his lawyer must have put him up to it. Hence accused and counsel go off to prison hand in hand.

The second circumstance in which lawyers are commonly convicted under Article 306 arises directly from the failure of prosecutors and “courts” to adhere to the clear provisions of the Code of Criminal Procedure (“CPL”) relating to defence counsel’s right to access the prosecution file on his client. Though the law so provides, in practice defence counsel never receives contents of the prosecution file, and is also routinely denied the right to meet with his client (again, notwithstanding the fact that counsel has an absolute right to do so according to the CPL). Therefore defence counsel is often unfamiliar with what his client may have told prosecutors or police. If a lawyer advises his client at trial to plead “not guilty”, but the client has already confessed (likely under torture), then the “court” concludes that the lawyer has obstructed justice by persuading the client to change his testimony. The same situation obtains if on counsel’s advice the client makes any statements at trial which do not accord with his statements in the file produced by the prosecutors.

<sup>10</sup> These include, without limitation, Falun Gong practitioners, Tibetan independence protesters, Catholics, Protestants, homeowners and farmers whose land and houses have been confiscated by corrupt officials in league with corrupt developers, and democracy activists/political dissidents.

<sup>11</sup> A table appears at the end of this report which provides names and basic details for a representative sample of illegal acts against Chinese human rights lawyers from 2004 to the present time (a few cases relate to pre-2004 acts of repression).

<sup>12</sup> Examples of this are also set out in the table at the end of this report.

9. There is also a new trend toward shutting down entire law firms which have employed one or more human rights lawyers taking on cases for any of the previously mentioned categories of the Chinese population which have incurred the disapproval of the CCP.<sup>13</sup>

### **III. Representative Table of Persecuted Chinese Human Rights Lawyers**<sup>14</sup>

<b>Name/Position of Victim</b>	<b>Nature of Attack</b>	<b>Motivation</b>	<b>Current Status of Victim/ Information Database</b>
Chen Guangcheng; blind self-educated Human Rights Lawyer	*Aug 2006: Unfair conviction for damaging property and blocking traffic” (earlier arbitrary detentions, beatings, and his lawyers were obstructed in legal process)	To prevent him from continuing Human Rights activism – Chen revealed a campaign of forced sterilization and abortions in Shandong province.	Awaiting a re-trial (Feb 2007 AI report)
Gao Zhisheng, Lawyer	*Aug 15, 2006: Arrested for “inciting subversion” without access to a lawyer *authorities have attacked his family *Sept 22, 2007: abducted twice by Chinese authorities and has not been seen since February 2009 after being kidnapped by thugs. Had undergone 50 days of torture, including having electric batons applied to his genitals, being burned over his entire body with electric shock batons, and having toothpicks inserted up his penis. He was warned that he would be killed if he publicized the details of his torture, but did so anyway.	To deter Gao from continuing to expose human rights abuses and arranging protests (Feb 2006 Hunger strike, several open and widely publicized letters to the Chinese party/state leaders, and an open letter to the US Congress)	Dec 22, 2006: given a three year suspended sentence; thereafter there were several attempts on his life, extreme intimidation of his family, torture and beatings inflicted on Gao himself by thugs recruited by Chinese police. <a href="http://news.amnesty.org/index/ENGASA170672006">http://news.amnesty.org/index/ENGASA170672006</a>
Guo Feixiong (Yang Maodong); Legal Advisor	*June 2007: tortured while in police custody and awaiting trial (including sleep deprivation, starvation, electrocution) in Ghuangzou No. 1 Detention Centre *Nov 14, 2007: sentenced to 5 years imprisonment	participation in a protest against human rights violations in Feb 2006 and for “endangering public security” by helping Taishi villagers remove a corrupt official in 2005.	<a href="http://web.amnesty.org/library/index/ENGASA170212007?open&amp;of=ENG-2AS">http://web.amnesty.org/library/index/ENGASA170212007?open&amp;of=ENG-2AS</a> : June 2007 AI report stated he was awaiting a trial in July, expected to be unfair

<sup>13</sup> Again, see table at end of this report.

<sup>14</sup> It should be stressed that this is in no way an exhaustive list; it should be considered as representative only and illustrative of very routine and typical repression methods employed by the CCP against Chinese human rights lawyers.

Guo Guoting; Human Rights and Criminal Defence Lawyer	*Feb 23, 2005: offices searched, and licence to practise law, as well as all computer files seized	To deter Guo from continuing his defense of Shi Tao (writer who allegedly “divulged state secrets), and to punish him for having defended Zheng Enchong and Falun Gong practitioners	(March 2005 AI report) <a href="http://web.amnesty.org/library/index/engasa170022005">http://web.amnesty.org/library/index/engasa170022005</a> Now has refugee status in Canada.
Hu Jia; Co- founder of the Beijing Aizhixing Institute of Health Education and HIV/AIDs Activist	*Feb 2006: “missing” *March 28, 2006: released from being held in custody for 41 days, suffering from Hepatitis B and refused medical attention *May 2007: Hu and his wife were questioned before going to Europe; passport confiscated in June 2007. *March 18, 2008: unfair trial (he was not allowed to speak; awaiting verdict)	*For his outspoken activism on HIV/AIDs in China and participation in Human Rights activism (Feb 2006 hunger strike) * 2007: for allegedly discussing human rights abuses abroad.	Unable to leave the country and always followed when leaving his home (Aug 2007 AI report) <a href="http://web.amnesty.org/library/index/ENGASA170242007">http://web.amnesty.org/library/index/ENGASA170242007</a>  The Observatory: CHN 009 / 1107 / OBS 141.4 (March 19, 2008)
Huang Jinchun; Judge in Beihai	*Nov 1999: Forced into psychiatric hospital and given narcotics in order to force him to renounce his faith in Falun Gong movement *Nov 8, 1999: fired	his association and participation in Falun Gong.	Last update: Observatory May 2002 <a href="http://www.fidh.org/article.php3?id_article=391">http://www.fidh.org/article.php3?id_article=391</a>
Li Boguang; Christian lawyer	*March 13-20, 1998: detained for trying to register a political party *March 24, 2001: arrested for support of “Four Honoured Men” *Jan 2005: detained for legal assistance to Fu’an peasants *Oct 10, 2007: summoned to state security for his interview with the EU parliament	his assistance in defending human rights for peasants, migrants, and Christians	Human Rights Without Frontiers: October 10, 2007 – “ A Chinese HR defendant interviewed by EU parliament immediately summoned...”
Li Heping; Beijing Lawyer	*Sept 29, 2007: captured, beaten, and released 6 hours later	*In order to have him leave Beijing (part of a strategy to keep “trouble makers” out of Beijing). He was the lawyer for Tan Kai (environmentalist) and Gao Zhisheng	Human Rights Without Frontiers: April 30, 2008 – “Legal Profession becomes more Dangerous Day by Day”
Li Jiangqiang; Lawyer	*June 2007: his licence to practise law was refused renewal	*To prevent Li from continuing to represent human rights activists (journalists, writers, poets, organizers) and dissidents of the PRC	June 2007: FIDH Observatory Report <a href="http://www.fidh.org/article.php3?id_article=4542">http://www.fidh.org/article.php3?id_article=4542</a>
Li Subin; Lawyer	*Oct 2005-June 2006: repeatedly beaten and harassed by police	*Attempting to represent Chen Guangcheng, an unfairly convicted blind self-educated human rights lawyer	Human Rights Watch Report July 2006 <a href="http://hrw.org/english/docs/2006/07/18/china13766_txt.htm">http://hrw.org/english/docs/2006/07/18/china13766_txt.htm</a>

Mo Shaoping; Lawyer	* From Sept 2004-May 2006: Mo is prevented from meeting and interviewing his client, Zhao Yan	*Because speaking with Zhao could divulge "state secrets." Zhao wrote a 4 line piece in the NYT detailing a conflict between Hu Jintao and Jiang Zemin about senior military positions	Human Rights Watch Report 2006 Chronology <a href="http://hrw.org/english/docs/2006/06/01/china13497_txt.htm">http://hrw.org/english/docs/2006/06/01/china13497_txt.htm</a>
Pu Zhiqiang; Beijing lawyer	*March 2007: censorship – his blogs were taken off the internet.	*Blogs discussed legal topics such as freedom of speech.	April 30, 2007 AI Report <a href="http://web.amnesty.org/library/index/ENGASA170152007">http://web.amnesty.org/library/index/ENGASA170152007</a>
Tang Jingling; Lawyer	*Feb 2, 2006: harassed and beaten by 5 unknown men.	*For helping with the legal suit of the Taishi villagers to dismiss Chen Jinsheng (the elected village official, who is thought to be corrupt.)	Feb 24, 2006 FIDH Observatory Report <a href="http://www.fidh.org/article.php3?id_article=3077">http://www.fidh.org/article.php3?id_article=3077</a>
Teng Biao; human rights' lawyer	* March 2008: abducted and held by police for 2 days.	*For his human rights' work on behalf of many dissidents and his offer to represent Tibetans arrested in the unrest during the spring of 2008.	Human Rights Without Frontiers International: "Ongoing Crackdown on HR Defenders" (March 9, 2008)
Wei Liuqiu	Early 2005, agreed to serve as lawyer for Guo Guoting, whose licence had been suspended and who had been threatened with criminal charges for insisting on defending Zheng Enchong, the Shanghai lawyer facing spurious charges of passing state secrets after ignoring CCP demands that he abandon his class action on behalf of dispossessed homeowners. Wu was threatened with reprisals by the CCP and finally withdrew as Guo Guoting's lawyer.		
Xu Zhiyong; Defence lawyer for Chen Guangcheng	*Aug 18, 2006: Detained by police and beaten; he was released 22 hours later	*FIDH attributes this to his work on Mr. Chen's legal case	FIDH Observatory April 9, 2006 Report <a href="http://www.fidh.org/article.php3?id_article=3593">http://www.fidh.org/article.php3?id_article=3593</a>
Yang Zaixing; Lawyer	*Feb 16, 2006: Detained and his computer confiscated; released on the 17 <sup>th</sup> . *Feb 17, 2006: Police broke into his home and took copies of all data on his computer; he was told not to contact Gao Zhisheng	* The police mentioned their concern for Yang accepting Falun Gong cases and his accusations against the Hepu Public Security Bureau.	<i>Epoch Times News Online</i> (Feb 22, 2006) <a href="http://en.epochtimes.com/news/6-2-22/38551.html">http://en.epochtimes.com/news/6-2-22/38551.html</a>

Yitong Law Firm	Beijing	*Interference in legal practice - hearing concluded that Yitong law firm must be shut down; lawyers of the firm were forbidden to attend the hearing.	Yitong Law Firm lawyers signed an open letter petitioning for independent candidates to be permitted to run in leadership elections for the Beijing Lawyers Association (August 2008).  The firm has also undertaken human rights cases.
Zhang Jiankang; Lawyer	*March 2007: denied registration and renewal of his licence to practise	* his representation of farmers in a high profile land dispute in Nanhai	Human Rights Without Frontiers: April 30, 2008 – “Legal Profession becomes more Dangerous Day by Day”
Zhang Jianzhong; lawyer and former head of the Beijing Lawyers Association	*May 2002: arrested and sentenced to two years imprisonment	* Sentenced under Article 307 – allegedly fabricating evidence	Human Rights Without Frontiers: April 30, 2008 – “Legal Profession becomes more Dangerous Day by Day”
Zhang Shizi; Lawyer	*Dec 2002: Originally representing Tenzin Deleg Rinpoche, Zhang was replaced by the Judge.		AI Report Oct 1, 2003 <a href="http://web.amnesty.org/library/index/engasa170292003">http://web.amnesty.org/library/index/engasa170292003</a>
Zheng Enchong; Shanghai lawyer representing housing rights	*June 2003: Detained and sentenced to 3 years for “providing state secrets to foreign entities.”	*AI believes it was to prevent his advocacy of housing rights (he was representing 500 families who were forcibly evicted in Shanghai)	*Zheng’s detention has discouraged other lawyers from continuing the housing rights’ advocacy. Dec 2004 AI Report <a href="http://web.amnesty.org/library/index/engasa170452004">http://web.amnesty.org/library/index/engasa170452004</a>
Zhu Jiuhu; Lawyer	*Warned to drop a human rights case, he refused and was put into detention (no date was given!)	*For his representation of private officers contesting the confiscation of oil fields by the Shaanxi government	*Dec 2006 Human Rights Watch Report <a href="http://hrw.org/reports/2006/china1206/4.htm">http://hrw.org/reports/2006/china1206/4.htm</a>

***Lawyers Rights Watch Canada (LRWC)** is a committee of lawyers who promote human rights and the rule of law internationally by protecting advocacy rights. LRWC engages in research and education, campaigns for advocates in danger because of their human rights advocacy and works in cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.*

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