



Stakeholders' submission	Suggested questions	Suggested recommendations
<p>Lawyers in China working on sensitive cases have been subjected to harassment, improper interference, arbitrary arrests, prosecutions, and convictions, as well as unfair trials, including denial of legal representation. In July, 2015, a nation-wide campaign was launched using criminal laws and executive controlled courts to silence lawyers and other human rights defenders (HRDs) through arbitrary arrests, detentions, convictions, and imprisonment (the '709-crackdown'). More than 300 human rights lawyers, legal assistants and rights activists were arrested during the nationwide sweep. See Joint submission (JI) L4L & LRWC, par. 13</p> <p>Since then, several lawyers have been prosecuted on overly broad charges, such as subversion of state power, inciting subversion of state power, and picking quarrels and stirring up troubles, denied fair trial rights and convicted by executive controlled courts. These lawyers have been sentenced to lengthy imprisonment. Of those arrested in the 709-crackdown, the lawyers who still remain in prison include: Wang Quanzhang, Jiang Tianyong, Zhou Shifeng, Li Yuhan and Yu Wensheng. See JI L4L & LRWC, par. 18-22.</p>	<p>(1) How does China prevent that lawyers suffer or be threatened with (criminal) prosecution or other sanctions for the legitimate exercise of their profession?</p> <p>(2) How does China ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the proper functioning of the legal profession?</p>	<p>Take immediate measures to ensure the effective protection of lawyers against any form of harassment and attempts to impede or interfere with their defence of clients, in accordance with articles 16(a) and (c) of the Basic Principles on the Role of Lawyers.</p> <p>Take immediate measures to ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the proper functioning and safety of lawyers and their effective protection against any form of retaliation, including criminal prosecution, in connection with their professional activities.</p> <p>Immediately release Wang Quanzhang, Jiang Tianyong, Zhou Shifeng, Li Yuhan and Yu Wensheng and compensate them for violations of their internationally protected rights.</p>
<p>It has been reported that detained lawyers have been subjected to torture and degrading treatment while in prison. See JI L4L & LRWC, par. 21.</p> <p>Residential surveillance at a designated location (RSDP) was created by a 2012 amendment to the Criminal Procedure Law (CPL) as a form of detention for investigating crimes of "endangering national security, terrorist activities or especially serious bribery cases." Article 73 of the CPL purports to allow arrest without warrant and detention in undisclosed places outside regulated detention facilities for an initial period of six months with a possible six month extension. Article 73 allows interrogation and treatment unrestricted by rules of regular detention facilities and public scrutiny. Communications with counsel or others is prohibited without investigators' permission and identification papers are confiscated to restrict movements. During the 709 Crackdown at least 27 lawyers and HRDs have been subjected to RSDP confinement, jailed in small rooms in secret locations, and held incommunicado without access to lawyers or judicial oversight. On sentencing, no credit for RSDP detention is allowed. In 2016, the CAT expressed "grave concern" that "these provisions, together with the possibility of refusing access to a lawyer... may amount to incommunicado detention in secret places, putting detainees at a high risk of torture or ill-treatment." See JI L4L & LRWC, par. 14-21</p>	<p>(3) How does China ensure that lawyers are not subjected to unfair trials and residential surveillance at a designated location and ensure their physical and psychological integrity and wellbeing while in prison?</p>	<p>Ensure that lawyers will not be subjected to torture or mistreatment in police custody and introduce effective measures to prevent and punish the use of torture by state agents.</p> <p>Recognize and ensure the principle of judicial independence.</p> <p>Abolish the use of Residential Surveillance at a Designated Location and all other forms of administrative detention, that detain individuals without due process and without independent judicial oversight;</p> <p>Repeal section 73 of the Criminal Procedure Law and any other provisions providing for residential surveillance at a designated location.</p> <p>Withdrawn China's reservations and declaration to the UN Convention against Torture and other cruel, inhuman and degrading treatment and punishment;</p>



In China, access to and the continued practice within the legal profession is controlled by the executive branch. Lawyers must renew their license to practice every year. The Ministry of Justice and its lower-level offices can issue / renew licenses to practice law on an annual basis. It is an administrative procedure to revoke or not renew a lawyer's license and the applicant has no access to an independent decision-maker to oppose or appeal a decision to revoke or refuse renewal of a license to practice law. In November 2016, the Chinese Ministry of Justice implemented two administrative (MoJ Directive 133 and 134) that require lawyers and law firms to support the leadership of the Communist Party of China and the socialist 'rule of law' as the basic requirement for legal practice. Lawyers are also prohibited from inciting, organizing or participating in demonstrations that could disturb public order, offline and online. The overly broad prohibitions can be arbitrarily applied to the exercise of internationally protected rights to expression, association and assembly. . An accusation of non-compliance with these Directives can lead to the arbitrary withdrawal or non-renewal of the license of a law firm or lawyer to practice law. The authorities often use their control over the licencing of lawyers to exclude lawyers who authorities perceive as 'problematic' for providing legal representation for sensitive cases. Since the implementation of the Directives, authorities have revoked or suspended the licenses to practice law of several human rights lawyers. They have also cancelled the registration of at least one law firm. See JI L4L & LRWC, par. 23

(4) How does China ensure that access or continued practise to the legal profession is not conditioned or controlled by the executive branch but by an independent decision maker?

(5) How does China prevent that lawyers are subjected to suspension, disbarment or other disciplinary proceedings as a result of discharging their professional duties?

(6) How does China ensure the effective protection of lawyers' rights to freedom of expression, association, assembly or the right to participate in public affairs ?

Take immediate measures to ensure that licencing to practice law is not controlled by the executive branch, but by an independent decision-maker.

Immediately take effective measures to prevent lawyers from disciplinary action or other sanctions on improper grounds, including for peacefully exercising protected rights to expression, association, assembly or the right to participate in public affairs or for carrying out their professional duties in accordance with Articles 23 and 16(c) of the Basic Principles.

Withdraw or amend the administrative directives affecting law firms and lawyers (MoJ Directive 133 and 134) in such a way, that they do not interfere with lawyers' independence.

Immediately renew the licence to practice law of Zhu Shengwu.

Lawyers for Lawyers (L4L), established in 1986, is an independent foundation merely funded by lawyers' donations. L4L is committed to safeguard the proper functioning of the rule of law through a free and independent exercise of the legal profession in accordance with international norms, including the United Nations Basic Principles on the Role of Lawyers. L4L was granted Special Consultative status with the UN Economic and Social Council in July 2013. www.lawyersforlawyers.org

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders who promote international human rights and the rule of law through advocacy, education and legal research. LRWC is a volunteer-run NGO with Special Consultative status with the UN Economic and Social Council since 2005. <https://www.lrwc.org>