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“China’s Human Rights Lawyers: Current Challenges and Prospects”

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This month marks the 30th anniversary of the path-breaking decision of the People’s Republic of China (PRC) to turn its back on almost three decades of Maoist antinomian rule and to embrace publicly a new role for law in China’s governance. On July 1, 1979, the PRC government promulgated seven new laws – including a criminal code, criminal procedure code and a law on Sino-Foreign Equity Joint Ventures – indicating a new determination to use law in the promotion of the PRC’s opening to the outside world and domestic economic reform. Thus it is appropriate that the Congressional-Executive China Commission convene this hearing today to consider the current state of development of China’s legal system and the legal profession which serves it.

As members of the Commission already know, China’s Communist Party under its current leadership emphasizes building a “harmonious socialist society.” One of the stated key components of this project has been enhancing the rule of law. Despite considerable progress over the past almost three decades, China today is hardly a “rule of law” society by Western lights. Unfortunately, for the past several years and even in recent months, activist lawyers, intrepid journalists and those who take on unpopular causes, or represent the disadvantaged and unfortunate, are arrested, intimidated, and silenced. China’s nascent bar and weak, poorly trained judiciary offer scant promise of redress.

Why then should we be so concerned with the development of law and the somewhat fitful improvements of the Chinese legal system? Well, from China’s perspective, establishing the “rule of law” is critical to China’s political stability and further economic growth. We should not forget that this process of legal modernization began on the heels of a devastating, decade-long Great Proletarian Cultural Revolution. This was a time of great disorder in every aspect of Chinese society. The leaders who set China on its current course were, many of them, also victims of the rampant lawlessness and political insanity of that era. So their interest in reform and legality was keen, even if China lacked the usual societal underpinnings for the “rule of law” concept.

If by “rule of law” we mean a system where law restrains state and private power, subjecting even the rulers to its limits, China is still far from realizing such a system. The top leadership – not only in the national and lower-level governments – but more importantly in the all powerful Communist Party are very unlikely to accept such constraints in the foreseeable future. Consistent rules, independent courts and a powerful bar to protect civil and political rights will be a long time coming. Market economy legal

rules, on the other hand, have been drafted and put into place much more quickly. Administrative rules to rein in the bureaucracy (and to attempt to force it to follow central government dictates) have been developing apace.¹

Despite this mixed picture, anyone who (as I did as a participant in the initial student exchange program) saw the reality of China in the late 1970s – when the legal reform developments began – must admit that China has indeed made a “new Long March” from the Maoist era “rule of man” and rampant lawlessness of the Cultural Revolution.²

Historical Background

At the famous Third Plenum of the Eleventh Communist Party Congress in December 1978, Deng Xiaoping not only opened China to the world and decreed its economic reform but also called for a rule of law. Since that time, there has been an exponential growth of national legislation, provincial and local lawmaking, and accession to international treaties and institutions. China’s entrance to the World Trade Organization (WTO), by itself, required the promulgation of thousands of laws and rules.

Institutions of national scope, such as the National People’s Congress (NPC) and its Standing Committee, the State Council, the Supreme People’s Procuratorate and the Supreme People’s Court were either revived or re-established. Over time, they have become much more professional than they were not only thirty years ago but even ten years ago. Throughout China, a small coterie of lawyers and legal reformers promoted legal change and protection of basic rights. Legal aid has become – at least theoretically – available to China’s citizens, some of whom avail themselves of such assistance and even make use of the media to assert their rights and try to achieve their objectives even against the government.

Nonetheless, the Communist Party remains in ultimate control; more significantly, the Party and its leadership remain outside the reach of the law, relying upon Party discipline and other mechanisms to maintain a separate superior status. The government bureaucracy – including the courts and other legal institutions – are dominated by Communist Party appointees at every level, despite some autonomy for independent actors to develop the rule of law.³

¹ Jamie P. Horsley, “Rule of Law in China: Incremental Progress,” in C. Fred Bergsten, N. Lardy, B. Gill & D. Mitchell, *The Balance Sheet in 2007 and Beyond*. Center for Strategic and International Studies and The Peterson Institute for International Economics, 2007.

² Randall Peerenboom, *China's Long March Toward the Rule of Law*, Cambridge University Press, 2002.

³ Xin Ren, *Tradition of the Law and Law of the Tradition: Law, State, and Social Control in China*, Greenwood Press, 1997.

A Preliminary Note on China's Courts

Continuing political interference by the Communist Party insures that China's judicial system is far from enjoying the judicial independence that other legal systems take as axiomatic. The implications for legal practice and protection of citizens' rights are ominous. The replacement of the former President of the Supreme People's Court, Xiao Yang, by a man who not only lacks legal training but has long been a Communist Party hack has set back efforts to improve the quality of judges and reform the judiciary. Poorly training and meager compensation of judges leads to corruption which plagues the court system, diminishing its respect and prestige among the Chinese public.

It is also worth noting that China's courts not an independent branch of government. The Standing Committee of the NPC has the final authority to interpret national law. Communist Party adjudication committees inside the courts oversee the work of the judges, particularly in politically sensitive or important cases. Judicial independence is non-existent in China.⁴

What Role for the Legal Profession?

The modernization of the PRC legal system has required a massive training effort to increase the quantity and the quality of legal professionals. These new lawyers have many roles: to familiarize the general public with the emerging legal system; to draft and to improve the laws themselves; and to serve in government and the private sector as practicing attorneys. Having begun with fewer than a thousand lawyers and less than a dozen law faculties when it began legal modernization in 1979, China now boasts over 130,000 lawyers (with a stated goal of having 150,000 qualified lawyers by 2010) and – depending on how they are counted – anywhere from 400 to 600 law faculties. Compared to the United States and other developed countries, the number of practicing lawyers in China is quite low on a per-population basis, the rapid growth of the bar is remarkable. Many obstacles stand in the way of creating a truly independent legal profession in China. Through the All China Lawyers Association and local-level organizations, PRC lawyers are subjected to Party discipline. The Ministry of Justice and local judicial bureaus exercise strict “supervision and guidance” over practicing lawyers and judges. Nevertheless, a few fearless lawyers and legal scholars have taken courageous positions, often contrary to government and Party dictates, to pushing for legal changes and greater “rule of law” in China.⁵

Along with the increasing number of lawyers, legal education institutions have also mushroomed in China since 1979. While these new faculties have the potential for advancing the “rule of law” in China, many are simply riding a wave of interest rooted in careerism as the profile of law and the legal profession has risen. Law is seen as a lucrative career path for those who pursue certain avenues, as it is in many developed countries. With a hidebound curriculum controlled at the national level by the Ministries

⁴ Benjamin Liebman, *China Quarterly*, Vol. 191, pp. 620-638 (September 2007).

⁵ Gerard J. Clark, “An Introduction to the Legal Profession in China in the Year 2008,” *Suffolk University Law Review*, Vol. 41, p. 833 (2008).

of Education and Justice, law schools are usually not too adventurous in training their graduates to consider what might be characterized as “public interest” law. While some, mostly elite, law faculties have introduced clinical legal education, combining hands-on representation of clients with classroom instruction, such programs have had limited impact in communities beyond their immediate environs. A few leading law faculties have also established research centers for topics of great public interest – such as worker and consumer rights, women’s status in society and the rights of the disabled and disadvantaged – but these programs have so far induced very little change in the larger societal and legal problems facing Chinese society today.⁶

The role of legal academics in the PRC has also been constrained by political realities. While many Chinese legal scholars have studied abroad in countries with more developed legal system, their new ideas about law and legal reform often present a source of controversy in China. Their assistance may be sought in certain narrow areas of legal drafting, but their ideas are often quite suspect when it comes to policymaking. Even when local people’s congresses and government legal affairs seek scholars’ input, they remain more likely to accept the advice of private law firms and lawyers’ associations as more practical. There has been a limited program to employ a few law professors as consultants to governments, but law professors and lawyers are far less likely to work for government agencies than is the case in the United States or other countries. Given the relative lack of legal expertise in most government sectors, and the growing need for legal advice in a society with the stated goal of basing government actions on law, the need for legal professionals to advise the government is obvious. The likelihood that the need will be filled is less certain.

Unlike their counterparts in the United States, Chinese lawyers have very little direct engagement in politics. While a few lawyers serve as local people’s congress deputies and on people’s political consultative congresses, their impact thus far has been quite limited. Presumably, their legal expertise could help to professionalize the law drafting and other work of these legislative bodies. At the national level, it will be interesting to see whether the ascent of a legally trained leader, Li Keqiang, who is likely to become China’s next Premier several years from now will have an impact on the involvement of other lawyers in Chinese political life.

As is true in many other countries, the vast majority of China’s law graduates go to work as private lawyers. Nevertheless, a few seek to represent the underrepresented groups in Chinese society. Criminal defendants are supposed to be given legal assistance as a matter of national law. With the assistance of various foreign and domestic organizations (including the United Nations Development Program and the Ford Foundation), legal aid clinics have been sponsored to assist disadvantaged citizens, rural migrants and people with disabilities. Legal aid has become firmly rooted in China’s changing legal culture and has helped to raise rights consciousness among sectors of society that have not had much access to the formal legal system in the past. Over a thousand centers have opened in cities across China and are estimated to employ several

⁶ Pamela N. Phan, “Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice,” *Yale Human Rights and Development Law Journal*, Vol. 8, pp. 117-152 (2005).

thousand full-time legal aid workers at a considerable cost to the government. However, these seemingly impressive figures may conceal more than they reveal. Researchers have discovered that these centers often have no real substance and no dedicated employees but rather are often local government offices of the Ministry of Justice with new signage. Moreover, the number of people actually receiving legal aid has not grown at the same rate as expenditures on legal aid which grew more than five-fold from 1999 to 2003, while the number of people receiving legal aid only increased by fifty percent. Despite considerable progress, experts continue to lament the shortage of funds and low access to legal aid.⁷

The reluctance of Chinese lawyers to pursue unconventional areas of practice may be explained by the consequences for those who find themselves in opposition to state and Communist Party. A series of cases over more than a decade have demonstrated that those who undertake criminal defense or politically sensitive cases may face dire consequences. Some criminal defense lawyers have been accused and convicted on trumped up charges of falsifying evidence or committing perjury. Others have been accused of revealing “state secrets” – often nothing more “secret” than newspaper clippings or published maps. This may result in the loss of their jobs and the suspension or cancellation of their licenses to practice law. Just these past few months, the Chinese government has been forcing human rights law firms to shut down. This has not involved a formal crackdown; authorities have not seized files or sent attorneys to labor camps. Instead, the justice authorities are simply using administrative procedures for licensing lawyers and law firms, declining to renew the annual registrations, which expired May 31, of those it deems troublemakers. Human rights groups say dozens of China's best defense attorneys have effectively been disbarred under political pressure.⁸ In the time-honored Chinese tradition of “killing the chicken to scare the monkeys,” these actions were clearly designed to put the brakes on activism by other individuals and firms.

What Happens to Lawyers Who Take On Controversial Cases and Clients

The maltreatment of lawyers involved in defending unpopular people and causes is nothing new in China's modern legal system. For years, the Chinese authorities have increased restrictions on lawyers who work on politically sensitive cases or cases that draw attention from the foreign news media. The typical means of harassment is to intimidate lawyers defending criminal defendants by charging them, or threatening to charge them, with various crimes. If that does not work, authorities have also used harassment and violence against those who participate in criminal or civil rights defense in sensitive matters. Detention, house arrest and even imprisonment on manifestly false charges are commonly employed. Pettier forms of harassment have also kept lawyers

⁷ Xu Jianxin, “Justice and the Need for Legal Aid NGOs in China,” *China Rights Forum*, No. 3, pp. 71-73 (2005)

⁸ Human Rights in China, “Human Rights Defenders: Harassment and Other Unfavorable Treatment,” cited at http://www.hrichina.org/public/contents/press?revision_id=62625&item_id=62623#hrd.

incommunicado, prevented friends and family members from contacting controversial lawyers and even turned on spouses and children of targeted attorneys.

These practices have excited concern of lawyers elsewhere in the world for the lives and livelihood of Chinese lawyers. In Hong Kong, the China Human Rights Lawyers Concern Group (CHRLCG) made an NGO Submission to the United Nations Committee Against Torture for the 41st session for the Fourth and Fifth Periodic Reports of the People's Republic of China on the Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in October 2008. It noted that although China had ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) in October 1988, dissidents and human rights defenders have continued to be subjected to various forms of torture. In addition to China's failure to effectively implement all the relevant provisions on torture in domestic laws, the report noted, law enforcement officers are usually the ones who violate the domestic laws and the international convention. Recently, CHRLCG became alarmed that the situation was becoming even more worrying because a number of human rights lawyers and legal rights defenders have become the subjects of torture by public security officers and prison officers merely because they provide legal assistance to human rights defenders or took up cases considered "politically sensitive" by the government. Therefore, the CHRLCG expressed concern about how bad the situation is and what problems ordinary Chinese citizens encounter since even lawyers are subjected to torture and harassment by law enforcement officers.⁹

In drawing the Committee's attention to individual cases to illustrate how China has violated the Convention, the CHRLCG noted:

[These] are more well-known cases about mainland Chinese human rights lawyers and legal rights defenders being illegally and unreasonably harassed by law enforcement officers. It is only the tip of the iceberg. There are many more cases involving lesser known human rights legal practitioners. These lawyers were targeted because they took up cases regarded by fellow legal practitioners as highly politically sensitive, such as defending political dissidents, rights defenders and Falun Gong practitioners. Falun Gong is banned in China. These lawyers are only using their professional skills to help people in need. They shouldn't be subjected to oppression and torture by the authorities. If [China] is committed to developing universally accepted principles and the rule of law, it should stop harassing and attacking legal rights defenders and human rights lawyers. Only an independent judiciary and a credible legal system can ensure that these abuses won't happen again. In order to ensure that lawyers, legal rights defenders and ordinary citizens will be free from arbitrary attacks and harassments by law enforcement officers and thugs hired by law

⁹ China Human Rights Lawyers Concern Group (CHRLCG), An NGO Submission to the UN Committee Against Torture for the 41st session for the Fourth and Fifth Periodic Reports of the People's Republic of China on the Implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, October 2008, accessed at http://www2.ohchr.org/english/bodies/cat/docs/ngos/CHRLCG_China_cat41.pdf.

enforcement officers, [China] should ensure that law enforcement officers comply with provisions of the Convention.¹⁰

With this background in mind, it may be worthwhile to consider briefly a few examples of individual rights defenders in representative cases who have suffered these abuses.

Falun Gong

Human Rights in China (HRIC) has reported on the cases of Beijing rights defense lawyers Zhang Kai and Li Chunfu who were violently beaten at their client's home in Chongqing by local police on May 13, 2009. They were then brought to the local police station for interrogation and were locked up in an iron cage and slapped in the face. A month earlier, Beijing rights defense lawyer Cheng Hai was also violently beaten by the police in Chengdu, Sichuan for handling a Falun Gong case.

Zhang Kai is a lawyer with Beijing Yijia Law Firm and Li Chunfu is a lawyer at Beijing Globe Law Firm. On the afternoon of May 13, they met with relatives of Jiang Xiqing at their home in Jiangjin District, Chongqing to discuss Jiang's death while serving a Reeducation-Through-Labor (RTL) sentence. Jiang Xiqing, 66, was arrested by the police on May 14, 2008, and sentenced to one year of RTL for practicing Falun Gong. On January 28, 2009, the Chongqing Xishanping Reeducation Center informed Jiang's family that Jiang had died of a heart attack. He was then cremated without consent by his family. The family, suspicious of the cause of death, hired a Chongqing lawyer for legal assistance. But after inquiring formally with the police, the lawyer declined to be retained by the family.

Li and Zhang agreed to represent the family, notwithstanding the implied threats experienced when the family had previously tried to retain counsel. Sources inside China informed HRIC that around 4 p.m. on the afternoon of May 13, four policemen came to the home of Jiang's relatives and said they were delivering materials from the public security bureau's judicial administrative office. They started to interrogate the lawyers, asking the lawyers to produce their identity cards. Soon afterwards, about 20 more people from the state security unit of the Jiangjin District Public Security Bureau and Jijiang Police Substation also arrived. Jiangjin State Security squadron leader Mu Chaoheng asked Jiang Xiqing's relatives, "Who told you to hire lawyers? Your dad died a natural death."

After Li Chunfu presented his lawyer's license and Zhang Kai presented his passport, the police announced, "We only accept identity cards." The police surrounded Zhang Kai and Li Chunfu and began pulling their hair, twisting their arms, tripping them, and beating them while pinning them on the ground. The police then handcuffed them and hauled them into their vehicle. They also took away Jiang Xiqing's son, Jiang

¹⁰ *Id.*

Hongbin. After arriving at the police station, Zhang Kai was hung up with handcuffs in an iron cage and Li Chunfu was slapped in the face by the police. During the interrogation, the police threatened the lawyer to stop defending Falun Gong cases. When the lawyers argued that everyone had a right to legal counsel, the police said: You absolutely cannot defend Falun Gong; this is the situation in China. Lawyer Zhang Kai later said, “This is typical hoodlum behavior. They just wanted to intimidate us and force us to withdraw from the case. They are so frightened; they must be hiding something about this case.”

Zhang Kai and Li Chunfu were released at 12:40 a.m. on May 14. Their hands were covered with bruises and scars. Zhang Kai’s hands were numb and swollen, and Li Chunfu had troubling hearing in one ear. Subsequently, they had to be taken to be examined at Jiangjin District People’s Hospital.¹¹

HIV patients

Hu Jia was a rights defender, not a lawyer, who worked for the rights of those suffering from HIV/ AIDS in rural China. He is the co-founder of the Beijing Aizhixing Institute for Health Education, a non-governmental organization which promotes public awareness and education on the issue of HIV/ AIDS. On March 18, 2008, Hu Jia was tried in the First Beijing Intermediate Court on charges of subversion against the Chinese Government in relation to his on-line writings and has pleaded not guilty. He faced up to five years' imprisonment and is expected to be sentenced in the coming week. Hu Jia's lawyer, Li Fangping, reported that he was allowed only twenty minutes in which to defend Hu Jia and was consistently interrupted by the judge when giving his defense. In addition, several foreign diplomats and members of Hu Jia's family were prevented from attending the trial and many of his supporters were reportedly forced by the authorities to leave Beijing for the duration of the trial in order to prevent them from speaking with journalists.

Hu Jia was detained on December 27, 2007 after giving his public testimony to the European Parliament in which he gave details of human rights violations reportedly being committed in China. He was officially arrested on January 30, 2008 and charged with “incitement to subvert state power”. On April 3, 2008, Hu was sentenced to three years and six months in prison. Hu's wife Zeng Jinyan, after an April 2009 prison visit with Hu Jia, noted that his health is deteriorating because of inadequate nutrition and medical care. Following his arrest his wife, Zeng Jinyan, and his daughter were reportedly prevented from leaving their apartment in Beijing. Several other writers who have published their work on the internet and are considered cyber-dissidents by the authorities were arrested at the same time.

¹¹ Human Rights in China, “Beijing Lawyers Beaten for Representing Falun Gong Case,” May 13, 2009, cited at http://www.hrichina.org/public/contents/press?revision_id=164835&item_id=164831.

These arrests have been interpreted as a campaign of intimidation on the part of the authorities against human rights defenders in order to dissuade them from publicizing information about human rights abuses in China during the period of the Olympic Games. Hu Jia has written of human rights abuses committed against those suffering from HIV/AIDS in rural China, as well as of issues of religious freedom and the human rights situation in Tibet. His lawyer, Li Fangping, a prominent human rights activist, has also been harassed both for representing Hu Jia and for other controversial cases.¹²

Class-action cases

In 2006, the All China Lawyers Association (ACLA) issued a guiding opinion that restricts and subjects to punishment any lawyer who gets involved in a "mass" case. The ACLA Executive Council approved the Guiding Opinion of the All China Lawyers Association Regarding Lawyers Handling Cases of a Mass Nature, which went into effect on March 20, 2006. The following passage, drawn from a translation prepared by the Congressional-Executive Commission on China of the "Guiding Opinion of the All China Lawyers Association Regarding Lawyers Handling Cases of a Mass Nature," distributed by the All China Lawyers Association on March 20, 2006, sets forth the new policy to restrict and inhibit class actions:

At present and hereafter, during this important era in which our nation is constructing a socialist harmonious society, the correct handling of cases of a mass nature is essential to the construction of a harmonious society. Cases of a mass nature more commonly occur in land requisitioning and levying of taxes, building demolitions, migrant enclaves, enterprise transformation, environmental pollution, and protection of the rights and interests of rural laborers, among other areas. Cases of a mass nature generally have comparatively complicated social, economic, and political causes, and have effects on the state and society that vary in degree and cannot be ignored. Thus, there is a need to standardize and guide lawyer handling of cases of a mass nature.¹³

This Guiding Opinion uses the term "mass" cases to describe those that involve representative or joint litigation by 10 or more litigants, or those in which the matter is handled through a series of litigation and non-litigation efforts. While it notes that mass cases "more commonly occur" in the safeguarding of rights and interests of disadvantaged groups, it clearly seeks to control and to minimize them. Also noteworthy is that the Guiding Opinion instructs law firms to assign only "politically qualified" lawyers to conduct initial intake of these cases, and to obtain the approval of at least three partners before taking them on. Such collective responsibility increases the likelihood

¹² Human Rights Watch, "Hu Jia Chronology: Key events, February 2006 – present," *Beijing 2008 China's Olympian Human Rights Challenges*, cited at http://china.hrw.org/press/news_release/hu_jia_chronology.

¹³ All China Lawyers Association, "Guiding Opinion of the All China Lawyers Association Regarding Lawyers Handling Cases of a Mass Nature," March 20, 2006, English translation available at <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingel=53258>.

that firms will be unwilling to take on these cases. Moreover, lawyers who handle mass cases must "promptly and fully communicate" this information to the local justice bureau, accept supervision and guidance by judicial administration departments, attempt to mitigate conflict, and propose mediation as the method for conflict resolution. Thus, the case will almost certainly never get to court if the tortuous path that the Guiding Opinion sets out is followed. As a final twist, the Guiding Opinion says that local lawyers associations may sanction any lawyer or law firm that fails to follow these guidelines and causes a "negative impact," or report them to the relevant judicial administration department for punishment.

The Guiding Opinion was only one in a series of opinions that restricted the participation of lawyers in specific categories of rights defense work. In addition to "mass" cases, other categories that triggered restrictions included "major," "difficult," and "sensitive" cases. For example, the Henan Provincial Justice Bureau and Shenyang Municipal Justice Bureau (in Liaoning province) each issued opinions governing the range of activities permitted in "sensitive" cases, according to reports in April, 2006.¹⁴

Tainted food and formula cases

In 2007 and 2008, China was rocked by scandals involving tainted milk and baby formula which poisoned hundreds, causing kidney stones and other medical problems, and even killed a number of children. The products had been adulterated increase its protein count; this in turn revealed a web of corruption and lack of proper oversight in China's food processing industries. A group of 90 lawyers from Hebei, Henan and Shandong - the three worst affected provinces - had made *pro bono* offers to assist victims, and a list of their names was published. Organizers of the group declared that they had come under pressure from officials to not to get involved in the issue. The Beijing Lawyers' Association, a part of the Communist Party apparatus, asked its members "to put faith in the party and government". Other members of the group reportedly received less subtle requests. Authorities were said to fear social unrest if law suits were unleashed. The Pro-Beijing Hong Kong journal *Ta Kung Pao* reported that central authorities, fearful of the effect of mass law suits, held a meeting with lawyers' groups in September, 2008, asking them to "act together, and help maintain stability."

Chang Boyang, one of the group of volunteer lawyers, said he had filed a suit in Guangdong against the chief offender, the Sanlu Milk Company, on behalf of the parents of one victim. One had already filed in Henan. Chang said that Henan's justice department had ordered 14 Henan lawyers to stop helping the kidney stone victims, saying it had become a political issue. He claimed he was told by the official to "follow the arrangements set out by the government," and was further threatened: "If this suggestion is disobeyed, the lawyer and the firm will be dealt with." Zhang Yuanxin, lawyer and officer in the Xinjiang Lawyers' Association said that the actions of certain departments in government have "set back the development of the legal profession." He

¹⁴ See, e.g., "Henan Justice Bureau Establishes a Rule for Lawyers: No Stirring Up of Sensitive Cases"[Henan sifating wei lushi ding "guiju" mingan anjian jin chaozuo], Henan Daily, reprinted in Xinhua (Online), 10 April 06. Cited at <news3.xinhuanet.com>

said that it was “intolerable” for government to interfere in the affairs of the judiciary, denying the right of ordinary citizens to sue.¹⁵

An official said that central government had issued instructions placing the cases on hold, pending a decision on how to handle the cases in a unified manner. Furthermore, that court was instructed not to give any written replies or accept Sanlu-related cases in the meantime.

Sichuan earthquake parents

In the spring of 2008, a terrible earthquake struck China’s Sichuan province. Buildings were leveled, towns destroyed and many citizens killed or injured. Later it was discovered that many of the buildings were improperly constructed and – had they been built according to applicable regulations – should have withstood the earthquake. Relatives of Sichuan earthquake victims attempted to sue those responsible but became victims yet again. Some were even imprisoned, such as an eight year-old boy who was among those imprisoned by Chinese police attempting to silence protests by the relatives of thousands of children who died in last year’s earthquake, according to a new report by Amnesty International. He was held as anger among bereaved parents in Sichuan Province intensified when the authorities went back on their promise to hold a full inquiry into why so many schools were destroyed. The boy was detained overnight last June, along with his father, by police in Shifang City who were looking for his uncle, who had been planning to petition the local authorities over the death of his two sons during the May 12 earthquake.

Roseann Rife, Amnesty’s Asia-Pacific Deputy Programme Director, said: “It’s absolutely extraordinary that the police would detain a child of that age. It’s a violation of the UN Convention on the Rights of the Child, which China has signed up to, as well as Chinese law.” Almost five thousand children are known to have died when their schools crumbled to the ground last May in what was the strongest earthquake to hit China in 50 years. Parents of the children have blamed the substandard construction of the schools, many of which collapsed while the buildings around them stayed upright, for the deaths. But officials in Sichuan claim that the force of the earthquake was the primary reason why 9,145 schools in the province were destroyed or damaged.¹⁶

The government has offered 60,000 Yuan compensation to the parents for each dead child, but only if they agree not to press for an inquiry into the construction of the schools, or to bring court cases seeking damages from the state. According to Amnesty International, an unknown number of those who have petitioned the authorities for an

¹⁵ Edward Wong, “Courts Compound Pain of China’s Tainted Milk,” *New York Times*, October 17, 2008, cited at <http://www.nytimes.com/2008/10/17/world/asia/17milk.html?ref=asia&p>.

¹⁶ Amnesty International, *China: Justice denied: Harassment of Sichuan earthquake survivors and activists*, May 2009, archived at <http://www.amnesty.org/en/library/asset/ASA17/018/2009/en/dbf100fd-c9f7-4675-91b4-e85e25460809/asa170182009eng.pdf>.

investigation have been detained in unofficial 'black jails' for up to 21 days at a time. Lawyers and activists who have assisted them have also been harassed or detained. For example, Luo Guoming claims he was imprisoned for a week last September. His 16 year-old daughter Luo Dan died with another 600 or so children, when the Juyuan Middle School in Dujiangyan collapsed.

“A dozen of us parents were on the way to the provincial capital Chengdu to petition the authorities when the police stopped us and turned us back. The next day, they came to my home and took me away,” he said. Mr Luo said he believed his mobile phone was being monitored. He has given up his job as a carpenter to devote his time to seeking justice for his daughter. “I want the authorities to do what they said they would do, which is investigate the construction of the schools, find out who was responsible for such shoddy building work and punish them,” he said.

Human rights activists who have offered assistance to the victims, given out information about the earthquake or represented parents in negotiations with authorities have been harassed and arbitrarily detained. Huang Qi was detained because of his work to help the families of five primary school students who died when their school building collapsed during the earthquake. He has been in detention since June 2008, with no access to his family. He Hongchun, a representative of parents whose children died during the earthquake, was detained in September 2009 after he organized a protest outside an insurance company. Tan Zuoren was detained on 28 March 2009, and it is believed that his detention is related to his intention to issue public materials on the first anniversary of the earthquake, including a list of the children who died on 12 May 2008.¹⁷

Concluding Reflections and Recommendations

China's evolving legal system is a substantial change to both long Chinese tradition and the politics and practice of Maoist Chinese political culture. Lawyers and a legal profession are equally new to China and can only become rooted in China slowly. Chinese citizens nonetheless seek ways to obtain redress of governmental abuses of power, to oversee government behavior, and to participate in their society. However reluctantly, the Chinese leadership has decided to foster a growing legal profession and to employ it, suitably constrained, in modernizing China, developing its economy and creating a “harmonious society,” with the support of law.

Establishing the rule of law with the help of lawyers is not that easy to control. While welcoming the predictability of legal order, and hoping that legal means can help to curb corruption, China's leaders have already learned that legal activism is difficult to channel. Once ordinary Chinese citizens begin to feel that they have the legal right to courts to enforce their rights, it becomes problematic to tell them that only certain rights warrant protection, especially when those rights are at least theoretically protected by existing laws and regulations.

China's judiciary has thus far served as a lackey for state and Party leaders, heeding their call and accepting the restrictions placed on it. As it becomes stronger, and as lawyers' activism

¹⁷ *Id.*

begins to promote judicial independence from government and Party interference, judges may be able to fulfill their roles and reframe Chinese jurisprudence. A more credible Chinese judiciary would also help increase domestic and foreign respect for the Chinese legal system.

The rule of law in China has long been something of an oxymoron, or as Mao used to stress, a “contradiction.” The Communist Party remains the final arbiter of not only the rule of law but of all lawful government and refuses subject itself and its minions to the discipline of the law. A professional class of lawyers – well educated, comfortably middle class and increasingly self assured – may eventually be able to wrest greater power over the legal system. And, in contrast to the experience of previous decades, the sunlight of a more active foreign and international press, homegrown human rights defenders (many of them NOT lawyers) and the advantages of modern modes of communication – the cell phone, fax and Internet – assure continued scrutiny of a system about which we know a great deal in detail. That alone may assure continuing pressure to extend the promise of the rule of law to ever larger swathes of Chinese society.