

ACCESS TO JUSTICE

Findings

- While China's Constitution recognizes certain universal human rights, the court system continued to lack any legal channel through which citizens can assert or protect these constitutional rights, thus failing to fulfill the obligation to provide enforceable legal remedies for rights violations committed by government officials.
- As courts in China slowed the rate of uploading judicial documents to the publicly accessible database, the Supreme People's Court announced the creation of a parallel database that is accessible only to judicial personnel. This development prompted concerns that authorities planned to phase out the public-facing database, thereby reducing judicial transparency, which would have the effect of undermining the rule of law and judicial credibility.
- Developments this past year indicate that the petitioning system has been weakened. The petitioning system, an extra-judicial channel through which citizens file grievances involving official misconduct, is being assimilated into the grassroots governance system overseen by the newly established Chinese Communist Party agency called the Social Work Department. One of the department's missions is to implement the "Fengqiao Experience," which is a way to exert granular social and political control through neighborhood committees and other grassroots-level organizations.
- Petitioners continued to suffer retaliation from local officials who tried to suppress exposure of their wrongdoing. Mistreatment experienced by petitioners included criminal prosecution, forcible commitment to a psychiatric hospital, arbitrary detention, and torture.
- Rights lawyers likewise suffered mistreatment, including criminal prosecution, for their legal work. After completing their sentences, lawyers typically have their law license revoked and are subjected to surveillance, restrictions on domestic and international travel, repeated forced relocation, and punishment of their family members, such as denial of education. As a United Nations special rapporteur pointed out, preventing lawyers from fulfilling their legal duties to their clients may "open the door to systematic violations of the right to a fair trial and equality before the law" in certain kinds of cases.

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Introduction

The International Covenant on Civil and Political Rights (ICCPR), which China signed and expressed its intention to ratify,¹ provides that all persons are equal before the courts; it also obligates a State Party to ensure that people have enforceable legal remedies for any violation of the rights and freedoms recognized in the convention, even if the violation has been committed by an official.² While China's Constitution recognizes certain universal human rights,³ citizens do not have any legal channel through which to assert or protect them.⁴ Moreover, instances of ongoing persecution of human rights lawyers and political control over the judiciary and the legal profession are inconsistent with the relevant ICCPR provisions.

Judicial Transparency

In 2013, the Supreme People's Court (SPC) established China Judgements Online (CJO), a database that provides public access to judicial judgments, and had accumulated over 140 million documents as of December 2023.⁵ Accessibility, however, became increasingly restricted in 2020 when the database required registration with a phone number and limited users' access to only the first 600 cases that turned up in a search query.⁶ Then, in 2021, the Dui Hua Foundation reported that the court had removed certain types of judgments, including politically sensitive cases and those concerning the death penalty, which were considered state secrets.⁷

In December 2023, media outlet *Caixin* reported that the SPC was building the National Court Judgments Database, which would be available only for internal use by court personnel.⁸ This initiative coincided with the declining rate at which judgments were uploaded to the CJO. To illustrate, a law professor noted that "[a]mong over 670,000 judgments of administrative litigations in 2022, only 854 were published . . ."⁹ A law professor expressed concern that diminishing judicial transparency could deprive the public of the ability to identify and address problems in the judiciary and would run counter to the promotion of the rule of law and judicial credibility.¹⁰

Revision of the PRC Administrative Reconsideration Law

In September 2023, the National People's Congress (NPC) Standing Committee revised the PRC Administrative Reconsideration Law.¹¹ Enacted in 1999, the law provides citizens with a means to review the government's administrative actions.¹² The revision aimed to enhance institutional neutrality of the review system by creating administrative reconsideration committees comprising government departments, experts, and scholars, from which administrative reconsideration offices should seek opinions, particularly on cases with complicated or technical components.¹³ Requiring administrative reconsideration before resorting to judicial remedies in some situations, the revision also expanded the scope of applicability to cases involving matters such as judgments in occupational injury cases, failure to enter into or honor government contracts, and infringement of citizens' rights in the course of disclosing government

information.¹⁴ Former Minister of Justice Tang Yijun explained that the revision addressed some shortcomings of the existing system, including narrow coverage that resulted in some citizens not being able to use the administrative reconsideration system, scattered jurisdictions that resulted in difficulty in identifying the right review agency, and a lack of a unified standard of review.¹⁵

Constitutional Enforcement

Despite the Chinese Communist Party's emphasis on constitutional enforcement, citizens continued to lack a mechanism through which to assert their individual rights. The NPC and its Standing Committee published in February 2024 the first report that focused on constitutional enforcement, in an apparent response to Xi Jinping's repeated calls for elevating the Party's stated commitment to the Constitution.¹⁶ China's Constitution provides a list of human rights that Chinese citizens are entitled to; it also delineates the functions of different state institutions and grants the NPC power to legislate and to supervise constitutional enforcement.¹⁷ The report mainly describes the NPC's performance of its constitutional duties, such as examining bills for constitutionality and reviewing reports prepared by state institutions.¹⁸ It makes no mention, however, of any effort to create legal channels for citizens to assert their rights.¹⁹ Under the existing legal framework, such legal channels are not provided for in China's Constitution or allowed by state institutions.²⁰ The NPC Work Report, published a month later, likewise did not describe ways, whether judicial or administrative, through which citizens could exercise their rights.²¹

Petitioning System as Part of the Grassroots Governance Network

Evidence emerged this past year that the petitioning system is being positioned as an integral component of grassroots-level governance, one goal of which is to exert social control. The petitioning system (*xinfang*), also known as the "letters and visits system," is overseen by the National Public Complaints and Proposals Administration (*Guojia Xinfang Ju*, 国家信访局; NPCPA) and operates outside the formal judicial system as a channel for citizens to present their grievances in hopes of triggering discretionary involvement by Party officials to provide a resolution.²² Although petitioners rarely see any results, the system remains widely used especially among people who lack the financial means to file court cases.²³

With the institutional reform in March 2023, the NPCPA's status was elevated within the State Council,²⁴ but it simultaneously came under the leadership of the newly created Social Work Department (*Shehui Gongzuo Bu*, 社会工作部), a Party agency.²⁵

In February 2024, the head of the Social Work Department convened a symposium, jointly presided over by the head of the NPCPA.²⁶ With grassroots governance being presented as a "clear direction," speakers at the event discussed using the petitioning system to receive people's suggestions and to resolve the root causes of problems.²⁷ Speakers also stressed the importance of building political power at the grassroots level and of promoting the "Fengqiao Experience," which is a way to exert granular social and political control through neighborhood committees and other grassroots-level

organizations.²⁸ A model of cross-departmental and cross-regional coordination also was raised as a way to augment street- and town-ship-level governments' capacity to resolve problems.²⁹

Persecution of Petitioners

The Commission continued to observe examples of petitioners being subjected to different kinds of control and mistreatment by local authorities, such as criminal prosecution and commitment to psychiatric hospitals.³⁰ "Stability maintenance" efforts intensified in the lead-up to and during events such as the annual meetings of the NPC and Chinese People's Political Consultative Conference in March (Two Sessions).³¹ Individuals who suffered mistreatment for petitioning include the following:

- **Zhang Junjie**, after fleeing China, detailed his experience of being forcibly committed to a psychiatric hospital twice in Nantong municipality, Jiangsu province, for protesting the government's strict zero-COVID measures.³² Hospital staff—having told Zhang that he had schizophrenia because he did not support the Party—injected him with sedatives and forced him to ingest large quantities of antipsychotic drugs.³³ Zhang reported that detainees at the psychiatric hospital were subjected to beating, electrocution, and being restrained in a room for at least three days for disobedience.³⁴ Detainees included petitioners and dissidents, with the longest stay reported to be at least four years.³⁵
- In April 2024, police took petitioner **Mao Hengfeng** into custody when she visited the hotel where the U.S. Secretary of State was staying.³⁶ After taking Mao to a police station, police strip-searched and shackled her, subjecting her to prolonged interrogation while restraining her in a metal chair.³⁷ Thereafter, police transported Mao to a guesthouse (an extralegal detention facility often referred to as a "black jail") and placed her under the supervision of two neighborhood workers and four individuals whom she believed were gangsters.³⁸ After releasing Mao, police warned that they would detain her again if she contacted foreign diplomats or media.³⁹ Previously, Mao had on multiple occasions traveled from her hometown in Shanghai municipality to Beijing municipality, to draw attention to her mother's death in 2000, which she said was a result of torture.⁴⁰ Mao had been imprisoned previously and subjected to arbitrary detention and torture for her repeated petitioning.⁴¹
- Petitioners also are subject to criminal prosecution under various charges. For example, **Lei Fengchun** was criminally detained on suspicion of "picking quarrels and provoking trouble" for persistently asserting his claim of wrongful termination from his employment.⁴² In another example, authorities charged **Lin Aiqin** with disturbing order in a workplace when she and another petitioner mailed a package containing petitioning materials at a post office in Beijing.⁴³ In the case of **Li Lu** (a pseudonym), a court in Shandong province sentenced her to two years and two months for "extortion" after she received partial settlement payment from a government official who verbally abused her as she sought to file a petition over her sexual assault claim.⁴⁴

Persecution of Legal Professionals

In February 2024, the U.N. Special Rapporteur on the independence of judges and lawyers issued a letter expressing concerns over the pattern of the PRC government's use of legal provisions to criminally prosecute lawyers, and otherwise subject them to different forms of hardship for handling politically sensitive cases, accusing them of endangering national security under offenses such as "subversion of state power" and "inciting subversion of state power."⁴⁵ Allegations of national security crimes can trigger the application of a form of detention known as "residential surveillance at a designated location," which could be a form of enforced disappearance given that authorities are not required by the PRC Criminal Procedure Law to notify family members or provide legal counsel for people facing national security charges.⁴⁶ Other forms of mistreatment highlighted in the letter include the denial of legal counsel of one's choosing, deprivation of political rights following a criminal conviction, collective punishment of lawyers' family members, license revocation, and travel bans.⁴⁷ Stressing that "The free exercise of the legal profession contributes to ensuring access to justice," the rapporteur concluded that legal provisions preventing lawyers from fulfilling their legal duties to their clients may "open the door to systematic violations of the right to a fair trial and equality before the law" in certain kinds of cases.⁴⁸ The PRC government had not submitted a response to the letter as of June 2024.⁴⁹

Some examples of persecution of legal professionals include the following:

- Lawyer **Yu Wensheng** and his wife **Xu Yan** have been in detention since April 2023, after being charged with "picking quarrels and provoking trouble" and "inciting subversion of state power" in connection with their attempt to meet with a European Union delegation.⁵⁰ During detention, Xu went on a week-long hunger strike to protest authorities' denial of access to legal counsel. She performed forced labor and was denied prompt medical treatment for an incapacitating spinal condition.⁵¹ Their 19-year-old son Yu Zhenyang suffered from depression as a result of his parents' detention and attempted suicide over 10 times since October 2023.⁵² Yu's 2023 detention took place within a year of being released from a four-year imprisonment that was imposed in connection with his advocacy of constitutional reforms and his providing legal representation to detained human rights lawyer Wang Quanzhang.⁵³
- At the age of 73, lawyer **Li Yuhua** was released in March 2024 from six years and six months of imprisonment for the offenses of "picking quarrels and provoking trouble" and "fraud";⁵⁴ the former charge was premised on her passing by the Tiananmen Square in Beijing, and the latter related to her applying for public assistance on behalf of her son with disabilities.⁵⁵ Li suffered torture and denial of medical treatment during detention.⁵⁶ After her release, she traveled to Beijing municipality to seek medical treatment, but police immediately evicted her from a friend's home where she was staying.⁵⁷ Before Li's detention, she had represented detained human rights lawyer **Wang Yu**.⁵⁸

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- According to an April 2024 article, landlords and hotel owners had evicted rights lawyer **Wang Quanzhang** over 10 times in the past year, which Wang characterized as punishment of him and his family.⁵⁹ The repeated evictions made it difficult for his 11-year-old son to stay in school for an extended period of time.⁶⁰ Some schools refused to enroll his son due to pressure from the government.⁶¹ When trying to seek education overseas, Wang's son was prohibited by border officials from leaving China on national security grounds.⁶²

Notes to Chapter 5—Access to Justice

¹ United Nations Treaty Collection, Chapter IV, Human Rights, International Covenant on Civil and Political Rights, accessed July 8, 2024; State Council Information Office, “国家人权行动计划（2016–2020 年）” [National Human Rights Action Plan of China (2016–2020)], September 29, 2016, sec. 5.

² International Covenant on Civil and Political Rights, adopted by U.N. General Assembly resolution 2200A (XXI) on December 16, 1966, entry into force March 23, 1976, arts. 2(3), 14.

³ 中华人民共和国宪法 [PRC Constitution], passed and effective December 4, 1982 (amended March 22, 2018), arts. 33–48.

⁴ Luoyang Municipal Intermediate People's Court, Henan province, 行政裁定书 [Administrative order], (2018) 豫 03 Xing Zhong No. 368, November 28, 2018, reprinted in China Judgments Online, January 14, 2019; Thomas E. Kellogg, “Arguing Chinese Constitutionalism: The 2013 Constitutional Debate and the ‘Urgency’ of Political Reform,” *University of Pennsylvania Asian Law Review* 11, no. 3 (2016): 349; Paul Gewirtz, “Constitutional Enforcement: Who Should Do It and How?” *China Law Review* 4 (2016): 5.

⁵ Shan Yuxiao, “全国法院裁判文书库将开通 供内部查询” [National Court Judgments Database will begin to operate for internal use], *Caixin*, December 11, 2023; Dui Hua Foundation, “Supreme People's Court Makes Two Announcements about Online Court Database,” *Dui Hua Human Rights Journal*, December 3, 2020.

⁶ Dui Hua Foundation, “Supreme People's Court Makes Two Announcements about Online Court Database,” *Dui Hua Human Rights Journal*, December 3, 2020; Luo Jiajun and Thomas Kellogg, “Verdicts from China's Courts Used to Be Accessible Online. Now They're Disappearing,” *ChinaFile*, Asia Society, February 1, 2022.

⁷ Dui Hua Foundation, “China: All State Security Judgments Purged from Supreme Court Site,” July 26, 2021.

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⁹ Zichen Wang, Peiyu Li, and Yuxuan Jia, “Tsinghua Law Professors Call for Renewing Open Access to China's Court Judgments,” *Pekingology*, December 13, 2023.

¹⁰ Zichen Wang, Peiyu Li, and Yuxuan Jia, “Tsinghua Law Professors Call for Renewing Open Access to China's Court Judgments,” *Pekingology*, December 13, 2023.

¹¹ 中华人民共和国行政复议法 [PRC Administrative Reconsideration Law], passed April 29, 1999, revised September 1, 2023, effective January 1, 2024.

¹² 中华人民共和国行政复议法 [PRC Administrative Reconsideration Law], passed April 29, 1999, revised September 1, 2023, effective January 1, 2024, art. 1.

¹³ Jamie P. Horsley, “Further Observations on the Second Revision Draft of the Administrative Reconsideration Law,” *China Law Translate*, August 10, 2023.

¹⁴ Yuechao Nie and Laney Zhang, Library of Congress, “China: Revised Law Makes Administrative Reconsideration the Major Means of Resolving Private-Public Disputes,” October 30, 2023.

¹⁵ Tang Yijun, “关于《中华人民共和国行政复议法（修订草案）》的说明” [Explanation of the PRC Administrative Reconsideration Law (revision draft)], October 27, 2022.

¹⁶ Changhao Wei, “Dissecting the Chinese Legislature's First Annual Report on Constitutional Enforcement,” *NPC Observer*, March 6, 2024; “2023年全国人大及其常委会 加强和创新宪法实施情况报告” [2023 report by the National People's Congress and its standing committee on strengthening and innovating constitutional enforcement], February 23, 2024.

¹⁷ 中华人民共和国宪法 [PRC Constitution], passed and effective December 4, 1982, amended March 11, 2018, arts. 33–56, 62.

¹⁸ “2023年全国人大及其常委会 加强和创新宪法实施情况报告” [2023 report by the National People's Congress and its standing committee on strengthening and innovating constitutional enforcement], February 23, 2024.

¹⁹ “2023年全国人大及其常委会 加强和创新宪法实施情况报告” [2023 report by the National People's Congress and its standing committee on strengthening and innovating constitutional enforcement], February 23, 2024.

²⁰ Luoyang Municipal Intermediate People's Court, Henan province, 行政裁定书 [Administrative order], (2018) 豫 03 行终 No. 368, November 28, 2018, reprinted in China Judgments Online, January 14, 2019; Thomas E. Kellogg, “Arguing Chinese Constitutionalism: The 2013 Constitutional Debate and the ‘Urgency’ of Political Reform,” *University of Pennsylvania Asian Law Review*, 11, no. 3 (2016): 349.

²¹ “全国人民代表大会常务委员会工作报告” [National People's Congress Standing Committee work report], March 14, 2024.

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²³ Lu Dewen, “‘解局’女教师绝笔信事件：一条诡异的上访之路” [“Solution” female teacher's last letter incident: a strange road of petitioning], *People's Daily*, August 6, 2019; Carl F. Minzner, “Xinfang: An Alternative to Formal Chinese Legal Institutions,” *Stanford Journal of International Law* (2006): 106.

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²⁵ “中共中央 国务院印发《党和国家机构改革方案》” [Party Central Committee and State Council issues “Institutional reform plan of the Party and State Council”], *Xinhua*, March 16, 2023; Jane Cai, “China Seeks to Tighten Grip with New Social Work Department,” *South China Morning Post*, March 17, 2023.

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²⁷National Public Complaints and Proposals Administration, “努力实现良好开局起步 推进社会工作高质量发展—全国社会工作部部长、信访局局长座谈会召开” [Working hard towards a good start; promoting the development of high-quality social work—National Social Work Department Director and National Public Complaints and Proposals Administration convene a symposium], February 22, 2024.

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²⁹National Public Complaints and Proposals Administration, “努力实现良好开局起步 推进社会工作高质量发展—全国社会工作部部长、信访局局长座谈会召开” [Working hard towards a good start; promoting the development of high-quality social work—National Social Work Department Director and National Public Complaints and Proposals Administration convene a symposium], February 22, 2024.

³⁰See, e.g., “打击上访有新招？福建访民涉‘扰乱单位工作秩序’遭批捕” [New tactic of handling petitioning? Fujian petitioner formally arrested on suspicion of “disrupting order of a workplace”], *Radio Free Asia*, October 16, 2024; Rights Defense Network, “归侨访民何观娇被囚精神病院已快四年，亲属今天送冬棉衣棉裤仍被阻止见面” [Petitioner He Guanqiao, who returned from overseas, has been forcibly committed to a psychiatric hospital for nearly four years, family prevented from seeing her as they try to deliver winter clothes to her], December 26, 2023.

³¹See, e.g., Civil Rights & Livelihood Watch, “王海凤进京被截访带回上海后关进黑监狱” [Wang Haifeng detained in black jail after being intercepted as she travels to Beijing for petitioning], April 2, 2024; Gao Feng, “北京‘两会’临近 各地安保升级维稳白热化” [As “Two Sessions” in Beijing approach, security and social maintenance measures in different localities intensified], *Voice of America*, February 28, 2024.

³²Cheng Kuanhou, “「被精神病」归来 白紙烟花革命青年一夜長大” [Having been released after being “forcibly committed to a psychiatric hospital,” youth who joined the White Paper and Firework protests grew up overnight], *Radio Taiwan International*, August 24, 2023.

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³⁸Rights Defense Network, “上海维权人士毛恒凤：我2024年4月24日周三傍晚9点半被抓全过程——我在和平饭店门口被抓坐铁椅” [Shanghai rights defender Mao Hengfeng: The whole process of me being apprehended on April 24, 2024 at 9:30 p.m.—I was taken into custody in front of Heping Hotel and forced to sit on a metal chair], April 28, 2024.

³⁹Rights Defense Network, “上海维权人士毛恒凤：我2024年4月24日周三傍晚9点半被抓全过程——我在和平饭店门口被抓坐铁椅” [Shanghai rights defender Mao Hengfeng: The whole process of me being apprehended on April 24, 2024 at 9:30 p.m.—I was taken into custody in front of Heping Hotel and forced to sit on a metal chair], April 28, 2024.

⁴⁰Rights Defense Network, “上海维权人士毛恒凤遭截访昨被送长兴岛黑监狱囚禁” [Shanghai rights defender Mao Hengfeng intercepted and detained at Changxingdao black jail], February 23, 2024; Rights Defense Network, “上海维权人士毛恒凤：我2024年4月24日周三傍晚9点半被抓全过程——我在和平饭店门口被抓坐铁椅” [Shanghai rights defender Mao Hengfeng: The whole process of me being apprehended on April 24, 2024 at 9:30 p.m.—I was taken into custody in front of Heping Hotel and forced to sit on a metal chair], April 28, 2024.

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⁴⁶ Mandate of the Special Rapporteur on the independence of judges and lawyers, AL CHN 1/2024, February 14, 2024, 4, 6.

⁴⁷ Mandate of the Special Rapporteur on the independence of judges and lawyers, AL CHN 1/2024, February 14, 2024, 4, 5, 6.

⁴⁸ Mandate of the Special Rapporteur on the independence of judges and lawyers, AL CHN 1/2024, February 14, 2024, 4, 5, 6.

⁴⁹ United Nations Office of the High Commissioner for Human Rights, “Communication Report and Search,” accessed June 12, 2024.

⁵⁰ ChinaAid Association, “人权律师余文生和许艳夫妇一案已完成补充侦查，起诉在即” [Indictment imminent as supplemental investigation has been completed in the case of human rights lawyer Yu Wensheng and his wife Xu Yan], April 30, 2024.

⁵¹ ChinaAid Association, “人权律师余文生和许艳夫妇一案已完成补充侦查，起诉在即” [Indictment imminent as supplemental investigation has been completed in the case of human rights lawyer Yu Wensheng and his wife Xu Yan], April 30, 2024.

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⁵³ ChinaAid Association, “人权律师余文生和许艳夫妇一案已完成补充侦查，起诉在即” [Indictment imminent as supplemental investigation has been completed in the case of human rights lawyer Yu Wensheng and his wife Xu Yan], April 30, 2024.

⁵⁴ Rights Defense Network, “刚刚获释的辽宁人权律师李昱函女士赴北京看病 借住王宇律师的朋友家 竟遭警方驱逐” [Human rights lawyer Ms. Li Yuhuan from Liaoning, who had just been released, traveled to Beijing to seek medical treatment but was evicted from the home of lawyer Wang Yu's friend where she was staying], April 15, 2024.

⁵⁵ He Randong, “特别面孔 | 一个延长的709：‘律师的律师’李昱函的执着与不屈” [Special face: A prolonged 709: The stubbornness and persistence of Li Yuhuan, “a lawyer of other lawyers”], *Mang Mang*, November 20, 2023.

⁵⁶ Rights Defense Network, “刚刚获释的辽宁人权律师李昱函女士赴北京看病 借住王宇律师的朋友家 竟遭警方驱逐” [Human rights lawyer Ms. Li Yuhuan from Liaoning, who had just been released, traveled to Beijing to seek medical treatment but was evicted from the home of lawyer Wang Yu's friend where she was staying], April 15, 2024.

⁵⁷ Rights Defense Network, “刚刚获释的辽宁人权律师李昱函女士赴北京看病 借住王宇律师的朋友家 竟遭警方驱逐” [Human rights lawyer Ms. Li Yuhuan from Liaoning, who had just been released, traveled to Beijing to seek medical treatment but was evicted from the home of lawyer Wang Yu's friend where she was staying], April 15, 2024.

⁵⁸ Rights Defense Network, “刚刚获释的辽宁人权律师李昱函女士赴北京看病 借住王宇律师的朋友家 竟遭警方驱逐” [Human rights lawyer Ms. Li Yuhuan from Liaoning, who had just been released, traveled to Beijing to seek medical treatment but was evicted from the home of lawyer Wang Yu's friend where she was staying], April 15, 2024.

⁵⁹ Yang Haowei, “异议人士获释多年后中国当局仍在迫害其家人” [Government continues to persecute family members of dissidents years after their release], *Voice of America*, April 16, 2024.

⁶⁰ Yang Haowei, “异议人士获释多年后中国当局仍在迫害其家人” [Government continues to persecute family members of dissidents years after their release], *Voice of America*, April 16, 2024.

⁶¹ Yang Haowei, “异议人士获释多年后中国当局仍在迫害其家人” [Government continues to persecute family members of dissidents years after their release], *Voice of America*, April 16, 2024.

⁶² Yang Haowei, “异议人士获释多年后中国当局仍在迫害其家人” [Government continues to persecute family members of dissidents years after their release], *Voice of America*, April 16, 2024.