

ACCESS TO JUSTICE

Findings

- To the extent that citizens rely on courts to protect their rights against state encroachment, political influence on the court system undermines their ability to access justice. The Chinese Communist Party goes beyond mere influence and expressly requires absolute loyalty and obedience from the courts.
- This past year, the Party maintained control by sending a political inspection team on a two-month-long tour to the Supreme People's Court (SPC) and reiterated the theme of subservience expressed in the last political inspection in 2016.
- An SPC judge highlighted the judiciary's role as being part of the political-legal system, stressing that courts must be unequivocally political. Given its role, the judiciary must operate under the leadership of the Political-Legal Committee (a Party organization having authority over both the public security and judicial systems) and take part in political initiatives like the "root cause management" scheme designed to seek out and resolve disputes before they become litigated matters. Acting as the Party's agent undermines the judiciary's capacity to adjudicate cases impartially.
- Authorities suppressed speech describing the universal conception of the rule of law and persecuted lawyers by detaining them and revoking their law licenses for their advocacy of democracy and constitutional reform, or for their representation of defendants in politically sensitive cases.
- The government increased state-sponsored legal aid programs and simultaneously squeezed out civil society participation, including by shutting down legal aid centers operated by non-governmental organizations, restricting their funding, and detaining lawyers and revoking their law licenses.

Recommendations

Members of the U.S. Congress and Administration officials are encouraged to:

- Highlight and discuss with Chinese officials the report in which the UN Working Group on Arbitrary Detention found human rights lawyers **Li Yuhan** and **Yu Wensheng** to have been arbitrarily detained. Call attention to the arbitrary detention of other rights lawyers such as **Lu Tingge**, **Chen Jiahong** and **Qin Yongpei**, **Jiang Tianyong**, as well as **Wang Quanzhang**, who continues to be under surveillance and subject to restrictions on personal liberty after being released from prison. Urge the Chinese government to unconditionally exonerate the above-named lawyers and other similarly situated lawyers.
- Highlight and discuss with Chinese officials cases of human rights lawyers such as **Lu Siwei**, **Li Jinxing**, **Sui Muqing**, **Liu Zhengqing**, **Xie Yanyi**, and **Chen Keyun**, whose law licenses were revoked or whose ability to practice law was otherwise restricted because of their legal representation and advo-

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cacy in cases that Chinese authorities deem politically sensitive.

- Urge the Chinese government to protect the fundamental civil and professional rights of China's lawyers, to investigate all allegations of abuse against them, and to ensure that those responsible are brought to justice. Urge the Chinese government to end all forms of harassment or persecution against family members of human rights lawyers and advocates, including surveillance and restrictions on their freedom of movement.

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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 by which to assert or protect them.⁴ Moreover, examples of political interference with the judiciary, control over the legal profession, and persecution of human rights lawyers that the Commission observed during the 2020 reporting year are inconsistent with the relevant ICCPR provisions.⁵

Judiciary as a Political Instrument

The Chinese Communist Party continued to reinforce ideological control over the judiciary and use it to achieve political goals. In September 2019, the Supreme People's Court (SPC) President Zhou Qiang spoke at a conference to mark the beginning of a two-month-long political inspection conducted by the No. 4 Central Inspection Tour Team, which is tasked with ensuring court officials' compliance with political directives.⁶ Zhou urged attendees to protect the country's political security and stressed the importance of political alignment with the Party Central Committee, with General Secretary Xi Jinping at its core.⁷ In January 2020, the inspection team gave the SPC its feedback, listing as the first recommendation that courts should actualize the Party's absolute control over the judiciary.⁸ This recommendation continued the theme of absolute loyalty and obedience to the Party expressed in the last political inspection in 2016.⁹

Likewise, SPC Judge Liu Guixiang¹⁰ clarified at a national conference that "as a political-legal institution, people's courts are first and foremost political entities; [as such,] they must prioritize political building and must be unequivocally political."¹¹ Another part of his speech showed that the Party's political-legal committees continued to have authority over courts and public security bureaus to coordinate efforts between them.¹²

"ROOT CAUSE MANAGEMENT" SYSTEM

A recent political initiative designed to reduce litigation may further undermine the judiciary's authority. In a July 2019 opinion, the Supreme People's Court laid out a plan to establish a nationwide multi-faceted system by the end of 2020 with the goal of resolving disputes before they become litigated matters.¹³ Called the "root cause management" (*susong yuantou zhili*) system, the plan requires courts to take a series of steps to reduce litigation, including integrating themselves into the grassroots-level dispute resolution network, collaborating with Party committees and local governments to create "litigation free" communities, and using big data to prevent or preemptively resolve "potential disputes."¹⁴ Implementation of the "root cause management" system would be part of a broader "peace building" scheme,¹⁵ in which social order main-

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tenance functions are assigned to political-legal committees.¹⁶ With pre-litigation dispute resolution prioritized, the judiciary will be relegated to an auxiliary role in the overall Party-led initiative.¹⁷

Pressure on the Legal Profession

The Chinese Communist Party continued to exert control over domestic law firms through “guidance tours.” In November 2019, the National Chinese Communist Party Committee on the Legal Profession conducted a series of guidance tours on Party committees in law firms across China¹⁸ as part of a political indoctrination campaign launched in May 2019.¹⁹ The Ministry of Justice established the National Chinese Communist Party Committee on the Legal Profession in October 2017 to promote Party ideology and to implement Party building within the legal profession.²⁰ According to the Party secretary at one Chinese law firm, non-Party members should conform to the standards set by Party members.²¹

The Party’s expectation for lawyers to conform to its political views may extend to international lawyers, as illustrated by censorship at the “Global Lawyers Forum” organized under the auspices of the Ministry of Justice and held in December 2019 in Guangzhou municipality, Guangdong province.²² A two-day event joined by over 800 lawyers and government officials from 57 countries, the forum aimed to showcase China’s development and promoted the formation of the Belt and Road International Lawyers Association.²³

Before the event, the Guangzhou Lawyers Association issued a directive prohibiting lawyers from expressing viewpoints inconsistent with those of the Party.²⁴ At the event, the president of the International Association of Lawyers (UIA) was scheduled to be a keynote speaker, but conference organizers canceled his speech after he submitted his planned remarks describing the concept of the rule of law in a manner inconsistent with the Chinese government’s formulation, which, according to the UIA, emphasized the nation’s prosperity and stability but disregarded “protection of human rights or rights of minorities, independence of the bar and judiciary, and separation of powers.”²⁵ In addition, domestic security officials in Beijing municipality placed Xu Yan, who tweeted about the forum, under home confinement during the event.²⁶ Xu Yan is the wife of lawyer Yu Wensheng, whom authorities detained, reportedly in connection with his legal reform advocacy and for providing legal representation in politically sensitive cases.²⁷

Persecution of Human Rights Lawyers and Advocates

This past year, Chinese authorities continued to persecute human rights lawyers and advocates by arbitrarily detaining them or by undermining their ability to render legal help. These individuals include the following:

- **Zhou Shifeng, Hu Shigen, and Wu Gan** continued to serve their sentences ranging from seven to eight years on state security charges.²⁸ Chinese authorities detained them in mid-2015 as part of a coordinated nationwide crackdown on human rights lawyers and advocates (“709 Crackdown”) for defending people facing politically motivated prosecution.²⁹

- As of January 2020, 71-year-old **Li Yuhan** remained in pre-trial detention for over two years, as she continued to refuse to plead guilty.³⁰ Prison officials tortured her by denying her medication and adequate food, and subjected her to degrading treatment by other inmates.³¹ Before her detention, Li represented Wang Yu, a lawyer detained in the 709 Crackdown, and spoke to members of the UN Committee against Torture in November 2015 about the plight of human rights lawyers in China.³²
- As of March 2020, **Yu Wensheng** continued to await sentencing after a court tried him for “inciting subversion” in a closed proceeding in May 2019.³³ Authorities denied him family visits and access to counsel.³⁴ Yu’s detention may be connected to his legal representation of Falun Gong practitioners and to his filing of a complaint alleging the illegality of the 709 Crackdown.³⁵
- After completing a sentence of 4 years and 6 months for “subversion,” rights lawyer **Wang Quanzhang** returned home in April 2020; however, he continued to be subjected to the supplemental punishment of deprivation of political rights for five years, including the rights of speech, publication, and gathering.³⁶ In May, authorities from Shandong province told him that he already had broken the law by giving media interviews and advised him not to attend a private gathering, the invitation to which had never been publicized.³⁷
- In December 2019, **Chen Jiahong** met with his lawyer for the first time in seven months since authorities took him into custody in April, reportedly for his speech calling for increased accountability of Party officials.³⁸ Chen’s colleague **Qin Yongpei** advocated for his release, which possibly led to Qin’s own detention in October 2019.³⁹ In February 2020, police interrogated Qin’s two daughters about his political speech.⁴⁰ Authorities held both Chen and Qin on state security grounds and deprived them of family and counsel visits.⁴¹ In October 2019, authorities suspended **Lu Siwei**’s law license for three months for representing Chen, citing a procedural irregularity.⁴²
- In July 2019, the Shandong Justice Department revoked **Li Jinxing**’s law license based on five social media posts about rule of law issues.⁴³ Li previously represented wrongfully convicted individuals and rights advocates in criminal proceedings.⁴⁴
- In December 2019, police summoned **Lu Tingge** on suspicion of “picking quarrels and provoking trouble,” and the local lawyers association started an investigation of him for “inappropriate speech.”⁴⁵ Previously, Lu repeatedly demanded that authorities investigate a 2017 incident in which he was assaulted by court police when he was representing a criminal defendant in a religion-based prosecution; he also filed a complaint in 2019 alleging illegal conduct by the local justice bureau.⁴⁶

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Citizen Petitioning

The petitioning system (*xinfang*), also known as the “letters and visits system,” is a popular mechanism outside of the formal legal system for citizens to present their grievances to authorities, either in writing or in person.⁴⁷ While the financial cost to use the petitioning system is low,⁴⁸ the system can be inefficient due to staff shortages and the large number of petitions.⁴⁹ Additionally, a structural conflict of interest exists, whereby local governments have police power over petitioners who bring claims against them and have used such power to prevent petitioners from asserting their rights.⁵⁰

This past year, central authorities continued their efforts to improve the petitioning system’s efficiency, such as by implementing an online platform within the National People’s Congress’s petitioning system,⁵¹ clarifying matters that can be presented by a petition,⁵² and sending supervision teams to ensure that local governments resolve matters affecting a large number of people.⁵³ Despite these changes, 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.⁵⁴ “Stability maintenance” efforts intensified during commemorative events such as National Day on October 1, 2019, when authorities systematically detained petitioners in Beijing municipality and prevented them from traveling there to air their grievances.⁵⁵

Legal Aid

The legal aid system remained a state-controlled institution. State Council regulations require that justice bureaus of local governments appoint legal aid organizations and administer legal aid programs through them.⁵⁶ Legal aid organizations may assign eligible applicants to in-house lawyers or make referrals to law firms, grassroots legal services, or other social organizations.⁵⁷ Lawyers are legally obligated to provide legal aid services and may be disciplined or fined for refusing to do so.⁵⁸ As the state-sponsored legal aid program continued to receive increased funding, however, authorities continued to limit space for non-governmental actors by restricting or shutting down their operations or by criminal prosecution.⁵⁹

This past year, authorities continued to encourage pro bono legal services⁶⁰ and further standardized legal aid work. In November 2019, the Ministry of Justice issued the Specifications for Civil and Administrative Legal Aid Service, which covers consultation, litigation, and non-litigation work (such as mediation and arbitration) and provides for a review mechanism to ensure the quality of the legal aid provider’s performance.⁶¹ According to an opinion issued by the Chinese Communist Party Central Committee in July 2019, legal aid is part of a broader system of public legal services that aims to “steadfastly uphold the Party’s leadership” and to “comprehensively strengthen Party building.”⁶²

Judicial Decisions on Social Issues

Following a 2018 Supreme People's Court decision adding two causes of action for "equal employment rights" and "sexual harassment damages,"⁶³ a growing body of documents shows that citizens are using the court system to litigate cases involving contemporary social issues.⁶⁴ In one example, the courts ruled in favor of sexual harassment victims, ordering the offenders to apologize.⁶⁵ In another case, where the employer terminated the employee for her pregnancy, the court awarded damages and directed the employer to apologize.⁶⁶

The outcomes in some recent cases, however, may be inconsistent with the goal of protecting citizens' rights and freedoms. In one case, the judge denied a woman's divorce petition despite severe domestic abuse by her husband, illustrating a broader trend of judges valuing "social harmony" over women's safety.⁶⁷ In another case, the court terminated the parents' custodial rights because they taught their child to refrain from saluting the flag and from learning socialism and Communism, in accordance with their religious beliefs as Jehovah's Witnesses.⁶⁸

Notes to Section III—Access to Justice

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

³PRC Constitution, passed and effective December 4, 1982 (amended March 11, 2018), arts. 33–48.

⁴Luoyang Municipal Intermediate People’s Court, Henan province, Xingzheng Caidingshu [Administrative Order], (2018) Yu 03 Xing Zhong No. 368, November 28, 2018, reprinted in *China Judgements 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*, vol. 11, 349 (2015–2016).

⁵International Covenant on Civil and Political Rights, adopted by UN General Assembly resolution 2200A (XXI) of December 16, 1966, entry into force March 23, 1976, arts. 2(3), 14.

⁶“Zhongyang Disi Xunshi Zu xunshi Zuigao Renmin Fayuan Dangzu gongzuo dongyuanhui zhaokai” [Mobilization meeting convened for work related to the inspection of Supreme People’s Court Party Group by No. 4 Central Inspection Tour Team], Central Commission for Discipline Inspection and State Supervision Commission, September 10, 2019; Susan Finder, “Central Inspection Group Inspecting the Supreme People’s Court (Again),” *Supreme People’s Court Monitor* (blog), September 11, 2019.

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⁸“Zhongyang Disi Xunshi Zu xiang Zuigao Renmin Fayuan Dangzu fankui xunshi qingkuang” [No. 4 Central Inspection Tour Team gives feedback to Supreme People’s Court Party Group on inspection], Central Commission for Discipline Inspection and National Supervision Commission, January 10, 2020.

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¹⁰Supreme People’s Court, “Liu Guixiang Tongzhi jianli” [Brief profile of Comrade Liu Guixiang], accessed March 10, 2020.

¹¹“Liu Guixiang zai Quanguo Fayuan Min Shang Shi Shenpan Gongzuo Huiyi shang de jianghua” [Liu Guixiang’s speech at the Conference of Nationwide Courts on Civil and Commercial Trial Work], *The Paper*, July 19, 2019. See also Sili, “Qichi xianming jiang zhengzhi” [Be unequivocally political], *Qiushi*, October 7, 2019.

¹²“Liu Guixiang zai Quanguo Fayuan Min Shang Shi Shenpan Gongzuo Huiyi shang de jianghua” [Liu Guixiang’s speech at the Conference of Nationwide Courts on Civil and Commercial Trial Work], *The Paper*, July 19, 2019.

¹³Supreme People’s Court, *Zuigao Renmin Fayuan Guanyu Jianshe Yizhanshi Duoyuan Jiefen Jizhi Yizhanshi Susong Fuwu Zhongxin De Yijian* [Opinion on Building a One-Stop Multi-Faceted Dispute Settlement System and a One-Stop Litigation Service Center], issued July 31, 2019, art. 7.

¹⁴Supreme People’s Court, *Zuigao Renmin Fayuan Guanyu Jianshe Yizhanshi Duoyuan Jiefen Jizhi Yizhanshi Susong Fuwu Zhongxin De Yijian* [Opinion on Building a One-Stop Multi-Faceted Dispute Settlement System and a One-Stop Litigation Service Center], issued July 31, 2019; “Zuigao Renmin Fayuan zhaokai dangwai renshi zuotanhui tingqu yijian jianyi, ge minzhu dangpai zhongyang quanguo gongshang lian wu dangpai renshi fayan zhai deng” [Supreme People’s Court convenes forum to listen to suggestions by non-Party members; excerpts of speech by different democratic groups, All-China Federation of Industry and Commerce, and people without political affiliation], *People’s Court Daily*, May 12, 2020.

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¹⁶Chinese Communist Party Central Committee, *Zhongguo Gongchandang Zhengfa Gongzuo Tiaoli* [Regulations on the Work of the Chinese Communist Party Political-Legal Committee], effective January 13, 2019; Shi Yajun and Zhang Li, “Fazhi zhujie ping’an Zhongguo” [Rule of law makes a peaceful China], *Red Flag Manuscript*, reprinted in *Qiushi*, October 24, 2019.

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Lushi Hangye Dangwei Xunhui Zhidao Zu zai Wuhan zhidao zhuti jiaoyu gongzuo” [National CCP Committee on the Legal Profession Guidance Tour Team gives guidance on themed education work in Wuhan], *Justice Bureau of Wuhan*, November 15, 2019.

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²³ *Ibid.*

²⁴ Huang Letao and Gao Feng, “Guangzhou Shijie Lushi Dahui jin Zhongguo weiquan lushi canjia [Guangzhou Global Lawyers Forum bars Chinese rights lawyers from attending], *Radio France Internationale*, December 6, 2019.

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³⁴ *Ibid.*

³⁵ *Ibid.*

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³⁹ “Qin Yongpei yi yin quefa zui zheng wufa ru zui gongan tu youdao jiashu zhizheng” [Because there is no evidence to charge Qin Yongpei with a crime, police seek to elicit evidence from family members], *Radio Free Asia*, February 28, 2020.

⁴⁰ *Ibid.*

⁴¹ Rights Defense Network, “Guangxi renquan lushi Chen Jiahong Shandong dianfu guojia zhengquan an zuixin tongbao: Yulin shi jianchayuan yu 2020 nian 1 yue 9 hao shenqing yanqi shenli, fayuan yi tongyi yanqi” [Latest circular on inciting subversion of state power case of Guangxi human rights lawyer Chen Jiahong: Yulin municipality procuratorate on January 9, 2020, applies to postpone trial, court already agrees to postpone], January 15, 2020; “Chen Jiahong ‘Shan dian an’ mianlin qisu” [Chen Jiahong’s “incitement case” is prosecuted], *Radio Free Asia*, October 18, 2020; “Qin Yongpei yi yin quefa zui zheng wufa ru zui gongan tu youdao jiashu zhizheng” [Because there is no evidence to charge Qin Yongpei with a crime, police seek to elicit evidence from family members], *Radio Free Asia*, February 28, 2020.

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⁴³ Wen Shan, “‘Shenyuan lushi’ huo bei diaoxiao zhizhao” [“Justice-seeking lawyer” may have license revoked], *Deutsche Welle*, July 20, 2019; Rights Defense Network, “Shandong zhuming renquan lushi Li Jinxing (Wu Lei) jiedao Shandong Sifating diaoxiao lushi zhiye zheng gaozhi

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shu” [Well-known Shandong human rights lawyer Li Jinxing (Wu Lei) receives notice revoking his law license from Shandong Justice Department], July 23, 2019.

⁴⁴Wen Shan, “‘Shenyuan lushi’ huo bei diaoxiao zhizhao” [“Justice-seeking lawyer” may have license revoked], *Deutsche Welle*, July 20, 2019; Rights Defense Network, “Shandong zhuming renquan lushi Li Jinxing (Wu Lei) jiedao Shandong Sifating diaoxiao lushi zhiye zheng gaozhi shu” [Well-known Shandong human rights lawyer Li Jinxing (Wu Lei) receives notice revoking his law license from Shandong Justice Department], July 23, 2019.

⁴⁵China Citizens Movement, “Lu Tingge lushi bei yi shexian xunxin zishi zui chuanhuan bing bei luxie li’an diaocha” [Lawyer Lu Tingge summoned on suspicion of picking quarrels and provoking trouble and investigated by lawyer association], December 15, 2019.

⁴⁶Ibid.

⁴⁷State Council, *Xinfang Tiaoli* [Regulations on Letters and Visits], issued January 5, 2005, effective May 1, 2005; Benjamin L. Liebman, “A Populist Threat to China’s Courts?” in *Chinese Justice: Civil Dispute Resolution in Contemporary China*, eds. Margaret Y.K. Woo and Mary E. Gallagher (Cambridge: Cambridge University Press, 2011), 269–313; Liang Shibin, “Jianjue da ying huajie xinfang ji’an gong jian zhan” [Resolutely fight to win the battle on clearing backlog of petitioning cases], *Legal Daily*, April 27, 2016. Such grievances reportedly include cases concerning demolition or expropriation of property, social security, agriculture, land and resources, and environmental protection.

⁴⁸Lu Dewen, “‘Jie ju’ nu jiaoshi juebi xin shijian: yi tiao guiyi de shangfang zhi lu” [“Solution” female teacher’s last letter incident: a strange road of petitioning], *People’s Daily*, August 6, 2019.

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