

STATEMENT BY THE LAWYERS COMMITTEE FOR HUMAN RIGHTS TO THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

HUMAN RIGHTS AND THE RULE OF LAW

March 4, 2002

The Lawyers Committee is an independent non-governmental human rights organization. We aim to hold governments accountable to the international standards of human rights, and work to develop stronger models of corporate accountability in the global market place.

The Lawyers Committee considers that human rights conditions in China continue to be an issue of deep concern.

Over the past year, China has secured a prominent position in the international arena, symbolized by its admission to the WTO, its successful bid to host the 2008 Olympics and the recent visit of President Bush. However, this has not been accompanied by a parallel improvement in human rights. Instead, government statements about upholding “the rule of law” have frequently veiled harsh political repression. This is most poignantly illustrated by the “Strike Hard” campaign, which resulted in scores of executions after procedural and substantive abuses of criminal law.

Moreover, in the aftermath of the September 11 tragedy in New York, anti-terrorist rhetoric has been misused to legitimize harsh crack-downs in Tibet and Xinjiang province, and illegitimate censorship of all forms of media, including the internet.

An abundance of NGO-reports, as well as the annual evaluations of China’s human rights practices by the State Department’s Bureau of Democracy, Human Rights and Labor, narrate these and other violations of the most fundamental human rights. They describe crackdowns on dissidents, cases of arbitrary arrest and detention of suspects, torture, forced prison labor, and abusive labor conditions. Freedom of expression continues to be restricted, and voices that endeavor to draw attention to pressing issues of national and global concern are frequently violently silenced.¹

¹ For instance, the NGO Human Rights in China reports the recent arrest and detention, on January 24, 2002, of Wang Daqi, Professor of Construction of Hefei Industrial University and editor of Ecology magazine. Since the 1989 Beijing crackdown, Professor Wang had published articles about social and human rights issues. The Chinese authorities previously attempted to prevent Prof. Wang from publishing these articles. *At* http://iso.hrichina.org:8151/iso/news_item.adp?news_id=691.

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The Lawyers Committee has welcomed positive developments in the Chinese legal system over the past few decades. However, continuing violations illustrate that a strong legislative framework cannot by itself secure the rule of law. It is necessary to enforce this legal framework in practice. To that end, China needs to build a strong, independent legal profession.

Persecution of Lawyers

In this submission, the Lawyers Committee wishes to highlight its concern about the continuing persecution, threats and harassment suffered by lawyers who confront common injustices. In 1998 the Lawyers Committee addressed this and related issues in a report on *Lawyers in China: Obstacles to Independence and the Defense of Rights*². Unfortunately, many of the problems described in that report continue to be matters of concern.

The report includes an analysis of the 1996 Lawyers Law, which, in general terms, regulates the legal profession.³ The Lawyers Law was inspired by, yet does not wholly encompass, the UN Basic Principles on the Role of Lawyers (1990).⁴ Nevertheless, the Law and the Basic Principles share the intention to protect lawyers from physical or other forms of abuse, and from interference when carrying out their responsibilities in accordance with the law.⁵ However, despite this strong legal framework, there are recurring reports of intimidation and threats targeted at legal practitioners. The case of Zhou Litai illustrates this problem:

Zhou Litai

Since 1996, Zhou Litai has helped workers in the Shenzhen area to obtain their rights in legal battles against local government authorities, foreign investors and company owners in a series of cases that have drawn public attention. Over the years, he has represented more than 800 factory workers in labor disputes and struggles for compensation for grave work injuries. Many of his cases involved legal action against the Labor Bureau or the social security department. In August last year, he represented 56 women workers in a South Korean-owned wig factory in Shenzhen, who had been the victim of illegal body searches. The company chose to settle the case out-of-court.

On December 19, 2001 the Longgang District Bureau of Justice in Shenzhen ordered Mr. Zhou to close his legal practice.⁶ The order, which apparently contravenes both international law and

² 1998, New York. A copies of this report are available upon request.

³ Lawyers Law of the People's Republic of China, adopted May 15, 1996, effective January 1, 1997. The Lawyers Law is available online at <http://www.qis.net/chinalaw/prclaw10.htm>

⁴ Adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in Havana, Cuba, August-September 1990. The Basic Principles enshrine the rights and responsibilities of lawyers around the world, and also lay out states' obligations to ensure effective and equal access to lawyers for their residents.

⁵ Article 3 of the Lawyers Law, *supra* note 6, declares that lawful legal practice shall be protected by the law. Article 32 provides that the personal rights of a lawyer will be inviolable in the course of his or her legal practice. The Basic Principles, *supra* note 7, are more detailed, yet provide essentially similar protection in artt. 16-22.

⁶ This matter was also covered in a New York Times article on January 3, 2002, which can be found online at <http://college4.nytimes.com/guests/articles/2002/01/03/894481.xml>.

domestic regulations, seems to be an illegitimate retaliation for the negative attention that Mr. Zhou's successful litigation practice has drawn to the Shenzhen region.

As noted above, the Chinese Lawyers Law expressly protects lawyers from such ungrounded interference and intimidation.⁷ Such interference is also outlawed in international human rights standards.

Specifically, the Lawyers Law states in its Article 12 that "legal practice shall not be subject to geographical limitation." This means that a lawyer licensed in one region of China may practice in another without obstruction from the local authorities. Mr. Zhou, who is in the possession of a Chongqing license, is entitled to practice anywhere in China. The District Bureau has no power under the law to obstruct Mr. Zhou's practice of law.

Mr. Zhou Litai has filed suit against the District Bureau of Justice with the Longgang District People's Court, to contest the legitimacy of the order.⁸ In this respect it should be noted that the Shenzhen local bureau of justice has previously attempted to confiscate Mr. Zhou's license, shortly after he started his practice in 1997. At that time, the bureau returned the license to Mr. Zhou after he initiated legal proceedings.

The Lawyers Committee believes that the case of Mr. Zhou deserves particular consideration in the light of China's recent accession to the WTO, and the obligations that membership of this organization entails with respect to the elimination of barriers to trade. It should be considered that the continuing threats and harassment directed against Mr. Zhou, and in particular the possible withdrawal of his license to practice, are wholly inconsistent with China's obligations under the WTO, and set a most disturbing precedent.

Mr. Zhou's activities show that the Chinese people increasingly turn to the legal system for protection. This commendable development needs to be protected and stimulated. Working towards the development of the rule of law, it is of key importance that China continues to build and enforce its legal system, to guarantee a sustainable protection of basic human rights, as well as the interests of foreign investors.

The legal system will only be as strong as the professionals who work within it. China should adhere to its own laws, and to international standards, upholding the independence of lawyers, and their protection from persecution.

Recommendations

1. The Lawyers Committee believes that it is important to recognize the educative, guiding role that can be played by foreign governments, human rights groups, law schools, bar associations and other international actors in the development of law in China. Underlining the position of China as a prominent member of the international community, efforts should be made to ensure the continued involvement of these foreign actors.

⁷ See *supra* note 3.

⁸ Report posted by the China Information Center on January 16, 2002:
<http://www.china.org.cn/english/2002/Jan/25353.htm>

2. The Chinese government should fully comply with the provisions of the UN Basic Principles on the Role of Lawyers, and to revise those aspects of Chinese law that restrict the ability of lawyers to freely represent their clients and to organize independent bar associations.
3. Lawyers should be free to carry out their professional duties without official interference, restrictions, threats or intimidation.
4. Particular assistance should be provided to the training of lawyers, both in China and abroad. Training programs should be designed to fit with China's particular conditions and needs. The exchange and sharing of relevant information should be stimulated. Assistance should also be provided to China's law schools for the design of courses and teaching methods.
5. Bar associations and the Chinese Ministry of Justice should be engaged to create mechanisms that ensure the adequate protection of legal practitioners.
6. At the same time, to promote high professional standards, these institutions should be encouraged to publicize and facilitate the rights of clients to bring malpractice suits, in the belief that this will encourage lawyers to seriously consider their professional responsibilities.
7. Assistance should be provided in the creation of a legal aid system, by providing know-how and financial support where appropriate.
8. Assistance should be provided to train and sensitize the relevant branches of government to the importance of the independent role of the lawyer within the legal system.