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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by Human Rights Now, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[29 August 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Human Rights Now Calls for the Release of All Those Unlawfully Detained as Part of the July 2015 Crackdown in China

Human Rights Now (HRN), a Tokyo-based international human rights NGO calls on the Chinese government to release of all lawyers and others unlawfully detained in the July 2015 crackdown in China and cease associated violations. China's conduct violates multiple international and domestic rights duties including rights to fair trial, access to counsel, no undue delays for trials, no coerced confessions, and privacy.

1. The Current Situation of those Affected by the July 2015 Crackdown

9 July, 2015, was the start of a period of arrests and detentions of human rights lawyers and defenders in China by Chinese authorities often referred to as the "709 Crackdown."¹ The 709 Crackdown targeted law firms and activist groups conducting human rights advocacy work, including lawyers, legal assistants, and human rights defenders.² Many others, including associates and family members, were also affected by the crackdown, and it was much larger and openly acknowledged by Chinese officials than any previous crackdown since at least the 1990s.³

Over 300 lawyers, law firm staff, human rights activists, and their family members were questioned, summoned, forbidden to travel abroad, held under house arrest, placed under surveillance, or criminally detained or arrested.⁴ Of that number, at least 6 lawyers and 10 human rights defenders remain detained since the crackdown, without contact with their families or counsel.⁵

The detained face charges of "subversion of state power" that include sentences from 10 years for participants to life for leaders, instead of the lesser charge of "incitement" used in the past.⁶

According to an expert in Chinese law and human rights, the switch to "subversion" charges signals that authorities want to be more public and assertive in expressing that they "don't tolerate human rights

¹ Andrew Jacobs, Chris Buckley, "China Targeting Rights Lawyers in a Crackdown", 22 July 2015, <http://www.nytimes.com/2015/07/23/world/asia/china-crackdown-human-rights-lawyers.html>

² Id.

³ Id.

⁴ James Griffiths, "Chinese human rights lawyer Wang Yu released after video 'confession'" CNN, 2 Aug. 2016, <http://edition.cnn.com/2016/08/02/asia/china-lawyer-wang-yu-confession/>.

⁵ Hong Kong Free Press, "Families of detained China lawyers 'harassed' – statement", 10 Jul. 2016, <https://www.hongkongfp.com/2016/07/10/families-detained-china-lawyers-harassed-statement/>.

⁶ Tom Phillips, "China's pursuit of rights lawyers signals aggressive push against 'subversion'", 14 Jan. 2016, <https://www.theguardian.com/world/2016/jan/14/chinas-pursuit-of-human-rights-lawyers-signals-aggressive-push-against-subversion>.

advocacy” and “really means to move against human rights advocates”, “this form of lawyering”, and “forceful legal advocates.”⁷

2. Human Rights Violations

Reports of Chinese authorities’ handling of the crackdown indicate violations of customary international human rights law (IHRL) under the Universal Declaration of Human Rights (UDHR)⁸ and other sources, as well as Chinese constitutional and domestic law. These include:

1. The use of national security-related crimes. This allows authorities to suspend detainees’ rights to due process, permitting them to be detained for extended periods, over a year in these cases, for investigation while deprived of access to counsel and the ability to develop a meaningful defence. This violates the UDHR Art. 10 right to a fair trial, which under customary law prohibits undue delays in beginning a trial after arrest.⁹

Claiming “national security” as a reason to derogate or limit this obligation (and the others that follow) is not a permissible reason under IHRL where no emergency or necessity situation can be supported or was notified.¹⁰

2. A lack of access to defence counsel and a right to visit family members since the detention started last year. Lack of access to counsel violates UDHR Art. 11(1), which provides accused a right to “guarantees necessary for his defence” at trial, which indisputably include access to counsel. Lack of access to other people also makes it difficult to verify that no torture or inhumane treatment has occurred.

3. Police intervention into the selection and appointment of defence counsel. Family members have reported that they received warnings for contacting lawyers to represent the detained or coerced to dismiss ones they already appointed.¹¹ This also violates UDHR Art. 11(1) insofar as requiring counsel not accepted by the accused is incompatible with the article’s guarantee of counsel which is necessary for the accused’s defence.

4. Confessions obtained by coercion. Police officers requested family members of one lawyer, Wang Quanzhang, to persuade Wang to confess. A televised video of Wang confessing was later released under conditions, including over a year of incommunicado detention, that have been widely criticized as coercive.¹²

⁷ Id.

⁸ Universal Declaration of Human Rights (1948), <http://www.un.org/en/universal-declaration-human-rights/>.

⁹ See, Krit Zeegers, *International Criminal Tribunals and Human Rights Law*, Springer (2016), p. 292 (describing how “no undue delay” is covered by IHRL’s customary “fair trial” duty).

¹⁰ Customary standards for human rights derogations and limitations are established by: Paris Minimum Standards of Human Rights Norms in a State of Emergency, ILA 1984, the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the final report of Mr. Leandro Despouy, Special Rapporteur of the Sub-Commission, on human rights and states of emergency, E/CN.4/Sub.2/1997/19 and Add.1, the Turku (Åbo) Declaration of Minimum Humanitarian Standards (1990), E/CN.4/1995/116; Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

¹¹ The family-appointed lawyers contested the dismissals in an open letter, <http://wqw2010.blogspot.jp/2016/03/709.html> (English translation: <https://translate.google.com/translate?hl=en&sl=zh-CN&tl=en&u=http%3A%2F%2Fwqw2010.blogspot.jp%2F2016%2F03%2F709.html>).

¹² Philip Wen, “A confession few believe: Chinese rights lawyer Wang Yu is ‘freed’”, Sydney Morning Herald, 2 Aug 2016, <http://www.smh.com.au/world/a-confession-few-believe-chinese-rights-lawyer-wang-yus-is-freed-20160801-gqipos.html>

This practice violates UDHR Art. 11(1) requiring a presumption of innocence unless proved guilty and China's Criminal Procedural Law, Art. 12, whereby suspects may not be pronounced guilty unless judged so by a court.¹³ Such coercion by police and detention conditions put into question the integrity of evidence collected by police, making it unacceptable as a reason to convict the detainees where no other evidence supports the charges against them.

5. Violations of freedom of expression. By detaining lawyers and activists for their rights-related conduct and statements, the Government of China has violated China's Constitution Article 35 protecting freedom of speech and UDHR Article 19 protecting freedom of expression.

6. Family members, friends, and defence counsel of the detained have been affected by the proceedings by being subjected to surveillance, monitoring, summons to authorities, and harassment such as restrictions on the ability to leave the country and other restrictions.¹⁴ This violates the UDHR Art. 12 prohibition on government interference with privacy, family, and home life.

7. The Chinese investigation agency and courts have not ensured due process, rejecting all inquiries and complaints submitted by defendants' defence counsel or family members calling for due process protections. These refusals are straightforward violation of UDHR Art. 11(1)'s obligation to ensure "guarantees necessary for [an accused's] defence", which by definition constitute customary due process standards.

8. The crackdown harassments, arrests, and detentions of lawyers are also incompatible with the UN Basic Principles on the Role of Lawyers, which states that governments shall ensure lawyers are able to perform all their professional functions without government intimidation, harassment, or interference and shall not suffer or be threatened with prosecution or any other sanction for actions taken in accordance with their professional duties.¹⁵ While non-binding, the principles represent the international standard for the treatment of lawyers.

3. Recommendations

Given the serious nature of the detained lawyers and others involved in the July 2015 Crackdown, Human Rights Now calls on the government of China to immediately:

1. Release all lawyers and others unlawfully detained;
2. Ensure access to counsel of one's own choosing for all those arrested or held as criminal suspects;
3. Cease all interference into the families' appointment of, and consultation with lawyers, and lift all measures that hinder their enjoyment of rights as citizens;
4. Ensure that the rights of those detained, including their right to adequate medical treatment and visitation rights, are fully enforced.

¹³ Criminal Procedural Law (2012), <http://chinalawtranslate.com/criminal-procedure-law/?lang=en>.

¹⁴ 30 rights lawyers and their family have been prohibited from leaving the country under the pretext that their exit would endanger state security.

¹⁵ Basic Principle on the Role of Lawyers, 7 Sept. 1990, Principle 16, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>

5. Cease all interferences with and threats of prosecution or sanction to any lawyers for conduct within the scope of their professional duties.
