

## The Law Society of England and Wales

### Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review – CHINA

45th Session (Jan. 2024)

The Law Society is a professional body representing approximately 200,000 solicitors in England and Wales. Its aims include upholding the independence of the legal profession, the rule of law and human rights around the world. The Law Society was established by Royal Charter (the "Charter of the Society") in 1845 and has consultative status with the Economic and Social Council of the United Nations since 2014. Its activities are established by statute: the Solicitors Act 1974, the Courts and Legal Services Act 1990, the Access to Justice Act 1999, and the Legal Services Act 2007.

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## **A. Introduction**

1. The information contained in this submission is based on evidence gathered by the Law Society of England and Wales (“Law Society”) as part of its Lawyers at Risk programme,<sup>1</sup> which supports members of the legal profession and human rights defenders worldwide who are being hindered in carrying out their profession because of the cases they work on or the clients they represent.
2. This submission for China's 4<sup>th</sup> UPR Cycle focuses on the following matters:
  - (a) Lack of Judicial Independence;
  - (b) Laws and Regulations Undermining the Independence of the Legal Profession;
  - (c) Systemic Persecution of Lawyers; and
  - (d) Recommendations for China's 4<sup>th</sup> UPR Cycle.

## **B. Lack of Judicial Independence**

3. The judiciary acts as an organ of the Communist Party of China (CPC). China has laws and policies in place that are designed to facilitate political influence over the judiciary.
4. The CPC Political-Legal Work Directive (January 2019) stipulates the “absolute leadership” of the Party over all political-legal affairs, including courts and procuratorates, and declares safeguarding “political security” a major task. Article 17 states that all central political-legal institutions, including the Supreme People’s Court and the Supreme People’s Procuratorate, report to the Party Centre.
5. The Supreme People’s Court issued “Guiding Opinions on Strengthening and Improving Efforts on the Evaluation of Judges” in 2021, which require judges to undergo annual evaluations based on five criteria that are used as a basis for promotion, termination, and allocation of bonuses. The first criterion of ‘morality’ refers to judges’ political character, including their implementation of Xi Jinping Thought, acceptance of the CPC’s absolute leadership and rejection of ‘Western’ notions of constitutional democracy, judicial independence, and separation of powers. A judge assessed to be of poor political character will be rated as ‘incompetent’, regardless of their performance in other areas. While these principles have been voiced by the court system before, this is their first inclusion in judges’ performance evaluations.
6. Judicial transparency has taken a significant step backward. In 2021, “court officials removed at least 11 million cases” from ‘China Judgments Online’, the official database of documents issued by courts, as part of a purported “migration process”.<sup>2</sup> Cases removed were primarily criminal and administrative cases, including convictions for state security crimes and “picking quarrels and provoking trouble”, and controversial cases “that have been the subject of public scrutiny in ways that reflect badly on either the Party itself or on Chinese society”. Reports indicate that some video recordings of court proceedings had been removed from another official platform.<sup>3</sup>

## **C. Laws and Regulations Undermining the Independence of the Legal Profession**

7. The legislative and regulatory framework governing the professional duties of lawyers and law firms systematically undermines their independence and represses activities perceived to support political dissent, thereby deterring the work of lawyers to enforce human rights, and threatening fair trial rights.
8. Following the ‘709 crackdown’ on human rights lawyers and activists in 2015, the Ministry of Justice amended the legislative and regulatory framework governing lawyers and law firms in 2016 and 2018, effectively legalising the precedents introduced through the crackdown. These laws and regulations have been used to pressure lawyers and law firms and appear to be regarded as a more concealed alternative to the arrests and disappearances of lawyers. One lawyer stated that the government is using “the justice departments and the Lawyers’ Associations instead of criminal proceedings” to target the legal profession “in all provinces”.<sup>4</sup>
9. The conduct of lawyers is regulated by the Law on Lawyers. Articles 47 – 49 outline conduct that can be punished by suspension or revocation of a lawyer’s license, including the vaguely-defined conduct of “disrupting court order”, “disrupting public order”, and “presenting views to endanger state security”.
10. The Administrative Measures for the Practice of Law by Lawyers also include strict rules of conduct. Articles 37 – 40 state that lawyers are prohibited from:

- Instigating, inciting, or organising others to engage in “methods that disrupt public order and endanger public safety”, such as “sit-ins, raising protest signs” and “shouting slogans”;
  - Engaging in distorting or misleading commentary on cases, thereby “maliciously stirring up the case”;
  - “Creating pressure from public opinion”, such as through “collecting signatures, publishing open letters, [or] organizing online gatherings or support”; and
  - Provoking, supporting, or participating in activities or groups that deny “the fundamental political system”, “endanger national security” or “provoke dissatisfaction with Party and government”.
11. Similarly, the All-China Lawyers Association (ACLA) “Rules on Prohibiting the Hyping of Cases” (October 2021) prevent lawyers from challenging the Party’s leadership, criticizing national policies, or instigating discontent toward the Party and the government.
  12. The Administrative Measures for the Practice of Law by Lawyers restrict many of the methods used by lawyers to draw attention to violations of their clients’ rights. Lawyers have been punished under the Administrative Measures for challenging the lawfulness of court proceedings in court or online, publicising accusations that their client had been tortured, or criticising the government’s persecution of lawyers. Lawyers have been accused of “hying a case” when they dispute the government’s case or allege that the case is politically motivated or contrary to the rule of law. Lawyers have been accused of “disrupting court order” or “inciting subversion of state power” over peaceful assemblies outside of courthouses.<sup>5</sup>
  13. Article 39.2 of the Administrative Measures prohibits “refusing to participate in courtroom proceedings”. This is an apparent attempt to prohibit a tactic used by some lawyers of abandoning proceedings to protest their lack of access to case files and/or unlawful judicial decisions restricting them from mounting a defence of their client.<sup>6</sup>
  14. Lawyers can be punished for other individuals protesting outside courthouses. Several individuals were accused of “inciting” or “organising” individuals to “disrupt court order” as part of the ‘709 crackdown’ and the Administrative Measures appear to be a legal extension of this.<sup>7</sup>
  15. The conduct of law firms is regulated by the Measures on the Administration of Law Firms. These Measures systematically undermine law firms’ independence by requiring the CPC’s presence in law firms. Article 3 requires law firms to “adhere to guidance of Xi Jinping Thought” and “adhere to and strengthen the comprehensive leadership of the Party over the work of lawyers”. Alike to other businesses and organisations with three or more members, Article 4 requires law firms to establish a Party cell.
  16. Article 50 states that law firms must prohibit lawyers from inciting or organizing parties “to disrupt public order”, “maliciously hyping a case”, “generating pressure through public opinion” or “disrupting a courtroom”. Law firms are ordered to dismiss lawyers for such conduct on penalty of losing the law firm’s license.

**Annual License Renewal Process:**

17. The two Administrative Measures that regulate lawyers and law firms, and the Measures for Annual Inspection and Assessment for Law Firms require lawyers and law firms to have their practise licenses renewed annually.
18. The Bureau of Justice, which reports to the Ministry of Justice, together with the ACLA, oversees the issuing, renewal, and revocation of licenses. The Bureau of Justice does not operate as an independent and impartial disciplinary body, but instead punishes lawyers or law firms for providing legal representation in politically sensitive cases. The license renewal process does not afford access to an independent body to appeal a decision.<sup>8</sup>
19. The Bureau of Justice can revoke a lawyer’s license, preventing them from ever practising again. One lawyer whose license was revoked reported that “domestic security police told me several times that they would revoke my licence if I didn’t drop the case.”<sup>9</sup>
20. The Bureau of Justice is also able to suspend a lawyer’s license temporarily for up to a year. While a lawyer may reapply for a license in the future, reports indicate that, for human rights lawyers, suspension effectively amounts to revocation as authorities are unlikely to allow their application.<sup>10</sup> Similarly, reports indicate that newly-qualified lawyers are refused their first license if they have been involved in human rights activism or are connected to well-known human rights lawyers.<sup>11</sup>
21. Although lawyers who have not passed the annual inspection process are still legally permitted to practise, they are effectively barred from providing effective legal assistance, as the police, prosecutors, and judicial authorities routinely obstruct them from handling cases, including by preventing them from accessing court documents or meeting with clients.<sup>12</sup> They are also at risk of being dismissed by their law firm, particularly if the authorities pressure them to do so.
22. Lawyers not attached to a law firm for six consecutive months face the automatic penalty of suspension for up to a year. Some lawyers have complained that the Bureau has blocked their attempts to find a new employer as a means of suspending them for one year.<sup>13</sup>
23. Meanwhile, law firms are likely to struggle to sustain their businesses without passing their annual inspection, thereby disincentivising them from hiring or continuing to employ lawyers perceived as political dissenters. One lawyer reported that his dismissal was motivated by the law firm’s concerns as to the risks it may face during the annual inspection.
24. From 2015 to February 2023, at least 46 lawyers have had their licenses suspended, cancelled, or revoked under these regulations:
  - 20 lawyers had their licenses revoked;
  - 4 lawyers were unable to renew their law licenses;
  - 4 lawyers did not pass the “political appraisal” needed to obtain a law license; and,
  - 18 lawyers were forced to leave their law firms, often due to official pressure on the law firm, and were unable to find another law firm willing to hire them.<sup>14</sup>
25. This compares to 20 cases over the period 2004 – 2014.<sup>15</sup>
26. Three law firms have had their license suspended, cancelled, or revoked under these regulations.<sup>16</sup>

27. Lawyers who have had their licenses suspended or revoked have described the procedural irregularities that occurred. These include (i) informing the lawyer orally of the decision rather than providing written notice, (ii) announcing the decision through the Judicial Bureau with no direct notification, (iii) not informing lawyers of their rights to appeal, (iv) not giving lawyers the required notice to appeal, and (v) not adequately explaining the reasons why the decision was taken, giving illegal or illogical reasons or giving different reasons in oral notification and later in the written notification.<sup>17</sup>
28. **Other Regulations:** Lawyers are reportedly required to report big or complicated cases to their law firm and request permission from the local Lawyers' Association before taking on the case. Reports indicate that this previously unwritten rule has been introduced into district-level regulations but has not yet become law.<sup>18</sup>

#### **D. Systemic Persecution of Lawyers**

29. Lawyers have been subjected to harassment, arbitrary prosecutions, unfair trials, arbitrary deprivation of liberty, incommunicado detention, enforced disappearance and torture.

#### **Residential Surveillance at a Designated Location (RSDL):**

30. Detained lawyers are routinely subjected to RSDL, which involves holding someone in incommunicado detention prior to arrest for up to six months in an undisclosed location. The individual is held in solitary confinement without access to family or legal assistance and is unable to challenge the measure.<sup>19</sup> RSDL has been regarded as "tantamount to enforced disappearance".<sup>20</sup>
31. Lawyers held in RSDL have been subjected to torture and ill-treatment, including prolonged interrogations, sleep deprivation, loud noise harassment, being bound to an iron "tiger chair" for days at a time, and a lack of adequate food and hygiene facilities.

#### **Lack of Access to a Lawyer:**

32. Chinese authorities have systematically restricted effective and independent legal assistance to lawyers in detention. Legal visits have been refused supposedly on the basis that it could "impede the investigation or result in leaking of state secrets", or on account of the potential spread of COVID-19.<sup>21</sup>
33. Lawyers in detention have also been denied access to legal assistance by being coerced into dismissing their lawyers, having their lawyers disbarred, being held under false names, and through bureaucratic hurdles to prevent legal visits or access to information, files, and documents.<sup>22</sup>

#### **Arrest, Detention, Prosecution, and Torture of Lawyers:**

34. Lawyers have been systematically targeted by the Chinese authorities through arrest, detention, prosecution, and torture, for taking up human rights cases, challenging the actions of the state, and advocating for the rule of law.
35. **Ding Jiayi** was detained without an arrest warrant on 26 December 2019. He was held in RSDL for six months and subjected to torture and ill-treatment.
36. On 19 June 2020, he was formally arrested for "inciting subversion of state power" (later changed to "subverting state power") and transported to a detention centre.
37. Ding was denied access to legal representation for more than a year. In early 2021, he was allowed to meet with his lawyers by video call, but his lawyers were obliged to

sign confidentiality agreements prohibiting them from speaking about his case and were subjected to pressure and surveillance by the authorities.

38. On 24 June 2022, Ding was tried behind closed doors without the legal representation of his choosing and was sentenced to 12 years in prison for “subverting state power” on 10 April 2023.
39. **Xu Zhiyong** was taken into custody on 15 February 2020 and held in RSDL until 20 June 2020, while being subjected to torture and ill-treatment.
40. He was formally arrested for “inciting subversion of state power” in June 2020 and charged with “subversion of state power” in January 2021.
41. He was denied access to legal representation for around a year after being detained. His lawyers have been obliged to sign confidentiality agreements prohibiting them from speaking about his case.
42. In June 2022, he was tried behind closed doors. His lawyers were obliged to sign additional confidentiality documents and were not permitted to call any witnesses.
43. On 10 April 2023, Xu was sentenced to 14 years in prison for “subversion of state power”.

#### **Retaliation against Lawyers Representing Protestors:**

44. Lawyers who offered their services to those detained during the protests against zero-COVID restrictions in November 2022 were targeted by the authorities.
45. One lawyer reported that state security police had begun investigating them after they had assisted detained protestors. The lawyer alleged that officials from the city’s justice bureau had visited their law firm and confiscated files linked to previous cases. This was allegedly an attempt to find administrative irregularities and see whether they had acted in politically sensitive cases. Their use of social media and messaging apps was restricted, preventing them from communicating with other lawyers taking on similar cases.
46. Many of these lawyers were allegedly contacted by state security police or local justice bureau officials for questioning. Some lawyers were warned by local authorities not to take up these cases, and others reported that their mobile phones had been tampered with. Many also received anonymous threats over the phone.

#### **Surveillance and Harassment Ahead of Official Events:**

47. Lawyers experienced increased surveillance and harassment by state authorities ahead of the 20th National Congress of the CPC in October 2022. Lawyers reported being called by police daily; being warned by police against going to foreign embassies, talking to journalists, or otherwise airing their opinions; experiencing increased surveillance, including having security cameras around their homes being upgraded; being barred from leaving their homes by security; and having their posts blocked on social media platforms.
48. Lawyers also reported that their movements were being unduly restricted by the colour-coded COVID-19 contact tracing apps, with their QR codes changing colour despite testing negative for COVID-19. This prevented them from travelling to their clients, offices, or the courts.<sup>23</sup>

49. Lawyers reported similar surveillance and harassment ahead of and during the U.S. Constitution Day and U.S. House Speaker Nancy Pelosi's visit to Taiwan.<sup>24</sup>

#### **E. Recommendations for China's 4<sup>th</sup> UPR Cycle**

- A. Ensure that provisions of the Law on Lawyers and the Administrative Measures for the Practice of Law by Lawyers that interfere with lawyers' right to freedom of expression – or can be interpreted as such in practice – are amended and brought into line with international standards.**
- B. Ensure that legislation and regulation is amended so that: (i) admission to the legal profession follows due process with objective, transparent and politically neutral criteria, (ii) decisions on admission are reasoned and made available to applicants, and (iii) any disciplinary proceeding follows due process and is decided by an independent and impartial body, with possibility of appeal.**
- C. Ensure that disbarment and suspension remain exceptional measures, only reserved for the most serious breaches of professional standards.**
- D. Drop all charges against, and immediately and unconditionally release Ding Jiayi, Xu Zhiyong and other human rights lawyers that have been arbitrarily detained or sentenced.**
- E. Ensure fair and human treatment of all persons deprived of their liberty, in accordance with international human rights standards.**
- F. Ensure that allegations of torture and ill-treatment are thoroughly investigated without undue delay, through a transparent and independent process, with appropriate accountability for perpetrators.**
- G. Ensure that all lawyers in China can practice their profession without undue interference in compliance with international standards on the independence of the legal profession.**

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<sup>1</sup> The Law Society, *International rule of law*, <https://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk>.

<sup>2</sup> Congressional-Executive Commission on China, *Annual Report 2022*, [https://www.cecc.gov/sites/chinacommission.house.gov/files/2022\\_CECC\\_Report.pdf](https://www.cecc.gov/sites/chinacommission.house.gov/files/2022_CECC_Report.pdf).

<sup>3</sup> Congressional-Executive Commission on China, *Annual Report 2022*, [https://www.cecc.gov/sites/chinacommission.house.gov/files/2022\\_CECC\\_Report.pdf](https://www.cecc.gov/sites/chinacommission.house.gov/files/2022_CECC_Report.pdf).

<sup>4</sup> Safeguard Defenders, *Access Denied: China's Legal Blockade*, <https://safeguarddefenders.com/sites/default/files/pdf/ACCESS%20DENIED%203%20EN.pdf>.

<sup>5</sup> Chinese Human Rights Defenders, *Joint Analysis of the Measures on the Administration of Law Firms and Administrative Measures for the Practice of Law by Lawyers of the People's Republic of China*, <https://www.nchrd.org/2019/05/joint-analysis-of-admin-measures-for-lawyers-and-law-firms/>.

<sup>6</sup> Chinese Human Rights Defenders, *Joint Analysis of the Measures on the Administration of Law Firms and Administrative Measures for the Practice of Law by Lawyers of the People's Republic of China*, <https://www.nchrd.org/2019/05/joint-analysis-of-admin-measures-for-lawyers-and-law-firms/>.

<sup>7</sup> Chinese Human Rights Defenders, *Joint Analysis of the Measures on the Administration of Law Firms and Administrative Measures for the Practice of Law by Lawyers of the People's Republic of China*, <https://www.nchrd.org/2019/05/joint-analysis-of-admin-measures-for-lawyers-and-law-firms/>.

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<sup>8</sup> The 29 Principles, *Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers for his Consideration for his Report to the UN Human Rights Council*, <https://29principles.uk/en/contents/joint-submission-special-rapporteur-independence-judges-and-lawyers-his-consideration-his>.

<sup>9</sup> Safeguard Defenders, *Access Denied: China's Legal Blockade*, <https://safeguarddefenders.com/sites/default/files/pdf/ACCESS%20DENIED%203%20EN.pdf>.

<sup>10</sup> Lawyers for Lawyers, *Mid-term Report – Review of the implementation of recommendations with respect to the rule of law and the role of human rights defenders accepted by China during the UPR in 2018*, <https://lawyersforlawyers.org/wp-content/uploads/2021/08/Final-mid-term-review-China-L4L-LRWC-final.pdf>.

<sup>11</sup> Safeguard Defenders, *Access Denied: China's Legal Blockade*, <https://safeguarddefenders.com/sites/default/files/pdf/ACCESS%20DENIED%203%20EN.pdf>.

<sup>12</sup> Chinese Human Rights Defenders, *Joint Analysis of the Measures on the Administration of Law Firms and Administrative Measures for the Practice of Law by Lawyers of the People's Republic of China*, <https://www.nchrd.org/2019/05/joint-analysis-of-admin-measures-for-lawyers-and-law-firms/>.

<sup>13</sup> Safeguard Defenders, *Access Denied: China's Legal Blockade*, <https://safeguarddefenders.com/sites/default/files/pdf/ACCESS%20DENIED%203%20EN.pdf>.

<sup>14</sup> Chinese Human Rights Defenders, *Joint CHR and RDN Civil Society Report Submitted to CESCR*, <https://www.nchrd.org/2023/02/chr-rdn-civil-society-report-submission/>.

<sup>15</sup> The 29 Principles, *Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers for his Consideration for his Report to the UN Human Rights Council*, <https://29principles.uk/en/contents/joint-submission-special-rapporteur-independence-judges-and-lawyers-his-consideration-his>.

<sup>16</sup> The 29 Principles, *Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers for his Consideration for his Report to the UN Human Rights Council*, <https://29principles.uk/en/contents/joint-submission-special-rapporteur-independence-judges-and-lawyers-his-consideration-his>.

<sup>17</sup> Safeguard Defenders, *Access Denied: China's Legal Blockade*, <https://safeguarddefenders.com/sites/default/files/pdf/ACCESS%20DENIED%203%20EN.pdf>.

<sup>18</sup> Safeguard Defenders, *Access Denied: China's Legal Blockade*, <https://safeguarddefenders.com/sites/default/files/pdf/ACCESS%20DENIED%203%20EN.pdf>.

<sup>19</sup> Lawyers for Lawyers, *Civil society call to end enforced disappearance in China* [https://lawyersforlawyers.org/wp-content/uploads/2022/08/Civil-Society-Call-to-End-Enforced-Disappearances-in-China\\_EN.pdf](https://lawyersforlawyers.org/wp-content/uploads/2022/08/Civil-Society-Call-to-End-Enforced-Disappearances-in-China_EN.pdf).

<sup>20</sup> Letter from the mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the right to privacy; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to the Permanent Representative to the Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland, OL CHN 15/2018, August 24, 2018.

<sup>21</sup> Lawyers for Lawyers, *Mid-term Report – Review of the implementation of recommendations with respect to the rule of law and the role of human rights defenders accepted by China during the UPR in 2018*, <https://lawyersforlawyers.org/wp-content/uploads/2021/08/Final-mid-term-review-China-L4L-LRWC-final.pdf>.

<sup>22</sup> Congressional-Executive Commission on China, *Annual Report 2022*, [https://www.cecc.gov/sites/chinacommission.house.gov/files/2022\\_CECC\\_Report.pdf](https://www.cecc.gov/sites/chinacommission.house.gov/files/2022_CECC_Report.pdf).

<sup>23</sup> Lawyers for Lawyers, *Chinese New Year: Looking back on another year of repression of China's legal professionals*, <https://lawyersforlawyers.org/en/chinese-new-year-looking-back-on-another-year-of-repression-of-chinas-legal-professionals/>.

<sup>24</sup> Asia Democracy Chronicles, *The dogged determination of China's human rights lawyers*, <https://adnchronicles.org/2022/11/03/the-dogged-determination-of-chinas-human-rights-lawyers/>.