

# Lawyers' Rights Watch Canada

*NGO in Special Consultative Status with the Economic and Social Council of the United Nations*  
**Promoting human rights by protecting those who defend them**

**[www.lrwc.org](http://www.lrwc.org) – [lrwc@portal.ca](mailto:lrwc@portal.ca) – Tel: +1 604 736 1175 – Fax: +1 604 736 1170**  
3220 West 13<sup>th</sup> Avenue, Vancouver, B.C. CANADA V6K 2V5

Item 4 – Human rights situations that require Council's attention

Written Statement by Lawyers' Rights Watch Canada an NGO in Special Consultative Status to the 37h Session of the United Nations Human Rights Council

## **The arrest, detention, conviction, and imprisonment of lawyers and human rights defenders in China: the silencing of human rights defenders through criminal law and executive controlled courts**

In a nationwide roundup, commencing as early as July 2015, the People's Republic of China (China) launched a campaign to repress lawyers and human rights activists and used criminal laws and executive controlled courts to silence them through arrests, detention, conviction, and imprisonment. In the following months, at least 320 Human Rights Defenders (HR Defenders) were harassed, arbitrary arrested, forcibly disappeared, tortured or criminally charged. The campaign was known as the "709 Crackdown" (the **Crackdown**). The HR Defenders affected by the Crackdown were, and continue to be, those who advocate for vulnerable groups or politically sensitive clients and causes within China. As of January 31, 2018, seven HR Defenders detained in the Crackdown remain in prison. Among them, Wang Quanzhang has been detained and held incommunicado for approximately 1,000 days.

It is widely believed that the Crackdown was a state-sanctioned response to the tens of thousands of Falun Gong practitioners who filed criminal complaints against the former Chinese dictator Jiang Zemin in May 2015 for his role in instigating the persecution of the Falun Gong and the state-sanctioned forcible organ removal from detainees and sales for profit.

Zhou Qiang, China's Chief Justice, in an annual report to the China's National People's Congress asserted that the "severe punishment" in the Crackdown was one of the top achievements of the judicial system in 2016.

Lawyers' Rights Watch Canada (LRWC) calls on the United Nations Human Rights Council (Council) to fulfill its duty to protect fundamental human rights in China, and recommends that Council:

- Request that China ensure the immediate release of and withdrawal of charges against all HR Defenders detained or charged during the Crackdown;
- Urge China to comply with its international human rights obligations and abolish the use of Residential Surveillance at a Designated Place (**RSDP**);
- Take steps to prevent and remedy the systematic and widespread violations against HR Defenders referred to in this report; and
- Insist on effective investigations of allegations of torture of HR Defenders during the Crackdown.

The Crackdown has been widely criticized as a gross and systematic violation of China's criminal and constitutional law and an example of non-compliance of its international obligations. The Crackdown was implemented to control and silence an increasing number of HR Defenders who advocated for clients and causes that the communist regime disagreed with.

Individual cases representative of persons detained in the Crackdown as at 31-Jan-2018)

Name	Charges	Progress	Status	Torture/ Mistreatment	Right to counsel	Pre-trial detention
Wang Quanzhang  Lawyer	Subversion of State Power ( <b>SOSP</b> )	10-Jul-2015: Detained  RSDP for 6-months.  8-Jan-2016: Formally arrested ( <b>FA</b> )  14-Feb-2017: Indicted	Pending trial	Enforced disappearance ( <b>ED</b> )  Struck by electroshock weapons.	No communicati on or lawyer's visits.	936 days  No bail hearing ( <b>NB</b> )
Jiang Tianyong  Lawyer	Inciting Subversion of State Power ( <b>ISOSP</b> )	22-Nov-2016: Detained  RSDP for 6-months.  31-May-2017: FA  Unknown: Indictment  22-Aug-2017: Tried  21-Nov-2017: Convicted	2-year imprisonment  Serving sentence	ED	Denied lawyer of his own choice ( <b>DL</b> )	263 NB
Zhou Shifeng  Lawyer	SOSP	09-Jul-2015: Detained  RSDP for 6-months.  15-Jul-2016: Indicted  4-Aug-2016: Tried and convicted on same day	7-year imprisonment  Serving sentence	ED	DL	360 NB
Hu Shigeng  HR Defender ( <b>HRD</b> )	SOSP	11-Jul-2015: Detained  7-Aug-2015: RSDP for 6-months.  15-Jul-2016: Indicted  3-Aug-2016: Tried and convicted on same day	7½-year imprisonment  Serving sentence	ED.  Critical medical conditions.	Not available.	359 NB
Wu Gan  HRD	ISOSP	20-May-2015: Detained.  03-Jul-2015: FA  23-Dec-2016: Indicted  14-Aug-2017: Tried  26-Dec-2017: Convicted	8-year imprisonment  Serving sentence	Prolonged fatigue interrogation and deprivation of sleep	Restricted lawyer's visits.	814 NB
Yin Xu'an  HRD	Picking quarrels and stirring up troubles ( <b>PQ- ST</b> )	28-Jul-2015: Detained  26-Sept-2015: FA  16-Mar-2016: Indicted	3½-year imprisonment  Serving sentence	Beaten.	First visit allowed on 10-May-2016 (after 10 months in custody).	412 NB

		13-Sept-2016: Tried 27-May-2017: Convicted				
Wang Fang HRD	PQ-ST	25-Jul-2015: Detained 14-Sept-2015: FA 27-Dec-2016: Indicted 10-Feb-2017: Tried 18-Jul-2017: Convicted	3-year imprisonment  Serving sentence	Critical medical condition-Cancer	Restricted lawyer's visits.	563 NB
Xie Yang Lawyer	ISOSP	11-Jul-2015: Detained 12-Jul-2015: RSDP for 6-months. 8-Jan-2016: FA 16-Dec-2016: Indicted 8-May-2017: Tried and released on bail 26-Dec-2017: Convicted	No prison term	ED  Beaten until unconscious and requiring hospitalization	First visit allowed on 21-Nov-2016 (after 16 months in custody).	667 NB
Li Heping Lawyer	SOSP	10-Jul-2015: Detained RSDP for 6-months. Jan-2016: FA 05-Dec-2016: Indicted 25-April-2017: Tried 28-April-2017: Convicted	3-year imprisonment with 4-year suspension	ED Handcuffed & shackled 7/24 for a month.  Struck by electroshock weapons	No lawyer visits.	669 NB

## China's practices and international law obligations

### *Politically-motivated criminal charges*

As of July 9, 2017, most HR Defenders affected by the Crackdown were investigated on the grounds of politically-motivated offences. This has been achieved through the vague statutory language of the Criminal Code and a broad interpretation of the legislation, enabling authorities to charge people for peacefully exercising their freedom of expression. None of the targeted HR Defenders advocated for, or engaged in violence.

### *Torture and other Cruel, Inhuman or Degrading Treatment*

Fifteen HR Defenders are known to have been tortured during the Crackdown. It is believed that there have been many more cases of torture; however, these have not been verified due to the inability to conduct independent investigations and heavy censorship of the Crackdown, including censorship of search engines and social media.

The UN Committee against Torture (CAT) previously expressed that they "remain seriously concerned over consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system." This is notwithstanding that China signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1986, ratified it in 1988, and has implemented laws that prohibit torture and mistreatment of detainees. These international obligations and national laws are not strictly enforced, and political and religious dissidents are singled out for "particularly harsh punishment."

### *Residential Surveillance at the Designated Place*

RSDP, a form of detention for investigating crimes of “endangering national security, terrorist activities or especially serious bribery cases,” was introduced by a 2012 amendment of the Chinese Criminal Procedure Law. The amendment purports to allow authorities to arrest suspects without a warrant and to detain suspects in an undisclosed place outside regulated detention facilities for a maximum length of 6-months. The de-facto incommunicado detention may extend after the 6-month RSDP period and is in effect legalizing enforced disappearance. This amendment allows investigators to interrogate suspects without being restricted by rules of regular detention facilities or being detected by the outside world and ensures that a suspect does not leave, meet or communicate with others without the investigator’s permission. The identification papers of suspects are held by police to restrict their movements.

During the Crackdown at least 27 HR Defenders were subjected to RSDP confinement. They were jailed in small rooms in secret locations, unable to communicate with the outside world, and denied access to family visits and their legal representatives. When sentenced, no credit for RSDP detention was allowed for sentencing.

On 3 February 2016, CAT stated, “these provisions, together with the possibility of refusing access to a lawyer for these types of crimes, may amount to incommunicado detention in secret places, putting detainees at a high risk of torture or ill-treatment.”

### *Pre-trial Detention*

Unusually long pre-trial detention is a feature of the Chinese criminal law system. Before a person is officially indicted, they could be held in custody for 8-months for criminal investigation and for 6-months in RSDP detention, a total of 14-months. The legal system allows for extensions; e.g., if the investigator discovers a new crime during the investigation, the custody period will be re-calculated from the date of discovery. During the Crackdown, many HR Defenders were detained for unreasonably long periods, without bail hearings, before being charged.

### *Judicial Independence*

The Chief Justice of China Zhou Qiang, opens each year’s annual report to the National People’s Congress by stating that the Supreme Court of China is under the leadership of the Party Central. On 14 January 2017, the Chief Justice urged China to fight against “Western Judicial Independence,” while addressing a national meeting of chief justices of higher courts. Without judicial independence, the suspects of politically sensitive cases and their HR Defenders are in extremely vulnerable positions.

### **Conclusion**

LRWC calls on Council to take the aforementioned steps to effectively protect the rights of HR Defenders in China and to ensure fulfillment of China’s obligation to uphold “the highest standards in the promotion and protection of human rights.” Pending release of and withdrawal of charges against all HR Defenders detained or charged during the Crackdown and adequate remediation of rights violations, LRWC requests that China’s membership on Council be suspended.