

***Human Rights in the Chinese Administration of Justice:  
Formalizing Ideology in the Political and Legal System and  
Institutionalizing and Normalizing Human Rights Abuses***

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Abstract

This article explores archetypical human rights problems in the contemporary Chinese justice system, with a particular focus on prominent human rights abuse cases and trends that emerged throughout 2020, and explores the structural reasons behind these problems. The article first discusses general trends in Chinese judicial policy in the past year, then examines representative human rights issues encountered with respect to each of the following key elements of the criminal justice process: Criminal investigation and supervisory investigation; trial; prison and enforcement of the law; and the legal profession.

The human rights issues observed this year and discussed in this article include: widespread instances of arbitrary punishment, imprisonment, and torture during the stages of criminal investigation and supervisory investigation (in domestic cases as well as cases involving foreign elements, or “foreign-related cases”); violations of human rights in pursuit and recovery of individuals and assets abroad; normalization of violations of the right to fair trial; lack of transparency in reporting transmission of Covid-19 in prisons; generally concerning issues regarding the health of political prisoners; and the ongoing repression of human rights lawyers.

In comparison with previous years, in 2020, there were more cases resulting in the criminalization of speech, demonstrating the impact of ongoing contractions in the space for freedom of speech and for judicial independence, as well as a marked increase in the tendency of the Chinese Party-state to view certain cases as “sensitive” (*mingan*, 敏感). From the start of pre-trial investigation to the end of court proceedings involving so-called “sensitive” cases, there has emerged a practice of normalizing human rights abuses that this article will refer to as a “Standard of Procedure” (SOP) for human rights

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violations. The commonly seen methods on display in cases involving human rights abuses of the past few years have now become routine practice.

In late 2018, two Canadian citizens were arrested in China, and subsequently became widely recognized as victims of hostage diplomacy (*renzhi waijiao*, 人質外交). In 2020, similar cases occurred involving Australian and Taiwanese citizens. This same year, further evincing China's actions in recent years to illegally surveil, intimidate, and stalk people around the world, the United States Department of Justice prosecuted eight individuals accused of harassing and threatening individuals targeted by Interpol "Red Notices" and their family members based in the United States. These incidents have severely damaged the credibility of the Chinese judicial system.

**Keywords:** Party leadership, criminal investigation, supervisory investigation, trial, prison, lawyer, personal freedom, fair trial, judicial independence, Covid-19

This article marks the author's third annual report on human rights in the Chinese administration of justice. The past reports for 2018 and 2019 (Chen Yu-Jie, 2019, 2020) explored common human rights issues in China's criminal justice system and reviewed prominent judicial human rights cases and trends against the standards set out in the "International Covenant on Civil and Political Rights" (ICCPR),<sup>1</sup> which China has signed, but not ratified.<sup>2</sup>

This year's report takes the same approach. The structure of the article is as follows: Part One will discuss the **overall trends in Chinese judicial policy** in 2020, adopting a macro-level perspective on the policies behind the phenomenon of human rights violations in the various stages of law enforcement and adjudication. Parts Two, Three, and Four will examine the following aspects of Chinese criminal justice procedure: **Criminal investigation and supervisory investigation** (including the public powers of the public security organs, national security organs, supervisory commissions, and procuratorial organs); **trial** (the courts); and **prison and enforcement of the law**. Part Five will discuss the legal profession. This article will explore representative human rights abuse issues occurring in each important element of the Chinese judicial system, and the structural reasons behind these issues. The conclusion of the article will summarize the new trends of **normalization and institutionalization of human rights violations** in the Chinese administration of justice in 2020 under the control of the Party-state and the implications of these trends.

## I. General trends in Chinese judicial policies

As first pointed out in this author's 2018 report on "Human Rights in the Chinese Administration of Justice," in recent years, the Communist Party of China (CPC) has sought to continuously strengthen its leadership and control of the judicial system. The legal system itself has been fully subordinated to political control, and it has been exceedingly difficult to apply checks and balances to public power. This is a far cry from the core constitutive concept of traditional "rule of law" (*fazhi*, 法治), namely, protection of the people from the harms that come of the government's arbitrary use of power—a "government under law." Rather, Chinese leadership can be said to have distorted the term "rule of law." In 2017, the Chinese government established the

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<sup>1</sup> As a signatory of the ICCPR, China is "obliged to refrain from acts which would defeat the object and purpose of a treaty," per Article 18 of the "Vienna Convention on the Law of Treaties." With reference to the "Vienna Convention on the Law of Treaties," China submitted its instrument of accession on May 9, 1997, and it entered into force for the country on October 3 of the same year.

<sup>2</sup> Due to space limitations, this article follows the style of the *China Human Rights Watch Report* published by the Taiwan Foundation for Democracy and does not provide additional notes for individual cases. The sources of the cases in the article are all available via media platforms on the public Internet. The Taiwan Foundation for Democracy also keeps relevant case reports on file.

central leading small group on “comprehensive law-based governance” (*quanmian yi fa zhiguo*, 全面依法治國), and in October 2019, the Fourth Plenary Session of the 19th Central Committee of the Communist Party declared that it would “uphold and improve the *rule of law* system of socialism with Chinese characteristics” (a shift in terminology from the “legal system of socialism with Chinese characteristics” of the past). Nevertheless, Chinese leadership’s use of the “rule of law” slogan should never be confused with the concept itself; the term is used not in hopes of restraining the Party-state system under law, but to use law as a tool for the Party-state machine (“law under government”) (Cohen, forthcoming).

The fundamental difference between the traditional “rule of law” and the Chinese conceptualization can be clearly seen from a statement made by Chinese leadership at the Central Committee’s Comprehensive Rule of Law Work Conference in November 2020. As Xi Jinping emphasized at the outset of his speech, “[We] must uphold the Party’s leadership of the comprehensive rule of law. Party leadership is the fundamental guarantee for advancing the comprehensive rule of law... Comprehensive rule of law is to **strengthen and improve the leadership of the party...**” (Xi Jinping, 2020). Further, the “Regulations on Work of the Central Committee of the Communist Party of China,” promulgated by the Central Committee itself on September 20, 2020,<sup>3</sup> enabled the decision-making, agenda-setting, and coordinating agencies originally attached to the Central Committee to obtain and institutionalize substantive decision-making powers, further realizing Xi Jinping’s goal of a “centralized and unified leadership” (Liang Shuyuan, 2020). The impact of the “Regulations” for the Chinese judiciary is that they expressly stipulated that the Central Committee would set up Party groups within the Supreme People’s Court and the Supreme People’s Procuratorate to “be responsible to the Central Committee of the Communist Party of China, and implement the Central Committee’s decision-making and deployment.” This also demonstrates the **general policy of the CPC to strengthen its control of the political and legal system.**

Although in recent years China has continued to implement judicial reforms (Zhou Di, 2016), on the whole, these reforms have failed to address the structural causes of China’s judicial human rights violations.<sup>4</sup> These reasons include the lack of mechanisms for public security agencies, procuratorial agencies, and courts to mutually restrain each other (Cohen, 2019), to the extent that, in fact, “unprincipled cooperation” (*wu yuanze peihe*, 無原則配合) between these agencies frequently occurs (Chen Guangzhong, 2014: 63). Secondly, in the tripartite power structure of the police,

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<sup>3</sup> “Regulations on Work of the Central Committee of the Communist Party of China,” Article 13, paragraph 3.

<sup>4</sup> This passage is taken from Chen Yu-Jie (2020: 62).

procurators, and courts (and, after 2018, including the supervisory committees), because the court is one of the weaker parties, it is impossible to effectively restrain abuse of power by powerful government departments, especially the police. Moreover, China also lacks an effective constitutional review organ. The National People's Congress Standing Committee has never declared laws that violate human rights unconstitutional. At the same time, ordinary courts are not able to directly cite the provisions of the constitution in making judgments, and it is therefore difficult to implement the provisions of the constitution that protect human rights.

China's Party-state system does not have the political will to "empower" the judicial system—that is, effectively strengthen the power of the judicial system to check and balance public power. The Party-state is especially unwilling to grant autonomy and independence to the courts and lawyers so that they can exercise supervisory functions.

To the contrary, as can be discerned from CPC political and legal policies of recent years, the law is seen as a tool to seize power rather than a binding norm. Policies in 2020 continue to emphasize the Party's leadership in political and legal work. For example, at the Fifth Plenary Session of the 19th Central Committee of the Communist Party of China held in October 2020, with regards to the next five years of policy, it was emphasized that: "Sustaining the comprehensive leadership of the Party and strengthening the centralized and unified Party leadership is the first, primary principle of the Fourteenth Five-Year Plan for economic and social development that must be respected" (Jiang Jinqun, 2020). After the meeting, the CPC's Political and Legal Committee issued the "Notice on the In-depth Study, Publication, and Implementation of the Spirit of the Fifth Plenary Session of the 19th Central Committee of the Communist Party of China," which requires political and legal institutions at all levels to study and implement General Secretary Xi Jinping's important speeches and the spirit of the Party's Fifth Plenary Session of the 19th National Congress as a crucial political duty for the present and extending into the future. That is, these principles are meant to underpin future policy in the "Fourteenth Five-Year Plan" (2021-2025) that will continue to strengthen the ideology of loyalty to the CPC and Xi Jinping.<sup>5</sup>

On July 8, 2020, the Political and Legal Committee of the CPC Central Committee convened a meeting to announce the launch of a pilot program for national political and

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<sup>5</sup> In recent years, similar important policies have also included the adoption of the "Implementation Opinions on Comprehensively Deepening Reforms in the Political and Legal Fields" by the Comprehensive Deepening Reform Committee of the CPC Central Committee in 2019. The Committee also held meetings to promote reform and carry out relevant measures, including strengthening the Party Committee's Political and Legal Committee to "comprehensively coordinate political and legal work." The core elements of these various measures are meant to strengthen the Communist Party's absolute leadership over the political and legal system.

legal team rectification and education. Outside of China, this was immediately compared to Mao Zedong's 1942 "Yan'an Rectification" campaign, an important development in the political and legal system. After the rectification began, several senior officials of the political and legal system were successively removed. It is expected that the nationwide rectification will be fully launched next year and will be completed at the 20th National Congress of the CPC in 2022. Thus, in the future, the Party will have further consolidated control over the political and legal system (Chu Bailiang, 2020).

This "political and legal team education and rectification" policy has two implications for human rights in the judicial system: First, in the future, as more political and legal system officials may be investigated by the Party's Discipline and Inspection Committee and the government's Supervisory Committee,<sup>6</sup> it can be anticipated that the number of "**retention in custody**" (*liuzhi*, 留置)<sup>7</sup> cases that violate human rights will only increase.<sup>8</sup> This will result in more cases that feature restrictions on the personal freedom of a person under supervisory investigation, do not permit lawyers to intervene, may take as long as six months, and involve retention in custody in a location that is actually not subject to any supervision.<sup>9</sup> Second, moving forward, the political and legal system will be even more subservient to "political correctness," insofar as it will maintain a loyal and correct ideology with reference to the Party and Xi Jinping, **silence divergent voices, and continue be unable to fulfill an independent supervisory function.**

## II. Criminal investigation and supervisory investigation

The criminal investigation and supervisory investigation processes primarily involve the exercise of the public powers of the following agencies: **public security organs, national security organs, supervision committees** (including the **Communist Party Disciplinary Inspection Commission**) and **procuratorial organs**. Abuse of these public powers in turn create the conditions for easy violation of the following provisions of the ICCPR: The right to liberty and security of the person (Article 9); prohibition against torture or cruel, inhuman or degrading treatment or punishment (Article 7); and the right to a fair trial (Article 14). This report summarizes the main human rights issues in the criminal investigation and supervisory investigation

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<sup>6</sup> For an explanation of the "Supervisory Committee," please refer to Chen Yu-Jie (2019: 73-75).

<sup>7</sup> For an explanation of "retention in custody," see *supra* note 6.

<sup>8</sup> Huang Yuanyuan, Wu Yihui (2020).

<sup>9</sup> The Supervisory Committee exercises its investigative powers in the context of investigatory procedures in accordance with the provisions of the *Supervision Law*. They are not regulated or protected by the *Criminal Procedure Law*, which is not conducive to the protection of human rights. See Liu Jihua (2020: 160).

stages as recorded in 2020. Here, this article offers description and analysis of the following two main trends in this area, which are considered in turn below: First, regarding arbitrary punishment, imprisonment, and torture domestically; and second, transnational pursuit of individuals outside Chinese borders.

## 1. Arbitrary punishment, detention, and torture

The issue of arbitrary detention and torture by Chinese investigative agencies is a grave defect in the Chinese criminal justice system. There are many **institutional reasons** for this (Chen Yu-Jie, 2020: 64, not repeated here). For the convenience of readers, in the past report, the author categorized various types of detention, specifically, "extralegal detention" and "statutory detention that is vulnerable to abuse" (Chen Yu-Jie, 2020: 65). Regardless of the type, however, the vast majority of cases in recent years display the characteristics of "**normalized human rights violations**," that is, most of them exhibit the following characteristics, which can be considered the **SOP** for sensitive cases:

- **Use "Residential Surveillance at a Designated Location" ("RSDL") against individuals in custody, or "retention in custody" in cases involving abuse of power (that is, normalize and institutionalize "disappearing" people);**
- **Completely isolate the individual in custody from the outside world for an extended period, causing that person to feel isolated;**
- **Deprive the person in custody of the opportunity to meet with a lawyer;**
- **Deprive the person in custody or family members of the right to engage a lawyer of their choosing, and appoint an "officially designated lawyer" to the case;**
- **Inflict torture or other cruel, inhuman, or degrading treatment or punishment on the person in custody;**
- **Repeatedly interrogate the imprisoned person, or compel that person to give a forced confession on official media;**
- **Prohibit family members or others to observe hearings, or conduct secret trials and legal proceedings;**
- **Prevent family members from obtaining case materials from "officially designated lawyers," or even receive relevant legal documents;**
- **Punish human rights lawyers who provide representation in relevant cases, including revoking their licenses to practice.**

Since the only channel for a person in custody to communicate and receive information is a lawyer (according to Chinese law, family members cannot visit the

detained suspect or defendant during the criminal investigation stage), the use of "RSDL" and "retention in custody" to prevent lawyers from meeting the detainee is effective in breaking his or her will. As a result of extended isolation, mental trauma, and abuse in countless interrogations, people in custody can be easily persuaded to confess guilt in return for less severe punishment or treatment. However, even if individuals plead guilty, facts demonstrate that they do not necessarily receive a lighter punishment. As can be seen from the following cases, many defendants who pled guilty still suffered harsh penalties of many years of imprisonment.

It is worth noting that it is impossible for the outside world to know what cases will be regarded as sensitive by the Chinese government. There is no clear distinction between "sensitive" and "ordinary" cases; this unclear boundary is a representation of the arbitrary nature of public power. Further, this ambiguity allows the Party-state, at the lowest possible price, to achieve the desired effect of causing individuals to engage in self-censorship. From observations of case developments in recent years, it is clear that the scope of sensitive cases is growing to be increasingly broad. It is not necessary for a given issue to touch explicitly on civil and political rights to receive the designation. For example, a case involving nongovernmental organization (NGO) staff advocating against discrimination and for economic and social rights was treated as sensitive.

In terms of the conduct of public security and national security agencies, this year, this author observed an incredible number of cases concerning arbitrary detention and torture. Due to space constraints, this article cannot present all of the cases in a comprehensive way. Instead, it will focus on a few significant cases, and to facilitate understanding, present them according to the following categories for discussion:<sup>10</sup> (1) **Domestic cases** and (2) **Foreign-related cases** (that is, arbitrary punishment, detention, and torture of non-Chinese citizens inside China).

## (1) Domestic cases

### 1. Cases involving Covid-19 whistleblowers and citizen journalists

During the Covid-19 epidemic, a number of cases emerged in which **whistleblowers** and **citizen journalists** were punished by the government for exposing or investigating the epidemic. Among these was the case of **Dr. Li Wenliang**, who was

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<sup>10</sup> Discussion of the relevant judicial issues in Xinjiang and Hong Kong are outside the scope of this article and appear in other sections of this volume. Regarding the Xinjiang concentration camps and cases involving arbitrary arrest in Hong Kong, please refer to the "Religious and Ethnic Minority Human Rights" and "Human Rights in Hong Kong and Macau" in the 2020 China Human Rights Report.

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one of the first to reveal the epidemic to the outside world. Dr. Li was issued a **written warning** by police for “publishing untrue information on the Internet” on January 3, 2020 after posting news about the epidemic to a private WeChat group. Police further warned Dr. Li that if he continued to “engage in illegal activities,” he would face legal consequences. Dr. Li died of Covid-19 on February 6, 2020.

Dr. Li Wenliang’s case was not an outlier. According to official Chinese media reports and information collected by the NGO Chinese Human Rights Defenders, aside from the eight whistleblowers punished for “spreading false information” in Wuhan in December 2019, as of March 12, 2020, there were 5,511 instances of individuals punished by Chinese authorities for sharing information related to the epidemic. The majority of these individuals were subject to administrative detention for three to fifteen days. Others were ordered to pay light administrative fines, issued verbal warnings, education, and reprimands, whereas others faced more stringent penalties involving criminal detention. In February 2020, it was reported that seven people were criminally detained in Tibet for sharing information about the pandemic, or in official terms, “disseminating false information.” These were merely officially reported cases; the total toll was presumably significantly higher.

Police across China threatened human rights activists and lawyers to prevent them from speaking out about the epidemic. Ordinary people or citizen journalists who tried to independently report on the epidemic were disappeared. Among them was Chinese lawyer **Chen Qiushi**, who went to local hospitals and communities in Wuhan to conduct interviews after the city was locked down. Friends reported losing contact with Chen on February 7, 2020, and later disclosed that he had been put under house arrest by the government. On February 9, Citizen journalist **Fang Bin** was also disappeared after filming the conditions in a Wuhan hospital. Other cases of media disclosures about the pandemic included former China Central Television (CCTV) host **Li Zehua**, with whom contact was lost after being taken away by police in February 2020; Li uploaded a video in April to provide evidence of being released. A democratic activist from Nanjing, **Guo Quan**, and independent critic Zhu Xinxin of Hubei Province were also detained by the police in February for expressing concern about the epidemic. In addition, **Liu Yingying**, a lawyer from Henan Province, received a warning from the bar association in April after she posted pictures of family members with the ashes of the remains of Covid-19 victims on the Internet.

Another notable case is that of Zhang Zhan, a citizen journalist and a former lawyer, who was covering the epidemic in Wuhan. On May 16, Zhang’s family received a Notice of Detention issued by the Shanghai police, stating that Zhang was being

arrested on the suspicion of the crime of "picking quarrels and provoking trouble." The lawyer initially hired by Zhang's mother, Ren Quanniu, was unable to meet with Zhang or apply for review of the case materials. Instead, the public security and national security agencies forced Zhang's mother to dismiss the lawyer she retained and engage an "officially designated lawyer." In December 2020, Zhang was sentenced to four years in prison.

Further, on April 19, 2020, three volunteers from the **Terminus 2049** website were taken into custody. The Terminus website specialized in backing up deleted articles from Chinese social platforms. During the epidemic, a large number of news reports deleted by officials were uploaded on the site, including content relating to the timeline of discovery of person-to-person transmission, and interviews with whistleblower doctors. Two of the volunteers, **Chen Mei** and **Cai Wei**, were placed in RSDL on suspicion of "picking quarrels and provoking troubles." They were charged on September 11, but their families never received notice of the court hearing. The police refused family members' request to select a lawyer on the grounds that the two had already applied for legal aid. The lawyer ultimately engaged by family members stated that the situation made it difficult for him to intervene in the case. As of this writing, nothing is known about even the physical health of the two volunteers.

Moreover, the general public have not proven immune to abuse of power by law enforcement. In February 2020, the media reported many incidents of brutal law enforcement actions and human rights violations. These included, for example, government workers stopping, verbally abusing, or even beating people who did not wear masks. In one notable case, some individuals who had gathered to play mahjong were paraded through the streets to be ridiculed by the public.

The turmoil of the Covid-19 epidemic has wreaked havoc not only as a public health crisis, but in terms of the **many human rights problems it has also brought to the surface**. In particular, it has highlighted the extent to which public security organs are willing to make use of a wide range of punishment tools, ranging from relatively minor "warnings" or "reprimands" to the more severe criminal justice mechanisms involving imprisonment. Examples of punishing whistleblowers, independent journalists who reported on the epidemic, and improper use of law enforcement tools against ordinary members of the general public are testament to the widespread **abuse of the power of Chinese public security agencies**, which is **subject to neither supervision nor restriction**.

## 2. Dissidents

### *Xiamen Gathering (12/26 Crackdown)*

In early December 2019, more than 20 human rights lawyers and human rights activists gathered in Xiamen to discuss social and political issues. On December 26, the Ministry of Public Security launched an investigation and detention of participants. This marked the most systematic action against human rights defenders since the “709 Crackdown” in 2015. The crackdown against those present at the Xiamen gathering is now referred to as the “**12/26 Crackdown**.” In the past year, many participants at the Xiamen event have been criminally detained by public security authorities on **national security-related charges**, to the point that some are being **placed under RSDL**—meaning they are not allowed to meet with lawyers, cut off from the outside world regarding their location of detention, and very likely being tortured. Some have had their detention formally approved and are now facing legal proceeding. In addition, although some detainees have been “**released on guarantee to await trial**,” this in reality has meant that they are subject to significant uncertainty as the police may initiate criminal investigations at any time and reapply compulsory measures. Below are a few specific cases of the individuals who gathered for the event in Xiamen and were subsequently detained:

- **Xu Zhiyong**, who holds a doctorate in law from Peking University and is the founder of the New Citizen Movement. Xu was forced to flee from authorities near the end of 2019. During his time in hiding, he criticized Xi Jinping’s handling of the Covid-19 epidemic. He was taken into custody in Guangzhou on February 15, 2020, and formally arrested on charges of “inciting subversion of state power” on June 20. Public security authorities have refused to allow the lawyer appointed by Xu Zhiyong to meet with his client.
- Human rights lawyer **Ding Jiayi** was accused of “inciting subversion of state power.” His wife, Luo Shengchun, posted on Twitter in July that Ding has been subject to torture and maltreatment during his lengthy imprisonment in the detention center. According to Luo, Ding has been deprived of sleep for extended periods, harassed by loud noises and bright lights in the facility for 24 hours a day, forced into painful physical postures for lengthy periods, and given little or no food.
- Human rights lawyer **Chang Weiping**, of Shaanxi Province, was accused of “subversion of state power” by police in January 2020 and placed in designated surveillance. After his release, he disclosed the extent of the “extreme torture” he suffered during the accusation process up until October. According to Chang, he was held in secret custody in a hotel guest house for 10 days and was forced to sit in a “tiger chair” around the clock, causing him to lose feeling in the index and

- ring fingers of his right hand. Because of this disclosure, on October 22, 2020, Chang was once again disappeared, this time from his hometown. A friend confirmed that he had been taken away by police and placed in designated surveillance, this time on suspicion of “inciting subversion of state power.”
- Other lawyers—including Huang Zhiqiang, Lu Siwei, Liu Shuqing, Lu Tingge, and Zhuang Daohe—all faced summons, detention, had their offices searched, and other measures as part of investigations related to the crime of “picking quarrels and provoking trouble.”
  - Others also in attendance at the Xiamen gathering were also detained but have since been released on bail: Dai Zhenya, Zhang Zhongshun, Li Yingjun, Li Qiaochu, Chen Jiaping and others.

This severe crackdown targeted not only participants at the Xiamen event, but also involved harassment of human rights activists not in attendance. As of this writing, this harassment has resulted in some cases involving severe crimes such as “**subversion of state power**” and “**inciting subversion of state power.**” Some of these offenses, if deemed “severe,” may result in life imprisonment. Immense pressure has been exerted on an already sorely tested human rights activist community. In particular, the arrest of Xu Zhiyong, an important symbolic figure, has further harmed morale. As a result, this large-scale crackdown against the community of human rights lawyers and activists has had a strong silencing effect. In the words of Chinese NGO activist Yang Zhanqing: “After several waves of crackdowns, most people are afraid of reprisals by the authorities. Defense attorneys and family members rarely accept media interviews. People who have lived through the crackdowns are afraid to talk about their experiences, even those who have fled overseas. This leads to insufficient attention from the outside world, and a lack of source material for the attention of the international community” (Radio Free Asia, 2020).

### 3. Scholars

A law professor at Tsinghua University, **Xu Zhangrun**, published an article in early February 2020 about Chinese leadership’s incompetent handling of the epidemic entitled, “When Fury Overcomes Fear.” After returning to Beijing, Professor Xu was promptly placed under house arrest. On July 6, 2020, he was issued a term of administrative detention by police on obviously trumped-up charges of “visiting a prostitute,” and released on July 12. Subsequently, Tsinghua University dismissed Professor Xu from his teaching position and expelled him from public office on the grounds of “moral corruption.” In August, the Harvard University Fairbank Center

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invited Professor Xu to visit for a year, but he was told by the police that he was not allowed to leave the country or accept media interviews.

People who assisted in Professor Xu's case have also been impacted. When Professor Xu was taken away by the police, **Geng Xiaonan**, a respected Chinese cultural figure, was the first person to share information about Xu's detention. Geng and her husband **Qin Zhen** were disappeared on September 9, 2020. They were later confirmed to be criminally detained on suspicion of "illegal business operations," and formally arrested in October. The police accused Geng of printing and selling illegal cookbooks and other monographs without proper licenses. When meeting with a lawyer in the detention center on September 30, Geng mentioned that she had undergone more than a dozen interrogations during her more than 20 days of detention.

#### 4. Private entrepreneurs

In 2020, there were several unusual cases involving the detention of private entrepreneurs reported in the media. The case that received the most attention was that of a well-known Chinese agricultural entrepreneur **Sun Dawu**, the founder of Hebei Dawu Group. Sun was taken away by police together with his family and senior company executives on November 11. Ministry of Public Security officials stated that they were suspected of "picking quarrels and provoking trouble" and "sabotage of production or business operation." Media reports also confirmed that Sun's enterprise was forcibly taken over. A private entrepreneur currently in exile in the United States, Wang Ruiqin, said that there are risks that accompany operating a business in China: "When your business is too large, it can pose a threat to the government. This is unacceptable to the CPC. Business owners are very concerned about the country's future and current political affairs. This is also unacceptable [to the government]. If a business owner pays attention to current politics and their opinions are not totally the same as that of the Party, you are seen as someone who is not a loyal follower of the Party, and [government officials] will place restrictions on you or even exert pressure on you" (Chen Wenwei, 2020).

There was more than one case involving the arrest of wealthy private entrepreneurs. According to a report by "Rights Defense Online" (*Weiquan Wang*, an online blog chronicling human rights issues in China), a private entrepreneur in Chongqing, **Li Huaiqing**, was arrested three years ago for reposting articles and recordings with politically sensitive content on WeChat. The prosecutors accused him of "instigating the subversion of state power by spreading rumors, defamation, or other methods" seven times on WeChat, specifically by reposting content containing words such as "moral resistance" and "violent revolution." On November 20, 2020, he was sentenced

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to 20 years in prison by the court on four counts of "inciting subversion of state power, fraud, extortion, and illegal detention."

In addition, in November 2020, the head of Jiangsu Fuxin Wealth Asset Management Co., Ltd., **Xia Weiguo**, and the parent company's chairman, **Yang Zongyi**, were both subject to criminal compulsory measures on suspicion of engaging in illegal fundraising. At present, as case information has not been made public, it is difficult to determine whether the evidence presented by the prosecution is sufficient to demonstrate the truth of the charges.

## 5. Activists, petitioners, civil society actors, and journalists

Since their arrest on suspicion of "subversion of state power" in 2017, staff members of an NGO focused on disadvantaged groups, Changsha Funeng, have all been unable to meet with lawyers. On March 16, 2020, the six lawyers hired by the families of the three defendants, **Cheng Yuan**, **Liu Yongze**, and **Wu Ge Jianxiong**, were dismissed en masse. According to letters received by family members, Cheng and Wu Ge Jianxiong "admitted to breaking the law," expressed that they had hired their own lawyers, and that they would "accept no one else's representation." The families called into question that these letters represented the true intentions of the defendants, and expressed suspicion that the three defendants were coerced by police to dismiss the originally appointed lawyers.

Normally held in March, because of the epidemic, the annual "Two Sessions" were convened this year close to the anniversary of the June Fourth massacre. Human rights defenders subsequently reported that the government was even more severe in its "stability maintenance" (*weiwen*, 維穩) efforts, and monitored, intercepted, and removed more petitioners than in previous years. Cases reported by the media included but were not limited to: the detention of Shanghai human rights defender **Jin Meizhen** and her husband **Zhang Kunfu**; the interception of a total of eight petitioners from Shanghai on May 6; and the "interception" of **Yang Xiumei** and other petitioners in Liaoning Province, who were brought to a hotel by authorities and forced to undergo mandatory quarantine. In Beijing, an independent scholar, **Gao Yu**, a political dissident, **Zha Jianguo**, a Christian church leader, **Xu Yonghai**, and others were all subject to surveillance operations (which is often referred to as "put on duty," or *beishanggang* 被上崗). Finally, a human rights activist in Sichuan Province, **Chen Yunfei**, was disappeared.

In addition to offline crackdowns, in recent years, **the online space for free speech in China has become increasingly constrained**. In September 2013, the Supreme People's Court of China and the Supreme People's Procuratorate issued an

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Translated by Siodhbhra Parkin.

“Interpretation on Several Issues Regarding the Applicable Law in Cases of Using Information Networks to Commit Defamation and Other Such Crimes.” Under this, certain forms of online speech could be punished for the crime of “picking quarrels and provoking troubles,” which has led to many cases of the criminalization of online speech. This undermines the freedom of speech and violates the principle of statutory crimes and punishments in relevant provisions of the *Law on Legislation* (Liu Zhiqiang, Song Haichao, 2020). In 2020, a number of incidents demonstrated a **growing trend in criminalizing online speech**. For example, online activist **Qu Hong** was detained by the police on suspicion of “picking quarrels and provoking trouble” on May 30, 2020. A month earlier, on April 29, a member of the Overseas Independent Chinese PEN Center, **Xie Wenfei**, was taken away by the police, and later criminally arrested for “picking quarrels and provoking trouble.” On the day he was taken into custody, Xie had criticized aspects of the epidemic in Wuhan on Twitter.

On December 7, a Chinese employee of Bloomberg News, **Fan Ruoyi (or “Haze Fan”)**, was detained. A few days later, on December 11, the Chinese Ministry of Foreign Affairs issued a statement that Fan had been detained on suspicion of endangering national security. The case is still under investigation, but no details whatsoever have been released. This case took place a few months after Chinese authorities detained an Australian journalist of Chinese descent, **Cheng Lei**, and threatened two Australian journalists in August (see below), in a further demonstration of the extent of the deterioration in the Chinese media environment.

## (2) Foreign-related Cases

### 1. Foreigners and hostage diplomacy

Close to the end of 2018, after the Canadian government arrested the Chief Financial Officer of Huawei, Meng Wanzhou, in accordance with an extradition request from the United States, the Chinese government immediately detained two Canadian citizens located in China: **Michael Kovrig**, a former Canadian diplomat, and **Michael Spavor**, a businessman. The move was widely criticized by the outside world as hostage diplomacy. On June 19, 2020, the Supreme People’s Procuratorate of China announced that Kovrig and Spavor faced legal charges. The specific charges against Kovrig and Spavor, respectively, are: “spying on state secrets and intelligence for foreign actors” and “spying and reporting on state secrets for foreign actors.”<sup>11</sup>

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<sup>11</sup> Translator’s note: The phrase “for foreign actors” (為境外) may also be translated as “for overseas actors.” It is important to note that, under PRC law, this would include spying for organizations, individuals, or entities based in Hong Kong, Macau, and Taiwan.

Sino-Australian relationships soured this year, and this state of affairs had direct implications for Australians in China. On August 14, 2020, an Australian of Chinese descent working as a reporter for the CCTV English channel, **Cheng Lei**, was detained in Beijing. China's Ministry of Foreign Affairs announced that because Cheng "was under suspicion of engaging in criminal activities that could endanger China's national security, she has been subject to criminal compulsive measures by relevant authorities in accordance with the law, and is under investigation." The MFA also noted that Cheng was behind held under designated residential surveillance. Six months after being criminally investigated, Cheng Lei was formally arrested in February 2021 and charged with "illegally providing state secrets to overseas actors."

After Cheng Lei was detained in August 2020, two Australian journalists in China, **Bill Birtles** and **Michael Smith**, were told by Chinese national security officials that they had become involved in an ongoing national security investigation and must accept an invitation to be interviewed, and furthermore, were not permitted to leave the country. The two journalists immediately sought protection from the Australian Embassy in China and were accompanied to their interview with Chinese national security personnel by Australian diplomats. Some of the content of the interview touched on the Cheng Lei case. After the interview, on September 7, the two journalists immediately and with urgency left China.

In addition to this, an Australian citizen of Chinese descent, writer **Yang Hengjun**, met with a defense attorney for the first time on September 3, 2020, following his detention in January 2019 (meaning Yang went over 19 months in custody without seeing an attorney). Yang said that during his detention, he had been interrogated many times and for extended periods, sometimes while wearing handcuffs and a blindfold. Every interrogation involved the same questions revolving around his political activities in Australia, the United States, and China. Because Yang Hengjun had been unable to contact the outside world and had been denied consular visits on several occasions, he expressed to his attorney that he had felt increasingly isolated for over a year—particularly as the hearing in his case was further postponed until April 2021.

## **2. Forced confessions from Taiwanese citizens**

Just as with Sino-Australian relations, when cross-Strait relations are tense, Taiwanese citizens living in China may also become victims. Following the 2017 Lee Ming-che case (Chen and Cohen, 2017), in 2019, the media reported that several Taiwanese had been "disappeared" in China. In October 2020, a number of Taiwanese citizens who had been detained in China appeared in video clips played on a CCTV

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television program called "Cases of Taiwanese Espionage." Over the course of three days of this programming, in various video clips, the following Taiwanese citizens were recorded giving confessions and announced to be suspected of espionage: **Lee Mung-chu** (a Pingtung County Township political advisor), **Cheng Yu-chin** (a Taiwanese scholar living in Europe), **Tsai Chin-Shu** (a former chairman of the Southern Taiwan Cross-Strait Relations Association), and **Shih Cheng-ping** (a retired associate professor at National Normal University). The report further noted that Tsai had been sentenced to four years in prison for espionage by the Chinese courts in July 2020, and that Shih had also been sentenced to four years in prison for espionage on November 25. There had been no news or reports of public hearings for either of these two cases, heavily implying the two had been tried in secret. Obviously, this phenomenon of politicized "forced confession" violates the principles of due process of law and presumption of innocence, in addition to seriously damaging cross-Strait relations.

## II. International pursuit of people and assets; transnational repression

The anti-corruption campaign launched under the leadership of Xi Jinping was never intended to be an exclusively domestic-facing initiative. An important element of the crackdown has featured the **extraterritorial pursuit of people and assets**, from China's "Operation Fox Hunt" in 2014 to "Operation Skynet" in 2015. Now on "Operation Skynet 2020," it is clear that China attaches great importance to the pursuit of alleged fugitives and stolen money abroad. It has even reached the point that, in an early phase, authorities were ordered to seize the exit permits and passports of Communist Party officials above the county level (Kuang Naian and He Zhenghua, 2009), a clear restriction on the personal freedom of movement.

However, there is a tension between international human rights norms and China's transnational efforts to pursue people and assets, particularly under the "**non-refoulement principle**." According to this principle, when deciding whether to agree to an extradition request from the Chinese government, the requested government must consider the non-refoulement principle in international human rights law and humanitarian law—that is, if the person to be deported or extradited is in danger of being subjected to torture and other cruel, inhuman, or degrading treatment or punishment when returned to China, extradition should not be considered. In recent years, the practice of non-refoulement has also continued to develop; in addition to considering the possibility of torture, some courts will also apply the non-refoulement principle to refuse to deport or extradite a person when that person's right to a fair trial may be seriously infringed upon returning home.

Though domestic human rights issues in the Chinese administration of justice have not seen any improvement, China is still actively pursuing people and property beyond its borders. Since its establishment in March 2018, starting in 2019, the **National Supervisory Commission of China** (NSC) replaced the Supreme Prosecutor's Office to become the lead unit of the special operations to pursue individuals and assets across international borders. One of its important functions is to specifically pursue people and assets across international borders as part of investigations into cases involving abuse of public office. In addition to leading overseas actions to seize individuals or property, the NSC was also designated by China as the central entity for coordinating the judicial system's work under the United Nations *Convention Against Corruption* and pursuing judicial assistance with other countries. For instance, the NSC has proactively signed anti-corruption agreements with relevant agencies of the United Nations as well as those of the Philippines, Thailand, and other nations. The NSC also hosts meetings of the Sino-U.S. anti-corruption working group and Sino-Australia anti-corruption enforcement working group, among other efforts.

In actuality, however, the supervisory commission system has built in many mechanisms that violate human rights, including the aforementioned practice of "retention in custody." Indeed, the NSC has authority to implement a range of compulsory investigation measures that do not require court approval and completely lack effective external supervision (Chen Yu-Jie, 2019: 74). When foreign governments and international organizations conduct judicial assistance activities with the NSC, they should comprehensively consider whether they violate international human rights norms in doing so.

The 2019 "Human Rights in the Chinese Administration of Justice" report last year noted that there were some significant cases in 2019 demonstrating that foreign countries have serious doubts about Chinese justice, including foreign courts rejecting extradition requests from the Chinese government (Chen Yu-Jie, 2020: 70-71). In addition, the relationship between China and the **International Criminal Police Organization** (Interpol) has also attracted attention. Meng Hongwei, the former chairman of Interpol, who also served as the former deputy minister of the Ministry of Public Security of China, disappeared after returning to China in September 2018. Chinese courts sentenced him on January 21, 2020 to thirteen and a half years in prison. Based in France, Meng's wife, Grace, stated that Meng was in fact persecuted for political reasons.

Interpol mechanisms have long been subject to abuse by authoritarian nations (Lemon, 2019). The Meng Hongwei case drew international attention to China's role in the operation of Interpol and the appropriateness of Interpol's relevant law

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enforcement actions. For example, in recent years, China has made liberal use of Interpol's "Red Notice" system to track down many individuals of Chinese origin based in other countries. Some are claimed by Chinese authorities to be escaped corrupt officials; others are in fact nongovernmental advocates (such as the President of the World Uyghur Congress, **Dolkun Isa**), or even private entrepreneurs pursued by the Chinese government (Huahu, 2020). It is likely that at least some of these cases are politically motivated, such as those reflecting a desire to repress dissidents;<sup>12</sup> in any case, it is impossible for international organizations to avoid the longstanding issues of human rights abuse inherent in the Chinese judicial system. Against this backdrop, in the past few years, Interpol has successively withdrawn some "Red Notice" requests submitted by China (Chen Yu-Jie, 2020: 70-71).

In 2020, media reports also revealed that, back in 2015, Switzerland signed an agreement with China allowing "experts" from the Ministry of Public Security to stay in Switzerland for two weeks. These "experts" may enter Switzerland without revealing their official identity, and further, the reports given by these experts to Swiss authorities are classified as confidential and subject to Switzerland's confidentiality practices. During their visits, these Chinese "experts" may meet and interview Chinese citizens the Swiss consider to be likely of interest to PRC authorities, or are found to be "illegally overstaying." Under this agreement, Chinese "experts" may interview a maximum of six people per day, and a total of 60 people each time they enter the country. Moreover, there is no supervision of the actions of these authorities, and the cost of the visit is paid entirely by the Swiss. Then, after receiving subsequent investigatory reports from the Chinese public security officials, Swiss authorities work with the Chinese Embassy in Switzerland to determine who will be repatriated to China. Professor Margaret Lewis, a legal expert at Seton Hall University School of Law in the United States, commented that this agreement is extremely beneficial to China and surpasses general intelligence sharing agreements. In her words: "If it is a low-level case such as illegally overstaying, the Ministry of Public Security will likely not specially dispatch officials. The Ministry of Public Security would likely only be deployed for an individual of interest to the Chinese Communist Party" (Central News Agency, 2020). This Sino-Swiss agreement expired this year, but because of widespread resistance from civic groups, the Swiss government has decided for the moment not to extend the arrangement.

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<sup>12</sup> Regarding discussion of authoritarian states using or trying to reshape norms of international law to suppress dissent abroad, see Ginsburg (2020).

As Western countries increasingly decline China's requests for extradition and mutual legal assistance, moving forward, the Chinese government may turn to signing more extradition and mutual legal assistance treaties with authoritarian and developing nations. However, these jurisdictions are not the destinations of most people fleeing China; therefore, it seems likely China's work to pursue these individuals will continue to run into bottlenecks. In the foreseeable future, if China's human rights practices in the context of the judicial system do not improve, its external requests for extradition and mutual legal assistance through formal legal channels may suffer yet more setbacks.

As formal channels are frustrated, media reports have revealed the Chinese government's efforts to make use of illegal channels to "urge return" (*quan fan*), China's so-called new method for pursuing individuals abroad;<sup>13</sup> that is, to use all manner of methods to entice, coerce, and even abduct targets and bring them back to China. A prosecution by the United States Department of Justice (DOJ) is an example of China's normalization of practices for using illegal law enforcement methods abroad; specifically, in November 2020, the DOJ prosecuted eight people suspected of threatening an individual named in an Interpol "Red Notice" and the person's family members while on U.S. territory. The indictment stated that between 2016 and 2019, these eight people acted as Chinese government agents and used various methods to stalk, intimidate, and threaten individuals named in "Red Notices" and their family members, to force them to return to China and face investigation. In fact, the NGO Human Rights Watch (HRW) published an investigative article as early as January 2018 demonstrating that the Chinese government imposes various forms of unending punishment on individuals named in "Red Notices" and their family members. In certain cases, this has included the Chinese government forcing family members of individuals named in "Red Notices" still based in China to travel to the country where the target is located to persuade them to return and use any manner of methods to threaten and harass them—all to avoid standard extradition requests or mutual legal assistance procedures. The experience of **Li Gang**, a resident of the United States who was named in a "Red Notice," is a representative example. Li stated that his family was constantly faced harassment in China, which resulted in his younger brother being detained by police in March 2018. As of this writing, Li's brother has yet to have been allowed to meet with his family or a lawyer. Li's ex-wife's parents also had their

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<sup>13</sup> Regarding "urging return" (*quan fan*) as a new method of pursuing people abroad, see Huang Lina (2016). Regarding the so-called "theory of harmonious pursuit," please refer to Liu Liming and Pu Qiuju (2015: 38): "The so-called 'theory of harmonious pursuit' refers to the practice of public security officials making proper use of social relationships between the fugitive and society, the public, and especially friends and family to win their understanding and, after they are comforted and persuaded by friends and family, move them to voluntarily surrender themselves."

personal accounts completely frozen (Hua Hu, 2020). In addition, back in the United States, Li claims that due to surveillance, harassment, and intimidation by CPC overseas agents, he has had to constantly move.

### III. Trials

Chinese "trials" differ greatly from the Western conceptualization of "trials." In any given case, witnesses rarely appear in court, and in so-called "sensitive cases," trials are mainly for show, rather than engaging in any objective finding of fact, and are used as a tool for punishment.<sup>14</sup> By the structure of power, Chinese courts have played a weak role in relation to the police—this is their own "Achilles' heel," which has made them totally ineffective in terms of their capacity to safeguard human rights (Chen Yu-Jie, 2019: 76-78, not repeated here).

There were two trends in 2020 that are of particular interest here. First, the right to a fair trial for defendants continues to face severe, systematic violations. This is especially obvious when government authorities deem the case to be sensitive. As mentioned earlier in this article, nearly all sensitive cases follow a specific SOP—that is, they exhibit the following characteristics: **Forcing the defendant to plead guilty; conducting a secret trial, or not letting the defendant's family attend a court session; handing down a severe punishment; and preventing even family members from obtaining case materials or court judgments.** The second trend is that of the normalization of criminalizing acts of speech, especially online speech. Most of these cases involve heavy sentences for minor crimes such as "picking quarrels and provoking trouble." In recent years, it has even been observed that these prosecutions and penalties have extended to include Chinese citizens who make comments or posts on foreign social media platforms (*Wall Street Journal*, 2021).

- For example, on April 30, 2020, former media personality **Chen Jieren** was sentenced to fifteen years in prison for the crimes of picking quarrels and provoking trouble, blackmail and extortion, illegal operation of a business, and bribery. The verdict stated that Chen had "pursued unlawful gains" by publishing false or negative information online that "attacked and slandered the Party, government, and judicial organs" starting back in 2015. One month after Chen was arrested, CCTV broadcasted a video clip of him giving a confession.
- On July 7, 2020, a Guangzhou citizen, **Chen Zong**, was sentenced to one year and three months in prison for forming a WeChat group in which Chen then shared a significant amount of content from outside China's "Great Firewall." This was

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<sup>14</sup> The author would like to thank Professor Margaret Lewis for this observation.

declared by the court to constitute the crime of “picking quarrels and provoking trouble.”

- In addition, there are countless cases domestically in China that involve people facing punishment for circumventing the Great Firewall and criticizing the government. For example, a political dissident in Kunming, Yunnan Province, **Xu Kun**, posted a large number of photos of and content about Hong Kong’s “anti-Extradition Law Amendment Bill” activities on Twitter, and was subsequently arrested by police on charges of “picking quarrels and provoking trouble” in August 2019. After this, during the ensuing court proceedings, officials only allowed two family members to observe when the case was heard on August 16, 2020. Defense counsel’s request for a witness was summarily dismissed. The trial itself lasted only ten minutes before the court announced an adjournment and scheduled a date to produce the verdict.
- Neither is immunity guaranteed for those who publish online remarks while overseas. This year the media reported on a case from 2019 involving a Chinese student studying abroad at the University of Minnesota in the United States, **Luo Daiqing**, who made satirical posts about Xi Jinping on Twitter. After returning to China in July 2019, Luo was arrested by the police and later sentenced by the courts to six months for “picking quarrels and provoking trouble.”

Convictions for acts of speech are not limited to ordinary citizens. One of the most prominent cases in 2020 was that of **Ren Zhiqiang**, former real estate tycoon and chairman of Beijing Huayuan Property Co., Ltd. and member of the “red second generation” (*hong er dai*, 紅二代), the sons and daughters of prominent revolutionaries. In early March, Ren wrote an article criticizing the government for covering up the truth of the Covid-19 epidemic and referring to Xi Jinping as “a clown stripped naked who insists on being called emperor.” On March 12, Ren was disappeared. On April 7, the Beijing Municipal Commission for Discipline Inspection announced that Ren was under suspicion of serious violations of discipline and law and was undergoing disciplinary review and supervisory investigation. His case was heard in court on September 11, 2020. The procuratorate accused Ren of corruption, bribery, embezzlement of public funds, and abuse of power as an employee of a state-owned company. On September 22, the court pronounced that Ren’s conduct fulfilled the conditions of these crimes, and he was handed down the severe sentence of 18 years in prison and a fine of CNY 4.2 million.

#### **IV. Prison and Enforcement of the Law**

There were two prominent issues related to human rights in prisons in 2020:

### **1. Transmission of Covid-19 in prisons**

On February 21, 2020, China reported a cluster of Covid-19 infections in five prisons in Shandong, Zhejiang and Hubei Provinces, resulting in 512 confirmed cases and 10 suspected cases. Meanwhile, in Wuhan, 565 confirmed cases of Covid-19 were reported on a single day on February 29. Prisons alone accounted for 233 cases, demonstrating the severity of the situation. However, there were no follow-up reporting on this issue starting from March. From the time the epidemic began in January up until February 21, there was no official news regarding transmission of the disease in prisons. When news was communicated, the problem was already quite serious, demonstrating that the government suppression of information was actually not conducive to controlling the epidemic. An associate professor at the City University of Hong Kong and expert in public health management, Dr. Nicholas Thomas, stated that because space in prisons is extremely confined, transmission of disease is difficult to avoid, and therefore made it likely cases had been developing in prisons for some weeks—and yet it was only made clear the this was the case on February 21 (BBC Chinese website, 2020).

### **2. Concerns over the health of political prisoners**

Prisoners—especially political prisoners and activists—are subject to extreme mistreatment in prison. For example, following his release from prison, human rights activist **Xing Wangli** revealed to the media several instances of mistreatment including denial of medical attention or referral to a hospital despite a weak and sickly physical condition; refused permission to receive or send letters; and being slapped in the side of the head on one occasion after a dispute with prison guards. Xing also repeated other prisoners' statements that they had been forced to work more than ten hours a day or being frequently beaten by police officers and cell bosses.

The 2019 "Human Rights in the Chinese Administration of Justice" report called on the outside world to pay attention to the deterioration of the health of political prisoners in prison, including death of such individuals in custody or shortly after release. In July of this year, Reporters Without Borders reported that at least 114 journalists and defenders of press freedom are currently being held in custody in China, some of whom are facing life imprisonment. The list highlights ten of these individuals with particularly distressing health conditions (or those whose condition is unclear as authorities refuse to give permission to family members to visit). If these individuals are not released immediately, their life and health may be in danger. These ten

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individuals are: **Ilham Tohti**, a Uyghur scholar; **Gulimila Yiming**, a writer and webmaster; **Lu Jianhua**, a political commentator; **Zhang Haitao**, a political commentator; **Qin Yongmin**, a political commentator; **Huang Qi**, founder of the "6/4 Sky Net," a website commemorating the Tiananmen Square massacre; **Yao Wentian**, a publisher; **Gui Minhai**, a Swedish citizen and publisher; **Wu Gan** an activist arrested during the 709 crackdown; and **Jiang Yefei**, a cartoonist. Of these, Ilham Tohti's case is an illustrative example. According to his daughter, since 2017, the Chinese government has refused to allow his family members to visit. Tohti suffers from cardiopulmonary disease and has experienced significant weight loss. Clarity about his physical health has been impossible to ascertain since late 2018.

Finally, Taiwanese human rights worker **Lee Ming-che** has been in Chinese custody for three years. On March 19, 2020, Lee's wife, Lee Ching-yu, and the civil society alliance "Team for the Rescue of Lee Ming-che" held a press conference to call on the public to continue to carry out efforts to rescue Lee. Since the explosive outbreak of Covid-19 in China, Lee Ching-yu has been unable to either visit Lee Ming-che in China or speak to him on the phone.

## V. Lawyers

While the "Party-building" work of general lawyers is still ongoing (Chen Yu-Jie, 2020: 76-77), on the other hand, China has never let up in its efforts to repress human rights lawyers. July 9, 2020 marked the fifth anniversary of the "709 Mass Arrest Incident" (Chen Yu-Jie, 2019: 81-82). As Professor Jerome A. Cohen of New York University has noted, the 709 incident demonstrates that repression of human rights lawyers is much more than a single, opportunistic crackdown; it is a **long-term and ongoing process**.

Even so, the community of human rights lawyers has not been extinguished. There are still many lawyers engaging in efforts to support the public interest, though there are many severe difficulties in carrying out this work. For example, in early March 2020, some lawyers set up a "Coronavirus Lawyers Advisory Group." Although the advisory group received more than a dozen applications for legal assistance, some families gave up their efforts as they could not bear to deal with threats from the government. Attorney Chen Jiangang, a member of the advisory group who fled to the United States, said that many lawyers in the group have also been warned that if a lawsuit is ultimately filed, that very act may endanger national security.

The repression encountered by human rights lawyers can be divided into the following categories (which may exist simultaneously or at different points in time in a given case):

**(1) Criminal sanctions (including of family members of lawyers), up to and including instances of “being disappeared”**

In addition to the aforementioned lawyers who attended the gathering in Xiamen, below are descriptions of cases involving other lawyers subject to crackdowns (because of space limitations, only a few, key cases are included here):

- Attorney **Yu Wensheng** (who represented Wang Quanzhang, a lawyer who was arrested in the 709 crackdown) was sentenced to four years in prison for “inciting subversion of state power” and deprived of political rights for three years in June 2020. Yu’s wife, Xu Yan, said Yu was subject to a secret trial, and the family has not received the court’s verdict. After being detained for nearly a thousand days, Yu was finally allowed to meet with a lawyer on August 14, 2020. However, his health was in a poor state; some of his teeth had fallen out, and his right hand was experiencing severe tremors. Yu’s wife has not yet been able to see her husband. In December, the court of appeal issued a decision upholding the original judgment.
- Attorney **Tan Yongpei** was detained and arrested on suspicion of “inciting subversion of state power” in October 2019 for posting on Twitter, and to date, has been unable to meet with a lawyer. On March 2, 2020, the case was transferred to the People’s Procuratorate for review and prosecution. However, the lawyer originally engaged by Tan’s family, Attorney Xie Yang, announced that his law firm had received direct pressure from the public security and national security agencies, and he would have to withdraw from the case. In addition, Tan Yongpei’s nephew, **Zhu Xingming**, was detained by the police in July 2020; Zhu’s family was formally informed only in August, when they received a police notice stating that Zhu was being criminally detained on suspicion of running a gambling ring. Tan’s family members suspect that this is a method by which police are putting pressure on Tan and his family before the trial begins.
- Attorney **Chen Jiahong**, formerly at the same law firm as Tan Yongpei (and who also provided support to Yu Wensheng) was detained and arrested in April 2019 on suspicion of “inciting subversion of state power.” The trial began in June, but the result is unknown; there has been no news about the progress of the case.

- Attorney **Gao Zhisheng** was disappeared again in August 2017, and as of this writing, there has been no news of his case. His elder sister became depressed and committed suicide in May 2020.

## (2) Torture

In a media interview in June, recently released human rights lawyer **Wang Quanzhang** detailed the torture he faced in prison for the first time. From his detention in August 2015 until his official arrest was announced in January 2016, Wang was imprisoned by the police in Tianjin in a place he described as a “hotbed of torture.” Wang was kept in a small cell and monitored by two armed police 24 hours a day. He was forbidden to move even while sleeping, was beaten for several hours at a time, and was required to stand with his hands held up high for 15 hours. He was eventually forced to sign a statement admitting that he accepted foreign funds to try and subvert the state.

## (3) Harassment, surveillance, and false release

- The final lawyer tried as part of the 709 crackdown was **Wang Quanzhang**, who completed his criminal sentence and was released from prison on April 5, 2020—only to be immediately sent to Jinan, Shandong Province, the place of his *hukou* registration, in the name of undergoing “quarantine,” rather than being reunited with his wife and children. There were more than ten people standing guard outside Wang’s apartment day and night who refused to allow any visitors to enter. Wang’s situation, similar to that of other human rights lawyers, has been called a “non-release release” by scholar Jerome Cohen (Cohen, 2016). After serving the terms of his sentence, rather than gaining freedom, Wang was simply transferred from a small prison to a larger one.
- Attorney **Jiang Tianyong**, who assisted the family members following the 709 incident, was released from prison at the end of February 2019 and was put under supervision for 24 hours. So far, his movement has been severely restricted, which puts him in a situation equivalent to house arrest.

## (4) Infringing on the practice of law

- Although exempted from criminal punishment by the court when accused of “inciting subversion of power” five years ago, **Xie Yang**, a human rights lawyer, had his license revoked by the local Justice Bureau in August 2020. The reason

- given was that when he was handling cases five years ago, he disrupted the order of the court.
- **Yang Bin**, a lawyer from Guangdong, had her license revoked by the Department of Justice in August. The ostensible reason was that Yang had not renewed her contract with her law firm and therefore did not meet the requirement of having an affiliated law firm. However, the cancellation of Yang's license to practice is more likely related to her involvement in the Xu Zhiyong case. In February 2020, police arrested Xu at Yang's apartment, and as a consequence, Yang and her husband and son were also deprived of their personal freedom.
  - In many cases recorded in 2020 (including the "#save12HKyouths"<sup>15</sup> case involving Hong Kong protestors; and the aforementioned "Changsha Funeng" and "Terminus 2049" cases), lawyers hired by the defendant or family members were pressured to withdraw from the case, or were dismissed by public security officials in various ways in favor of appointment of an "officially designated lawyer," effectively depriving the defendant or family members of the right to select legal counsel. Peng Yongfeng, a Chinese human rights lawyer in the United States, believes that it is more appropriate to refer to these officially-appointed lawyers as "stability maintenance lawyers" (*weiwēn lǚshī*, 維穩律師). In Peng's words: "These lawyers will only get involved in a case under unified dictates from officials, and hope that their clients will participate in putting on a judicial 'show' for the government. Obviously this is part of 'stability maintenance' efforts."
  - Attorney **Lu Siwei** and Attorney **Ren Quanniu**, both of whom offered representation to defendants in the case involving 12 youths who attempted to flee Hong Kong, received notification from the local Department of Justice on January 4, 2021 that their licenses to practice law are to be revoked.

## VI. Observations and Conclusions

The past year marked an extremely grave period for human rights in the administration of Chinese justice. Compared with the previous year, more cases involving criminalization of speech were recorded in 2020, especially during the Covid-19 period. Many independent citizen journalists or critics were arrested for speaking out, and in some cases, the punishment was unusually severe in comparison with years past. This demonstrated the further reduction in the space for freedom of speech and expression. In addition, the number of cases regarded as "sensitive" by the Chinese Party-state also increased significantly and expanded beyond the scope of civil and political rights-related cases. The prosecution of staff members of "Changsha Funeng,"

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<sup>15</sup> See the 2020 "Human Rights in Hong Kong and Macau" article in this volume.

a group advocating anti-discrimination and providing assistance to disadvantaged groups, is a useful example of how even NGOs advocating only for economic and social rights were swept up in this trend.

From the beginning of the investigation to the end of the trial, a standard of practice (**SOP**) has emerged for such "sensitive" cases:

- First, the public security organs place detainees in "RSDL" for up to six months, during which time they are not permitted to meet lawyers and family members are not notified of even the place of detention. In this way, the imprisoned person can be completely isolated from the outside world for an extended period, resulting in feelings of isolation.
- If the case involves abuse of power, the State Supervisory Commission will implement "retention in custody," which can also last up to six months, is not subject to supervision, and again, does not permit consultation with lawyers, completely isolating the detainee.
- Deprive the accused or their family members of the right to select a lawyer and force the use of an "officially appointed lawyer" to act in the case.
- Inflict torture and other cruel, inhuman, or degrading treatment or punishment on the imprisoned person, such as repeatedly interrogating the imprisoned person and force him or her to plead guilty on official media.
- Conduct secret trials and do not allow family members to observe legal proceedings and prevent family members from obtaining any information related to the case from the "officially appointed lawyers," including official legal materials.

These are all common methods that have been observed in cases involving human rights violations in the past few years, which have now become a set of **normalized practices**.

In the wake of the arrest of two Canadian citizens in China at the end of 2018, who have since been deemed victims of **hostage diplomacy**, similar cases have since been observed in 2020, and in fact appear to be getting worse; there was a marked deterioration in Sino-Australian relations this year, to the point the Australian government issued an official warning in July that Australian citizens in China should be aware of a heightened risk for arbitrary arrest by Chinese authorities. Subsequently, in August, Chinese CCTV reporter Cheng Lei, an Australian citizen of Chinese descent, was arrested in Beijing on suspicion of "endangering national security." Not long after, two Australian journalists were intimidated and interviewed by authorities. Most

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external observers believe that these events are all related to the worsening of Sino-Australian relations. Similarly, relations across the Taiwanese Strait have also come under strain. Chinese CCTV broadcast the taped confessions of four Taiwanese citizens over the course of a three-day television special, accusing them of espionage. **After these incidents, the credibility of the Chinese judicial system in the international arena has been severely damaged. This will in turn hinder China's plans to pursue individuals and assets that have escaped across its borders.**

When China fails in efforts to obtain mutual legal assistance through legal channels, it may resort to **illegal ones**. In recent years, NGOs have already begun to document instances of Chinese authorities illegally surveilling and coercing targets abroad. For example, in 2020, the United States brought charges against eight people for harassing and threatening certain individuals named in Interpol "Red Notices" who were residing in the United States at the time. It is difficult to guarantee that such cases will not happen again in the future. If China continues to resort to these illegal methods in order to pursue individuals and recover assets, and is unwilling to systematically improve domestic judicial human rights, then **the stage has been set for sharply increased points of conflict with the judicial systems of other countries.**

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