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A. Introduction

1. Lawyers for Lawyers (“**L4L**”), the International Bar Association’s Human Rights Institute (“**IBAHRI**”), and The 29 Principles submit this report on the state of human rights in the People’s Republic of China (“**China**”), particularly in respect of the legal profession, with recommendations for the 45th session of the Universal Periodic Review (UPR) Working Group in the UN Human Rights Council in January 2024.
2. L4L is an independent and non-political foundation based in the Netherlands, which was established in 1986 and is funded by lawyers’ donations. L4L promotes the proper functioning of the rule of law through the free and independent exercise of the legal profession around the world. L4L has special consultative status with ECOSOC since 2013.
3. The International Bar Association (“**IBA**”), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of 80,000 individual lawyers and more than 190 Bar Associations and Law Societies, spanning all continents. The IBA’s Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.
4. The 29 Principles is a non-profit organisation based in London, established in 2021, which focuses on human rights lawyers based in China and Hong Kong. They work with lawyers and legal associations around the world to support human rights lawyers and uphold the rule of law, especially with reference to the UN Basic Principles on the Role of Lawyers.

B. Executive Summary

5. This submission highlights key concerns regarding China’s compliance with its international human rights obligations to guarantee the right to independent counsel as set out in the UN Basic Principles on the Role of Lawyersⁱ (“**Basic Principles**”) and other international rights instruments, focusing on the following issues:
 - a) Criminal prosecution of lawyers (section D)
 - b) Disbarment and other disciplinary measures on improper grounds (section E)
 - c) Harassment of lawyers (section F)
 - d) Freedom of expression of lawyers (section G)
 - e) Restrictions of lawyers’ rights in Hong Kong (section H)
 - f) Access to legal representation of their own choosing (section I)

C. Normative and Institutional Framework of the State

6. The adequate protection of human rights and fundamental freedoms requires that every citizen has effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently of the government and political pressure. This follows inter alia from the Charter of the United Nations, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights (“**ICCPR**”). In particular, the protection and the independence of justice actors is a key component to ensure the well-functioning of justice systems and to combat impunity. This is a precondition to the right to a fair trial, protected by Article 14 of the ICCPR.
7. Furthermore, on 22 June 2017, the Human Rights Council (“**HRC**”) passed a resolution condemning in general “the increasingly frequent attacks on the independence of [lawyers], in particular threats, intimidation and interference in the discharge of their professional functions”. The HRC expressed its deep concern “about the significant number of attacks against lawyers and instances of arbitrary or unlawful interference with or restrictions to the free practice of their profession” and called upon States “to ensure that any attacks or interference of any sort against lawyers are promptly, thoroughly and impartially investigated and that perpetrators are held accountable”.ⁱⁱ
8. In its task of promoting and ensuring the proper role of lawyers, the Government of China should respect the Basic Principles within the framework of its national legislation and practice. The Basic Principles provide a concise description of international standards relating to key aspects of the right to independent counsel. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.ⁱⁱⁱ
9. During the third UPR cycle in 2017, China received^{iv} and accepted^v some recommendations concerning the need to guarantee protection of lawyers against any form of harassment^{vi}; the need to ensure that human rights defenders and lawyers are able to exercise their right to freedom of expression and opinion without threats, harassment or repercussions^{vii}; and the need to take necessary measures to provide a safe environment for those who work on the protection and promotion of human rights^{viii}. China accepted all these recommendations but noted them as ‘already implemented’. Additionally, China did not accept^{ix} recommendations concerning the need to end the practice of “residential surveillance at a designated location”, specifically with regard to human rights defenders and lawyers^x; and the need to release all human rights defenders and lawyers and refrain from persecuting those who exercise their rights or defend others^{xi}.
10. Despite China noting recommendations relating to the protection of lawyers and human rights defenders as ‘already implemented’, reports gathered by L4L, IBAHRI, and The 29 Principles including information received from lawyers in China demonstrate that China does not uphold the necessary guarantees for the proper functioning of the legal profession as set out in the Basic Principles. Consequently, lawyers encounter serious difficulties in carrying out their professional duties independently. This undermines the proper functioning of the judicial system, including the right to fair trial and effective access to justice.

A. Criminal Prosecution of Lawyers

11. L4L, IBAHRI, and The 29 Principles are concerned about the increase in arrests, arbitrary detention, and illegitimate criminal prosecution of lawyers in China. We also note that the practice of ‘Residential Surveillance at a Designated Location’ (RSDL) has continued to be used against lawyers.^{xii}
12. Interference in the work of lawyers in the form of arrests, arbitrary detention and illegitimate prosecution results in violations of the right to a fair trial under article 14 of the ICCPR. In accordance with Principle 16(a) of the Basic Principles, governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference”. The UN Human Rights Committee has stated that “lawyers should be able to advise and to represent persons charged with a criminal offence in accordance with generally recognized professional ethics without restrictions, influence, pressure or undue interference from any quarter.”^{xiii} In addition, illegitimate actions taken against the lawyers violate the right to a fair trial of the clients they represent, because it deprives them of legal representation of their own choosing and restricts access to justice for people in China in an impermissible manner.^{xiv}
13. We further condemn the abuse of National Security Laws to target human rights lawyers. Lawyers are systematically targeted with national security crimes under China’s Criminal Law, in particular Article 105(2), ‘inciting subversion of State power’. UN human rights experts have called on the government of China to repeal Article 105(2) or bring it in line with its obligation under international human rights law.^{xv}
14. L4L, IBAHRI, and The 29 Principles have identified a multitude of cases that highlight the ongoing and systematic criminal prosecution of lawyers in China. This is illustrated by, but not limited to, the following cases:

a) Ding Jiayi

On 10 April 2023, Beijing lawyer Ding Jiayi was sentenced to 12 years imprisonment and 3 years deprivation of political rights. He was found guilty on charges of “subverting state power” after he was tried in a closed door trial in June 2022.^{xvi} Ding Jiayi was detained by Shandong police on 26 December 2019 as part of a mass arrest known as the ‘1226 Crackdown’. Mr. Ding had already been held in pretrial detention for more than two years and has been subjected to torture and ill-treatment during his arbitrary detention.

During his pretrial detention, Mr. Ding’s requests to see his lawyer were denied on grounds of ‘endangering national security’. According to reliable sources, his lawyer had been forced to sign a non-disclosure agreement barring him from sharing information about the trial. Now, after the verdict has been delivered, Mr. Ding’s lawyer has been forced to sign an agreement to not disclose the verdict to the public.

^{xvii}

b) Li Yuhan

Human rights lawyer Li Yuhan has been detained in Shenyang City, Liaoning since October 2017. She was charged with “picking quarrels and provoking trouble”. Although her case was tried 27 October 2021, there is still no verdict and her release date remains unknown.^{xviii}

In November 2019, Li Yuhan told her lawyer that the court had said that she would only be allowed to practice law again after release if she confessed to the supposed crime.^{xix} She refused, insisting that she had not committed any crime.

Li Yuhan has several urgent medical conditions (arrhythmia, coronary heart disease, unstable angina, hyperthyroidism, acute erosive gastritis, cerebral concussion, among others) but has been denied the necessary medical treatment.^{xx} Her health has been deteriorating since her trial in October 2021. The deterioration of her health includes episodes of heart attacks.^{xxi}

c) Yu Wensheng

On April 13, 2023, human rights lawyer Yu Wensheng and his wife Xu Yan were criminally detained by the Beijing police. Yu Wensheng and Xu Yan were on their way to the EU embassy in Beijing when they were intercepted by police officers who told them they had been summoned to a police station. Their son was informed on 15 April that the couple had been criminally charged with “picking quarrels and provoking trouble”.

Yu Wensheng had been released from prison just over a year before on 1 March 2022 after serving a four year prison sentence in retaliation for his human rights efforts.^{xxii} On 17 June 2020, the Xuzhou Intermediate People's Court convicted Yu Wensheng of 'inciting subversion of State Power' and sentenced him to four years' imprisonment, followed by three years' deprivation of political rights.^{xxiii}

d) Chang Weiping

Since 2013, Chang Weiping has represented victims of workplace discrimination over HIV/AIDS, litigated cases involving defective vaccines and defended rights activists. He was arrested in January 2020 after he attended a gathering of lawyers and activists in Xiamen after mass arrests during the ‘1226 crackdown’. After the arrest Chang Weiping was held under RSDL, in this case, a hotel, for 10 days. His license to practice law was suspended.

Mr. Chang was arrested again by the Baoji City Public Security Bureau on 22 October 2020. His arrest followed six days after he openly accused Baoji police of torture during his January hotel detention. Mr. Chang was held in RSDL for more than 5 months and 16 days. In September 2021, he was able to meet with his lawyer and shared that he had again been subject to torture.

On 26 July 2022, Chang Weiping was tried in a secret closed-door trial at the Feng County Court in Shaanxi Province on charges of ‘subversion of state power’.^{xxiv} Only on 8 June 2023, Mr Chang’s verdict was announced and he was sentenced to 3.5 years imprisonment.

E. Disbarment and Other Disciplinary Measures on Improper Grounds

15. L4L, IBAHRI, and The 29 Principles observe an increase in instances of lawyers who have been subjected to disciplinary measures on improper grounds such as the revocation of licenses of lawyers to practice law. These practices deprive lawyers of the ability to adequately defend their clients and themselves. At least 30 lawyers have had their licenses revoked since 2017.
16. Due to the recent implementation of a number of administrative instruments, the Justice Bureau can decide not to renew or withdraw the license of a particular human rights lawyer in the event the authorities perceive the lawyer in question as ‘problematic’ for providing legal representation for sensitive cases. According to information received, these administrative instruments are being used by authorities in China to silence human rights lawyers working on sensitive cases.^{xxv} L4L, IBAHRI, and The 29 Principles are concerned about this method of preventing lawyers from carrying out their professional duties.
17. The United Nations (UN) Basic Principles on the Role of Lawyers states that governments must ensure that lawyers “are able to perform all of their professional functions without intimidation, hindrance or improper interference.”^{xxvi} The Basic Principles further require that lawyers “shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards, and ethics.”^{xxvii} They further stipulate that “charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures.”^{xxviii} The Basic Principles further state that “disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.”^{xxix}
18. The following cases illustrate the issue of disbarment and other disciplinary measures on improper grounds:

a) Lin Qilei

Lin Qilei is a human rights lawyer from Beijing, who has represented a number of human rights defenders, including detained human rights lawyer Li Yuhan. In October 2021, Mr. Lin was informed by the Beijing Municipal Bureau of Justice that his license had been revoked. The reason provided by the Bureau was that the law firm to which Lin Qilei belonged, Beijing Ruikai Law Firm, had been deregistered six months prior and that Mr Lin had not been employed by another law firm since that time. According to the Beijing Municipal Bureau of Justice, the firm had not participated in the mandatory 2020 annual inspection, ignoring Mr Lin’s appeals to the Bureau’s decision and ignoring the fact that the authorities had hindered the firm in participating in the annual inspection since 2018.^{xxx}

b) Liang Xiaojun

Liang Xiaojun is also a lawyer in Beijing who has represented a number of human rights cases, including most recently the detained legal scholar Xu Zhiyong. On 26 November 2021, Mr Liang received a notice from the Beijing Municipal Justice Bureau that his legal practice license had been revoked as an administrative punishment. The Beijing Municipal Justice Bureau accused Mr Liang of violating article 49 (1.8) of the PRC Law on Lawyers for spreading online messages on domestic and overseas social media to support Falun Gong, which is banned in China, and discrediting China's legal system and basic principles as a lawyer and the director of Beijing Daoheng Law Firm.^{xxxix}

F. Harassment of Lawyers

19. Besides criminal proceedings and administrative disciplinary actions, L4L, IBAHRI, and The 29 Principles have also noted the prevalence of other forms of harassment against lawyers, including threats, surveillance and house arrest. In particular, lawyers often endure restrictions to their rights and freedoms upon leaving prison, in a phenomenon known as 'non-release release'.
20. Non-release release refers to the practice of continuing to subject convicted lawyers to forms of (continuous) surveillance and economic restrictions, even after completion of their prison sentence. Lawyers and human rights defenders are often also sentenced to years of deprivation of political rights after their release, which allows the Chinese authorities to impose restrictions on and monitor their freedom of movement, expression, association, and assembly. In September 2019, UN human rights experts condemned the practice of non-release release in response to the case of human rights lawyer Jiang Tianyong as "gratuitously punitive and legally unjustified".^{xxxix}

a) Jiang Tianyong

Jiang Tianyong has taken on 'sensitive' cases as a human rights lawyer since 2005. He has defended fellow lawyers and human rights defenders, and religious minorities. On 22 August 2017, Mr Jiang was convicted to two years' imprisonment and three years' deprivation of political rights for the offence of 'inciting subversion of state power'.

On 28 February 2019, Mr Jiang was released from prison after completion of his prison sentence. After his release, Mr Jiang was placed under strict house arrest and has been subject to continuous police and camera surveillance. He is not allowed to leave China, so has been unable to reunite with his family living in the United States. His parents and younger sister, who live in China, are also under surveillance and are harassed by the authorities.

b) Li Heping

Chinese human rights lawyer Li Heping started his human rights work in 2002. He has defended members of the 'New Youth Study Group', who were accused of 'subverting state power'. Li Heping was arrested as part of the '709 crackdown' in July 2015. He spent nearly 22 months in pre-trial detention, after which he was

convicted in a secret trial to three years imprisonment and a four-year probationary suspension. Mr Li was released from prison on 10 May 2017.

Since his release, Mr Li and his family have remained subject to close control and surveillance by state authorities. On 9 June 2023, Li Heping and his family were intercepted by border police from leaving the country and subjected to a travel restriction on the grounds that their departure might endanger national security.

c) Zhou Shifeng

Zhou Shifeng as a human rights lawyer has taken up multiple 'sensitive' human rights cases and was part of the legal activist Weiquan movement for civil rights. Zhou Shifeng was sentenced on 4 August 2016. He was released on 27 September 2022, after completing his seven-year prison sentence.

Zhou Shifeng is still subject to deprivation of his political rights for 5 years after his release. Since his release, Mr Zhou has been subject to close surveillance and continued harassment by the authorities. On 19 April 2023, Mr Zhou was taken away by unknown authorities, only to be released again a day later. On 22 May 2023, Mr Zhou left Beijing to go back to his hometown, after his surveillance had been tightened further.

21. Additionally, lawyers in China are sometimes pressured to drop certain politically sensitive cases. In November and December 2022, there were large scale peaceful protests in several big Chinese cities against the zero-COVID policy. During these protests, a large number of protesters were arrested. Lawyers have been providing legal services to those arrested during the protests. Lawyers report being pressured by local authorities and state police. Lawyers were warned to drop certain cases and have been questioned by state security police. Lawyers also stated receiving threatening phone calls.

G. Freedom of Expression of Lawyers

22. Lawyers, like any other individuals, have the right to freedom of expression. In particular, they have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights. This right is guaranteed under Article 19 of the ICCPR and Principle 23 of the Basic Principles. Lawyers' right to freedom of expression in connection to their professional capacity under the Basic Principles, the UDHR and the ICCPR, extends to legal advocacy in the protection of the rights of their clients. Lawyers must be enabled to effectively protect the rights and interests of their clients. This should include, for example, the use of social media platforms to inform the public about human rights law.
23. The case of Qin Yongpei shows that lawyers can experience retaliations for criticising government officials or speaking on politically sensitive topics:

a) Qin Yongpei

On 31 October 2019, Qin Yongpei was detained in apparent retaliation for criticising the corruption of high-level Chinese officials on social media after police raided his office. He was charged with “inciting subversion of state power” more than a month after his arrest and has been in police custody ever since. The Nanning police has continuously refused requests by Qin Yongpei’s lawyers to meet their client but did bring in Mr. Qin’s two daughters for questioning. Mr Qin was eventually tried on 31 December 2021, with his family and lawyers only being informed of the trial 4 days before. Only on 31 March 2023 the verdict was announced and Qin Yongpei was convicted of ‘inciting subversion to state power’ to 5 years imprisonment and 3 years deprivation of political rights.

24. Additionally, the use of non-disclosure agreements (‘NDAs’) in trial is becoming increasingly common in China. This practice requires attendees of a trial, including lawyers, to sign an NDA pursuant to which they are not allowed to disclose any information about the case or trial, including to the media. Chinese lawyers and their families believe that the NDAs allow the Chinese government to prosecute lawyers and other human rights defenders with as little public and international attention as possible.

H. Restrictions of lawyers’ rights in Hong Kong

25. L4L, IBAHRI, and The 29 Principles are concerned about the increasing restrictions on lawyers rights since the implementation of the Law on Safeguarding National Security in the Hong Kong Special Administrative Region (HKNSL).^{xxxiii} The imposition of the HKNSL has severely impinged upon the city’s commitment to human rights protection. This law, unilaterally enforced upon Hong Kong by the Central People’s Government, fundamentally undermines the rule of law within the region.
26. The HKNSL was a paramount point of concern for the Human Rights Committee (HRCttee) during its June 2022 review session of Hong Kong’s compliance with the ICCPR. As per the HRCttee in its concluding observations^{xxxiv}, the HKNSL has adversely affected a broad spectrum of rights under the ICCPR, including articles 2, 4, 7, 9, 10, 12, 14, 15, 17, 18, 19, 21, 22 and 25. The HRCttee has identified multiple shortcomings of the HKNSL which has led it to call for the repeal of the HKNSL. These shortcomings include^{xxxv}:
- a) The lack of clarity on “national security”, the types of behaviour and conduct that constitute a criminal offence under the Law, undermining the principle of legal certainty;
 - b) The transfer of national security cases to the Central People’s Government, China not being a party to the Covenant, for investigation, prosecution, trial and execution of penalties, as provided for in articles 55, 56 and 57, which may lead to de facto breach of obligations of Hong Kong under the Covenant;
 - c) The absence of mechanisms under the Law to allow suspects to challenge enforcement measures taken by the authorities of the Central People’s Government and seek judicial remedies in case of violation of Covenant rights;
 - d) The excessive power of the Chief Executive and other measures provided for in the Law, which undermine the independence of judiciary and procedural

safeguards for access to justice and the right to a fair trial, as specified in paragraph 35 below;

- e) The extensive investigative powers of the Hong Kong Police Force's department for safeguarding national security and the absence of judicial oversight, provided for under article 43 of the Law and the implementation rules;
- f) The lack of clarity on the grounds for invoking the Law's extraterritorial application.

27. While the HKNSL *prima facie* acknowledges the need to protect human rights and commitment to the rule of law, its broad measures pose significant risks to these principles. To affirm its commitment, the HKNSL specifically refers in article 4 to the adherence to the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, this provision, at best, serves as a smokescreen, as the actual application of the HKNSL contravenes multiple articles of human rights protection as outlined in the ICCPR and ICESCR.

28. These shortcomings were noted in a recent communication delivered to the HKSAR Government by the Special Rapporteur on the Independence of Judges and Lawyers . They noted that provisions in the HKNSL pose threats to Hong Kong's judicial independence and justice accessibility.^{xxxvi} The HKNSL, for example, grants the Chief Executive power to appoint and remove judges for national security cases, introduces the possibility of jury-less trials, and provides for case transfer to mainland China.^{xxxvii} Such view is shared by the Committee on Economics, Social and Cultural Rights (CESCR), which stated in its recent concluding observations^{xxxviii}, that the imposition of the HKNSL has *de facto* abolished independence of the judiciary in Hong Kong.

29. L4L, IBAHRI and The 29 Principles would particularly like to point out that the HKNSL and related sedition laws profoundly impacts human rights lawyers within the territory, in terms of the shrinking practice scope they can engage in and the significant risk posed to their personal liberty and security. Similar to events observed in mainland China, the implementation of the HKNSL and sedition laws suggests that human rights lawyers in Hong Kong are now vulnerable to forms of interference, including arrests, arbitrary detention, and unjust prosecutions, which could lead to severe sentences.

30. Both the CESCR^{xxxix} and HRCtee^{xl} in their concluding observations noted above have expressed concern about the HKNSL's arbitrary application and lack of due process. Both committees noted the potential detrimental effects on human rights focused-work and expression, including the arrest and arbitrary detention of journalists, politicians, academics, students and human rights defenders expressing dissenting opinions.^{xli} The HRCtee urged the HKSAR Government to cease the application of the HKNSL.

a) Chow Hang-Tung

The case of Chow Hang Tung, a human rights lawyer and female human rights defender (WHRD), serves as an illustration of how the application of the HKNSL can undermine the rule of law, especially in the context of human rights lawyers

and advocates in Hong Kong.

In June 2023, the UN Working Group on Arbitrary Detention issued an opinion^{xlii} on the ongoing detention of Chow. Chow faced multiple arrests on various charges, with the most recent arrest occurring on 8 September 2021. She has been held in detention since then. The charges levied against her included two counts of "incitement to knowingly participate in an unauthorised assembly," connected to a vigil of the Tiananmen Square protests and massacre, "failing to comply with the police request for information to assist in an investigation of an organisation as a suspected "foreign agent" under article 43 of the HKNSL, and "incitement to State subversion" under article 22 of the HKNSL. The Working Group determined that Chow's detention was arbitrary on several grounds. In its tardy response, the HKSAR Government denied the assertion but failed to offer specific and substantive counterarguments.^{xliii}

On the first ground, the Working Group concluded that Chow's arrest and detention were arbitrary, contravening Article 9 (1) and (2) of the ICCPR.^{xliv} The Group expressed serious concerns over the extensive initial detention and the frequent denials of bail. When she was arrested on 4 June 2021, Chow was accused by the authorities of inciting an unauthorised assembly via two social media posts in which she merely urged people to light a candle "in every corner of Hong Kong".^{xlv} Even though the charges were vague, Chow faced prolonged detention as her numerous bail applications were denied. When a bail application was eventually considered, the bail conditions provided were ambiguously worded^{xlvi}, making the condition too ambiguous to comply with. This tendency to use ambiguous terminology, such as "subversion" and "secession" had already been noted by UN mandate holders in 2020, who highlighted the risk of the potential misuse of such terms to misconstrue lawful citizen-state interactions as illegal activities.^{xlvii}

In addition, it was further pinpointed by the Working Group that Chow's right to a fair trial was infringed, as a magistrate involved in the trial manipulated her social media posts used as evidence, leading to an exclusion of potentially exculpatory statements.^{xlviii} Despite Chow's conviction being overturned by the city's High Court, the HKSAR Government failed to explain the Magistrate's initial ruling in response to the Working Group's inquiry. It must be emphasised that any instance of evidence manipulation by judicial officers aimed at ensuring a conviction against selected individuals starkly undermines the entire principle of the rule of law.

Last but not least, the Working Group concluded that Chow's arrest and detention were driven by discriminatory practice pursuant to her political opinion and her activism, making her detention to be arbitrary.^{xlix}

This case of Chow Hang Tung thus demonstrates the detrimental impact of the HKNSL on the rule of law and the numerous violations of human rights and principles of justice that may arise against the backdrop of its adoption, particularly in relation to human rights lawyers and defenders.

I. Access to legal representation of own choosing

32. L4L, IBAHRI and The 29 Principles are concerned that the HKNSL further hinders lawyers' rights in making legal representation. Such limitation was demonstrated in the case of media tycoon Jimmy Lai Chee-ying, the founder of the now-disbanded Apple Daily, as the actions taken by the HKSAR Government towards limiting a defendant's freedom to choose their legal representation have raised concern.
33. On 28 November 2022, the Chief Executive of the HKSAR Government sought interpretation of the HKNSL from the Standing Committee of the National People's Congress in Beijing.ⁱ This request for interpretation followed the city's Court of Final Appeal's ruling dismissing the government's appeal to bar British barrister Tim Owen KC from representing Jimmy Lai.ⁱⁱ
34. The decision was perceived as putting judicial matters into the political realm, casting a significant shadow on the principle of the separation of powers. Traditionally, Hong Kong's legal system, deeply rooted in its common law tradition, allows foreign lawyers to represent clients in its courts. The HKSAR Government's determination to restrict foreign legal representation threatens this tradition, limiting defendants' right to representation of their choice, and therefore hindering access to justice.
35. This apparent deviation from the established norms raises questions about Hong Kong's adherence to international standards. UN Basic Principle 1 stipulates that "all persons are entitled to call upon the assistance of a lawyer of their choice", and mandates that governments should "ensure that lawyers are able perform all of their professional functions without intimidation, hindrance, harassment, or improper interference" (Principle 16(a)). The actions of the HKSAR Government are, arguably, in contravention of these principles.
36. Eventually, the NPCSC's ruling on 30 December 2022 now requires Hong Kong courts to obtain certification from the Chief Executive to determine whether an act involves national security.ⁱⁱⁱ An amendment of law confirming the same was passed in Hong Kong's Legislative Council in May 2023. This ruling, together with the law amendment, means that any defendants under the HKNSL who instruct a foreign lawyer to represent them at their trial are subject to the sole discretion of the Chief Executive and the Committee for Safeguarding National Security.
37. These circumstances highlight a potentially concerning trajectory, where international standards on judicial independence appear to be compromised. Principle 4 of the UN Basic Principles on the Independence of the Judiciary, which expressly prohibits "any inappropriate or unwarranted interference with the judicial process", seems to be at risk of violation. The adoption of the HKNSL sets a precedent that limits the ability of lawyers in fulfilling their duties to make representation.
38. Also in Mainland China we observe problems with access to legal representation of one's own choosing. Detainees under RSDL are frequently denied access to legal counsel which is guaranteed under Article 37 of China's Criminal Law within 48 hours of making a request. The following cases illustrate that detained lawyers also face such problems:

a) Yu Wensheng & Xu Yan

When Yu Wensheng was first arrested on 19 January 2018, he was not given access to a lawyer within 48 hours of requesting. In May 2019, Mr Yu was secretly tried at the Xuzhou Municipal Intermediate Court. His lawyers had not been informed and were not present. Only on 14 August 2020, after Yu Wensheng had already been convicted to 4 years imprisonment, he was permitted to meet a lawyer of his choice for the first time.

A little over a year since his release, Yu Wensheng was arrested again on 13 April 2023 together with his wife Xu Yan and they are still detained. Two lawyers attempted to represent the couple, but they were told that “Yu Wensheng did not want any lawyers at this stage” and that Xu Yan had already hired her own lawyers. At the time of this submission, Yu Wensheng and Xu Yan have not been given access to counsel of their own choosing nor to the lawyers that their family hired for them.

b) Chang Weiping

Chang Weiping was first arrested in January 2020 and later placed under RSDL for prolonged periods of time. His requests for legal representation were denied until 14 September 2021. Only in May 2022, Mr Chang’s lawyers were given access to his casefiles. However, his lawyers were told they were not allowed to make copies, meaning that the lawyers had to read through hundreds of pages on the spot.

J. Recommendations to the Government of China

- a. Immediately release all detained human rights lawyers;**
- b. Take measures to guarantee detained lawyers immediate and effective access to legal counsel of their own choosing;**
- c. Abolish RSDL and all other forms of administrative detention, that detain individuals without due process and without independent judicial oversight;**
- d. Immediately halt all abuse and misuse of national security laws, including the HKSNL, aimed at arbitrarily restricting lawyers’ legitimate activities and detain and prosecute human rights lawyers and defenders;**
- e. Take immediate steps to establish due safeguards, in law and practice, to guarantee the full independence, safety and effective protection of lawyers, and cease any form of retaliation in connection with their professional activity such as the nature of the cases that the lawyer is involved in or the expression of critical views;**
- f. Take immediate measures to guarantee the effective protection of the right of freedom of expression of lawyers as set out in article 23 of the Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of**

matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.

ⁱ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, which was adopted without a vote on December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly.

ⁱⁱ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/35/12, 22 June 2017, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/L.20.

ⁱⁱⁱ During its 29th session (from 15 June – 3 July 2015), the Human Rights Council adopted without a vote a resolution on the independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers. While recalling the Basic Principles on the Role of Lawyers and condemning the increasingly frequent attacks on the independence of lawyers, in particular threats, intimidation and interference in the discharge of their professional functions, the Human Rights Council reminded all States of their duty “to uphold the integrity of [lawyers] and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice”. See UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers, A/HRC/RES/29/6, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/29/L.11.

^{iv} Report of the Working Group on the Universal Periodic Review of China, A/HRC/40/6, 26 December 2018.

^v Addendum to the Report of the Working Group on the Universal Periodic Review of China, A/HRC/40/6/Add.1.

^{vi} Recommendation 28.216 (Finland): Guarantee the protection of lawyers against any form of harassment, violence or attempts to impede or interfere with the defence of their clients, in accordance with national law.

^{vii} Recommendation 28.340 (Ireland): Take immediate action to allow human rights defenders and lawyers to exercise their right to freedom of expression and opinion without threats, harassment or repercussions. Recommendation 28.337 (Belgium): Take the necessary measures to guarantee that human rights defenders can exercise their freedom of expression and association.

^{viii} Recommendation 28.341 (Argentina): Adopt the necessary measures to provide a safe environment for those who work on the protection and promotion of human rights, including human rights defenders and journalists, and investigate and punish all acts of violence against them.

Recommendation 28.342 (Liechtenstein): Ensure that human rights defenders can conduct their work without being subject to harassment, intimidation or any kind of reprisals.

Recommendation 28.335 (Spain): Apply public policies to protect human rights defenders in line with international standards.

^{ix} Addendum to the Report of the Working Group on the Universal Periodic Review of China, A/HRC/40/6/Add.1.

^x Recommendation 28.176 (Switzerland): Put an end to the practice of “residential surveillance at a designated location”, specifically with regard to human rights defenders and lawyers.

^{xi} Recommendation 28.213 (Czechia): Guarantee fair trials, an independent judiciary and access to legal counsel, release all human rights defenders, including lawyers, and refrain from prosecuting those who exercise their right or defend others.

^{xii} L4L, *Joint statement on ‘Civil society call to end enforced disappearances in China* (30 August 2022), <https://lawyersforlawyers.org/joint-statement-on-civil-society-call-to-end-enforced-disappearances-in-china/>; L4L, *Chinese New Year: Looking back on another year of repression of China’s legal professionals* (22 January

2023), <https://lawyersforlawyers.org/chinese-new-year-looking-back-on-another-year-of-repression-of-chinas-legal-professionals/>

^{xiii} Human Rights Committee, General Comment No. 32, Article 14: Right to equality before court and tribunals and to a fair trial, 23 August 2007, CCPR/C/GC/32, par. 34.

^{xiv} ICCPR, Art. 14.

^{xv} OHCHR, *Opinions adopted by the Working Group on Arbitrary Detention at its eighty-fourth session, 24 April – 3 May 2019; Opinion No. 15/2019 concerning Yu Wensheng (China)*, A/HRC/WGAD/2019/15 (29 May 2019), https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session84/A_HRC_WGAD_2019_15.pdf

^{xvi} L4L, *Joint statement on the trials of Ding Jiaxi & Xu Zhiyong* (1 juli 2022) <https://lawyersforlawyers.org/joint-statement-on-the-trials-of-ding-jiaxi-xu-zhiyong/>

^{xvii} L4L, *Joint statement on the sentencing of Ding Jiaxi and Xu Zhiyong* (24 April 2023) <https://lawyersforlawyers.org/joint-statement-on-the-sentencing-of-ding-jiaxi-and-xu-zhiyong/> ; Front Line Defenders, *Human Rights Defender Ding Jiaxi Sentenced to 12 Years in Prison* <https://www.frontlinedefenders.org/en/case/human-rights-defender-ding-jiaxi-sentenced-12-years-in-prison>

^{xviii} L4L, *Joint statement calling for the release of Li Yuhan* (29 November 2022) <https://lawyersforlawyers.org/joint-statement-calling-for-the-release-of-li-yuhan/>

^{xix} L4L, *Letter on the ongoing detention of Li Yuhan* (9 October 2020) <https://lawyersforlawyers.org/en/letter-on-the-ongoingdetention-of-li-yuhan/>.

^{xx} Front Line Defenders, *Li Yuhan's Health Deteriorates and Under Duress to Confess* (14 July 2021), <https://www.frontlinedefenders.org/en/case/li-yuhans-health-deteriorates-and-under-duress-confess>.

^{xxi} Front Line Defenders, *Woman human rights defender and lawyer Li Yuhan's health deteriorates under prolonged detention* (6 September 2022) <https://www.frontlinedefenders.org/en/case/woman-human-rights-defender-and-lawyer-li-yuhans-health-deteriorates-under-prolonged-detention>

^{xxii} L4L, *Joint statement on arrest Yu Wensheng and Xu Yan* (28 April 2023) <https://lawyersforlawyers.org/joint-statement-on-arrest-yu-wensheng-and-xu-yan/>

^{xxiii} L4L, *Yu Wensheng* (n.d.) <https://lawyersforlawyers.org/advocaten/yu-wensheng/> ; Frontline Defenders, *Yu Wensheng sentenced, and transferred from the Xuzhou detention centre to the Nanjing prison* (16 March 2021), <https://www.frontlinedefenders.org/en/case/yu-wensheng-detained-and-charged-disrupting-public-service> ; Amnesty

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Martin Ennals Award, *Yu Wensheng, a lawyer who held his government to account*, 12 February 2021, <https://www.martinennalsaward.org/yu-wensheng-a-lawyer-who-held-his-government-to-account/>

^{xxiv} L4L, *Joint statement on the trial and detention of Chang Weiping*, 28 July 2022, <https://lawyersforlawyers.org/joint-statement-on-the-trial-and-detention-of-chang-weiping/>.

^{xxv} L4L & LRWC, *China: UPR Mid-Term Report*, p. 7-8, <https://lawyersforlawyers.org/china-upr-mid-term-report/>

^{xxvi} Basic Principles, par. 16(a).

^{xxvii} Basic Principles, par. 16(c).

^{xxviii} Basic Principles, par. 27.

^{xxix} Basic Principles, par. 28.

^{xxx} L4L, *Joint statement on the suspension of Lin Qilei's and revocation of Liang Xiaojun's legal practice licenses* (7 December 2021), <https://lawyersforlawyers.org/joint-statement-on-the-suspension-of-lin-qileis-and-revocation-of-liang-xiaojuns-legal-practice-licenses/>

^{xxxi} *Ibid.*

^{xxxii} UN High Commissioner for Human Rights, 'China: Harassment of human rights lawyer Jiang Tianyong must stop, say UN experts', 24 September 2019, <https://www.ohchr.org/en/press-releases/2019/09/china-harassment-human-rights-lawyer-jiang-tianyong-must-stop-say-un-experts?LangID=E&NewsID=25046>.

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^{xxxiv} UN Human Rights Committee, ‘Concluding observations on the fourth periodic report of Hong Kong, China’, CCPR/C/CHN-HKG/CO/4, 11 November 2022.

^{xxxv} *Ibid*, par. 12-13.

^{xxxvi} Mandate of the Special Rapporteur on the independence of judges and lawyers, OL CHN 2/2023, 19 April 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27992>.

^{xxxvii} *Ibid*, p. 2-3.

^{xxxviii} UN Committee on Economic, Social and Cultural Rights, ‘Concluding observations on the third periodic report of China, including Hong Kong, China, and Macao, China, E/C.12/CHN/CO/3, 22 March 2023, par. 100.

^{xxxix} *Ibid*, par. 102.

^{xl} *Ibid*.

^{xli} UN Human Rights Committee, ‘Concluding observations on the fourth periodic report of Hong Kong, China’, CCPR/C/CHN-HKG/CO/4, 11 November 2022, par. 41.

^{xlii} UN Human Rights Council Working Group on Arbitrary Detention, ‘Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March-5 April 2023, Opinion No. 30/2023 concerning Ms. Hang Tung Chow (Hong Kong, China), A/HRC/WGAD/2023/30, 1 May 2023.

^{xliii} *Ibid*, par. 56.

^{xliv} *Ibid*, par. 64-73.

^{xlvi} *Ibid*, par. 39.

^{xlvi} *Ibid*, par. 36.

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^{xlviii} UN Human Rights Council Working Group on Arbitrary Detention, ‘Opinions adopted by the Working Group on Arbitrary Detention at its ninety-sixth session, 27 March-5 April 2023, Opinion No. 30/2023 concerning Ms. Hang Tung Chow (Hong Kong, China), A/HRC/WGAD/2023/30, 1 May 2023, par. 87.

^{xlix} *Ibid*, par. 91-94.

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