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Human Rights Lawyers' Role in Rights NGOs in China: History and Future

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ARTICLE
HUMAN RIGHTS LAWYERS' ROLE IN RIGHTS
NGOS IN CHINA:
HISTORY AND FUTURE

*Lu Jun**

I.	INTRODUCTION.....	1197
II.	CONTRIBUTIONS OF HUMAN RIGHTS LAWYERS TO RIGHTS NGOS IN CHINA.....	1198
III.	GOVERNMENT INTERFERENCE IN THE WORK OF RIGHTS NGOS IN CHINA.....	1203
IV.	COLLABORATIONS BETWEEN HUMAN RIGHTS LAWYERS AND NGOS: CHALLENGES AND PROSPECTS.....	1208
V.	CONCLUSION.....	1212

I. INTRODUCTION

With the passage of the “Lawyers Law of the People’s Republic of China” at the Nineteenth Session of the Standing Committee of the Eighth National People’s Congress on May 15, 1996,¹ the Chinese legal profession entered a period of fast and orderly development. On September 12, 1997, a report released at the Fifteenth National Congress of the Communist Party of China formally introduced the term “rule of law” (依法治国).² This term was in turn written into an

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1. *Lawyers Law of the People’s Republic of China* (中华人民共和国律师法), CHINA NAT’L PEOPLE’S CONG. (中国人大网), http://www.npc.gov.cn/wxzl/gongbao/2013-02/25/content_1790832.htm (last visited June 25, 2018).

2. *See Report by Jiang Zemin to the Fifteenth National Congress of the Communist Party of China* (江泽民在中国共产党第十五次全国代表大会上的报告), COMMUNIST PARTY OF

amendment to the Constitution of the People's Republic of China ("PRC") at the Second Session of the Ninth National People's Congress in 1999.³ After these developments, lawyers became increasingly engaged and visible in society, and their role increasingly important. This was nowhere more evident than in the realm of human rights protection. In the last two decades, Chinese human rights lawyers have not only played a key role in the area of criminal justice and in protecting the rights of political dissidents, but also in founding and directing influential rights non-government organizations ("NGOs").

II. CONTRIBUTIONS OF HUMAN RIGHTS LAWYERS TO RIGHTS NGOS IN CHINA

The 1989 June Fourth massacre and political repression that followed resulted in the severe and extensive repression of political dissident activities as well as Chinese civil society as whole. However, gradually in the time that followed, activists found ways to establish and operate NGOs—including NGOs focusing on rights protection.⁴ In many cases, the founders of some of the most important of these NGOs were lawyers.

In September 1995, a journalist named Guo Jianmei attended the Fourth World Conference on Women, a conference convened by the United Nations in Beijing.⁵ Though she spent more than ten days at the conference, she found that no one could satisfactorily reply to a fairly straightforward question: Whether or not there existed any civil society organization that could provide legal aid to women in China.⁶ Soon after the conference, Ms. Guo resigned from her position at a prominent magazine and started practicing law, ultimately becoming China's first

CHINA ONLINE NEWS ONLINE (中国共产党新闻网), <http://cpc.people.com.cn/GB/64162/64168/64568/65445/4526285.html> (last visited June 25, 2018) [<https://perma.cc/4YAP-HY3W>].

3. See *Second Session of the Ninth National People's Congress* (全国人大九届二次会议"国人大九届二次会议"), THE CENT. PEOPLE'S GOV'T OF CHINA, http://www.gov.cn/test/2006-02/24/content_209903.htm (last visited June 25, 2018) [<https://perma.cc/7C77-BNH7>].

4. Chen Yizhong: Strength of Civil Society's action (陈宜中：民间行动的力量), 30 *Reflexion* (思想 30) (May 26, 2016)145-147 (2016) EAN : 9789570847338 (last visited June 9, 2018)

5. See *Guo Jianmei: The Perseverance of the First Generation of Public Interest Lawyers* (郭建梅：第一代公益律师的坚持), QIANQIAN LAW FIRM (Dec. 7, 2015, 4:51 PM), http://www.woman-legalaid.org.cn/news_details/newsId=365.html (last visited Mar. 4, 2018) [<https://perma.cc/JH6X-YCW4>].

6. See *id.*

full-time public interest lawyer.⁷ In December 1995, Ms. Guo co-founded China's first legal aid NGO for women, the Center for Women's Law Studies and Legal Services of Peking University ("Peking University Women's Center").⁸ Over the next ten years, the Center became the most influential NGO working on women's rights, providing a tremendous amount of legal aid and consultations to women across China and regularly engaging in legislative recommendation processes.⁹ Ms. Guo also co-founded Qianqian Law Firm in 2009 and Beijing Zhongze Women's Legal Consulting Services Center in 2010.¹⁰

Through many years of development, Ms. Guo and the Peking University Women's Center began using what were widely considered "extreme" working methods, for example, setting up networking groups and issuing public declarations. The Center also began addressing so-called "politically sensitive" topics, such as local government scandals and black jails. For example, in March 2009, Ms. Guo's center launched the "Public Interest Lawyers' Network," a member network of over 400 lawyers and legal workers across China.¹¹ On May 10, 2009, the news broke that a young woman from Hubei Province, Ms. Deng Yujiao, stabbed a local government official to death for attempting to rape her. The case sparked a national uproar. The Peking University Women's Center quickly took up the case. Together with another public interest organization that worked on anti-discrimination cases, the Beijing Yirenping Center ("Yirenping"), the Peking University Women's Center organized a public conference about Ms. Deng's case, launched a group specifically focused on Ms. Deng's defense called the "Women's Community Support Coalition," and published a statement entitled "Prevent the Encore of the DENG Yujiao Tragedy." The Peking University Women's Center also started a letter-writing campaign to local police bureaus, courts, and government departments to increase official and public awareness of the case.¹² On August 4, 2009, a guard in a black jail in Beijing raped

7. *See id.*

8. *See id.*

9. *See id.*

10. *See id.*

11. *See Introduction to the Public Interest Lawyers' Network* (公益律师网络介绍), PUB. INT. LAW. NETWORK, <http://www.wrpil.org.cn/PageInfo/CN/ShowNews.aspx?CodeType=Net> (last visited June 25, 2018) [<https://perma.cc/R9S3-KTNE>].

12. *See generally* Cao Xiaole, *Center for Women's Law Studies and Legal Services of Peking University shut down; Center known for its involvement in the DENG Yujiao case* (北大

a political petitioner named LI Ruirui.¹³ The Peking University Women's Center appointed a lawyer, Zhang Jing, to provide legal aid to Ms. Li.¹⁴ In recognition of the many contributions Ms. Guo made both as a public interest lawyer and as a leader in the public interest sector, the US Department of State recognized her with the International Women of Courage Award in 2011.¹⁵

There are of course many other examples of human rights lawyers founding and operating prominent rights NGOs. To name just a few: Mr. Xu Zhiyong, Mr. Teng Biao, and Mr. Zhang Xingshui co-founded the Open Constitution Initiative ("OCI");¹⁶ Mr. Li Fangping co-founded Yirenping;¹⁷ Ms. Huang Xuetao founded the Equity and Justice Initiative ("EJI") in Shenzhen to focus on involuntary psychiatric commitment;¹⁸ Ms. Li Ying founded the Yuanzhong Gender Development Institute ("Yuanzhong");¹⁹ Ms. Li Yan co-founded the Wider Pro Bono Legal Service Center;²⁰ Mr. Wang Quanzhang co-founded the Chinese Urgent Action Working Group;²¹ Mr. Tong Lihua founded a law firm and civil society organization focusing on migrant workers' rights and juvenile justice called

法学院妇女法律研究与服务中心被撤 曾几次介入邓玉娇案), CHENGDU BUS. DAILY, Apr. 8, 2010, <http://news.sina.com.cn/c/2010-04-09/042817344110s.shtml> [<https://perma.cc/YM22-C8HD>].

13. See Verna Yu, *Victim angered by lenient sentence for "black jail" rapist*, SOUTH CHINA MORNING POST (Dec. 12, 2009, 12:00 AM), <http://www.scmp.com/article/701085/victim-angered-lenient-sentence-black-jail-rapist> [<https://perma.cc/E46Q-QHTT>].

14. See *id.*

15. See Rachel Vogelstein, *International Women of Courage Awards*, THE WHITE HOUSE BLOG (Mar. 10 2011), <https://obamawhitehouse.archives.gov/blog/2011/03/10/international-women-courage-awards> [<https://perma.cc/D29W-ZLPQ>].

16. See Feng Chongyi, Colin Hawes, & Gu Ming, *Rights Defence Lawyers as Dissidents in Contemporary China*, 3 INT'L J. OF CHINA STUD. 3 (Dec. 2012).

17. The Beijing Yirenping Center was co-founded by the author as well as Mr. LI Fangping.

18. See Huang Xuetao on the Reform of the Involuntary Commitment System, U.S.-ASIA LAW INSTITUTE (Apr. 18, 2016), <https://usali.org/events-1/huang-xuetao-on-reform-of-involuntary-commitment-system> [<https://perma.cc/FR6H-9U9T>].

19. See Yao Lu, *First-year anniversary of the Anti-Domestic Violence Law: Have fewer been sacrificed?*, RENWU (Mar. 2017), at 34-35, <http://www.cqvip.com/qk/80469x/201703/671515371.html> [<https://perma.cc/FSC2-8Y6A>].

20. See Attorney Li Yan Attends Pro Bono Legal Seminar, LONGAN LAW FIRM (July 22, 2013, 3:07 PM), <http://english.longanlaw.com/ennews/2916.jhtml> [<https://perma.cc/A39M-6UFP>].

21. See Verna Yu, *Detained Swedish NGO worker Peter Dahlin's colleague refutes accusation that his group endangered China's security*, SOUTH CHINA MORNING POST, (June 12, 2017, 1:03 PM), <http://www.scmp.com/news/china/policies-politics/article/1903454/detained-swedish-ngo-worker-peter-dahlins-colleague> [<https://perma.cc/ZX9R-BL7V>].

“Zhicheng” (致诚);²² Mr. Huang Leping founded a labor rights NGO;²³ and Mr. Zhou Dan founded an NGO promoting the rights of the Chinese LGBT community.²⁴ In addition to founding these rights NGOs, Chinese human rights lawyers also serve in important positions as managers and staff lawyers. In June 2008, Ms. Huang Yizhi joined the Beijing Yirenping Center 18 months after its founding in order to implement a project related to the anti-discrimination law.²⁵ Over the next six years, Ms. Huang managed and worked on many of Yirenping’s high-impact lawsuits, such as the first-ever cases in China in response to Hepatitis B discrimination in the media industry, HIV/AIDS-related and gender-based discrimination in the workplace, and “genetic discrimination.”²⁶ Only three years after joining Yirenping, Ms. Huang became executive director of the organization.²⁷ Her leadership contributed a great deal to Yirenping’s subsequent development.

In the decade prior to the rise of authoritarian President XI Jinping, Yirenping was widely considered one of the most successful civil society organizations working on public interest litigation in China.²⁸ On March 27, 2015, US State Department spokesman Jeffrey Rathke mentioned Yirenping by name as an “important civil society organization in China” in his daily press briefing.²⁹ In December 2015, the Italian government awarded Yirenping the International Padre Pino

22. See Li Handan, *Tong Lihua: Prominent rights lawyer defends vulnerable people*, 21 CHINESE SONS AND DAUGHTERS 30-34 (2012).

23. See generally WING-CHUNG HO, OCCUPATIONAL HEALTH AND SOCIAL ESTRANGEMENT IN CHINA (2017).

24. Interview with Zhou Dan (2014).

25. Author reviewed the Beijing Yirenping Center’s employment records.

26. See CSCC Speaker Series: Xiaonan Liu and Yizhi Huang: *Anti-Discrimination Law and Social Activism in China*, U. OF PA. CTR. FOR EAST ASIAN STUD., <https://ceas.sas.upenn.edu/events/cscs-speaker-series-xiaonan-liu-and-yizhi-huang-anti-discrimination-law-and-social-activism> (last visited June 25, 2018) [<https://perma.cc/7D94-VMLB>].

27. See generally Lai Yang, ZHANG Hongguang: *Using Weibo to protect rights: One young public interest lawyer’s account* (借力微博维权：一名年轻公益律师的自我修炼), CHINA YOUTH DAILY (2013).

28. See generally Fu Hualing, *Embedded Socio-Legal Activism in China: The Case of Yirenping*, 42 H. K.L. J. (2012).

29. See *Daily Press Briefing – March 27, 2015*, U.S. DEP’T OF STATE, <https://2009-2017.state.gov/r/pa/prs/dpb/2015/03/239836.htm> (last visited June 25, 2018) [<https://perma.cc/957W-TYWL>].

Puglisi Award.³⁰ Other examples of human rights lawyers directing rights NGOs include Mr. Chang Boyang, who served as the Yirenping's legal representative in Zhengzhou, Henan Province,³¹ Mr. Jiang Tianyong, served as the program director of HIV/AIDS-focused NGO, the Beijing Aizhixing Institute,³² and Mr. Li Xiongbing, director of the Open Constitution Initiative.³³

In addition to directing rights NGOs, many human rights lawyers have also served on the staff of such groups in various capacities. For example, Ms. Liu Wei worked for Beida Women's Legal Center as well as the Beijing Aizhixing Institute.³⁴ Ms. Zhang Jingjing worked for the Center for Legal Assistance to Pollution Victims and The Global Network for Public Interest Law ("PILnet").³⁵ Ms. Wang Yongmei has worked for PILnet as well as China Law Development ("CLD").³⁶ Further, dozens of young lawyers have worked or are still working for groups like the Peking University Women's Center, Zhicheng, and Mr. Huang Leping's organization. Even without formally serving as staff, human rights lawyers act as consultants and advisers to these groups. For example, Ms. Lu Miaoqing works with gender equality NGOs;³⁷ Mr. Li Heping works on the issue of government torture with The

30. See *Albo Personaggi Premiati*, ASSOCIAZIONE, JUS VITAE, <http://jusvitae.org/premio-internazionale-padre-pino-puglisi/albo-personaggi-premiati> (last visited June 25, 2018) [<https://perma.cc/6SVU-55ZN>].

31. The Author worked with Yirenping's Zhengzhou branch together with Chang Boyang from 2010- 2014.

32. See *Beijing Aizhixing Institute Welcomes Lawyer Jiang Tianyong Home!*, BEIJING AIZHIXING INSTITUTE (北京爱知行研究所: "北京爱知行研究所欢迎江天勇律师回家!") (Apr. 20 2011), <http://www.canyu.org/n24269c12.aspx> [<https://perma.cc/WFF2-38D6>].

33. See Tang Qiwei, *Beijing civil society human rights organization "OCI" inaugural event shut down*, (北京民间维权组织'公盟'召开年会受阻), RADIO FREE ASIA (Jan. 2, 2011), <https://www.rfa.org/mandarin/yataibaodao/bei-01022011161143.html> [<https://perma.cc/5WTC-RFXA>].

34. See generally Zhang Shaomei, *Female PhD student sexually harassed; to protect her reputation she fights to keep her academic degree* (女博士遭遇性骚扰 为维护名誉反丢学), BEIJING YOUTH DAILY, Jan. 21, 2002; Scott Wilson, *Seeking One's Day in Court: Chinese regime responsiveness to international legal norms on AIDS carriers' and pollution victims' rights*, 2 J. OF CONTEMP. CHINA 77 (2012).

35. See *Jingjing Zhang: Open Society Fellow*, OPEN SOC'Y F., <https://www.opensocietyfoundations.org/people/jingjing-zhang> (last visited Mar. 11, 2018) [<https://perma.cc/3LDE-AJFV>].

36. See *The Future of Chinese Civil Society and Foreign NGOs*, HARV. KENNEDY SCH. ASH CTR. FOR DEMOCRATIC GOVERNANCE AND INNOVATION, <https://ash.harvard.edu/event/future-chinese-civil-society-foreign-ngos> (last visited Mar. 11, 2018) [<https://perma.cc/V392-DG2Q>].

37. Interview with Lu Miaoqing (Dec. 2013).

Rights Practice;³⁸ Mr. Duan Yi cooperates with labor rights NGOs;³⁹ and Mr. Wang Zhenyu's Impact Law Firm provides legal advice and consultation services to many rights-based NGOs;⁴⁰ and Ms. Huang Sha works closely with NGOs that focus on pro bono and gender equality issues.⁴¹

III. GOVERNMENT INTERFERENCE IN THE WORK OF RIGHTS NGOS IN CHINA

Thanks in part to the many contributions of human rights lawyers, rights NGOs have done very important and high impact work on different subjects. However, this work has often been under sustained suppression by the Chinese government, to the detriment of the work of the NGOs as well as the lawyers themselves. One commonly seen problem is restrictions on the registration of rights NGOs. Rights NGOs face incredible difficulty in registering as non-profit entities in mainland China. Though the Chinese government relaxed registration requirements for a number of different types of NGOs in 2013, neither rights NGOs nor law-focused NGOs benefited from this policy change.⁴² Rights NGOs therefore usually have no choice but to register as a company. Without nonprofit legal status, rights NGO are prohibited from publicly raising funds or claiming tax exemptions.

The OCI provides a case study of the implications of these restrictions. Established in 2003 by lawyers Mr. Xu Zhiyong, Mr. Teng Biao, Mr. Zhang Xingshui, and Dr. Yu Jiang,⁴³ it was quickly obvious

38. See Wu Yitong & Dai Weisen, *British human rights organization founder on the arrest of LI Heping* (英国人权机构创办人关注李和平遭酷刑), RADIO FREE ASIA (Jan. 28, 2017), <https://www.rfa.org/cantonese/news/lawyer-01282017091034.html> [https://perma.cc/42FL-L9UY].

39. See Fu Hualing, *Can Lawyers Build a Legal Complex for the Rule of Law in China?*, HUM. RTS. IN CHINA (July 25, 2014), <https://www.hrichina.org/en/china-rights-forum/can-lawyers-build-legal-complex-rule-law-china> [https://perma.cc/4AGW-NRPF].

40. See *Benzene content in Lanzhou tap water exceeds legal standard; Case formally accepted by court after 10 months* (兰州自来水苯超标事件'历经近 10 个月正式立案) XINHUA (Mar. 23, 2015), http://www.xinhuanet.com/politics/2015-03/23/c_127609615_2.htm [https://perma.cc/4J78-M9AV].

41. Interview with Huang Sha (Sept. 2016).

42. See Ministry of Civil Affairs of the People's Republic of China, *Ministry of Civil Affairs: Four types of social organizations by directly registering; mandatory approval process to be eliminated* (民政部：四类社会组织直接登记 不必要审批将取消), XINHUA NEWS, <http://www.mca.gov.cn/article/mxht/mtgz/201312/20131200556602.shtml> (last visited Mar. 4, 2018) [https://perma.cc/F7BB-DQH5].

43. See generally Chongyi, Hawes, & Ming, *supra* note 16.

that registration was going to be an issue. Because OCI was unable to register under the Ministry of Civil Affairs as a “civic nonprofit institution” (民间非营利组织), it was forced to register as a company, first as the “Beijing Sunshine Constitution Path Social Science Research Center,” renamed in September 2005 as the “Beijing Open Alliance Consultation Company, Ltd.”⁴⁴

In July and August of 2009, both the national- and municipal-level tax administration bureaus formally accused OCI of tax evasion and fined the organization a combined total of over CNY¥1 million. On July 29, 2009, OCI director Xu Zhiyong was detained by police on suspicion of tax evasion along with the OCI financial officer Ms. Zhuang Lu. On August 12, 2009, Mr. Xu was formally charged with the crime of tax evasion. During that time, the Beijing Municipality Haidian District Administration for Business and Commerce issued a “Notice of Administrative Fines” and rescinded OCI’s corporate registration.⁴⁵ On August 23, 2009, Mr. Xu was released on bail prior to his trial.⁴⁶

Another problem frequently encountered by rights organizations in China is the restriction of foreign funding, which comprises a significant amount of support for many of these types of organizations. This is a direct result of the fact that, as previously discussed, it is illegal for rights NGOs without nonprofit status and government approval to publicly fundraise.⁴⁷ Donations from other sources, such as domestic foundations or businesses, are also severely restricted as there are widespread concerns within such organizations about the possibility of government reprisal for offering support to rights groups. In fact, it is not unheard of for police to detain businesspeople who become involved with certain NGO activities.⁴⁸ Thus, my observation and

44. Author’s interview to Teng Biao in 2018.

45. See Zhang Lihui & Zhang Boshu, *Mainland Chinese civil society organization governance ‘government monopoly method’ encounters difficulties: The case of OCI* (大陆民间组织治理的‘政府垄断模式’与困境 困境断以‘公盟事件’为例), *HUM. RTS. IN CHINA*, <http://biweeklyarchive.hrichina.org/article/504.html> (last visited June 25, 2018) [<https://perma.cc/FAP5-9C8X>].

46. U.S. DEP’T OF STATE, 2009 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) (2010).

47. See generally *The Charity Law of China* (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 16, 2016, effective Aug. 01, 2016), ch. 3, *translated in the China Development Brief*.

48. See Oiwan Lam, *China Detains Activist Billionaire Wang Gongquan Amid Crackdown on Dissent*, *PUB. RADIO INT’L*, <https://www.pri.org/stories/china-detains-activist-billionaire>

experience indicate that most rights NGOs have no choice but to seek foreign funding; and simultaneously, the Chinese government has sought to make that as difficult as possible.

The most recent technique in this vein took the form of the “Law of the People’s Republic of China on the Administration of Activities of Foreign Non-governmental Organizations in Mainland China” (“FNGO Law”), which came into effect on January 1, 2017.⁴⁹ This law requires foreign foundations and other kinds of foreign NGOs to register a representative office with Chinese public security authorities, and have their activities monitored by a relevant government department.⁵⁰ Failure to do so would result in expulsion from China and possible administrative penalties or even criminal penalties.⁵¹ Of course, my inference is that it has been incredibly difficult for many foreign groups working on human rights issues to obtain registration. As a result, their grants in China are considered illegal, and grantees run the risk of being punished by police. Some of my friends working for foreign groups have told me that their organizations have had to reduce their work on human rights issues in China in order to be registered. Either way, the FNGO Law has seriously impacted the financial status of rights NGOs and the lawyers working with them, as well as increased the risks for all involved.

Another set of difficulties faced by rights NGOs and human rights in contemporary China are those inflicted by the state’s public security apparatus. This includes strict monitoring and investigation as well as more explicit methods such as making threats, enacting travel bans, and forced relocation of both NGOs and individual rights advocates.⁵² It is widely known that staff working with rights NGOs have their office and mobile phones monitored closely by police.⁵³ Public security and state security authorities “visit” NGO directors and staff regularly, particularly during the so-called “politically sensitive” periods such as

wang-gongquan-amid-crackdown-dissent-0 (last visited June 25, 2018) [<https://perma.cc/JEL3-G4R7>].

49. See Order of the President of the People’s Republic of China No. 44 (April 28, 2016), <http://www.mps.gov.cn/n2254314/n2254409/n4904353/c5548987/content.html>

50. See generally Law of the People’s Republic of China on Administration of Activities of Overseas Nongovernmental Organizations in the Mainland of China (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 18, 2016, effective Jan. 01, 2017), ch. 2.

51. See generally *Law of China on the Management of Foreign Non-government Organizations’ Activities Within Mainland China* (promulgated by the Standing Comm. Nat’l People’s Cong., Apr. 18, 2016, effective Jan. 01, 2017), ch. 6.

52. Author’s experience of working for NGOs in China between 2003 and 2013.

53. Author’s experience of working for NGOs in China between 2003 and 2013.

the NPC and National Party Congress annual meetings and the anniversary of the June 4 Massacre, etc.⁵⁴ During these “visits,” police usually raise questions about NGOs’ current activities, future plans, cooperation with other NGOs and activists, and connections with foreign foundations, institutes, and diplomats.⁵⁵ Police even visit young staff lawyers and apply pressure on them to resign from rights NGOs.⁵⁶ Staff lawyers’ family members have also been visited by police.⁵⁷

The harassment does not stop outside of the office of these rights lawyers. Police prevented lawyer Li Fangping, the co-founder of Beijing Yirenping Center, from traveling to Hong Kong to visit his family members on several occasions since July 2014.⁵⁸ Increasingly of late, police have also taken to pressuring rights NGO office landlords to cancel the NGO’s lease. For example, one lawyer was informed by her office’s landlord that the NGO’s office lease would be immediately canceled in the weeks leading up to the 18th National Party Congress in 2012.⁵⁹

Rights NGOs and lawyers are also subject to arbitrary detentions and office searches. In May 2014, human rights lawyer Mr. Chang Boyang was criminally detained by police in Zhengzhou, Henan Province after he tried to meet his detained clients after participating in an event related to the 25th anniversary of the Tiananmen Square protests.⁶⁰ Mr. Chang was charged with “gathering a crowd to disrupt public order.”⁶¹ Twenty days after Mr. Chang’s detention, police searched Yirenping’s Zhengzhou branch office and questioned one Yirenping staff member regarding the organization’s connections with

54 . Author’s experience of working for NGOs in China between 2003 and 2013.

55 . Author’s experience of working for NGOs in China between 2003 and 2013.

56 . Author’s experience of working for NGOs in China between 2003 and 2013.

57 . Author’s experience of working for NGOs in China between 2003 and 2013.

58 . See Liu Yun, *Newsflash: Lawyer LI Heping subject to rough reception at Huanggang Border crossing in Shenzhen en route to Hong Kong* (快讯：李方平律师今去港在深圳皇岗口岸遭蛮横拦截), BLOGSPOT (July 5, 2014), http://wqw2010.blogspot.com/2014/07/blog-post_5524.html [<https://perma.cc/6YPQ-ZG9C>].

59 . Interview with colleague, Guo Bin (2012).

60 . See *Congressional - Executive Commission on China Political Prisoner Database*, PPDCECC <http://ppdcecc.gov/QueryResultsDetail.aspx?PrisonerNum=10403> [<https://perma.cc/2YZB-G9UJ>] (last visited July 17, 2018).

61 . See *China: Release Rights Lawyer and End Crackdown on Civil Society*, AMNESTY INT’L (June 20, 2014) <http://www.amnesty.org/en/documents/ASA17/036/2014/en/> [<https://perma.cc/4DEJ-CE6Q>].

Mr. Chang.⁶² Sixteen days after the search, police formally arrested Mr. Chang, who was the legal representative of Yirenping's Zhengzhou branch, on charges of illegally operating a business.⁶³

Mr. Xu Zhiyong, Mr. Wang Quanzhang,⁶⁴ Mr. Li Fangping,⁶⁵ Mr. Li Xiongbing,⁶⁶ and Mr. Li Heping⁶⁷ also experienced arbitrary detentions. Their respective rights NGOs were subsequently impacted and, in some cases, shut down altogether, and their NGOs inevitably were hurt or even destroyed.⁶⁸ Of course, in contrast, the lawyers detained or arrested for involving in "sensitive cases" greatly outnumbered those lawyers who were detained or arrested as a result of working in a rights NGO or participating in rights NGO activities.

Rights lawyers and rights NGOs are also subject to both censorship and defamatory attacks in the media. Chinese domestic media either completely ignored or chose to attack lawyers and their family members in a number of cases. This can be seen in the following cases: Mr. Chang Boyang's detention in 2014;⁶⁹ the forced closure of Ms. Guo Jianmei's organization in 2016;⁷⁰ Mr. Wang Quanzhang's detention in 2016, and his wife's subsequent pleas for his release;⁷¹ and

62. *See id.*

63. *See generally* Office of the High Comm'r for Human Rights, Internal Communication Clearance Form (Sept. 9, 2014).

64. *See* Verna Yu, *Detained Swedish NGO worker Peter Dahlin's colleague refutes accusation that his group endangered China's security*, SOUTH CHINA MORNING POST, (Jan. 20, 2016), <http://www.scmp.com/news/china/policies-politics/article/1903454/detained-swedish-ngo-worker-peter-dahlins-colleague> [https://perma.cc/9PY4-XUHZ].

65. *See* Chris Buckley, *China rights lawyer Li missing, wife pleas for information* REUTERS, (May 2, 2011, 12:54 AM), <https://ca.reuters.com/article/topNews/idCATRE74111120110502> [https://perma.cc/99EH-2ANS].

66. *See Chinese government critics missing as crackdown on dissent widens*, AMNESTY INT'L (May 5, 2011), <https://www.amnesty.org/en/latest/news/2011/05/chinese-government-critics-missing-crackdown-dissent-widens> [https://perma.cc/H97S-856N].

67. *See* Wu & Dai, *supra* note 38.

68. *See* EVA PILS, CHINA'S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE 259 (2016).

69. *See* Office of the High Comm'r for Human Rights, *supra* note 63.

70. *See* Sim Chi Yin, *China Is Said to Force Closing of Women's Legal Aid Center*, N.Y. TIMES (Jan. 29, 2016), <https://www.nytimes.com/2016/01/30/world/asia/beijing-women-legal-aid-guojianmei.html?mtref=www.google.com&gwh=31725CD8CDF865CCA55771DE065BEF51&gwt=pay>.

71. *See* Christian Shepherd, *Wife of detained Chinese lawyer begins 100-km march to press for answers*, REUTERS (Apr. 4, 2018, 1:59 AM), <https://www.reuters.com/article/us-china-rights/wife-of-detained-chinese-lawyer-begins-100-km-march-to-press-for-answers-idUSKCN1HB0J7?il=0> [https://perma.cc/HB56-6L8E].

when Mr. Jiang Tianyong was put on trial.⁷² During all of these incidents, Chinese domestic media either circulated erroneous government press releases⁷³ or videos⁷⁴ that defamed the lawyers themselves or their family members.

IV. COLLABORATIONS BETWEEN HUMAN RIGHTS LAWYERS AND NGOS: CHALLENGES AND PROSPECTS

In the last year, both human rights lawyers and rights NGOs experienced continuous government attacks and crackdowns. Lawyers faced harassment, administrative punishment, detention, and criminal prosecution.⁷⁵ NGOs engaged in human rights advocacy struggle for survival, and some groups persevere with their human rights work in spite of considerable oppression.⁷⁶ At this crucial moment, it is more important than ever that human rights lawyers and rights NGOs continue collaborating, as cooperation between these groups will ultimately serve to improve the operating environment for the other.

Through this kind of cooperation, lawyers can also work on broader rights issues, including those considered to be less politically sensitive than criminal justice cases. Though currently an important entry point into human rights work for many lawyers, criminal justice cases by their very nature involve direct confrontation between the defense attorney and the police and procuratorate, and are therefore more likely to incite retaliation from government police and procuratorate authorities than civil cases or administrative cases that have nothing to do with government police and procuratorate authorities. Further, criminal justice cases also frequently involve subject matter or trends that are under direct attack by the central government, such as the criminal charges often brought against

72. See Benjamin Haas, *'Travesty' trial ends in China with lawyer Jiang Tianyong jailed*, THE GUARDIAN (Nov. 20, 2017, 11:41 PM), <https://www.theguardian.com/world/2017/nov/21/chinese-human-rights-lawyer-jiang-tianyong-jailed> [<https://perma.cc/U4UR-KM4U>].

73. See *Jiang Tianyong handed down sentence of two years in jail for incitement to subvert state power; when visiting father professed he would accept the charges and reflect on the sentence* (江天勇煽动颠覆国家政权获刑两年·会见父亲时表示会服从管教), THE PAPER (Nov. 22, 2017, 11:44 AM), <http://news.163.com/17/1122/11/D3RIBNFR000187VE.html> [<https://perma.cc/HBZ5-7FSM>].

74. See *The farce at the Tianjin Municipality Second Intermediate Court gates* (天津二中院门口的闹剧), SOHU NEWS, <http://tv.sohu.com/20160803/n462464282.shtml> (last visited June 25, 2018) [<https://perma.cc/C7D2-TCP6>].

75. See generally CONG.-EXEC. COMM'N ON CHINA, 2017 ANNUAL REPORT (2017).

76. See generally CHINESE HUMAN RIGHTS DEF., REPRESSION AND RESILIENCE: ANNUAL REPORT ON SITUATION OF HUMAN RIGHTS DEFENDERS IN CHINA (2017).

Falungong practitioners, political dissidents, underground religious groups, NGO workers, etc.⁷⁷ In these kinds of cases, in representing their clients lawyers must oppose precisely those government mechanisms that are used against the lawyers themselves—namely, public security authorities with their powers of detention and the procuratorate with its power to authorize arrests.⁷⁸ There are other tools the state can use to apply pressure against rights lawyers, including working through the Ministry of Justice to rescind a lawyer's credentials to practice law⁷⁹ or defame a lawyer using the state media mouthpieces.⁸⁰

In contrast, the types of cases that many NGOs tend to handle are typically civil or administrative in nature rather than criminal, and involve economic and social rights rather than exclusively civil and political rights. For example, many rights NGOs mainly focus on the following types of cases: anti-discrimination, labor rights, rights of people living with infectious diseases, food safety, environmental protection, consumer protection, etc.⁸¹ Lawyers working on these cases will not go against the police, procuratorate, or the full force of state mechanisms, but rather, commercial enterprises and civil administrative departments, making for reduced political risk. Further, the government departments involved in these cases tend to be those like the Ministry of Human Resources and Social Security that is responsible of labor rights,⁸² Ministry of Education that is responsible of the equal right to education,⁸³ National Health Commission that is

77. See *Freedom in the World 2018 - China, Jan. 27, 2016*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2016/china> (last visited June 25, 2018) [<https://perma.cc/8PSZ-B7TF>].

78. See generally Criminal Procedure Law of China (promulgated by the Standing Comm. Nat'l People's Cong., July 7, 1979, effective Jan. 1, 1980), art. 3.

79. See generally LEITNER CTR. FOR INT'L LAW AND JUSTICE & THE COMM. TO SUPPORT CHINESE LAWYERS, PLIGHT AND PROSPECTS: THE LANDSCAPE FOR CAUSE LAWYERS IN CHINA (2015).

80. See Michael Caster, *Chinese media participate in forced confessions, treat them like agents of the state*, CNN (May 3, 2018, 12:15 AM), <https://www.cnn.com/2018/05/03/opinions/china-world-press-freedom-day-caster-intl/index.html> [<https://perma.cc/7GWW-K2RQ>].

81. Author's experiences of running rights NGOs and collaborating with rights NGOs in China between 2004 and 2013.

82. See generally Labor Law of China (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1994, effective Jan. 1, 2008), art. 9.

83. See generally Education Law of China (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 18, 1995, effective Mar. 18, 1995), art. 15.

responsible of the rights of people living with infectious diseases,⁸⁴ Food and Drug Administration that is responsible of food safety,⁸⁵ Ministry of Environmental Protection, Industrial and Commercial Administrative Department that is responsible of consumer's rights protection,⁸⁶ etc. These departments have no power over the management of lawyers' credentials to practice law, or to launch criminal investigations, or influence with state media mouthpieces.

Those human rights lawyers who have been disbarred are likely to be more active in the work of rights NGO. This is because of the simple fact that, having been deprived of the ability to continue to practice law, they have very few alternatives to continue working on human rights issues other than founding or joining rights NGOs. In recent years, the Chinese government disbarred an increasingly large number of human rights lawyers or otherwise prohibited them from practicing law. One of the most recent disbarment cases targeted Beijing-based lawyer Mr. Yu Wensheng, a long-time and vocal critic of the government, whose license was revoked in January 2018.⁸⁷ A few days later, an outspoken human rights lawyer Mr. Sui Muqing of Guangzhou, Guangdong Province, a former student involved in the 1989 Tiananmen Square Protest, was similarly disbarred.⁸⁸

Most of the disbarred lawyers still continue their human rights work in other ways, including establishing or joining rights NGOs. For example, human rights lawyer Mr. Jiang Tianyong joined the Beijing Aizhixing Institute after the Beijing Justice Bureau revoked his law license in 2009.⁸⁹ Mr. Li Heping began his work with the London-based The Rights Practice on torture issues in 2009 in similar

84. *See generally* Law of China on Prevention and Treatment of Infectious Diseases (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 21, 1989, effective Aug. 28, 2004), art. 6.

85. *See generally* Food Safety Law of China (promulgated by the Standing Comm. Nat'l People's Cong., Feb. 28, 2009, effective June 1, 2009), art. 5.

86. *See generally* Law of China on the Protection of Consumer Rights and Interests (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 31, 1993, effective Oct. 31, 1993), art. 32.

87. *See China rights lawyer Yu Wensheng loses licence*, BBC (Jan. 16, 2018), <http://www.bbc.com/news/world-asia-china-42702731> [<https://perma.cc/3LF9-E386>].

88. *See* Christian Shepherd, *Chinese authorities disbar second rights lawyer in two weeks*, REUTERS (Jan. 23, 2018, 6:38 AM), <https://www.reuters.com/article/us-china-rights/chinese-authorities-disbar-second-rights-lawyer-in-two-weeks-idUSKBN1FC1DQ> [<https://perma.cc/6GJR-HQ4N>].

89. *See Beijing Aizhixing Institute Welcomes Lawyer JIANG Tianyong Home!* (北京爱知行研究所：“北京爱知行研究所欢迎江天勇律师回家！”), BEIJING AIZHIXING INST. (Apr. 20, 2011), <http://www.canyu.org/n24269c12.aspx>.

circumstances.⁹⁰ Mr. Wang Cheng, Mr. Tang Jitian, and Mr. Jiang Tianyong founded the China Human Rights Lawyers Group in 2013 after being disbarred.⁹¹ In addition, Ms. Liu Wei co-founded the Woman Human Rights Defenders Empowerment Network in 2013, after her license was taken away.⁹² Lawyer Liu Shuqing co-founded the China Anti-employment Discrimination Lawyers Group after he was suspended from practicing law in 2016.⁹³

With the benefit of this kind of in-house legal experience and expertise, rights NGOs have been able to take on considerably more legal action in recent years. In recent years, rights NGOs discovered that many of their traditional methods of work proved no longer effective. Activists who perform public exhibitions or events are more frequently detained and arrested by police, as in the case of the “Feminist Five” in March 2015.⁹⁴ Rights NGO conferences are shut down and in some cases result in organizers being detained by police, as in the case of the LGBT rights group seeking to hold a conference in Xi’an, Shaanxi Province in 2017, which ultimately resulted in nine activists being taken away by police.⁹⁵ Surveys and reports published by NGOs find it difficult to have their findings circulated by domestic media channels. For example, in November 2016, in seeking to publicize a report produced by the Single Women Reproductive Rights Concern Group in Guangzhou, Guangdong Province entitled “Survey and Report on Single Women’s Reproductive Rights in China,” a Shanghai journalist directly told an NGO worker, “NGOs are too sensitive. We can’t write any article about a report produced by an NGO.”⁹⁶

90. See Wu & Dai, *supra* note 38.

91. See Wang Cheng, Tang Jitian, & Jiang Tianyong, *Public notice on the establishment of the Chinese human rights lawyers service organization* (中国保障人权律师服务团成立公告), HUM. RTS. IN CHINA (Sept. 13, 2013) <https://www.hrichina.org/chs/content/6921> [<https://perma.cc/XW52-W36Z>].

92. Interview with Liu Wei (2013).

93. See Qiao Long, *Establishment of China’s anti-employment discrimination organization* (中国反就业歧视律师团成立), RADIO FREE ASIA (May 2, 2016), <https://www.rfa.org/mandarin/yataibaodao/renquanfazhi/ql2-05022016103948.html> [<https://perma.cc/LN29-TA7K>].

94. See generally Leta Hong Fincher, *China’s Feminist Five*, 63 DISSENT 84, 84-90 (2016).

95. See Ben Blanchard, *China police detain gay activists after Xian event canceled*, REUTERS, (May 31, 2017, 5:53 AM), <https://www.reuters.com/article/us-china-lgbt-idUSKBN18R168> [<https://perma.cc/S5TL-BKZD>].

96. Interview with Single Women Reproductive Rights Action Group (Dec. 2016).

In comparison, NGOs working on straightforward litigation appear to be the safer option of late. NGOs are able to handle a considerable volume of cases quite safely, with only a very few resulting in police detentions. Further, the media has more leeway to report on legal cases; by way of example, one anti-discrimination case in Sichuan Province involving an individual living with HIV/AIDS was widely reported on in the media.⁹⁷ Another case, this one involving an environmental public interest lawsuit in Yunnan Province orchestrated by prominent environmental NGO Friends of Nature, also benefited from widespread media coverage.⁹⁸ The potential of law-focused strategies to advance the traditional work of rights NGOs is therefore worth considering. As more lawyers enter NGOs, the ability of NGOs to engage or organize litigation will also strengthen, which would fulfill the current needs of human rights NGOs.

V. CONCLUSION

In summary, over the past two decades, human rights lawyers have made significant contributions in the creation and operation of human rights NGOs as a direct result of their legal expertise, skill, and support for the cause of human rights generally since Chinese Communist Party formally introduced the “rule of law” policy in 1997. Many lawyers served as rights NGO’s founders, directors or pillar personnel and became advocates and promoters of many important human rights issues such as women’s rights, LGBT rights, minor’s rights, labor rights, rights of people living with HIV/AIDS and hepatitis virus, mental patient’s rights and disabled rights. Although in the course of their work on behalf of these NGOs lawyers faced numerous and severe attacks from the government including registration restriction, tax burden, fund raising obstacles, police harassment and arbitrary detention and state media’s stigmatization. By and large, these are risks that lawyers are willing to take on. Indeed, lawyers often find

97. See Chen Qingyuan, *Young man’s HIV/AIDS status revealed during medical test to enter the workplace; after losing job offer, alleges discrimination and sues would-be employer* (小伙入职体检查出感染艾滋 称遭歧视丢工作告公司), *LEGAL EVENING NEWS*, (Jan. 24, 2018, 12:57 PM), <http://news.163.com/18/0124/17/D8UBEKH300018AOR.html> [https://perma.cc/6R78-GBXF].

98. See Xi Jianrong, *Environmental organization’s public interest lawsuit accepted by Intermediate People’s Court in Yuxi City* (环保组织提公益诉讼玉溪中院立案), *LEGAL DAILY* (Feb. 28, 2018, 7:20 AM), <http://sn.people.com.cn/n2/2018/0228/c378297-31290943.html> [https://perma.cc/8JZU-R7H4].

that the risks involved in NGO-related work have paled in comparison with those involved in taking on criminal defense cases that directly challenging either police and procuratorate or central government's political crackdown policy. In the future, human rights lawyers and human rights NGOs come to rely on each other more and more in the shrinking space for rights advocacy in China. We should expect to see increasing numbers of lawyers entering NGOs and, subsequently, strengthening the capacity of these NGOs to perform legal advocacy work and still play an important role in the rights issues such as anti-discrimination, labor rights, infectious patient's rights, food safety, environment protection and consumer protection.

