

Executive Summary

This submission examines the challenges faced by the legal profession in safeguarding democracy in Mainland China and Hong Kong.

The submission endorses and recognizes the efforts of human rights lawyers in both mainland China and Hong Kong in advocating for human rights protection and democratic values despite significant risk of reprisal and threats.

This submission, however, seeks to criticize the complicity of the judiciary in these abuses, through its failure to address or prevent such practices, which indicates a significant departure from international human rights norms.

In Mainland China, we explore the judges' acquiescence towards the use of "Residential Surveillance at a Designated Location" (RSDL). Effectively, judges encourage further arbitrary detention, enforced disappearance, and torture.

In Hong Kong, this report highlights the deterioration of the rule of law and democratic principles post-Hong Kong National Security Law (HKNSL). Under the broader HKNSL environment, the judiciary completely failed to act independently. Judges knowingly enforce the HKNSL which is incongruent to well-established and fundamental human rights and democratic values.

The case of human rights lawyer Chow Hang Tung, detained under the HKNSL, is presented as a stark example of the law's misuse and how the judiciary aligns with the political objectives of oppressive regimes.

Report to United Nations Special Rapporteur on the Independence of Judges and Lawyers

Undermining Democracy and Human Rights: Plight of Human Rights Lawyers and Complicity of Judges in Erosion of Judicial Independence in Mainland China and Hong Kong

30 January 2024

Introduction

1. This report is submitted to the mandate-holder of United Nations Special Rapporteur on the Independence of Judges and Lawyers (“SRIJL”) pursuant to the mandate-holder’s call for input for the preparation of its thematic report to be presented during the 56th session of Human Rights Council in June 2024.
2. This submission is jointly prepared and submitted by The 29 Principles (referring to the 29 “UN Basic Principles on the Role of Lawyers”). The 29 Principles is a UK-based organisation supporting lawyers facing human rights oppression. The 29 Principles is committed to providing support to lawyers to help them fulfil the roles described in the Basic Principles, in particular on promoting the rule of law.
3. We focus this submission on the situation of human rights lawyers and defenders in mainland China and Hong Kong. The submission aims to recognize the vital role these lawyers play in advocating for democracy and human rights, in the face of significant repression and threats. It also seeks to expose the complicity and acquiescence of judges in mainland China and Hong Kong, who, acting as instruments of the political regime, contribute to the repression, oppression, and torture of human rights lawyers and defenders.

Democracy in facilitating the protection of human rights

4. The 29 Principles recognizes the importance of democracy in facilitating the adequate protection of human rights.

5. According to The 2009 Guidance Note on Democracy of the UN’s Secretary-General (“**Democracy Guidance Note**”), the UN plays a pivotal role in fostering and facilitating democracy globally, for its recognition of the fundamental importance of democracy, realizing it not merely as a political system but as a key mechanism for upholding human rights, the rule of law, and sustainable development.

6. In a democratic society, mechanisms are in place to ensure that voices are heard and considered in the decision-making process, thereby enhancing international peace, security, economic, social progress, and the realization of human rights.

7. In this sense, the rule of law serves as the bedrock upon which democratic principles are built and maintained. It ensures that laws are applied equally and impartially, creating a predictable and secure environment where citizens can exercise their rights and freedoms without fear of arbitrary power.

Records of Repression on Democracy and Human Rights Advocacy

8. Realizing the importance of rule of law, democracy and human rights, groups of human rights lawyers and defenders in mainland China and Hong Kong are committed to promoting democracy and the implementation of human rights by virtue of the legal system.

9. China has signed the ICCPR, and Hong Kong has ratified it. Both China and Hong Kong have also ratified the ICESCR. The foundational objective of both the ICCPR and ICESCR is to facilitate the establishment of a democratic society.

10. However, despite their obligations under the International Bill of Human Rights, both governments of mainland China and Hong Kong actively work against the promotion of democracy and the protection of human rights. They use various methods to silence activists who criticize the government, including strict laws, administrative actions, and other extra-legal tactics that are beyond checks and balances. Human rights lawyers, who often lead such advocacy efforts, tend to face the most severe repression.

11. This report further contends that judges in both mainland China and Hong Kong fail to uphold democratic values. They instead aid in the political repression enforced by the Chinese and Hong Kong governments, aimed at eroding democratic structures. This is done through:
 - (1) Ignoring arbitrary detention, torture, and inhumane treatment sanctioned by the regime;
 - (2) Strictly enforcing laws that fundamentally breach human rights and democratic values; and
 - (3) Supporting political repression by imposing severe penalties on individuals who criticize the government's neglect of democratic and human rights obligations.

Mainland China

12. The 29 Principles have been providing support to Chinese human rights lawyers. This group of lawyers in mainland China considers the legal system as the avenue for advocacy in the protection of civil and human rights. These human rights lawyers, who challenge the government's wrongdoing and misconduct as a result of their failure to uphold human rights and democratic values, often become the focus of crackdowns and face persecution.

Arbitrary Detention, Enforced Disappearance, and Torture Endorsed by the Government

13. It is evident that human rights lawyers in mainland China face severe persecution due to their advocacy for human rights. This submission purports to record the experiences of lawyers who are subjected to “Residential Surveillance at a Designated Location” (“RSDL”).
14. RSDL serves as a breeding ground for torturous punishments and inhumane treatment, as it operates outside the boundaries of the legal system. This mechanism permits officials to place human rights lawyers and defenders in prolonged incommunicado detention.
15. Within this framework, arbitrary detention and enforced disappearance are imposed with impunity. These can include, but are not limited to, restraining the detainee in extremely confined spaces for extended periods, denying food and sleep, enduring prolonged interrogations, and physical assault.
16. Detainees under RSDL are deprived of any means to file complaints. As mentioned above, RSDL functions outside the legal system’s normal purview, lacking any form of checks and balances. This situation allows officials to act arbitrarily and with impunity.
17. In fact, the United Nations has comprehensively documented and repeatedly condemned the Chinese authorities’ use of RSDL. Nevertheless, such criticism is invariably dismissed by the Chinese government.

18. In [OL CHN 15/2018](#), numerous UN human rights experts alarmingly characterised RSDL as enforced or involuntary disappearance, a practice which directly contravenes international human rights norms. Significant issues have been raised regarding the lack of judicial oversight, the arbitrary nature of RSDL detentions, the absence of formal charges, and prolonged solitary confinement.
19. These experts also express grave concern particularly over the use of RSDL against human rights lawyers and defenders, noting its role in suppressing dissent and intimidating advocacy.
20. In the [UN Committee Against Torture's Fifth Periodic Report on China](#), the Committee urged China to promptly repeal the provisions in the Criminal Procedure Law that allow for RSDL. The Committee identified RSDL as essentially amounts to incommunicado detention and enforced disappearance under the pretext of residential surveillance, counter to China's obligations under the Convention against Torture which it ratifies. The Committee has called for the criminal accountability of officials involved in any abuses against detainees.
21. Despite extensive evidence of human rights abuses, China persistently dismisses these criticisms. During its third cycle of the Universal Periodic Review in 2018, China faced [at least two recommendations urging the abolition of RSDL](#). Nevertheless, China dismissed these recommendations, [claiming that it is a country governed by the rule of law](#) and that its judicial organs function in strict accordance with its laws and regulations.

Judges' Blatant Ignorance of Torture and Blatant Acceptance of Evidence Obtained Through Forced Confession and Torture

22. RSDL is a procedure provided in China's Criminal Procedural Law, but detainees of RSDL have no official channel to file complaint or report instances of torture.

23. Attempts to speak out about torture during criminal trials are often futile, as judges have historically interrupted detainees trying to share their experiences during criminal trial. Such incidents of torture and forced confession are blatantly ignored, and trials proceed as if these violations did not occur, despite defendants' express request of investigation to their torture.

24. Judges in China are consciously turning a blind eye. Their acquiescence to torture and acceptance of evidence and forced confessions obtained during defendants' detention under RSDL significantly perpetuates RSDL, impunity, and effectively encourages further torture and inhumane treatment of human rights lawyers and defenders.

25. Presented below is a compiled list referenced in UN communications of Chinese human rights lawyers who have been subjected to RSDL in the past and are currently still detained. Their experiences of torture have not been adequately acknowledged in court proceedings. Contrarily, the courts have proceeded with their trials, even when evidence were potentially derived from torture and forced confessions during RSDL.

- a. Chang Weiping ([AL CHN 8/2022](#); [AL CHN 20/2020](#))
- b. Ding Jiayi ([UA CHN 6/2020](#); [AL CHN 20/2020](#))
- c. Gao Zhisheng ([AL CHN 2/2022](#))
- d. Guo Feixiong ([AL CHN 2/2022](#))
- e. Tang Jitian ([AL CHN 10/2022](#))
- f. Xie Yang ([UA CHN 3/2017](#))
- g. Xu Zhiyong ([AL CHN 5/2023](#); [AL CHN 8/2020](#))
- h. Yu Wensheng ([AL CHN 16/2020](#))

26. Human rights lawyers and defenders who publicly denounce the torture they experience under RSDL often face further reprisals, including more severe detention and punishment. For instance, Chang Weiping (above) was returned to RSDL shortly after revealing his torture during a previous RSDL stint and remains in detention as of today.
27. Similarly, [Li Qiaochu was quickly detained under RSDL](#), and continues to be held as of today, soon after she openly criticized the torture experienced by above human rights lawyers and activists Ding Jiayi and Xu Zhiyong during their respective RSDL detentions.

Hong Kong

28. Historically, Hong Kong has a relatively more developed legal system, compared with that of mainland China, that enables the region to uphold democracy and human rights. This includes the ratification of the ICCPR, which was integrated into Hong Kong's domestic law. The judicial system in Hong Kong was relatively more independent, affording judges and lawyers greater autonomy in managing cases and defending detainees.

Erosion of Rule of Law and Human Rights in Hong Kong Post-Enactment of the HKNSL

29. This situation has drastically changed following the Chinese Central Government's unilateral enactment of the Hong Kong National Security Law ("HKNSL"). Subsequent to the HKNSL, rule of law in Hong Kong has significantly deteriorated, profoundly undermining the city's democracy and human rights protections.

30. The extensive damage to democracy and human rights inflicted by the HKNSL has been thoroughly documented and criticized by the UN. The UN has been actively condemning the HKNSL for its stark incongruence with Hong Kong's commitments under the ICCPR and its track record of upholding human rights to a large extent. Numerous communications from UN human rights experts have decried the human rights violations associated with the enforcement of the HKNSL.

31. For instance, there are at least eight communications issued by human rights experts criticizing the violation of human rights committed under the HKNSL, even though the HKNSL has just been in place for around 3.5 years, three of which include the SRIJL: [AL CHN 16/2023](#); [OL CHN 2/2023](#); [AL CHN 1/2023](#).

32. In November 2022, [in its concluding observation of periodic ICCPR review](#), the Human Rights Committee criticized the HKNSL for its vagueness, breach of international obligations, excessive governmental powers, lack of judicial oversight, and unclear extraterritorial application.

33. In March 2023, the Committee on Economic, Social and Cultural Rights, despite its primary focus on economic, social, and cultural rights, observed in [its concluding observation of the periodic ICESCR review](#) that the HKNSL “has effectively eliminated the independence of Hong Kong's judiciary.”

34. Both the HRCttee and the CESCR possess well-established jurisprudence regarding the enforcement of the ICCPR and ICESCR, both of which Hong Kong has ratified.

Compromise of Judicial Integrity in Hong Kong Post-HKNSL

35. However, in cases concerning the HKNSL, no judges have ever addressed the committees’ critical comments on the HKNSL. Instead, they rigidly enforce the law, effectively serving as tools in furthering the regime's political agenda.

36. The concern over judicial independence in Hong Kong is underscored by [the city’s security secretary’s praise for the 100% conviction rate under the HKNSL](#). This statistic is troubling, as it indicates a compromise of judicial independence and a tendency for the judiciary to conform to the political regime’s goals.

37. In fact, under [Article 44 of the HKNSL](#), judges must be handpicked by the city’s chief executive to preside over HKNSL cases. Many permanent and high-ranking judges in the city’s higher courts are designated as “HKNSL-designated” judges. This arrangement suggests that judges are expected to support the HKNSL, evidenced by the aforementioned 100% conviction rate, as a prerequisite for career progression.

UN Human Rights Experts Criticize HKNSL Amidst Government Dismissal of Concerns

38. Shortly before the enactment of the HKNSL in June 2020, [an unprecedented group of 50 UN human rights experts issued a joint statement offering a detailed critique of the HKNSL from a human rights standpoint.](#)
39. To begin with, the draft of the HKNSL was without substantial consultation with the local population. The HKNSL also contains vaguely defined crimes which are open to abuse and repression. Further, the HKNSL is seen as a threat to the right to a fair trial, raising the spectre of increased arbitrary detention and prosecution of peaceful human rights defenders at the behest of Chinese authorities.
40. These experts call for the withdrawal of the HKNSL, and urged the international community to have a renewed focus on the human rights situation in China, including recommendation of urgent actions from the UN Human Rights Council to convene special session to assess China’s violation of human rights, and the establishment of an impartial and independent UN mechanism to monitor human rights situation in China.

41. However, mirroring practices in mainland China, the Hong Kong government has consistently dismissed these claims as unfounded and fabricated despite repeated criticisms and condemnations.

Chow Hang Tung – Human Rights Lawyer Being Detained Under HKNSL

42. The 29 Principles aim to demonstrate how the HKNSL specifically targets human rights lawyers and defenders by presenting the case of Chow Hang Tung. Among the various dissidents detained under the HKNSL, Chow Hang Tung’s situation, as a human rights lawyer and woman human rights defender, exemplifies the law’s blatant disregard for the rights of human rights activists.

43. As a human rights lawyer, Chow Hang Tung participated in multiple human rights cases and represented human rights defenders. She also actively participated in the human rights movements in both China and Hong Kong, and proactively concerned and advocated for the situation of Chinese human rights lawyers.

44. Chow Hang Tung has been under detention since 8 September 2021 and is charged for “inciting subversion of state power” under the HKNSL, predominantly in association of her role as the vice-chair of the Hong Kong Alliance in Support of Patriotic Democratic Movements of China (“the HKA”), the organiser of the annual candlelight vigil for Tiananmen Massacre, until its disbandment in 2021. To date, Chow Hang Tung has been detained for nearly 900 days but has yet been tried.

45. In May 2023, the [Working Group on Arbitrary Detention of the Human Rights Council \(“WGAD”\)](#) adopted [Opinion No. 30/2023 concerning Hang Tung Chow](#), characterising her detention as arbitrary in multiple categories under the Working Group’s jurisprudence.
46. The WGAD determined that the detention of Hang Tung Chow lacked legal justification. They noted that she was held for an unjustifiably long period after her arrest in absence of adequate evidence.
47. The presumption of innocence is effectively nullified under the HKNSL. Defendants prosecuted under the HKNSL are presumed to re-offend, and it falls upon them to convince the court that they will not continue to commit the offense. This approach shifts the burden of proof from the prosecutors to the defendants.
48. In Hong Kong, no judges have publicly challenged what is obviously incongruent to basic criminal law and human rights value – violation of presumption of innocence, a principle as basic as enunciated in both the Universal Declaration of Human Rights and the ICCPR.
49. It is also [the city’s highest court that has sanctioned the elimination of the presumption of innocence in cases under the HKNSL](#). This action aligns with the assertion presented here that judges are willfully becoming tools to support the regime’s harmful political agenda, particularly against human rights lawyers and defenders.

50. The Working Group also found that Chow Hang Tung's arrest and ongoing detention were due to her exercising her rights to free speech, to peacefully assemble, and to associate with others. Further, the WGAD also identified her detention being discriminatory, influenced by her political views and her role as a pro-democracy activist.

51. Despite the WGAD explicitly declaring her detention arbitrary, Chow Hang Tung has consistently been denied bail. Her most recent bail rejection occurred in December 2023, during which the presiding judge entirely disregarded the WGAD's statement about the arbitrary nature of her detention.

52. Due to her outspokenness, Chow Hang Tung has even become a specific target of the regime, evidenced by multiple instances of solitary confinement.

53. The most recent instance occurred after she received The Franco-German Prize for Human Rights and the Rule of Law 2023. After expressing gratitude, [Chow Hang Tung was placed in solitary confinement. She faced 18 days in solitary confinement, her longest stint yet, marking her ninth time in solitary confinement from June to December in 2023.](#)

54. More alarmingly, judges in Hong Kong are now engaging in selective evidence presentation, leading to a distorted representation of Chow Hang Tung's actions and intentionally biasing the narrative against her. This was underscored by the WGAD's observations on the handling of evidence in her trial. Crucial statements that could have supported her defense were reportedly either left out or altered.

55. Last but not least, the WGAD identified charges under HKNSL are vague and broad, lacking clear definitions of the alleged offenses. The ambiguity allows for wide interpretations that could unjustly criminalize activities protected under international human rights law, leading to an impression that HKNSL is more focused on targeting a prominent pro-democracy figure rather than upholding justice based on clear and objective legal standards.

Conclusion

56. This submission seeks to offers a critical insight into the erosion of judicial independence in mainland China and Hong Kong. It explores the judiciary's complicity in suppressing democratic values and human rights, particularly through the use of mechanisms like RSDL in mainland China and the implementation of the HKNSL in Hong Kong. The case of Chow Hang Tung exemplifies the systemic failure to uphold the rule of law, with her ongoing detention despite international condemnation.

57. This report provides findings on the judiciary's deviation from its safeguarding role on human rights protection and democracy construction, aligning instead with political agendas that undermine the very principles of democracy and human rights.

58. We sincerely hope that this report contributes to the Special Rapporteur's understanding of the challenges facing judicial independence in the context of democratic erosion and deterioration of human rights in mainland China and Hong Kong. Our examination of the struggles faced by human rights lawyers and the judiciary's complicity in suppressing democratic values and human rights is intended to provide a comprehensive overview of the current situation.

59. We trust that the insights and data presented will assist the Special Rapporteur in formulating effective and actionable recommendations to safeguard the independence of judicial systems and uphold democracy.