

Report to the Special Rapporteur of Independence of Judges and Lawyers

The 29 Principles, referring to the 29 “UN Basic Principles on the Role of Lawyers”), 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.

Legal Empowerment and Access to Justice: Challenges and Opportunities in China

Executive Summary

Legal empowerment and access to justice are essential for marginalised and disadvantaged groups in (mainland) China and Hong Kong. However, challenges such as ambiguous laws, limited civil society space, and restricted access to justice hinder these initiatives. The Chinese regime often prioritises compliance over legal empowerment, using vague and ambiguous laws to detain and convict individuals deemed as challenging their authority. This results in uncertainty for the public and self-censorship, hindering legal empowerment. Access to justice is further compromised by the use of state-appointed lawyers, who often fail to effectively defend their clients and may even facilitate the government's agenda.

In addition, NGOs and CSOs focused on claims-making are virtually non-existent in China and Hong Kong due to purges and suppression, significantly limiting the potential for community-based legal empowerment initiatives. To address these challenges, we recommend encouraging the Chinese government to ensure the independence and professionalism of legal professionals, review and reform ambiguous laws, support the protection and promotion of NGOs and CSOs, ensure transparency and adherence to due process, and engage in constructive dialogue with the international community. By addressing these issues, we hope to contribute to the realisation of human rights, social justice, and sustainable development in China and Hong Kong.

Introduction

The 29 Principles appreciates the opportunity to contribute to the Special Rapporteur's examination of legal empowerment and people-centred approaches to achieving access to justice in China and Hong Kong. We understand that the Special Rapporteur seeks submissions highlighting the potential for paralegals and grassroots justice advocates to expand and transform access to justice, particularly for those excluded from, marginalised by, or harmed within legal systems. Moreover, we are aware of the direction to discuss the shortcomings of existing judicial and legal systems that demonstrate the value of a legal empowerment approach, such as systemic discrimination, exclusion, and harms perpetrated within legal systems.

This submission focuses on one of the most marginalised aspects of the legal systems in (mainland) China and Hong Kong: the implementation of the legal system concerning human rights advocacy. This includes the suppression of claims-making advocates, who face prosecution under criminal laws, and other human rights advocates attempting to defend the accused using the legal system. The situation described above has two implications: (1) promulgated rules of legal procedure are frequently ignored in litigation concerning human rights protection claims; (2) additional suppressive procedures and rules are specifically implemented against human rights advocates.

Definition of Legal Empowerment

Referring to the [article by The Fund for Global Human Rights](#), we define legal empowerment in this submission as the process of enhancing the ability of individuals and communities to understand, use, and shape the law and legal systems impacting their lives. Legal empowerment facilitates better access to justice, promotes the rule of law, and strengthens the capacity of marginalised and disadvantaged groups to assert and defend their rights. Legal empowerment is grounded in the belief that access to justice is a fundamental human right and a crucial component of sustainable development and social progress.

Drawing on the "The Four Pillars of Legal Empowerment" by the UN Commission on the Legal Empowerment of the Poor and the webpage article "Access to justice and legal empowerment" by the Governance and Social Development Resource Centre (GSDRC), we identify the following elements as the most relevant aspects of legal empowerment in this submission:

1. Legal awareness and education: Raising awareness of rights, providing legal information, and conducting training sessions to help people understand the legal system and their rights within it.
2. Access to justice through legal assistance and representation: Supporting grassroots legal organisations and community-based legal advocates who can provide legal advice, representation, and mediation services to those in need, including legal aid services and training for community paralegals.
3. Building partnerships and collaborations: Engaging in partnerships between various stakeholders, such as civil society organisations, legal professionals, government agencies, and international organisations, to leverage resources, knowledge, and expertise to advance legal empowerment and access to justice.

We recognise that the above list is not exhaustive, as legal empowerment initiatives can also include other elements such as legal reform and policy advocacy, and addressing barriers like lack of formal identity, illiteracy, or unavailability of legal services. However, this report focuses on the elements identified above, as they are most relevant in this context.

Challenges and Barriers to Legal Empowerment in China and Hong Kong

In China and Hong Kong, legal empowerment in the context of promoting human rights, particularly civil rights, is immensely challenging. As mentioned in the introduction, rather than providing a means for individuals to scrutinise the legitimacy of the government's actions, the implementation of the legal system concerning human rights advocacy is used to suppress claims-making advocates, subjecting them to prosecution under criminal laws and creating obstacles for human rights advocates defending the accused through the legal system. The three elements of legal empowerment identified above are analysed to illustrate challenges of facilitating legal empowerment in this context of laws in China and Hong Kong.

Enhancing legal awareness and education can be risky and viewed as a challenge

The first element of legal empowerment identified above is enhancing legal awareness and education, such as raising awareness of rights, providing legal information, and conducting training sessions to help people understand the legal system and their rights within it. In reality, in China, the teaching of law or legal empowerment is often compromised, as laws are frequently adopted to achieve political agendas with justifiable grounds used as a pretext for suppressing individuals. The Chinese regime does not prioritise legal empowerment in this context, instead seeking compliance from its citizens.

A prime example is the offence of "picking quarrels and provoking trouble" in mainland China, often recognised as a pocket crime: a charge the regime can use at will to criminally detain and convict individuals they view as challenging the legitimacy of their actions. For example, civil journalist Zhang Zhan, who was convicted for picking quarrels and provoking troubles and was sentenced to four years in prison, or the recent detention of prominent lawyers Yu Wensheng and his wife Xu Yan (also mentioned in our statement jointly published with other organisations). More serious offences, such as (inciting) subversion of state power, may be used against targeted individuals, and these offences are similarly ambiguously defined with capricious scope. This includes prominent Chinese activists Ding Jiayi, a human rights lawyer, and Xu Zhiyong, a legal scholar. They were sentenced 12 and 14 years in prison respectively in April 2023. As pointed out in our joint statement with other organisations, the Chinese authorities applied this vague offence to suppress their human rights advocacy efforts and subjected them to various forms of ill-treatment.

Similar patterns are also seen in Hong Kong, as the government has widely enforced the ambiguous sedition law to prosecute individuals whose actions go against the political will of the regime– the sedition law has remained dormant for more than half a century. It was revived with the aim to crack down on free speech, as discussed in a commentary in the Diplomat.

Legal empowerment in this regard is virtually impossible, as there can be no clear definition of the law – the offence itself arguably contradicts the rule of law due to its ambiguity and lack of certainty, but it is strategically so designed to fit the will of the regime, and largely to deter the public and encourage self-censorship. Attempts to dispute the constitutionality of the offence, or to pinpoint its capriciousness, may attract reprisals from the regime.

Access to justice is virtually impossible for advocates targeted by the regime

We also wish to pinpoint that access to justice is virtually impossible for advocates targeted by the government. First and foremost, many defendants can be detained incommunicado in Residential Surveillance at a Designated Location (RSDL) – a procedure which has been described as tantamount to enforced disappearance by UN human rights experts – rendering attempts to provide access to justice largely futile, as even family members and the public are unable to visit them. The RSDL procedure has been used against numerous prominent human rights advocates.

Furthermore, state-appointed lawyers (known as *Guanpai Lvshi*), are appointed by the authorities to represent defendants in sensitive cases, often facilitating the government's agenda. In the “Access Denied – China’s Legal Blockade” report published by Safeguard Defenders, the NGO extensively covers the use of such state-appointed lawyers in China (inter alia pp. 18-23). The independence and commitment of these lawyers to providing an effective defence are greatly doubted. In many instances, they do not report case progress or detainee conditions to family members, and they do not act in the best interests of the accused, according to Human Rights in China. In other words, rather than promoting legal empowerment, the regime ensures the disruption of legal empowerment by ensuring that targeted individuals receive no independent legal representation.

Concrete examples abound, such as when individuals are placed in RSDL – a procedure tantamount to enforced disappearance – where clear signs of potential torturous activities may occur. Although criminal procedural laws in China stipulate that evidence obtained through torture is inadmissible, *state-appointed lawyers* never challenge the legality of evidence or confessions obtained from detainees during RSDL. Instead, they may induce defendants to plead guilty, further serving the government's objectives, according to a news report by Radio Free Asia (in Chinese only).

Recent changes to legal aid laws in Hong Kong also raise doubts as to whether the state-appointed lawyer system (*Guanpai Lvshi* system) will be similarly institutionalised in the territory. The amendment of the legal aid law essentially means defendants do not have a choice – the Legal Aid Department assigns lawyers on their behalf. In Hong Kong, the Legal Aid Department's appointments of barristers and solicitors have been criticised as a disguised form of establishing “*Guanpai Lvshi*,” leading some pro-democracy defendants to reject these lawyers and seek alternative representation, according to Ming Pao (only available in Chinese), a Hong Kong media outlet.

The territory-wide effort to limit free choice of lawyers is echoed in an HKNSL case concerning Mr Lai Chee-ying. In this case it was demonstrably apparent that the Hong Kong Government was exhausting all efforts to ensure that foreign lawyers were not able to participate in legal proceedings relating to HKNSL cases. As noted in our previous joint statement with other organisations, the Government first challenged Mr Lai's attempt to appoint Tim Owen KC, a British barrister, in Hong Kong courts. Upon losing the dispute in the Hong Kong's highest court, the Government sought to have the decision overturned by inviting the Chinese Central Government to intervene through exercising an interpretation of law. Legal empowerment is purposely disrupted through restricting individuals' choice of lawyers.

Purge of NGOs essentially means legal empowerment through community-based approach is non-existent

Lastly, as mentioned above, a community-based approach can be a vital step to enhance legal empowerment. However, NGOs and CSOs focused on claims-making are virtually non-existent in China and Hong Kong, as they face purges and suppression. China's state security apparatus has long targeted foreign NGOs and their domestic partners, identified in a news article by The Guardian as early as in 2015.

According to the China Development Brief, in 2022 the total number of international organisations worldwide is 74,250, including 66,425 international NGOs (INGOs). However, the number of social organisations officially approved by the Chinese government as INGOs is just over 40 – an extremely small proportion given China has been the most populated country in the world. Such a statistic reflects the meagre and arguably non-existent civil society space in China. According to an article published in August 2022 by ChinaFile, an online magazine, foreign NGOs in China have to steer away from issues like human rights and media. The article also described other factors affecting civil society space in China, like local officials enforcing "unspoken protocols" due to the vagueness of laws, limiting the foreign NGOs' operations and the types of work they could undertake. The COVID-19 pandemic and the implementation of Hong Kong's National Security Law in 2020 further restricted civil society space in Hong Kong, particularly affecting NGOs based in the city with programmes in mainland China (discussed further below).

Local NGOs in mainland China focusing on human rights claims-making face further headwinds, as their organisers are constantly subject to suppression, prosecution, and prison sentences. This is evident in the case of Changsha Funeng. According to a communication issued by UN human rights experts to China, "Changsha Funeng is an organisation founded in 2016 to defend the rights of disadvantaged groups in the realisation of their right to health, including persons with disabilities, Hepatitis B, and AIDS, through policy advocacy and *legal empowerment* (emphasis added)." The same communication revealed that the organisers of the group were subjected to incommunicado detention and enforced disappearance (the aforementioned RSDL). Lawyers appointed by family members, or the family members themselves, were unable to meet the detained organisers of the group.

NGOs and CSOs focused on claims-making activities are similarly purged in Hong Kong in light of the recently promulgated Hong Kong National Security Law. The crackdown on civil society has led to the arrest of pro-democracy politicians, lawyers, scholars, journalists, NGO workers, and activists, instilling fear and uncertainty among organisations operating in the city. As a result of the ongoing suppression, prominent NGOs like Amnesty International and Human Rights Watch have decided to leave Hong Kong.

Communities, or even law firms, offering legal advice to people to challenge laws exercised by the regime can be deemed as abetting actions opposing the government, which may attract reprisals from the regime. This further contributes to the decline of NGOs and CSOs in China and Hong Kong. For instance, in the aforementioned HKNSL case concerning Mr Lai Chee-ying, his son along with Mr Lai's legal team gave testimony to the UN Human Rights Council to address Mr Lai's prolonged detention. In response, the Hong Kong Government issued a statement to condemn the attempt, effectively phrasing Mr Lai's son's attempt to adopt the UN human rights mechanism as "abuse of the United Nations mechanisms by soliciting the United Nations Human Rights Council to interfere in the judicial proceedings of Lai Chee-ying's case concerning the NSL". As described by a member of Mr Lai's legal team, Caoilfhionn Gallagher KC, "[w]e have had very clear threats in Chinese state media that even the very act of bringing an appeal to the United Nations to protect Jimmy Lai's internationally protected human rights, in itself might constitute an offence under the national security laws." These challenging circumstances make it difficult for legal empowerment and access to justice initiatives to thrive and for marginalised and disadvantaged groups to assert their rights.

Conclusion and Recommendations

Legal empowerment initiatives in China face significant challenges due to the political context and limited access to justice. To address these challenges and maintain dialogue with the Chinese government, it is crucial to encourage the development of a more transparent and equitable legal system, support the protection and promotion of NGOs and CSOs, and foster constructive dialogue with the international community.

The 29 Principles remains committed to promoting legal empowerment and access to justice for all, particularly for marginalised and disadvantaged groups. By addressing challenges in China, we can contribute to the realisation of human rights, social justice, and sustainable development in the country.