

HEARING OF THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Gagging the Lawyers: China's Crackdown on Human Rights Lawyers and Its Implications for U.S.-China Relations

Wednesday, June 28, 2017
Capitol Visitor Center
HVC-210
2:00 p.m. - 4:00 p.m.

Statement of Teng Biao

1.

Mr. Chairman, Mr. Co-chairman, and distinguished Members of CECC, I'm honored to be invited to testify at this specially important hearing. The coming July 9, the 2nd anniversary of 709 crackdown, there will be events in DC, HK, Taiwan and some European cities to mark the inaugural china human rights lawyers day, which I have been organizing and coordinating for months.

Chinese human rights lawyers have since 2003 become one of the most active and effective forces in China defending rights and freedom, and inevitably, have been the target of government's persecution since the beginning of the rights defense movement in China. Gao Zhisheng and other lawyers were put into prison and brutally tortured. Because of my work of promoting human rights and democracy since 2003, I was disbarred, banned from teaching and eventually fired, banned from travelling, and kidnapped for three times by the secret police. In 2001 I was detained in a black jail for 70 days in an extreme form of solitary confinement, physically and mentally tortured. My wife and daughter were banned from travelling abroad, and my wife was fired the company she worked for due to the pressure from Chinese government. Collective punishment is frequently used by Chinese authorities to maximize intimidation. The purpose of torture and collective punishment was to make me stop my human rights work but I didn't.

The persecution of rights lawyers reached its peak on July 9, 2015, known as the “709 crackdown.” More than 320 human rights lawyers were kidnapped, detained or interrogated. 8 of them are still in prison. Wang Quanzhang is still disappeared since July 28, 2015, his family and lawyers don’t even know whether he’s alive or dead. Dozens of lawyers were severely tortured, including beatings, electric shocks, sleep deprivation, prolonged interrogations, death threats, months or years of solitary confinement, humiliation, forcible televised confessions, so on and so on. **Notably, it has been confirmed that many lawyers and activists were force-fed with medicines which caused them muscle pain, blurred vision and other physical and mental harm.**

The prison conditions and the treatment in detentions are extremely inhuman and cruel in China. Just the day before yesterday we received news that Nobel laureate Liu Xiaobo has been diagnosed with late-stage liver cancer. Ill treatment in custody may well have contributed to the disease; we know for certain deliberate neglect aggravated the cancer, given how advanced the disease appears. I request sincerely that you esteemed members of the Commission and all people who support freedom in China, please do something to urge Chinese government to immediately & unconditionally allow Liu Xiaobo to obtain medical treatment wherever he wants.

Suppression has increased markedly not only against human rights lawyers, dissidents and NGOs, but also against media, churches, religious groups labeled “evil cults” including FalunGong, petitioners, activist netizens, liberalized scholars and artists. In a report published in February 2017, Chinese Human Rights Defenders (CHRD) documented the deteriorating situation of rights defenders and NGOs. Many new and ongoing cases of enforced disappearance, arbitrary detention, and acts of torture were reported, and the number of criminal detention and conviction, especially the use of “endangering state security charge” were increased. A human rights activist felt the difference, “There are no more ‘grey areas.’ To advocate for human rights in China today, you must be willing to accept the reality that the government views your work as ‘illegal.’” (CHRD 2017) Chinese government has obviously tightened control over information dissemination, teaching materials, publishing and social media. Some laws and regulations, with

a clear purpose of controlling and oppressing the rights defense movement and civil society, were put into effect. State Security Law, Foreign NGO Management Law, Charity Law, Cyber security Law, etc, have already curtailed the development of rights activism and civil society, putting fundamental rights and freedom in danger.

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The “Rights Defence Movement” (weiquan yundong) has emerged since early 2000s as a new focus of the Chinese democracy movement, after the Xidan Democracy Wall movement in late 1970s and the Tian’anmen Democracy movement in 1989. The main political-social factors behind the rise of China’s rights defence movement are as follows:the recovery of legal professions, new ideological discourse, new space for traditional media and the rise of the internet and social media , the development of the market economy and China’s entry to global economy; the dissemination of liberalism ideas and expanded consciousness of civil rights.

Let’s take a brief look at the history of the Chinese Communist Party. When the CCP was facing a deep political and economical crisis in the late 1970s after waves of political campaigns and the brutal Cultural Revolution, it had to introduce a process of legalization and marketization. Legalization was necessary for establishing social order and market economy and thus was beneficial to the political system when mass mobilization was not applicable to the political-social situation any more. Millions of laws and regulations were made, legal professions were recovered, but the CCP never meant to accept a democratic transition or a system with rule of law. Oppositional politics is prohibited, but as an unintended consequence, we lawyers and rights advocates tried our best to use existing legal channels to defend human rights and freedom. Starting with a narrow space, the rights defense movement attracted more and more supporters, such as lawyers, bloggers, pro-democracy scholars, petitioners, persecuted religious groups, victims of human rights abuse, and political dissidents. These are incredible achievements under such a repressive regime, for the past 14 years, the development of the rights defense movement was expressed through at least four trends, namely, organization(zuzhi hua), street activism(jietou hua), politicization(zhengzhi hua) and internationalization(guojia hua).

There is a clear limitation to China's legalization, that is one-party rule, the number one priority of the CCP. Once the CCP senses the use of law could be a potential challenge, it never hesitates to nip it in the bud. Not long after the emergence of the rights defense movement, the Chinese government saw it as a real threat to the regime and never stopped its crackdown. When Xi Jinping took his office, what the CCP was facing was increasing crisis: political, economical, social and ideological crisis. The calculation of Xi Jinping and top CCP leaders is that without a "war on law" to destroy the resisting ability of the social and political movement a color revolution will occur and thus the monopoly of power of the CCP will be in danger. **This is the political background of "709 crackdown", the worst crackdown on lawyers since the recovery of judicial system in late 1970s.**

Upon the more brutal suppression and tighter social control under Xi Jinping's rule since 2013, some analysts asserted "the end of the rights defense movement", but, in my opinion, the idea of the rights defense movement is still showing its exuberant vitality, the spirit of the rights defense movement is still gaining moral and social support, and the persistence of the rights defense movement is still shaping China's politics like unstoppable lightning in the darkness.

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Once again, the CCP's war on law makes it urgent and necessary to change US human rights policy towards China.

In 1989, the CCP crushed a non-violent democracy movement with machine guns and tanks, killing hundreds of students and civilians. 28 years have passed since the Tiananmen massacre and it is a shock to many people when they take a retrospective look at what happened to the relationship between China and the rest of the world. In 1989, all democracies condemned the Tiananmen massacre, sanctioned Chinese dictators and supported Tiananmen activists in jail or in exile. Yet very soon Western leaders couldn't wait to welcome Chinese butchers and dictators, rolling out their red carpet, replete with eager hugs and state banquets. In 1994 U.S. government granted permanent most-favored-nation (MFN) status to China to delink human rights to trade,

despite protests from human rights groups. Then China was allowed to enter the WTO and international markets. China was given the opportunity to host Olympics, World Expo, APEC and G20. China was voted in as a member of UN Human Rights Council again and again.

Now China has become the second largest economy. China is playing an active and aggressive role on the international stage. The Asian International Investment Bank (AIIB), “One Belt One Road”, South China Sea aggression, internet sovereignty, cyber attacks, abducting overseas booksellers and activists, Confusion institutes which erode academic freedom--the list goes on. China is demanding a re-write of international norms, wanting to create a new international order in which rule of law is manipulated, human dignity is debased, democracy is abused, and justice is denied. In this international order, corruption and persecution are ignored, perpetrators are immune, and dictatorial regimes are united and smugly complacent.

China then gained the clout to say no to the West and the West kowtows to China through self-censorship and a policy of appeasement. Besides short-term pragmatic interests, I would like to point out that US human policy towards China has long been based on a series of erroneous theories and mistaken presumptions regarding Chinese politics and Chinese society.

I don't have time to go into details but the erroneous theories cover misunderstandings of China's market, constitution, rule of law, international accountability, NGO, so on and so on.

Erroneous theory No.1:

That a liberalized and globalized market economy will lead to democracy and an open society. Economic growth will bring a strong middle class which of course will demand democracy. Admission to the WTO, the internet, Olympics and international travel will certainly be favorable to a rising civil society which will in turn change China's political ecosystem.

Yes, we have a sort of market economy in China, but it is a market distorted by unchecked powers, corrupt judiciary, and currency manipulation. Yes we have the internet, but it is an

internet confined by the Great Fire Wall, information censorship, and an effective trap for servicing the world's biggest prison for journalists, bloggers and writers.

Erroneous theory No.2:

That the Chinese government represents China and the Chinese people and is a legitimate government with accountability, like the US, Japanese or Indian governments. It has a congress, elections, leadership transitions, a constitution, secular and rational laws and regulations, and a professionalized judiciary. It will honor its domestic and International commitments.

And its watered-down version of Erroneous theory No.2:

That China is an authoritarian system but it has been changing rapidly and positively and it has achieved profound progress. Party reformers will lead China to democracy, but they need time and they need international goodwill. China ratified at least 25 international human rights treaties. International human rights mechanisms will be a powerful promotion for China's rule of law. Human rights dialogue/rule of law dialogue will work. It is much better to keep China on the Human Rights Council than to kick it out. It is better to give China the opportunity to host the Olympics than to boycott the Olympics.

No, no, and no. China is a new type of totalitarian system, compared to which authoritarianism looks soft and pleasing. There is strict one-party rule. There is no separation of powers no judicial independence, no free elections. It has no legitimacy. It has much more in common with a criminal gang than a modern democracy. It does not represent the interests of China or the Chinese people.

The legal system is nothing more than a tool to further control society. Anti-corruption campaigns are a part of cutthroat political jockeying and have nothing to do with rule of law. It has entailed another wave of human rights violation. Rule of law is always superseded by the rule of the party. Human rights dialogue or rule of law dialogue does not work. Chinese government ratifies human rights conventions in order not to adopt them but to deceive the international community. China

has not kept its promise or fulfill its obligations under of ICESCR, CAT, WTO, or any other such affiliations. What China has gotten really good at is manipulating human rights mechanisms to its own ends.

Erroneous theory No.3:

That Chinese government permits the existence of NGOs and cooperation with some NGOs/activists will expand the space of Chinese civil society.

It sounds correct. The problem is that the NGOs that western actors have chosen to cooperate/support are GONGOs(Government-Organized Nongovernmental Organizations). Many western people think that the All China Lawyers Association(ACLA) is just like any other bar association. In believing this they are committing a classic error of mirror-imaging. Similarly, that the Chinese Supreme People's Court is the counterpart of the US federal Supreme Court, or that the National Peoples Congress is the counterpart of a western Parliament, and that the All China Law Association is the mirror image of the American Bar Association. You could not be mistaken. Can you imagine a lawyer's association that suppresses human rights lawyers? A journalist's association which spies on its members? The ACLA is simply a part of the government's apparatus of control: it has disbarred numerous rights lawyers on the orders of the Party, and has been a proactive accomplice in drafting policies that prevent lawyers from taking on political cases.

I'd like to offer a few recommendations here:

- Link HR to trade and other important issues that the CCP cares about.
- Implement the Global Magnitsky Act to ban Chinese perpetrators and corrupt officials from entering the US.
- Punish US and western business which cooperate with Chinese authorities and participate in human rights abuses.
- End the 110 Confucius Institutes in US educational institutions.
- Don't fund the oppressor.

- Support real NGOs not GONGOs.
- Name and shame.
- Expel China from the UN Human Rights Council.

A powerful and autocratic China will bring calamities to mankind. Supporting democracy and human rights in China not only corresponds to American declared values; it will also benefit American politics, society and economics in the long term. Please stand on the side of Chinese people, not on the side of Chinese Communist Party. China should be represented by the human rights lawyers, activists, dissidents and all Chinese people fighting for freedom and democracy, not the illegitimate Party and government.