

《保护律师在中国内地和香港特区
自由和独立行使法律职能时不受可能面临的不当干预》
[英文原文](#)

中国人权对法官和律师独立性问题特别报告员
[面向民间社会和律师协会的调查问卷的答复](#)

1. 鉴于[《关于律师作用的基本原则》](#)第 16-22 条中所载的保证律师履行职责的措施，请说明贵国采取了哪些宪法、法律、行政和政策措施，以使律师能以自由和独立的方式从事服务于其委托人的专业活动。
2. 为了防止和/或惩罚对自由和独立行使法律职能的干预，设立了哪些机构和/或机制？请简要介绍并具体说明它们是独立机构还是属于国家行政结构体系。
3. 请指出贵国是否存在阻碍律师工作和行使法律职能的立法、行政或体制障碍，并加以说明。

在中华人民共和国（**中国**），法律职能的自由和独立行使取决于探讨对象是中国内地（**内地**）还是中国境内的某个特别行政区而有所不同。**中国人权**的答复侧重于内地和香港特别行政区（**香港或香港特区**）。问题 1、2 和 3 将一并讨论。

在内地，由于通过具体法律和政策实施全面政治监督和控制，法律专业人员在实际上和形式上都没有实现独立。整个法律体系在中国共产党（**中共**）的一党政治体制下运作，包括司法机构在内的法律系统为中共的利益和目标服务¹。新出台的法律改革五年规划²强调通过“落实习近平法治思想”以加强党的“集中统一领导”³，即主要将法律视为中共的工具，并将习近平的领导突显为此般中国“法治”的最根本保障⁴。

¹ William Zheng, “China’s legal reforms seek to cement party leadership’s role,” *South China Morning Post*, January 12, 2021, <https://www.scmp.com/news/china/politics/article/3117316/chinas-legal-reforms-seek-cement-party-leaderships-role>.

² Taige Hu and Changhao Wei, “Communist Party Releases New Set of NPC-Related Reform Goals in First Five-Year Plan on Building Rule of Law in China,” *NPC Observer*, January 10, 2021, <https://npcobserver.com/2021/01/10/communist-party-releases-new-set-of-npc-related-reform-goals-in-first-five-year-plan-on-building-rule-of-law-in-china/>; and “Xi Focus: Xi Jinping Thought on the Rule of Law guides law-based governance in China,” *Xinhua News*, December 10, 2020, http://www.xinhuanet.com/english/2020-12/10/c_139578646.htm.

³ Melissa Zhu, “Jury still out on China’s legal reform and judicial independence,” *South China Morning Post*, April 3, 2021, <https://www.scmp.com/economy/article/3128422/jury-still-out-chinas-legal-reform-and-judicial-independence>; and “Open letter on the rule of law in China [by 14 NGOs],” *Human Rights in China*, September 9, 2019, <https://www.hrichina.org/en/press-work/joint-statements/open-letter-rule-law-china>.

⁴ Moritz Rudolf, “Xi Jinping Thought on the Rule of Law: New Substance in the Conflict of Systems with China,” *German Institute for International and Security Affairs*, April 28, 2021, https://www.swp-berlin.org/publications/products/comments/2021C28_Jinping_RuleOfLaw.pdf.

中共通过各种立法、行政和体制手段对法律专业人员实施控制，包括掌控全国所有的律师协会（在下面问题 4 中详述）和规定法律援助机构的目标和职能。《中华人民共和国律师法》⁵阐述了律师的权利和责任、律师协会的职能，以及违反职业规定需要负起的责任，但没有对律师独立履行职责作出任何保证。

内地的律师和律师事务所还必须拥护中共的政策⁶。由司法部发布的修正后的《律师事务所管理办法》规定，律师事务所“应当坚持以习近平新时代中国特色社会主义思想为指导”。指示还要求律师事务所在内部建立发挥核心政治作用的党组织，参与律师事务所的决策和管理⁷。此外，《律师执业管理办法》还禁止律师公开发表“否定”中国的“根本政治制度”、“危害国家安全”或“攻击、诋毁”司法体系的言论⁸。鉴于中国在国家安全法律和政策上含糊不清又不留余地的作风，对律师的这些限制对其独立和专业作用以及其表达自由权利的影响引人关切。

在香港，法律专业人员此前一直享有较高的独立性。在“一国两制”框架下，香港是中国唯一一个实行普通法系的城市⁹，这是在英国统治时期形成的。香港的法律专业人员以法治基础和司法独立为傲¹⁰。管理香港法律专业人员的主要法规是《法律执业者条例》（第 159 章）¹¹。

2021 年 10 月，香港政府发布的一项对法律援助制度施加新限制的提案提到，法律援助署将为法援申请人指派律师，受助人将不再能够自行选择律师¹²，而且司法复核案件也将受到限制。这些拟议的变化影响了申请人选择律师的权利和获得司法救济的机会，此举也因预示着向内地的制度靠拢而引发关切：内地当局设置了许多程序和其他制度性障碍，例如取消指定律师，尤其是刑事和政治敏感案件的被告的指定律师，并将其替换为政府指派的律师¹³。

⁵ *Law of the People's Republic of China on Lawyers* (2008), http://english.www.gov.cn/archive/laws_regulations/2014/08/23/content_281474983042459.htm.

⁶ Ministry of Justice, *Management Methods on Law Firms* (律师事务所管理办法) [effective January 15, 2019], Art. 3 (Chinese: http://www.gov.cn/zhengce/zhengceku/2018-12/31/content_5437152.htm), no English translation publicly available.

⁷ *Ibid.*, Art. 4.

⁸ Ministry of Justice, *Measures on the Administration of Lawyers' Practice* (律师执业管理办法) [effective November 1, 2016], Art. 40 (Chinese: <https://perma.cc/QBG5-7KWY>, unofficial English translation: <http://chinalawtranslate.com/%E5%BE%8B%E5%B8%88%E6%89%A7%E4%B8%9A%E7%AE%A1%E7%90%86%E5%8A%9E%E6%B3%95/?lang=en>).

⁹ C. H. Poon, “Legal Services Industry in Hong Kong,” *Hong Kong Trade Development Council Research*, May 20, 2021, <https://research.hktdc.com/en/article/MzEzODc5NTk5>.

¹⁰ “Hong Kong: The Facts – Legal System”, *GovHK*, February 2021, https://www.gov.hk/en/about/abouthk/factsheets/docs/legal_system.pdf.

¹¹ *Legal Practitioners Ordinance (Cap. 159)* (2003), <https://www.elegislation.gov.hk/hk/cap159!en.pdf>.

¹² Selina Cheng, “Legal aid reform: Critics fear right to choose lawyer will be undermined but Hong Kong gov't advisor says plan will be ‘fairer’,” *Hong Kong Free Press*, October 25, 2021, <https://hongkongfp.com/2021/10/25/legal-aid-reform-critics-fear-right-to-choose-lawyer-will-be-undermined-but-hong-kong-govt-advisor-says-plan-will-be-fairer/>.

¹³ *Ibid.*; and Chunyi Chen, “Some Fundamentals Regarding China’s ‘Government-designated Lawyers’,” *ChinaChange*, September 24, 2020, <https://chinachange.org/2020/09/24/some-fundamentals-regarding-chinas-government-designated-lawyers/>.

4. 请说明全国律师协会在保护律师和法律职能的自由行使方面的作用。律师协会在法律上和事实上是否独立于政府？

内地的律师协会在法律上和事实上都不独立于政府。所有市级、省级和国家级的律师、律师事务所和律师协会仍处于司法部的管辖之下，受其“监督和指导”¹⁴。

内地唯一的全国性律师协会是中华全国律师协会（**全国律协**），它虽然被称为“自律组织”，但同样服从司法部的管理。所有律师和律师事务所都必须加入当地的律师协会，并自动成为全国律协会员¹⁵。截至 2020 年底，内地有超过 52.2 万名执业律师和 3.4 万家律师事务所¹⁶。全国律协的宗旨是：“坚持中国共产党领导，团结带领会员高举中国特色社会主义伟大旗帜……忠实履行中国特色社会主义法治工作队伍的职责使命……维护当事人合法权益，维护法律正确实施，维护社会公平和正义……为建设社会主义法治国家……把我国建设为……文明和谐……的社会主义现代化强国……而奋斗。”¹⁷（下划线为作者添加。）

中国法律还规定，律师不能自行组建专业协会或选举律师协会的领导班子。2008 年，北京的 35 名律师呼吁让由政府控制的北京律师协会进行公开直选，以自行选举领导班子¹⁸。然而，在当局的回应之下，他们当中至少有 7 人因官方施压¹⁹而失去工作，其中一家律师事务所还被勒令关停 6 个月²⁰。

¹⁴ Article 4 of the Law on Lawyers of the People's Republic of China states that "The judicial administrative departments conduct supervision and guidance of lawyers, law firms and bar associations according to the present law." Article 4 of the Charter of the All-China Lawyers Association states that "Lawyers associations receive the supervision and guidance of judicial administrative departments."

¹⁵ NPC Standing Committee, *Law on Lawyers of PRC* (中华人民共和国律师法) [amended as of September 1, 2017], Art. 45 (Chinese: http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-09/12/content_2028697.htm), no English translation publicly available.

¹⁶ Ministry of Justice, *Statistical Analysis of the Work of Lawyers and Grassroots Legal Services in 2020* (2020 年度律师、基层法律服务工作统计分析), June 11, 2021 (Chinese: http://www.moj.gov.cn/pub/sfbgw/zwxgk/fdzdgknr/fdzdgknrtjxx/202106/t20210611_427394.html), no English translation publicly available.

¹⁷ All-China Lawyers Association, *Association Introduction* (协会介绍) (Chinese: <http://www.acla.org.cn/home/toMenu?menuIdStr=1>), no English translation publicly available.

¹⁸ "Beijing Lawyers' Appeal for Direct Elections," *Human Rights in China*, August 26, 2008, <https://www.hrichina.org/en/content/289>; and "Campaign for Direct Elections of Beijing Lawyers Association, 2008-2009," *ChinaChange*, July 8, 2019, <https://chinachange.org/2019/07/08/campaign-for-direct-elections-of-beijing-lawyers-association-2008-2009/>.

¹⁹ "China Lawyers Who Called For Bar Elections are Fired," *The New York Times*, November 6, 2008, <https://www.nytimes.com/2008/11/06/world/asia/06iht-beijing.1.17584310.html>.

²⁰ Jerome A. Cohen, "The Struggle for Autonomy of Beijing's Public Interest Lawyers," *Human Rights in China*, April 1, 2009, <https://www.hrichina.org/en/content/3692>.

与联合国《关于律师作用的基本原则》²¹中规定的律师和专业协会的作用²²相反，全国律协在履行其官方监管职责时，出手限制了内地律师的表达和集会自由²³。2021年10月，全国律协发布了《关于禁止违规炒作案件的规则》，进一步禁止律师“联署签名、发表公开信、组织网上聚集、声援”或组织“个案研讨”²⁴。

香港的两大主要律师协会，即面向大律师的**香港大律师公会**和面向律师的**香港律师会**，一直享有相对较高的独立性，但这在《国家安全法》²⁵颁布后有了变化，这一令人担忧的情形仍在持续发展²⁶。

大律师公会成立于1949年，以《社团条例》注册²⁷。相较于律师会，大律师公会更倾向于就社会问题发表意见²⁸。与香港其他民间社会机构一样，大律师公会越来越多地受到大力审查、妖魔化和威胁，以致于多名理事会成员在2021年辞任²⁹。该组织对香港的司法动态，如《国家安全法》的强制施行³⁰和最近的移民法³¹表达了关切，于是被北京和香港当局指控为政治团体。中国官方媒体《人民日报》称大律师公会是“过街老鼠”，并警告说它“在香港的溃败已是确定之数”³²。

²¹ Under the UN Principles, “professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest.” Basic Principles on the Role of Lawyers (1990), <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

²² Ibid.

²³ Emily Feng, “Where No One Dares Speak Up’: China Disbars Lawyers On Sensitive Cases,” *National Public Radio*, February 18, 2021, <https://www.npr.org/2021/02/18/963217332/where-no-one-dares-speak-up-china-disbars-lawyers-on-sensitive-cases>.

²⁴ *All-China Lawyers Association Rules on Prohibiting the Hyping of Cases in Violation of Rules (中华全国律师协会关于禁止违规炒作案件的规则)* [passed on October 15, 2021], Art. 4 (Chinese: <http://www.acla.org.cn/article/page/detailById/32079>, unofficial English translation: <https://www.chinalawtranslate.com/en/lawyers-speech/>).

²⁵ *Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region* (2020), <https://www.elegislation.gov.hk/hk/A406>.

²⁶ Kari S. Lindberg, Natalie Lung, and Pablo Robles, “How Hong Kong’s National Security Law Is Changing Everything,” *Bloomberg*, October 6, 2021, <https://www.bloomberg.com/graphics/2021-hong-kong-national-security-law-arrests/>.

²⁷ *Societies Ordinance (Cap. 151)* (1911), <https://www.elegislation.gov.hk/hk/cap151>.

²⁸ Rhoda Kwan, “Hong Kong’s Justice Sec. warns law societies to steer clear of politics after Chinese state media blasts barristers,” *Hong Kong Free Press*, August 16, 2021, <https://hongkongfp.com/2021/08/16/hong-kongs-justice-sec-warns-law-societies-to-steer-clear-of-politics-after-chinese-state-media-blasts-barristers/>.

²⁹ “One more barrister quits Hong Kong Bar Association council,” *The Standard*, August 16, 2021, <https://www.thestandard.com.hk/breaking-news/section/4/178908/One-more-barrister-quits-Hong-Kong-Bar-Association-council>.

³⁰ “Hong Kong’s Justice Sec. warns law societies to steer clear of politics after Chinese state media blasts barristers,” op. cit.

³¹ “‘Intrusive power’: Concern over proposed Hong Kong law that could bar anyone from leaving city,” *Agence France-Presse*, February 13, 2021, <https://hongkongfp.com/2021/02/13/intrusive-power-concern-over-proposed-hong-kong-law-that-could-bar-anyone-from-leaving-city/>.

³² “Hong Kong’s Justice Sec. warns law societies to steer clear of politics after Chinese state media blasts barristers,” op. cit.

北京和香港当局还将于 2021 年 1 月被任命为大律师公会主席的著名人权和公法专家夏博义（**Paul Harris**）（他自 1994 年起便一直在香港生活和工作）指控为“与外国有着紧密联系的反华政客”，而他此前对亲民主活动人士的监禁判决³³和《国家安全法》发表过多项评论。夏博义的英国自由民主党党籍也招致当局不满，他现已退党³⁴。近期消息显示，从可能参与大律师公会竞选的新人选可以看出，有势力想将该组织变得更加“非政治化”³⁵。

律师会的自我描述是“香港律师的自我监管组织及专业团体，具有法定权力规管律师及律师执业操守，以维持其最高专业水平”³⁶。该组织也同样遭到施压。在其 2021 年 8 月的选举中，亲北京的媒体指控一些候选人有政治偏见³⁷，尽管有候选人声明了中立的政治立场³⁸。《人民日报》还警示律师会不要成为大律师公会那样；行政长官林郑月娥甚至警告说，如果律师会变得政治化，政府将与其终止关系³⁹。律师会新会长陈泽明坚称，律师会只会严格从法律角度对社会问题提出看法⁴⁰。

5. 请提供详细信息，说明在过去五年中有多少律师因涉嫌违反职业行为标准而受到刑事、行政或纪律处分程序。其中有多少人被认定有罪？又有多少人最终被取消律师资格？

很遗憾，没有公开渠道显示或提供关于过去五年中，内地律师因涉嫌违反职业行为标准而受到刑事、行政或纪律处分程序的人数的全面数据。这基本上是中国在数据透明度方面的一贯挑战⁴¹。同样，香港过去五年中因涉嫌违反职业行为标准而受到

³³ Helen Davidson, “Beijing calls Hong Kong bar association chief an ‘anti-China politician’,” *The Guardian*, April 27, 2021, <https://www.theguardian.com/world/2021/apr/27/beijing-calls-hong-kong-bar-association-chief-an-anti-china-politician>.

³⁴ Chris Lau, “Exclusive | Hong Kong Bar chief Paul Harris ‘removed’ from national security trial by legal aid officials against activist client’s wish,” *South China Morning Post*, November 30, 2021, https://www.scmp.com/news/hong-kong/politics/article/3157921/hong-kong-bar-chief-paul-harris-removed-national-security?utm_source=rss_feed.

³⁵ Chris Lau, “‘Apolitical’ Hong Kong barristers emerge as possible candidates to run Bar Association, thaw frosty relations with Beijing,” *South China Morning Post*, October 18, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3152670/apolitical-hong-kong-barristers-emerge-possible-candidates>.

³⁶ “Our Profile,” The Law Society of Hong Kong, undated, <https://www.hklawsoc.org.hk/en/About-the-Society/Our-Profile>.

³⁷ “Hong Kong lawyers attacked by pro-Beijing media defeated in heated Law Society poll,” *Reuters*, August 25, 2021, <https://www.reuters.com/world/china/hong-kong-lawyers-attacked-by-pro-beijing-media-defeated-heated-law-society-poll-2021-08-25/>.

³⁸ “Law Society election in Hong Kong spotlights tensions over China, legal system,” *Reuters*, August 24, 2021, <https://www.channelnewsasia.com/asia/hong-kong-law-society-election-china-2132706>.

³⁹ Ibid; and Qingqing Chen and Fandi Cui, “HKSAR govt could step in if Law Society dominated by pro-opposition candidates: experts,” *Global Times*, August 24, 2021, <https://www.globaltimes.cn/page/202108/1232360.shtml>.

⁴⁰ Chris Lau, “Hong Kong Law Society will offer legal perspective only when it comes to social issues, new president says,” *South China Morning Post*, August 31, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3146992/hong-kong-law-society-councillor-known-liberal-approach>.

⁴¹ Walter Lohman and Justin Rhee, “2021 China Transparency Report,” *The Heritage Foundation*, June 2021, http://thf_media.s3.amazonaws.com/2021/China_Transparency_Report.pdf; and Frank Tang, “China’s data protection rules among ‘core challenges’ facing British firms, despite steps to open economy,” *South China Morning*

刑事、行政或纪律处分的律师人数的详细信息也未公开。虽然对纪律处分的裁决为公开发表⁴²，但没有相关的综合数据统计。

6. 请提供信息，说明贵国律师因履行受承认的专业职责而受到国家当局或非国家行为者的恐吓、阻挠、骚扰或不当干预的任何案件。并请说明国家当局采取了哪些措施进行调查并将施害者绳之以法。

在内地，律师经常因履行受承认的专业职责而受到国家当局的恐吓、阻挠、骚扰或不当干预。由于国家当局是这方面的主要施害者，所以并未做出有意义或有效的努力来进行调查并将施害者绳之以法。

有的指示，如授权政府自由处理几乎所有被认为与国家安全⁴³和“社会主义法治”（在我们对问题 4 的答复中有详述）有关的事项的立法，严重阻碍了律师的表达、集会和结社自由权。控制律师和限制其受理案件的另一个工具是通过威胁临时注销或永久吊销律师或律师事务所的执业证书来威胁律师的生计⁴⁴。由于律师事务所和律师要接受年检并更新执业证书，该年度审核被用于恐吓律师及其事务所。9 月，司法部宣布了明确针对非经法律许可的社会活动的新措施，修订后的法规禁止“静坐、举横幅或标语牌、喊口号”等活动，甚至连“通过舆论施压”也不允许⁴⁵。当局要求律师事务所解雇不服从规定的律师，否则就有被吊销执业证书的风险⁴⁶。所有这些措施都严重妨碍了律师自由和独立地行使职能。

此外还有地方当局的更多监视和骚扰⁴⁷。取消律师资格的威胁意味着律师在受理被当局认为是敏感的案件时要冒着生计不保的风险⁴⁸。“我原本是一个抢手的律师，所以我的律师费也相当高。失去执业证书意味着收入大幅减少。”在 2018 年因法律倡导活动而被永久吊销执业证书的广东律师隋牧青如是说。当局在经济制裁上重拳出击：隋牧青的文章仍然被审查，他开设的多个社交媒体账户被突然冻结，从而切断了他的写作收入⁴⁹。当局在取消律师资格时动用的是禁止律师在法庭外有高调声援之举的 2016 年规定⁵⁰。

Post, May 26, 2021, <https://www.scmp.com/economy/china-economy/article/3134805/chinas-data-protection-rules-among-core-challenges-facing>.

⁴² “Disciplinary Decisions,” Hong Kong Lawyer (The Official Journal of the Law Society), constantly updated, <http://www.hk-lawyer.org/contents/disciplinary-decisions>.

⁴³ Alex W. Palmer, “Flee at Once: China’s Besieged Human Rights Lawyers,” *The New York Times*, July 25, 2017, <https://www.nytimes.com/2017/07/25/magazine/the-lonely-crusade-of-chinas-human-rights-lawyers.html>.

⁴⁴ William Nee, “China’s 709 Crackdown Is Still Going On,” *The Diplomat*, July 9, 2021, <https://thediplomat.com/2021/07/chinas-709-crackdown-is-still-going-on/>.

⁴⁵ “Flee at Once: China’s Besieged Human Rights Lawyers,” op. cit.

⁴⁶ “Flee at Once: China’s Besieged Human Rights Lawyers,” op. cit.

⁴⁷ “Where No One Dares Speak Up!: China Disbars Lawyers On Sensitive Cases,” op. cit.

⁴⁸ “Flee at Once: China’s Besieged Human Rights Lawyers,” op. cit.

⁴⁹ “Where No One Dares Speak Up!: China Disbars Lawyers On Sensitive Cases,” op. cit.

⁵⁰ “Where No One Dares Speak Up!: China Disbars Lawyers On Sensitive Cases,” op. cit.

近年来，“709 大抓捕”和 12.26 公民案最为重大。2015 年 7 月 9 日，中国政府发起了一场全国性的行动，利用刑事法律和受政府控制的法院，通过任意逮捕、拘留、定罪和监禁来压制律师和其他人权活动人士⁵¹。有 300 多名律师和活动人士在这场行动中被逮捕⁵²。这些律师和活动人士曾对中国司法部门或警察对其当事人的不当行为提出挑战，导致其自身也成为了政府的目标⁵³。在“709 大抓捕”之后，许多幸免于难的法律界人士转入地下或者隐退⁵⁴。2019 年 12 月，多位律师和公民因为参加厦门的私人聚会而被失踪或遭到传唤，有的还被控以“颠覆国家政权”或“寻衅滋事”罪⁵⁵。截至目前，中国政府并未放松对律师，特别是人权律师的施压⁵⁶。

以下是中国著名维权律师的案例，他们在接手政治敏感案件或被认为挑战国家利益的案件后，有的受到取消律师资格的威胁，有的被取消律师资格，还有的被禁止履行基本职能：

- 2021 年 11 月 26 日，为著名法律倡导者许志永（现正因“颠覆国家政权罪”面临审判）和试图逃往台湾而在海上被捕的“12 港人”其中一员辩护的律师梁小军接到了北京市司法局关于吊销其律师执业证书听证的通知，理由是他“发表支持法轮功的言论”。
- 彭剑作为丁家喜律师的律师，披露了与该案件有关的一些细节，因此也成为了打击报复的受害者。据彭剑说，他创办和经营的北京华欢律师事务所没有通过 2020-2021 年的律师事务所审核。
- 人权律师卢思位于 2021 年 1 月被吊销执业证书，此前他曾代表异见诗人王藏和他的妻子王丽⁵⁷，以及“12 港人”的其中一员。
- 任全牛在 2021 年 2 月被吊销了律师执业证书，他此前为两个敏感案件的当事人辩护：一位是“12 港人”的其中一员，另一位是因报道和传播有关武汉暴发 2019 冠状病毒病的消息而正在服四年刑期的公民记者张展。
- 1 月 27 日，裘祥栋律师接到山东省当局有关吊销其律师执业证书听证的通知，以此作为“扰乱法庭秩序”的行政处罚。他曾代表当时被拘留的人权律师王全璋，即“709 大抓捕”中被重点打击的律师之一。

⁵¹ “5-year anniversary of the 709-Crackdown,” *Lawyers for Lawyers*, July 9, 2020, <https://lawyersforlawyers.org/en/5-year-anniversary-of-the-709-crackdown/>.

⁵² “International Community Must Stand in Solidarity with Chinese Human Rights Lawyers — on the Third Anniversary of the 709 Crackdown,” *Human Rights in China*, July 6, 2018, <https://www.hrichina.org/en/press-work/statement/international-community-must-stand-solidarity-chinese-human-rights-lawyers>.

⁵³ Andrew Jacobs and Chris Buckley, “China Targeting Human Rights Lawyers in a Crackdown,” *The New York Times*, July 3, 2015, <https://www.nytimes.com/2015/07/23/world/asia/china-crackdown-human-rights-lawyers.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>.

⁵⁴ “Flee at Once: China’s Besieged Human Rights Lawyers,” *op. cit.*

⁵⁵ “12.26 Citizen Case,” *Human Rights in China*, undated, <https://www.hrichina.org/en/1226-citizen-case>.

⁵⁶ “China’s 709 Crackdown Is Still Going On,” *op. cit.*

⁵⁷ “Mainland Chinese lawyer who helped Hong Kong fugitive in Shenzhen hits out at ‘baffling suppression’ as he faces loss of licence,” *South China Morning Post*, January 4, 2021, <https://www.scmp.com/news/hong-kong/politics/article/3116301/mainland-chinese-lawyer-who-assisted-one-hong-kong>.

- 2021年10月31日，为“12港人”其中一员辩护的**蔺其磊**律师接到了北京市司法局注销其律师执业证书的决定⁵⁸。
- 2021年12月，一位知情人士透露，代表法律倡导者**许志永**和律师**丁家喜**的律师们被当局强迫签署保密协议，禁止他们复印案件档案，与包括许、丁二人的亲属在内的任何人讨论案件细节，接受任何媒体采访，或公开谈论案件⁵⁹。（许志永和丁家喜是新公民运动的两位主要倡导者，因为涉及12.26公民案而以“颠覆国家政权罪”面临审判。在此案中，多人因在2019年12月参与了律师及其他人士一同讨论时事和中国的未来、分享促进民间社会建设经验的两次私人聚会而成为当局的打击对象。）
- 曾在“709大抓捕”中为王宇律师辩护的**李昱函**律师，在被审前拘留四年后，于2021年10月20日以“寻衅滋事”和“诈骗”的罪名受审，但并未作出判决。据报道，她的健康状况不佳⁶⁰。
- 法律倡导者**郝劲松**律师于2019年12月17日被拘留，并在拒绝删除其社交媒体帖子后因涉嫌违反《反恐怖主义法》和“寻衅滋事”被处以15天的行政拘留。他于2021年11月18日被闭门审判，但并未作出判决⁶¹。
- 对高层腐败敢怒敢言的**覃永沛**律师自2019年10月以来被拘留至今。他获准于2021年10月13日参加庭前会议，目前还没有开庭日期的消息⁶²。

在香港，支持民主改革或活跃于开明派组织或诉求的律师也以各种方式成为了当局的打击对象⁶³，并被敦促“远离政治”⁶⁴。历来关注度不高的律师会理事会选举在2021年风起云涌，“开明派”三位候选人之一的**罗彰南（Jonathan Ross）**以担心自身和家人安全为由退选。建制派候选人则赢得了所有空缺席位。

大律师**邹幸彤**的案件意义重大。邹幸彤36岁，是现已解散的香港市民支援爱国民主运动联合会的前副主席。她自2021年9月8日以来被拘留至今，被法院第七次

⁵⁸ Gao Feng, “曾为十二港人辩护 律师蔺其磊遭注销执业证 (Lin Qilei, a defense lawyer for twelve Hong Kong residents, has his practice license cancelled),” Radio Free Asia, November 1, 2021, <https://www.rfa.org/mandarin/yataibaodao/renquanfazhi/gf-11012021074353.html>.

⁵⁹ “Cases of Human Rights Lawyers/Activist– Xu Zhiyong and Ding Jiayi,” compiled by Sophie Luo, December 2021, <https://static1.squarespace.com/static/55c7279de4b014e7aad20a46/t/61ad2e9b30cbd27514729c2e/1638739611995/Cases%2Bof%2BXu%2B-%2BDing%2B-%2Bfinal.pdf>.

⁶⁰ “New Wave of Persecution Against Chinese Human Rights Lawyers Must Sound the Alarm,” Chinese Human Rights Defenders, December 6, 2021, https://www.nchr.org/2021/12/new-wave-of-persecution-against-chinese-human-rights-lawyers-must-sound-the-alarm/?utm_source=rss&utm_medium=rss&utm_campaign=new-wave-of-persecution-against-chinese-human-rights-lawyers-must-sound-the-alarm.

⁶¹ Ibid.

⁶² Ibid.

⁶³ “Opinion: First they came for the Hong Kong protesters. Then they came for their lawyers.,” *The Washington Post*, November 3, 2021, <https://www.washingtonpost.com/opinions/2021/11/03/first-they-came-hong-kong-protesters-then-they-came-their-lawyers/>.

⁶⁴ Sara Cheng, “Hong Kong's Lam tells solicitors' group to stay out of politics,” *Reuters*, August 17, 2021, <https://www.reuters.com/world/asia-pacific/hong-kong-leader-says-no-explicit-timetable-anti-foreign-sanctions-law-2021-08-17/>.

拒绝保释。⁶⁵她面临多项指控，包括：根据《香港国安法》，在她拒绝提供警方要求的与港支联有关的信息后，被起诉煽动颠覆国家政权和作为“外国代理人”；⁶⁶参与、煽惑他人参与未经批准的2020年“六四”守夜活动集会；煽惑他人参与未经批准的2021年“六四”守夜活动集会。⁶⁷

被拘留的邹幸彤无法继续担任何桂蓝的法律代表。何是因参加在《国家安全法》下被认定为非官方的初选而被指控的47名民主人士之一⁶⁸。2021年9月8日，即邹因涉嫌“煽动颠覆国家政权罪”被捕的当天，国务院港澳事务办公室公开批评她以“公民抗命”和“违法达义”为借口走上犯罪道路⁶⁹。由政府控制的报社记者还在她被捕前对她进行跟踪，说她在销毁证据；亲北京的团体“爱护香港力量”也在法庭外抗议，要求香港大律师公会取消邹的大律师资格⁷⁰。

⁶⁵ Candice Chau, “Hong Kong Tiananmen Massacre vigil group leader denied bail over ‘inciting subversion’ national security charge,” *Hong Kong Free Press*, September 10, 2021, <https://hongkongfp.com/2021/09/10/hong-kong-tiananmen-massacre-vigil-group-leader-denied-bail-over-inciting-subversion-national-security-charge/>; and “【支聯會案】鄒幸彤 7 度被拒保釋 旁聽人士喊「堅持、加油」(Chow Hang-tung was refused bail for 7 charges and observers shouted "Persevere, come on"),” *The Stand News*, November 16, 2021, <https://www.thestandnews.com/court/%E6%94%AF%E8%81%AF%E6%9C%83%E6%A1%88%E9%84%92%E5%B9%B8%E5%BD%A4-7-%E5%BA%A6%E8%A2%AB%E6%8B%92%E4%BF%9D%E9%87%8B-%E6%97%81%E8%81%BD%E4%BA%BA%E5%A3%AB%E5%96%8A%E5%A0%85%E6%8C%81%E5%8A%A0%E6%B2%B9>.

⁶⁶ “Hong Kong: Arrests under Security Law, a serious concern,” *UN News*, October 12, 2021, <https://news.un.org/en/story/2021/10/1102882>; and Candice Chau, “Hong Kong Tiananmen Massacre vigil leaders plead not guilty to refusing national security data probe, bail denied,” *Hong Kong Free Press*, September 10, 2021, <https://hongkongfp.com/2021/09/10/hong-kong-tiananmen-massacre-vigil-leaders-plead-not-guilty-to-refusing-national-security-data-probe-bail-denied/>.

⁶⁷ Candice Chau, “Hong Kong democrats to plead guilty over banned 2020 Tiananmen Massacre vigil,” *Hong Kong Free Press*, June 11, 2021, <https://hongkongfp.com/2021/06/11/hong-kong-democrats-to-plea-guilty-over-banned-2020-tiananmen-massacre-vigil/>; and “Vigil organiser Chow Hang-tung arrested: sources,” *RTHK News*, June 4, 2021, <https://news.rthk.hk/rthk/en/component/k2/1594219-20210604.htm>.

⁶⁸ “【拒交資料被捕】鄒幸彤原代表何桂藍申保釋 「遺憾上唔到藍的保釋了」 ([Arrested for refusal to submit information] Chow Hang-tung originally applied for bail on behalf of Gwyneth Ho, "I regret not obtaining bail for Ho"),” *The Stand News*, September 8, 2021, <https://www.thestandnews.com/politics/%E6%8B%92%E4%BA%A4%E6%94%AF%E8%81%AF%E6%9C%83%E8%B3%87%E6%96%99%E8%A2%AB%E6%8D%95-%E9%84%92%E5%B9%B8%E5%BD%A4%E5%8E%9F%E4%BB%A3%E8%A1%A8%E4%BD%95%E6%A1%82%E8%97%8D%E7%94%B3%E4%BF%9D%E9%87%8B-%E9%81%BA%E6%86%BE%E4%B8%8A%E5%94%94%E5%88%B0%E8%97%8D%E7%9A%84%E4%BF%9D%E9%87%8B%E4%BA%86>.

⁶⁹ “Hong Kong and Macau Affairs Office: Zou Xingtong and others claim to be “unlawful and righteous” as excuses,” *Now News*, September 8, 2021, <https://news.now.com/home/local/player?newsId=449157>.

⁷⁰ “鄒幸彤匿辦公室一周 銷毀證據 (Chow Hang-tung’s office destroyed evidence within a week),” *Wen Wei Po*, September 9, 2021, <https://www.wenweipo.com/a/202109/09/AP61396c60e4b08d3407d934e0.html>; and “團體高院示威 籲大律師公會取消鄒幸彤資格 (Group demonstration outside High Court calls on Bar Association to Disqualify Chow Hang-tung),” *ST Headline News*, September 10, 2021, <https://hd.stheadline.com/news/realtime/hk/2212656/%E5%8D%B3%E6%99%82-%E6%B8%AF%E8%81%9E-%E5%9C%98%E9%AB%94%E9%AB%98%E9%99%A2%E7%A4%BA%E5%A8%81-%E7%B1%B2%E5%A4%A7%E5%BE%8B%E5%B8%AB%E5%85%AC%E6%9C%83%E5%8F%96%E6%B6%88%E9%84%92%E5%B9%B8%E5%BD%A4%E8%B3%87%E6%A0%BC>.

最近有消息披露，香港法律援助署在违背国家安全案当事人马俊文意愿的情况下，取消了香港大律师公会主席夏博义（见我们对问题 4 的答复）作为其法律顾问的身份（见对问题 1 至 3 的答复）。如之前在问题 4 中提到的，夏博义因为力求倡导修改《国家安全法》的部分内容而成为了北京的眼中钉⁷¹。尽管马俊文后来屡次要求聘用夏博义，官方都没有给出撤换他的理由。

此外，在最近的一次法庭听证会上有消息披露，在香港根据《国家安全法》被指控和定罪的第一人唐英杰的审判中，以受理活动人士案件而闻名的伍展邦律师行也不被允许为其辩护⁷²。政府通常希望某些当事人没有法律代表，或由政府指定的会乖乖听话的律师为其辩护，又或者能让不受其控制的律师收敛一些。在像马俊文这样的“敏感”案件中尤其如此：政府希望在合法的外衣下得到其想要的结果，从而让其一手操纵的结局具有一定合法性⁷³。

7. 贵组织为促进法律职能的独立行使开展了哪些活动？您方是否有与其他国家或地区具有类似职能的组织协调合作？您方是否是为此目的而建立的组织网络的一部分？请举例说明。

中国人权一直积极致力于促进法律专业人员的独立性和对维权律师个人提供支持。我们的活动包括：国际人权法培训、与其他区域或国际团体的合作与协调、战略咨询和技术援助，以及创建实用的资源。

中国人权在 2015 年就对律师和维权倡导者的“709 大抓捕”创建了大量相关资源，具体包括：

- 2015-2016: [中国政府大规模镇压律师、维权人士及国际社会的反应：简要年表](#)
- 2016: [中国人权敦促允许独立观察员监督对维权律师的审判](#)
- 2020: [“709 大抓捕”五周年：对律师、法律工作者和维权人士的镇压](#)
- 2021: [“709 大抓捕”六周年：致敬不屈的女性](#)

8. 贵国因 2019 冠状病毒病大流行而采取的立法和/或措施，在多大程度上影响了法律专业人员的独立性或律师的安全？请解释。

在过去的一年里，内地和香港当局将 2019 冠状病毒病大流行作为限制权利，尤其是限制表达、结社和集会自由的公共卫生理由。这些限制影响了民间社会的方方面面，包括合法行使这些权利的律师。

9. 请说明您方建议采取哪些措施和政策来更好地保护和保障法律职能的自由行使。

⁷¹ Chris Lau, “Exclusive | Hong Kong Bar chief Paul Harris ‘removed’ from national security trial by legal aid officials against activist client’s wish,” *South China Morning Post*, November 30, 2021, https://www.scmp.com/news/hong-kong/politics/article/3157921/hong-kong-bar-chief-paul-harris-removed-national-security?utm_source=rss_feed.

⁷² Ibid.

⁷³ “China’s 709 Crackdown Is Still Going On,” op. cit.

多年来，各类联合国人权机制对法律体系的独立性⁷⁴、包括律师⁷⁵在内的权利捍卫者的权利⁷⁶，以及滥用 2019 冠状病毒病⁷⁷和国家安全立法⁷⁸来打击权利合法行使的情况表示了关切。

我们建议，作为有意义并有建设性的第一步，内地和香港特区当局应当认真地对这些关切进行回应，并将对其提出的具体建议予以实施。

我们还建议法官和律师独立性问题特别报告员考虑制定一个确保法律职能自由行使的框架，以便为各国在准备向条约机构提交的缔约国报告，以及各缔约国在回应其收到的法律和其他方面文书时提供指导。

⁷⁴ “UN experts call for decisive measures to protect fundamental freedoms in China,” United Nations Office of the High Commissioner for Human Rights, June 26, 2020,

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26006>

⁷⁵ U.N. experts’ joint communication of September 24, 2021, (UA CHN 10/2021), September 24, 2021,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26658>.

⁷⁶ U.N. experts’ joint communication of April 28, 2021 (AL CHN 4/2021), April 28, 2021,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26337>; and U.N.

experts’ joint communication of May 4, 2020 (AL CHN 9/2020), May 4, 2020,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25187>.

⁷⁷ Human Rights in China, “Input for report on disinformation: To the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,” February 15, 2021. This submission focuses on the human rights challenges posed when misinformation is created and disseminated by the state itself or by state supported actors. This submission has not been made public. MS on file.

⁷⁸ UN experts’ joint communication on the Decision of the National People’s Congress on Establishing and Improving the Legal System and Enforcement Mechanisms for Safeguarding National Security in the Hong Kong Special Administrative Region (OL CHN 13/2020), June 19, 2020,

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25354>; Seven UN experts’ communication to China urging review and reconsideration of National Security Law to comply with international law, September 1, 2020, at:

<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25487>.