

Saturday, 20 July 2019

Law Council on the detention of Dr Yang Hengjun in China

Statement from Law Council of Australia President, Arthur Moses SC

The Law Council of Australia strongly supports remarks by the Minister for Foreign Affairs, Senator the Hon Marise Payne, on Friday concerning the criminal detention of Dr Yang Hengjun in China, and welcomes the Minister's interventions in relation to this very troubling matter.

The Law Council has previously expressed grave concerns and made representations to the Australian Government in relation to China's treatment of the Chinese-Australian writer who has been detained in China on suspicion of "endangering national security".

The Law Council remains concerned that Dr Yang does not appear to have the benefit of any of the traditional safeguards expected of an independent criminal justice system and the rule of law, including access to a lawyer of his choice, the right for the public to know what he is being detained for and when it is expected that he will be released.

Despite China being a signatory to the International Covenant on Civil and Political Rights (ICCPR), a person who is arrested may not receive information about the reason for their detention, may not have access to the courts or independent legal representation, and may face very difficult conditions of detention. People are routinely held for months or years under these conditions. Communication with family members, and in the case of foreigners, consular officials, is also extremely limited.

The treatment of Dr Yang appears to constitute several breaches of the United Nations' Basic Principles of the Role of Lawyers (the Principles). The Principles exist to protect individuals who are charged and promote a fair trial by ensuring they are able to access the lawyer of their choice to act for them without fear or favour. Principle 1 states that all persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings. The Principles also protect lawyers who are called to act for unpopular persons or persons whom a Government alleges has broken the law. It is vital for every nation to have an independent legal profession that can practice without fear of reprisal, to promote the administration of justice and ensure a fair trial.

The Law Council stands ready to offer any assistance required to the Australian Government in this important matter.

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