

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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15 July 2015

Xi Jinping, President of the People's Republic of China
Zhang Dejiang, Chairman of the National People's Congress
Zhongnanhai,
No. 174 Xi Chang'an Jie,
Beijing 100017 China

Dear President Xi and Chairman Zhang,

Re: Coordinated harassment, incommunicado detention and disappearances of lawyers and other human rights defenders

Lawyers' Rights Watch Canada (LRWC) is a committee of Canadian lawyers advocating on behalf of lawyers and other human rights defenders whose rights, safety or independence are threatened as a result of their human rights work.

LRWC is alarmed and gravely concerned about the coordinated campaign of mass arrest and detention of more than 190 lawyers and other human rights defenders since 10 July 2015 in a systematic crackdown on legitimate dissent in China. While the majority of those detained have been released, dozens remain in detention in unknown locations or have been subjected to enforced disappearance in violation of the *Constitution of the People's Republic of China*¹ as well as China's most basic international obligations including the *Universal Declaration of Human Rights* (UDHR).²

Among those detained are at least nine lawyers and two activists detained incommunicado on criminal charges in unknown locations.³ Scores of other lawyers and activists have been taken away by

¹ *Constitution of the People's Republic of China*, 2004, Art. 33, http://www.npc.gov.cn/englishnpc/Constitution/node_2825.htm

² *Universal Declaration of Human Rights*, 1948, <http://www.un.org/en/documents/udhr/>

³ "As of 20:00 15 July 2015, 190 lawyers/ law firm staff/human right activists have been detained/ arrested/ incommunicado/ summoned/ restricted freedom temporarily," , China Human Rights Lawyers Concern Group (CHRLCG), 15 July, 2015, <http://www.chrlawyers.hk/en/content/2000-15-july-2015-190-lawyers-law-firm-staffhuman-right-activists-have-been-detained> Excepted as noted below, those reported to be criminally detained are in unknown locations charged with unspecified offences. They include: Ms. Wang Yu, Mr. Zhou Shifeng, Mr. Wang Quanzhang and Mr. Huang Liqun, lawyers from Fengrui Law Firm, Beijing; Mr. Sui Muqing a lawyer from Guangzhou charged with inciting subversion of

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authorities, and their whereabouts are unknown.⁴ Several of the detainees have reportedly been beaten by authorities. According to reports by China's state news agency, the Ministry of Public Security alleges that the detainees are part of a "criminal syndicate"⁵ suspected of "illegally organizing paid protests, hyping public sentiment and fabricating rumors on the Internet to sway court decisions."⁶ However, the known facts indicate that the purpose of the arrests and detentions is to silence and punish the expression of opinion of more than a hundred persons who signed a petition against an official campaign to defame the prominent Beijing human rights lawyer Ms. Wang Yu, who was reportedly accused by China's State media of "blabbering about the rule of law and human rights."⁷ Ms. Wang is among those detained since 10 July 2015; she is held in an unknown location on unspecified criminal charges. Ms. Wang's husband, Mr. Bao Longjun, a non-practicing lawyer, has also been detained on unspecified charges in an unknown location. The 15-year-old son of Ms. Wang and Mr. Bao was arrested with his parents early on 10 July and released on 11 July; the boy was reportedly beaten by police, who also confiscated his passport.⁸

The list of persons unlawfully detained or subjected to enforced disappearance makes it clear that those detained or disappeared have represented clients or cases in which they have advocated compliance with international human rights, including cases of arrested human rights defenders, Christians, Falun Gong practitioners and other dissidents. The detentions and enforced disappearances constitute grave breaches of China's basic obligations under China's *Constitution* the UDHR and the *International Covenant on Civil and Political Rights* (ICCPR), which China signed on 5 October 1998.⁹

state power; Mr. Xie Yang, a lawyer from Hunan charged with inciting subversion of state power; Mr. Bao Longjun, a legal activist and Wang Yu's husband, Beijing; Mr. Liu Sixin, administrative assistant, Fengrui Law Firm, Beijing; Chen Taihe, a lawyer and law professor from Guangxi charged with picking quarrels and provoking troubles on 13th July and detained in Guilin 2nd Detention Centre, Mr. Ge Ping, a Christian rights activist from Gou Hongguo, Tianjin; Mr. Jiang Jianjun, an activist from Liaoning Dalian, detained on suspicion of creating a disturbance.

⁴Nineteen persons suspected of being subjected to enforced disappearance include four lawyers: Ms. Li Shuyun, Fengrui Law Firm, Beijing; Mr. Li Heping, Beijing; Mr. Xie Yanyi, Beijing; and Mr. Zheng Enchong, Shanghai. Fifteen non-lawyers have also been disappeared including: Ms. Wang Fang, accountant, Fengrui Law Firm, Beijing; Ms. Kao La, also known as Zhao Wei, Beijing, Li Heping's assistant; Mr. Lao Mu, also known as Liu Yongping, Beijing; Mr. Hu Shigen, Beijing; Mr. Guo Yuhao, Beijing, Monk Wang Yun, also known as Lin Bin, activist monk; Mr. Gong Lei, Shandong; Mr. Li Xiangyang, Shandong; Mr. Ren Naijun, Shanghai; Mr. Wang Mingxian, Suzhou; Mr. Wang Yanming, Guizhou; Ms. Ding Hongfen, Wuxi, Jiangsu; Huang Yanming, Guizhou; Huang Yijie, Guangzhou, Guangdong; Wu Bin (internet name Xiucai Jianghu, Guangzhou, Guangdong; and Su Shaoliang, Guangxi. For lists of those detained and disappeared, please see *Ibid*, as well as, "Individuals Affected by July 10 Crackdown on Rights Lawyers," Chinese Human Rights Defenders, 13 July 2015 (updated), <http://chrndnet.com/2015/07/individuals-affected-by-july-10-crackdown-on-rights-lawyers/>; "China: Latest information on crackdown against lawyers and activists," Amnesty International, 15 July 2015, <https://www.amnesty.org/press-releases/2015/07/china-list-of-lawyers-and-activists-targeted/>

⁵Reported by Chris Buckley, "People's Daily Details Allegations Against Lawyers Detained in China," *New York Times*, 13 July 2014, <http://sinosphere.blogs.nytimes.com/2015/07/13/peoples-daily-details-allegations-against-detained-lawyers/>.

⁶"China apprehends suspected paid protest organizers," *China Daily*, 12 July 2015, http://www.chinadaily.com.cn/china/2015-07/12/content_21254510.htm; also see uncovering the dark story of 'rights defence', *People's Daily*, 12 July 2015, as quoted by Verna Yu in "Chinese police detain more than 100 lawyers and activists in weekend sweep," *South China Morning Post*, 13 July 2015, <http://www.scmp.com/news/china/policies-politics/article/1838240/chinese-police-detain-scores-lawyers-and-activists>;

⁷Sui-Lee Wee, "How support for a Chinese rights lawyer could have led to crackdown," Reuters, 13 July 2015, <http://www.reuters.com/article/2015/07/13/us-china-rights-idUSKCN0PN1FE20150713>

⁸"Individuals Affected by July 10 Crackdown on Rights Lawyers," Chinese Human Rights Defenders, 13 July 2015, <http://chrndnet.com/2015/07/individuals-affected-by-july-10-crackdown-on-rights-lawyers/>;

⁹UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

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China's continuing pattern of torture of persons in custody¹⁰ coupled with incommunicado detention is another grave concern. Evidence indicates that the risk of enforced disappearance, torture, and other ill-treatment increases significantly when detainees are held incommunicado.¹¹

We urge China to unconditionally release all those detained and to cease the unlawful conduct of incommunicado detention, detention in unknown places, and torture and ill-treatment of prisoners.

Violations of China's international law obligations

The unlawful arrests, detention without charge and enforced disappearances of lawyers and human rights defenders are very disturbing, particularly in light of China's international and domestic obligations to uphold international human rights and its statements that China is a proponent of the rule of law.¹² In 2004 China's Constitution was amended to include a provision that China respects and safeguards human rights. As a member State of the United Nations (UN), China is required to uphold the UN Charter and the UDHR. As a current member of the UN Human Rights Council (HRC), China is expected to uphold the 2006 founding resolution of the HRC, which provides that members of the HRC "shall uphold the highest standards in the promotion and protection of human rights" and "shall fully cooperate with the Council..."¹³

China is obligated to ensure that everyone is guaranteed the rights to freedoms of expression (UDHR Article 19), association (UDHR Article 17) and peaceful assembly (UDHR Article 20) as well as freedoms of conscience and religion (UDHR Article 18). Where persons are subject to criminal charges, China is obligated to ensure fair trial rights including the presumption of innocence (UDHR Article 11) and a "fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him" (UDHR Article 10). Notwithstanding that China has not yet ratified the ICCPR, as a signatory, China is expected to respect its provisions, including the State duty to ensure that all people in China can exercise their rights to freedoms of thought, conscience and opinion (Article 18), expression (Article 19), association (Article 22), and peaceful assembly (Article 21) as well as freedom from arbitrary arrest and detention (Article 9) and fair trial rights (Article 14), and to act consistently with China's repeated statements that it is preparing to ratify the ICCPR.

In addition, China has an international legal obligation to uphold customary international law that prohibits arbitrary detention and enforced disappearances. China acceded to the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT) in 1988 and is thus obligated to take positive steps to prevent and punish torture by any state officials. The *Convention on the Rights of the Child* (CRC), to which China acceded in 1992, affirms that the prohibitions against arbitrary arrest and detention and the absolute prohibitions against torture and ill-treatment extend to those under 18 years of age (CRC Article 37).

¹⁰ Human Rights Watch, China: Torture by Police Dodges Reforms: Officers Adapt to Evade New Measures, 13 May 2015, <https://www.hrw.org/news/2015/05/13/china-torture-police-dodges-reforms>

¹¹ Nigel S. Rodley, "Reflections on Working for the Prevention of Torture," *Essex Human Rights Review* 6, no. 1 (2009): 15-21, at 15, available at <http://projects.essex.ac.uk/ehrr/V6N1/Rodley.pdf>.

¹² See, e.g. "China Voice: A solid step toward rule of law," *Xinhua*, 3 December 2014, <http://english.cntv.cn/2014/12/03/ARTI1417611881886141.shtml>

¹³ UN General Assembly, *Human Rights Council: resolution / adopted by the General Assembly*, 3 April 2006, A/RES/60/251, available at: <http://www.refworld.org/docid/4537814814.html>.

The UN *Declaration on Human Rights Defenders*, adopted by consensus of the UN General Assembly in 1999,¹⁴ recognizes the legitimacy and importance of the activities of human rights defenders, including their right to participate in peaceful activities against violations of human rights, and calls on all States, including China, to ensure that human rights defenders can carry out their activities without fear of reprisals. In particular, Article 12 of the *Declaration on Human Rights Defenders* states:

(1) Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

(2) The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

The UN *Basic Principles on the Role of Lawyers*¹⁵ mandate that:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

The actions of government officials in arbitrarily arresting and detaining scores of lawyers, human rights defenders and activists is in direct contradiction all these human rights treaties and instruments.

We remind you that just two weeks ago, on 30 June 2015, your government was part of a unanimous resolution adopted by the UN Human Rights Council, which resolution condemned “the increasingly

¹⁴ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms: resolution / adopted by the General Assembly*, 8 March 1999, A/RES/53/144 (*Declaration on Human Rights Defenders*), available at: <http://www.refworld.org/docid/3b00f54c14.html>. The Declaration, while not in itself a binding instrument, is based on human rights standards enshrined in other international instruments that are legally binding including the ICCPR. The Declaration was adopted by consensus (without a vote) of the General Assembly and thus represents a unanimous commitment by States to its implementation.

¹⁵ *Basic Principles on the Role of Lawyers*, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, 7 September 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>. The UN General Assembly welcomed the *Basic Principles* in its resolution on “Human rights in the administration of justice,” adopted by consensus (without a vote) 18 December 1990.

frequent attacks on the independence of [...] lawyers [...], in particular threats, intimidation and interference in the discharge of their professional functions,” and reminding all States of their duty “to uphold the integrity of [...] lawyers and to protect them, as well as their families and professional associates, against all forms of violence, threat, retaliation, intimidation and harassment resulting from the discharging of their functions, and to condemn such acts and bring the perpetrators to justice...”¹⁶

LRWC calls on China to:

- Immediately and unconditionally release all the lawyers, human rights defenders and activists arrested and detained as part of the nation-wide crackdown referred to above;
- Immediately disclose the whereabouts of all those detained in unknown locations and allow them access to lawyers, their family members and any medical treatment they may require prior to release;
- Immediately ensure that all detainees are protected from torture or ill-treatment, and at all times guarantee their physical and psychological integrity;
- Affirm through public statements that the government of the People’s Republic of China respects and will meet its obligations under domestic and international law to ensure lawyers may carry out their legitimate duties without persecution as well as their legitimate work as human rights defenders; and
- Declare an immediate timetable for prompt ratification, without reservations, of the ICCPR.

We look forward to your reply and would be pleased to discuss these matters with appropriate officials at your convenience.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Gail Davidson', written over a light blue grid background.

Gail Davidson, Executive Director, LRWC

cc. H.E. Ambassador Wu Hailong
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¹⁶ UN Human Rights Council, Independence and impartiality of the judiciary, jurors and assessors, and the independence of lawyers A/HRC/29/L.1, 30 June 2015, http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_29_L11.docx.

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