

COMMITTEE TO SUPPORT CHINESE LAWYERS | 中国律师之友

Premier Wen Jiabao
State Council of the People's Republic of China
No. 2 Fuyoujie, Xicheng District
Beijing, People's Republic of China, 100017

August 21, 2009

Re: Mr. Xu Zhiyong

Dear Sir:

We write on behalf of the Committee to Support Chinese Lawyers to express our concern about the arrest of Xu Zhiyong (许志永), the legal scholar and rights defender who was detained by police on July 29, 2009, and formally arrested on August 13, 2009.

The Committee to Support Chinese Lawyers is a group of independent lawyers from outside China whose goal is to support lawyers in China in their quest to strengthen the rule of law there. The Committee, which is housed at the Leitner Center for International Law and Justice at Fordham Law School in New York City, seeks to strengthen the role of Chinese lawyers and to promote their independence. We know that you share these objectives.

Our understanding of the relevant facts is as follows:

- Mr. Xu is a lecturer at the Beijing University of Posts and Telecommunications, and a former Visiting Scholar at the China Law Center at Yale Law School. In 2003, he was elected to be a deputy of the Haidian District People's Congress in Beijing and has been re-elected for a second four-year term. In 2003, he founded the Open Constitution Initiative (阳光宪政), which later became Gongmeng (北京公盟咨询有限责任公司, “公盟”), an entity registered with the State Administration of Industry and Commerce (SAIC). Since its founding Gongmeng has provided legal aid and assistance, organized trainings and symposiums on issues of public interest law, conducted legal research, and promoted citizen participation in legal reform efforts. Mr. Xu and the legal aid team at Gongmeng conducted public interest litigation in a wide range of cases and provided legal assistance to the parents of children affected by melamine-contaminated milk, petitioners, and individuals held in secret undeclared jails. Throughout his career, Mr. Xu has been an advocate in support of legal reform and committed his efforts to strengthening the rule of law in China.
- On July 14, 2009, Gongmeng was notified by the Beijing Municipal Office of the State Administration of Taxation and the Beijing Local Taxation Bureau it was being fined 1.42 million RMB for tax evasion.

Committee to Support Chinese Lawyers | 中国律师之友 | www.csclawyers.org

Chair: Robert N. Hornick, Esq.

Vice Chair: Professor Martin S. Flaherty, Esq. | Vice Chair: R. Scott Greathead, Esq.

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- On July 17, 2009, the Beijing Municipal Bureau of Civil Affairs shut down the Gongmeng Legal Research Center, claiming that it has carried out its activities in the name of a private non-enterprise unit without registration and authorization. The Beijing Municipal Bureau of Civil Affairs also confiscated most of Gongmeng's property.
- On July 28, 2009, the Standing Committee of Haidian District People's Congress in Beijing approved the use of coercive measures against Mr. Xu.
- Mr. Xu was detained by police on the morning of July 29, 2009. According to his lawyer Mr. Zhou Ze (周泽), Mr. Xu was formally arrested on August 13, 2009, after getting approval from Beijing Prosecutors, on charges of tax evasion. These charges are based primarily on a 100,000 USD grant from Yale University to Gongmeng. Ms. Zhuang Lu (庄璐), a staff member of Gongmeng, was also detained on July 29.
- On August 17, 2009, the Beijing Haidian District Industry and Commerce Bureau went to No. 1 Detention Center, where Mr. Xu is currently detained, to inform him that Gongmeng was shut down for providing "false data" when it registered as a company, claiming that the public interest activities of Gongmeng were inconsistent with its registration as a commercial enterprise.
- Mr. Li Xiongbing (黎雄兵), Gongmeng's lawyer, has made multiple attempts to establish a process for paying the fines on behalf of Gongmeng. Between August 11 and August 17, Mr. Li sent more than 700,000 RMB by post office money orders to the State Administration of Taxation and the local tax bureau.

Our Committee is deeply concerned that Mr. Xu's detention may be a result of his professional commitment to provide legal assistance to citizens in politically sensitive cases, undermining the development of a professional and independent bar and the rule of law in China.

According to Article 201 of the *Criminal Law of the People's Republic of China*, if a tax offender pays in full the taxes owed and has received administrative punishment, then no criminal action shall be brought against the tax offender.

The detention of Mr. Xu is also inconsistent with international standards codified in the United Nations Basic Principles on the Role of Lawyers, which state,

“Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; . . . 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.” *Basic Principles on the Role of Lawyers, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), Article 16.*

The detention of Mr. Xu is also inconsistent with the international principles laid out in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which state,

everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the State, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments;

(c) To offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

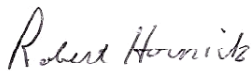
Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Resolution adopted by the General Assembly, December 8, 1998, U.N. Doc. A/RES/53/144, Article 9(3).

Article 35 of the *Constitution of the People's Republic of China* guarantees Mr. Xu, and all other citizens, the right to freedom of expression, assembly, and association. Article 33 also guarantees the protection and respect for human rights.

We respectfully ask that you take all necessary steps to investigate the detention of Mr. Xu and Ms. Zhuang, and ensure that attempts to pay the disputed amount in taxes and secure the release Mr. Xu and Ms. Zhuang in accordance with Chinese law are not impeded. We also ask that you enforce their right to legal representation, a fair and public trial, and other procedural rights under the *PRC Criminal Procedure Law*, and protect his rights as a citizen of the People's Republic of China.

Thank you for your attention to this important matter.

Very truly yours,



Robert N. Hornick



Martin S. Flaherty



R. Scott Greathead

Cc: Hu Jintao, President, People's Republic of China
Zhou Yongkang, Secretary, Political and Legal Committee, Central Committee, CPC
Wu Aiyong, Minister, Ministry of Justice
Meng Jianzhu, Minister, Ministry of Public Security
Zhou Bohua, Minister, Ministry of State Administration for Industry and Commerce
Xiao Jie, Commissioner, Ministry of State Administration of Taxation
Wang Anshun, Secretary, Political and Legal Committee, CPC
Guo Jinlong, Mayor of Beijing
Ma Zhenchuan, Director-General, Beijing Municipal Public Security Bureau
Du Deyin, Chairman, Standing Committee, Beijing People's Congress
Zhou Laisheng, Chairman, Standing Committee, Haidian District People's Congress, Beijing Municipality
Mu Ping, Chief Prosecutor, Beijing Municipal People's Procuratorate
Xiang Ming, Chief Prosecutor, Beijing Municipal People's Procuratorate No. 1 Branch
Kong Fanqi, Commissioner, Beijing Municipal Office of State Administration of Taxation