

1. 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. 2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their jurisdiction and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status. 3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources. 4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers. 5. Governments shall ensure that all persons are immediately informed of the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence. 6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of their own choice and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services. 7. Governments shall ensure that all persons arrested or detained, with or without a criminal charge, shall have prompt access to a lawyer, and shall not later than forty-eight hours from the time of arrest or detention. 8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials. 9. Governments, professional associations of lawyers and educational institutions shall take appropriate measures to establish conditions under which justice can be maintained and to proclaim as one of their duties of the lawyer and the legal profession the promotion and protection of human rights and fundamental freedoms recognized by national and international law. 10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must have a national or local residence in a country concerned, shall not be considered discriminatory. 11. In countries where there exist groups, communities or regions whose needs for legal services are not met, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups. 12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice. 13. The duties of lawyers towards their clients shall include: (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients; (b) Assisting clients in every appropriate way, and taking legal action to protect their interests; (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate. 14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession. 15. Lawyers shall always loyally respect the interests of their clients. 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. 19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles. 20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority. 21. It is the duty of the competent authorities to ensure lawyers have access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time. 22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential. 23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession. 24. Lawyers shall be entitled to form or join independent self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of these professional associations shall be elected by its members and shall exercise its functions without external interference. 25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics. 26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms. 27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice. 28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review. 29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.

LEGAL ADVOCACY AND THE 2011 CRACKDOWN IN CHINA: ADVERSITY, REPRESSION, AND RESILIENCE

NOVEMBER 2011

EXECUTIVE SUMMARY

In 2011, an unprecedented number of lawyers, legal advocates and activists in China have been subject to disappearances, arbitrary detentions, physical and mental abuse, intimidation and harassment. This crackdown intensified the pressures on civil society and legal advocacy that have increased steadily in the past several years.

Between February 2011 and time of press, Chinese authorities took documented punitive actions against hundreds of people. The most drastic of these measures was the enforced disappearances of at least 24 individuals, as well as the criminal detention of at least 52 more. Other measures taken range from generalized harassment to threats, forced relocations, pressures on family and friends, beatings, “house imprisonment” and torture. Of those targeted in the 2011 crackdown, some of the harshest measures were applied against a core group of 15 rights lawyers and legal activists, all of whom had previously been targeted by Chinese authorities for taking on cases deemed controversial or sensitive. (See **Graphic 1: Anatomy of a Crackdown**)

This report examines the shrinking space for legal activism and advocacy in China with a specific focus on the escalation in enforced disappearances, secret detentions, and arrests of this community of rights lawyers since February 2011. It analyses how authorities have used both existing law and extra-legal measures as tools to interfere with the practice of law and eliminate a vanguard of lawyers that take on the most politically sensitive cases, including cases of religious freedom, freedom of expression, access to housing, environmental justice, and access to information. This report references the international human rights framework to demonstrate how this crackdown has violated lawyers’ individual human rights, as well as their rights as legal professionals. (See **Appendix I: United Nations Basic Principles on the Role of Lawyers**)

The 2011 crackdown was sweeping in the volume and range of those targeted. Legal scholar and religious freedom advocate Fan Yafeng later called it one of the worst crackdowns on Chinese civil society in 20 years. Yet, the disappearances and detentions of rights lawyers and activists are not new. Uprisings in the Middle East and North Africa were a convenient pretext to crackdown on human rights advocates throughout the country, even though the overwhelming majority of those targeted had no connection to online calls for “Jasmine Rallies.” The official narrative—that harsh measures were taken by Chinese authorities to combat an external threat—obscures the reality that many of those targeted had already faced harassment, intimidation and detention at the hands of Chinese authorities. The events in the spring provided an opportunity to isolate and incapacitate this community; it also served as an effective warning against other groups who might choose to organize.

Moreover, some lawyers and legal advocates have been subject to the comprehensive array of legal and extra-legal methods used to interfere with their professional duties. These individuals included blind, self-taught

lawyer Chen Guangcheng, rights lawyer Gao Zhisheng, and legal scholar and religious advocate Fan Yafeng. Gao's disappearances in 2009 and 2010 (his whereabouts remain unknown), and Fan's disappearance for nine days in December 2010 foreshadowed a dramatic increase in the use of enforced disappearances in China, a serious violation of international human rights law as well as domestic Chinese law. Chen and Fan are held under extra-legal "house imprisonment," another method used with alarming frequency in 2011. Especially troubling is the increased use of "collective responsibility" where family members and friends are also subjected to arbitrary or extra-legal punitive measures. In some cases, family members were forced to stay in their homes, themselves detained for questioning, or physically harmed.

In August 2011, the National People's Congress of the People's Republic of China introduced draft amendments to the Criminal Procedure Law. The proposals fail to bring the criminal justice system into greater conformity with international law requirements. In some cases, the new provisions would allow for more serious violations of individual's rights. (See **Appendix II: Chart of Domestic and International Standards on Access to Counsel and Due Process**) One proposed amendment dramatically increases detention powers to public security organs in certain cases, allowing authorities to hold individuals at undisclosed locations for up to six months without family notification. The draft amendment appears to formalize the way in which individuals were treated this year, enabling incommunicado detentions and even enforced disappearances.

One of the most disturbing consequences of the 2011 crackdown has been its disabling effect on a vanguard of lawyers committed to the public interest, human rights, and rights defense work, many of whom are part of a cohesive public community. This report discusses how the crackdown impacted this community through disruption and isolation, both physical (through forced relocations) (See **Graphic 3: Fragmenting Community through Relocations**) and virtual (by silencing online discussions, including over Twitter) (See **Graphic 2: Lawyers Tweeting the 2011 Crackdown**). By September 2011, many of these lawyers began to re-emerge publicly, but the comprehensiveness of the recent crackdown, coupled with the introduction of the draft CPL amendments (mentioned above) signals a possible systemization of these secretive measures to silence rights lawyers and other activists that could be readily applied in future.

These troubling developments all demand the attention of the international community. Governments, non-governmental organizations, and international organizations should urge China to ensure that all lawyers are able to practice law freely and without fear of reprisals, regardless of the cases they take on. Professional associations, lawyers, and law firms should also speak out on behalf of their colleagues in China whenever actions that impede their ability to practice are carried out. To this end, they should consider adopting principles that express support for the rights of lawyers, such as those adopted by the New York City Bar Association. (See **Appendix III: Association of the Bar of the City of New York, Lawyers' Statement of Principles Regarding China.**)

This report focuses on rights lawyers that play a fundamental role with respect to human rights promotion and protection in China, protecting the rights of other civic actors, vulnerable citizens, and activists. Although the community is a comparatively small part of China's legal profession, in many cases they represent the "only source of legal resistance"ⁱ to the capriciousness of a developing legal system. They themselves frequently become the target of retaliation and abuse, in the form of surveillance, detentions, harassment and administrative punishments that threaten their livelihoods. Targeting these rights lawyers leaves many vulnerable groups with far fewer advocates able to defend their rights, and threatens the Chinese legal profession as a whole.

i Paul Mooney, *Silence of the Dissidents*, July 4, 2011, <http://www.usasialaw.org/?p=5654> (an edited version of this article was published in the SOUTH CHINA MORNING POST on July 4, 2011) (*quoting* Jerome Cohen).

SUMMARY OF RECOMMENDATIONS

A. To the Chinese government:

Based on the findings in this report, the Committee to Support Chinese Lawyers recommends action on the part of the government in three areas: (1) changes to current practice; (2) legal and legislative reforms; (3) review of individual cases.

Specifically, the Chinese government should:

1. Make changes to its current practices through providing access to independent international experts, investigators, and trainers;
2. Undertake legislative and other legal reforms to promote and protect the human rights of its citizens by:
 - (a) Ratifying the International Covenant on Civil and Political Rights, as well as the International Convention for the Protection of All Persons from Enforced Disappearance
 - (b) Bringing domestic laws related to criminal defense and fair trial guarantees into conformity with international standards, through amendments to its laws, including:
 - o Criminal Law
 - Repeal Article 306 and revise articles to increase specificity in legal provisions.
 - o Criminal Procedure Law
 - Amend articles to guarantee individuals' access to counsel.
 - Amend articles to guarantee attorneys' access to relevant evidence.
 - Amend legal provisions to ensure that the due process rights of individuals are guaranteed.
 - o Law on Lawyers
 - Revise the Law on Lawyers to ensure that all criminal suspects have access to counsel in all stages of criminal proceedings.
 - Increase the protections guaranteed to lawyers for the performance of their professional functions.
 - Amend Law on Lawyers to allow lawyers to join independent lawyers associations that representing their professional interests and integrity.
3. Review and investigate individual cases mentioned in this report, and cease the use of extra-legal and illegal measures to target lawyers for carrying out their professional functions.

B. To the international community

The international community, including governments, non-governmental and international organizations, professional organizations, academic institutions, lawyers associations, and individuals, have an important role to play in calling for a strengthening of the rule of law in China.

The international community should:

1. Continue to press Chinese officials in both official and unofficial settings to strengthen protections for an independent legal profession and judiciary;
2. Increase opportunities for legal exchanges and trainings between China and other legal jurisdictions, at bar associations, law firms, and law schools, to provide for further training and understanding of human rights concerns, independent legal standards, and non-criminal professional sanctions;
3. Build relationships and cooperation between independent bar associations outside of China and the All-China Lawyers Association and city lawyers associations, and working to create a stronger independent bar inside China;
4. Speak out on behalf of individual colleagues in China who have been subjected to criminal prosecution, have had their licenses stripped, or have otherwise been punished for carrying out their professional responsibilities through statements, letters, and the media; and
5. Promote the rights of lawyers as a professional group at home and abroad in meetings with other lawyers, businesses, law firms, bar associations, and governments, such as those adopted by the New York City Bar Association (See **Appendix III**).

12/23. A police officer said to me: "Why waste words on this sort of person? Let's beat him to death and dig a hole to bury him in and be done with it. How lucky we've got a place to put him away here."
 @tengbiao, describing his detention after visiting Fan Yafeng's mother in Beijing

2/15. "If you don't let us get on with our work in peace," they said, "we won't let you get on with anything. No, don't argue; this is the Communist Party's China."
 @litiantian on her questioning by the Domestic Security Department officials

2/15 Anonymous Twitter post calling for a Jasmine Revolution in China

2/19. "In the future, anyone who is invited to 'drink tea' should not hope to drink jasmine tea."
 @tengbiao

2/22. "Please keep an eye out for our friends, Teng Biao, Ran Yunfei, Jiang Tianyong, Tang Jitian etc. – in this defeated cynical society, they are our era's rare generous and righteous people."
 @zhiyongxu

3/11. "Under house arrest by the police for more than 20 days, without due process, without telling me what laws I've violated – how can the police illegally block one's door with such brazenness?"
 @lhplawer (Li Heping)

4/21. "I am well, please rest assured my friends. I am not prepared to accept any media interviews on the matter, please forgive me."
 @jtyong1 (Jiang Tianyong)

5/4. "Li Fangping is out, Li Xiongbing has disappeared again, it's unbearable these days!"
 @liuweilawyer

8/22. "If I don't even dare reveal the humiliation of having my newlywed wife stolen from me, then God wasted his time making me a human! Haven't I been 'released pending further investigation'? Whatever they do to me, it'll still be the same lousy fate!"
 @liushihui after his Vietnamese wife was repatriated to Vietnam after 17 days of illegal detention

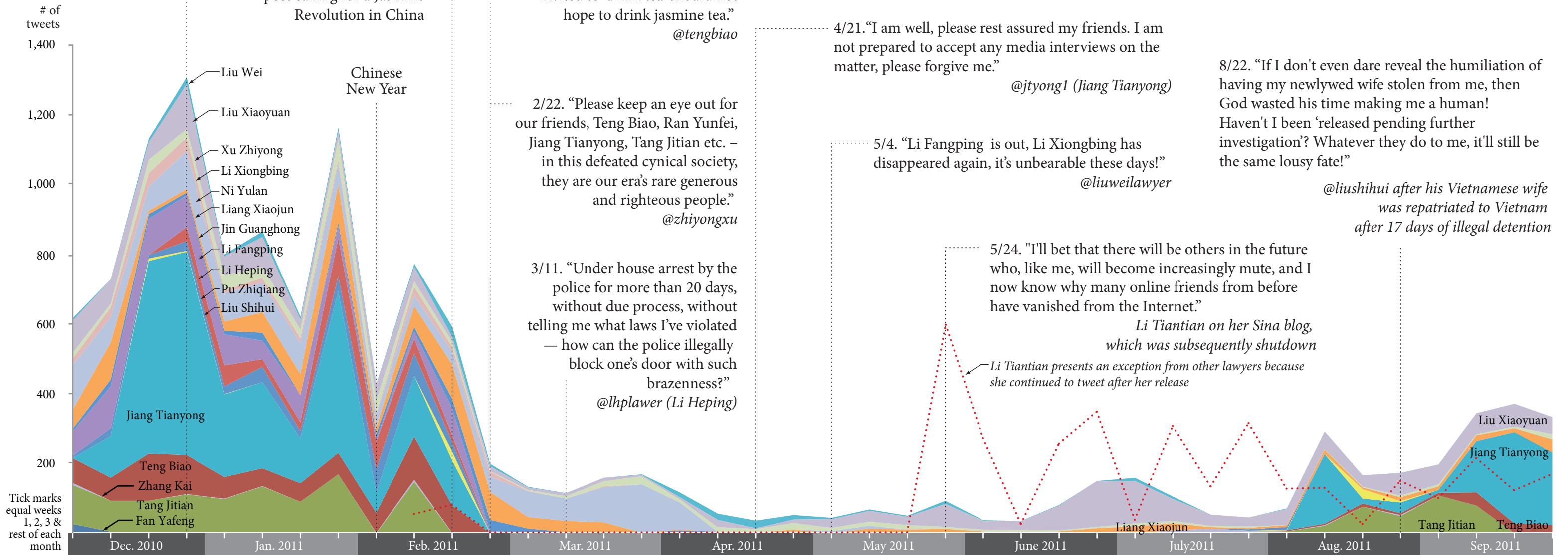
5/24. "I'll bet that there will be others in the future who, like me, will become increasingly mute, and I now know why many online friends from before have vanished from the Internet."
 Li Tiantian on her Sina blog, which was subsequently shutdown
 Li Tiantian presents an exception from other lawyers because she continued to tweet after her release

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4/29 Teng Biao released
 4/19 Jiang Tianyong released
 5/24 Li Tiantian released, blogs about her experience "inside"

6/12 Liu Shihui released

8/11 Jiang Tianyong returns to Twitter, 114 days after release
 8/4 Teng Biao returns to Twitter, 97 days after release
 7/26 Tang Jitian returns to Twitter, 143 days after release



Tick marks equal weeks 1, 2, 3 & rest of each month

12/8 Fan Yafeng disappeared
 2/16 Tang Jitian disappeared; Li Heping, Li Xiongbing and Xu Zhiyong under house arrest
 2/19 Teng Biao, Jiang Tianyong, Li Tiantian disappeared; Li Heping under house arrest
 Liu Shihui disappeared on 2/20

4/7 Ni Yulan detained under charges of "creating a disturbance"
 3/5 Tang Jitian released

16 Number of lawyers active on Twitter by month

7
 9

6
 4

8

LAWYERS TWEETING THE 2011 CRACKDOWN

Although Twitter is currently blocked in China by the Great Firewall, users can access it through censorship circumvention software. Twitter can therefore be a platform on which netizens communicate with and meet like-minded individuals. China's rights lawyers have used Twitter to disseminate information about their cases as well as beleaguered colleagues and personal encounters with Chinese authorities, describing their experiences in detention and house arrest. The graphic below traces the tweets of 16 of the most vocal lawyers from December 2010 to September 2011. The silence of these lawyers on Twitter following the 2011 Crackdown demonstrates one aspect of its chilling effect on that community.