

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

JOHN S. KIERNAN
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
jkiernan@nycbar.org

December 22, 2016

Minister Wu Aiying
Ministry of Justice of the People's Republic of China
No. 10 Nandajie, Chaoyangmen Beijing
People's Republic of China
Postal code: 100020
Tel: +86 (010) 65205114
Fax: +86 (010) 84772883
e-mail: minister@legalinfo.gov.cn

Dear Minister:

I write on behalf of the New York City Bar Association to express our grave concern regarding the recent disappearance, on November 21, 2016, of a professional colleague, lawyer Jiang Tianyong and to urge the People's Republic of China to immediately confirm his location and safety and provide him with access to counsel. Members of this Association met with Mr. Jiang during a visit to China in 2009.¹ One month has passed since Mr. Jiang's disappearance, and he is now reported to be in police custody. We are deeply concerned about Mr. Jiang's current safety and well-being, especially since he was detained for three weeks outside of formal legal channels, his location remains unknown, and he has no access to his family or to legal counsel.

The Association is a 146-year-old organization of more than 24,000 members in New York City, throughout the United States, and in over fifty countries across the globe, including China. Our membership includes judges, prosecutors, government officials, and defense lawyers, as well as corporate attorneys representing nearly every major law firm and corporation in the United States. The Association has a long history of engagement in legal issues to promote human rights, the rule of law, and the rights of lawyers to practice law. It has long sought to deepen its relationship with and to promote the rule of law in China, chiefly through its Committee on International Human Rights and its Committee on Asian Affairs.

Mr. Jiang is a prominent *weiqian* (rights defense) lawyer who took on a number of high-profile cases, including those of Tibetan protesters, victims of the 2008 contaminated milk powder incident, and Falun Gong practitioners. He also helped to defend fellow lawyers Gao Zhisheng and Chen Guangcheng, but his license was revoked because of his politically sensitive

¹ New York City Bar Ass'n, *Report of the Mission to China of the Association of the Bar of the City of New York*, 48 COLUM. J. TRANSNAT'L L. 519 (2009), available at <http://bit.ly/2gPEc7k>.

work in 2009. Since that time, he has been involved in legal advocacy on a range of human rights issues.

Mr. Jiang, who was also detained in 2012 and 2014 in connection with his work, disappeared on November 21, 2016. Mr. Jiang had been in Changsha, Hunan Province, where he was visiting the wife of detained human rights lawyer Xie Yang, who is in detention facing charges for “inciting subversion of state power” after a crackdown on lawyers that began on July 9, 2015. We wrote to Chinese authorities, copying your office, raising concerns about the crackdown and detention of lawyers including Mr. Xie on July 28, 2015.² Mr. Jiang has not been heard from since he called his wife, Jin Bianling, right before he was scheduled to board the train back to Beijing on November 21. On December 16, 2016, state-run newspaper *Legal Daily* published a notice reporting that Mr. Jiang is in police custody and that he had been detained for using a fake identity card to buy a ticket. The newspaper states that more serious charges are now lodged that Mr. Jiang “illegally possessed multiple secret state documents, colluded with overseas institutions, organizations and individuals, and is suspected of illegally providing state secrets abroad.”³ The crime of leaking state secrets to organizations and individuals outside of China can carry a sentence of up to ten years in prison.⁴

Mr. Jiang’s family members, lawyers, and colleagues state they have not received any official notification of his detention. While they have tried to confirm that Mr. Jiang is in detention, they have consistently met bureaucratic roadblocks. On November 23, officials at the Tongbolu Zhengzhou Public Security Bureau—with jurisdiction over Mr. Jiang’s residential registration (“*hukou*”)—refused to take up the case, though they registered the report. Other family and friends have attempted to obtain surveillance video at the train station where Mr. Jiang was due to arrive, but police at the station have not cooperated with them.

On November 29, 2016, Mr. Jiang’s father filed for administrative review with the aid of one of Mr. Jiang’s lawyers, Chen Jinxue, but authorities have refused to take up the case or have otherwise made things difficult to proceed. Mr. Chen believes that his disappearance relates to his legal activism, and reports that he had been under official scrutiny for some time. United Nations experts are similarly concerned. On December 6, the Special Rapporteur on Extreme Poverty and Human Rights, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the Situation of Human Rights Defenders, and the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression urged China to investigate the disappearance, citing concern that it may be connected to his human rights work.⁵

We are extremely concerned about Mr. Jiang’s safety because according to information available, his disappearance took place outside formal procedures and protections of the law. Even now, with informal indications that he is being held in police custody, his location remains

² Letter from Debra L. Raskin, President, New York City Bar Association to His Excellency Mr. Xi Jinping, President, People’s Republic of China (Jul. 28, 2015), available at <http://bit.ly/2hn16nL>.

³ Chris Buckley, *Chinese Activist, Missing for Weeks, Is Said to Be in Custody*, N.Y. TIMES, Dec. 16, 2016, available at <http://nyti.ms/2hx1EMx>.

⁴ Criminal Law of the People’s Republic of China, art. 111, available at <http://bit.ly/2h97pPb>.

⁵ Office of the High Commissioner for Human Rights, *UN Experts Urge China to Investigate Disappearance of Human Rights Lawyer Jiang Tianyong*, Dec. 6, 2016, <http://bit.ly/2he4Jyv>.

unknown and he has access to neither his family nor his lawyers—leaving him vulnerable to abuse in detention and a range of human rights violations.

The arbitrary disappearance of Mr. Jiang and the failure of authorities to provide him with access to family members and legal counsel violate basic rule of law principles and provisions of China’s domestic law. The prohibition against arbitrary detention is articulated in the Universal Declaration of Human Rights in article 9, and is codified in Article 9 of the International Covenant on Civil and Political Rights.⁶ Although China has not ratified the ICCPR, it is a signatory to the Covenant and as such must not violate its object and purpose. Protections against arbitrary detention are included in numerous other international documents, including the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. In addition, Article 37 of China’s Constitution prohibits “unlawful detention or deprivation or restriction of citizens’ freedom of the person.”

These actions are also wholly inconsistent with both Chinese law and international legal principles. Article 33 of the Criminal Procedure Law of the People’s Republic of China (CPL) states that “a criminal suspect has the right to appoint a defender as of the date on which the suspect is first interrogated by the investigating authority or is subject to compulsory measures.” Article 1 of the UN Basic Principles on the Role of Lawyers similarly states that “[a]ll 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.”

Moreover, Mr. Jiang’s disappearance and detention are even more troubling since they have occurred in the context of what appears to be a broader, renewed round of arrests and detentions of lawyers and activists. Two other activists targeted around the time of Mr. Jiang are Huang Qi, also working on legal activism who has also disappeared, and Liu Feiyue, who was detained on suspicion of subverting state power on November 17 or 18. Other activists and lawyers remain in detention since the sweep of disappearances and detentions began in July 2015, and include Li Heping, another lawyer with whom members of the Association met in 2009, who was indicted for subversion of state power in early December 2016.⁷

These detentions violate international and domestic standards and undermine the rule of law. We are troubled that Mr. Jiang and other colleagues appear to have faced arrest, detention and disappearance in retaliation for their efforts to undertake peaceful activities to promote human rights, or in the course of representation of clients. The rights of lawyers in China to practice their profession and to carry out their professional duties to clients free of government interference are protected by both Chinese law and international norms.

Like all other citizens, Chinese lawyers are entitled to the rights and protections articulated in Article 35 of the Constitution of the People’s Republic of China,⁸ including the rights to free speech, assembly, association, and demonstration. Article 37 of the Lawyers Law

⁶ International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, entered into force Mar. 23, 1976, 999 U.N.T.S. 171, available at <http://bit.ly/2hDCgjC>.

⁷ Committee to Support Chinese Lawyers, *Plight and Prospects: The Landscape for Cause Lawyers in China* (Sep. 2015), <http://bit.ly/1JxiEIW>.

⁸ CONSTITUTION OF THE PEOPLE’S REPUBLIC OF CHINA (1982), available at <http://bit.ly/2hDsLB5>.

of the People’s Republic of China specifically protects lawyers in carrying out their professional duties. Article 37 provides that “a lawyer’s right of the person is inviolable” and affirms that a lawyer should not be legally liable for the opinions he or she presents on behalf of clients.

The intimidation and harassment of lawyers—including by detaining them—also violates international standards set forth in the UN Basic Principles on the Role of Lawyers, which the members of the UN General Assembly, including China, adopted without dissent.⁹ In particular, Article 16 provides that “[g]overnments 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.” Article 18 affirms that “[l]awyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.” Lawyers are also entitled to join in broader advocacy campaigns and express opinions freely. Article 23 of the Basic Principles states “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”

We respectfully urge the Chinese government to immediately confirm Mr. Jiang’s safety and location and provide him with access to counsel. Any ongoing detentions must conform to international standards of detention and ensure that detainees are held in official detention facilities, have regular access to legal counsel, and have access to their families. We also urge the Chinese government to take other steps to ensure that lawyers in China are free to carry out their professional obligation without intimidation, hindrance, harassment, or improper interference, in conformity with international standards and Chinese domestic law.

Respectfully,



John S. Kiernan

⁹ The U.N. Basic Principles on the Role of Lawyers were adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in 1990, and were endorsed by the General Assembly on December 14, 1990. U.N. Basic Principles on the Role of Lawyers, Eighth U.N. Congress on the Prevention of Crime and the Treatment of Offenders, Aug. 27-Sep. 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1, at 118–23, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>; G.A. Res. 45/121, U.N. GAOR, 45th Sess., U.N. Doc. A/CONF. 144/28 (1990).

CC:

His Excellency Xi Jinping
President of the People's Republic of China
State Council General Office 2 Fuyoujie Xichengqu Beijingshi 100017 People's Republic of China
Email: English@mail.gov.cn

His Excellency Li Keqiang
Premier of the People's Republic of China
State Council 9 Xihuangcheng Genbeijie Beijing 100032 People's Republic of China
Email: English@mail.gov.cn

Ambassador Cui Tiankai
Ambassador of the People's Republic of China to the United States of America
Embassy of the People's Republic of China in the United States of America 3505 International Place, N.W. Washington, D.C. 20008 U.S.A.
e-mail: chinaembpress_us@mfa.gov.cn

Ambassador Max Sieben Baucus
United States Embassy of Beijing
China No. 55 An Jia Lou Lu 100600 Beijing People's Republic of China
Fax: +86-10-8531-3300

Wang Junfeng
President, All China Lawyers Association
5th Floor of Qinglan Mansion No.24 Dongsi Shitiao Dongcheng District Beijing, 100007
People's Republic of China
Fax: +86-10-6406-0207