

This update covers recent reports on the arrest and release of prominent legal activist [Xu Zhiyong](#), an announcement from the Supreme Peoples' Court that the [death penalty](#) is going to be used more sparingly, and new regulations intended to stop [petitioners](#) from traveling to Beijing.

Prominent Legal and Political Activist Arrested and Released

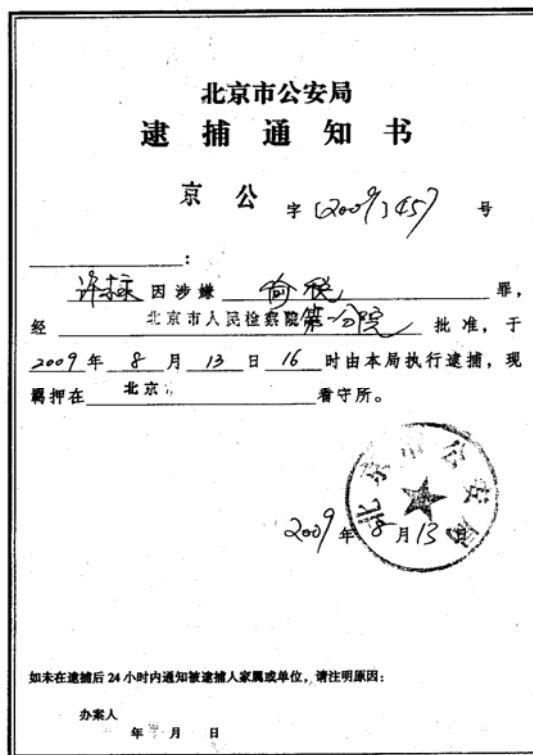
Over the past several months, Chinese authorities have interrupted the activities of a number of lawyers and human rights activists involved in politically sensitive cases. The recent arrest of Xu Zhiyong, a prominent lawyer and scholar, provoked a new round of debate about the limits of legal activism in China.

Xu Zhiyong Freed, But Still May Face Tax Evasion Charges

On August 23, prominent legal activist Xu Zhiyong and his office assistant were released under a Chinese form of non-custodial detention (*qubao houshen*) to the Beijing University of Post and Telecommunications, after nearly a month of detention. Xu and the Open Constitution Initiative (Gongmeng), a legal aid organization he established in 2007, were charged with tax evasion.

State and local tax bureaus fined Gongmeng 1.4 million yuan (\$206,000) on July 14 for failing to pay taxes on grant money received from Yale University. Three days later, the Beijing Municipal Bureau of Civil Affairs declared the organization "illegal" and banned its operations. A month later, the Beijing Municipal Industry and Commerce issued a formal decision that withdrew Gongmeng's registration,

alleging that the organization's public interest activities were inconsistent with its registration as a commercial enterprise.



此联交被逮捕人家属或单位

Xu Zhiyong's Notification of Arrest – available at www.xuzhiyong.net

Xu was formally arrested (*daibu*) on August 12 on charges of evading taxes, two weeks after a provisional detention. Gongmeng responded to Xu's arrest by publishing the arrest warrant and documenting what it claims were irregularities in the detention process on its site, www.xuzhiyong.net (see image above). Gongmeng complains that the local Beijing tax bureau would not allow the legal aid organization to make tax payments in the absence of its founder.

Xu's arrest sparked controversy among China observers and scholars in the West. Human Rights in China, a New York based non-profit organization, alleges that Gongmeng was "annihilated" by the government through the concerted efforts of multiple agencies.

Jerome Cohen, a professor at New York University, sees the arrests of "rights lawyers" such as Xu in different terms. In a statement before the Congressional Executive Commission on China, Cohen blames veteran Party officials, now leading legal institutions, who are determined to "eviscerate" the country's human rights lawyers. In a Huffington Post editorial, attorney Elizabeth Lynch concludes that Chinese political actions and rhetoric are increasingly focused on constraining rule of law activism that has moved into political spheres.



Xu Zhiyong (AP Photo/Greg Baker, File)

Xu's detention follows a number of incidents this year in which legal activists, some supported by foreign funds, have been subjected to more intense government surveillance or detention. On July 15, Amnesty International reported that the Justice Bureau of Beijing Municipality revoked 53 lawyers' licenses and issued a list of 23 lawyers, including prominent human rights lawyers, who would not have their licenses re-registered.

Other observers noticed that Gongmeng's activities in other public matters may have aroused hostile scrutiny. According to the China Digital Times, Gongmeng opposed a new government requirement that all computers sold in China have pre-installed software that filtered out pornography and other "controversial content."

Xu's arrest nevertheless struck some observers as unusual on account of his prominence and the celebration of his legal work in mainstream media outlets, including the Chinese Esquire magazine. In an August 9 article in the New York Time, Professor Paul Gewirtz of the Yale China Law Center—where Xu Zhiyong was a visiting scholar in 2007, and which funded some of Gongmeng's work—expressed his shock over the detention: "What makes his detention particularly disturbing," wrote Gewirtz, "is that he's a special figure in so many ways." Xu first gained attention as a legal activist for his role in representing the family of Sun Zhigang, whose death in police custody in 2003 ultimately led to the end of the Chinese custody and repatriation system.

Xu faces a potential prison sentence of up to seven years if convicted, and his release may benefit authorities watching Xu's rights work. Xu's conditional release provides the police more time and broader authority to investigate his activities. Had Xu remained in custody, police authorities would have been required to complete an investigation within a few months. Instead, police now have one year to complete their investigation and can monitor Xu Zhiyong's activities during that period.

<http://cecc.gov/pages/roundtables/2009/20090710/index.php?PHPSESSID=0f5176d7a05c0cd8c692e88dc6fcecfa>

http://www.huffingtonpost.com/elizabeth-lynch/xu-zhiyong-and-what-his-d_b_261440.html

<http://www.amnesty.org/en/news-and-updates/human-rights-lawyers-disbarred-china-20090715>

<http://www.nytimes.com/2009/08/10/world/asia/10rights.html>

<http://www.timesonline.co.uk/tol/news/world/asia/article6806946.ece>

Supreme Peoples' Court to Curb Death Penalty, Despite Apparent Popularity

China to Use Death Penalty More "Springly"

According to a *New York Times* report on July 29, SPC Vice President Zhang Jun has said that, although China was not ready to abolish capital punishment, the penalty should be reserved for the most serious crimes. Zhang was quoted as saying that judicial departments "should use the least number of death sentences possible."

Although Zhang offered few details on how the judiciary would accomplish a reduction in executions, he suggested that the number of eligible crimes would be reduced and that lower courts would be encouraged to hand down "death penalty with reprieve" sentences.

In 2007, when the SPC reassumed the authority to review all death penalty sentences, the SPC overturned 15 percent of all death sentences issued by lower courts, according to the *China Daily*. In 2008, the SPC overturned 10 percent of such sentences.

Some observers speculate that the SPC might overturn a greater proportion of lower court sentences in the future. Drawing on Zhang's remarks, an *AP* article proposed that the death penalty could be avoided when "the defendant gives compensation or is forgiven by the family of those he injured." Other observers note the apparent public demand for this punishment, including for officials charged with corruption and, in one recent instance, a driver who caused four deaths.

<http://www.nytimes.com/2009/07/30/world/asia/30china.html>

Central Government Tries to Reduce Volume of Petitioners in Beijing

Xinhua reported on August 18 that the Party's Central Commission on Political Science of Law, has issued a new regulation intended to stop petitioners

from traveling to Beijing. Under the new regulation, legal officials from Beijing will travel to provinces to hear grievances and other complaints about injustices. Petitions will also be accepted and responded to through an online service.

According to a BBC report, Beijing legal officials have previously tried to stop the thousands of petitioners who often go to the capital to voice complaints about "land grabs, police beatings and legal abuses."

A top judge with the SPC the BBC reports, views the large swarm of petitioners as a "horrible situation." For officials, the large number of petitioners reflects widespread distrust of the legal system, while others attribute popularity of the petition system (*shang fang*) to its origins in China's imperial past.

According to the new rules, the Central Commission on Political Science and Law will send touring groups or specific petition claim groups to areas with a high number of petitions. Also, local and provincial law enforcement agencies are encouraged to designate time to handle petition requests. The Commission warned that petitioners who travel to Beijing may have cases dismissed without review and have ordered hotels not to provide accommodation to petitioners before the celebrations in October.

http://news.xinhuanet.com/legal/2009-08/18/content_11904544.htm

Editors

Todd Foglesong, Ph.D.
Senior Research Associate
todd_foglesong@harvard.edu

Robert Ullmann
Partner, Nutter McClennen & Fish LLP

Jesse Heatley
Research Assistant

Harvard Kennedy School

Program in Criminal Justice Policy and Management
www.hks.harvard.edu/criminaljustice