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His Excellency Mr Xi Jinping
President of the People's Republic of China
Zhongnanhai, Xichengqu
Beijing
The People's Republic of China

22 July 2015

Open letter to His Excellency Mr Xi Jinping, President of the People's Republic of China, from the International Bar Association's Human Rights Institute

Your Excellency,

We are writing on behalf of the International Bar Association's Human Rights Institute (IBAHRI) to express our deep concern at the unprecedented number of lawyers, human rights activists and support staff who have faced arrest, questioning and detention in China since 9 July 2015.

The International Bar Association (IBA), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. The IBAHRI works across the IBA to promote and protect human rights and the independence of the legal profession under a just rule of law, so that lawyers have the ability to practise freely and without interference. We take a strong interest in the legal profession and human rights situation in China, particularly as many members of the Chinese legal profession are members of the IBA.

The IBAHRI understands that, at the time of writing, 132 lawyers who work to protect human rights and fundamental freedoms have been summoned, arrested, questioned and/or detained by Government authorities across 24 provinces of China. It is reported that some of the detained lawyers have been charged with offences including 'inciting subversion of state power' and 'picking quarrels and provoking troubles'. The IBAHRI is concerned that the Government's actions appear to be related to the lawyers' human rights work and activism.

According to reports, over the past 18 days at least 242 individuals associated with human rights practice have faced action by the authorities. The IBAHRI understands that, of these, 219 individuals have since been released. This means that 23 individuals remain in detention, some of whom remain unaccounted for.

The IBAHRI is gravely concerned by reports that some individuals have been detained incommunicado; without access to legal counsel; unable to notify family members; and/or detained under residential surveillance and not in an officially recognised place of detention.

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The IBAHRI respectfully reminds Your Excellency of the fundamental role of lawyers and legal practice in ensuring the protection of human rights and the rule of law in China, as around the world, and the concomitant importance of safeguarding lawyers' rights in line with domestic and international law.

Article 33 of China's *Criminal Procedure Law 2013* (the *CPL*) highlights the role of lawyers in the criminal justice system, stipulating 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'.

We would like to remind your Excellency that all United Nations Member States are bound by the *United Nations Basic Principles on the Role of Lawyers* (the *Basic Principles*).

Principle 16 of the *Basic Principles* guarantees that lawyers shall be able to carry out all their professional functions without intimidation, hindrance, harassment or improper interference.

Principle 17 of the *Basic Principles* protects the right of lawyers to be adequately safeguarded in carrying out their professional functions.

Principle 18 of the *Basic Principles* provides that lawyers shall not be identified with their clients or their clients' causes in the execution of their professional functions.

The IBAHRI also wishes to draw Your Excellency's attention to domestic and international law provisions that protect standards of due process and fair trial rights.

Article 37 of the *Constitution of the People's Republic of China* affords protection against '...unlawful detention or deprivation or restriction of citizens', assuring that citizens may only be detained following a decision of a public prosecutor or judge, and for reasons established by law. This right is also guaranteed by Article 9 of the *International Covenant on Civil and Political Rights (ICCPR)*, signed by China on 5 October 1998, and by Article 9 of the Universal Declaration of Human Rights.

Article 14(3) the *ICCPR* instructs further that 'anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him'.

The right to a lawyer guaranteed by Article 33 of the *CPL* is reinforced by Principles 1, 5 and 7 of the *Basic Principles*, which state that all persons have the right of prompt access to a lawyer and must be informed of this right immediately when arrested, detained or charged.

Article 83 of the *CPL* states that 'family members of the person in custody should be informed within 24 hours after the person is taken into detention, save where it is impossible to furnish a notice or where crimes endangering state security or crimes of terrorism are suspected and a notice may impede the investigation'. This is complementary to Principle 19 of the *United Nations Body of Principles for the Protection of All Persons under Any Form of*



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Detention or Imprisonment, which provides for contact with the outside world while in detention, particularly with family members and legal counsel.

The right to freedom of expression is protected by Article 35 of the *Constitution of the People's Republic of China*, which guarantees that 'Citizens... enjoy freedom of speech'. This constitutional protection supports the right of lawyers to freedom of expression as guaranteed by Principle 23 of the *Basic Principles* and Article 19 of the *ICCPR*.

Finally, we would like to highlight the importance of the United Nations Human Rights Council (HRC) in strengthening human rights protection globally and respectfully remind Your Excellency of your Government's pledge, as an applicant to the HRC, to 'continue to strengthen the development of democracy and the rule of law, improve institutions for democracy, push forward the reform of the judicial system and further protect civil and political rights'.

The IBAHRI expresses serious concern that unwarranted interference with the professional duties of lawyers will have a chilling effect on legal practice, and on human rights practice in particular, undermine the rule of law, and threaten democratic principles.

In light of the above, the IBAHRI urges Your Excellency to take all possible measures to ensure that lawyers can carry out their legitimate professional activities without fear of intimidation, harassment or interference, in accordance with international human rights standards.

The IBAHRI strongly urges the relevant authorities to ensure that all individuals who remain in detention and under investigation are afforded due process guarantees and their right to a fair trial, in full compliance with international human rights standards to which the People's Republic of China is party.

We would be grateful to receive your assurances that our concerns will be addressed as a matter of urgency.

Respectfully yours,

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Co-Chair
International Bar Association's
Human Rights Institute

Ambassador Hans Corell
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