

The Association of the Bar of the City of New York

Lawyers' Statement of Principles Regarding China

In February 2011, the Chinese Government greatly escalated its previous efforts to intimidate lawyers who are well-known rights defenders or who simply represent clients whom the government regards as objectionable, because of their challenges to Government policies involving religious freedom, population control, environmental pollution or other social concerns. Many lawyers, some prominent, some unknown to the public, some from Beijing or Shanghai and some from smaller cities, have been arrested or simply abducted and held in harsh, often secret, detention without trial and subjected to highly abusive interrogation practices. As of July 1, 2011, many of these lawyers remain in detention or are unaccounted for.

Such arrests, abductions, detentions without trial, physical abuse and other practices designed to intimidate lawyers (including surveillance both at home and in public), violate the Constitution of the People's Republic of China, which entitles all citizens to the rights of free speech, assembly and association. China's actions also violate the international standards set forth in the United Nations Basic Principles on the Role of Lawyers, which the members of the U.N. General Assembly, including China, adopted without dissent and also appear to violate China's own Lawyers Law as well.

Article 16 of the Basic Principles 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; (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."

The Association of the Bar has become increasingly concerned by the mistreatment of lawyers in China. In December 2009, a delegation from the Association met with Bar representatives in Beijing and Shanghai to discuss areas of mutual concern, including human rights. On March 15, 2011, the President of the Association of the Bar wrote to the Chinese Ministry of Justice protesting the most recent mistreatment of lawyers and calling upon the Ministry to (i) investigate the foregoing incidents, (ii) take immediate steps to end the abuses of lawyers who are carrying out their professional duties, and (iii) reassure the rights afforded Chinese lawyers to practice their profession without governmental interference under domestic and international law. No response has been received to that request.

Recognizing the critical role that lawyers play in promoting and protecting the rule of law, we therefore call upon lawyers everywhere to join us demanding that the Chinese government respect the basic right of Chinese lawyers to practice their profession free of government interference, police harassment, and surveillance. To this end, we endorse the five Principles set forth below and ask our colleagues to do the same. We pledge to apply these Principles with integrity and to implement policies and procedures to ensure our on-going commitment to their implementation.

To that end, we will:

1. Express our support for the right of lawyers to zealously represent and defend their clients and to do so without being identified with their clients or their clients' causes as a result of that representation;
2. Promote the right of lawyers to practice law without harassment, intimidation, disbarment, detention, prosecution, or other forms of hindrance or abuse in response to lawyers' choices to defend or represent clients in asserting or defending their clients' rights under applicable law;
3. Defend the right of lawyers to voluntary freedom of association, to security of the person and to travel;
4. Work with governments and professional associations in the countries in which we practice to respect the right of all lawyers in those countries to represent their clients with the same degree of professional independence that we enjoy in our own countries; and
5. Promote the application of these Principles by other lawyers and businesses with whom we do business at home and abroad.

References:

United Nations Basic Principles on the Role of Lawyers (1990)
<http://www2.ohchr.org/english/law/lawyers.htm>

Letter of Samuel W. Seymour, President of the New York City Bar, to Minister Wu Aiying, Ministry of Justice of the People's Republic of China (March 15, 2011)
<http://www.abcny.org/pdf/report/uploads/20072073-LettertotheMinisterofJusticeofthePeoplesRepublicofChina.pdf>

Jerome A. Cohen, "First, They Came for the Lawyers," Foreign Policy (July 12, 2011)
http://www.foreignpolicy.com/articles/2011/07/12/first_they_came_for_the_lawyers

September, 2011