

His Excellency Mr. Xi Jinping, President  
The State Council General Office  
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Xichengqu  
Beijing 100017  
People's Republic of China

20 April 2021

Your Excellency,

### **China: Alleged Enforced Disappearance of Lawyer Gao Zhisheng**

The Law Society of England and Wales (the “Law Society”) is the professional body representing more than 180,000 solicitors in England and Wales. Its concerns include upholding the independence of the legal profession, the rule of law and human rights throughout the world. The Law Society holds special consultative status with the Economic and Social Council of the United Nations since 2014.

Lawyers for Lawyers (“L4L”) is an independent and non-political Dutch foundation that seeks to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. L4L was granted Special Consultative status with the United Nations Economic and Social Council in July 2013. The Law Society and L4L are very concerned about the alleged enforced disappearance of Chinese lawyer Gao Zhisheng. Mr. Gao acted as a legal representative in cases of religious minorities, freedom of expression, forced evictions, and corruption.

In December 2005, Mr. Gao’s law firm was ordered to cease operations for one year. In August 2006, Mr. Gao was illegally detained by police and, in December 2006, he was sentenced to three years imprisonment on charges of ‘inciting to subvert the state power’, with a probation period of five years. It has been reported that Mr. Gao disappeared several times during this period and was tortured in detention. In April 2010, Mr. Gao spoke about the torture he suffered to the Associated Press and was subsequently disappeared again, while visiting his in-laws in Xinjiang.

On 16 December 2011, Mr. Gao was accused of having violated the terms of his probation and he was sent back to prison for three years on the charge of ‘inciting to subvert the state power’, with a one-year deprivation of his political rights. He was prevented from seeing his family and legal representatives while in prison. In August 2014, he was released but was allegedly disappeared again in August 2017. To date, his whereabouts remain unknown.

Since 2005, Mr. Gao Zhisheng has been the subject of several communication letters addressed by United Nations Special Rapporteurs to the Chinese Government. The most recent communication letters were sent in April 2014, September 2017, and March 2020. The latter two communications were sent by the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the situation of human rights defenders, and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. The letter sent in March 2020, was also sent by the

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Working Group on Arbitrary Detention, acting under its humanitarian mandate of Working Group on Enforced or Involuntary Disappearances (case no. 10002630).

In October 2017, the Chinese government responded to the letter of the United Nations Special Rapporteurs sent that same year, stating that Mr Gao had been released in August 2014 after having served his time in prison and that public security authorities had 'not carried out any coercive measures against him since then'. In addition, the response from the Chinese government noted that, on 13 August 2017, Mr. Gao's family had reported him to the police as a missing person, that public security authorities had carried out an inquiry in accordance with the law, and that 'the case is currently still open'. The Chinese government also responded to the most recent letter sent by UN Special Rapporteurs in May 2020, repeating that Mr. Gao had been released in August 2014 and that, since his release, 'the public security authorities have not taken any coercive measures against him'.

We note with concern that it is not clear from the most recent response of the Chinese government if the case of Mr. Gao remains open and under investigation and, if so, what progress has been made to identify his whereabouts and ensure his physical and psychological integrity.

We also regard it as unlikely, after previous actions taken against Mr. Gao, that no further coercive measures would have been taken against him by Chinese authorities and that Mr. Gao would have disappeared of his own accord. We understand that he has not been in contact with family members or his legal representatives since his most recent disappearance.

Every State has an obligation and a moral duty to respect and guarantee the human rights of the persons who find themselves within their jurisdiction. This means that States need to carry out a prompt, effective and impartial investigation into the whereabouts of those who are disappeared. In the case of Mr Gao, it seems that such investigation has not been carried out or has been discontinued. This is especially concerning given the indications that Mr. Gao's case is one of alleged enforced disappearance.

In relation to the above, we note the following international principles. China acceded to the Vienna Convention on the Law of Treaties on 3 September 1997, which provides in its article 18 that "a State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: (a) it has signed the treaty [...] until it shall have made its intention clear not to become a party to the treaty". China signed the International Covenant on Civil and Political Rights on 5 October 1998, and we refer to its articles 6, 7, 9, 10, 14, and 19 (which broadly correspond with the rights set out in the Universal Declaration of Human Rights cited below).

**The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, ratified by China on 4 October 1988, provides:

#### **Article 1**

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

## Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

The **Universal Declaration of Human Rights** provides:

Article 3: Everyone has the right to life, liberty and security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

The **UN Declaration on the Protection of all Persons from Enforced Disappearance** provides:

## Article 1

1 . Any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field.

2. Any act of enforced disappearance places the persons subjected thereto outside the protection of the law and inflicts severe suffering on them and their families. It constitutes a violation of the rules of international law guaranteeing, inter alia , the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment. It also violates or constitutes a grave threat to the right to life.

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## **Article 2**

1. No State shall practise, permit or tolerate enforced disappearances.

## **Article 3**

Each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction.

## **Article 7**

No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances.

## **Article 10**

1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.

2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.

The **UN Basic Principles Basic Principles on the Role of Lawyers** state:

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.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

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.

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The Law Society and L4L urge the relevant authorities to:

- Without delay identify and disclose the whereabouts of Chinese lawyer Gao Zhisheng and carry out a prompt, effective, and impartial investigation into his disappearance;
- Immediately release lawyer Gao Zhisheng to the extent that he is being held by state authorities;
- Pending such release, grant Mr. Gao Zhisheng access to his legal representatives and family members, as well as comply with international standards on conditions of detention, ensuring his physical and psychological integrity;
- Drop any pending charges against Mr. Gao Zhisheng unless credible evidence is presented in proceedings that respect fair trial guarantees; and
- Ensure that all lawyers in the People's Republic of China can carry out their legitimate professional activities without intimidation, improper interference or reprisals.

We will continue to monitor the situation of Gao Zhisheng, as well as that of other lawyers in the People's Republic of China. We also look forward to receiving any information that you can provide regarding his situation and the implementation of the recommendations above.

Yours sincerely,

**The Law Society of England and Wales**

**Lawyers for Lawyers**

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