

Gongmeng Update August 2009

After his arrest and detention in July, Xu Zhiyong, (许志永) 36, a soft-spoken and politically shrewd legal scholar who has made a name representing migrant workers, death row inmates and the parents of babies poisoned by tainted milk, has been accused of tax evasion. He may still face up to seven years in prison. [A New York Times story reports](#) that the accusation was almost universally seen here as a cover for his true offense: angering the Communist Party leadership through his advocacy of the rule of law. That suspicion was confirmed to a large degree after Mr. [Xu's release later in August](#) just after the new American ambassador to China, the former Utah governor Jon M. Huntsman Jr., arrived in Beijing.

Mr. Xu helped establish the Open Constitution Initiative (Gongmeng), a six-year-old nonprofit legal center that the authorities closed in July ([see IJCSL-N for August 2009](#)), charging that it was improperly registered and that it failed to pay taxes on a \$100,000 grant received from Yale's China Law Center. Given Mr. Xu's international stature and reputation for working within the law, legal scholars both in China and abroad said that his prosecution suggests a new level of repression. [China Human Rights Defenders](#) reported that Gongmeng's remaining organizers had been calling for donations to help pay the banned organization's enormous fine of 1.42 million RMB. Complicating the process, however, was the refusal of tax authorities to issue the necessary paperwork, and the fact that bank accounts belonging to the organization and director Xu Zhiyong have been frozen.

[A letter dated August 21, 2009, from the Committee to Protect Chinese Lawyers](#) to Premier Wen Jianbao, raised concerns about the inability to clear up the claims for back taxes. Mr. Li Xiongbing, Gongmeng's lawyer, had made multiple attempts to establish a process for paying the fines on behalf of Gongmeng. According to the letter, between August 11 and August 17, 2009, Mr. Li sent more than 700,000 RMB by post office money orders to the State Administration of Taxation and the local tax bureau.

There are several legal issues here. One concerns the deregistration of the organization Gongmeng. Gongmeng's registration with the State Administration of Industries and Companies (SAIC) was revoked under Article 69 of the revised Regulation on the Administration of Company Registration (2005). This states in translation (from LawInfoChina): "Where a company registration is acquired by false submissions or other fraudulent means, a company registration organ shall order correction, and impose a fine of not less than 50,000 yuan but not more than 500,000 yuan; if the case is serious, shall revoke the company registration or revoke the business license."

<http://www.lawinfochina.com/law/displayModeTwo.asp?ID=4821&DB=1&keyword=>

Furthermore, looking at it from a social organization standpoint (organizations that should be registered in accordance with the Regulations on the Administration and Management of Social Organizations of 1998), if Gongmeng was truly a social organization instead of a business organization, as seems to be alleged, the "Temporary Measures Banning Illegal Organizations" from April 20, 2000, say that illegal organizations include ones that are "unregistered and unauthorized [as social organizations] and engage in activities in the name of a social organization." This was widely seen at the time as an end-run around SOs, like Gongmeng, that

could not receive sponsorship in order to register as SOs, and therefore were seeking to be registered with SAIC. It certainly leaves them vulnerable to being shut down, by placing them in the never-never-land between properly registered business organizations and properly registered social organizations.

The other issue involves the tax evasion charges. If Gongmeng was truly a business, there is no question that it should have paid taxes on the grant from Yale. See Leon E. Irish, Jin Dongsheng, and Karla W. Simon, CHINA'S TAX RULES FOR NOT-FOR-PROFIT ORGANIZATIONS, available at http://siteresources.worldbank.org/INTCHINA/1503040-1122886803058/20601839/NPO_tax_En.pdf. If it was truly an SO, then it would not be required to do so, but it was clearly registered with SAIC.

Most important is the fact that the law requires mitigation of the criminal charges if full restitution is offered. According to the letter from the Committee to Protect Chinese Lawyers, according to Article 201 of the *Criminal Law of the People's Republic of China*, if a tax offender pays in full the taxes owed and has received administrative punishment, then no criminal action may be brought against the tax offender. This would again raise the question of political motives behind the arrest, the criminal charges, and the closure of the organization, confirmed, of course, by his release so quickly after the arrival of Ambassador Huntsman.