

(Translated from Chinese)

Receipt is hereby acknowledged of communication No. UA CHN 3/2017 of 22 March from the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, of the United Nations Human Rights Council. The Chinese Government has made careful inquiries into the matter referred to in the communication and wishes to make the following reply:

Xie Yang, Li Heping, Wang Quanzhang and Jiang Tianyong, who are mentioned in the communication, have all been the subject of action taken in accordance with the law by bodies of the Chinese justice system because of their actions which violated Chinese criminal law. The cases of Li Heping, Wang Quanzhang and Xie Yang are already being prosecuted; the case of Jiang Tianyong is still under investigation.

If Mr. Li and the others have been the subject of action taken in accordance with the law by bodies of the Chinese justice system, it is not because they are so-called “rights defenders”, nor is it because they defended the legal rights of persons involved in court proceedings, but because, for an extended period, under the banner of attorneys and using the pretext of being “rights defenders”, they carried out illegal criminal activities aimed at overthrowing the fundamental State system established by the Chinese Constitution. Through investigations and inquiries, it has been ascertained by the Chinese judicial authorities that their conduct constitutes serious violations of the rules of criminal law. They have colluded with a number of elements who were engaged in illegal activities in society; plotted to subvert the political power of the State; proposed ideologies, actions and steps to systematically subvert the political power of the State; made use through their planning and organization of a number of issues and cases of popular concern to incite others to illegally gather and stir up trouble in judicial bodies and in public places; incited unsuspecting people both online and offline to be hostile toward and oppose the judicial authorities and bodies of State power; and carried out criminal activities aimed at subverting the political power of the State and overthrowing the fundamental State system. Their prosecution by the Chinese judicial authorities is fully justified and in keeping with the law.

The Government of China respects and guarantees human rights, and Chinese law prohibits and opposes torture. The Criminal Procedure Law clearly and categorically prohibits the extraction of confessions by torture through the use of threats, enticement or deception as well as other illegal means of collecting evidence; no persons may be compelled to testify against themselves. The People’s Police Law stipulates that the police must not extract confessions or engage in corporal punishment or mistreatment of suspects. The Criminal Law provides that the extraction by judicial officials of confessions from suspects or accused persons and their use of violent means against witnesses to force their testimony is punishable by up to 3 years of imprisonment or criminal detention; if it results in injury, disability or death, a heavier punishment is imposed, in accordance with the provisions on intentional injury and intentional homicide. When the Chinese judicial authorities dealt with the above criminal cases, they scrupulously upheld procedures in accordance with the law and fully respected the procedural rights and legal interests of the defendants; there was no so-called coercion to confess or “torture”. It is simply that a number of Western media outlets, relying on false information disseminated on the Internet, have wantonly spread sensationalist reports of so-called “rights defending lawyers” being subjected to torture; such reports are neither objective nor impartial.

China is a State based on the rule of law, and no places or people are above the law. Any person who violates the law is subject to investigation under the law; the fact of being a lawyer does not serve as a “free pass” to trample the rule of law. The criminal acts perpetrated by these people violated the law. The way their cases have been handled fully gives effect to the principle of the equality of all persons before the law; it is also consistent



with the practices of the overwhelming majority of countries and is in keeping with the related provisions of United Nations conventions.

In fact, relative to the over 300,000 lawyers in China, the number of lawyers who, like Li Heping and the others, have broken the law is extremely low. The Government of China has always highly valued the positive contribution of lawyers in building socialism with Chinese characteristics. After 30 years of reform and development, the Chinese legal profession has had some remarkable achievements. It has unceasingly grown and expanded its field of service, its stature and role have been enhanced and it has become an all-around important force for governance in accordance with the law. The Government of China has always supported and defended the practice of the legal profession in accordance with the law, and the Chinese Criminal Procedure Law, Law on Lawyers and other laws all establish clear rules for guaranteeing the rights of lawyers in their work. In recent years China has reformed its judicial structure, strengthening such guarantees. In September 2015 the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly issued the Provisions on the Legal Protection of Lawyers' Practising Rights, thus strengthening the rights of lawyers to obtain information, to petition and to appeal, as well as specific measures and relief mechanisms in support of their rights to meet with clients, to examine case files, to collect evidence and to argue and defend cases. Since then, various central government and legal bodies have taken relevant implementing measures. In July 2016 the Supreme People's Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice once again jointly issued a document, their Opinions on Advancing the Reform of the Trial-Centered Criminal Procedure System, the main point of which was to underscore the right of lawyers to cross-examine during court inquiries and their right to argue their cases and defend clients during court hearings, providing guarantees so as to bring the functions of lawyers, and especially their role in court hearings, more into play in criminal proceedings. The Government of China will continue, in accordance with the law, to defend the right of lawyers to practise their profession and will encourage and support the positive contribution made by the very large majority of lawyers in defending the legal rights and interests of their clients, upholding fairness and justice in society and promoting the rule of law in our country.

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中华人民共和国常驻联合国日内瓦办事处和瑞士其他国际组织代表团

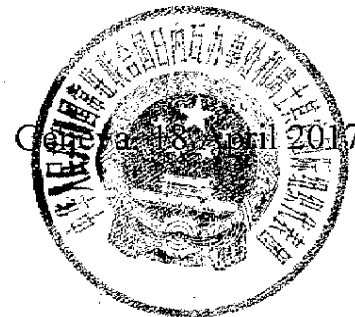
PERMANENT MISSION OF THE PEOPLE'S REPUBLIC OF CHINA

11 Chemin de Surville, 1213 Petit-Lancy
Tel: +41 (0)22 879 56 78 Fax: +41 (0) 22 793 70 14
Email: chinamission_gva@mfa.gov.cn Website: www.china-un.ch

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The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights, and with reference to the latter's communication **【UA CHN 3/2017】** dated 22 March 2017, has the honour to transmit herewith the reply by the Chinese Government.

The Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and Other International Organizations in Switzerland avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.



Office of the High Commissioner for Human Rights
GENEVA

联合国人权理事会强迫失踪工作组、“人权卫士”问题特别报告员和酷刑问题特别报告员 3 月 22 日就谢阳等 4 人案来函 [UA CHN 3/2017] 收悉。中国政府对来函所涉情况进行了认真调查，现答复如下：

函中提到的谢阳、李和平、王全璋、江天勇，均因其行为触犯中国刑事法律而受到中国司法机关依法处理。目前，李和平、王全璋、谢阳案已提起公诉，江天勇案仍在侦查中。

李和平等人被中国司法机关依法处理，不是因为他们所谓“维权律师”身份，也不是因为他们在法庭上维护当事人合法权益，而是他们打着法律工作者的旗号，以“维权”为幌子，长期从事颠覆中国宪法确立的国家基本制度等违法犯罪活动。中国司法机关经侦查、审查查明，李和平等人与社会上一些不法分子相勾结，密谋策划颠覆国家政权，提出了系统化的颠覆国家政权思想、方法和步骤，利用一些公众关注的个案、事件，通过策划、组织、指使他人司法机关、公共场所非法聚集滋事，网上网下煽动不明真相的人仇视、对抗司法机关和国家政权机关等方式，实施颠覆国家政权、推翻国家基本制度的犯罪活动，其行为已严重触犯刑法相关规定。中国司法机关对李和平等人进行刑事追诉，具有充分的事实和法律依据。

中国政府尊重和保障人权，中国法律禁止和反对酷刑。《刑事诉讼法》明确规定，严禁刑讯逼供和以威胁、引诱、欺骗以及其他非法方法收集证据，不得强迫任何人证实自己有罪。《人民警察法》规定，人民警察不得刑讯逼供或体罚

虐待人犯。《刑法》规定，司法工作人员对犯罪嫌疑人、被告人实行刑讯逼供或者使用暴力逼取证人证言的，处3年以下有期徒刑或者拘役；致人伤残、死亡的，依照故意伤害罪、故意杀人罪定罪从重处罚。中国司法机关办理上述人员犯罪案件时，始终坚持严格依法按程序，充分保障了他们的诉讼权利和合法权益，不存在所谓刑讯逼供和“酷刑”问题。一些西方媒体仅凭网络上流传的不实信息就大肆炒作所谓“维权律师”遭受酷刑，是不客观、不公正的。

中国是法治国家，没有法外之地、法外之人。任何人只要触犯法律，都应受到法律追究，律师身份不是践踏法治的“护身符”。对这些人违法犯罪行为依法处理，充分体现了法律面前人人平等的法治原则，也是世界上大多数国家的通行做法，符合联合国有关公约的规定。

事实上，相对中国30多万律师队伍来说，像李和平等违法犯罪的律师只是极个别。中国政府历来高度重视律师队伍在中国特色社会主义事业中的积极作用。经过30多年改革发展，中国律师事业取得令人瞩目的成就，律师队伍规模不断壮大，服务领域不断拓展，律师职业的地位和作用进一步提高，已经成为全面依法治国的重要力量。中国政府始终支持并保障律师依法执业，中国的《刑事诉讼法》、《律师法》等法律都对保障律师执业权利作出明确规定。近年来，中国在司法体制改革中进一步加强了对律师执业权利的保障。2015年9月，最高人民法院、最高人民检察院、公安部、国家安全部、司法部联合发布了《关于依法保障律师执业权利

的规定》，进一步强化了保障律师知情权、申请权、申诉权以及会见、阅卷、收集证据和辩论辩护等方面权利的具体措施和救济机制。其后，中央政法各单位还出台了相关配套措施。2016年7月，最高人民法院、最高人民检察院、公安部、国家安全部、司法部又联合发布了《关于推进以审判为中心的刑事制度改革的意见》，重点强化了律师在法庭调查中的质证权和在庭审中的辩论辩护权，为进一步发挥律师在刑事诉讼特别是庭审中的职能作用提供了保障。中国政府将继续依法保障律师执业权利，鼓励和支持广大律师在维护当事人合法权益、维护社会公平正义、推进国家法治建设中发挥积极作用。