(Translated from Chinese)

Receipt is hereby acknowledged of the letter dated 22 August 2018 addressed jointly by the United Nations Human Rights Council's Working Group on Arbitrary Detention; 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 rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the independence of judges and lawyers; Special Rapporteur on the right to privacy; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (ref. OL CHN 15/2018). The Chinese Government wishes to make the following reply to that communication:

1. Procedures for approval of monitored confinement in a designated residence

The Chinese Criminal Procedure Law and the Provisions on the Procedures for Handling Criminal Cases by Public Security Organs stipulate strict procedures for the approval of monitored confinement in a designated residence, requiring that the measure be approved by the heads of public security organs at or above the county level. For persons suspected of crimes of endangering national security, terrorist activities, or major acts of bribery, where confinement in the suspect's own domicile could impede an investigation, monitored confinement in a designated residence should be approved by the people's procuratorate or public security organ at the next higher level.

2. Requirements related to the designation of premises for monitored residential confinement

The relevant Chinese laws and regulations set out clear requirements regarding the conditions under which residential premises are designated for monitored residential confinement. Article 73 of the Criminal Procedure Law stipulates that monitored confinement in a designated residence shall not be carried out in detention facilities or places specifically used for handling cases. In order to protect the personal rights of persons under monitored confinement in designated residences, the Provisions on Procedures for Handling Criminal Cases by Public Security Organs further clarify that "designated residences" refers to residences designated by public security organs for persons under monitored confinement, in accordance with the circumstances of their cases, in cities and counties where the organs handling their cases are located, and which meet the following conditions: (a) they provide normal living and resting conditions; (b) they are conducive to monitoring and management; and (c) they ensure security. Public security organs shall not execute monitored residential confinement in detention facilities, places specifically used for handling cases, or office spaces.

3. Notification of family members

Chinese law fully guarantees the right to know of the family members of persons under monitored confinement in a designated residence. Article 73 of the Criminal Procedure Law stipulates that the family members of the monitored resident shall be notified within 24 hours after the execution of monitored residential confinement, unless there is no possibility of such notification. Article 109 of the Provisions on Procedures for Handling Criminal Cases by Public Security Organs limits "no possibility of notification" to the four situations in which the suspect: has not provided his/her authentic name, address, or identity; has no immediate family; has provided invalid family contact information; or, on whose behalf, such notification is impossible owing to force majeure and objective factors such as natural disasters and so forth. It further clearly requires that family members should be notified immediately as and when the circumstances preventing such notification no longer obtain, thus guaranteeing, to the greatest extent, family members' right to know.

The alleged problem of secret disappearances resulting from monitored confinement in a designated residence does not exist in China.

4. Defence

Under the relevant provisions of Chinese law, persons placed in monitored residential confinement enjoy the right to mount a defence in accordance with the law and have the rights to retain, meet and communicate with defence lawyers. The rights to retain, meet and communicate with defence lawyers stipulated in the Criminal Procedure Law are applicable to persons under monitored residential confinement. The main points include: criminal suspects have the right to retain defenders from the first day they are interrogated by an investigative organ or have coercive measures taken against them. During the investigation period, defence lawyers may provide legal assistance to criminal suspects, file complaints and indictments on their behalf, apply for modifications in compulsory measures, make inquiries to the investigating organs regarding the charges against the suspects and information related to their cases, and submit opinions. Defence lawyers may meet and communicate with suspects and defendants under monitored residential confinement, but in cases requiring permission from the investigative organs in accordance with the relevant legal provisions, lawyers shall conduct such meetings after obtaining permission. As permitted by the people's court or the people's procuratorate, other defenders may also meet and communicate with the criminal suspects and defendants under monitored residential confinement.

5. Judicial supervision

According to the Criminal Procedure Law and the Rules of Criminal Procedure for the People's Procuratorate (for Trial Implementation), the people's procuratorates oversee the legality of decisions and execution of monitored confinement in designated residences. The Provisions of the People's Procuratorate on the Supervision of Monitored Confinement in Designated Residences, introduced by the Supreme People's Procuratorate, require procuratorial organs at all levels to strictly supervise decisions to execute monitored confinement in designated residences, as well as their implementation of such decisions. According to Article 7 of the Provisions, the people's procuratorate shall initiate supervision over the decision to execute monitored confinement in a designated residence in one of the following circumstances: (a) if criminal suspects and their legal agents, close relatives or defenders consider that the decision to execute monitored confinement in a designated residence is illegal, they shall file a complaint, report or appeal with the people's procuratorate; (b) if the people's procuratorate finds, through its involvement in the work of the investigation, such as reviewing arrests and decisions to prosecute, examining the conduct of criminal affairs, and reviewing case preparation, that the decision of the investigative organ (or department) to execute monitored confinement in a designated residence may be illegal; or (c) if the people's supervisors consider that the decision to execute monitored confinement in a designated residence is illegal, they submit supervisory opinions to the people's procuratorate. According to article 9 of the Provisions, the people's procuratorate may fulfil its supervisory function by consulting relevant case materials and debriefing the investigative organ (or department) on its decision to execute monitored confinement in a designated residence. According to Article 17 of the Regulations, the people's procuratorate can supervise the execution of monitored confinement operations in designated residences by the following means: consulting relevant legal documents and materials, such as interviews, communications, public appearances and physical examination records of the monitored persons; on-site checking on whether the designated residences conform to legal provisions; checking relevant surveillance videos and other materials, and if necessary, conducting body-surface examinations of the persons being subjected to monitored confinement; and interviewing the persons being subjected to monitored confinement, the persons executing it, personnel handling the cases, or other personnel involved, in order to investigate and come to an understanding of the relevant facts. The Provisions also require that the people's procuratorates conduct inspection tours of monitored confinement operations in designated residences, not less than once a week and with no less than two procuratorial personnel.

Moreover, under the provisions of the Criminal Procedure Law, extorting confessions by torture; gathering evidence by threat, enticement, deceit, or other illegal

means; or forcing anyone to commit self-incrimination are strictly prohibited. Confessions of criminal suspects or defendants extorted by torture or obtained by other illegal means, and statements by witnesses or victims obtained by violence, threat, or other illegal means, shall be excluded. When a people's procuratorate receives reports, charges, or tips or otherwise discovers collection of evidence by investigators using illegal means, it should investigate and verify them. If it is confirmed that evidence has been illegally obtained, the people's procuratorate should submit an opinion on rectifying it; for those instances constituting actual crimes, criminal liability shall be investigated in accordance with the law. In 2017, 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 Regulations on Several Issues Concerning the Strict Exclusion of Illegal Evidence in Handling Criminal Cases, further clarifying the principle of exclusion, its scope, criteria for identification, departmental responsibilities and operational procedures with regard to illegal evidence.

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

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No.GJ/66/2018

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 [OL CHN 15/2018] dated 22 August 2018, has the honour to transmit the reply by the Chinese Government.

The Permanent Mission of the People's Republic of China avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 23 November 2018

Office of the High Commissioner for Human Rights
Geneva

OHCHR REGISTRY

28 NOV 2018

Recipients : SRB

联合国人权理事会任意拘留问题工作组、强迫失踪问题工作组、言论自由问题特别报告员、和平集会与结社自由问题特别报告员、“人权卫士”问题特别报告员、健康权问题特别报告员、法官与律师独立性问题特别报告员、隐私权问题特别报告员、反恐与人权问题特别报告员、酷刑问题特别报告员2018年8月22日来函[OL CHN 15/2018]收悉。中国政府对来函答复如下:

一、指定居所监视居住批准程序

中国《刑事诉讼法》和《公安机关办理刑事案件程序规定》对采取指定居所监视居住规定了严格的批准程序，要求应当经县级以上公安机关负责人批准。对于涉嫌危害国家安全犯罪、恐怖活动犯罪、特别重大贿赂犯罪，在住所执行可能有碍侦查而在指定居所执行监视居住的，应当经上一级人民检察院或者公安机关批准。

二、指定居所监视居住场所的相关要求

中国有关法律、法规对于指定居所监视居住场所的条件作了明确要求。《刑事诉讼法》第73条规定，指定居所监视居住，不得在羁押场所、专门的办案场所执行。为保障被指定居所监视居住人的人身权利，《公安机关办理刑事案件程序规定》进一步明确，“指定的居所”是指公安机关根据案

件情况，在办案机关所在的市、县内为被监视居住人指定的生活居所，应当符合下列条件:（一）具备正常的生活、休息条件;（二）便于监视、管理;（三）保证安全。公安机关不得在羁押场所、专门的办案场所或者办公场所执行监视居住。

三、关于通知家属

中国法律充分保障被指定居所监视居住人的家属的知情权。《刑事诉讼法》第 73 条规定，对指定居所监视居住的，除无法通知以外，应当在执行监视居住后 24 小时以内，通知被监视居住人的家属。《公安机关办理刑事案件程序规定》第 109 条将“无法通知”限定在不讲真实姓名、住址、身份不明，没有家属，提供的家属联系方式无法取得联系，因自然灾害等不可抗力、客观原因导致无法通知等四种情形，并明确要求无法通知的情形消失以后，应当立即通知家属，最大限度地保障家属的知情权。中国不存在所谓的指定居所监视居住导致秘密失踪的问题。

四、关于辩护

根据中国法律的有关规定，被监视居住人依法享有辩护权，有权委托辩护律师，并与律师会见、通信。《刑事诉讼法》规定的有关委托辩护、会见、通信等权利，均适用于被监视居住人。主要内容包括：犯罪嫌疑人自被侦查机关第一次讯问或者采取强制措施之日起，有权委托辩护人。辩护律

师在侦查期间可以为犯罪嫌疑人提供法律帮助，代理申诉、控告，申请变更强制措施，向侦查机关了解犯罪嫌疑人涉嫌的罪名和案件有关情况，提出意见。辩护律师可以同被监视居住的犯罪嫌疑人、被告人会见和通信，但是依照有关法律规定需经侦查机关许可的案件，律师应当在取得许可后会见。其他辩护人经人民法院、人民检察院许可，也可以同被监视居住的犯罪嫌疑人、被告人会见和通信。

五、关于司法监督

根据《刑事诉讼法》和《人民检察院刑事诉讼规则（试行）》，人民检察院对指定居所监视居住的决定和执行是否合法实行监督。最高人民检察院专门出台了《人民检察院对指定居所监视居住实行监督的规定》，要求各级检察机关对指定居所监视居住的决定和执行情况进行严格监督。根据《规定》第7条，具有以下情形之一的，人民检察院应当对指定居所监视居住决定是否合法启动监督：（一）犯罪嫌疑人及其法定代理人、近亲属或者辩护人认为指定居所监视居住决定违法，向人民检察院提出控告、举报、申诉的；（二）人民检察院通过介入侦查、审查逮捕、审查起诉、刑事执行检察、备案审查等工作，发现侦查机关（部门）作出的指定居所监视居住决定可能违法的；（三）人民监督员认为指定居所监视居住决定违法，向人民检察院提出监督意见的。根据《规定》第9条，人民检察院可以通过查阅相关案件材料、

听取侦查机关（部门）作出指定居所监视居住的决定进行监督。根据《规定》第17条，人民检察院对指定居所监视居住执行活动进行监督，可以采取以下方式：查阅相关法律文书和被监视居住人的会见、通讯、外出情况、身体健康检查记录等材料；实地检查指定的居所是否符合法律规定；查看有关监控录像等资料，必要时对被监视居住人进行体表检查；与被监视居住人、执行人员、办案人员或者其他有关人员谈话，调查了解有关情况。《规定》还要求，人民检察院对指定居所监视居住的执行活动应当进行巡回检察，巡回检察每周不少于一次，监察人员不得少于二人。

同时《刑事诉讼法》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。对于采用刑讯逼供等非法方法收集的犯罪嫌疑人、被告人供述和采用暴力、威胁等非法方法收集的证人证言、被害人陈述，应当予以排除。人民检察院在接到报案、控告、举报或者发现侦查人员以非法方式收集证据的，应当进行调查核实。对于确有以非法方式收集证据情形的，人民检察院应当提出纠正意见；构成犯罪的，依法追究刑事责任。2017年，最高人民法院、最高人民检察院、公安部、国家安全部、司法部联合下发《关于办理刑事案件严格排除非法证据若干问题的规定》，进一步明确了非法证据的排除原则、排除范围、认定标准、部门职责和操作程序等。