

**Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and the Special Rapporteur on the situation of human rights defenders**

REFERENCE: UA  
CHN 5/2015:

11 June 2015

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 24/7, 25/2, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arbitrary sentencing of human rights defender Mr. Liu Jiakai and the arbitrary detention of housing rights' activist Ms. Jia Lingmin amid lack of due process and access to a fair trial.

**Mr. Liu Jiakai** (刘家财) is a democracy activist who has organised gatherings with other human rights defenders in Yichang City to discuss legal rights and human rights. Mr. Liu Jiakai is also a supporter of the New Citizen's Movement, a network of activists campaigning for greater transparency and greater equality within the education system, as well as for Constitutional government.

Mr. Liu Jiakai was the subject of a previous communication sent to your Excellency's Government from the Chair-Rapporteur of the Working Group on Arbitrary Detention; 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; and Special Rapporteur on the situation of human rights defenders dated 22 August 2013, see A/HRC/25/74, case no. CHN 9/2013. We regret that, to date, no response has been received from your Excellency's Government.

**Ms. Jia Lingmin** (贾灵敏) has been a housing rights' activist since her home was unlawfully demolished. She provides information on the use legal procedures to seek remedy and gives lectures across China about best practices and also about monitoring police misconduct.

*The case of Mr. Liu Jiakai*

According to the information received:

On 18 September 2013, Mr. Liu Jiakai was formally arrested, after being detained since 2 August 2013, on grounds of 'disrupting public order' (Article 290 of China's Criminal Law).

On 23 July 2014, Mr. Liu Jiakai's trial took place. It was initially to be a closed trial but, as a result of opposition to this from his lawyers, the authorities allowed three of his family members to attend the hearings.

On 11 May 2015, Mr. Liu Jiakai was sentenced to five years' imprisonment on charges of 'inciting subversion of state power' (Article 105 of China's Criminal Law) by the Intermediate People's Court in Yichang City, Hubei Province. It is reported that his detention and sentence is related to Mr Liu Jiakai's peaceful and legitimate activities as democracy and human rights activist. More information on his detention related to human rights activities can be found in the previous communication dated on 22 August 2013, see A/HRC/25/74, case no. CHN 9/2013

He is currently detained in Yichang No. 1 Detention Centre.

*The case of Ms. Jia Lingmin*

According to the information received:

On 7 May 2014, Ms. Jia Lingmin received a phone call informing her of a house in Zhengzhou City, Henan Province, which was to be demolished without the consent of the inhabitants. When she arrived at the house, Ms. Jia Lingmin approached a police car which was parked outside to ask them for assistance. The two men inside the car did not have badges identifying them as police officers. She proceeded to photograph them with her mobile phone and asked to see their official identification. The police then confiscated her mobile phone and she was taken to Wutongjie Police Station in Gaoxin District where she was detained without an arrest warrant or given a reason for the arrest.

The following day, Ms. Jia Lingmin was transferred to Zhengzhou City No. 3 Detention Centre where she is reported to have been held in incommunicado detention for almost a week. When her lawyers requested to see her, they were informed that she was not detained at that facility. Her lawyers later discovered that she had been registered in the detention centre under a different name.

A detention notice dated 8 May 2014 stated that Ms. Jia Lingmin was criminally detained on suspicion of ‘disrupting public order’ (Article 290 of China’s Criminal Law).

On 30 May 2014, Ms. Jia Lingmin was formally arrested for the crime of ‘creating a disturbance’ (Article 293 of China’s Criminal Law). This charge is believed to be related to her human rights activism, and specifically in connection with lectures that she gave in September 2013, her presence at demolition sites in January and April 2014, and due to the fact that she welcomed the release of an activist from detention in January 2014.

Prior to her trial, on two separate occasions, the prosecutor sent Ms. Jia Lingmin’s case back to the police for further investigation, allegedly due to insufficient evidence of criminal activity.

Ms. Jia Lingmin’s trial hearing began on 27 April 2015 at the Heluo Center People’s Court in Gongyi City. The hearing was suspended, however, as the defence team refused to continue as a result of procedural breaches citing her right to a fair trial. It is alleged that Ms. Jia Lingmin’s lawyers had not been notified of the trial date in a timely manner and that the court authorities refused to allow for a public trial or to provide a large courtroom, therefore excluding the defence witnesses, who were due to be called to testify. On the day of the trial more than a hundred police officers were present in front of the court and a number of people were denied entry to the court room. Furthermore, it is reported that one of the lawyers was informed that he could not stay at a local hotel as the owners had been informed that they were not to provide accommodation to non-locals during the month of April.

Ms. Jia Lingmin remains detained in Zhengzhou City No. 3 Detention Centre to date.

Concern is expressed at the detention and lengthy criminal sentence handed down to Mr. Liu Jiakai as a result of his peaceful and legitimate human rights activities and the exercise of his right to freedom of expression. Concern is also expressed at the detention of Ms. Jia Lingmin, including being held incommunicado, allegedly as a result of her peaceful and legitimate human rights activities and the exercise of her right to freedom of expression. Further concern is expressed at the alleged lack of due process in the criminal

proceedings against Ms. Jia Lingmin, amounting to a breach of her right to a fair trial and at the arbitrary pre-trial and continued detention of Ms. Jia Lingmin, while her trial is suspended.

Concerns are expressed at the intimidating and deterrent effect that these criminal proceedings would have on human rights activists and individuals, preventing the legitimate exercise to their rights, including the right to freedom of expression and to perform their work in the promotion and protection of human rights in a safe and enabling environment without fear of prosecution or harassment of any sort.

While we do not wish to prejudge the accuracy of these allegations, the above allegations appear to be in contradiction with Article 9 and 10 of the Universal Declaration on Human Rights (UDHR). These articles include the right not to be deprived arbitrarily of liberty and the right to a fair hearing.

We also refer your Excellency's Government to Article 19 of the UDHR, which provides for the right to freedom of opinion and expression, as well as the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, in particular articles 1, 2, 6 and 12.

Furthermore, we take note of the recommendation accepted by People's Republic of China during the Universal Periodic Review process to "[e]nsure that human rights defenders can exercise their legitimate activities, including participation in international mechanisms, without being subjected to reprisals". We also note the comments of your Excellency's Government that human rights defenders' activities are encouraged, protected and supported by the State, indicating that the individuals or organizations engaging in illegal activities in the name of safeguarding human rights will be duly prosecuted by the Chinese government according to law (A/HRC/25/5/Add.1). In this regard, we would like to stress that the allegations before us in the present communication do not disclose elements that the activities of the two concerned individuals would require criminal prosecution, but instead seem to constitute activities related to the legitimate exercise to the right to freedom of expression and the promotion of human rights.

Acknowledging the declaration made by People's Republic of China in the Universal Periodic Review process, indicating that the State "is now prudently carrying out its judicial and administrative reform to actively prepare for the ratification of the ICCPR" (A/HRC/25/5/Add.1), we encourage your Excellency's Government to take concrete steps towards the ratification of the ICCPR.

The full texts of the human rights instruments and standards recalled above are available on [www.ohchr.org](http://www.ohchr.org) or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.

2. Please provide information concerning the legal grounds for the charges against and the pre-trial detention of Ms. Jia Lingmin and for the sentencing of Mr. Liu Jiakai. Please provide information on how these measures are compatible with international norms and standards, in particular the right to freedom of opinion and expression and the rights and specific protections granted to human rights defenders.

3. Please provide information on how the right to a fair and public trial, as established in international norms and standards, has been respected in the case of Ms. Jia Lingmin.

4. Has a complaint been lodged by or on behalf of the alleged victims, in relation for instance to the allegations of arbitrary detention, the detention incommunicado and lack of guarantees of due process?

5. Please kindly indicate what measures have been taken to ensure that human rights defenders in China are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.

6. Please kindly indicate what measures have been taken towards the judicial and administrative reform required for the ratification of the ICCPR.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Seong-Phil Hong  
Chair-Rapporteur of the Working Group on Arbitrary Detention

David Kaye  
Special Rapporteur on the promotion and protection of the right to  
freedom of opinion and expression

Michel Forst  
Special Rapporteur on the situation of human rights defenders