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PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; 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

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) G/SO 214 (107-9) G/SO 214 (53-24)
CHN 3/2014

1 April 2014

Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention; 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 pursuant to Human Rights Council resolutions 24/7, 16/16, 16/4, 16/5, and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received regarding the alleged incommunicado detention of human rights lawyer Mr. **Gao Zhisheng**.

Mr. Gao Zhisheng has been the subject of several communications sent on: 25 November 2005; 21 December 2005; 30 November 2006; 1 December 2006; 28 September 2007; 12 February 2009; and 23 March 2010. Responses were received from your Excellency's Government on 18 April 2006, 12 February 2007, 26 February 2007, 18 December 2007, 1 April 2009 and 24 February 2011. He was also the subject of Opinion No. 26/2010 (People's Republic of China) of the Working Group on Arbitrary Detention.

According to the new information received:

In December 2011, the authorities announced that Mr. Gao would be imprisoned for the remainder of his original three-year sentence in Shaya prison in Xinjiang Province. Since then, family members have allegedly only been allowed to visit him twice for 30 minutes on each occasion. Mr. Gao was reportedly last seen by

his family on 12 January 2013. Since then, he has reportedly been held incommunicado. Mr. Gao is allegedly scheduled to be released in August 2014.

According to the information received, despite repeated inquiries and formal requests made, no explanation has been given regarding the fate and whereabouts of Mr. Gao, whether he is still detained in Shaya prison, whether he has been transferred to another detention facility, and why he has been denied the right to receive family visits, the right to send and receive written correspondence, and the right to have access to counsel.

Grave concern is expressed about the personal security and the physical and psychological integrity of Mr. Gao Zhisheng. Serious concern is expressed that his incommunicado detention since 12 January 2013 might amount to an enforced disappearance and that this situation could be linked to his peaceful work for the promotion and protection of human rights.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. Gao Zhisheng is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR).

In relation to the allegations according to which the fate and whereabouts of Mr. Gao Zhisheng have been unknown for over a year, we would like to bring to your Excellency's Government's attention the United Nations Declaration on the Protection of All Persons from Enforced Disappearance, which sets out the necessary protection by the State, in particular article 10 (2), which provides that accurate information on the detention of persons deprived of liberty 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.

We are also drawing your Excellency's Government's attention to paragraph 8 (b) of Human Rights Council Resolution 16/23, which reminds States that "Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished."

In this connection, we would like to refer your Excellency's Government to 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, and in particular articles 1 and 2

which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 9, para. 3, point c) which provides that everyone has the right, individually and in association with others to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.

- article 12, paras 2 and 3, which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

We would further like to appeal to your Excellency's Government to take all necessary steps to secure the right of Mr. Gao Zhisheng to freedom of opinion and expression in accordance with the fundamental principles set forth in article 19 of the UDHR which provides that "[e]veryone 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."

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 Mr. Gao Zhisheng in compliance with the above international instruments.

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. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please provide information on the fate and whereabouts of Mr. Gao Zhisheng. Is Mr. Gao still held in Shaya Prison in Xinjiang Province?
3. Please provide information on the reasons why Mr. Gao has been denied any contact with and visit by his family since 12 January 2013.
4. Please provide information concerning the legal grounds for the arrest and detention of Mr. Gao Zhisheng and how these measures are compatible with international norms and standards as stated, inter alia, in the Universal Declaration of Human Rights.

We undertake to ensure that your Excellency's Government's response will be available in the report we will submit to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Gao Zhisheng are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

We would like to bring to the attention of your Excellency's Government that, should the sources submit the allegations concerning Mr. Gao Zhisheng as a case to the Working Group on Enforced or Involuntary Disappearances, they will be considered by the Working Group according to its methods of work, in which case your Excellency's Government will be informed by separate correspondence.

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

Mads Andenas
Chair-Rapporteur of the Working Group on Arbitrary Detention

Ariel Dulitzky
Chair-Rapporteur of the Working Group on Enforced or Involuntary
Disappearances

Frank La Rue
Special Rapporteur on the promotion and protection of the right to freedom of
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punishment