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PROCEDURES SPECIALES DU
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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 rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

REFERENCE: UA G/SO 218/2 G/SO 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
CHN 12/2013

22 October 2013

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 rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 15/18, 16/16, 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning **the arrest and detention, and in some instances disappearances, of 20 individuals in connection with their participation in peaceful assemblies or human rights campaigns in different parts of the country**, protesting, inter alia, against alleged corruption among Government officials or calling on the State to ratify the International Covenant on Civil and Political Rights. Many of them are believed to belong to, or be inspired by, the New Citizen Movement, a network of peaceful activists who reportedly call for transparency about the financial assets of top Chinese leaders, and promote political and legal reforms.

According to the information received:

The following individuals have reportedly disappeared:

- Mr. **Yang Tingjian** was arrested in late May 2013 in Guangdong province, and has disappeared since. It is alleged that Mr. Yang had organised an event in which participants would share information about democracy and freedom via mobile phone on 4 June, which is the anniversary of the June 1989 pro-democracy protests in Tiananmen Square. Mr. Yang's whereabouts are currently unknown.

- Mr. **Zhang Fuying** of Lianoning was arrested on 13 June 2013 in Beijing municipality, and has disappeared since. Sources indicate that Mr. Zhang had sought public disclosure of the financial assets of top Chinese leaders. There are further indications that Mr. Zhang may have been transferred to Beijing Municipal Public Security Bureau, where officials have reportedly said he would “disappear forever”.

The following individuals have reportedly been criminally charged:

Mr. **Xu Zhiyong**, legal advocate and founder of the NGO Open Constitution Initiative, has spearheaded the New Citizen’s Movement. He was allegedly taken into custody on 16 July 2013 and was formally arrested on 22 August 2013.

- Mr. **Liu Yuandong**, was taken into custody on 23 February 2013 outside the headquarters of the *Southern Weekly* where there had been a demonstration in support of press freedom. Mr. Liu had also been supporting activists in Guangzhou province, as well as engaging in human rights advocacy work. He was formally arrested on charges of “withdrawing contributed capital after incorporation of a company”. He is detained at the Tianhe District Detention Center. There have been allegations that Mr. Liu has been subjected to ill-treatment, including sleep deprivation, whilst in detention.
- Ms. **Ying Jixian** of Zhejiang was apprehended on 18 May 2013 and charged with “gathering a crowd to disrupt public order”. She was detained at the Xicheng District Detention Center, and released on bail on 26 July 2013, pending trial.
- Mr. **Deng Zhibo** of Jilin was apprehended on 18 May 2013 and charged with “gathering a crowd to disrupt public order”. He was detained at the Xicheng District Detention Center, and released on bail on 25 July 2013, pending trial.
- Ms. **Zhang Jixin** was apprehended on 18 May 2013 and charged with “gathering a crowd to disrupt public order”. She was detained at the Xicheng District Detention Center, and released on bail on 26 July 2013, pending trial.
- Mr. **Zhao Guanjun** of Liaoning was apprehended on 18 May 2013 and charged with “gathering a crowd to disrupt public order” and “creating a disturbance”. He was detained at the Fengtai District Detention Center, and released on bail on 26 July 2013, pending trial.
- Ms. **Zhu Pingping** of Shanghai was apprehended on 18 May 2013 and charged with “gathering a crowd to disrupt public order” and “creating a disturbance”. She was detained at the Fengtai District Detention Center, and released on bail on 26 July 2013, pending trial.

- Mr. **Xu Nailai** of Tianjin and Mr. **He Bin** of Hubei were apprehended on 27 May 2013 after they and other petitioners expressed their sympathy for hurricane victims in the US by gathering outside the US embassy with banners. They have been criminally detained since late June on charges of “creating disturbance”. Both are in detention at The Chaoyang District Detention Center.
- Mr. **Gu Yimin** was apprehended at his work place on 1 June 2013, and sources indicate that police simultaneously searched his home and confiscated his computer. He was formally arrested on 14 June 2013 on charges of “inciting subversion of State power” and is being detained at the Changshu City Detention Centre. He had allegedly posted photos of the 1989 Tiananmen Square pro-democracy protests online and had also refused to withdraw a petition to hold a gathering to mark the anniversary of the event. Sources indicate that Mr. Gu faced trial on 29 September 2013 at Changshu People’s Intermediate Court. Although his family was allowed to attend the trial, it has been indicated to us that fellow pro-democracy campaigners were forbidden from doing so.
- Mr. **Zhao Zhenjia** of Liaoning was apprehended on 9 June 2013 at the Beijing South railway station, and is currently being held at the Haidian District Detention Center on unknown charges. He had been working on the campaign for disclosure of public assets. It is alleged that he was held incommunicado for some weeks after his arrest.
- Mr. **Shen Guodong** was apprehended on 5 July 2013, and was formally arrested on 6 August 2013 on charges of “gathering a crowd to disrupt public order”. He is being detained at the Wuxi City No.1 Detention Center.
- Mr. **Yin Xijin** was apprehended on 5 July 2013 and formally arrested on 6 August 2013 on charges of “gathering a crowd to disrupt public order”. He is being detained at the Wuxi City No.1 Detention Center.
- Mr. **Song Ze** was apprehended on 12 July 2013 and temporarily fell out of contact before being formally arrested on 16 August 2013 on charges of “gathering a crowd to disrupt public order”. He is being detained at the Beijing No. 3 Detention Center. Mr. Song is reportedly involved in the New Citizen’s Movement.
- Mr. **Guo Feixiong** and Mr. **Sun Desheng** were detained on 8 and 13 August 2013, respectively, on suspicion of “gathering a crowd to disrupt public order” and have been detained since then at the Tianhe District Detention Center. On 27 August 2013, it is reported that officials refused Mr. Sun’s lawyer’s request to meet him, citing the need for permission from higher authorities. Mr. Sun and Mr. Guo have both participated in the New Citizen’s movement and Mr. Sun has also sought the release of legal advocate Mr. Xu Zhiyong.

- Mr. **Zhou Weilin**, apprehended on 6 September 2013 in Hefei, has been detained since on the charge of “gathering a crowd to disrupt order”. Police simultaneously searched his home and confiscated his computers, cell phone and publications. He is being detained at the Feixi County Detention Center. Mr. Zhou had previously been detained for participating in the campaign for the right to education of Mr. Zhang Lin’s daughter.
- Mr. **Yao Cheng** was apprehended on 6 September 2013 and has been detained since. Neither Mr. Yao’s place of or reason for detention are known. He had previously been detained for his role in the campaign for the right to education of Mr. Zhang Lin’s daughter.

Serious concerns are expressed that the alleged arrest and detention of the above mentioned individuals, and the enforced disappearances of Mr. Yang Tingjian and Mr. Zhang Fuying, may be linked to their legitimate human rights activities in the exercise of their rights to freedom of peaceful assembly and of opinion and expression, as well as the right to defend human rights. Further concerns are reiterated that the latest series of arrests, as raised *inter alia* in our communications sent on 9 and 22 August 2013 and 18 September 2013, reveals little room for dissenting voices in China and a worrisome sign of an escalating crackdown on the rights to freedom of expression, association and peaceful assembly.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of the abovementioned persons is arbitrary or not, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee their right not to be deprived arbitrarily of their 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.

We would like to refer your Excellency’s Government to article 19 of the Universal Declaration of Human Rights 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.”

Similarly, we would also like to refer to article 20 of the Universal Declaration of Human Rights, which provides that “[e]veryone has the right to freedom of peaceful assembly and association.”

In this connection, we would also like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on

the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

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 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;
- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and
- article 8, paragraph 1, which stipulates that everyone has the right, individually and in association with others, to have effective access, on a non-discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

In relation to the allegations according to which the fate and whereabouts of Mr. Yang Tingjian and Mr. Zhang Fuying are currently unknown, we would like to bring to the attention of your Excellency's Government the United Nations Declaration on the Protection of All Persons from Enforced Disappearance which sets out necessary protection by the State, and in particular:

- article 2 (no State shall practice, permit or tolerate enforced disappearances);

- article 3 (each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction); and
- article 6 (no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance).
- article 10 (right to access of competent national authorities to all places of detention; to be held in an officially recognized place of detention, in conformity with national law and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest);
- article 12 (right to the maintenance in every place of detention of official up-to-date registers of all detained persons); and
- article 13 (right to complain to a competent and independent State authority; to conduct the investigation effectively; to ensure that all involved in the investigation are protected against ill-treatment, intimidation or reprisal; to have findings of an investigation made available upon request to all persons concerned, unless doing so would jeopardize an ongoing criminal investigation; to ensure that any ill-treatment, intimidation or reprisal or any other form of interference on the occasion of the lodging of a complaint or during the investigation procedure is appropriately punished; an investigation to be conducted for as long as the fate of the victim of enforced disappearance remains clarified).

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 the above international instruments.

Moreover, since 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, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please indicate or confirm the legal basis for the arrest and detention of the abovementioned individuals, and how such measures are compatible with international human rights norms and standards as mentioned above.
3. Please provide information on the fate and whereabouts of Mr. Yang Tingjian and Mr. Zhang Fuying. If their fate and whereabouts are unknown, please provide the details of any investigation or other queries which may have been carried out. If no queries have been made, or if they have been inconclusive, please explain why.

We undertake to ensure that your Excellency's Government's response is reflected 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 the above mentioned persons 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. Tingjian and Mr. Zhang Fuying as a case to the Working Group on Enforced or Involuntary Disappearances, it 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.

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