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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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 217/1 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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1 October 2013

Excellency,

We have the honour to address you in our capacity as 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 16/16, 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **allegations that two citizens were prohibited from travelling to Geneva in order to attend a training seminar on UN mechanisms, and further allegations that one of them is subject to enforced disappearance.**

Alleged violations against human rights defenders seeking participation in China's UPR process, requesting information from the authorities in this regard and peacefully protesting against an alleged lack of response from the Government was the subject of a joint urgent appeal sent by the Chair-Rapporteur of the Working Group on Arbitrary Detention; the Chair-Rapporteur of 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; 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 on 17 July 2013. While we thank your Excellency's Government for the reply received on 23 September 2013 to this communication, we regret that the main allegations therein, including with regard to the dispersal of protests outside the Ministry of Foreign Affairs as well as the alleged refusal

by the authorities to disclose information regarding the preparation of the national UPR report, were not addressed in the response.

According to the information received:

Ms. **Cao Shunli** has been active in the campaign for transparency on the Universal Periodic Review (UPR) process since 2008. This has involved advocating for the participation of civil society in preparation for the 2009 and 2013 Chinese UPRs, in particular in the drafting of the national human rights reports. Reportedly, Ms. Cao has been involved in peaceful protests outside the Ministry of Foreign Affairs since June 2013 campaigning for transparency in the UPR process. In August 2013, a Beijing Court allegedly refused to hear a law suit filed by dozens of citizens, including Ms. Cao, regarding the alleged lack of transparency surrounding this process. On 13 August 2013, Ms. Cao, along with others, was reportedly taken into temporary custody as they made their way to the State Council Information Office where they had hoped to make an application for transparency with regard to the drafting of China's Human Rights Action Plan 2012-5. It is reported that on 2 September 2013, police forced protesters to leave as they needed to clean the area. This is allegedly the third time such a protest has been broken up at this location.

Ms. Cao had been due to travel to Geneva on 14 September 2013 in order to attend a seminar on UN human rights mechanisms and Human Rights Council sessions as a member of civil society. Sources indicate that on this date she was stopped from boarding her flight from Beijing Capital International Airport to Geneva. Ms. Cao was allegedly taken away by security agents and her whereabouts are currently unknown.

Ms. **Chen Jianfang**, who is reportedly based in Shanghai, has been actively working on land and housing rights since her family reportedly lost their land to developers. Recently she has been working on the issue of transparency in the UPR process, advocating for the Chinese Government to ratify the International Covenant for Civil and Political Rights (ICCPR) and campaigning for disclosure of personal wealth by public officials. On 17 June 2013, Ms. Chen distributed copies of the UPR recommendations made by other countries to China in 2009.

On 13 September 2013 Ms. Chen was allegedly stopped by authorities from boarding her flight to Geneva at Baiyun International Airport. She had also intended to attend the above-mentioned training seminar. It is reported that she demanded to see the documents which would forbid her leaving the country, but the authorities refused, reportedly stating that "Shanghai police told us to do this" and "you are barred from travelling for life". She was also allegedly threatened with violence if she tried to pass through the security gates. It is further alleged that when she protested that this was a deprivation of her liberty to travel abroad, she was issued with an administrative warning for "disrupting public order". On 16 September, when Ms. Chen returned to Shanghai, she was reportedly

surrounded by a number of policemen claiming to be from the Shanghai Public Security Bureau who took her to Pudong Station and allegedly detained and interrogated her for ten hours.

It is further alleged that in recent weeks, police in several Chinese cities have interrogated other activists and lawyers about the same training programme and warned them about serious consequences. Authorities reportedly rejected two activists' applications for passports and put one activist under criminal detention some days before his scheduled trip to Geneva.

Grave concern is expressed at the alleged enforced disappearance of Ms. Cao Shunli, particularly in light of the fact that she was due to travel to Geneva to be trained on United Nations human rights mechanisms. Concern is expressed at allegations of a campaign against citizens wishing to exercise their legitimate rights to freedom of assembly and freedom of opinion and expression. Serious concern is expressed at apparent restrictions, including the imposition of travel bans, being carried out against citizens and human rights defenders seeking to engage in public affairs. Further serious concern is expressed at the fact that a large part of the reported restrictions are related to China's upcoming UPR review process and the possibility that they are being implemented to limit scrutiny of China's obligations under international human rights law.

Without in any way implying any determination on the facts of the case, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights (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."

We would like to call on your Excellency's Government to take all necessary steps to secure the rights to freedom of peaceful assembly and of association in accordance with fundamental principles as set forth in article 20 of the UDHR which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

In this connection, we would 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 point a) which provides that everyone has the right, individually and in association with others to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;

- 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; and paragraph 2, which holds that this includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

In relation to the allegations according to which the fate and whereabouts of Ms. Cao are currently unknown, 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 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); and
- article 12 (right to the maintenance in every place of detention of official up-to-date registers of all detained persons).

We also wish to recall the provisions of resolution 12/2 of the Human Rights Council (A/HRC/RES/12/2), which, inter alia, “condemns all acts of intimidation on reprisal by Governments and non-State actors against individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (OP 2) and “calls upon all States to ensure adequate protection from intimidation or reprisals for individuals and groups who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights (...)” (OP 3).

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, 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 indicate what measures have been taken to ensure that the legitimate right to meet and assemble peacefully is respected and that the physical and psychological integrity of those exercising this right is guaranteed.

3. Please provide information concerning the legal grounds for the arrest and detention of Ms. Cao Shunli and Ms. Chen Jianfang and how these measures are compatible with international norms and standards as stated, inter alia, in the UDHR. Please provide information on whether all detainees have access to family members, legal counsel, and medical personnel.

4. Please provide information on the fate and whereabouts of Ms. Cao Shunli. If her 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.

5. Please provide information concerning measures which have been taken to ensure broad civil society participation in China's UPR process, as well as participation in the drafting and implementation of the National Human Rights Action Plan.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

We would like to bring to the attention of your Excellency's Government that should the sources submit the allegations concerning Ms. Cao 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.

Given the seriousness of the allegations presented to us, we would like to inform your Excellency's Government that we are considering a public statement on this issue in the near future.

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

Olivier de Frouville
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
opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and of
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Margaret Sekaggya
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