

Mandates of the Special Rapporteur on extreme poverty and human rights; 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; and the Special Rapporteur on the situation of human rights defenders

REFERENCE:
UA CHN 15/2016

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on extreme poverty and human rights; 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; and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 26/3, 24/7, 27/1, 25/2, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government additional information we have received concerning the disappearance of Mr. **Jiang Tianyong**, which was brought to the attention of your Excellency's Government in our urgent appeal of 5 December 2016 (UA CHN 13/2016).

According to the additional information received:

In the evening of 21 November 2016, the public security authorities placed Mr. Jiang under administrative detention in Changsha, Hunan Province, for 9 days for having allegedly used a false national identity card to purchase a train ticket for D940 train from Changsha South to Beijing West. The police at the Changsha South train station apparently sought to notify Mr. Jiang's family of his detention by sending a notice to his residence in Zhengzhou by mail, but it was returned because nobody was home. When Mr. Jiang's lawyer requested copies of documents concerning his client's detention and his alleged use of a false identity card, the police denied the request on the ground that the case had not reached the stage of trial.

It has been reported that when Mr. Jiang was placed under administrative detention, the public security officials conducted a search on him and allegedly discovered that he was in possession of 7 mobile phones, 11 phone cards and 7 bank cards. According to the authorities, he was suspected of using false identity cards on multiple occasions to board transportation and to rent different accommodations. Mr. Jiang was also suspected of illegally possessing documents containing "state secrets", being associated with "extra-territorial organisation(s),

group(s) and individual(s)", and having provided state secrets to such extra-territorial entities.

On 1 December 2016, the public security authorities imposed "compulsory criminal measures" on Mr. Jiang on the basis of these suspicions. Although the authorities claimed that the family was notified of this measure against Mr. Jiang in accordance with the law, his family members only learned of this news through the online official newspaper, *thepaper.cn*, on 16 December 2016. According to the website, Mr. Jiang has also been receiving extra-territorial funding and intervened in sensitive cases as a "citizen lawyer", allegedly hyping up cases on the Internet, spreading rumours, inciting his clients and their families to oppose the State organs, and disrupting the social order. It further claimed that Mr. Jiang has admitted to having committed these crimes and violations of the law. He is reportedly suspected of committing other crimes and is under further investigation.

On 23 December 2016, Mr. Jiang's family received an official notice issued by the Changsha Public Security Bureau, which indicated that Mr. Jiang is held under "residential surveillance at a designated location" since 1 December 2016. Under the Criminal Procedure Law, such a measure may be applied in cases involving crimes of "endangering State security", "terrorism" or serious "bribery", for a maximum period of six months.

Meanwhile, on 4 December 2016, plain-clothed officers from Beijing Municipal Public Security Bureau allegedly entered residential premises where Mr. Jiang had formerly lived, in the northern district of Changping region of Beijing, and took away some of the belongings. On or about the same day, the police allegedly also entered an apartment in the same district belonging to Mr. Jiang's younger brother where Mr. Jiang stayed from time to time in the past. The current tenant of the apartment was reportedly taken away by the police in the process of the raid. The whereabouts of the tenant is unknown and he has not been heard of since the incident.

While we do not wish to prejudge the accuracy of this information, we would like to express deep concern about the compulsory criminal measures, including the "residential surveillance at a designated location" brought against Mr. Jiang, which appear to be related to his longstanding human rights work and which carry serious consequences on his right to a fair trial.

Based on the information available to us, it appears that Mr. Jiang is suspected of violating article 11 of the Criminal Law prohibiting, *inter alia*, the providing of "state secrets" to an organization, institution or personnel outside China. Given the overbroad scope of "state secrets" under the Law, this state secret provision has been often used as a pretext to suppress legitimate and peaceful activities in defense of human rights, such as

providing information to international human rights organizations, sending an article concerning human rights to an overseas magazine, or giving an interview on human rights issues to foreign journalists. We thus express concern at the use of this provision to target legitimate activities that are deemed by the authorities to be critical or dissenting. While national security is a legitimate objective to pursue, the overbroad wording of the state secret provision represents a limitation to the right to freedom of expression which does not meet the threshold of international human rights standards, including article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR), signed by China in 1998

There have been a number of reported cases in which the accused was denied the right to communicate with their counsel of their own choosing and the Committee against Torture (CAT) has recently noted with concern “consistent reports indicating that public security officials constantly refuse lawyers’ access to suspects and notification to their relatives on the grounds that the case concerns State secrets, even when the detained person is not charged with State security crimes”.¹ The state secrecy provision may also result in a violation of the right to a public hearing, as the authorities have often denied an open and public trial in cases involving “state secrets”.

Furthermore, it is of serious concern that the precise location of Mr. Jiang is still unknown and that he appears to be detained incommunicado, without access to a lawyer or his family members. As noted by the CAT, the Criminal Procedure Law while requiring the authorities to notify the families within 24 hours of executing the decision, does not oblige the authorities to disclose the reasons for or the place of detention. The CAT expressed concern that “these provisions, together with the possibility of refusing access to a lawyer for these types of crimes, may amount to incommunicado detention in secret places, putting detainees at a high risk of torture or ill-treatment”. In this light, we are alarmed by the claim that Mr. Jiang has “confessed” that he has committed the crimes, taking into account the CAT’s serious concern over “consistent reports indicating that the practice of torture and ill-treatment is still deeply entrenched in the criminal justice system, which overly relies on confessions as the basis for convictions”.²

Furthermore, the fact that Mr. Jiang is suspected of crimes involving “state secrets” is most likely to have a negative impact on his right to a fair trial. In this context, we appeal to your Excellency’s Government to take all necessary measures to guarantee the rights of Mr. Jiang not to be deprived arbitrarily of his liberty and to a fair trial, in accordance with articles 9, 10 and 11 of the UDHR, and articles 9 and 14 of the ICCPR. We would also like to remind your Excellency’s Government of the non-derogable right of everyone not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment, guaranteed under article 5 of the UDHR and article 7 of the ICCPR, as well as the absolute prohibition on acts of torture under article 2 of the Convention against

¹ CAT/C/CHN/CO/5 (2016), para. 12.

² CAT/C/CHN/CO/5 (2016), para. 20.

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China ratified in 1988.

We would also like to once again remind your Excellency's Government Human Rights Council resolutions 12/2 and 24/24 and the Revised Terms of Reference for country visits by Special Procedures mandate holders of the United Nations Human Rights Council, which condemn acts of reprisal and require the Government to assure that no person or group of persons who have cooperated with the special procedures mandate holders will suffer for this reason intimidation, threats, harassment or punishment, be subjected to judicial proceedings or to any other kind of reprisals by any means whatsoever, before, during and after the conduct of country visits.

In light of the additional information received, we would like to revise the questions addressed to your Excellency's Government in the previous communication of 5 December 2016 and 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 legal grounds of "compulsory criminal measures" and "residential surveillance at a designated location" imposed on Mr. Jiang.

3. Please provide information as to which authority has Mr. Jiang in custody and where he is currently detained.

4. Please provide specific facts and evidence supporting the claims that Mr. Jiang has committed crimes involving state secrets. Please indicate whether he has been charged and if so, details of the charges.

5. Please indicate whether Mr. Jiang has been provided access to lawyers and any medical care that he may require.

6. Please provide information on the whereabouts of the tenant of the apartment who was allegedly taken away on 4 December 2016 and whether he has been provided with access to a lawyer and his family.

We are considering to publicly express our concerns in the near future once again as, in our view, the information upon which the press release would be based is sufficiently reliable to indicate a matter warranting immediate attention. Such a press release would indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

We would like to inform your Excellency's Government that after having transmitted an urgent appeal to the Government, the Working Group on Arbitrary

detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such appeals — which are of a purely humanitarian nature — in no way prejudice any opinion the Working Group may render. The Government is required to respond separately for the urgent appeal procedure and the regular procedure.

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.

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Special Rapporteur on extreme poverty and human rights

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