

Mandates of the Working Group on Enforced or Involuntary Disappearances; 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 CHN 3/2017

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Working Group on Enforced or Involuntary Disappearances; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/13, 27/1 and 26/7.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **allegations of the arbitrary arrest, short-term disappearance and prolonged incommunicado detention of four human rights defenders and lawyers; of their subjection to torture and other cruel, inhumane or degrading treatment in detention, in particular during Residential Surveillance at Designated Location (RSDL); and that the charges against them might be related to their activities as human rights defenders.**

According to the information received:

Since July 2015, numerous human rights lawyers have been arrested and detained in China in an unprecedented wave of repression, accusing them of belonging to a "criminal gang" and charging them with subverting the state power.

Xie (谢) Yang (阳)

Mr. Xie Yang, born on 4 February 1972, Chinese, lawyer at the Hunan Gang Wei Law Office, is a human rights defender who has been actively involved in civil rights movements and is said to have mainly worked on cases involving the abuse of public power.

In the morning of 11 July 2015, Mr. Xie was apprehended by police officers, some in uniform and some in plain clothes, at the *Tuokou County* hotel which belongs to both Huaihua City and Hongjiang City (怀化市洪江市托口镇黔洲大酒店). Mr. Xie was taken to the Hongjiang City Public Security Bureau.

The following morning, he was forced to sign a document stating that he would be sent for Residential Surveillance at a Designated Location (RSDL), namely a form of house arrest in a guesthouse located in the premises of the National University for Defence Technology (国防科技大学) in the Kaifu district.

According to article 73 of the People's Republic of China Criminal Procedure Law (CPL), RSDL can be implemented at any location designated by the police. RSDL can however not be implemented in a detention centre or in the premises of investigation.

For a period of six months, neither his family nor his lawyers knew his whereabouts as he was detained incommunicado until late January 2016.

During his detention in Hongjiang City Public Security Bureau and then under RSDL, Mr. Xie was subjected to torture and other cruel, inhumane or degrading treatment. This included uninterrupted interrogation for long hours (22 hours each day for the first 7 days), being put in stress positions on top of a chair without being able to touch the floor, sleep deprivation, beatings, slapping, food and water deprivation, inadequate access to medical treatment, inhumane detention conditions, and threats to himself and his family members. After prolonged torture and ill-treatment, Mr. Xie was coerced into confessing and signing false statements and transcripts.

In January 2016, the family received notification that Mr. Xie was formally arrested on 9 January 2016 for the alleged crime of “inciting subversion of state power” and “disrupting court order”, and detained at the Changsha No. 2 Detention center in Hunan Province.

On 21 November 2016, the defence lawyer appointed by his family was allowed to meet Mr. Xie for the first time since his arrest and was able to meet with him several times thereafter. His lawyer reportedly heard Mr. Xie screaming before entering the room where the meeting took place and found visible signs of physical abuse during that initial meeting, and in particular a swollen lump on the left side of Mr. Xie's head.

On 19 January 2017, another defence counsel of Mr. Xie, released the transcription of his five meetings with Mr. Xie, respectively on the 4th, 5th, 6th and 12th and 13th of January 2017, during which Mr. Xie describes his torture during

detention.¹ On 4 March 2017, the said lawyer published a statement expressing his fears of being subjected to reprisals for having released the said transcripts.

On 7 March 2017, the Permanent Mission of the People's Republic of China to the United Nations Office in Geneva transmitted a Newsletter to several Human Rights Council Special Procedures mandates, citing an official media report that denied that Mr. Xie Yang had been subjected to torture. We acknowledge receipt of this correspondence and take note of the information provided, but maintain our concern in this and the following cases, until we are satisfied that these allegations are proved unfounded.

Li (李) Heping(和平)

Mr. Li Heping, born on 26 October 1970, is a human rights defender and lawyer based in Beijing. He was a partner at Beijing Globe Law Firm before he was arrested. In this role, Mr. Li represented political dissidents, victims of forced evictions, Falun Gong practitioners as well as persons belonging to other vulnerable groups.

On 10 July 2015 at around 2 p.m, Mr. Li was apprehended at his home by unidentified persons and taken away. After his abduction, more than 10 persons claiming to be police officers searched his apartment and seized several items. No legal documents, such as an arrest or a search warrant, were presented.

On 11 September 2015, officers of the Hexi Branch of the Tianjin Municipal Public Security Bureau (天津市公安局河西分局) indicated that their office was in charge of Mr. Li's case. Thereafter, however, they denied knowledge of his whereabouts or status of his case. Neither Mr. Li's family nor his lawyers were informed of his detention and whereabouts.

Mr. Li has remained detained incommunicado until 20 January 2016, when his family received the first official notification by the Tianjin Municipal Public

¹ See links for transcription in English (in 4 segments)
<https://chinachange.org/2017/01/19/transcript-of-interviews-with-lawyer-xie-yang-1/>
<https://chinachange.org/2017/01/20/transcript-of-interviews-with-lawyer-xie-yang-2/>
<https://chinachange.org/2017/01/21/transcript-of-interviews-with-lawyer-xie-yang-3-dangling-chair-beating-threatening-lives-of-loved-ones-and-framing-others/>
<https://chinachange.org/2017/01/22/transcript-of-interviews-with-lawyer-xie-yang-4-admit-guilt-and-keep-your-mouth-shut/>
Original in Chinese recorded by defence counsel Chen Jiangang
<http://www.msguancha.com/a/lanmu4/2017/0119/15421.html> (Part 1)
<http://www.msguancha.com/a/lanmu4/2017/0119/15425.html> (Part 2)

Security Bureau stating that he was formally arrested on 8 January 2016 for the alleged crime of “subverting state power”. Since 8 January 2016, Mr. Li has been detained at Tianjin No. 1 Detention Centre.

It is alleged that Mr. Li has been held under RSDL in the interim, and that he was subjected to torture and other ill-treatment during this time, including through the use of electric batons.

Wang (王) Quanzhang (全璋)

Mr. Wang Quanzhang, born on 15 February 1976, is a human rights defender who has cooperated with human rights organizations in Beijing and provided legal services to defendants, including civil rights activists and Falun Gong followers.

In the morning of 10 July 2015, Mr. Wang was abducted and taken to an unknown destination by police officers in Beijing.

From 10 July 2015 to 30 August 2015 Mr. Wang was kept in an unknown location. From 31 August 2015, he was put under RSDL at the Hexi branch of the Tianjin Municipal Public Security Bureau (天津市公安局河西分局). Neither Mr. Wang’s family nor his lawyer were informed of the RSDL and Mr. Wang remained in incommunicado detention until 7 January 2016, when his family was formally informed of his arrest. He was then transferred to the Tianjin #2 Detention Centre, where he is believed to be at risk of torture and ill-treatment.

To date, Mr. Wang’s lawyers have not been able to meet with him despite multiple requests.

Jiang (江) Tianyong (天勇)

The disappearance of Mr. **Jiang Tianyong**, was brought to the attention of your Excellency’s Government in previous urgent appeals dated 5 and 28 December 2016 (UA CHN 13/2016 and 16/CHN/2016).

Mr. Jiang Tianyong, born on 19 May 1971, is a professional lawyer who was reportedly disbarred for his human rights work. He disappeared in Hunan province on 21 November 2016, at around 10 p.m. after visiting the family of Xie Yang (first case above).

On 13 December 2016, his lawyers were informed that he had been held at the police station of Changsha Train Station (South) in Hunan from 21 November to

30 November 2016 under “administrative detention” for using someone else’s ID card to purchase train tickets.

On 23 December 2016, Mr. Jiang’s family was informed by the branch office of the Changsha City Public Security Bureau that, starting from 1 December 2016, he would be held under Residential Surveillance at a Designated Location for the alleged crime of “inciting subversion of state power”.

Multiple requests were made by Mr. Jiang’s relatives and lawyer to meet with him, but they have not been allowed to do so. However, on 1 March 2017, the newspaper *Global Times* published a report claiming that it conducted an interview with Mr. Jiang. The same day and in response to the article, Mr. Jiang’s lawyers published a statement reiterating their requests to the authorities to have access to their client.

To date, Mr. Jiang remains detained incommunicado without his lawyers or family being able to access him. Mr. Jiang is believed to be vulnerable to being submitted to torture and other cruel, inhumane and degrading treatment.

We express our serious concern regarding the alleged arbitrary arrests, short-term disappearances, incommunicado detention of Messrs. Xie Yang, Li Heping, Wang Quanzhang and Jiang Tianyong. We also express our serious concern that they may have been subjected to torture or ill-treatment during their detention, in particular during RSDL. We further express our concern at the allegation that they have been denied access to their defence lawyers and/or to their families, and that the charges against them might be related to their legitimate activities as lawyers seeking to promote and protect the human rights of their fellow citizens.

While we do not wish to prejudge the accuracy of these allegations, we find them sufficiently credible to warrant serious attention and to ensure that they are fully investigated according to law.

We would like to refer your Excellency’s Government to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which China ratified in 1988. General Assembly Resolution 68/156 (February 2014), “[r]eminds all 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 dignity of the person and to ensure that secret places of detention and interrogation are abolished”.

Principle 1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly on 9 December 1988 (adopted by General Assembly resolution 43/173 of 9 December 1988) refers to humane treatment and respect for the inherent dignity of the person. Principle 6 states that no person will be subjected to torture or other ill-treatment while imprisoned. In addition, the recently updated Standard Minimum Rules for the Treatment of Prisoners (as amended and adopted by the UN General Assembly on 5 November 2015 and renamed the “Mandela Rules”) and in particular Rule 58 that provides that prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals by corresponding or by receiving visits.

In relation to the allegations of short-term disappearances, we are referring Your Excellency’s Government to the prohibition to practice, permit or tolerate enforced disappearance, as enshrined in the United Nations Declaration on the Protection of All Persons from Enforced Disappearances (article 2); the obligation to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance (article 3); that no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances (article 7); the right 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 and the obligation to make available accurate information on the detention of persons and their place of detention to their family, counsel or other persons with a legitimate interest (article 10); and the obligation to maintain in every place of detention an official up-to-date register of detained persons (article 12).

We would also like to underline the need to respect 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, its articles 1, 2, and 12.

Finally, the alleged arrest, detention and ill-treatment of these lawyers contravene the UN Basic Principles on the Role of Lawyers, in particular principle 16, which stipulates that Governments must ensure that lawyers can perform their professional functions without intimidation, hindrance, harassment or improper interference, and that they do not suffer, or be threatened with, prosecution or other sanctions.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the seriousness of the matter, we would appreciate a detailed response on the 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 cooperation to clarify the following matters:

1. Please provide detailed and precise information as well as any comment you may have on these allegations.
2. Please indicate the legal and factual basis for the arrest and detention of these four individuals.
3. Please provide information on any measures taken to ensure the protection of the physical and psychological integrity of the above-named individuals, and in particular during their RSDL, as per China's obligations under the CAT
4. Please indicate what measures are being taken to investigate the allegations of torture and other ill-treatment in a prompt, impartial and effective manner, and to ensure that any public officials involved in such acts are prosecuted, according to existing law.
5. Where applicable, please provide the details and the results of any such investigation, and judicial or other inquiries carried out in relation to the above-mentioned allegations.
6. Please indicate what measures are being taken to prevent the recurrence of the alleged acts and 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.

While awaiting a reply, we respectfully request that all necessary measures are taken to protect the human rights of these four individuals.

Given the importance of the allegations, we reserve the right, in accordance with our mandates and code of conduct, to express publicly our concerns until we are satisfied that these persons and others in similar situations, are treated according to basic human rights norms and standards, including China's international human rights obligations

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.

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Houria Es-Slami
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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