

Mandates of the Working Group on Arbitrary Detention; 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 the independence of judges and lawyers

REFERENCE:
AL CHN 2/2018

24 January 2018

Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; 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 the independence of judges and lawyers, pursuant to Human Rights Council resolutions 33/30, 34/18, 34/5 and 35/11.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the arrest, residential surveillance and raid on the house of Mr. **Jianghua Zhen**, along with the pending investigation against him for "inciting subversion of the State", which seem to be closely linked to his peaceful and legitimate activities in defense of human rights in China.

Mr. Jianghua Zhen is a human rights defender, he serves as executive director for Human Rights Campaign in China (HRC China), an organization that campaigns for arrested human rights defenders and helps victims of human rights violations to record and publicize their experiences. The human rights defender has also supported the work of other NGOs, including the management of the Hong Kong AIDS Foundation's trainings in the Zhuhai region.

According to the information received:

On 1 September 2017, at around 10.00 p.m., Mr. Jianghua Zhen was taken by police officers, without a warrant, from his home in Zhuhai, Guangdong Province. Roughly two hours later, he was temporarily brought back to his home by police while a search of his domicile was conducted. Most of his belongings, including computers and mobile phones, were confiscated. The search involved some 20 police officers, including Special Forces, plainclothes police and police from the local police station.

On 2 September 2017, police again searched his home, confiscating registration documents of HRC China along with event stickers.

On 7 September 2017, Mr. Zhen's family received a detention notice from Zhuhai Public Security Bureau, which stated that he was suspected of "inciting subversion of the state" and was under criminal detention.

On 14 September 2017, his lawyer attempted to visit him in the detention center but was prevented from visiting his client.

In early November, Mr. Zhen's family were taken to a secret location by authorities and requested to advise him to plead guilty. Since his arrest, the police have allegedly questioned numerous friends and family members, and instructed several of them not to discuss his situation with outside parties.

On 13 December 2017, Mr. Zhen's lawyer received a call stating that Mr. Zhen was being kept under "residential surveillance at a designated location", a government-sanctioned form of isolated detention in an undisclosed location. At the time of writing, Mr. Zhen has not received any visit by appointed lawyer and no family member has been able to see him. His whereabouts are currently unknown.

We express serious concern at the arbitrary arrest, the lack of arrest warrant and the incommunicado detention of Mr. Jianghua Zhen, as well as at his lack of access to a lawyer. We express concern at that alleged basis for his arrest and detention which represents a criminalization of his human rights activities and his right to freedom of expression. The use of "residential surveillance at a designated location" by authorities also raises serious concerns over the treatment of Mr. Zhen along with the conditions he is being kept in. Concern is expressed over the lack of the guarantees of due process, including Mr. Zhen's alleged lack of access to legal counsel and family members, due to the effects this may have on his ability to mount an effective defence to the charges which may potentially be levelled against him as well as his protection against any possible ill-treatment. We have strong grounds to believe that the alleged human rights violations to which Mr. Zhen is subjected to are related to his peaceful and legitimate activities as a human rights defender.

We reiterate more general concern over the ongoing crackdown on human rights defenders and lawyers in China, which may have a chilling effect that this may have on civil society and the overall protection of human rights and human rights defenders in the country. In particular, concern is expressed at the vague and far reaching charge of "inciting subversion of the state" which has been regularly used to prosecute human rights defenders for their legitimate and peaceful work.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide legal grounds for the “residential surveillance at a designated location” imposed on Mr. Zhen, along with information as to which authority has Mr. Zhen in custody and where he is currently detained.
3. Please provide specific facts and evidence supporting the claims that Mr. Zhen has committed crimes involving “inciting subversion of the state”. Please indicate whether he has been charged and if so, details of the charges.
4. Please indicate whether Mr. Zhen has been provided access to lawyers and whether he has been granted any access to or contact with his family. If not, please explain how this is compatible with international human rights standards.
5. Please kindly indicate what measures have been taken to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation, harassment and persecution of any sort.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

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 urgent appeals 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.

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

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Michel Forst
Special Rapporteur on the situation of human rights defenders

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw your attention to the following human rights standards:

- Articles 9 and 19 of the International Covenant on Civil and Political Rights (ICCPR), which the People's Republic of China signed on 5 October 1998 which provide for the rights not to be arbitrarily detained and for freedom of opinion and expression respectively;
- Article 14(2)(b) of the ICCPR which states that "everyone shall be entitled to (...) have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing".

We would like to draw the attention of your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR), which provides for the right to freedom of expression. In this regard, we would like to highlight Human Rights Council resolution 12/16, calling on States to refrain from , to refrain from imposing restrictions on discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups.

We would furthermore like to call your Excellency's Government's attention to the principle enunciated in the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, as endorsed in E/CN.4/1996/39 of 1996, which provides that a restriction sought to be justified on the ground of national security is not legitimate unless its genuine purpose and demonstrable effect is to protect a country's existence or its territorial integrity against the use or threat of force, or its capacity to respond to the use or threat of force, whether from an external source, such as a military threat, or an internal source, such as incitement to violent overthrow of the government. In particular, a restriction sought to be justified on the ground of national security is not legitimate if its genuine purpose or demonstrable effect is to protect interests unrelated to national security, including, for example, to protect a government from embarrassment or exposure of wrongdoing, or to conceal information about the functioning of its public institutions, or to entrench a particular ideology, or to suppress industrial unrest (Principle 2).

In connection with the above alleged facts and concerns 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right 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.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 (b) and (c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone 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.

We would further like to refer your Excellency's Government to the Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular principle 5, which states: "Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence."; and principle 7, which states: " Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention."

We would also like to refer your Excellency's Government to United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) concerning dignified treatment (Rules 1 and 3); prohibition of (prolonged) solitary confinement (Rule 43); family contact (Rule 58), access to lawyer (Rule 61); right to notify the person of his choosing of his whereabouts (Rule 68); the treatment of unconnected prisoners (especially Rules 111 and 119) and entitlement to protection to t even those detained without a charge (Rule 122).