

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; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on minority issues; and the Special Rapporteur on freedom of religion or belief

REFERENCE:
AL CHN 15/2019

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Excellency,

We have the honour to address you in our capacities as 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; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on minority issues; and Special Rapporteur on freedom of religion or belief, pursuant to Human Rights Council resolutions 33/30, 36/6, 34/18, 32/32, 34/5, 34/6 and 40/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **alleged police intimidation and harassment** since 2005 and **subsequent detention** on 9 December 2018 of **Mr. Wang Yi** and **Mrs. Jiang Rong**, founders of the Early Rain Covenant Church and members of a religious minority.

According to the information received:

Alleged police intimidation, harassment, and subsequent detention of Mr. Wang Yi and Mrs. Jiang Rong and other related individuals on the basis of religious belief.

Mr. Wang Yi is an Evangelical pastor and human rights defender who has been advocating for freedom of religion for independent protestant churches in China. Together with his wife, Jiang Rong, he founded in 2005 a church in Chengdu, Sichuan province, called the Early Rain Covenant Church. Since the establishment of his religious congregation, he has refused to register it with the authorities.

Following the founding of that church, Mr. Wang Yi and his spouse have faced police harassment and intimidation to pressure them to register their church with the Government as an 'official religious institution'. From February 2018 onwards, in the context of the implementation by the Government of the amended Religious Affairs Regulations, Mr. Wang Yi and Mrs. Jiang Rong faced increased police harassment.

The pressure apparently grew following a memorial service that the church held on 12 May 2018 to mark the 10-year anniversary of the 2008 Wenchuan earthquake in Sichuan. It culminated on 9 December 2018 when security officers from the Chengdu Public Security Bureau surrounded the church premises and arrested the pastor and his wife, along with several dozen members of the religious assembly. On the following day, the local religious Affairs Bureau issued a ‘notice of prohibition’, stating that under Article 69 of the new Regulations on Religious Affairs, the church was established without authorization and would thus be banned. On the same day, the Chinese authorities issued a State directive prohibiting Chinese media from publishing coverage of the police intervention on the church and the arrest and detention of its members. The church was closed, and some of its property confiscated.

Mr. Wang Yi and Mrs. Jiang Rong were detained under Article 105 (2) of China’s Criminal Law, which criminalises “inciting others, through the spreading of rumours, slanders or any other means to subvert the State power or overthrow the socialist system.” Later on the additional charge of “illegal business activity” was filed against him under Article 225 of the Criminal Law.

He was apprehended on 9 December, and formally detained on 14 December. Upon his apprehension, the security officers did not present an official detention warrant to his family. A notice ordering the arrest, and signed by the Chengdu Public Security Bureau was shown to a person associated with Mr. Wang Yi, and was taken away after he signed it. In the following months the authorities did not indicate where Mr. Wang Yi was being taken and he was detained incommunicado at an undisclosed location.

Mrs. Jiang Rong was placed under ‘Residential Surveillance in a Designated Location (RSDL)’, under Criminal Procedure Law (CPL) Article 75 which authorises the detention of persons incommunicado in an unspecified location for up to six months.

The authorities have reportedly used provisions in China’s Criminal Procedure Law to block Mr. Wang Yi’s and Mrs. Jiang Rong’s access to legal counsel and to prevent the release of information about their detention. According to article 83 of the CPL, when charges filed against individuals reaching the threshold of ‘endangering state security’, the authorities may deprive them of access to legal counsel.

Following the arrest, Mr. Wang Yi’s family sought the legal assistance of a lawyer to enquire about his whereabouts, the charges against him and to prepare his defence. The lawyer was subsequently arrested and detained for a day by the police, questioned and released. His repeated requests to the relevant authorities to disclose Mr. Wang’s whereabouts and to meet him remained unanswered. He was told by the authorities that he would not be allowed to meet his client as long as the investigation continued.

In the case of his wife, her lawyer was similarly denied access to her while she was held and his initial requests for bail were turned down. She was eventually released, apparently on bail, on 10 June 2019, that is, six months after her arrest, and allowed to stay at a relative's residence, where she remained under surveillance.

The other members of the church arrested with the couple were accused of a variety of offences such as "picking quarrels and provoking trouble", "illegal business activity", or "illegal publishing". By the afternoon of 10 December 2018, several of them had been released after they were forced to sign a document pledging to refrain from attending the church activities; others were released on bail and/or placed under house arrest.

By mid-July 2019, Mr. Wang Yi was confirmed alive and detained, although in an undisclosed location. He had reportedly lost considerable weight. Mr. Wang Yi and Mrs. Jiang Rong are not known for having used or advocated the use of violence, and their religious activities have always been peaceful.

At the time of this communication, the fate and whereabouts of Mr. Wang Yi and at least four other church members arrested along with him, remain unknown. They are believed to be still detained.

While we do not wish to prejudge the accuracy of the information made available to us, should these allegations be confirmed, Mr. Wang Yi and the other persons detained with him, or released on bail, appear have been detained for the sole peaceful exercise of their right to freedom of religion, opinion and expression, and for their right to profess and practice their religion in community with other members of their group, in a peaceful manner, in violation of articles 18, 19, and 27 of the International Covenant on Civil and Political Rights (ICCPR).

Their deprivation of liberty on these grounds, their secret detention and their lack of legal counsel are also contrary to the universal recognized right not to be deprived arbitrarily of one's 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, and articles 9, 14 and 19 in conjunction with article 2 of the ICCPR.

We respectfully recall that upon signing an international human rights treaty, such as the ICCPR, a State is obliged to refrain, in good faith, from acts that would defeat the object and purpose of that treaty (Vienna Convention on the Law of Treaties, article 18)

We reiterate our concern about the practice of RSDL, which appears to be used to silence the peaceful expression of views deemed dissident, as well as freedom of religion or belief and punish human rights defenders of religious minorities. According to international standards, the use of RSDL is tantamount to enforced disappearance and arbitrary detention, and in this context, we recall that 10 UN Special Procedures called on

the Chinese Government to repeal the relevant provisions of the Criminal Procedure Law in August 2018 (**OL CHN 15/2018**).

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 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 precise information on the fate and whereabouts of Mr. Wang Yi and the four other members of the Early Rain Covenant Church detained since December 2018, and whose fate and whereabouts are unknown. Please include details on their exact location of detention.
3. Please provide detailed information concerning the factual and legal grounds for the arrest and detention of Mr. Wang Yi, Mrs. Jiang Rong and the four other members of that church who remain in detention; the precise charges brought against them; and how these are compatible with China's obligations under international human rights law, notably the ICCPR;
4. Please provide detailed information about the reasons for maintaining Mr. Wang Yi and all other detained members of the Early Rain church in incommunicado detention in places undisclosed to their families and lawyers. What does justify such exceptional measures, and are they compatible with China's human rights obligations under the treaties it has signed or ratified?
5. Please provide clarification about the current status of Mrs. Jiang Rong: has she been released or is she being subjected to continued measures of restrictions such as release on bail, house arrest, residential surveillance or other forms of restriction of their liberty? If she remains under any form of restriction, please clarify on what grounds and for what purpose;
6. Please provide detailed information about all the other members of the Early Rain church who were arrested since 9 December 2018, including their place of detention if they continue to be detained, the charges against them, their trial proceedings, and in the case they were released their current status (i. e. conditional release, release on bail, house arrest, residential surveillance, or other forms of restriction of their liberty);

7. Please clarify whether the members of the church who were arrested and then released were requested to sign a statement whereby they pledged to renege their membership to the early Rain church, and explain how this is consistent with the right, to peacefully exercise one's religion or belief, recognized in China;
8. We understand that Mr. Wang Yi, his spouse, and the other members of the Early Rain church arrested since 9 December 2018, did not use or advocate the use of violence, and that that they were exercising their right to freedom of opinion, belief and religion in a peaceful manner. Please explain how does this constitute an offence under Chinese law, and how this is consistent with China's human rights obligations?
9. Please provide a copy of the Religious Affairs Regulations that were amended in 2016 and 2017 and were signed into law in February 2018. What are the purpose of the changes introduced by these amendments and the consequences for the peaceful exercise by Chinese citizens of their right to freedom of religion and belief, and of the right of members of a religious minority to practice their own faith with members of their community?
10. Please explain the legal basis for the decision why Mr. Wang Yi and the other individuals arrested and detained along with him were refused access to family visits and legal counsel? If they have not been granted access to their family and their lawyers, what is the reason, the legal basis, and when is this expected to occur? In this regard, please explain how Article 83 of the Chinese Criminal Code, which reportedly limits the right of access to persons under investigation, is consistent with China's obligations under international human rights law.
11. Please provide detailed information on the detention condition of all the members of the Early Rain church who remain in detention and any measures taken to protect their right to physical and psychological integrity. In this regard, please provide precise information about the health of Mr. Wang Yi and the other detainees.
12. Please explain the legal basis and rationale of the policy of Residential Surveillance in a Designated Location. Please also explain the reason why the transfer of persons to these locations is not disclosed to their families, their lawyers and can thus amount to a form of secret detention or temporary disappearance. How is this consistent with China's obligations under international human rights law, notably ICCPR?
13. Please indicate what measures have been taken to ensure that all people in China who are exercising peacefully their rights to freedom of opinion, expression, religion, belief, assembly and association, can do so in an

enabling environment, without fear of reprisals, threats, harassment, violence or criminalisation of any kind.

14. Please indicate what measures have been taken to ensure that all human rights defenders in China, including minority and religious rights defenders, can operate in an enabling environment and can carry out their legitimate activities without fear of reprisals, threats, harassment or criminalisation of any kind.
15. Please indicate the measures undertaken by the Government of China to guarantee in law and practice the right to freedom of religion or belief for all, and of members of religious minorities to profess and practice their own faith in community with other members of their group.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

We would further like to bring to the attention of your Excellency's Government that should sources submit the allegation of enforced disappearance mentioned in this communication 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 a separate correspondence.

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

Leigh Toomey
Vice-Chair of the Working Group on Arbitrary Detention

Bernard Duhaime
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

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

Clément Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

Michel Forst
Special Rapporteur on the situation of human rights defenders

Fernand de Varennes
Special Rapporteur on minority issues

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Annex
Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the following human rights norms and standards:

We would like to refer to your Excellency's Government's obligation to respect and protect individual rights guaranteed under the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), signed by China on 5 October 1998. We would like to remind your Excellency's Government that upon signing the ICCPR, a State is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty (Vienna Convention on the Law of Treaties, Article 18).

Without expressing at this stage an opinion on the facts of the case and on whether the abovementioned individuals was 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 UDHR.

Article 18, paragraph 1 of the International Covenant on Civil and Political Rights includes provides for the freedom to "either individually or in community with others and in public or private, to manifest [their] religion or belief in worship, observance, practice and teaching". The possibility of engaging in various forms of community activities thus clearly falls within the scope of freedom of religion or belief. Thus, registration should not be compulsory, i.e. it should not be a precondition for practising one's religion, but only for the acquisition of a legal personality status.

In addition, we would equally like to refer to article 19 of the ICCPR, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". Any restriction to freedom of expression must meet the threshold established under article 19(3) of the ICCPR, that is, be provided by law and necessary and proportionate in order to protect the rights or reputation of others, national security or public order (*ordre public*), or public health or morals.

The facts alleged, if proved correct, would furthermore be in violation of the rights of liberty of movement, to peaceful assembly and association as well as non-discrimination. These are guaranteed in Articles 12, 21, 22, and 26 of the ICCPR. Although Articles 12, 21, and 22 allow for restrictions of these rights in the interests of national security or public safety, we would like to reiterate the need for restrictions to meet standards of legality, necessity, and proportionality, (CCPR/C/GC/34). Furthermore, restrictions made in the interests of national security should only be applied in situations where the interest of the whole nation is at stake, (A/71/373).

As the whereabouts and well-being of Mr. Wang Yi and 11 other individuals are currently unknown, we would like to draw the attention of your Excellency's Government to the United Nations Declaration on the Protection of All Persons from Enforced Disappearance. In particular, we respectfully highlight Art. 7, 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; Art. 10, that individuals maintain the right to be held in an officially recognized place of detention ... and (authorities) 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.

In addition, we would like to stress that an arrest or detention may be authorised by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "violating the law", but includes elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. Arrest or detention as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR is considered arbitrary. This includes the rights to freedom of opinion and expression (Art. 19), freedom of assembly (Art. 21), freedom of association (Art. 22), and freedom of religion or belief (Art. 18).

We call to the attention of your Excellency's Government the international standards regarding the protection of minorities, in particular article 27 of the ICCPR which establishes that in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities have the right, in community with the other members of their group, "to enjoy their own culture, to profess and practice their own religion, or to use their own language."

We would also like to refer to the international standards relevant to the protection and promotion of the rights of minorities. The 1992 United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities requires under Art 1.1 that States "shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity." Art 2.1 states that "persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in 6 private and in public, freely and without interference or any form of discrimination. Art 2.2 highlights that "persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life". Art 4.1 establishes that: "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."

Finally, 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.