

Mandates of the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 25/18, 26/7 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the recent conviction of human rights defenders **Zhou Shifeng**, **Zhai Yanmin**, **Hu Shigen** and **Gou Hongguo** for charges of subversion of State power, allegedly following criminal proceedings which lacked sufficient due process and fair trial guarantees.

The rulings happen in the context of the larger harassment of human rights lawyers and defenders taking place since July 2015, over which several Special Rapporteurs expressed concern in a press release dated 16 July 2015 (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16241&LangID=E>). On that occasion, more than 100 lawyers and their legal assistants were arrested, detained or interrogated in the course of two weeks, in direct connection with their professional activities. The four human rights defenders mentioned above were amongst them.

According to the information received:

From 2 August to 5 August 2016, Zhou Shifeng (human rights lawyer and director of the Fengrui Law Firm, epicentre of the so called '709 crackdown'), Zhai Yanmin (human rights defender), Hu Shigen (human rights defender), and Gou Hongguo (human rights defender) were found guilty by the No. 2 Intermediate People's Court in Tianjin Municipality of "subverting state power" and sentenced from three to seven and a half years of imprisonment and in some cases with three to five years deprivation of political rights.

Their trials were conducted largely on the basis of confessions, in some instance on national TV, made by the defendants, who had been held incommunicado for

over a year and without access to lawyers of their own choosing. Throughout the procedure, neither the defendants nor their legal counsellors made any statement of defence or attempted to launch an appeal at the time of their conviction.

Although reports state that attendants to the trials included members of the National People's Congress, the Political Consultative Conferences, legal practitioners, academics and journalists, family members and the self-appointment lawyers of the defendants were absent from Court. Likewise, it appears that there was no presence of independent media in the proceedings.

A few days before the convictions, some family members of the victims were placed under house arrest, some forcibly removed to other cities, and some kept under close surveillance by the police.

Grave concern is expressed about the lack of observance of due process and fair-trial guarantees in the criminal procedures brought against Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo, as well as their conviction under ambiguous charges and by virtue of invalid confessions obtained through coercion after a year-long period of incommunicado detention. Serious concern is likewise expressed in relation to the arbitrary restriction of movement and undue interference with the private life of their families. Furthermore, deep concern is expressed with regard to other lawyers and human rights defenders who were arrested in conditions similar to those of Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo, and who remain in detention awaiting conviction.

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 particular, the allegations seem to contravene Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo's rights under articles 10 and 11 of the Universal Declaration of Human Rights (UDHR) to be tried in a fair and public hearing by an independent and impartial tribunal at which all the guarantees necessary for an adequate defence are respected. These include, among others, the right to legal counsel of own choosing and to communicate with it as necessary, the right to be tried without delay, and the right to be protected from having to testify against oneself or to confess guilt.

Likewise, we would like to remind your Excellency's Government that incommunicado detention jeopardizes the presumption of innocence, may facilitate the perpetration of torture or other forms of cruel, inhumane and degrading treatment or punishment, and amounts in itself to ill-treatment. In this context, we would like to remind your Excellency's Government of the absolute and non-derogable prohibition of

torture and other ill-treatment as codified in articles 1, 2 and 16 of the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified by China on 4 October 1988.

It is also pertinent to recall that, as article 15 of the CAT provides, and as has been established by the Committee Against Torture in a number of cases (see for example *P.E. v. France*, No.193/2001, 19 December 2002, para.6.3; *G.K. v. Switzerland*, No.219/2002, para.6.10; and *Ktiti v. Morocco*, No.419/2010, 5 July 2011, para.8.8), confessions obtained in circumstances that jeopardize the prohibition of torture or other forms of cruel, inhumane and degrading treatment, do not constitute valid means of proof in criminal proceedings and must be excluded from the evidence.

Moreover, the restriction of movement and surveillance of family members of Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo appears to be in contravention of the right to freedom of movement and the rights not to be subjected to arbitrary arrest or arbitrary interference with privacy, family, home or correspondence, as established in articles 9, 12 and 13 of the UDHR.

We would also like to refer to 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 articles 1 and 2.

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 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 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 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 detailed information on the detention conditions under which Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo were held from July 2015 to their conviction in August 2016, including the reasons behind the incommunicado character of such deprivation of liberty.

3. Please provide detailed information regarding the conduction of the criminal proceedings of Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo. In particular, please explain the particular reasons for depriving the defendants of their faculty to appoint legal counsels of their own choosing and the absence of statements of defence or appeal attempts by the public defenders appointed to them.
4. Please provide information concerning the safeguards that have been put in place in order to enforce the 2010 Chinese legislation on the exclusion of evidence obtained through illegal means. Similarly, please provide information regarding the implementation of the recommendations addressed to China by the Committee against Torture during its 56th session in November 2015.
5. Please provide detailed information on the reasons why certain members of the press and the families of Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo were kept from attending their trial in Tianjing.
6. Please provide information on the nature of the charges and the evidence brought before the court against Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo, and the particular conducts considered to be criminal by the No. 2 Intermediate People's Court in Tianjin Municipality.
7. Please provide information on the measures taken to guarantee the freedom of movement and the privacy of the families of Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo.
8. Please provide information on the measures taken to guarantee the safety and integrity of Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo while in detention. In particular, please provide details on the measures taken to ensure that the detainees are being held free from torture, torture or other cruel, inhumane and degrading treatment.

While awaiting a reply, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts. In particular, we urge that Mr. Shifeng, Mr. Yanmin, Mr. Shigen and Mr. Hongguo are granted access to an effective independent appeal in which they are adequately represented by legal counsel of their own choosing and in which they can obtain redress for the violations allegedly suffered.

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

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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Mónica Pinto
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