

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

REFERENCE:
UA CHN 13/2016

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Excellency,

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

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the disappearance of Mr. **Jiang Tianyong**.

Mr. Jiang Tianyong is a renowned human rights lawyer. He has represented clients in a number of high-profile cases and supported various fellow human rights lawyers and rights defenders over the last decade. Mr. Jiang has represented clients that carried HIV, Falun Gong practitioners, Tibetan protesters, and victims of the 2008 milk scandal, as well as well-known rights defenders, such as Chen Guangcheng, Zhang Shufeng and Gao Zhisheng.

Over the past years, he has reportedly been arrested, detained, and beaten by the police and state security officers on multiple occasions as a result of his human rights work. This includes his enforced disappearance by security services for a period of 2 months in 2011, during a previous crackdown on human rights lawyers. Mr. Jiang has been the subject of previous joint communications of the special procedures mandate-holders, dated: 16 July 2014 (CHN7/2014), 15 May 2012 (CHN4/2012), 3 March 2011 (CHN5/2011), 7 December 2010 (CHN29/2010), and 10 June 2009 (CHN15/2009). We acknowledge the replies of your Excellency's Government to two of these communications on 20 August 2014 and 27 August 2012, in response to CHN7/2014 and CHN4/2012 respectively.

For the purpose of this communication, it is furthermore relevant to note that Mr. Jiang Tianyong met with the Special Rapporteur on extreme poverty and human rights, Mr. Philip Alston, who visited China from 15 to 23 August 2016.

According to the information received:

On 17 November 2016, Mr. Jiang travelled to Changsha, Hunan Province, to visit the wife of a human rights lawyer who had been arrested in the “709” crackdown that started on 9 July 2015 and who currently remains in detention at the Changsha Detention Centre. During his visit, he accompanied the wife and three other lawyers to the Changsha Detention Centre to arrange a meeting with the detainee and inquire about his situation.

At 22:22 on 21 November 2016, Mr. Jiang sent a message to a friend, informing that he was boarding the train back to Beijing that would depart at 22:53 and arrive at 06:30 the next morning (train number D940). Since this communication, he has gone missing and neither his family members nor his friends have been able to get in touch with him.

On 21 November 2016, 61 lawyers and four family members of human rights lawyers who were arrested in the “709” crackdown issued a public statement on Mr. Jiang’s disappearance, calling on the authorities to investigate his case, to notify his family members and to allow him access to a lawyer if he is held in custody.

On 23 November 2016 a family member of Mr. Jiang’s wife reported his disappearance to the Tongbolu Branch of the Zhengzhou Public Security Bureau. The officials, however, allegedly refused to take up the case on the basis that it was unclear where he was last seen and that they therefore may not have jurisdiction over this case. The Public Security Bureau referred the family member to the Beijing Public Security Bureau.

On 24 November 2016, Mr. Jiang’s friends and supporters sought access to the footage of the surveillance camera at Changsha South Railway Station, but the station authorities allegedly refused to grant them access.

On 25 November 2016, a lawyer retained by Mr. Jiang’s father reported his disappearance to the police station at the Beijing West Railway Station. At first, a police officer admitted the case and issued a receipt, and also verbally agreed to check the closed-circuit television at the railway station. When the lawyer requested to see the footage, however, access was denied on the ground that Mr. Jiang’s father had to provide a proof of his father-and-son relations with Mr. Jiang.

On 29 November 2016, two lawyers went back to the police station at the Beijing West Railway Station with a certificate issued by the village committee of Mr. Jiang’s father’s town of residence, which affirmed the father-and-son

relations. Access was denied once again on the basis that they required a proof from a police station of the town where Mr. Jiang's father's hukou was registered, as well as evidence from the Changsha Railway Station to confirm whether or not Mr. Jiang had boarded the train.

As of the date of this communication, the fate and whereabouts of Mr. Jiang remain unknown.

While we do not wish to prejudge the accuracy of these allegations, we are deeply concerned about Mr. Jiang's situation, particularly because he reportedly suffers from various health conditions that require regular medication. Given Mr. Jiang's occupation, previous incidents, including a prior enforced disappearance by the authorities in 2011, and the reports of hundreds of human rights defenders in China that have been questioned, summoned, forbidden to leave the country, held under house arrest, residential surveillance, arrested, criminally detained or gone missing since July 2015,¹ we cannot dismiss the likelihood that Mr. Jiang may have been disappeared by the authorities because of his human rights work.

Furthermore, given Mr. Jiang's meeting with the Special Rapporteur on extreme poverty and human rights in Beijing in August 2016, we are also concerned that his disappearance may have occurred, at least in part, in reprisal for his cooperation with the Special Rapporteur.

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 in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR), and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR), signed by China in 1998. 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 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which China ratified in 1988.

We are further drawing your Excellency's Government's attention to the United Nations Declaration on the Protection of All Persons from Enforced Disappearances, which establishes the prohibition to practice, permit or tolerate enforced disappearances (art.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

¹ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16241&LangID=E>

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). Article 13 (1) of the Declaration also proclaims that whenever there are reasonable grounds to believe that an enforced disappearance has been committed, the State shall promptly refer the matter to that authority for such an investigation, even if there has been no formal complaint. No measure shall be taken to curtail or impede the investigation.

In view of the alleged connection between Mr. Jiang's legitimate human rights work and his disappearance, we reiterate our appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression in accordance with the fundamental principles as set forth in article 19 of the UDHR and article 19 of the ICCPR. We would moreover 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, 2, 6, 9 and 12.

Furthermore, taking into account Mr. Jiang's cooperation with the Special Rapporteur on extreme poverty and human rights, we wish to underline that Human Rights Council resolutions 12/2 and 24/24 call on Governments to prevent and refrain from all acts of intimidation or reprisal against those who seek to cooperate or have cooperated with the United Nations, its representatives and mechanisms in the field of human rights. The Secretary-General reiterated that any such act of intimidation or reprisal "must be halted, immediately and unconditionally".² We reiterate that acts of reprisal are widely condemned as a "completely unacceptable" practice by the international community.³

We furthermore point to the Revised Terms of Reference for country visits by Special Procedures mandate holders of the United Nations Human Rights Council adopted at the 23rd Annual Meeting of Special Procedures from 6 to 10 June 2016 in Geneva, which indicate that countries that are subject to a visit should assure that no person or group of persons, whether acting in their official or individual capacities, who cooperate, seek to cooperate, or have cooperated with the mandate holder in relation to the mandate, will for this reason suffer intimidation, threats, harassment or punishment, be subjected to judicial proceedings or to any other kind of reprisals by any means

² Report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/30/29), at paragraph 47.

³ Report of the Secretary-General on cooperation with the United Nations, its representatives and mechanisms in the field of human rights (A/HRC/30/29), at paragraph 47.

whatsoever; assurance that any measures that could deter such cooperation or be perceived as such, will be avoided. These assurances should apply before, during and after the conduct of country visits.

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 Mr. Jiang 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 any information you may have concerning Mr. Jiang's current location.
3. Please provide details of any specific measures taken by your Excellency's Government to locate Mr. Jiang and ensure his physical and psychological integrity and well-being.
4. If Mr. Jiang has been arrested and detained by the authorities, please provide the legal grounds of his arrest and detention, and indicate whether he has been provided access to lawyers and any medical care that he may require.
5. Please provide detailed information concerning measures to ensure that human rights defenders are able to carry out their legitimate work in a safe and enabling environment without fear of violence, threats or acts of intimidation and harassment of any sort.

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 responsible of the alleged violations.

Please note that in accordance with its Methods of work, the Working Group on enforced or involuntary disappearances has also transmitted this individual case to your

Excellency's Government, through an Urgent Action sent earlier today. The case will therefore be registered among the outstanding cases under review by the Working Group.

We furthermore 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 issue/s 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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Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

David Kaye
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